

TEODORO K. KATIGBAK AND BIENVENIDO E. MERELLOS, PETITIONERS, VS. THE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 140183. July 10, 2003

Ponente: CORONA, J.

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CORONA, J.:

The instant petition for certiorari and prohibition under Rule 65 of the Rules of Court seeks to annul and set aside the Resolution[1] dated April 7, 1999 of the Sandiganbayan's Second Division, in Criminal Case No. 22647 denying petitioners' motion to dismiss the case against them on demurrer to evidence and the Resolution[2] dated August 9, 1999 which denied their motion for reconsideration.

The antecedent facts show that, on July 18, 1990, the National Housing Authority (NHA) entered into a contract for the land development of the Pahanocoy Sites and Services, Phase I, in Bacolod City with Arceo Cruz of A.C. Cruz Construction. After the contract was confirmed by the NHA Board of Directors, the work commenced on August 1, 1990. Before the project could be completed, however, the NHA rescinded the contract on August 29, 1991 and engaged the services of Jose Cruz of Triad Construction and Development Corporation for the unfinished portion thereof.

Consequently, Arceo Cruz lodged a complaint with the Office of the Ombudsman. After preliminary investigation, an information[3] was filed with the Sandiganbayan on May 3, 1995, docketed as Criminal Case No. 22647, charging the petitioners and their co-accused with the crime of violation of Section 3, paragraph (e) of RA 3019,[4] as amended. Specifically, the petitioners and their co-accused were indicted for having allegedly conspired, through evident bad faith and manifest partiality, in unilaterally rescinding the contract for land development with the private complainant, Arceo Cruz, and subsequently awarding the same, without public bidding and at an exorbitant rate, to private respondent, Jose Cruz, thereby granting unwarranted benefits to said private respondent while causing damage and undue injury to the government and the private respondent.

On March 20, 1996, the information in Criminal Case No. 22647 was amended to read as follows:

The undersigned Special Prosecution Officers, Office of the Special Prosecutor, hereby accuses ROBERT ANTHONY P. BALAO, TEODORO K. KATIGBAK, BIENVENIDO MERELLOS, HARRY PASIMIO, JOEL LUSTRIA and JOSE CRUZ, of violation of Section 3 (e), R.A. 3019 as amended, committed as follows:

That on or about March 16, 1992, and for sometime prior or subsequent thereto, in Bacolod City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused ROBERT ANTHONY P. BALAO, General Manager and Member of the Board of Directors; TEODORO K. KATIGBAK, Chairman, Board of Directors and the following members of the Board of Directors, namely: BIENVENIDO MERELLOS, HARRY PASIMIO, and JOEL LUSTRIA, all of the National Housing Authority (NHA) all public officers, while in the performance of their official functions, committing the offense in relation to their office, and conspiring and confederating with each other and with accused JOSE CRUZ, General Manager of the Triad Construction and

Development Corporation, did then and there wilfully, unlawfully, criminally and through evident bad faith and manifest partiality, unilaterally rescind the contract for the land development of Pahanocoy Sites and Services Project, Phase I of (sic) Bacolod City, an Infrastructure Development Project of the National Housing Authority which was awarded to A.C. CRUZ CONSTRUCTION and thereafter awarded the contract for the completion of the remaining civil works in the said NHA project to TRIAD CONSTRUCTION AND DEVELOPMENT CORPORATION represented by JOSE CRUZ, without public bidding and at a contract price of P10,027,970.97 which is much more than the estimated cost of the remaining project work of P4,963,511.99 to which A.C. CRUZ would have been entitled if the original contract was not rescinded, thereby causing undue injury to A.C. CRUZ and to the Government.

Contrary to law.”[5]

Upon arraignment, the petitioners and their co-accused, assisted by their counsels, entered the plea of “not guilty” to the charge in the amended information. Pre-trial was waived by the parties per Order dated March 18, 1997. Thereafter, trial on the merits ensued during which the prosecution presented four witnesses, namely: Adelino M. Amurillo, Principal Engineer, stationed at the NHA Management Office on Elliptical Road, Diliman, Quezon City; Felicisimo F. Lazarte, Jr., Department Manager, NHA Regional Projects Department; Virgilio V. Dacalos, Division Manager, NHA Regional Projects Department; and private complainant Arceo C. Cruz. The prosecution rested its case after the admission of its Exhibits “A,” “B,” “C,” “D,” “E,” “F,” “G,” “H,” “H-1,” “J,” “K,” “L,” “M,” “N,” “O,” “Q,” “R” and “S” with submarkings. The descriptions and the purposes for which each of the said prosecution exhibits were offered in evidence were specifically stated in the written Formal Offer of Exhibits[6] dated September 22, 1997 quoted hereunder in full:

1) Exhibits “A,” “B” and “C” are the Notice of Award dated July 5, 1990, the Contract For Infrastructure Development of Pahanocoy Sites and Services Project, Phase I, Bacolod City and the Notice to Proceed dated July 18, 1990, respectively, signed by Arceo C. Cruz as contractor and Monico V. Jacob as General Manager of National Housing Authority (NHA), Quezon City. The purposes for which these exhibits are offered is to prove that the private offended party and the NHA have entered into a contract whereby the latter shall pay the former the amount of P7,686,507.55 to develop road works, drainage, and water works for a project of NHA located at (sic) Bacolod City and known as Pahanocoy Sites and Services Project, Phase I, Bacolod City.

