

EUSEBIO V. FONACIER, ROGELIO RAMOS, JOSEPH GONZALES AND FRANCISCO VILLANUEVA, PETITIONERS, VS. THE HON. SANDIGANBAYAN PRESIDED BY HONORABLE MANUEL PAMARAN, BERNARDO P. FERNANDEZ...

G.R. No. 50691. December 05, 1994

Ponente: VITUG, J.

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VITUG, J.:

A public office, regardless of hierarchy, is a public trust. It is reserved for those who, faithful to that trust, remain capable and willing to serve our country and people with integrity and probity. It is truly unfortunate that an indictment against an entire bureaucracy often results and so many must suffer from the wayward acts of so few.

These consolidated cases were spawned by the reported "ghost project" in 1978 by the Benguet Highway Engineering District under the then Ministry of Public Highways. Herein petitioners were among those originally charged before the then Court of First Instance of Baguio for violation of Section 3, paragraph (e), of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and for estafa thru falsification of public documents in, respectively, Criminal Case No. 707 and Criminal Case No. 708.

Before petitioners' arraignment, the Sandiganbayan and the Tanodbayan were created. Pursuant to Section 8 of Presidential Decree No. 1486, the two cases were transferred to the Sandiganbayan (docketed Criminal Cases No. 010 and No. 011). The amended information in Criminal Case No. 010 for violation of the Anti-Graft Law, filed on 04 April 1978, read:

"That in or about and during the period from April 17, 1978 up to and including May 26, 1978, in the Municipality of Atok, Province of Benguet, Republic of the Philippines, and within the jurisdiction of this Honorable Sandiganbayan, the accused Santiago G. Paragas, District Engineer of the Benguet Highway Engineering District, Ministry of Public Highways, with the indispensable cooperation and assistance of accused Eusebio V. Fonacier, Supervising Civil Engineer, Rogelio R. Ramos, Materials Testing Engineer, Joseph U. Gonzales, Field Materials Man, Francisco M. Villanueva, Jr., Acting Property Custodian III, Hubert Nabus, Cashier I, all of the office of the Benguet Highway Engineering District, Ministry of Public Highways; Apolinario T. Padilla, Resident Auditor, Arnulfo B. Sarmiento, Audit Clerk, and Remedios B. Almoite, Auditing Examiner, all of the Commission on Audit, and assigned in the office of the Benguet Highway Engineering District, then being public officers, all taking advantage of their official positions, for personal gain, financial and pecuniary interest, with deliberate intent to cause damage and undue injury to the Government, through manifest partiality, evident bad faith or gross inexcusable negligence in the discharge of their official duties and functions, giving unwarranted benefits, advantage or preference to a particular contractor, conspiring, conniving, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously directly become interested in entering into a fixed and pre--arranged contract requiring their participation and approval with Francisco T. del Moral, a private contractor, for the delivery of Five Thousand Five Hundred and Fifty (5,550) cubic meters of aggregate subbase (Item 108) at Km. 271.470 to Km. 275.700 of the Baguio-Bontoc road otherwise known as Halsema highway within the jurisdiction of the

Benguet Highway Engineering District, and after a fixed and pre-arranged public bidding, an award was made to Francisco T. del Moral as the lowest bidder, and through a purchase order, Francisco T. del Moral allegedly delivered to the jobsite aforementioned the aggregate subbase (Item 108) called for in the requisition and issue voucher, when in truth and in fact, no delivery was ever made, after which payment was demanded by and paid to Francisco T. del Moral through falsified vouchers supported by falsified, spurious, irregularly prepared and questionable documents and without the requisite delivery receipts and tally sheets in the total amount of Ninety Six Thousand Six Hundred and Three Pesos (P96,603.00), Philippine Currency, hurriedly signed, processed and pre-audited by the accused public officers to the damage and prejudice of the Government in the sum of P96,603.00.

"CONTRARY TO LAW."[1]

On 26 April 1979, the ten (10) accused, nine (9) of them public officials, pleaded not guilty to the charge.[2] The accused public officials were thereupon suspended from office pursuant to the Sandiganbayan's Resolution of 21 June 1979.[3] Later, upon motion of the prosecution, and with the conformity of the accused given in open court, Criminal Case No. 011 was dismissed without prejudice.[4] Trial thus proceeded in respect only to Criminal Case No. 010.[5]

Evidence for the Prosecution

The prosecution presented its evidence, narrated thusly:

Shortly before the scheduled Batasan Pambansa election in April of 1978, then President Ferdinand Marcos was informed by Ben Palispis, Governor of Benguet, of the deteriorated condition of the Halsema (Baguio-Bondoc) Highway. Acting on this report, the President, through then Minister of Public Highways Baltazar Aquino, directed Santiago Paragas, district engineer of the Benguet Highway Engineering District ("BHED"), in the presence of Eugenio Manalo, Public Highways Director for Region I, to immediately undertake repairs on said highway. In March 1978, Eusebio Fonacier, supervising civil engineer of the BHED, instructed Ruben Buccat, a district civil engineer, to prepare a program of work ("PW") for the Halsema Highway under cover of a P10 million development fund. Fonacier and Buccat visited the highway in April 1978. During the same month, Buccat went to Km. 271 to 276 of the highway and placed stakes or markers for the installation of culverts. He noticed that the road continued to deteriorate and mounds of gravel were at the roadside.

Following Fonacier's instruction, Buccat prepared the PW. The PW was forwarded by the BHED to the regional office in Bauang, La Union. The PW was later revised upon the representation of Governor Palispis who wanted the road to be concreted, not merely asphalted. In the revised PW, the regional office suggested that the construction station be situated along Habatan road or Km. 335 instead of along Km. 271 to 276. Buccat was told by Fonacier to prepare the time spot schedule.[6] The PW for the concreting of Km. 271 to 276 was submitted in July 1978 to, and approved only in January 1979 by, Public Highways Minister Aquino.

Pending the Minister's approval, the processing of other documents required to implement the Halsema Highway project continued. On 20 April 1978, Remedios Gacad, an accountant at the BHED, signed a requisition for supplies and equipment ("RSE"),[7] bearing the signature of Fonacier, with an allotment of P270,500.00. Gacad entered the RSE in her Journal Analysis of Obligation[8] which she thereafter brought to the administrative office of the BHED.

In May 1978, Fonacier designated Buccat to be the resident engineer for the Halsema project. Buccat was asked to prepare the statement of work accomplished ("SWA") which would indicate the delivery of the road materials for Phase II of the project (the asphaltting of Km. 271 to 276). It was the first time that Buccat learned of such assignment. Since he had not seen as yet the deliveries covered by the SWA, Buccat told Fonacier that he would

first check them out. Fonacier replied that there was no need for that because he (Fonacier) himself had personally seen the deliveries. Fonacier also assured Buccat that he (Fonacier) would continue to supervise the deliveries. Since Buccat was busy with Phase I of the Halsema project which entailed the asphaltting of the overlay of the road shoulders from the junction of Pico to the foot of the bridge in front of the Capitol Building of La Trinidad, Benguet, or about ten kilometers from Km. 271, Buccat agreed to sign the two sheets of SWA.

Later that day, Fonacier asked Buccat to prepare the tally sheets ("TSs") and the delivery receipts ("DRs"). Fonacier gave to Buccat a list of dump trucks, with their corresponding plate numbers, volume and dimension, which, according to Fonacier, were used in delivering Item 108, an aggregate sub-base construction material with mixed gravel, stones and sand.[9] The DRs were in blank mimeographed forms while the TSs bore the signature in red ink of Arnulfo Sarmiento, an audit clerk of the COA assigned at the BHED. Buccat left all these papers in his locker and proceeded to the site of the asphalt overlay project.

The next day before retiring for the day, Buccat went to the BHED office to get the blank mimeographed forms and, following the instructions of Fonacier, he cut each of them in triplicates, stapled them and filled in the blanks using for reference the list of dump trucks furnished by Fonacier. Buccat was finally able to prepare and sign close to 10% of the DRs in four or five days. Buccat would report to Fonacier every morning before going to his assigned project site, and each time the latter would find occasion to inquire about the DRs. Buccat would answer that he had yet to complete them.

On 25 May 1978, Francisco del Moral, a private contractor, brought to accountant Gacad two general vouchers ("GV"), numbered 8410 and 8412,[10] already signed by Fonacier and Francisco Villanueva (the acting property custodian). Attached to the GVs were the RSE, canvass paper, approved purchase order ("PO"), abstract of bids, report of inspection and materials test signed by Ramos. While Gacad was processing the first GV,[11] she inquired from Del Moral about the DRs which were required to be part of the documents. Del Moral took out from a brown envelope a bundle of documents, 1/8 of a coupon bond in size, 5 to 6 inches thick and bound by a rubber band, stating that they were the delivery receipts. Seeing that on top of the bundle was an already filled up DR, and having been told by Del Moral that Paragas was waiting for the documents, Gacad affixed her initials on the portion corresponding to "indexed by" of the GV. Gacad had no reason to doubt that the supporting papers were complete since the GVs already appeared to have been signed by Fonacier and Villanueva. While she was processing the second GV,[12] Gacad once again asked Del Moral about the DRs. Del Moral again brought out from an envelope a bundle of documents. Believing that these were the same DRs earlier shown to her by Del Moral, Gacad merely glanced at the receipts and affixed her signature on the GV.

The GVs soon reached the desk of Josephine Carantes, acting chief of the Internal Control Unit ("ICU"), for pre-audit. Using a blue ink pen, Carantes checked the stamped list of submitted documents against those shown by Del Moral consisting of the approved RSE, approved PO, original invoice, report of inspection, latest tax clearance, taxpayer's certificate, canvass and abstract of bids. She noticed certain crossed marks in red ink on the list but she could not tell who placed them there.

Carantes asked Del Moral for the DRs. Del Moral retorted, "Why do you still have to check (them) when those papers have already been checked by three different people in your office?" He told her that he was in a hurry because Paragas was waiting for the papers. He then brought out from an envelope two bundles of papers on top of which was what appeared to be an already filled up DR. When she asked him, "Supposed they are not really delivery receipts?" Del Moral replied, "They are really the ones because they have been scrutinized already by these people. Otherwise, these people would not have affixed their signatures had they not been shown to them." In finally initialing the GVs, Carantes affixed the abbreviated word "Del" on the stamped list to indicate that the DRs were the supporting documents in place of the original invoices.

Meanwhile, Buccat stopped preparing the DRs when, in the BHED office, Fonacier "whispered" to him that he should rush the preparation of the DRs because "they" had already "collected." Suspecting possible irregularities, Buccat tore into pieces the DRs which he had prepared and signed, and he thereafter ceased to further attend to the still unsigned DRs and the preparation of the TSs.

When Fonacier saw Buccat the following day at the office, the former, once more, reminded the latter to rush the preparation of the DRs. Fearing the pressure, Buccat lamely answered that he was still in the process of preparing the DRs. Some time during the last week of May, 1978, Buccat asked Fonacier and Del Moral how they were able to collect payment despite the absence of the DRs; one of them answered, "Utak lang."

Informed that the PW was already being implemented by the BHED and that the subbase materials had been laid out, Director Manalo signed the RSE on 22 May 1978. He had the RSE stamped for public bidding. On 06 June 1978, he received a telegram^[13] from Minister Aquino suspending the work at the Halsema Highway.

In his report, dated 19 July 1978,^[14] to Director Manalo, Matias Ateo-an, a civil engineer in the Maintenance Division, MPH, Region I, recommended that the surface of Km. 271 to 276 be repaired immediately. He also recommended that Item 200 should be used since the road thereat was stable enough. Ateo-an had frequently gone home to Bontoc but he did not once see any pile of Item 108 along the stretch of Km. 271 to 276 between the months of April and July 1978. He did see piles of Item 300 which he thought were part of the road rehabilitation program of the IBRD.

A month earlier, or on 17 June 1978, Jose Dominguez, Vice Chairman of the Sangguniang Panlalawigan, Mountain Province, informed the Provincial Fiscal, through a letter, of alleged irregularities and anomalies concerning BHED projects along the Halsema Highway.^[15] Governor Palispis requested for a meeting with Dominguez at his residence. Coincidentally, Buccat also heard from an engineer of the regional office that an investigation was being conducted in connection with the delivery of road materials at Km. 271 to 276.

During the first week of August 1978, Dominguez went to the residence of Governor Palispis. Dominguez brought with him documents consisting of a report on the Halsema Highway project and sworn affidavits of witnesses. He briefed the governor on the anomalies attending the project. Governor Palispis requested Dominguez to make representations with the Provincial Fiscal's Office to hold in abeyance any investigation pending further verification of the matter. The governor was said to have been apprehensive that making public the incident would alienate him from the people of Benguet.

The governor and Dominguez met once again at the former's residence. During their meeting, Dominguez scribbled a note^[16] which read:

- "1 - SEEK HIS OWN TRANSFER
- 2 - IF NO TRANSFER:
 - (a) STOP FOOLISHNESS
 - (b) PAL, COS, DOM, CAO
 - (c) NO MORE LOWLANDERS all c/o CEL
- 3 - PROCEED WITH ACTION

DECISION AUG. 29, 1978"

According to Dominguez, it was the governor's idea that Paragas should be transferred elsewhere. The "foolishness" meant were the rumored irregularities in the BHED. The abbreviations "PAL, COS, DOM, CAO" referred, respectively, to Governor Palispis, Assemblymen Cosalan, Victor Dominguez and Fiscal Caoile of Benguet to whom the work program was to be shown for checking. Lowlander contractors were to be excluded on account of the alleged "suspicious contracts" being "bagged by lowlanders." The governor and Dominguez agreed that, should these options fail, the case pending with the Fiscal's office would then be pursued.

A special panel, composed of special counsel Felix Cabading of the Provincial Fiscal's Office and Assistant Fiscal Daniel Sarate, was created to investigate the 17th June 1978 complaint of Dominguez. The panel conducted an investigation from 03 to 23 October, 1978. On 24 October 1978, the GVs were brought to Cabading's office by Resident Auditor Apolinario Padilla. When Cabading noticed that the DRs and TSs were not among the papers shown, he inquired from Padilla whether there were other documents aside from those already attached to the GVs. Padilla answered that all have been submitted. Cabading did not mention specifically the DRs and the TSs because, wanting to find out the extent of the anomalies committed, he thought it to be prudent at the time that the concerned officials were not unduly forewarned about the missing documents.

Following the panel's investigation, a formal charge was filed on 08 November 1978 against the accused. Responding to a subpoena, Buccat went to the Provincial Fiscal's Office the following day and executed his sworn statement. Two days later, Fonacier, not knowing that Buccat had already executed a sworn statement, told Buccat to report to the BHED after office hours. When he arrived, Buccat found Fonacier, Paragas, Sarmiento, Del Moral, Villanueva, BHED's Materials Testing Engineer Rogelio Ramos, several contractors and one Atty. Tungpalan in the process of preparing some affidavits. Fonacier and Paragas told Buccat to prepare the DRs to support the GVs and then handed to him a new list of dump trucks and blank receipts. Paragas placed his arm on Buccat's shoulder and said, "Gawin mo na iyan at akong bahala sa itaas." Buccat agreed to prepare the DRs to give him an excuse to leave the meeting without signing the affidavit prepared for him by Atty. Tungpalan. During the days following, in an effort to avoid Fonacier, Buccat would report directly to the project site. In one particular instance, however, Buccat met Fonacier at the Fiscal's Office. The latter told Buccat to prepare a logbook where a summary of the aggregate materials that he supposedly had received should be made to appear.

That same month of November 1978, Assemblyman Antonio Villar saw Paragas, Padilla and one Atty. Vinci talking to Assemblyman Victor Dominguez at the Batasan Pambansa in Manila. Villar did not hear their conversation. Later, however, Paragas requested Villar to accompany him (Paragas) to the house of Assemblyman Dominguez. The following day, Villar, Paragas and Padilla went to the house of Assemblyman Dominguez. After a snack, Villar left to allow Paragas and Padilla to talk privately with Dominguez.

On 05 December 1978, Benjamin Galsim, City Auditor of Baguio, received a telegram^[17] from COA General Counsel Fernandez directing Galsim to take immediate custody of GVs Nos. 8410 and 8412 and their supporting documents which were still then in the possession of the BHED Auditor and to submit these documents to Fiscal Caoile in compliance with the latter's subpoena duces tecum. When Galsim went to the BHED Office, Alvaro Jasa, who took over the work of Padilla (on leave of absence at the time), asked the assistance of Alviar in locating the GVs. The documents were ultimately found inside a steel cabinet in a bodega of the office. Jasa then turned over the documents to Galsim. The latter scanned the documents; there were no DRs. Later, Jasa and Galsim made an inventory^[18] of the documents at the Provincial Fiscal's Office in the presence of Cabading and Caoile.

Evidence for the Defense

For its part, the defense presented its evidence hereunder detailed, viz:

During the Holy Week of 1978 in Baguio City, Minister Aquino verbally instructed Paragas in the presence of Director Manalo to prepare a PW for the Halsema Highway with specific instructions to promptly repair the badly damaged sections along Km. 271 to 276. Paragas instructed Fonacier to form a team to conduct a survey of the project site and to prepare the PW. He also issued a memorandum naming Buccat to be the Resident Engineer of the project.[19]

In compliance with the directive of Paragas, both Fonacier and Buccat inspected the project site and gathered the necessary data for the preparation of the PW. The PW,[20] signed by Buccat, Fonacier, Paragas and Assistant District Engineer Felimon Garcia, was forwarded to the Regional Office for approval. It was, however, returned to the BHED without any action. A few days later, a staff of the Construction Division of the Regional Office, composed of Engineers Purugganan and Collado, went to the BHED office to look into the Halsema Highway project and to prepare a PW. Fonacier instructed Buccat to accompany them to the project site.

Phase I of the PW was prepared by Purugganan and Phases II, III and IV by Collado. These engineers noted that the road materials in Km. 271 to 276 were "almost earth" that became muddy when it rained. Collado, taking into account the traffic situation and the weather condition in the locality, then recommended that Item 108 should be placed before Item 200.

On 21 March 1978, when Fonacier was at the Regional Office, Collado and Purugganan asked Fonacier to sign the PW which the two had prepared. Fonacier obliged and kept a copy of the PW. He later showed it to Paragas who instructed Fonacier to implement it. Fonacier examined the PW, took note of the materials needed and submitted the list of materials to the Property Section for the preparation of the RSE.[21]

When Paragas learned that funds were available for the project, he decided that a general bidding be conducted without disclosing in the meantime the quantity of materials involved. Paragas thought that since Director Manalo had not yet approved the PW, the bidding should only be confined to obtaining the prevailing prices of materials for future reference. The notice of bidding, published on 19 and 26 March, 1978[22] in the Baguio Midland Courier, read:

"REPUBLIC OF THE PHILIPPINES

DEPARTMENT OF PUBLIC HIGHWAYS

OFFICE OF THE HIGHWAY DISTRICT ENGINEER

BAGUIO CITY

March 17, 1978

ADVERTISEMENT

"SEALED BIDS, in proposals to be furnished by this Office, will be received at the Office of the Highway District Engineer, Benguet Engineering District, Baguio and opened exactly at 10:00 AM, on the dates hereunder indicated, for the furnishing and delivery of the following supplies and materials:

"Kind of Supplies Date of Bidding

and Materials

Office supplies March 28, 1978

Gasoline and diesel fuel March 29, 1978

Construction materials, March 30, 1978

like plywood, steel bars,

lumber and other hardware

materials

Road materials, like March 31, 1978

sand, gravel, stone, etc.

"Full particulars, including cash and credit lines retained from the Administrative Officer, Mr. Cipriano G. quirements (sic), bid bond and other prerequisites, may be ob (sic) Ismael.

"SANTIAGO G. PARAGAS

Highway District Engineer II

By:

FILEMON B. GARCIA

Assistant Highway District

Engineer III

March 19 and 26, 1978."

Del Moral, who happened to read the notices, went to the BHED and secured from Cipriano Ismael, the Administrative Officer, a copy of an invitation to bid. After two days, Del Moral went back to the BHED office and learned from Fonacier and Ismael the subject items for the bidding and, from the Materials Testing Laboratory, the sources of the road materials.

On 28 March 1978, Paragas decided to postpone the general bidding because only two out of the four bidders "prequalified." Del Moral was one of the two who prequalified. Paragas instructed Garcia, the chairman of the Bid and Award Committee, to prepare new notices,[23] informing various contractors that the bidding had been reset to 28 April 1978. On account of limited BHED funds, no publication of the new date of bidding was made.

On 20 April 1978, Villanueva prepared the RSE, signed by Fonacier, which Del Moral handcarried to the Accounting Section, then to Ismael, Garcia and Paragas for their respective signatures. The following day, Fonacier brought the RSE to the Regional Office where it was also signed by Atty. Runez, Dioquino and Director Manalo. The RSE was returned to the Property Section of the BHED on 24 April 1978.

At the rescheduled date of bidding, on 28 April 1978, the only members of the Bid and Award Committee present were Ismael, Villanueva and Almoite (the latter representing Padilla). They opened the eight bids at 10:00 in the morning and shortly thereafter declared to be the winning bidders Anitos Construction for Items 200, 300, 306-1 and 405, and Del Moral for Item 108. Fonacier learned about the bidding and the names of the winning bidders only when he saw a BHED employee typing the abstract of bids.[24]

On the same day, Del Moral directed one of his men to instruct his truck drivers to immediately make the deliveries of Item 108. According to Felimon Dulay and Florencio Alhambra, two of the truck drivers of Del Moral, no less than ten truckloads of Item 108 were delivered, along Km. 271 to 276, daily from 28 April to 23 May 1978.

On 30 April 1978, Gonzales, a field materials man, went to Km. 271 to km. 276 and got a half sack of the samples of construction materials delivered by Del Moral. When he arrived at the BHED office, he found it already closed

for the day. He left the half sack of samples near the office door and proceeded home. The next day, a holiday, Gonzales borrowed the office keys from Ramos, his immediate supervisor, and went to the office to perform the required tests. He found that the samples met the required specifications for Item 108. Gonzales went five times to the project site during the month of May. Each time, he would perform tests and submit a report to Ramos.

On 02 May 1978, at the BHED office, Del Moral followed up the PO and informed Fonacier that he had, since 28 April 1978, been making deliveries of Item 108. Fonacier relayed this information to the Material Testing Laboratory and the Auditor. He also instructed Buccat to inspect the deliveries. After visiting Km. 271 to Km. 276, Buccat told Fonacier that the road materials were obstructing the traffic. Fonacier accordingly directed Buccat to have Teodolfo Apostol, a grader operator, spread the road materials. While he was officially assigned to the vicinity of Km. 257, Apostol, nonetheless, worked on the km. 271 to km. 276 portion every Monday, Wednesday and Friday of the week for close to three weeks. Apostol explained that he failed to indicate in his daily time record^[25] his work along Km. 271 to 276 because the space provided therein for "remarks" was "very short" aside from having done work on that portion only for a brief period.

On 04 May 1978, Fonacier visited Km. 271 to 276 and saw piles of road materials. At another time, he noticed that the piles had been spread out on the road. He would also often see Buccat holding a logbook recording the deliveries. He went to the site for the last time on 20 May 1978.

Audit clerk Sarmiento was asked as early as 26 April 1978 to inspect the deliveries at the Halsema Highway. He visited the site on 01 May 1978. The following day, he saw Buccat with the "camineros". Whenever he was at the project site, Sarmiento would look at the logbook of Buccat, count the number of deliveries posted and check each item with actual deliveries. He observed that truck drivers would just present to Buccat the report of deliveries and Buccat would thereupon record it in his logbook. Buccat informed Sarmiento that he (Buccat) would prepare the DRs in due time. During certain occasions when Buccat would not be at the site, Sarmiento himself listed the number of deliveries in a worksheet.

Petra Mayos and Billy Sote, barangay captain and councilman, respectively, of Caliking, testified that they regularly passed the Halsema Highway and witnessed the delivery and spreading of earth mixed with stones along Km. 271 to 276 in May 1978.

On 14 May 1978, Del Moral asked from Fonacier a partial payment of his deliveries which, at the time, had been almost half of the 5,550 cu. m. of the required Item 108. Fonacier told him to instead see Buccat who had the record of deliveries. Buccat handed to Del Moral around 500 signed DRs and 25 signed TSs. Del Moral gave the DRs and TSs to Sarmiento who, before himself signing them, checked the signatures of the receiving officer and the resident engineer. He crosschecked the entries on the receipts with his record and Buccat's logbook. Thereafter, the DRs and the TSs were likewise signed by Fonacier and brought to the Property Section for preparation of the GV.

While reviewing the DRs, property custodian Villanueva focused special attention on the signatures of the resident engineer, the auditor's representative and the project engineer, who, respectively, received, inspected and noted the deliveries. He also examined the signatures appearing on the TSs and the volume of deliveries. He saw on the upper left hand corner of a TS a piece of adding machine tape with entries and figures, the total of which he further checked with the volume appearing on the GV.

The first GV,^[26] covering the partial delivery of 2,775 cu. m., was prepared and signed by Villanueva and Fonacier. A day after, 15 May 1978, Villanueva received the PO,^[27] signed the same and wrote "2,775 cu. m. partial" above his signature to indicate that one-half of the total requisition of 5,550 cu. m. had been delivered. Noting that the date appearing on the PO was 01 May 1978, a holiday, Villanueva instructed a subordinate to

correct it by placing the number "2"[28] over the figure "1". Subsequently, Villanueva signed the Report of Inspection and corrected the date 25 May 1978 appearing thereon by placing "1" over the figure "2". Aside from the PO, also attached to the documents were the RSE, abstract of bids and invitation to bid. Del Moral then handcarried the documents to the Accounting Section but because the other officials who were required to sign the first GV were in Legazpi City attending a conference, Del Moral decided to instead hold it until the next billing.

On 23 May 1978, Del Moral returned to the BHED office to follow-up the payment of his deliveries. He asked Buccat for the DRs and TSs covering the last half of his deliveries. Buccat was reluctant to sign the DRs and TSs because he had not witnessed some of the deliveries. When Del Moral told Buccat that Fonacier and Sarmiento had seen the deliveries, Buccat said, "Sigue." Forthwith Buccat prepared the DRs and TSs along with Sarmiento and Fonacier.

At the property section, Villanueva signed the DRs and TSs for the last half of the deliveries and thereafter prepared the second GV.[29] Del Moral got his copy of the signed DRs and TSs which he later gave to his sister for safekeeping. Villanueva also signed the Report of Inspection[30] for the second GV with his note that the original copy of the PO had been attached to the first GV (dated 15 May 1978). He got a duplicate of the original PO and attached it to the second GV. Since the two GVs were already prepared, Villanueva did not see any need to consolidate them.

