

## FIRST DIVISION

[ G.R. No. 123144, October 15, 2003 ]

**PABLO P. BURGOS, FRANCISCO G. PEDRIGAL, AND JESUS B. SABANDO, PETITIONERS, VS. HON. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

[G.R. NO. 123207]

**ABELARDO M. MONGE, JR., PETITIONER, VS. HON. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

[G.R. NO. 123536]

**FLAVIANO B. GALAPON, PETITIONER, VS. HON. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**AZCUNA, J.:**

Three consolidated appeals by way of petitions for review on *certiorari* are before the Court, seeking to reverse the decision<sup>[1]</sup> of the Sandiganbayan in Criminal Case No. 13527 entitled "*People of the Philippines v. Flaviano B. Galapon, Pablo P. Burgos, Abelardo S. Monge, Jesus O. Sabando, Francisco B. Pedrigal, Santiago L. Loyola, Jr., Julieta L. Modesto and Ricardo B. Castañeda.*" Petitioners Galapon, Burgos, Monge, Sabando and Pedrigal were all convicted of violating Section 3(e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," as amended, and each sentenced to suffer an indeterminate penalty of 6 years and 1 month, as minimum, to 9 years and 21 days, as maximum, with perpetual disqualification from public office.<sup>[2]</sup>

The entire controversy relates to the repair of some 30 to 45 year-old surveying instruments owned by the Leyte-Samar Engineering Districts, which is under the Ministry (now Department) of Public Works and Highways (MPWH). Culled from the records of the case, it appears that sometime in 1983 appellant Monge, Chief of the Planning and Designs Division of the MPWH, and appellant Galapon, Chief of the Survey Section of said Division, requisitioned for the repair of 19 of these surveying instruments. Accordingly, on September 14, 1983, appellant Pedrigal, Chairman of the Procurement Section of the Finance Division, caused the preparation of three Requisitions for Supplies and Equipment (RSE) forms, which enumerated the repairs or job orders that needed to be made on the surveying instruments. The RSEs were later recommended for approval by Finance Officer Modesto.<sup>[3]</sup>

Invitations to Bid were sent out on October 26, 1983 and, eventually, the contract to

repair the instruments was awarded to Engineering & Surveying Instruments Center (ESIC), represented by Castañeda. On December 14, 1983, three Purchase Orders (PO), addressed to ESIC, were recommended for approval in the amount of P83,850. Castañeda received the POs, together with the 19 surveying instruments, on December 19, 1983.<sup>[4]</sup>

On January 3, 1984, petitioner Galapon inspected the 19 surveying instruments after they were returned, and presumably repaired, by ESIC. The results of the inspection are contained in three Reports on Inspections prepared by petitioner Galapon wherein he declared that the surveying instruments were functional and operational. The Reports on Inspection were concurred in by petitioners Burgos, Monge and Sabando, who were all members of the Inspectorate Committee.<sup>[5]</sup> Thereafter, Disbursement Vouchers were prepared and signed by, among others: Galapon, who directed the preparation of thereof; Pedrigal, who declared receiving the surveying instruments in good condition; and Modesto, who certified that the expenses incurred were necessary and lawful.<sup>[6]</sup>

The surveying instruments were, thereafter, stored in a warehouse of Region VIII, MPWH until they were post-inspected by Robert A. Bajar, Technical Inspector for the Commission on Audit. According to his Post Inspection Report dated January 20, 1984, Bajar found numerous defects and deficiencies on the surveying instruments. Reacting to the Post Inspection Report, the Regional Director of MPWH sent a wire to Castañeda requesting him to correct these defects. Initially, Castañeda did not respond to the wire so the Regional Director ordered one of his subordinates, Loyola, personally to bring the instruments to ESIC in Cebu City and to see to it that they were properly repaired. Before Loyola could leave for Cebu City, a brother of Castañeda arrived to pick up the instruments. The two of them then brought the instruments to ESIC.<sup>[7]</sup>

On October 5 and 8, 1984, after Castañeda returned the surveying instruments, Bajar inspected them for a second time and again found their conditions unacceptable. His findings are contained in his Post Inspection Report dated October 15, 1984. This prompted the Regional Director again to request Castañeda to correct the deficiencies. Castañeda accordingly complied and went to Leyte to make repairs thereon.<sup>[8]</sup>

On October 30, 1985, Bajar conducted a third post inspection and numerous deficiencies and defects were still found on the surveying instruments. Due to Bajar's recommendation that final action be immediately taken, an investigating team was formed to look into the whole incident regarding the repairs of the surveying instruments. The result was a recommendation that charges be filed against Galapon, Burgos, Monge, Sabando, Modesto, Pedrigal, Loyola and Castañeda. After the requisite preliminary investigation, an information for violation Section 3(e) of Republic Act (R.A.) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, was filed against petitioners, as follows:<sup>[9]</sup>

