

## THIRD DIVISION

[ G.R. No. 153526, October 25, 2005 ]

**FLORANTE SORIQUEZ, PETITIONER, VS. SANDIGANBAYAN  
(FIFTH DIVISION) AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**GARCIA, J.:**

In this petition for certiorari and prohibition under Rule 65 of the Rules of Court, petitioner Florante Soriquez seeks to annul and set aside the Sandiganbayan's (Fifth Division) Resolution<sup>[1]</sup> dated March 6, 2002, denying his demurrer to evidence in **Criminal Case No. 23539** entitled "People vs. Florante Soriquez, et al.," and Resolution<sup>[2]</sup> dated May 20, 2002, denying his motion for reconsideration. The prohibition aspect of the petition aims at prohibiting the respondent court from taking further proceedings in the same criminal case.

In an Information filed with the anti-graft court and raffled to its Fifth Division, petitioner, in his capacity as Program Director of Mt. Pinatubo Rehabilitation-Project Management Office (MPR-PMO), along with nine others, were charged with Violation of Section 3 (e) of Republic Act 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*. Specifically, petitioner and his co-accused were indicted for having allegedly conspired, through evident bad faith or gross inexcusable negligence, in allowing the contractor, Atlantic Erectors, Inc., to deviate from the plans and specifications of the contract in connection with the construction of the Pasig-Potrero River Diking System, popularly known as the **Megadike**. This breach of contract allegedly resulted in the collapse of the Megadike, thereby causing damage and undue injury to the government. In its precise words, the Information<sup>[3]</sup> alleges, as follows:

That on or about February 29 to June 15, 1996, or sometime prior or subsequent thereto, in the Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, above-named accused public officers from the Department of Public Works and Highways, namely, Florante Soriquez, Program Director MPR-PMO, Romeo P. Mendoza, Rey S. David, Ulysis Mañago, Juan M. Gonzales and Gil A. Rivera, all Supervising Engineers, MPR-PMO, and private individuals, Ariel T. Lim, CEO, Alberto Teolengco, Neil Allan T. Mary and Remigio Angtia, Jr. of Atlantic Erectors, Inc., conspiring, confederating and mutually helping one another, while accused public officers were performing their administrative and official functions and acting in evident bad faith, or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to the government in the following manner: accused public officers of the DPWH, by reason of their respective official functions, did consent, allow and/or permit the contractor, Atlantic

Erectors, Inc., represented by aforementioned accused private individuals, to disregard and/or deviate from the plans and specifications of Contract Package No. 25 in constructing the Transverse Section of the Pasig-Potrero River Diking System (popularly known as the Megadike) in violation of the material provision of said contract, and thereafter allow the contractor to collect and receive P38,289,708.61, despite the violation, and which breach of contract caused the collapse of substantial portion of the transverse dike, thereby causing prejudice and damage to the government.

#### CONTRARY TO LAW.

On arraignment, petitioner, as accused below, entered a plea of "Not Guilty". In the ensuing trial, the prosecution presented its lone witness in the person of Atty. Mothalib Onos, Chairman of the Fact-Finding Investigation Panel of the Office of the Ombudsman. Thereafter, the prosecution formally offered its documentary evidence and rested its case.

Instead of going forward with defensive evidence, petitioner, with leave of court, filed a Demurrer to Evidence (Motion to Dismiss),<sup>[4]</sup> thereunder substantially alleging that the evidence presented by the prosecution is grossly insufficient to warrant his conviction, hence, he is entitled to an acquittal.

In the herein first assailed **Resolution dated March 6, 2002** (Promulgated March 7, 2002), the Sandiganbayan (Fifth Division) denied petitioner's demurrer "for lack of merit". Says the respondent court in its denial Resolution:

In sum, the arguments of herein accused may be summarized as follows: that there is no proof that there was a faulty construction; that even assuming that there was faulty construction, there is no proof that Atlantic Erectors, Inc., the company where accused-movants come from, is the only author of the faulty construction to the exclusion of the other contractors; that the findings mentioned in the Fact-Finding Report are evidentiary in nature but no physical evidence was ever presented by the prosecution necessitating the acquittal of herein accused; that the evidence on record is hearsay as the investigators who personally conducted the investigation on the alleged faulty construction were not presented as witness; that the construction of the megadike was not tainted with bad faith because during the construction of the same, various groups were monitoring the construction, including herein prosecution witness, Atty. Onos; that there is no evidence showing previous plan to defraud the government as, in fact, Atlantic Erectors, Inc. manifested its willingness to reconstruct the breached section of the megadike using the same plan free of charge, but the DPWH did not accept the offer and instead reconstructed the same using a different design; that the Fact-Finding Report is bias; that the information is admittedly erroneous insofar as to the amount paid by the government to the contractor which is P38,289,708.61, the truth being that only P17,183,619.61 was duly paid by the government; that the filing of the case is tainted with political color.

In its "CONSOLIDATED COMMENT/OPPOSITION TO ACCUSED'S

DEMURRER TO EVIDENCE," dated December 3, 2001, the prosecution admits that the cause of the breach was not due to faulty construction or deviation from the plans and specifications, but due to faulty design; that his conclusion was strengthened when the contractor offered to repair the damaged portion of the megadike free of charge.

In his "REPLY TO THE COMMENT OF THE OFFICE OF THE SPECIAL PROSECUTOR" dated December 18, 2001, accused Soriquez belies having participated in the defective construction of the megadike because, according to him, he was not tasked to directly supervise every phase of the construction. Likewise, accused added that the amount of P17,183,607.99 representing the contractor's first progress billing was duly paid to the contractor after a verification and certification of the work accomplished.

As borne out by the records, accused Soriquez was one of the officials of the Department of Public Works and Highways who recommended the approval of the design of the transverse dike without which recommendation the Secretary could not have approved the defective design plan for the megadike (pp. 5-6, Exhibit "10"). On the other hand, his co-accused were the ones responsible for the construction work in Contract Package-25 (otherwise referred to as the transverse dike) being the contractors of the megadike in question (Exhibit "C"). They even manifested their willingness to reconstruct the breached section of the megadike using the same plan, free of charge (pp. 18-19, TSN, June 11, 2001).

All of the above shows that, at this point in time, the evidence presented by the prosecution creates a *prima facie* case against herein accused, which, if uncontradicted, may be proof beyond reasonable doubt of the charge against him (Salonga vs. Paño, 134 SCRA 438; Bautista vs. Sarmiento, 138 SCRA 587). Mere declaration that the testimonies of the prosecution witnesses are uncorroborated, inconsistent, incredible or hearsay is not sufficient. It is, therefore, absolutely necessary for herein accused to present their countervailing/exculpatory evidence.

In time, petitioner moved for a reconsideration but his motion was likewise denied by same court in its subsequent Resolution of May 20, 2002, and accordingly set the case for the reception of defense evidence.

Hence, petitioner's present recourse, faulting the respondent court, as follows:

1. THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED ACCUSED-PETITIONER'S DEMURRER TO EVIDENCE DESPITE A FINDING THAT ONLY A *PRIMA FACIE* CASE HAS BEEN ESTABLISHED BY THE PROSECUTION.
2. THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN DENYING ACCUSED-PETITIONER'S DEMURRER TO EVIDENCE DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE.