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[G.R. No. 72670, September 12, 1986]

SATURNINA GALMAN, REYNALDO GALMAN AND JOSE P. BENGZON, MARY CONCEPCION BAUTISTA, JOAQUIN G. BERNAS, S.J., M. BELLARMINE BERNAS, O.S.B., FRANCISCO I. CHAVEZ, SOLITA COLLAS-MONSOD, SANTIAGO DUMLAO, JR., MARIA FERIA, MARCELO B. FERNAN, FRANCISCO GARCHITORENA,** ANDREW GONZALEZ, JOSE C. LAURETA, SALVADOR P. LOPEZ, FELIX K. MARAMBA, JR., CECILIA MUÑOZ PALMA, JAIME V. ONGPIN, FELIX PEREZ, JOSE B.L. REYES, JOSE E. ROMERO, JR., RAMON DEL ROSARIO, JR., RICARDO J. ROMULO, AUGUSTO SANCHEZ, EMMANUEL V. SORIANO , DAVID SYCIP, ENRIQUE SYQUIA, CRISTINA TAN, JESUS VARGAS, BERNARDO M. VILLEGAS, VICENTE JAYME,*** PETITIONERS, VS. SANDIGANBAYAN, FIRST DIVISION (REPRESENTED BY JUSTICE MANUEL PAMARAN, CHAIRMAN,AND JUSTICE AUGUSTO AMORES AND BIENVENIDO VERA CRUZ, MEMBERS), JUSTICE BERNARDO FERNANDEZ (OMBUDSMAN) AND GEN. FABIAN C. VER, MAJ. GEN. PROSPERO A. OLIVAS, BRIG. GEN. LUTHER A. CUSTODIO, COL., ARTURO G. CUSTODIO, COL. VICENTE B. TIGAS, JR., CAPT. FELIPE VALERIO, CAPT. LLEWELYN KAVINTA, CAPT. ROMEO M. BAUTISTA, 2ND LT. JESUS CASTRO, SGT. PABLO MARTINEZ, SGT. ARNULFO DE MESA, SGT. TOMAS FERNANDEZ, SGT. CLARO LAT, SGT. FILOMENO MIRANDA, SGT. ROLANDO C. DE GUZMAN, SGT. ERNESTO M. MATEO, SGT. RODOLFO M. DESOLONG, SGT. LEONARDO MOJICA, SGT. PEPITO TORIO, SGT. ARMANDO DELA CRUZ, SGT. PROSPERO A. BONA, CIC ROGELIO MORENO, CIC MARIO LAZAGA, AIC CORDOVA G. ESTELO, AIC

ANICETO ACUPIDO AND HERMILO GOSUICO, RESPONDENTS.

R E S O L U T I O N

TEEHANKEE, C.J.

Last August 21st, our nation marked with solemnity and for the first time in freedom the third anniversary of the treacherous assassination of foremost opposition leader former Senator Benigno "Ninoy" Aquino, Jr. imprisoned for almost eight years since the imposition of martial law in September, 1972 by then President Ferdinand E. Marcos, he was sentenced to death by firing squad by a military tribunal for common offenses alleged to have been committed long before the declaration of martial law and whose jurisdiction over him as a civilian entitled to trial by judicial process by civil courts he repudiated. Ninoy pleaded in vain that the military tribunals are admittedly not courts but mere instruments and subject to the control of the President as created by him under the General Orders issued by him as Commander-in-Chief of the Armed Forces of the Philippines, and that he had already been publicly indicted and adjudged guilty by the President of the charges in a nationwide press conference held on August 24, 1971 when he declared the evidence against Ninoy "not only strong but overwhelming."[1] This followed the Plaza Miranda bombing of August 21, 1971 of the proclamation rally of the opposition Liberal Party candidates for the November, 1971 elections (when eight persons were killed and practically all of the opposition candidates headed by Senator Jovito Salonga and many more were seriously injured), and the suspension of the privilege of the writ of *habeas corpus* under Proclamation No. 889 on August 23, 1971. The massacre was instantly attributed to the communists but the truth has never been known. But the then President never filed the said charges against Ninoy in the civil courts.

Ninoy Aquino was nevertheless thereafter allowed in May, 1980 to leave the country to undergo successful heart surgery. After three years of exile and despite the regime's refusal to give him a passport, he sought to return home "to strive for a genuine national reconciliation founded on justice." He was to be cold-bloodedly killed while under escort away by soldiers from his plane that had just landed at the Manila International Airport on that fateful day at past 1 p.m. His brain was smashed by a bullet fired point-blank into the back of his head by a murderous assassin,

notwithstanding that the airport was ringed by airtight security of close to 2,000 soldiers — and "from a military viewpoint, it (was) technically impossible to get inside (such) a cordon."[2] The military investigators reported within a span of three hours that the man who shot Aquino (whose identity was then supposed to be unknown and was revealed only days later as Rolando Galman, although he was the personal friend of accused Col. Arturo Custodio who picked him up from his house on August 17, 1983) was a communist-hired gunman, and that the military escorts gunned him down in turn. The military later filmed a re-enactment of the killing scripted according to this version and continuously replayed it on all TV channels as if it were taken live on the spot. The then President instantly accepted the military version and repeated it in a nationally televised press conference that he gave late in the evening of August 22, 1983, wherein he said, in order to induce disbelief that the military had a hand in the killing, that "if the purpose was to eliminate Aquino, this was not the way to do it."

The national tragedy shocked the conscience of the entire nation and outraged the free world. The large masses of people who joined in the ten-day period of national mourning and came out in millions in the largest and most orderly public turnout for Ninoy's funeral reflected their grief for his martyrdom and their yearning for the truth, justice and freedom.

The then President was constrained to create a Fact Finding Board[3] to investigate "the treacherous and vicious assassination of former Senator Benigno S. Aquino, Jr. on August 21, 1983 [which] has to all Filipinos become a national tragedy and national shame specially because of the early distortions and exaggerations in both foreign and local media[4] so that all right thinking and honest men desire to ventilate the truth through fare, independent and dispassionate investigation by prestigious and free investigators." After two false starts,[5] he finally constituted the Board[6] on October 22, 1983 which held 125 hearing days commencing November 3, 1983 (including 3 hearings in Tokyo and 8 hearings in Los Angeles, California) and heard the testimonies' of 194 witnesses recorded in 20,377 pages of transcripts, until the submission of their minority and majority reports to the President on October 23 and 24, 1984. This was to mark another first anywhere in the world wherein the minority report was submitted one day ahead by the ponente thereof, the chairman, who was received congenially and cordially by the then President who treated the report as if it were the majority report instead of a minority report of one

and forthwith referred it to respondent Tanodbayan "for final resolution through the legal system" and for trial in the Sandiganbayan which was better known as a graft court; and the majority report of the four other members was submitted on the following day to the then President who coldly received them and could scarcely conceal his instant rejection of their report with the grim statement that "I hope you can live with your conscience with what you have done."

The fact is that both majority and minority reports were one in rejecting the military version as propounded by the chief investigator, respondent Gen. Olivas, that Rolando Galman was the NPA hired assassin, stating that "the evidence shows [to the contrary] that Rolando Galman had no subversive affiliations." They were in agreement that "only the soldiers in the staircase with Sen. Aquino could have shot him;" that Galman, the military's "fall guy" was "not the assassin of Sen. Aquino" and that "the SWAT troopers who gunned down Galman and the soldiers who escorted Sen. Aquino down the service stairs, deliberately and in conspiracy with one another, gave a perjured story to us regarding the alleged shooting by Galman of Sen. Aquino and the mowing down, in turn, of Galman himself;" in short, that Ninoy's assassination was the product of a military conspiracy, not a communist plot. The only difference between the two reports is that the majority report found all the twenty-six private respondents abovenamed in the title of the case headed by then AFP Chief General Fabian C. Ver involved in the military conspiracy and therefore "indictable for the premeditated killing of Senator Benigno S. Aquino, Jr. and Rolando Galman at the MIA on August 21, 1983;" while the chairman's minority report would exclude nineteen of them and limit as plotters "the six persons who were on the service stairs while Senator Aquino was descending" and "General Luther Custodio x x x because the criminal plot could not have been planned and implemented without his intervention."

The chairman wrote in her minority report (somewhat prophetically) that "The epilogue to our work lies in what will transpire in accordance with the action that the Office of the President may thereafter direct to be taken." The four-member majority report (also prophetically) wrote in the epilogue (after warning the forces who adhere to an alien and intolerable political ideology against unscrupulously using the report "to discredit our traditionally revered institutions"), that "the tragedy opened our eyes and for the first time confirmed our worst fears of what unchecked evil would be capable of doing." They wrote:

"The task of the Board was clear and unequivocal. This task was not only to determine the facts and circumstances surrounding the death of the late former Senator. Of greater significance is the awesome responsibility of the Board to uphold righteousness over evil, justice over injustice, rationality over irrationality, humaneness over inhumanity. The task was indeed a painful test, the inevitable result of which will restore our country's honored place among the sovereign nations of the free world where peace, law and order, freedom, and justice are a way of life.

"More than any other event in contemporary Philippine history, the killing of the late former Senator Aquino has brought into sharper focus, the ills pervading Philippine society. It was the concretization of the horror that has been haunting this country for decades, routinely manifested by the breakdown of peace and order, economic instability, subversion, graft and corruption, and an increasing number of abusive elements in what are otherwise noble institutions in our country the military and law enforcement agencies. We are, however, convinced that, by and large, the great majority of the officers and men of these institutions have remained decent and honorable, dedicated to their noble mission in the service of our country and people.

"The tragedy opened our eyes and for the first time confirmed our worst fears of what unchecked evil would be capable of doing. As former Israeli Foreign Minister Abba Eban observes. 'Nobody who has great authority can be trusted not to go beyond its proper limits.' Social apathy, passivity and indifference and neglect have spawned in secret a dark force that is bent on destroying the values held sacred by freedom-loving people.

"To assert our proper place in the civilized world, it is imperative that public officials should regard public service as a reflection of human ideals in which the highest sense of moral values and integrity are strictly required.

"A tragedy like that which happened on August 21, 1983, and the crisis that followed, would have normally caused the resignation of the Chief of the Armed Forces in a country

> where public office is viewed with highest esteem and respect and where the moral responsibilities of public officials transcend all other considerations."

It is equally the fact that the then President through all his recorded public acts and statements from the beginning disdained and rejected his own Board's above findings and insisted on the military version of Galman being Ninoy's assassin. In upholding this view that "there is no involvement of anyone in his government in the assassination," he told David Briscoe (then AP Manila Bureau Chief) in a Radio-TV interview on September 9, 1983 that "I am convinced that if any member of my government were involved, I would have known somehow xxx Even at a fairly low level, I would have known. I know how they think. I know what they are thinking of."[7] He told CBS in another interview in May, 1984 (as his Fact Finding Board was holding its hearings) the following:

> "CBS: 'But indeed there has been recent evidence that seems to contradict earlier reports, namely, the recent evidence seems to indicate that some of the guards may have been responsible (for shooting Ninoy).' "
>
> "MARCOS: 'Well, you are of course wrong. What you have been reading are the newspapers and the newspaper reports have been biased. The evidence still proves that Galman was the killer. The evidence also shows that there were intelligence reports connecting the communist party to the killing.' "[8] In his reply of October 25, 1984 to General Ver's letter of the same date going on leave of absence upon release of the Board's majority report implicating him, he wrote that "(W)e are even more aware, general, that the circumstances under which the board has chosen to implicate you in its findings are fraught with doubt and great contradictions of opinion and testimony. And we are deeply disturbed that on the basis of so-called evidence, you have been so accused by some members of the Board," and extended "My very best wishes to you and your family for a speedy resolution of your case,"[9] even as he announced that he would return the general to his position as AFP Chief "if he is acquitted by the Sandiganbayan." In an interview on June 4, 1985 with the Gamma Photo Agency, as respondent court was hearing the cases, he was quoted as saying that "as will probably be shown, those witnesses (against the accused) are perjured

witnesses."[10]

It was against this setting that on November 11, 1985 petitioners Saturnina Galman and Reynaldo Galman, mother and son, respectively, of the late Rolando Galman, and twenty-nine (29) other petitioners, composed of three former Justices of this Court, five incumbent and former university presidents, a former AFP Chief of Staff, outstanding members of the Philippine Bar and solid citizens of the community, filed the present action alleging that respondents Tanodbayan and Sandiganbayan committed serious irregularities constituting mistrial and resulting in miscarriage of justice and gross violation of the constitutional rights of the petitioners and the sovereign people of the Philippines to due process of law. They asserted that the Tanodbayan did not represent the interest of the people when he failed to exert genuine and earnest efforts to present vital and important testimonial and documentary evidence for the prosecution and that the Sandiganbayan Justices were biased, prejudiced and partial in favor of the accused, and that their acts "clouded with the gravest doubts the sincerity of government to find out the truth about the Aquino assassination." Petitioners prayed for the immediate issuance of a temporary restraining order restraining the respondent Sandiganbayan from rendering a decision on the merits in the pending criminal cases which it had scheduled on November 20, 1985 and that judgment be rendered declaring a mistrial and nullifying the proceedings before the Sandiganbayan and ordering a re-trial before an impartial tribunal by an unbiased prosecutor.[10-a]

At the hearing on November 18, 1985 of petitioners' prayer for issuance of a temporary restraining order enjoining respondent court from rendering a decision in the two criminal cases before it, the Court resolved by nine-to-two votes[11] to issue the restraining order prayed for. The Court also granted petitioners a five-day period to file a reply to respondents' separate comments and respondent Tanodbayan a three-day period to submit a copy of his 84-page memorandum for the prosecution as filed in the Sandiganbayan, the signature page of which alone had been submitted to the Court as Annex 5 of his comment.

But ten days later on November 28, 1985, the Court by the same nine-to-two-vote ratio in reverse,[12] resolved to dismiss the petition and to lift the temporary restraining order issued ten days earlier enjoining the Sandiganbayan from rendering its decision.[13] The same Court majority denied petitioners' motion for a new 5-day period counted from receipt of

respondent Tanodbayan's memorandum for the prosecution (which apparently was not served on them and which they alleged was "very material to the question of his partiality, bias and prejudice" within which to file a consolidated reply thereto and to respondents' separate comments, by an eight-to three vote, with Justice Gutierrez joining the dissenters.[14]

On November 29, 1985, petitioners filed a motion for reconsideration, alleging that the dismissal did not indicate the legal ground for such action and urging that the case be set for a full hearing on the merits because if the charge of partiality and bias against the respondents and suppression of vital evidence by the prosecution are proven, the petitioners would be entitled to the reliefs demanded: The People are entitled to due process which requires an impartial tribunal and an unbiased prosecutor. If the State is deprived of a fair opportunity to prosecute and convict because certain material evidence is suppressed by the prosecution and the tribunal is not impartial, then the entire proceedings would be null and void. Petitioners prayed that the Sandiganbayan be restrained from promulgating their decision as scheduled anew on December 2, 1985.

On December 5, 1985, the Court required the respondents to comment on the motion for reconsideration but issued no restraining order. Thus, on December 2, 1985, as scheduled, respondent Sandiganbayan issued its decision acquitting all the accused of the crime charged, declaring them innocent and totally absolving them of any civil liability. This marked another unusual first in that respondent Sandiganbayan in effect convicted the very victim Rolando Galman (who was not on trial) as the assassin of Ninoy contrary to the very information and evidence submitted by the prosecution. In opposition, respondents submitted that with the Sandiganbayan's verdict of acquittal, the instant case had become moot and academic.

On February 4, 1986, the same Court majority denied petitioners' motion for reconsideration for lack of merit, with the writer and Justice Abad Santos maintaining our dissent.

On March 20, 1986, petitioners filed their motion to admit their second motion for reconsideration attached therewith. The thrust of the second motion for reconsideration was the startling and therefore unknown revelations of Deputy Tanodbayan Manuel Herrera as reported in the March 6, 1986 issue of the Manila Times entitled "Aquino Trial a Sham,"

that the then President had ordered the respondents Sandiganbayan and Tanodbayan Bernardo Fernandez and the prosecution panel headed by Herrera to whitewash the criminal cases against the 26 respondents accused and produce a verdict of acquittal.

On April 3, 1986, the Court granted the motion to admit the second motion for reconsideration and ordered the respondents to comment thereon.[15]

Respondent Tanodbayan Bernardo Fernandez stated in his Manifestation filed on April 11, 1986 that he had ceased to hold office as Tanodbayan as of April 8, 1986 when he was replaced by the new Tanodbayan, Raul M. Gonzales, but reiterating his position in his comment on the petition, he added "relative to the reported alleged revelations of Deputy Tanodbayan Manuel Herrera, herein respondent *never succumbed* to any alleged attempts to influence his actuations in the premises, *having instead successfully resisted perceived attempts to exert pressure to drop the case after preliminary investigation* and actually ordered the filing and prosecution of the two (2) murder cases below against herein private-party respondents." He candidly admitted also in his memorandum: "There is not much that need be said about the existence of pressure. That there were pressures can hardly be denied; in fact, it has never been denied."[15-a] He submitted that "even as he vehemently denies insinuations of any direct or indirect complicity or participation in any alleged attempt to supposedly whitewash the cases below, x x x should this Honorable Court find sufficient cause to justify the reopening and retrial of the cases below, he would welcome such development so that any wrong that had been caused may be righted and so that, at the very least the actuations of herein respondent in the premises may be reviewed and reexamined, confident as he is that the end will show that he had done nothing in the premises that violated his trust as Tanodbayan (Ombudsman)." New Tanodbayan Raul M. Gonzales in his comment of April 14, 1986 "interposed no objection to the reopening of the trial of the cases x x x as, in fact, he urged that the said cases be reopened in order that justice could take its course."

Respondents Justices of the Sandiganbayan First Division in their collective comment of April 9, 1986 stated that the trial of the criminal cases by them was valid and regular and decided on the basis of evidence presented and the law applicable, but manifested that "if it is true that the former Tanodbayan and the Deputy Tanodbayan, Chief of the Prosecution Panel, were pressured into suppressing vital evidence which would

probably alter the result of the trial, Answering Respondents would not interpose any objection to the reopening of those cases, if only to allow justice to take its course." Respondent Sandiganbayan Justice Bienvenido C. Vera Cruz, in a separate comment, asserted that he passed no note to anyone; the note being bandied about is not in his handwriting; he had nothing to do with the writing of the note or of any note of any kind intended for any lawyer of the defense or even of the prosecution; and requested for an investigation by this Court to settle the note-passing issue once and for all.

Deputy Tanodbayan Manuel Herrera, in his comment of April 14, 1986 affirmed the allegations in the second motion for reconsideration that he revealed that the Sandiganbayan Justices and Tanodbayan prosecutors were ordered by Marcos to whitewash the Aquino-Galman murder case. He amplified his revelations, as follows:

> "1. *AB INITIO*, A VERDICT OF ACQUITTAL!
>
> Incidents during the preliminary investigation showed ominous signs that the fate of the criminal case on the death of Ex-Senator Benigno Aquino and Rolando Galman on August 21, 1983 wasdooned to an ignominous end. Malacañang wanted dismissal to the extent that a prepared resolution was sent to the Investigating Panel (composed of the undersigned, Fiscals Ernesto Bernabe and Leonardo Tamayo) for signature. This, of course, was resisted by the panel, and a resolution charging all the respondents as principals was forwarded to the Tanodbayan on January 10, 1985.
>
> 2. MALACAÑANG CONFERENCE PLANNED SCENARIO OF TRIAL.
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> At 6:00 p.m. of said date (January 10) Mr. Ferdinand E. Marcos (the former President) summoned to Malacañang Justice Bernardo Fernandez (the Tanodbayan), Sandiganbayan Justice Manuel Pamaran (the Presiding Justice) and all the members of the Panel.
>
> Also present at the meeting were Justice Manuel Lazaro (the Coordinator) and Mrs. Imelda R. Marcos, who left earlier, came back and left again. The former President had a copy of the panel's signed resolution (charging all accused as

principals), evidently furnished him in advance, and with prepared notes on the contents thereof.

The former President started by vehemently maintaining that Galman shot Aquino at the tarmac. Albeit initially the undersigned argued against the theory, to remain silent was the more discreet posture when the former President became emotional (he was quite sick then).

During a good part of the conference, the former President talked about Aquino and the communists, lambasting the Agrava Board, specially the Legal Panel. Shifting to the military he rumbled on such statements as: 'It will be bloody x x x Gen. Ramos, though close to me, is getting ambitious and poor Johnny does not know what to do' xxx 'our understanding with Gen. Ramos is that his stint is only temporary, but he is becoming ambitious;' x x x 'the boys were frantic when they heard that they will be charged in court, and will be detained at city jail.'

From outright dismissal, the sentiment veered towards a more pragmatic approach. The former President more or less conceded that for political and legal reasons all the respondents should be charged in court. Politically, as it will become evident that the government was serious in pursuing the case towards its logical conclusion, and thereby ease public demonstrations; on the other hand, legally, it was perceived that after (not IF) they are acquitted, double jeopardy would inure. The former President ordered then that the resolution be revised by categorizing the participation of each respondent.

In the matter of custody of the accused *pendente lite* the Coordinator was ordered to get in touch with Gen. Narciso Cabrera, Gen. Vicente Eduardo and Director Jolly Bugarin to put on record that they had no place in their respective institutions. The existence of PD No. 1950 (giving custody to commanding officers of members of AFP charged in court) was never mentioned.

It was decided that the presiding justice (First Division) would personally handle the trial, and assurance was made by him

> that it would be finished in four to six months, pointing out that, with the recent effectivity of the New Rules on Criminal Procedure, the trial could be expedited.
>
> Towards the end of the two hour meeting and after the script had been tacitly mapped out, the former President uttered: 'Magmoro-moro na lang kayo.'
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> The parting words of the former President were: 'Thank you for your cooperation. I know how to reciprocate.'
>
> While still in the palace grounds on the way out, the undersigned manifested his desire to the Tanodbayan to resign from the panel, or even the office. This, as well as other moves to this effect, had always been refused. Hoping that with sufficient evidence sincerely and efficiently presented by the prosecution, all involves in the trial would be conscience-pricked and realize the futility and injustice of proceeding in accordance with the script, the undersigned opted to say on."