2) Exhibit “D” is a Memorandum dated August 1, 1989 addressed to All Concerned Departments/Projects, issued by Monico V. Jacob, the subject matter of which was the establishment of an “express lane” to expedite the payment to contractors’ claims for accomplished work at the regional projects area as in this case. That the salient factor in this memorandum is found in paragraph 2 of page 2 thereof which clearly limited the period for approving and signing by the (NHA) General Manager of claims for payment to only one (1) working day from the time the claims of a contractor is submitted for approval and signature.

The attached Department Order No. 99 Series of 1991 dated April 19, 1991 issued by the Secretary of Department of Public Works and Highways, JOSE P. DE JESUS to Exh. D (page 576 of Volume II the record of the case) is also offered to show that contractors were vested with the right to suspend their work operations if their claim for payment is not made within the period. Said Department Order declares in essence that, and we quote for the easy reference of the Honorable Court:

‘the contractor will have an option to suspend the work if there is no Government response within fifteen (15) calendar days from the date of the written notice from the contractor.’

In addition, the purpose of this exhibit and its annex is to show that accused ROBERT ANTHONY P. BALAO grossly violated the guideline set up by his predecessor Monico V. Jacob. On the other hand this exhibit is offered to show the good faith and sincerity of the private offended party. Mr. Arceo Cruz, instead of availing of his right to suspend his work because he was not paid for what he had accomplished went on to complete his work on the

project until illegally stopped and forcibly ejected by the accused.

That lastly, the said exhibit and its annex are also offered to show that inspite of compliance of the private offended party of the conditions put up by the NHA and the Department of Public Works and Services the approval and signing of payment was illegally, fraudulently and immorally withheld by the accused Balao. This illegal act of accused Balao continued even after his own field officers had already signed and recommended the payment of the private offended party's claim for payment as specified by the NHA's own guideline.

3) Exhibit "E" is the memorandum addressed to accused Balao as General Manager of NHA dated February 19, 1992 by field officers. The subject of this memorandum is the recommendation for the approval and payment of the private offended party(s) claim for the latter's accomplished work described in his fourth billing in the amount of P1,554,379.55 (NET) which was also again recommended by accused(s) own field officer in the person of FELICISIMO E. LAZARTE, JR., Manager, Regional Projects Department.

Exhibit "F" is the Abstract Of the Physical Accomplishment which evidences the work accomplished by the private offended party worth P2,888,918.29 (GROSS) as of January 20, 1992 as confirmed to (sic) by all field officers of the NHA namely: NOEL A. LOBRIDO, NHA Supervising Engineer, VIRGILIO V. DACALOS, Division Manager Visayas, and FELICISIMO E. LAZARTE, JR., Regional Project Department Manager.

Exhibit "G" is the Summary Of Payment Estimate accomplished by the NHA itself, through its Division Manager, Visayas Division and Manager of the Regional Project Department.

These exhibits are all offered to show that the amount of P2,888,918.30 (GROSS) being claimed by the private offended party of (sic) his accomplished work from October 1, 1991 to January 20, 1992 was due, justified, and complete in all the necessary papers needed for its processing and payment.

As it will be later shown in 2nd paragraph, page one of EXHIBIT "E" the NHA field officers in their memorandum to accused Balao clearly and specifically declared, state and are quote(d) for this Honorable Court's ready reference:

'Attached as support are pertinent documents and including detailed analysis.'

4) Exhibit "H" is the Voucher of the NHA dated January 27, 1992 which was already processed by the NHA own personnel in the person (of) Ofelia A. Capistrano upon request of Virgilio Dacalos (Division Manager-Visayas Division) and certified by Felicisimo E. Lazarte, Jr., Manager RPD setting aside for (sic) the gross amount of P2,888,918.29, from which the private offended party is claiming as payment the NET amount of P1,108,288.10 and Exhibit "I" is another Disbursement Voucher by the same NHA field officers showing a billing of the same gross amount of P2,888,918.29 for which the private offended party has a net claim of P466,091.49 or a total NET claim of P1,674,379.59 for the two (2) vouchers, the purpose of which is to show that the claim of Mr. Arceo C. Cruz the private complainant of this case had already been prepared by all the departments of the NHA concerned but for reasons only known to him was illegally, immorally and maliciously withheld by the accused Balao.

5) Exhibit "H-1" is a letter dated August 29, 1991 of accused Balao addressed to the private offended party informing the latter that his contract with the NHA is being rescinded for the reasons that:

- a) private offended party had allegedly unilaterally suspended his work on the project.
- b) that the work have suffered negative slippage or unaccomplished work of 59.11%.
- c) That the contract has expired as of July 1, 1991.

