

THIRD DIVISION

[G.R. No. 191834, March 04, 2020]

**JOSEPHINE ESPINOSA, PETITIONER, V. SANDIGANBAYAN AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

[G.R. No. 191900, March 4, 2020]

**FELICISIMO F. LAZARTE, JOSEPHINE C. ANGSICO, AND
VIRGILIO C. DACALOS, PETITIONERS, V. SANDIGANBAYAN AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

[G.R. No. 191951, March 4, 2020]

**NOEL A. LOBRIDO, PETITIONER, V. SANDIGANBAYAN AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

A petition for certiorari assailing the denial of a demurrer to evidence will not resolve the merits of the case in advance of trial. The court tasked with resolving the petition for certiorari may only review whether the lower court denied the demurrer to evidence with grave abuse of discretion.

Filing petitions for certiorari to assail denials of demurrers to evidence is emphatically discouraged. There is clearly a remedy still left to the accused, which is to continue with trial. Filing a petition for certiorari, therefore, borders on contumacious.

For this Court's resolution are consolidated Petitions for Certiorari, filed under Rule 65 of the Rules of Court, assailing the Sandiganbayan Resolutions^[1] denying the Demurrers to Evidence and subsequent Motions for Reconsideration of the National Housing Authority officials charged with violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

The case centers on the alleged giving of unwarranted benefits to a contractor for a housing development project. Before this Court, the accused officials allege that the Sandiganbayan committed grave abuse of discretion when it denied their respective Demurrers to Evidence and instead ordered them to present their evidence.

On May 9, 2001, Robert P. Balao (Balao), Josephine C. Angsico (Angsico), Virgilio V. Dacalos (Dacalos), Felicisimo F. Lazarte, Jr. (Lazarte), Josephine Espinosa (Espinosa), and Noel H. Lobrido (Lobrido), as employees of the National Housing Authority, and Jose M. Cruz (Cruz), as president of Triad Construction and Development Corporation (Triad Construction), were all charged with violating

Section 3(e) of Republic Act No. 3019 for the unwarranted benefits given to the contractor, to the government's prejudice, involving the Pahanocoy Sites and Services Project Phase I (Pahanocoy Project).

The Information^[2] read in part:

That in or about the month of September, 1992, at Bacolod City, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused ROBERT P. BALAO, JOSEPHINE C. ANGSIKO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINTE T. ESPINOSA and NOEL H. LOBRIDO, Public Officers, being the General Manager, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, respectively, of the National Housing Authority, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused JOSE M. CRUZ, a private individual and President of Triad Construction and Development Corporation, with address at Ben-lor Bldg. , Quezon Avenue, Quezon City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to Triad Construction and Development Corporation public funds in the amount of ONE MILLION TWO HUNDRED EIGHTY THOUSAND NINE HUNDRED SIXTY FOUR PESOS and TWENTY CENTAVOS (P1,280,964.20) PHILIPPINE CURRENCY, supposedly for the final work accomplishment of Triad Construction on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that the Final Quantification of the Actual Work Accomplishment on the said Project amounted only to THREE HUNDRED THIRTY THOUSAND SEVENTY FIVE PESOS AND SEVENTY SIX CENTAVOS (P330,075.76) as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to Jose M. Cruz and Triad Construction and Development Corporation and themselves, to the damage and prejudice of the government.

CONTRARY TO LAW.^[3]

Cruz died before his arraignment, warranting his case's dismissal and leaving only the National Housing Authority officials, who all pleaded not guilty.^[4] Trial commenced on June 14, 2004, with the prosecution presenting its witnesses and documentary evidence.^[5]

Candido Montesa Fajutag, Jr. (Fajutag) testified that as the then project engineer of the Pahanocoy Project, he was tasked with checking the contractors' personnel and equipment capabilities, monitoring construction activities, checking contractor billings, and evaluating contractor requests for progress payments.^[6]

Fajutag explained that the Pahanocoy Project was a land development project intended for housing"^[7] that involved "earthworks, water and sewerage works, drainage[,] and road construction."^[8] He was appointed halfway through the project's expected duration, following two (2) project engineers who had already

billed two (2) progress payments to A.C. Cruz Construction, the former contractor. Upon his appointment, Triad Construction was already engaged for the remaining works.^[9]