Herrera further added details on the "implementation of the script," such as the holding of a "make-believe raffle" within 18 minutes of the filing of the Informations with the Sandiganbayan at noon of January 23, 1985, while there were no members of the media; the installation of TV monitors directly beamed to Malacañang; the installation of a "war room" occupied by the military; attempts to direct and stifle witnesses for the prosecution; the suppression of the evidence that could be given by U.S. Airforce men about the "scrambling" of Ninoy's plane; the suppression of rebuttal witnesses and the bias and partiality of the Sandiganbayan; its cavalier disregard of his plea that it "should not decide these cases on the merits without first making a final ruling on the Motion for Inhibition;" and the Presiding Justice's over-kill with the declaration that "the Court finds all accused innocent of the crimes charged in the two informations, and accordingly, they incur neither criminal nor civil liability," adding that "in the almost twenty years that the undersigned has been the prosecutor in the sala of the Presiding Justice this is the only occasion where civil liability is pronounced in a decision of acquittal." He "associated himself with the motion for reconsideration and likewise prayed that the proceedings in the Sandiganbayan and its decision be declared null and void."

New Solicitor General Sedfrey Ordonez' comment of April 25, 1986

submitted that a declaration of mistrial will depend on the veracity of the evidence supportive of petitioners' claim of suppression of evidence and collusion. He submitted that this would require reception of evidence by a Court appointed or designated commissioner or body of commissioners (as was done in G.R. No. 71316, *Fr. Romano case*; and G.R. No. 61016, *Morales case*; and G.R. No. 70054, *Banco Filipino case*); and that if petitioners' claim were substantiated, a reopening of the double murder case is proper to avoid a miscarriage of justice since the verdict of acquittal would no longer be a valid basis for a double jeopardy claim.

Respondents-accused opposed the second motion for reconsideration and prayed for its denial. Respondent Olivas contended that the proper step for the government was to file a direct action to annul the judgment of acquittal and at a regular trial present its evidence of collusion and pressures.

As a whole, all the other respondents raised the issue of double jeopardy, and invoked that the issues had become moot and academic because of the rendition of the Sandiganbayan's judgment of acquittal of all respondents-accused on December 2, 1985, with counsels for respondents Ver and Tigas, as well as Olivas, further arguing that assuming that the judgment of acquittal is void for any reason, the remedy is a direct action to annul the judgment where the burden of proof falls upon the plaintiff to establish by clear, competent and convincing evidence the cause of the nullity.

After petitioners had filed their consolidated reply, the Court resolved per its resolution of June 5, 1986 to appoint a three-member commission composed of retired Supreme Court Justice Conrado Vasquez, chairman, and retired Intermediate Appellate Court Justices Milagros German and Eduardo Caguioa as members, to hear and receive evidence, testimonial and documentary, of the charges of collusion and pressures and relevant matters, upon prior notice to all parties, and to submit their findings to this Court for proper disposition. The Commission conducted hearings on 19 days, starting on June 16, 1986 and ending on July 16, 1986. On the said last day, respondents announced in open hearing that they decided to forego the taking of the projected deposition of former President Marcos, as his testimony would be merely corroborative of the testimonies of respondents Justice Pamaran and Tanodbayan Fernandez. On July 31, 1986, it submitted its extensive 64-page Report[16] wherein it discussed fully the evidence received by it and made a recapitulation of its findings in capsulized form, as follows:

"1. The Office of the Tanodbayan. particularly Justice Fernandez and the Special Investigating Panel composed of Justice Herrera, Fiscal Bernabe and Special Prosecutor Tamayo, was originally of the view that all of the twenty-six (26) respondents named in the Agrava Board majority report should all be charged as principals of the crime of double murder for the death of Senator Benigno Aquino and Rolando Galman.

2. When Malacañang learned of the impending filing of the said charge before the Sandiganbayan. the Special Investigating Panel having already prepared a draft Resolution recommending such course of action, President Marcos summoned Justice Fernandez, the three members of the Special Investigating Panel, and Justice Pamaran to a conference in Malacañang in the early evening of January 10, 1985.

3. In said conference. President Marcos initially expressed his disagreement with the recommendation of the Special Investigating Panel and disputed the findings of the Agrava Board that it was not Galman who shot Benigno Aquino.

4. Later in the conference, however, President Marcos was convinced of the advisability of filing the murder charge in court so that, after being acquitted as planned, the accused may no longer be prosecuted in view of the doctrine of double jeopardy.

5. Presumably in order to be assured that not all of the accused would be denied bail during the trial, considering that they would be charged with capital offenses. President Marcos directed that the several accused be 'categorized' so that some of them would merely be charged as accomplices and accessories.

6. In addition to said directive. President Marcos ordered that the case be handled personally by Justice Pamaran who should dispose of it in the earliest possible time.

7. The instructions given in the Malacañang conference were followed to the letter and compliance therewith manifested

itself in several specific instances in the course of the proceedings, such as the changing of the resolution of the special investigating panel, the filing of the case with the Sandiganbayan and its assignment to Justice Pamaran, suppression of some vital evidence, harassment of witnesses, recantation of witnesses who gave adverse testimony before the Agrava Board, coaching of defense counsels, the hasty trial, monitoring of proceedings, and even in the very decision rendered in the case.

8. That expression of President Marcos' desire as to how he wanted the Aquino-Galman case to be handled and disposed of constituted sufficient pressure on those involved in said task to comply with the same in the subsequent course of the proceedings.

9. That while Justice Pamaran and Justice Fernandez manifested no revulsion against complying with the Malacañang directive. Justice Herrera played his role with manifestly ambivalent feelings.

10. Sufficient evidence has been ventilated to show a scripted and predetermined manner of handling and disposing of the Aquino-Galman murder case, as stage-managed from Malacañang and performed by willing *dramatis personnae* as well as by recalcitrant ones whipped into line by the omni present influence of an authoritarian ruler."

The Commission submitted the following recommendation.

"Considering the existence of adequate credible evidence showing that the prosecution in the Aquino-Galman case and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist, and which not only prevented the prosecution to fully ventilate its position and to offer all the evidences which it could have otherwise presented, but also predetermined the final outcome of the case, the Commission is of the considered thinking and belief, subject to the better opinion and judgment of this Honorable Court, that the proceedings in the said case have been vitiated by lack of due process, and hereby respectfully recommends that the prayer in the petition for a declaration of a mistrial in Sandiganbayan

> Cases Nos. 10010 and 10011 entitled '*People vs. Luther Custodio, et al.*,' be granted."

The Court per its Resolution of July 31, 1986 furnished all the parties with copies of the Report and required them to submit their objections thereto. It thereafter heard the parties and their objections at the hearing of August 26, 1986 and the matter was submitted for the Court's resolution.

The Court adopts and approves the Report and its findings and holds on the basis thereof and of the evidence received and appreciated by the Commission and duly supported by the facts of public record and knowledge set forth above and hereinafter, that the then President (code-named Olympus) had stage-managed in and from Malacañang Palace "a scripted and predetermined manner of handling and disposing of the Aquino-Galman murder case;" and that "the prosecution in the Aquino-Galman case and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist, and which not only prevented the prosecution to fully ventilate its position and to offer all the evidences which it could have otherwise presented, but also predetermined the final outcome of the case" of total absolution of the twenty-six respondents-accused of all criminal and civil liability.

The Court finds that the Commission's Report (*incorporated herein by reference*) and findings and conclusions are duly substantiated by the evidence and facts of public record. Composed of distinguished members of proven integrity with a combined total of 141 years of experience in the practice of law (55 years) and in the prosecutoral and judicial services (86 years in the trial and appellate courts), experts at sifting the chaff from the grain,[17] the Commission properly appraised the evidences presented and denials made by public respondents, thus:

> "The desire of President Marcos to have the Aquino-Galman case disposed of in a manner suitable to his purposes was quite understandable and was but to be expected. The case had stirred unprecedented public outcry and wide international attention. Not invariably, the finger of suspicion pointed to those then in power who supposedly had the means and the most compelling motive to eliminate Senator Aquino. Aday or so after the assassination, President Marcos came up with a public statement aired over television that Senator Aquino was

killed not by his military escorts, but by a communist hired gun. It was, therefore, not a source of wonder that President Marcos would want the case disposed of in a manner consistent with his announced theory thereof which, at the same time, would clear his name and his administration of any suspected guilty participation in the assassination.

"The calling of the conference was undoubtedly to accomplish thus purpose x x x.

"President Marcos made no bones to conceal his purpose for calling them. From the start, he expressed irritation and displeasure at the recommendation of the investigating panel to charge all of the twenty-six (26) respondents as principals of the crime of double murder. He insisted that it was Galman who shot Senator Aquino, and that the findings of the Agrava Board were not supported by evidence that could stand in court. He discussed and argued with Justice Herrera on this point. Midway in the course of the discussion, mention was made that the filing of the charge in court would at least mollify public demands and possibly prevent further street demonstrations. It was further pointed out that such a procedure would be a better arrangement because, if the accused are charged in court and subsequently acquitted, they may claim the benefit of the doctrine of double jeopardy and thereby avoid another prosecution if some other witnesses shall appear when President Marcos is no longer in office.

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"After an agreement was reached as to filing the case, instead of dismissing it, but with some of the accused to be charged merely as accomplices or accessories, and the question of preventive custody of the accused having thereby received satisfactory solution, President Marcos took up the matter of who would try the case and how long it would take to be finished.

"According to Justice Herrera, President Marcos told Justice Pamaran 'point blank' to personally handle the case. This was denied by Justice Pamaran. No similar denial was voiced *by Justice Fernandez in the entire course of his two-day*

testimony. Justice Pamaran explained that such order could not have been given inasmuch as it was not yet certain then that the Sandiganbayan would try the case and, besides, cases therein are assigned by raffle to a division and not to a particular Justice thereof.

"It was preposterous to expect Justice Pamaran to admit having received such presidential directive. His denial, however, falls to pieces in the light of the fact that the case was indeed handled by him after being assigned to the division headed by him. A supposition of mere coincidence is at once dispelled by the circumstance that he was the only one from the Sandiganbayan called to the Malacañang conference wherein the said directive was given x x x.

"The giving of such directive to Justice Pamaran may also be inferred from his admission that he gave President Marcos the possible time frame when asked as to how long it would take him to finish the case.

"The *testimony* of Justice Herrera that, during the conference, and after an agreement was reached on filing the case and subsequently acquitting the accused, *President Marcos told them 'Okay, mag moro-moro na lamang kayo*;' and that on their way out of the room President Marcos expressed his thanks to the group and uttered '*I know how to reciprocate,' did not receive any denial or contradiction either on the part of Justice Fernandez or Justice Pamaran. (No other person present in the conference was presented by the respondents. Despite an earlier manifestation* by the respondents of their intention *to present Fiscal Bernabe and Prosecutor Tamayo, such move was abandoned without any reason having been given therefor*).