That the said exhibit is being offered to show the malice and bad faith of accused Balao whose reasons for

rescinding the contract between the private offended party and the NHA are completely contradictory to the finding of his own field personnel.

a) As above mentioned private offended party never suspended his work operation.

b) The work of the private offended party never have (sic) a negative slippage of 59.11%. But even if granting, though not admitting that there was slippage the same could not be attributable to the private offended party and could easily be corrected as Exhibits “E,” “F,” “G,” “H” and “H-1” show remedies were already being taken.

This baseless conclusion is aggravated by the fact that accused Balao never actually personally conducted his own survey at the project job sites and therefore has no basis to form his own personal conclusion and ought to have rel(ied) on the written report of his field officers above-mentioned.

c) That the expiry date of the contract was changed by way of extending the same.

6) Exhibit “J” is the private offended party’s letter dated October 17, 1991 to accused Balao as General Manager of NHA requesting the latter to lift his rescission order of the contract for the reasons stated in the letter. The last paragraph of the last page of this letter stated that and we quote for the easy reference of the Honorable Court:

‘Furthermore in consideration of the actual findings/result of the Inventory Acceptance Committee with a substantial accomplishment from 01 October 1991 to date, we are requesting for payment so as it will help our cash flow on the completions of the remaining portion of the project.’

This exhibit is offered for the purpose of showing that the rescission order of accused Balao has no legal nor moral basis and his continued refusal to release the payment due to the private offended party caused and is causing the government and the private offended party more damage and prejudice.

7) Exhibit “K” is a letter dated January 29, 1992 sent by the private offended party to the Board of Directors of the NHA through its Chairman. The purpose of this exhibit is to show that accused Balao(s) act of rescinding the NHA contract with the private offended party is illegal and therefore cannot be justifiably enforced. As testified to by the private offended party, the Board Secretary informed him that his letter to the Board cannot be calendared and cannot be taken up by the Board in its meeting because the Board never rescinded the contract between the private offended party and the NHA. That the act of rescission of the contract according to the Board Secretary, a certain Mr. De las Alas, was the personal act of accused Balao.

8) Exhibit “L” is a memorandum dated July 14, 1992 by the Management Committee (MANCOM) of the NHA to its General Manager, accused Balao, recommending for the lifting and the reconsideration of the latter’s rescission order of the contract of the private offended party with the NHA.

We quote the pertinent portion of the memorandum found in the last page thereof for the easy reference of this Honorable Court:

‘Considering the above facts, RPD is recommending that the decision of management rescinding the contract of A.C. Cruz be reconsidered and he be allowed to bill subject to (sic) the condition that said contractor will complete the project on or before March 20, 1992 as reflected in the attached revised PERT/CPM.’

Exhibit “M” is the PERT/CPM of the Estimate For The Remaining Works of Barangay Pahanocoy, Bacolod City, Pahanocoy Sites and Services Project, Phase I, Bacolod City.

Exhibit “N” is the memorandum to accused Balao as Manager from the Executive Services Group.

Exhibit “O” is the Deed of Assignment executed by the private offended party to US Commercial Incorporated, a

store selling construction materials, etc.

The purpose of (sic) these exhibits (Exhibit “L,” “M,” “N” and “O”) are offered to show that the private offended party had submitted documents and papers in compliance to the demand of accused Balao and that inspite of this compliance accused Balao’s capricious whims could not be satisfied.

These exhibits are also offered to show the premeditated and malicious scheme of accused Balao to terminate the contract of the private offended party and to withhold or refuse the latter’s claim for payment for reason to be showed (sic) below.[7]

(10) Exhibit “Q” is the letter of the private offended party to accused Balao, which is offered to show that accused Balao continuously refused to reconsider his illegal and immoral acts above-described inspite of the acts of good faith of the private offended party just to satisfy accused Balao(s) whimsical demands and even after the unanimous favorable recommendation of his own field officers and inspectors. We quote the 2nd paragraph of the letter for the easy referral of this Honorable Court:

‘Relative to our letter to the Chairman of the NHA-Board of Directors dated 29 January 1992, we are requesting for a reconsideration and or lifting of the rescission order issued by your office dated 20 January 1992, however up to this writing we are informed nothing from your office.’

And also to prove that the private offended party never discontinued nor abandoned the project which is emphasized in his 3rd paragraph and we quote for the ready reference of the Honorable Court:

‘In as much as to (sic) the illegal take over of the project inspite of our continuous operation, we are entitled for (sic) payment of our physical accomplishment as of 20 January 1992 duly evaluated, signed, concurred and recommended for payment by the Regional Projects Department.’

And lastly, also to prove that all the required documents demanded from the private offended party had been satisfied and submitted. We quote the 4th paragraph of the said letter again for the ready reference of the Honorable Court:

‘Hereunder are the following annexes for ready references:

Annex “A”

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Letter to the Board dated 29 January 1992.

Annex “B”

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Abstract of Physical Accomplishment dated 20 January 1992.

