

**FLORANTE SORIQUEZ, PETITIONER, VS. SANDIGANBAYAN (FIFTH DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.***G.R. No. 153526. October 25, 2005*

Ponente: GARCIA, J.

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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[1] dated March 6, 2002, denying his demurrer to evidence in Criminal Case No. 23539 entitled "People vs. Florante Soriquez, et al.," and Resolution[2] 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[3] 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:

- 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.
- THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN DENYING ACCUSED-PETITIONER'S DEMURRER TO EVIDENCE DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE.
- THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN DENYING ACCUSED-PETITIONER'S DEMURRER TO EVIDENCE WHEN IT DID NOT CONSIDER THE WELL-ENTRENCHED DOCTRINE THAT THE PROSECUTION MUST RELY ON THE STRENGTH OF ITS OWN EVIDENCE AND NOT ON THE WEAKNESS OF THE DEFENSE.
- THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN DENYING ACCUSED-PETITIONER'S DEMURRER TO EVIDENCE WHEN IT RELIED HEAVILY ON THE DOCTRINE LAID DOWN IN THE CASES OF SALONGA VS. PANO, 134 SCRA 438 AND BAUTISTA VS. SARMIENTO, 138 SCRA 587, WHICH, WE BELIEVE, ARE INAPPLICABLE, HAD ALREADY BEEN ABANDONED AND SUPERSEDED BY SUBSEQUENT DOCTRINES TO THE CONTRARY.

In essence, re-echoing the very same arguments advanced by him before the respondent court, petitioner claims that the latter gravely abused its discretion when it denied his demurrer to evidence despite the patent weakness and gross insufficiency of the evidence adduced by the prosecution. He argues that the prosecution failed to establish his participation in the alleged conspiracy to violate the contract for the construction of the Megadike, adding that the very observation of the respondent court itself that only a prima facie case was established against him all the more warrants the dismissal of the charge and his acquittal therefrom.

We are not persuaded.

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which 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. 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.[5]

Petitioner is charged with violation of Section 3 paragraph (e) of the Anti-Graft and Corrupt Practices Act. The provision reads:

SEC. 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.

xxx xxx xxx

In order to be held liable for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act, 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.[6]

Here, it is undisputed that petitioner is a public officer as in fact he is an official of the Department of Public Works and Highways (DPWH) and Program Director of the Mt. Pinatubo Rehabilitation Project Management Office (MPR-PMO). The first element required for the commission of the offense is thus clearly extant.

The second element enumerates the different modes by which the offense may be committed. These three modes, i.e., manifest partiality, evident bad faith and inexcusable negligence, are distinct and different from each other. Proof of the existence of any of these modes would suffice. The use of the three phrases "manifest partiality," "evident bad faith" and "inexcusable negligence" in the same Information does not mean that it thereby charges three distinct offenses but only implies that the offense charged may have been committed through any of the modes provided by the law.[7]

In Criminal Case No. 23539, the Information alleged "evident bad faith" or "inexcusable negligence" as the modes by which petitioner and his co-accused allegedly committed the crime. The prosecution was able to prove that petitioner was one of the officials of the DPWH who recommended the defective design plan of the Megadike. It was upon his recommendation that the design plan was eventually approved by the DPWH Secretary. Such act of petitioner may have constituted evident bad faith or inexcusable negligence inasmuch as this design plan proved to be defective. Likewise, the testimonial and documentary evidence presented by the prosecution (such as the notice of award to Atlantic Erectors, the contract between DPWH and Atlantic Erectors, the disbursement vouchers[8]) disclosed the role played by petitioner in allowing the contractor to infringe the material stipulations of the contract that caused the eventual collapse of the Megadike. As correctly held by the respondent court, the prosecution's evidence established a prima facie proof of petitioner's guilt.