"The facts set forth above are all supported by the evidence on record. In the mind of the Commission, the only conclusion that may be drawn therefrom is that pressure from Malacañang had indeed been made to bear on both the court and the prosecution in the handling and disposition of the Aquino-Galman case. *The intensity of this pressure is readily deductible from the personality of the one who exerted it, his moral and official ascendancy over those to whom his*

instructions were directed, the motivation behind such instructions, and the nature of the government prevailing at that time which enabled the then head of state to exercise authoritarian powers. That the conference called *to script or stage-manage the prosecution and trial* of the Aquino-Galman case was considered as *something anomalous that should be kept away from the public eye is shown by the effort to assure its secrecy*. None but those directly involved were called to attend. The meeting was held in an inner room of the Palace. Only the First Lady and Presidential Legal Assistant Justice Lazaro were with the President. The conferees were told to *take the back door* in going to the room where the meeting was held, presumably to escape notice by the visitors in the reception hall waiting to see the President. Actually, *no public mention was ever made of this conference until Justice Herrera made his expose some fifteen (15) months later when the former President was no longer around.*

"President Marcos undoubtedly realized the importance of the matter he wanted to take up with the officials he asked to be summoned. *He had to do it personally*, and not merely through trusted assistants. The lack of will or determination on the part of Justice Fernandez and Justice Pamaran to resist the presidential summons despite their realization of its unwholesome implications on their handling of the celebrated murder case may be easily inferred from their unquestioned obedience thereto. No effort to resist was made, despite the existence of a most valid reason to beg off, on the lame excuses that they went there out of 'curiosity,' or 'out of respect to the Office of the President,' or that it would be 'unbecoming to refuse a summons from the President.' Such frame of mind only reveals their susceptibility to presidential pressure and lack of capacity to resist the same. *The very acts of being summoned to Malacañang and their ready acquiescence thereto under the circumstances then obtaining, are in themselves pressure dramatized and exemplified.* Their abject deference to President Marcos may likewise be inferred from the admitted fact that, not having been given seats during the two-hour conference (Justice Fernandez said it was not that long, but did not say how long) in which President Marcos did the talking most of the time, they listened to him on their feet. Verily, it can be said that *any avowal of*

independent action or resistance to presidential pressure became illusory from the very moment they stepped inside Malacañang Palace on January 10, 1985."[18]

The Commission pinpointed the crucial factual issue thus: "the more significant inquiry is on whether the Sandiganbayan and the Office of the Tanodbayan actually succumbed to such pressure, as may be gauged by their subsequent actuations in their respective handling of the case." It duly concluded that "the pressure exerted by President Marcos in the conference held on January 10, 1985 *pervaded the entire proceedings* of the Aquino-Galman [murder] cases" as manifested in several specific incidents and instances it enumerated in the Report under the heading of "Manifestations of Pressure and Manipulation."

Suffice it to give hereinbelow brief excerpts: —

1. *The changing of the original Herrera panel draft Resolution charging all the twenty-six accused as principals by conspiracy by categorizing and charging 17 as principals, Generals Ver and Olivas and 6 others as accessories and the civilian as accomplice, and recommending bail for the latter two categories*: "The categorization may not be completely justified by saying that, in the mind of Justice Fernandez, there was no sufficient evidence to justify that all of the accused be charged as principals. The majority of the Agrava Board found the existence of conspiracy and recommended that all of the accused be charged accordingly. Without going into the merit of such finding, it may hardly be disputed that, in case of doubt, and in accordance with the standard practice of the prosecution to charge accused with the most serious possible offense or in the highest category so as to prevent an incurable injustice in the event that the evidence presented in the trial will show his guilt of the graver charge, the most logical and practical course of action should have been, as originally recommended by the Herrera panel, to charge all the accused as principals. As it turned out, Justice Fernandez readily opted for categorization which, not surprisingly, was in consonance with the Malacañang instruction." It is too much to attribute to coincidence that such unusual categorization came only after the then President's instruction at Malacañang when Gen. Ver's counsel Atty. Coronel, had been asking the same of Tanodbayan Fernandez since November, 1984; and "Justice Fernandez himself, admit(ted) that, as of that time, [the Malacañang conference on January 10, 1985], his own view was in conformity with that of the Special Investigating Panel to charge all of the twenty-six (26) respondents as principals of the crime of

double murder.[19] As the Commission further noted, "Justice Fernandez never denied the claim of Justice Herrera that the draft resolution of January 10, 1985 (Exhibit 'B-l') [charging all 26 accused as principals] was to have been the subject of a press conference on the afternoon of said date which did not go through due to the summons for them to go to Malacañang in the early evening of said date."[20]

2. *Suppression of vital evidence and harassment of witnesses*: "Realizing, no doubt, that a party's case is as strong as the evidence it can present, unmistakable and persistent efforts were exerted in behalf of the accused to weaken the case of the prosecution and thereby assure and justify [the accused's] eventual scripted acquittal. Unfavorable evidences were sought to be suppressed, and some were indeed prevented from being ventilated. Adverse witnesses were harassed, cajoled, perjured or threatened either to refrain from testifying or to testify in a manner favorable to the defense."

The Report specified the ordeals of the prosecution witnesses:[21] *Cesar Loterina*, PAL employee, *Roberta Masibay*, Galman's step-daughter who recanted their testimonies before the Fact Finding Board and had to be discarded as prosecution witnesses before at the trial. Witnesses *Viesca* and *Rañas* who also testified before the Board disappeared all of a sudden and could not be located by the police. The Commission narrated the efforts to stifle *Kiyoshi Wakamiya*, eyewitness who accompanied Ninoy on his fateful flight on August 21, 1983 and described them as "palpable, if crude and display(ing) sheer abuse of power." Wakamiya was not even allowed to return to Manila on August 20, 1984 to participate in the first death anniversary of Ninoy but was deported as an undesirable alien and had to leave on the next plane for Tokyo. The Board had to go to Tokyo to hear Wakamiya give his testimony before the Japanese police in accordance with their law and Wakamiya claimed before the Commission that the English transcription of his testimony, as prepared by an official of the Philippine Embassy in Tokyo, was inaccurate and did not correctly reflect the testimony he gave "although there was no clear showing of the discrepancy from the original transcription which was in Nippongo. Upon his arrival at the MIA on August 21, 1985 on invitation of Justice Herrera to testify at the ongoing trial, "a shot was fired and a soldier was seen running away by media men who sought to protect Wakamiya from harm by surrounding him." Wakamiya was forced by immigration officials to leave the country by Saturday (August 24th) notwithstanding Herrera's request to let him stay until he could testify the following Monday (August 26th). In the case of principal eyewitness Rebecca Quijano, the Commission reported that

"x x x Undoubtedly in view of the considerable significance of her proposed testimony and its unfavorable effect on the cause of the defense, the efforts exerted to suppress the same was as much as, if not more than those in the case of Wakamiya x x x She recounted that she was in constant fear of her life, having been hunted by armed men; that their house in Tabaco, Albay was ransacked, her family harassed by the foreclosure of the mortgage on their house by the local Rural Bank, and ejected therefrom when she ignored the request of its manager to talk with her about her proposed testimony; that a certain William Farinas offered her plane tickets for a trip abroad; that Mayor Rudy Farinas of Laoag City kept on calling her sister in the United States to warn her not to testify; that, later, Rudy and William Farinas offered her two million pesos supposedly coming from Bongbong Marcos, a house and lot in Baguio, the dropping of her estafa case in Hongkong, and the punishment of the persons responsible for the death of her father, if she would refrain from testifying.

"It is a matter of record, however, that despite such cajolery and harassments, or perhaps because of them, Ms. Quijano eventually testified before the Sandiganbayan. Justice Herrera was told by Justice Fernandez of the displeasure expressed by Olympus at Justice Herrera's going out of his way to make Ms. Quijano to testify, and for his refusal to honor the invitation to attend the birthday party of the First Lady on May 1, 1985, as on the eve of Ms. Quijano's testimony on May 2, 1985. The insiduous attempts to tamper with her testimony, however, did not end with her taking the witness stand. In the course of her testimony several notes were passed to Atty. Rodolfo Jimenez, the defense counsel who cross-examined her, one of which suggested that she be asked more questions about Dean Narvasa who was suspected of having coached her as to what to declare (Exhibit 'D'); and on another occasion, at a crucial point in her testimony, a power brownout occurred; which lasted for about twenty minutes, throwing the courtroom into darkness, and making most of those present to scamper for safety, and Ms. Quijano to pass over the ratling of the rostrum so as to be able to leave the courtroom. It was verified that the brownout was limited to the building housing the Sandiganbayan, it not having affected the nearby Manila City Hall and the Finance Building Justice

> Herrera declared that the main switchboard of the Sandiganbayan electrical system was located beside the room occupied by Malacañang people who were keeping track of the proceedings."

Atty. Lupino Lazaro for petitioners further made of record at that August 26th hearing that the two Olivas sisters, Ana and Catherine (hospitality girls) disappeared on September 4, 1984, two weeks after Ninoy's assassination. And the informant, by the name of Evelyn (also a hospitality girl) who jotted down the number of the car that took them away, also disappeared. On January 29, 1984, during the proceedings of the Board, Lina Galman, the common-law wife of Rolando Galman, was kidnapped together with a neighbor named Rogelio Taruc. They have been missing since then, despite his attempts to find any of them. According to him, "nobody was looking for these five persons because they said Marcos was in power [despite his appeal to the Minister of National Defense to locate them]. Today, still no one is looking for these people." And he appealed to the new leadership for its assistance in learning their fate.

3. *The discarding of the affidavits executed bv U.S. airmen*: "While it is true that the U.S. airmen's proposed testimonies would show an attempt of the Philippine Air Force to divert the plane to Basa Airfield or some other place, such showing would not necessarily contravene the theory of the prosecution, nor the actual fact that Senator Aquino was killed at the Manila International Airport. Justice Herrera had accurately pointed out that such attempt of scrambling Aquino's plane merely *showed a 'wider range of conspiracy*,' it being possibly just one of two or three other plans designed to accomplish the same purpose of liquidating Senator Aquino. In any event, even assuming that the said piece of evidence could go either way, it may not be successfully contended that it was prudent or wise on the part of the prosecution to totally discard the said piece of evidence. Despite minor inconsistencies contained therein, its introduction could have helped the cause of the prosecution. If it were not so, or that it would even favor the defense, as averred by Justice Fernandez, the determined effort to suppress the same would have been totally uncalled for.

"4. *Nine proposed rebuttal witnesses not presented.*

"5. *The failure to exhaust available remedies against adverse developments*: "When the Supreme Court denied the petition of Justice

Fernandez [against the exclusion of the testimonies given by the military respondents headed by Gen. Ver before the Fact Finding Board], the latter *almost immediately announced* to media that he was *not filing a motion for the reconsideration* of said denial, for the reason that it would be futile to do so and foolhardy to expect a favorable action on the same x x x His posture x x x is, in the least, *indicative that he was living up to the instruction of finishing the trial of the case as soon as possible*, if not of something else.

"6. *The assignment of the case to Presiding Justice Pamaran*: "Justice Herrera testified that *President Marcos ordered Justice Pamaran point-blank to handle the case*. The *pro-forma* denial by Justice Pamaran of such instruction crumbles under the actuality of such directive having been complied with to the letter x x x.

"Justice Pamaran sought to discredit the claim that he was ordered by President Marcos to handle the case personally by explaining that cases in the Sandiganbayan are assigned by raffle and not to a particular Justice, but to a division thereof. The evidence before the Commission on how the case happened to be assigned to Justice Pamaran evinces a strong indication that such assignment was not done fairly or regularly.

"There was no evidence at all that the assignment was indeed by virtue of a regular raffle, except the uncorroborated testimony of Justice Pamaran x x x *Despite an announcement that Justice Escareal would be presented* by the respondents to testify on the contents of his aforesaid Memorandum, *such was not done*. *No reason was given why Justice Escarel could not, or would not like to testify. Neither was anx one of the officials or employees of the Sandiganbayan* who, according to Justice Pamaran, were present during the supposed raffle, presented to corroborate the claim of Justice Pamaran as regards the said raffle.

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"It is also an admitted fact that the two Informations in the double murder case were filed by Justice Herrera on January 23, 1985, at 12:02 p.m., and the members of the Raffle Committee were summoned at 12:20 p.m. or only 18 minutes after the filing of the two Informations. Such speed in the actual assignment of the case can truly be categorized as unusual, if not extraordinary, considering that before a case filed may be included in the raffle, there is need for a certain amount of paper work to be undertaken. If such preliminary requirements were done in this case within the limited

time available therefor, the charge that the raffle was rushed to avoid the presence of media people would ring with truth.

"What is more intriguing is the fact that although a raffle might have been actually conducted which resulted in the assignment of the case to the First Division of the Sandiganbayan, the Commission did not receive any evidence on how or why it was handled personally by Justice Pamaran who wrote the decision thereof, and not by any one of the two other members of his division x x x"

7. The custody *of the accused; their confinement in a military camp, instead of in a civilian jail*: "When the question of custody came up after the case was filed in the Sandiganbayan, the latter issued an order directing the confinement of the accused in the City Jail of Manila. This order was not carried out in view of the information given by the Warden of the City Jail that there was no space for the twenty-six accused in said jail. The same information was given when the custody was proposed to be given to the National Penitentiary in Muntinglupa and to the National Bureau of Investigation. At that point, the defense came up with *Presidential Decree No. 1950-A* which authorizes the custody of the accused military personnel with their respective Commanding Officers. Justice Herrera claimed that the said Presidential Decree was not known even to the Tanodbayan Justice Fernandez who had to call up the then Minister of Justice Estelito Mendoza to request a copy of the same, and was given such copy only after sometime x x x."

8. *The monitoring of proceedings and developments from Malacañang and by Malacañang personnel*. "There is an *uncontradicted evidence* that the progress of the proceedings in the Sandiganbayan as well as the developments of the case outside the Court had been monitored by Malacañang presumably for it to know what was happening and to take remedial measures as may be necessary, Justice Pamaran had candidly admitted that television cameras "boldly carrying the label of 'Office of the President of the Philippines' " were installed in the courtroom for that purpose. There was a room in the Sandiganbayan, mischievously called 'war room', wherein military and Malacañang personnel stayed to keep track of the proceedings." The *close monitoring* by Malacañang showed its results oh several occasions specified in the Report. *Malacañang was immediately aware of the Japanese witness Wakamiya 's presence in Justice Herrera's office* on August 21, 1985 and forestalled the giving of his testimony by having the Japanese Embassy advise Wakamiya to leave the country at once. Likewise, *Col. Balbino Diego, Malacañang*

intelligence chief, suddenly appeared at the National Bureau of Investigation office when the "crying lady" *Rebecca Quijano* was brought there by NBI agents for interrogation and therein sought to obtain custody of her. "It is likewise an undisputed fact," the Commission noted "that *several military personnel pretended to be deputy sheriffs of the Sandiganbayan and attended the trials thereof in the prescribed deputy sheriffs' uniforms*." The Commission's inescapable finding: It is *abundantly clear* that *President Marcos did not only give instructions as to how the case should be handled. He saw to it that he would know if his instructions will be complied with*.

9. *Partiality of Sandiganbayan betrayed by its decision: That President Marcos had wanted ail of the twenty-six accused to be acquitted may not be denied*. The disposal of the case in said manner is an integral part of the scenario which was cleverly designed to accomplish two principal objectives, seemingly conflicting in themselves, but favorable both to then administration and to the accused; to wit, [1] the satisfaction of the public clamor for the suspected killers of Senator Aquino to be charged in court, and [2] the foreclosure of any possibility that they may again be prosecuted for the same offense in the event that President Marcos shall no longer be in power.

"*In rendering its decision, the Sandiganbayan overdid itself in favoring the presidential directive. Its bias and partiality in favor of the accused was glaringly obvious. The evidence presented by the prosecution was totally ignored and disregarded*. x x x It was deemed *not sufficient* to simply acquit all of the twenty-six accused on the *standard ground that their guilt had not been proven beyond reasonable doubt*, as was the most logical and appropriate way of justifying the acquittal in the case, there not being a total absence of evidence that could show guilt on the part of the accused. *The decision had to pronounce them innocent of the crime* charged on the two intormations, and *accordingly, they incur neither criminal nor civil liability. It is a rare phenomenon to see a person accused of a crime to be favored with such total absolution. x x x*.

"Doubt on the soundness of the decision entertained by one of the two justices who concurred with the majority decision penned by Justice Pamaran was *revealed by Justice Herrera* who testified that *in October, 1985*, when the decision was being prepared, *Justice Augusto Amores told him that he was of the view that some of the accused should be convicted*, he having found difficulty in acquitting all of them; however, *he confided to Justice Herrera that Justice Pamaran made it clear to him and Justice*

Vera Cruz that Malacañang had instructions to acquit all of the twenty-six accused (TSN. July 17, 1986, p. 49). *Justice Amores also told Justice Herrera that he would confirm this statement* (which was mentioned in Justice Herrera's comment to the Second Motion for Reconsideration) *if asked about it* (TSN, June 19, 1986, pp. 92-93). *This testimony of Justice Herrera remained unrebutted*." (Italics supplied).

The record shows suffocatingly that from beginning to end, the then President used, or more precisely, misused the overwhelming resources of the government and his authoritarian powers to corrupt and make a mockery of the judicial process in the Aquino-Galman murder cases. As graphically depicted in the Report, *supra*, and borne out by the happenings (*res ipsa loquitura*[22]), since the resolution prepared by his "Coordinator," Manuel Lazaro, his Presidential Assistant on Legal Affairs, for the Tanodbayan's dismissal of the cases against all accused was unpalatable (it would summon the demonstrators back to the streets[23]) and at any rate was not acceptable to the Herrera prosecution panel, the unholy scenario for acquittal of all 26 accused after the rigged trial as ordered at the Malacañang conference, would accomplish the two principal objectives of satisfaction of the public clamor for the suspected killers to be charged in court and of giving them through their acquittal the legal shield of double jeopardy.[24]

Indeed, *the secret Malacañang conference* at which the authoritarian President called together the Presiding Justice of the Sandiganbayan and Tanodbayan Fernandez and the entire prosecution panel headed by Deputy Tanodbayan Herrera and told them how to handle and rig (*moro-moro*) the trial and the close monitoring of the entire proceedings to assure the predetermined ignominious final outcome are *without parallel and precedent* in our annals and jurisprudence. To borrow a phrase from Ninoy's April 14, 1975 letter withdrawing his petition for habeas corpus,[25] "This is the evil of one-man rule at its very worst." Our Penal Code penalizes "any *executive officer* who shall address any *order or suggestion* to any judicial authority with respect to any case or business coming within the exclusive jurisdiction of the courts of justice."[26] His obsession for "the boys" acquittal led to several *first* which would otherwise be inexplicable: —

1. He turned his back on and repudiated the findings of the very Fact Finding Board that he himself appointed to investigate the "national tragedy and national shame" of the "treacherous and vicious assassination

of Ninoy Aquino" and to ventilate the truth through free, independent and dispassionate investigation by prestigious and free investigators.

2. He cordially received the chairman with her minority report one day ahead of the four majority members and instantly referred it to respondents "for final resolution through the legal system" as if it were the majority and controlling report; and rebuked the four majority members when they presented to him the next day their report calling for the indictment of all 26 respondents headed by Gens. Ver and Olivas (instead of the lesser seven under the chairman's minority report).

3. From the day after the Aquino assassination to the dictated verdict of acquittal, he totally disregarded the Board's majority and minority findings of fact and publicly insisted that the military's "fall guy" Rolando Galman was the killer of Ninoy Aquino and sought futilely to justify the soldiers' incompetence and gross negligence to provide any security for Ninoy in contrast to their alacrity in gunning down the alleged assassin Galman and sealing his lips.

4. The Sandiganbayan's decision (Pamaran, J. *ponente*) in effect convicted Rolando Galman as Ninoy's assassin notwithstanding that he was not on trial but the victim according to the very information filed, and evidence to the contrary submitted, by the Herrera prosecution panel; and

5. Justice Pamaran's *ponencia* (despite reservations expressed by Justice Amores who wanted to convict some of the accused) granted all 26 accused total absolution and pronounced them "innocent of the crimes charged in the two informations, and accordingly, they incur neither criminal nor civil liability," notwithstanding the evidence on the basis of which the Fact Finding Board had unanimously declared the soldiers' version of Galman being Aquino's killer a "*perjured* story, given deliberately and in conspiracy with one another."

The fact of the secret Malacañang conference of January 10, 1985 at which the authoritarian President discussed with the Presiding Justice of the Sandiganbayan and the entire prosecution panel the matter of the imminent filing of the criminal charges against all the twenty-six accused (as admitted by respondent Justice Fernandez to have been confirmed by him to the then President's "Coordinator" Manuel Lazaro on the preceding day) is not denied. It is without precedent. This was illegal under our penal laws, *supra*. This illegality vitiated from the very

beginning all proceedings in the Sandiganbayan court headed by the very Presiding Justice who attended. As the Commission noted: "The very acts of being summoned to Malacañang and their ready acquiescence thereto under the circumstances then obtaining, are in themselves pressure dramatized and exemplified x x x Verily, it can be said that any avowal of independent action or resistance to presidential pressure became illusory from the very moment they stepped inside Malacañang Palace on January 10, 1985."

No court whose Presiding Justice has received "orders or suggestions" from the very President who by an amendatory decree (disclosed only at the hearing of oral arguments on November 8, 1984 on a petition challenging the referral of the Aquino-Galman murder cases to the Tanodbayan and Sandiganbayan instead of to a court martial, as mandatory required by the known P.D. 1850 at the time providing for exclusive jurisdiction of courts martial over criminal offenses committed by military men[26-a]) made it possible to refer the cases to the Sandiganbayan, can be an impartial court, which is the very essence of due process of law. As the writer then wrote, "jurisdiction over cases should be determined by law, and not by *preselection* of the Executive, which could be much too easily transformed into a means of *predetermining* the outcome of individual cases."[26-b] This criminal collusion as to the handling and treatment of the cases by public respondents at the secret Malacañang conference (and revealed only after fifteen months by Justice Manuel Herrera) completely disqualified respondent Sandiganbayan and voided *ab initio* its verdict. This renders moot and irrelevant for now the extensive arguments of respondents accused, particularly Generals Ver and Olivas and those categorized as accessories, that there has been no evidence or witness suppressed against them, that the erroneous conclusions of Olivas as police investigator do not make him an accessory of the crimes he investigated and the appraisal and evaluation of the testimonies of the witnesses presented and suppressed. There will be time and opportunity to present all these arguments and considerations at the remand and retrial of the cases herein ordered before a neutral and impartial court.

The Supreme Court cannot permit such a sham trial and verdict and travesty of justice to stand unrectified. The courts of the land under its aegis are courts of law *and* justice *and* equity. They would have no reason to exist if they were allowed to be used as mere tools of injustice, deception and duplicity to subvert and suppress the truth, instead of repositories of judicial power whose judges are sworn and committed to

render impartial justice to all alike who seek the enforcement or protection of a right or the prevention or redress of a wrong, without fear or favor and removed from the pressures of politics and prejudice. More so, in the case at bar where the people and the world are entitled to know the truth, and the integrity of our judicial system is at stake. In life, as an accused before the military tribunal Ninoy had pleaded in vain that as a civilian he was entitled to due process of law and trial in the regular civil courts before an impartial court with an unbiased prosecutor. In death, Ninoy, as the victim of the "treacherous and vicious assassination" and the relatives and sovereign people as the aggrieved parties plead once more for due process of law and a retrial before an impartial court with an unbiased prosecutor. The Court is constrained to declare the sham trial a mock trial — the non-trial of the century — and that the predetermined judgment of acquittal was unlawful and void *ab initio*.

1. *No double jeopardy*. — It is settled doctrine that double jeopardy cannot be invoked against this Court's setting aside of the trial courts' judgment of dismissal or acquittal where the prosecution which represents the sovereign people in criminal cases is denied due process. As the Court stressed in the 1985 case of *People vs. Bocar*,[27]

> "Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated.[27-a]
>
> "The cardinal precept is that *where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction*. Thus, the violation of the State's right to due process raises a serious jurisdictional issue (*Gumabon vs. Director of the Bureau of Prisons*, L-30026, 37 SCRA 420 [Jan. 30, 1971] which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (*Aducayen vs. Flores*, L-30370 [May 25, 19731, 51 SCRA 78; *Shell Co. vs. Enage*, L-30111-12, 49 SCRA 416 Feb. 27, 1973]). Any judgment or decision rendered notwithstanding such violation may be regarded as a 'lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head' (*Aducayen vs. Flores, supra*).
>
> "Respondent Judge's dismissal order dated July 7, 1967 being

> null and void for lack of jurisdiction, the same does not constitute a proper basis for a claim of double jeopardy (*Serino vs. Zosa, supra*).
>
> xxx xxx xxx
>
> "Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*People vs. Ylagan*, 58 Phil. 851). The lower court was not competent *as it was ousted of its jurisdiction when it violated the right of the prosecution to due process*.
>
> "*In effect, the first jeopardy was never terminated*, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy."

More so does the rule against the invoking of double jeopardy hold in the cases at bar where as we have held, the sham trial was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused. Notwithstanding the laudable efforts of Justice Herrera which saw him near the end "deactivating" himself from the case, as it was his belief that its eventual resolution was already a foregone conclusion, they could not cope with the misuse and abuse of the overwhelming powers of the authoritarian President to weaken the case of the prosecution, to suppress its evidence, harass, intimidate and threaten its witnesses, secure their recantation or prevent them from testifying. Fully aware of the prosecution's difficulties in locating witnesses and overcoming their natural fear and reluctance to appear and testify, respondent Sandiganbayan maintained a "dizzying tempo" of the proceedings and announced its intention to terminate the proceedings in about 6 months time or less than a year, pursuant to the scripted scenario. The prosecution complained of "the Presiding Justice's seemingly hostile attitude towards (it)" and their being the subject of warnings, reprimand and contempt proceedings as compared to the nil situation for the defense. Herrera likewise complained of being "cajoled into producing witnesses and pressed on making assurances that if given

a certain period, they will be able to produce their witnesses," Herrera pleaded for "a reasonable period of preparation of its evidence" and cited other pending cases before respondent court that were pending trial for a much longer time where the "dizzying tempo" and "fast pace" were not maintained by the court.[28] Manifestly, the prosecution and the sovereign people were denied due process of law with a partial court and biased Tanodbayan under the constant and pervasive monitoring and pressure exerted by the authoritarian President to assure the carrying out of his instructions. A dictated, coerced and scripted verdict of acquittal such as that in the case at bar is a void judgment. In legal contemplation, it is no judgment at all. It neither binds nor bars anyone. Such a judgment is "a lawless thing which can be treated as an outlaw". It is a terrible and unspeakable affront to the society and the people. To paraphrase Brandeis:[29] If the authoritarian head of the government becomes the lawbreaker, he breeds contempt for the law, he invites every man to become a law unto himself, he invites anarchy.

Respondents-accused's contention that the Sandiganbayan judgment of acquittal ends the case which cannot be appealed or reopened, without being put in double jeopardy was forcefully disposed of by the Court in *People vs. Court of Appeals*, which is fully applicable here, as follows: That is the general rule and presupposes a valid judgment. As earlier pointed out, however, respondent Courts' Resolution of acquittal was a void judgment for having been issued without jurisdiction. No double jeopardy attaches, therefore. A void judgment is, in legal effect, no judgment at all. By it no rights are divested. Through it, no rights can be attained. Being worthless, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void.

xxx xxx xxx

Private respondent invoke 'justice for the innocent'. For justice to prevail, the scales must balance. It is not to be dispensed for the accused alone. The interests of the society, which they have wronged must also be equally considered. A judgment of conviction is not necessarily a denial of justice. A verdict of acquittal neither necessarily spells a triumph of justice. To the party wronged, to the society offended, it could also mean injustice. This is where the Courts play a vital role. They render justice where justice is due.[30]

2. *Motion to Disqualify/Inhibit should have been resolved ahead.* - The

private prosecutors had filed a motion to disqualify and for inhibition of respondents Justices of the Sandiganbayan on grounds of manifest bias and partiality to the defense and arising from then Atty. (now Tanodbayan) Raul M. Gonzales' charge that Justice Vera-Cruz had been passing coaching notes to defense counsel. Justice Herrera had joined the motion and pleaded at the hearing of June 25, 1985 and in the prosecution memorandum that respondent Sandiganbayan "should not decide the case on the merits without first making a final ruling on the Motion for Inhibition." Herrera quoted the exchange between him and the Presiding Justice to show the latter's "following the script of Malacañang" -

> "PJ PAMARAN
>
> "Well, the court believes that we should proceed with the trial and then deal later on with that. *After all the most important thing here is, shall we say, the decision of the case*."
>
> "J. HERRERA
>
> I think *more important* than the decision of the case, Your Honor, *is the capacity of the Justices to sit in judgment*. That is more important than anything else." (p. 13 TSN, June 25, 1985) (Italics supplied by Herrera)."[31]

But the Sandiganbayan brushed aside Herrera's pleas and then wrongly blamed him, in the decision, for supposedly not having joined the petition for inhibition, contrary to the facts above-stated, as follows:

> "x x x the motion for inhibition above referred to related exclusively for the contempt proceeding. Too, it must be remembered that the prosecution neither joined that petition, nor did it at any time manifest a desire to file a similar motion prior to the submission of these cases for decision. To do it now is not alone out of season but is also a confession of official insouciance." (Page 22, Decision).[32]

The action for prohibition was filed in the Court to seek the disqualification of respondents Justices pursuant to the procedure recognized by the Court in the 1969 case of *Paredes vs. Gopengco*[33] since an adverse ruling by respondent court might result in a verdict of acquittal, leaving the offended party without any remedy nor appeal in view of the double jeopardy rule, not to mention the overriding and

transcendental public interest that would make out a case of denial of due process to the People if the alleged failure on the part of the Tanodbayan to present the complete evidence for the prosecution is substantiated.[34]

In this case, petitioners' motion for reconsideration of the abrupt dismissal of their petition and lifting of the temporary restraining order enjoining the Sandiganbayan from rendering its decision had been taken cognizance of by the Court which had required the respondents', including the Sandiganbayan's, comments. Although no restraining order was issued anew, respondent Sandiganbayan should not have precipitately issued its decision of total absolution of all the accused pending the final action of this Court. This is the teaching of *Valdez vs. Aquilizan*,[35] wherein the court in setting aside the hasty convictions, ruled that "prudence dictated that (respondent judge) refrain from deciding the cases or at the very least to hold in abeyance the promulgation of his decision pending action by this Court. But prudence gave way to imprudence; the respondent judge acted precipitately by deciding the cases [hastily without awaiting this Court's action]. All of the acts of the respondent judge manifest grave abuse of discretion on his part amounting to lack of jurisdiction which substantively prejudiced the petitioner."

3. *Re: Objections of respondents*. - The other related objections of respondents' counsels must be rejected in the face of the Court's declaration that the trial was a mock trial and that the predetermined judgment of acquittal was unlawful and void *ab initio*.

(a) It follows that there is no need to resort to a direct action to annul the judgment, instead of the present action which was timely filed initially to declare a mistrial and to enjoin the rendition of the void judgment. And after the hasty rendition of such judgment for the declaration of its nullity, following the presentation of competent proof heard by the Commission and the Court's findings therefrom that the proceedings were from the beginning vitiated not only by lack of due process but also by the collusion between the public respondents (court and Tanodbayan) for the rendition of a predetermined verdict of acquitting all the twenty-six respondents-accused.

(b) It is manifest that this does not involve a case of mere irregularities in the conduct of the proceedings or errors of judgment which do not affect the integrity or validity of the judgment or verdict.

(c) The contention of one of defense counsel that the State and the

sovereign people are not entitled to due process is clearly erroneous and contrary to the basic principles and jurisprudence cited hereinabove.

(d) The submittal of respondents-accused that they had not exerted the pressure applied by the authoritarian president on public respondents and that no evidence was suppressed against them must be held to be untenable in the wake of the evil plot now exposed for their preordained wholesale exoneration.

(e) Respondents' invocation of the writer's opinion in *Luzon Brokerage Co., Inc. vs. Maritime Bldg. Co., Inc.*[36] is inappropriate. The writer therein held that a party should be entitled to only one Supreme Court and may not speculate on vital changes in the Court's membership for review of his lost case once more, since public policy and sound practice demand that litigation be put to an end and no second *pro forma* motion for reconsideration reiterating the same arguments should be kept pending so long (for over six (6) years and one (1) month since the denial of the first motion for reconsideration). This opinion cannot be properly invoked, because here, petitioners' second motion for reconsideration was filed promptly on March 20, 1986 following the denial under date of February 4th of the first motion for reconsideration and the same was admitted per the Court's Resolution of April 3, 1986 and is now being resolved within five months of its filing after the Commission had received the evidence of the parties who were heard by the Court only last August 26th. Then, the second motion for reconsideration is based on an entirely new material ground which was not known at the time of the denial of the petition and filing of the first motion for reconsideration, i.e, the secret Malacañang conference on January 10, 1985 which came to light only fifteen months later in March, 1986 and showed beyond per adventure (as proved in the Commission hearings) the merits of the petition and that the authoritarian president had dictated and predetermined the final outcome of acquittal. Hence, the ten members of the Court (without any new appointees) unanimously voted to admit the second motion for reconsideration.[37]

4. With the declaration of nullity of the proceedings, the cases must now be tried before an impartial court with an unbiased prosecutor. — There has been the long dark night of authoritarian regime, since the fake ambush in September, 1972 of then Defense Secretary Juan Ponce Enrile (as now admitted by Enrile himself) was staged to trigger the imposition of martial law and authoritarian one-man rule, with the padlocking of Congress and the abolition of the office of the Vice-President.

As recently retired Senior Justice Vicente Abad Santos recalled in his valedictory to the new members of the Bar last May, "In the past few years, the judiciary was under heavy attack by an extremely powerful executive. During this state of judicial siege, lawyers both in and outside the judiciary perceptively surrendered to the animus of technicality. In the end, morality was overwhelmed by technicality, so that the latter emerged ugly and naked in its true manifestation."

Now that the light is emerging, the Supreme Court faces the task of restoring public faith and confidence in the courts. The Supreme Court enjoys neither the power of the sword nor of the purse. Its strength has mainly in public confidence, based on the truth and moral force of its judgments. This has been built on its cherished traditions of objectivity and impartiality, integrity and fairness and unswerving loyalty to the Constitution and the rule of law which compels acceptance as well by the leadership as by the people. The lower courts draw their bearings from the Supreme Court. With this Court's judgment today declaring the nullity of the questioned judgment or acquittal and directing a new trial, there must be a rejection of the temptation of becoming instruments of injustice as vigorously as we rejected becoming its victims. The end of one form of injustice should not become simply the beginning of another. This simply means that the respondents accused must now face trial for the crimes charged against them before an impartial court with an unbiased prosecutor with all due process. What the past regime had denied the people and the aggrieved parties in the sham trial must now be assured as much to the accused as to the aggrieved parties. The people will assuredly have a way of knowing when justice has prevailed as well as when it has failed.