Annex “C”

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Recommendation by RPD for Fourth (4th) Partial Payment dated 19 February 1992.

Annex “D”

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Vouchers Signed by RPD.’

(11) Exhibit “R” which is the letter of accused Balao to the private offended party Arceo C. Cruz dated July 6, 1992 informing the latter that the NHA Board of Directors had approved the alleged request of the latter for mutual termination of his contract with the NHA and that the latter has as of date of the termination of his contract ‘has still an acceptable accomplishment work of P573,107.16.’

The above exhibit is respectfully offer(ed) to show the capacity of accused Balao to resort to a blatant distortion of facts in order to achieve his malicious designs for the reason that the private offended party could never had (sic) agreed to any form of mutual agreement to have his contract terminated. On the contrary, this Honorable Court will note that the private offended party was fighting all the way to have the rescission or termination of his contract reconsidered or lifted.

This exhibit is also offered to show accused Balao(s) capacity to fabricate fictitious facts just to succeed in his illegal purpose as shown in this case, that he was able to secure the approval of the NHA Board of his a (sic) action of terminating the private offended party’s contract by misrepresenting to the Board that the termination was with the consent of the private offended party when in fact he knew this assertion to be a complete blatant misrepresentation.

The last paragraph of Exh. “R” is also offered to show the damage and prejudice accused Balao had inflicted on the government and the private offended party as he paid to his co-accused, the late Jose M. Cruz, his selected and preferred contractor over the offended party the amount of P573,170.16 which he himself have (sic) already acknowledged is due and payable to the private offended party.

(12) Exhibit “S” is the letter of (sic) Notice To Proceed addressed to the late Jose M. Cruz, as the contractor appointed by accused Balao to take over the completion of the remaining works of (sic) the Development of Pahanocoy Sites and Services Project, including that which had already been accomplished by the private offended party, as sent by accused Balao together with its annex which is a summary of work description which Jose M. Cruz submitted as the new contractor of the remaining work to be done in the project for the amount of P9,554,837.22.

The purpose of this exhibit is to show the reason why accused Balao had the contract of Mr. Arceo C. Cruz illegally rescinded/terminated... and that is to favor another contractor in the person of the late Jose Cruz.

This exhibit and its annex is also offered to prove that accused Balao was able to surreptitiously and illegally enter into a contract with another contractor, Jose Cruz, to have the remaining work on the Pahanocoy Sites and Services Project, Phase I, Bacolod City paying the latter P4,591,325.30 more than the original contractor, herein private offended party, Arceo C. Cruz, would have been paid had he been allowed to finish the project for the amount of P4,963,511.99, causing damage to the private offended party by refusing to pay him for the work which he had already accomplished in the amount of P2,022,242.80 and deprived him of the opportunity to finish his work with the NHA for which he should have been paid for two (2) million pesos making a total

damage of P4,963,511.99 and in addition causing also the government to pay P5,064,459 more than what it could (sic) have paid to the private offended party if his contract with the NHA have (sic) not been cancelled and rescinded by accused Balao.

That in the above mentioned exhibits together with the testimony of the private offended party Arceo C. Cruz and with his witnesses, Virgilio V. Dacalos, Felicisimo F. Lazarte, Jr., and Adelino Amurillo the prosecution respectfully submit this case for the resolution of the Honorable Court.

On January 12, 1998, the petitioners, through their respective counsels and with prior leave of court, jointly filed a Demurrer to Evidence[8] dated January 9, 1998. Petitioners' demurrer to evidence was adopted by their co-accused Joel Lustria. For their part, accused Harry Pasimio and Robert Anthony Balao filed their own separate Demurrer to Evidence dated January 12, 1998 and March 5, 1998, respectively.

The prosecution filed a consolidated Opposition to the Demurrer to Evidence[9] dated December 9, 1998.

On April 13, 1999, the Sandiganbayan promulgated the questioned Resolution[10] dated April 7, 1999 denying the demurrer to evidence of all the accused.

On May 10, 1999, herein petitioners filed a joint motion for reconsideration[11] which was denied by the Sandiganbayan in its Resolution[12] dated August 9, 1999.

Undaunted, petitioners Teodoro Katigbak and Bienvenido Merelos filed the instant petition for certiorari and prohibition[13] assailing the questioned resolutions of the Sandiganbayan on the following grounds:

I

THE SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR WANT OF JURISDICTION WHEN IT DENIED PETITIONERS' DEMURRER TO EVIDENCE AND THEIR MOTION FOR RECONSIDERATION, CONSIDERING THAT NONE OF THE PROSECUTION'S EVIDENCE, BOTH DOCUMENTARY AND TESTIMONIAL, INCRIMINATES PETITIONERS AS DEMONSTRATED IN THEIR SAID DEMURRER TO EVIDENCE AND SAID RESOLUTIONS DO NOT CITE ANY INCRIMINATING EVIDENCE AGAINST THEM AND EVEN HOLD THEM CRIMINALLY LIABLE ON MERE BELIEF AND FOR AN OFFENSE NOT CHARGED IN THE INFORMATION.