The third element of the offense penalized in Section 3 (e) is satisfied when the questioned conduct causes undue injury to any party, including the government, or gives any unwarranted benefit, advantage or preference. Proof of the extent or quantum of damage is thus not essential, it being sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible.[9]

Again, the prosecution's evidence satisfactorily demonstrated that petitioner allowed Atlantic Erectors to collect and receive the net amount of P12,697,197.61[10] despite the breach of contract committed by it. Indubitably, the government suffered undue injury and losses.

Given the sufficiency of the testimonial and documentary evidence against petitioner, it would, therefore, be premature at this stage of the proceedings to conclude that the prosecution's evidence failed to establish petitioner's participation in the alleged conspiracy to commit the crime. Likewise, the Court cannot, at this point, make a categorical pronouncement that the guilt of petitioner has not been proven beyond reasonable doubt. As there is competent and sufficient evidence to sustain the indictment for the crime charged, it behooves petitioner to adduce evidence on his behalf to controvert the asseverations of the prosecution. Withal, respondent court did not gravely abuse its discretion when it found that there was a prima facie case against petitioner warranting his having to go forward with his defensive evidence.

The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a prima case against an accused is left to the exercise of sound judicial discretion. Unless there is a clear showing of a grave abuse of discretion amounting to lack or excess of jurisdiction, the trial court's denial of a motion to dismiss or a demurrer to evidence may not be disturbed.[11]

Petitioner implores this Court to review the evaluation made by respondent court on the sufficiency of the evidence against him. Such a review cannot be secured in a petition for certiorari and prohibition which is not available to correct mistakes in the judge's findings and conclusions or to cure erroneous conclusions of law and fact. It should be noted that an order denying a demurrer to evidence is interlocutory and, thus, not appealable. When such an adverse interlocutory order is rendered, the remedy is not to resort to certiorari or prohibition but to continue with the case in due course and when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[12] Of course, this rule is not absolute and admits of exceptions, as when the assailed interlocutory order is patently erroneous or issued with grave abuse of discretion.[13] In the present case, however, the Court is not inclined to agree with the petitioner that the respondent court's denial of his demurrer to evidence is erroneous or tainted with grave abuse of discretion.

Finally, factual findings of the Sandiganbayan are conclusive upon this Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record.[14]

A perusal of the pleadings and annexes would reveal that none of the above exceptions obtains in this case. There is no showing that the conclusion made by the respondent court on the sufficiency of the evidence of the prosecution is manifestly mistaken or grounded entirely on speculation and conjectures. No capricious exercise of judgment exists that would warrant the issuance of the extraordinary writs of certiorari and prohibition. Clearly, the denial of petitioner's demurrer was made by the respondent court in the due exercise of its jurisdiction.

WHEREFORE, the petition is DISMISSED.

### **SO ORDERED.**

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

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[1] Penned by then Sandiganbayan Justice Minita V. Chico-Nazario, (now a member of this Court) and concurred in by Justices Ma. Cristina G. Cortez-Estrada and Francisco H. Villaruz, Jr.; Rollo, pp. 35-39.

[2] Rollo, pp. 40-41.

[3] Rollo, p. 36.

[4] Rollo, pp. 63-80.

[5] *Gutib vs. Court of Appeals*, 312 SCRA 365, [1999].

[6] *Katigbak vs. Sandiganbayan*, 405 SCRA 558, [2003].

[7] *Fonacier vs. Sandiganbayan*, 238 SCRA 655, [1994].

[8] Rollo, p. 121.

[9] *Fonacier vs. Sandiganbayan*, *supra*.

[10]Rollo, p. 47.

[11]People vs. Peralta, 426 SCRA 472, [2004].

[12] Quiñon vs. Sandiganbayan, 271 SCRA 575, [1997].

[13]Gutib vs. Court of Appeals, *supra*; Cruz vs. People, 303 SCRA 533, [1999].

[14] Diaz vs. Sandiganbayan, 302 SCRA 118, [1999]

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