According to Fajutag, he was not given an official project plan upon which to base the fourth progress billing, so he inventoried the contractor's accomplishments and asked the project engineers to verify their billings.^[10] He found that the portion of work Triad Construction completed was not commensurate to the amount it received, which was well over 30% of the contract price.^[11]

Fajutag noted that the project construction was suspended at the time he assumed office and resumed only when Work Variation Order No. I was issued upon approval by the general manager.^[12] The variation order called for the resumption of "(1) excavation of unsuitable materials, (2) filling up of road fill materials, (3) reinforcement of RC road pipe crossing, and (4) demolition of unwanted structures."^[13] Because these items were excluded from the original contract, Fajutag stated, they required an additional net cost of over P710,000.00.^[14]

Not only did Fajutag find that some of these items were nonexistent, but that the fourth progress billing covered over 40% work accomplishment when only 32% of the work was completed, discounting those Fajutag found defective or substandard. He reported these irregularities in his Evaluation Report to the project manager and general manager of the National Housing Authority. Since he refused to sign the fourth progress billing request, Fajutag was pulled out of the project.^[15]

On May 1, 1992, the Pahanocoy Project was completed.^[16]

Sometime in 1993, Fajutag accompanied the Commission on Audit Special Team sent to investigate the project. He identified the irregularities and substandard construction works surrounding it.^[17]

Atty. Sheila Uy-Villa (Atty. Villa), a state auditor for the Commission on Audit, testified that she led the team that investigated the Pahanocoy Project from July 5 to 31 1993,^[18] upon Fajutag's Complaint against the National Housing Authority officials. Their investigation allegedly revealed irregularities in the project: of the two (2) billings paid to Triad Construction, the second billing covered works that did not exist and those already paid to the previous contractor.^[19]

Assisted by engineers, the Atty. Villa-led team conducted core drilling and soil testing to see if "activities that were claimed in connection with the excavation of unsuitable materials and the import of road field works"^[20] were actually conducted in accordance with the variation order.^[21]

The results of the tests allegedly indicated that "[t]here were no unsuitable materials removed from the road sites" and that "no imported road materials were filled thereat."^[22] Likewise, the pavement core samples confirmed Fajutag's concerns that they "fell short of the required thickness."^[23] The team also examined the supporting documents of the contracts with the contractors, but noted that some important documents were not provided despite the team's efforts to procure them from the officials concerned.^[24]

Their findings indicated that the grant of remaining works in the Pahanocoy Project to Triad Construction was irregular, that the documents supporting the final billing estimate showed various discrepancies, and that changes in the scope of work were not supported by the necessary contract variation order.^[25]

Atty. Villa pointed out that there were two (2) summaries of payment estimates for Triad Construction's final billing: first, totaling P330,075.76; and second, totaling P1,280,964.20. The difference was allegedly due to quantity overruns that were not supported by any contract variation order. According to Atty. Villa, such variations should have been covered by a change order pursuant to the Implementing Rules and Regulations of Presidential Decree No. 1594.^[26]

Moreover, Atty. Villa testified that the project had two (2) Certificates of Completion—the first dated May 1, 1992; the second, March 31, 1992. The latter date was typewritten over the original completion date of May 1, 1992 on the second Certificate of Completion. Likewise, a memorandum labeled Exhibit "I" indicated a project completion date of April 15, 1992.^[27]

In an exit conference on February 4, 1994,^[28] Atty. Villa's team received the National Housing Authority representatives' comments on the draft report, in which they explained that the discrepancies arose when Triad Construction conducted additional works for items that were either inexistent or in need of repair.^[29] However, the officials failed to provide any documentation for these purported works, which, Atty. Villa noted, should have been standard practice.^[30]

Rosalie Molo Sales (Sales), a state auditor who was part of Atty. Villa's team, mainly testified on the lack of "factual or documentary basis for the increased contract cost"^[31] paid to Triad Construction.^[32]

According to Sales, the audit team's requests for the project's supporting documents were not fully complied with, and even former project engineer Fajutag could not produce them as these were not provided to him. Instead, Fajutag provided a "built-in-plan" of the project that he prepared on his own.^[33]

Corroborating Atty. Villa's testimony, Sales stated that the test results showed the pavement samples did not meet the required thickness, and that only one (1) of 12 samples was a mix of gravel and sand, while "[t]he rest showed that unsuitable materials were not extracted by the contractor."^[34]

Sales also testified on the Physical Abstract Accomplishment, a Memorandum, and a Final Quantification. The Memorandum, which did not show a specific quantity of particular works defined in the contract, indicated a total project cost of P10,024,970.79—different from the project cost shown in the contract, which was P9,554,837.32. Meanwhile, the Final Quantification showed a discrepancy in the quantity of unsuitable materials excavated, from the original 2,018.94 cubic meters to 2,018.95 cubic meters. Finally, the Abstract of Physical Accomplishment suggested how farfetched it was that the excavation was done in four (4) days, when the process was significantly more laborious.^[35]

The prosecution dispensed with the testimony of their fourth witness, Atty. Jose M. Agustin, because the defense admitted that the photocopies of the checks to be identified were "faithful reproductions of the originals."^[36]

On March 8, 2006, the prosecution formally offered its evidence, on which the National Housing Authority officials then commented. Nonetheless, the Sandiganbayan admitted the prosecution's evidence despite the officials' objections. Thus, they moved for leave to file their respective demurrers to evidence.^[37]

The Sandiganbayan granted the officials' motion for leave. The officials commonly alleged that the prosecution failed to prove their guilt beyond reasonable doubt because the "Final Quantification"—which, as the Information stated, supposedly indicated a billing of P330,075.76—never existed. It was, thus, never presented in court, rendering the complaint baseless and dismissible. Additionally, they argued that the prosecution failed to adequately establish conspiracy on their part.^[38]

In a January 29, 2008 Resolution,^[39] the Sandiganbayan denied the Demurrers to Evidence, holding that there was sufficient basis to support the charges in the Information. The Sandiganbayan, thus, ordered the accused officials to proceed to trial and establish their respective defenses.^[40]

The National Housing Authority officials respectively moved for reconsideration, commonly insisting on the prosecution's failure to prove its case, but were collectively denied in the Sandiganbayan's February 18, 2010 Resolution.^[41] Thus, except Balao who had since passed away,^[42] they filed three (3) separate Petitions for Certiorari, alleging that the Sandiganbayan gravely abused its discretion when it denied their Demurrers to Evidence.

In G.R. No. 191834, petitioner Espinosa argues that the Sandiganbayan gravely abused its discretion in ordering her to defend herself despite the prosecution's failure to establish her guilt beyond reasonable doubt.^[43]

She insists that the prosecution could not rely on the June 24, 1992 Memorandum, it being a mere draft that only bore her signature, without the other signatures needed to accord it finality.^[44] Thus, the alleged first set of billings for P330,075.76 could not have existed and be used as basis for comparison with the second set of P1,280,964.20.^[45] She also asserts that the prosecution failed to present the supposed Final Quantification, rendering the complaint baseless.^[46] Accordingly, she argues that a variation order was unnecessary.^[47]

Petitioner Espinosa further argues that her continued prosecution despite the admitted absence of the Final Quantification violated her substantial right to be informed of the charges against her.^[48] She adds that the prosecution utterly failed to adduce any proof of conspiracy on her part, as her mere signature on a draft memorandum could not suffice on its own.^[49]

In G.R. No. 191951, petitioner Lobrido also argues that the absence of the Final Quantification should have been deemed fatal to the prosecution's case. He insists that its very absence was why the first set of billings remained drafts, "set aside and not processed."^[50]

In G.R. No. 191900, petitioners Lazarte, Angsico, and Dacalos also adopted this argument, insisting that the criminal case was founded on the Final Quantification; the prosecution's admission of its nonexistence, therefore, contradicted the charges in the Information.^[51] Since the draft Memorandum was never forwarded to the