II

SAID RESOLUTIONS DEPRIVED HEREIN PETITIONERS OF DUE PROCESS OF LAW, CONSIDERING THAT THE FINDINGS THEREIN ARE NOT SUPPORTED BY EVIDENCE AND CONTAIN NO EXPLANATIONS OR REASONS THEREFOR.

Petitioners claim, in essence, that respondent court gravely abused its discretion when it denied their motion to dismiss the case against them on demurrer to evidence despite the fact that the prosecution failed to establish, either by testimonial or documentary evidence, their participation in the alleged conspiracy to unilaterally rescind the NHA contract for land development with private complainant Arceo Cruz. The letter[14] dated August 29, 1991 rescinding the contract with the private complainant did not show the participation or concurrence of the petitioners inasmuch as the same was signed by accused Robert P. Balao alone, in his capacity as general manager of the NHA. The subsequent letter[15] of accused Balao dated July 6, 1992 informing private complainant Cruz of the "approval" by the NHA Board of Directors of his alleged "request for mutual termination" of the subject contract, among other things, only showed that the petitioners could not have earlier approved the rescission of the said contract which was entered into by the parties as early as August 29, 1991. In fact, the purported appeal[16] filed by the private complainant never reached the NHA Board for its cognizance for the reason that,

as testified to by the private complainant himself, the NHA Board Secretary, a certain Mr. de las Alas, did not include the same in its (Board) agenda. Being actually in the nature of a motion for reconsideration, the same should have been filed with the office of the NHA General Manager, herein accused Robert Balao. Private complainant even admitted during the trial^[17] that he did not include the petitioners, and the other members of the NHA Board of Directors for that matter, in his complaint lodged with the Office of the Ombudsman against accused Balao.

The subsequent award of the contract for the completion of the unfinished portion of the land development project to Triad Construction and Development Corporation, Exhibit “S” of the prosecution or the Notice to Proceed dated March 16, 1992, did not disclose in any way petitioners’ participation therein. On the contrary, the testimony of the private complainant revealed that it was accused Robert Balao, general manager of the NHA, who awarded the subject contract to the Triad Construction and Development Corporation without public bidding. In the absence of any evidence to establish petitioners’ participation in or concurrence with not only the rescission of the subject NHA contract but also the eventual award thereof to private respondent Jose Cruz/Triad Construction, the charge of conspiracy between the petitioners and their co-accused cannot be sustained.

Furthermore, petitioners assail as violative of due process the ruling of the Sandiganbayan’s Resolution dated August 9, 1999 denying their motion for reconsideration. The court a quo ruled that, even if they did not actively participate in the commission of the crime, the petitioners could still be held liable therefor through gross inexcusable negligence. Petitioners emphasize that the information averred that the crime was allegedly committed by the accused through manifest partiality or evident bad faith and not through gross inexcusable negligence.

In its Comment,^[18] respondent People of the Philippines contends that the evidence presented by the prosecution established the guilt of the petitioners and their co-accused beyond reasonable doubt. In order to show the existence of conspiracy involving the petitioners and their co-accused, public respondent states that, on August 29, 1991, accused Robert Balao sent a letter to private complainant, Arceo Cruz, informing the latter that he (Balao) was rescinding the subject contract for abandonment of the project with negative slippage (unfinished portion) of 59.11% as of the stipulated date of completion thereof. The NHA Board of Directors of which petitioners Katigbak and Merelos were chairman and member respectively, later approved the termination of the contract through Board Resolution No. 2453 dated March 12, 1992, using as a ground therefor the “mutual agreement of the parties.” However, the private complainant neither suspended work on nor abandoned the project, as he continuously worked thereon until he was forced to vacate the premises by the private respondent Jose Cruz/Triad Construction on January 20, 1992. This fact is evident from the Abstract of Physical Accomplishment^[19] which was signed by all concerned field officers of the NHA, namely: Supervising Engineer Noel Lubrido and prosecution witnesses Virgilio Dacalos and Felicisimo Lazarte, Jr. both of the NHA Regional Projects Department. Moreover, there is no evidence that private complainant ever requested the “mutual termination” of the contract. On the contrary, he even wrote accused Balao on October 17, 1991 and asked him to reconsider the rescission of the contract but the latter instructed him to file an appeal with the NHA Board which later approved the termination of the contract allegedly upon mutual agreement of the parties.

Anent the subsequent award to private respondent Jose Cruz/Triad Construction of the contract for the unfinished portion of the project without public bidding, the evidence shows that accused Balao was the one who entered into such contract in his capacity as general manager of the NHA. The said contract was approved by his co-accused members of the NHA Board of Directors in the same Board Resolution No. 2453 dated March 12, 1992 for a contract price of P9,554,837.22.^[20] The value of the subsequent contract was P4,591,325.30^[21] more than what private complainant would have been paid had he been allowed to finish the project.

Even on the assumption that respondent Sandiganbayan misappreciated the evidence presented, the error was one of law that could only be reviewed through an appeal; it did not constitute grave abuse of discretion correctible by certiorari.

By way of reply,[22] petitioners insist that there was no proof that they participated in nor conspired with their co-accused in the rescission of the subject contract and the award thereof to the private respondent. Under the circumstances, the remedy of certiorari is proper because the assailed resolutions of the respondent court were not supported by evidence, thus constituting a whimsical and capricious exercise of judgment.

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. For its part, the court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[23]

A judicial action on a motion to dismiss on demurrer to evidence rests within the sound discretion of the court.[24] In addition, an order denying a demurrer to evidence is interlocutory. It is not appealable. Neither can it be the subject of a petition for certiorari in the absence of grave abuse of discretion or excess of jurisdiction, or an oppressive exercise of judicial authority.[25] And, as correctly stressed by the public respondent, unless there is grave abuse of discretion amounting to lack of jurisdiction, respondent Sandiganbayan's denial of petitioners' motion to dismiss on demurrer to evidence may not be disturbed and may only be reviewed in the ordinary courts of law by an appeal after trial.[26]

Hence, the issue to be resolved is whether or not respondent Sandiganbayan committed grave abuse of discretion when it denied petitioners' motion to dismiss on demurrer to evidence.

Section 3 paragraph e of RA 3019, as amended, provides:

Section 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

xxx

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In order to be held liable for violation of Section 3 paragraph (e) of RA 3019, as amended, the following elements must concur: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (3) his action has caused undue injury to any party, including the Government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions.[27]

Private complainant Arceo Cruz[28] testified that he entered into a contract with the NHA for the land

development of Pahanocoy Sites and Services, Phase I, in Bacolod City. Before he could finish the project, the NHA, through its general manager, accused Robert Balao, unilaterally rescinded the contract for the reason that he was allegedly behind schedule, which private complainant denied. Consequently, private complainant was not paid his fourth billing in the amount of P2,888,918.29. His subsequent motion for reconsideration was not acted upon by accused Balao who instead advised private complainant to appeal to the NHA Board. Private complainant's appeal, however, was not even considered since the NHA Board Secretary, a certain Mr. de las Alas, did not include the matter in the agenda. According to de las Alas,[29] the rescission of the contract was the decision of accused Balao alone. With this information, private complainant returned to accused Balao who recommended, this time, that he bring his appeal to the management committee of the NHA. Private complainant did, again to no avail. Realizing the futility of his efforts, private complainant engaged the legal services of a lawyer to file a formal complaint with the Office of the Ombudsman, for which he agreed to pay 30% of any recovery.

Meanwhile, in July 1992, private complainant received a letter from accused Balao stating falsely that his "request for mutual termination" of the contract was "approved" by the NHA Board. The truth was, up to that point, private complainant was earnestly seeking a reconsideration of the rescission of the contract.

Private complainant admits that the sum of P573,107.60 was the monetary value of his work accomplishment as of July 1992. However, his total collectible from the NHA as of said date amounted to P2,888,918.29 for the reason that he continued working on the project pending his motion for reconsideration upon the suggestion of Engineers Lazarte, Jr. and Dacalos,[30] the latter being directly in charge of the project. These NHA officials believed that the government could economize if the NHA had to pay P2,888,918.29 only, representing the balance due the private complainant, compared to the contract price of P9,554,837.22 for the unfinished portion of the project awarded, without public bidding, to private respondent Jose Cruz/Triad Construction.

Due to the unilateral rescission of the contract by accused Balao, private complainant was blacklisted and unable to secure any project for at least two years until he was awarded a project in Lanao del Sur worth P50 million. While in Mindanao, private complainant was kidnapped for 56 days. His frightful experience affected him and his family so much that he claimed moral damages of P5 million in addition to the amount of P2,888,918.29 representing the unpaid balance from the NHA plus interest, and actual damages of P15,000.

On cross-examination, the private complainant admitted that he did not include the petitioners and the other members of the NHA Board of Directors in his complaint at the Office of the Ombudsman. The contract which was supposed to be completed in 120 days was commenced on July 18, 1990 and hence, the same was already terminated when it was rescinded on August 29, 1991. Private complainant explained that an extension was being worked out before the rescission but he could not work on the project until after the contractor in the neighboring NHA project completed the excavation and gathering of filling materials from his project site in Phase I Pahanocay Sites and Services, Bacolod City. He reiterated that he was not behind schedule, much less that he abandoned the project.

Prosecution witness Adelino M. Amurillo,[31] Principal Engineer assigned at the NHA head office along Elliptical Road, Diliman, Quezon City, testified that he was instructed by his superior to locate the official documents sought in a subpoena issued by the Sandiganbayan. He coordinated with the NHA office in Bacolod City and searched the steel cabinets in his office, after which he was instructed by his superior to present the official documents in court. He disclosed that there was no official custodian of the official records in their office and that anybody who needed the files simply had to look for them in the proper cabinet where they were stored. With respect to perfected NHA contracts, for instance, the Finance Section had custody of the relevant documents. The official documents he presented in court consisted of prosecution Exhibits "A," "B," "C," "E,"

“F,” “H,” “H-1,” “I,” “J,” “K,” “M,” “Q” and “R.”

Prosecution witness Felicisimo F. Lazarte, Jr.[32] identified his signatures appearing on Exhibits “E,” “F,” “G,” and “H” in his capacity as Department Manager, NHA Regional Projects Department. However, he denied having affixed the signatures above his typewritten names in Exhibits “L” and “P” of the prosecution. He identified the same as that of his subordinate, Virgilio Dacalos, whose signature was very familiar to him.

For his part, prosecution witness Virgilio Dacalos,[33] Division Manager, NHA Regional Projects Department, testified that his basic responsibility was to conduct overall supervision of the NHA operations in the Visayas region. In the absence of his superior, prosecution witness Lazarte, Jr., he ensured the continuity of operations by affixing his signature over the typewritten name of Lazarte on official documents. He identified his signatures appearing above his typewritten name in Exhibits “E,” “F,” “G,” “H” and “H-1.” He also recognized his signatures over the typewritten name of Felicisimo Lazarte, Jr. in Exhibits “L” and “P.” This prosecution witness stated that petitioners Katigbak and Merelos had no participation in the preparation of all the documents he identified in court.

The foregoing testimonies of the prosecution witnesses did not disclose any role played by the petitioners in the so-called “conspiracy loop” alleged by the public respondent in its Comment. The testimony of private complainant Arceo Cruz dwelt principally on the acts of accused Robert Balao in unilaterally rescinding the contract for land development with the private complainant and then awarding the contract for the unfinished portion of the project, without public bidding and at an exorbitant rate, to private respondent Jose Cruz/Triad Construction. The same testimony also told of the damage suffered by the private complainant because of the acts of accused Balao. Nowhere, however, in his said testimony did it appear that petitioners participated in the decision to rescind the subject contract and to award the unfinished portion of the project to the private respondent. On the contrary, private complainant even absolved the petitioners of any participation in the complained acts of their co-accused Balao by admitting that he never accused any member of the NHA Board of Directors of anything in his complaint filed with the Office of the Ombudsman.[34]

The testimony of prosecution witness Adelino M. Amurillo was presented only for the purpose of identifying the official documents which were the subject of the subpoena sent to the NHA central office on Elliptical Road, Diliman, Quezon City, specifically Exhibits “A,” “B,” “C,” “E,” “F,” “H,” “H-1,” “I,” “J,” “K,” “M,” “Q” and “R” of the prosecution.

Prosecution witness Felicisimo Lazarte, Jr. identified his signatures appearing in Exhibits “E” (Memorandum dated February 19, 1992 of Virgilio V. Dacalos); “F” (Abstract of Physical Accomplishments); “G” (Summary of Payment Estimates); and “H” (Disbursement Voucher dated January 27, 1992) as well as his participation in the preparation of the said documents. On the other hand, prosecution witness Virgilio Dacalos identified his signatures appearing in the same Exhibits “E,” “F,” “G,” “H” and “H-1” of the prosecution, including those appearing in Exhibits “L” and “P” which he affixed in behalf of his superior Felicisimo Lazarte, Jr. In addition, Dacalos affirmed that petitioners Katigbak and Merelos had no participation in any of the official documents he identified in court.

A careful scrutiny of the documentary evidence adduced by the prosecution does not support the charge of violation of Section 3, paragraph (e) of RA 3019, as amended, in the instant information against the petitioners. Significantly, the said pieces of documentary evidence were offered only for the purpose of establishing the participation and liability of their co-accused, Robert Balao, as noted in the written Formal Offer of Exhibits[35] of the prosecution dated September 22, 1997. The same was prepared and signed by Atty. Nicanor V. Villarosa, counsel of the private complainant, with the written approval of Prosecutor Manuel M. Corpuz of the Office of the

Special Prosecutor. In this connection, the rule is explicit that courts should consider the evidence only for the purpose for which it is offered.[36]

The prosecution relies heavily on NHA Board Resolution No. 2453 dated March 12, 1992 to establish the alleged conspiracy between the petitioners and their co-accused. This resolution purportedly approved the cancellation of the NHA contract for land development with the private complainant on the ground of “mutual termination” and the award of the contract for the unfinished portion of the project to the private respondent Jose Cruz/Triad Construction. However, the Court is bothered by the unexplained failure of the prosecution to include in its formal offer of exhibits such a very vital piece of evidence in proving the existence of the alleged conspiracy among the petitioners.

We emphasize that any evidence a party desires to submit for the consideration of the court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of fact and his judgment strictly on the evidence offered by the parties at the trial; and no finding of fact can be sustained if not supported by such evidence. Documents not regularly received in evidence during the trial will not be considered in disposing of the issues in an action. Hence, we have held that:

When a party offers a particular documentary instrument as evidence during trial, he must specify the purpose for which the document or instrument is offered. He must also describe and identify the document, and offer the same as an exhibit so that the other party may have an opportunity of objecting to it. The offer of evidence is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. Such offer may be made orally or in writing sufficient to show that the party is ready and willing to submit the evidence to the court.[37]

In view of the complete absence of evidence, both testimonial and documentary, to prove the liability of the petitioners for the crime charged in the information, we find no basis for respondent Sandiganbayan’s conclusion in its assailed Resolution dated April 7, 1999 “that the prosecution has sufficiently proven the allegations in the Amended Information and the elements of the offense” as against herein petitioners. Since the petitioners satisfactorily demonstrated that the prosecution had failed to prove the crime charged against them, respondent Sandiganbayan’s denial of their motion to dismiss the instant criminal case on demurrer to evidence constituted grave abuse of discretion. The denial was a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction.[38]

Indeed, there remains no further reason to hold the petitioners for trial. They have the right to be protected against hasty, malicious and oppressive prosecution; to be secure from an open and public accusation of a crime and from the trouble, expense and anxiety of a public trial. Similarly situated is the State, which must be shielded at all times from useless and expensive litigations that only contribute to the clogging of court dockets and take a heavy toll on its limited time and meager resources.[39]

WHEREFORE, in view of the foregoing, the instant petition for certiorari and prohibition is hereby GRANTED. The assailed resolutions of the Sandiganbayan in Criminal Case No. 22647 denying petitioners’ demurrer to evidence are REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Panganiban, and Carpio-Morales, JJ., concur.

Sandoval-Gutierrez, J., on official leave.

- [1] Penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Edilberto G. Sandoval and Alfredo G. Gustilo. Petition, Annex “A,” Rollo, pp. 60-62.
- [2] Petition, Annex “B,” Rollo, pp. 63-64.
- [3] Petition, Annex “C,” Rollo, pp. 65-67.
- [4] Otherwise known as the Anti-Graft and Corrupt Practices Act.
- [5] Rollo, pp. 73-74.
- [6] Petition, Annex “F,” Rollo, pp. 76-80.
- [7] Exhibit “P,” which is supposed to be Item No. 9 in the Formal Offer of Exhibits, was not offered in evidence by the prosecution.
- [8] Petition, Annex “G,” Rollo, pp. 120-161.
- [9] Petition, Annex “H,” Rollo, pp. 204-205.
- [10] See Note No. 1.
- [11] Petition, Annex “I,” Rollo, pp. 206-219. Accused Balao, Pasimio and Lustria did not move for a reconsideration of the questioned Resolution dated April 7, 1999.
- [12] See Note No. 2.
- [13] Rollo, pp. 3-59.
- [14] Exhibit “H-1.”
- [15] Exhibit “R.”
- [16] Exhibit “K.”
- [17] TSN, September 10, 1997, p. 27.
- [18] Rollo, pp. 245-257.
- [19] Exhibit “F.”
- [20] Per the Amended Information, the contract price was P10,027,970.97.
- [21] Exhibit “S.”
- [22] Rollo, pp. 260-264.
- [23] Gutib vs. CA, 312 SCRA 365, 371 [1999] citing Black’s Law Dictionary, 5th Ed., 1979, p. 390.
- [24] De Carlos vs. Court of Appeals, 312 SCRA 397, 405 [1999]; People vs. Mercado 159 SCRA 453, 459 [1988].
- [25] Tadeo vs. People, 300 SCRA 744, 748 [1998]; Cruz vs. People, 144 SCRA 677, 681 [1986]; People vs. Court of Appeals, 119 SCRA 162, 173 [1982].
- [26] Gamboa vs. Cruz, 162 SCRA 642, 652 [1988].
- [27] Fonacier vs. Sandiganbayan, 238 SCRA 655, 687 [1994]; Villanueva vs. Sandiganbayan, 223 SCRA 543, 547 [1993]; Ponce De Leon vs. Sandiganbayan, 186 SCRA 745, 754 [1990]; Jacinto vs. Sandiganbayan, 178

SCRA 254, 259 [1989].

[28] TSN, September 10, 1997, pp. 5-74.

[29] Ibid, pp. 37-38.

[30] Exhibit "H."

[31] TSN, August 12, 1997, pp. 9-33.

[32] TSN, August 12, 1997, pp. 35-50.

[33] TSN, August 12, 1997, pp. 52-85.

[34] TSN, September 10, 1997, pp. 27; 36.

[35] See Note No. 5.

[36] *People vs. Dela Piedra*, 350 SCRA 163, 187 [2001]; *People vs. Lapay*, 298 SCRA 62, 79 [1998] citing Regalado, *Remedial Law Compendium*, 7th Revised Ed., pp. 677; 679.

[37] *Chua vs. Court of Appeals*, 206 SCRA 339, 346 [1992]; *Llaban y Catalan vs. Court of Appeals*, 204 SCRA 887, 898-899 [1991].

[38] *Asian Trading Corporation vs. CA*, 303 SCRA 152, 161, 162 [1999]; *Commissioner of Internal Revenue vs. CA*, 257 SCRA 200, 232 [1996].

[39] *Ong vs. People*, 342 SCRA 372, 387 [2000].

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