That on or about the 29<sup>th</sup> day of December, 1983, in the municipality of Palo, Leyte and within the jurisdiction of this Honorable Court, accused Engr. Flaviano Galapon, Supervising Civil Engineer III, Engr. Pablo P. Burgos, Regional Engineering Coordinator, Engr. Jesus Sabando, Engr. Abelardo Monge, Jr. and Julieta Modesto, Chairman and Members,

respectively, of the MPWH Inspectorate Committee, Region VIII, Candahug, Palo, Leyte, Francisco Pedrigal, Supply Officer of the then MPWH, and therefore all public officers, with grave abuse of confidence and acting in conspiracy and confabulation with accused Ricardo Castañeda, Proprietor/Manager of Engineering and Surveying Center, with business address at No. 33 F. Ramos St., Cebu City, did then and there willfully enter into a contract with the said Ricardo Castañeda, who actually received the same, despite their being aware and knowing fully well that the said survey instruments were not actually repaired and rendered functional/operational, thereby causing undue injury to the government and giving themselves unwarranted benefits and advantage, through manifest partiality and/or evident bad faith in the discharge of their official and administrative functions, in the aforementioned amount of P83,850.<sup>[10]</sup>

Prior to trial before the Sandiganbayan, Burgos, Sabando, Monge and Loyola filed a motion for reinvestigation. The motion was at first denied but was eventually granted upon motion for reconsideration. After reinvestigation, the prosecution moved to withdraw the information on the ground that it "is morally convinced that...those 19 surveying instruments could be used." The Sandiganbayan, however, denied the motion to withdraw and proceeded to try the case on the merits.<sup>[11]</sup>

The prosecution submitted 67 exhibits consisting of various documents including POs, Disbursement Vouchers, RSEs and the three Post Inspection Reports of Bajar. The defense, during pre-trial, admitted the existence, genuineness and due execution of these documents but reserved the right to question the truth and veracity of their contents. The prosecution rested its case after formally offering the 67 exhibits and without having presented any testimonial evidence.<sup>[12]</sup>

The evidence for the defense consisted of testimonies from petitioners Galapon, Pedrigal, Sabando and Burgos. Other witnesses presented were Loyola, Mercedita, Caing, Bonifacio, Boco and San Gabriel. Along with testimonial evidence, the defense submitted 18 exhibits.<sup>[13]</sup>

On August 12, 1994, the Sandiganbayan rendered a decision finding petitioners guilty of violating Section 3(e) of R.A. 3019 by falsely making it appear in the Reports of Inspection and Disbursement Vouchers that the 19 surveying instruments had all been repaired in the manner specified in the Job Orders, thus, allowing full payment to Castañeda, causing undue injury to the Government. A motion for reconsideration was duly filed but was denied on December 1, 1995.<sup>[14]</sup>

Seeking to reverse their convictions, petitioners Burgos, Pedrigal and Sabando appealed their case to this Court through a petition for review on *certiorari*, docketed as G.R. No. 123144. Appellants Monge and Galapon likewise filed their own petitions that were docketed as G.R. No. 123207 and G.R. No. 123536, respectively. All three petitions were eventually consolidated under a resolution issued by this Court on August 28, 1996.<sup>[15]</sup>

Common and foremost among the issues raised by petitioners is the argument that the Sandiganbayan erred in convicting them on a finding of fact that was not alleged in the information. They contend that the information charged them with having

allowed payment of P83,850 to Ricardo Castañeda despite being aware and knowing fully well that the surveying instruments were not actually repaired and rendered functional/operational. However, their conviction by the Sandiganbayan was based on the finding that the surveying instruments were not repaired in accordance with the specifications contained in the job orders.

Petitioners contend that there is a whale of a difference between the information, which alleges that the surveying instruments were not actually repaired and rendered functional/operational, and the finding of the Sandiganbayan that the survey instruments were not repaired in the manner specified in the job orders. They assert that to convict them based on allegations other than what was contained in the information would be a deprivation of their right to due process and to be informed of the nature and cause of the accusation against them.

The Office of the Special Prosecutor on the other hand maintains that although the exact wording of the information is not faithfully stated in the Sandiganbayan decision, a reading of the entire information would show that the words therein practically mean the same thing, in that "not actually repaired and rendered functional/operation" is synonymous with "not having been repaired in accordance with the job orders."

Moreover, according to the prosecution, petitioners admitted in their pleadings that they fully understood that the charge against them was allowing payment despite knowledge that the surveying instruments were not repaired in accordance with the job orders. One such pleading cited by the prosecution is appellants' Motion for Reconsideration<sup>[16]</sup> dated July 7, 1989 to the Order denying their Motion for Reinvestigation, to wit:

1. That during the preliminary investigation, the principal issue posited by the complainant thru the evidence presented was whether the repairs made on the 19 surveying equipments by the Engineering and Surveying Instruments Center of Cebu were in accord with the specifications in the corresponding job orders.
2. Evidence submitted by the accused dwelt solely on this issue and that the same strongly supports the findings that the repairs made were in conformity with the job orders.
3. That notwithstanding the fact that during the preliminary investigation the issue on the functionality/or operational condition of the instruments aforesaid after the repair was never raised by the complainant or evidence, and as such, the prosecution made no findings on this point, the prosecution now in the amended information in Criminal Case No. 13527, alleged that the equipment were "not repaired and rendered functional/operational". In effect, the accused, although [they] were in possession of evidence to sufficiently prove that the instruments became functional/operational because of the repairs made thereon, were deprived of an opportunity to present their evidence on this point. This is the reason why the accused filed their Motion for Reinvestigation;