The notion nurtured under the past regime that those appointed to public office owe their primary allegiance to the appointing authority and are accountable to him alone and not to the people or the Constitution must be discarded. The function of the appointing authority with the mandate of the people, under our system of government, is to fill the public posts. While the appointee may acknowledge with gratitude the opportunity thus given of rendering public service, the appointing authority becomes *functus officio* and the primary loyalty of the appointed must be rendered to the Constitution and the sovereign people in accordance with his sacred oath of office. To paraphrase the late Chief Justice Earl Warren of the United States Supreme Court, the Justices and judges must ever realize that they have no constituency, serve no majority nor minority but

serve only the public interest as they see it in accordance with their oath of office, guided only the Constitution and their own conscience and honor.

5. *Note of Commendation*. — The Court expresses its appreciation with thanks for the invaluable services rendered by the Commission composed of retired Supreme Court Justice Conrado M. Vasquez, chairman, and retired Court of Appeals Justices Milagros German and Eduardo Caguioa as members. In the pure spirit of public service, they rendered selflessly and without remuneration thorough, competent and dedicated service in discharging their tasks of hearing and receiving the evidence, evaluating the same and submitting their Report and findings to the Court within the scheduled period and greatly easing the Court's burden.

ACCORDINGLY, petitioners' second motion for reconsideration is granted. The resolutions of November 28, 1985 dismissing the petition and of February 4, 1986 denying petitioners' motion for reconsideration are hereby set aside and in lieu thereof, judgment is hereby rendered nullifying the proceedings in respondent Sandiganbayan and its judgment of acquittal in Criminal Cases Nos. 10010 and 10011 entitled "People of the *Philippines vs. Gen. Luther Custodio, et al*." and ordering a re-trial of the said cases which should be conducted with deliberate dispatch and with careful regard for the requirements of due process, so that the truth may be finally known and justice done to all.

This resolution is immediately executory.

SO ORDERED.

Yap, Cruz, Paras, and *Feliciano, JJ.*, concur.
Feria, Fernan, and *Narvasa, JJ.*, took no part.
Feliciano, J., joins Gutierrez, Jr., *J.*, in his statements in the last three paragraphs (prior to the dispositive paragraph) of his Separate Concurring Opinion.
Melencio-Herrera, Alampay, and *Gutierrez, JJ.*, see separate opinion.

** Francis Garchitorena withdrew as co-petitioner in view of his appointment and assumption of office as Presiding Justice of the Sandiganbayan on May 5, 1986, per the Resolution of May 15, 1986.

*** The motion for intervention of 25 accused generals and military men

and one civilian was granted in the Court's Resolution of November 24, 1985. Petitioners in their Manifestation of November 22, 1985 likewise impleaded the said 26 accused as private respondents.

[1] See *Aquino vs. Military Commission No. 2, et al.*, 63 SCRA 546 (May 9, 1975). Ninoy Aquino's motion of April 14, 1975 to withdraw his petition challenging the jurisdiction of military tribunals over civilians with his letter stating, inter alia, his reasons for continuing the hunger strike "(he) began ten days ago," that "(he) felt that the case (he) had filed since 1973 in the Supreme Court had become meaningless;" that he has decided to "place (his) fate and (his) life squarely in the hands of Mr. Marcos" was denied by a seven-to-three vote.

[2] Col. G. Honasan, Time issue of March 10, 1986; Minister Enrile, Newsweek issue of March 3, 1986.

[3] P.D. 1886 dated October 14, 1983 and Amendatory P.D. 1903 dated February 8, 1984.

[4] As was a matter of public knowledge, the local media were subject to very tight rein by the regime. There was the ironic case of Rommel Corro, publisher-editor of the Philippine Times. His paper was raided, padlocked and closed down by heavily armed soldiers on September 29, 1983, after he had published therein reprints of wire stories on Ninoy Aquino's assassination, *viz*. that his assassination was the product of a military conspiracy. On October 1, 1983, Corro himself was detained under a Preventive Detention Order issued by the then President and he was thereafter charged in court with inciting to sedition with no bail recommended. He was reporting only what people here and abroad had been thinking and talking about the Aquino assassination. The President's Fact Finding Board's official report later bore out and affirmed what Corro had published the year before that Aquino's assassination-murder was due to a military conspiracy. So on November 8, 1984, upon a habeas corpus petition, the Supreme Court ordered his release on recognizance of his own lawyers. The then President lifted the PDA. But Corro never got back his newspaper until after the then President was deposed, overthrown and fled the country in February, 1986.

[5] The first Board headed by then Chief Justice Enrique M Fernando and composed of four retired Supreme Court Justices resigned, after its composition was challenged in an action filed in the Supreme Court.

Thereafter, former Senator Arturo M. Tolentino declined appointment as board chairman.

[6] Composed of retired Court of Appeals Justice Corazon J. Agrava, chairman, and lawyer Luciano E. Salazar, businessman Dante G. Santos, labor leader Ernesto F. Herrera and educator Amado C. Dizon, members.

[7] Mr. & Ms. special edition of Oct. 26-Nov. 1, 1984, p. 11.

[8] Idem, p. 12.

[9] Times-Journal issue of October 25, 1984.

[10] Record, Vol. 1, pp. 24-25.

[10-a] The Court per its Resolution of Nov. 14, 1985 required respondents' comment on the petition by Nov. 18, 1985 and set the plea for restraining order for hearing at 3:00 p.m. of the same day. Ramon C. Aquino, J., joined by Felix V. Makasiar, C.J., voted to dismiss outright the petition on the grounds that "The Sandiganbayan and Tanodbayan acted within their jurisdiction in trying the case," "petitioners are neither public prosecutors nor the accused" and have no cause for action, concluding that the "petition is novel and unprecedented for the single reason that it is devoid of any legal basis."

[11] As per the Court's Resolution of November 18, 1985, Senior Associate Justice Claudio Teehankee and Associate Justices Vicente Abad Santos, Efren I. Plana, Venicio Escolin, Hugo Gutierrez, Jr., Buenaventura de la Fuente, Serafin Cuevas, Nestor Alampay and Lino Patajo voted to issue the restraining order, and Makasiar, C.J. and Ramon C. Aquino, J. reiterated their votes to dismiss the petition. Concepcion, Jr. and Melencio-Herrera, JJ. were absent and Relova, J. was on leave.

[12] As per the Court's Resolution of November 28, 1985, Chief Justice Ramon C. Aquino and Associate Justices Hermogenes Concepcion, Jr., Efren I. Plana, Venicio Escolin, Hugo Gutierrez, Jr., Buenaventura de la Fuente, Serafin R. Cuevas, Nestor Alampay and Lino Patajo so voted to dismiss the petition. Teehankee and Abad Santos, JJ. filed separate dissenting opinions. Gutierrez, Jr., J. filed a concurring and dissenting opinion. Melencio-Herrera and Relova, JJ. were on leave.

Teehankee, J. stated in his dissent and vote for granting petitioners the requested 5-day period and to set the case for hearing on the merits: "I fail to see the need of rushing the release of the majority resolution of dismissal considering that it was made quite clear at the hearing on the petition for issuance of a temporary restraining order on November 18, 1985 that the merits of the petition would be heard by the Court after the parties had opportunity to file their pleadings such as an amended petition to implead the accused as well as the People as parties respondents, besides giving the petitioners an opportunity to reply to the comments filed by the original respondents Sandiganbayan and Tanodbayan." He added that the petition deserved a full-dress hearing on the merits; that the personality of the offended party such as Saturnina D. Galman in disqualification cases to file the action independently of the prosecution to stop the rendition of a possible judgment of acquittal by a biased court which would leave the offended party without any remedy nor appeal in view of the double jeopardy rule has long been recognized, since the 1969 case of *Paredes vs. Gopengco*, 29 SCRA 688, not to mention the overriding and transcending public interest.

Abad Santos, J., in dissenting and voting that the minimum treatment which the petition deserves is a full-dress hearing on "the merits, prefaced same with the statement that never had any illusion concerning the ultimate fate of the instant petition, but the precipitate dismissal truly amazes me."

[13] Escolin, J. was absent.

[14] Gutierrez, Jr., J., citing the momentous issues of due process and grave averments of miscarriage of justice, cast a dissenting vote against the majority resolution to deny petitioners the brief 5-day extension to file a reply and to *immediately* dismiss or deny the petition (italics copied), stating that petitioners should be given every reasonable opportunity to show the merit of then petition. He "personally found it intriguing for the accused in a sensational double murder case involving the rallying figure of the political opposition to strongly insist on an immediate decision." He expressed "disturbance why the 'trial of the century where all the accused, except for one civilian, are military officials and where witnesses are understandably reluctant to come forward,' should have been televised at all." But he concurred in the results of the majority resolution of immediate dismissal of the petition on "the presumption that judicial acts were regularly performed and that public officers have

discharged their duties in accordance with law."

[15] The Court, then composed of ten members, Teehankee, C.J. and Concepcion Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., Cuevas, Alampay and Patajo, JJ. voted *unanimously*.

[15-a] Vol. III, Record, p. 703.

[16] 63 pages so numbered with an additional page 19-A.

[17] Justice Conrado M. Vasquez was admitted to the Bar in 1937. He occupied successively the positions of Chief, Legal Research Division, and Chief, Law Division, of the Department of Justice, before his appointment as Judge of the Court of First Instance (1954-1973). He was Associate Justice of the Court of Appeals for 5 years (1973-1978) until his compulsory retirement at age 65 on September 3, 1973. He was called back from retirement and appointed Associate Justice of the Supreme Court on May 14, 1982 and his compulsory retirement at age 70 on September 3, 1983.

Justice Milagros German was admitted to the Bar in 1940. She occupied the positions of Assistant Fiscal of Manila (1948-1959); Judge, City Court of Manila (1959-1962); Judge of the Court of Agrarian Relations (1965-1978) and Associate Justice of the Court of Appeals (February 15, 1978 until her compulsory retirement on October 3, 1985).

Justice Eduardo Caguioa was admitted to the Bar in 1940. He was an active law practitioner and law professor, He was appointed Judge of the Court of First Instance on May 12, 1971 until January 16, 1983 when he was promoted to the Court of Appeals, until his compulsory retirement on March 14, 1986.

[18] Commission's Report, pp. 29-35; italics supplied.

[19] Commission's Report, p. 27.

[20] *Idem*, p. 38.

[21] *Idem*, pp. 40-43.

[22] "The thing speaks for itself."

[23] According to Gen. Olivas' counsel. Atty. N. Quisumbing's statement at last August 26th hearing, what could have concerned President Marcos xxx to me what concerned him in the security of the State. Did he like the demonstrators to go back to the streets?

[24] Sec. 22 of the Bill of Rights provides: "No person shall be twice put m jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

[25] *Supra*, fn. 1 on page 3 hereof.

[26] Article 243, Revised Penal Code.

[26-a] See the writer's separate opinion in G.R. Nos. 69025 and 69046 "*Arturo M. de Castro vs. Hon. Estelito Mendoza, et al.*), June 4, 1985: "Petitioners cite long-standing laws and practice that Armed Forces officers and men are exclusively tried and punished by the executive process of court martial pursuant to the Articles of War. But respondent minister disclosed at the hearing of oral arguments on November 8, 1984 the issuance of P.D. No. 1952 dated September 5, 1984 concededly not published nor disclosed prior to said date whereby 'the President may, in the interest of justice, order or direct, at any time before arraignment, that a particular case be tried by the appropriate civil court' and thereby waive the mandatory court martial jurisdiction."

[26-b] *Osmeña, Jr. vs. Secretary of Justice*, 41 SCRA 199, 205 (1971).

[27] 138 SCRA 166 (Aug. 16, 1985) per Makasiar, C.J. (retired). See also *Combate vs. San Jose, Jr.*, 135 SCRA 693 (April 15, 1985), per Melencio-Herrera, J. and *People vs. Catolico*, 38 SCRA 389 (1971), per Teehankee, J.; *People vs. Navarro*, 63 SCRA 264 (1975), per E.A. Fernandez, J.

[27-a] *Uy vs. Genato*, L-37399, 57 SCRA 123 [May 29, 1974]; *Serino vs. Sosa*, L-33116, 40 SCRA 433 [Aug. 31, 1971]; *People vs. Gomez*, L-22345, 20 SCRA 293 [May 29, 1967]; *People vs. Balisacan*, L-26376, 17 SCRA 1119 [Aug. 31, 1966].

[28] Deputy Tanodbayan Herrera's Comment dated April 14, 1986, see Annex "D".

[29] *Olmstead vs. U.S.*, 277 U.S. 438, dissenting opinion of Brandeis, J.

[30] 101 SCRA 450 (1980), per Melencio-Herrera, J., italics supplied.

[31] Deputy Tanodbayan's Comments dated April 14, 1986.

[32] *Idem.*

[33] 29 SCRA 688 (1969), per Teehankee, J.

[34] Cf. *Mateo vs. Villaluz*, 50 SCRA 19; *Pimentel vs. Salonga*, 21 SCRA 160; *Luque vs. Kayanan*, 29 SCRA 165.

[35] 133 SCRA 150, (1984) per Abad Santos, J. (retired); notes in brackets supplied.

[36] 86 SCRA 305 (1978) per Teehankee, J.

[37] Except for the writer who was appointed and took his oath of office as Chief Justice on April 2nd. See footnote 15, on p. 13.

CONCURRING

MELENCIO-HERRERA, J.:

Consistent with what I had perceived as the need to establish the truth behind the vicious assassination of the late Senator Benigno Aquino, as expressed in my dissenting opinion in *Galman vs. Pamaran* (138 SCRA 294, 379 [1985]), and so that justice may be done, I vote for the re-trial prayed for by petitioners.

There is reason to believe that some vital evidence had been suppressed by the prosecution, or that it had disregarded, as immaterial or irrelevant, evidence which, if presented, could affect the outcome of the case. As it

is, the prosecution failed to fully ventilate its position and to lay out before respondent Court all the pertinent facts which could have helped that Court in arriving at a just decision. It had, thus, failed in its task.

"A public prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. As such, he is in a peculiar and every definite sense the servant of the law, the two-fold aim of which is that *guilt shall not escape or innocence suffer*." [Underscoring ours] (*Suarez vs. Platon*, 69 Phil. 556 [1940]).

"He owes the state, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts, the innocent may not suffer, and the guilty may not escape unpunished" (*People vs. Esquivel*, 82 Phil. 453 [1948]).

Respondent Court, in showing partiality for the accused from beginning to end, from the raffle of the subject cases to the promulgation of judgment, which absolved the accused, *en masse*, from any and all liability, is equally culpable for miscarriage of justice. Due process of law, which "requires a hearing before an impartial and disinterested tribunal" and the right of every litigant to "nothing less than the cold neutrality of an impartial Judge" (*Gutierrez vs. Santos*, 112 Phil. 184 [1961]; *Castillo vs. Juan*, 62 SCRA 124 [1975]), was violated.

The proceedings below, having been vitiated by lack of due process, to the detriment of the State and the People, were invalid and the judgment rendered null and void *ab initio*. There having been no trial at all in contemplation of law, there is likewise no judgment on which a plea of double jeopardy may be based. To entitle the accused to the plea of former jeopardy, the proceedings must have been valid (*State vs. Bartlett*, 164 N.W., 757; *State vs. O' Day*, 185 So. 290). The lack of any fundamental requisite which would render void the judgment would make ineffective a plea of jeopardy based on such proceedings (*Steen vs. State*, 242 S.W. 1047).

The accused, however, argue that double jeopardy attaches for, even assuming without conceding, that pressure and collusion did take place,

they were not a party to the same; and, for those who were charged only either as accomplices or accessories, they contend that their alleged offense involved only a cover-up in the investigation of the crimes so that, whatever pressure was exerted could only have benefited the principals, consequently, to subject them to a re-trial is to put them twice in jeopardy.

It is true that where an accused was not a party to the fraud, a conviction secured fraudulently by the State's officer cannot be avoided by the state (*State vs. Heflin*, 96 So. 459, 19 Ala. App. 222). However, that exception is inapplicable to the cases at bar where both the prosecution and the Trial Court itself were parties to the fraud and collusion. Nor can it be said that the accused were not a part thereof. The agreement to file the murder charge in Court so that, after being acquitted as planned, the accused could no longer be prosecuted under the doctrine of double jeopardy; the "categorization" of the accused into principals, accomplices and accessories so that not all of them would be denied bail during the trial, were fraudulently conceived for their benefit and for the purpose of protecting them from subsequent prosecution. It is, thus, no bar to a subsequent prosecution for the same offense (*Coumas vs. Superior Court*, 192 P. 2d. 449, 452, 31 C. 2d. 682). A verdict of acquittal procured by the accused by fraud and collusion is a nullity and does not put him in jeopardy; and consequently, it is no bar to a second trial for the same offense (*State vs. Lee*, 30A. 1110, 65 Conn. 265, 48 Am. S.R. 202, 27 L. RA. 498).

The proceedings below having been fatally flawed by pressure, fraud and collusion, with the legal consequence that there was no trial and judgment to speak of, and under the circumstances peculiar only to these cases, I vote for a re-trial in the interest of truth and the ends of public justice. As in all criminal proceedings, however, the accused must be guaranteed a fair, speedy, and impartial re-trial before an unbiased Tribunal and prosecutor and, I might add, safeguarded against trial by publicity.

CONCURRING

ALAMPAY, J.:

Considering that certain significant facts and circumstances not previously disclosed to the Court were found by the Commission

constituted by this Court, purposely to inquire and ascertain the veracity of the same, to be duly established by sufficient evidence and are indicative of "a scripted and predetermined manner of handling and disposing of the Aquino-Galman murder case x x x;" and that there exists "adequate credible evidence showing that the prosecution in the Aquino-Galman case and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist and which not only prevented the prosecution to fully ventilate its position and to offer all the evidences it could have otherwise presented, but also predetermined the outcome of the case; x x x." I join in granting petitioners' second motion for reconsideration.

In my considered view, the ends of Justice will be best served by allowing the trial anew of the subject cases in order to ultimately obtain a judgment that will be removed from any suspicion of attendant irregularities. With the greatest significance being given by our people to the said cases, which are evidently of historical importance, I am readily persuaded that it is to our national interest that all relevant evidence that may be now available be provided an opportunity to be received and made known so that whatever is the actual truth can be rightfully ascertained.

I, therefore, vote for a declaration of mistrial and for nullifying the proceedings of the referred Criminal Cases Nos. 10010 and 10011 before the Sandiganbayan and the ordering of a re-trial.

CONCURRING

GUTIERREZ, JR., J.:

On November 28, 1985, this Court dismissed the petition for certiorari and prohibition with preliminary injunction and lifted a Temporary Restraining Order earlier granted. We are now acting on a motion for reconsideration filed by the petitioners.

When the Court initially dismissed the petition, I issued a separate concurring and dissenting opinion.

The issues before us were novel and momentous. I felt that in immediately dismissing the petition, we were denying the petitioners every reasonable opportunity to prove their allegations of non-

independent and biased conduct of both the prosecution and the trial court. I stated that the issues of miscarriage of justice and due process arising from that conduct should be allowed more extended treatment. With then Associate Justices Claudio Teehankee and Vicente Abad Santos, I, therefore, dissented from the Court's resolution denying the petitioners' motions to continue presenting their case.

Since the majority of the Court, however, had decided to resolve the petition on its merits and the findings of the Vasquez Commission were still for the future, I concurred in the result of this Court's action on two grounds - (1) the right of the accused to speedy trial and (2) the presumption in law that judicial acts are regularly performed and that public officers have discharged their duties in accordance with law.

The findings of the Vasquez Commission now confirm my initial misgivings and more than overcome the presumption of regular performance of official duty upon which I based my concurrence.

What were some of these misgivings now given substance by the investigation?

Mistrial is usually raised by the accused. In this petition neither the accused nor the prosecution saw anything wrong in the proceedings. We had the unusual phenomenon of the relatives of one victim, prominent lawyers and law professors, and retired Justices assuming the uncommon role of alleging not only a biased Sandiganbayan but also a Tanodbayan holding back its own evidence. Instead of allowing the heated passions and emotions generated by the Aquino assassination to cool off or die down, the accused insisted on the immediate rendition of a decision.

The Sandiganbayan is usually sober and respectful in its relations with the Supreme Court. I, therefore, found it strange and unfortunate why, in its Comment, the Sandiganbayan should question our authority to look into the exercise of its jurisdiction. There was the further matter of television cameras during trial, their effect on the witnesses and the judges, and other mischievous potentialities.

The report of the Vasquez Commission now shows that there was more to these misgivings and suspicions than appeared in the records at that time. The Court's opinion penned by the Chief Justice states in detail why the Sandiganbayan was not an impartial tribunal and the Tanodbayan not an unbiased prosecutor.

The right against double jeopardy is intended to protect against repeated litigations and continuous harassment of a person who has already undergone the agony of prosecution and trial for one and the same offense. It certainly was never intended to cover a situation where the prosecution suppresses some of its own evidence, where the accused correctly and eagerly anticipate a judgment of acquittal, and where the court appears to have made up its mind even before trial has started.

Under the circumstances found by the Vasquez Commission, there was a failure of trial tantamount to no trial at all. A "moro-moro" could not possibly result in a just or valid decision.

I am, however, constrained to write this separate opinion to emphasize a concern of this Court and of all Filipinos who want genuine justice to be realized in this case.

In the same way that we deplore the pressures and partiality which led to the judgment of acquittal, we must insure that absolutely no indication of bias, prejudgment, or vindictiveness shall taint the retrial of this case. The fairly strong language used by the Court in its main opinion underscores the gravity with which it views the travesties of justice in this "trial of the century". At the same time, nothing expressed in our opinion should be interpreted as the Supreme Court's making a factual finding, one way or another, about the perpetrators of the Aquino or the Galman killing. Any statements about the circumstances of the assassination or about the military version of the killings are intended solely for one issue - whether or not the Sandiganbayan acquittals should be set aside and a retrial ordered.

Neither our final resolution of this petition, the stature of the persons involved, pakikisama, utang na loob for an appointment or reappointment, or any other extraneous matters should color or influence the future course of this case.

Needless to say, any person who, in the past, may have formally expressed opinions about the innocence or guilt of the accused should be neither a prosecutor or judge in any forthcoming trial. It is not enough for the future proceedings to be fair; they should be above any suspicion of partiality, bias, rancor, or vindictiveness. It would be unfortunate if, in the conduct of further proceedings in this case, erroneous impressions may arise that a prosecutor or judge has prejudged the guilt or innocence of

any accused. Having just declared a mistrial, we should not again declare the retrial as another mistrial, ad infinitum.

For the reasons abovestated, I concur in the decision of the Court to grant the petitioners' second motion for reconsideration.

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