When the two GVs reached the accounting section, Gacad asked for the supporting DRs. Del Moral got the DRs from a brown envelope but Gacad merely glanced at them. Del Moral told Gacad that he was in a hurry to get the payment for the deliveries because Paragas, who was almost always out on field inspections, was again about to leave. Thus, Gacad initialed the two GVs and Del Moral handcarried them to the ICU where Carantes stamped a list[31] of the documents submitted at its dorsal side and then crosschecked it with the attached supporting papers. Carantes then placed the word "Del" after seeing the DRs. When the documents reached administrative officer Ismael, he checked at random the DRs attached to the two GVs. His initials on the GVs were to indicate that all the supporting papers had been duly attached and included.

Since Garcia, the assistant district engineer, was not around, Del Moral directly proceeded to Paragas. The latter inquired why the first GV was not signed by the assistant district engineer. Paragas directed his secretary to first have the GV signed by Garcia. When his secretary could not find Garcia, Paragas signed the GV after reviewing all its supporting documents. In the afternoon, Del Moral brought the second GV to Paragas for his signature.

At the Auditor's Office, the first GV was recorded and assigned a number by a clerk before it was handed over to COA examiner Remedios Almoite. Almoite first checked whether the GV bore the signatures of the concerned officials. She crosschecked the attached documents with the "stamped list" prepared by Carantes paying particular attention to the report of inspection. She then made her own computations[32] on the volume of materials delivered. She also placed a red "x" mark on the stamped list of documents at the dorsal side of the GV to indicate that she had crosschecked the supporting papers. She examined the DRs and the TSs at random. When she noticed that the certificate of test was not attached, she made a note on a one-fourth coupon bond that it should be attached. She also informed Del Moral that the certificate of test, a vital supporting paper, was lacking.

When Del Moral went to the Materials Testing Laboratory to get the certificate of test, Rogelio Ramos, the supervisor therein, told Joseph Gonzales to prepare the certificate. Gonzales prepared two certificates of test[33] and signed the space provided for "Materialman." Ramos then likewise signed the certificates. Although there were nineteen (19) sieve analysis tests conducted by Gonzales, only two results[34] were attached since the results of the other tests proved to be the same.

Del Moral went back to the auditor's office and handed the certificates to Almoite. When she called Villanueva's attention that only 2,775 cu. m. of Item 108 was indicated on the GV, he said that another GV would be coming in the afternoon. Almoite then processed the first GV and brought it to Padilla, who, before affixing his signature, examined the other signatures already affixed, verified the supporting documents, checked the list of documents attached and reviewed the computations made by Almoite. Padilla did not see Del Moral since it was his policy not to allow contractors to follow-up their papers with him. In the afternoon, the second GV was processed by Almoite.

While Nabus, cashier I at the BHED, was examining the first GV, he noticed that assistant district engineer Garcia had yet to affix his signature. He told administrative officer Ismael about this fact but the latter told Nabus that Garcia's signature was merely "recommendatory" and that the approval of the GV was evidenced by Paragas' signature. Thus, Nabus instructed a clerk to prepare the check^[35] but he did not sign it because the amount involved was more than P50,000.00. Del Moral then brought the check to the Accounting Section, ICU, Ismael, Paragas, Padilla and then back to Nabus for its release. Nabus processed the second GV and issued the corresponding check^[36] in the afternoon of the same day.

Some time after 26 May 1978, Buccat approached Del Moral for a loan ("utang") of P2,000.00. Del Moral construed the "utang" to be a "balato" and gave Buccat P500.00. After Buccat said, "never mind," Del Moral explained that his profit out of the project was "very little." Buccat allegedly retorted, "I have signed without seeing some of the deliveries and that is all you are giving me." Buccat pushed aside the money offered by Del Moral and said, "Let us see what will happen. After all there is nothing more to be done."

The telegram from Minister Aquino stopping the asphaltting of the Halsema Highway received by Director Manalo in June 1978 was the result of the request made by Governor Palispis to President Marcos to instead have the highway concreted. According to Governor Palispis, in July 1978 Jose Dominguez showed him an envelope containing several documents. The first sheet of paper signed by Dominguez referred to anomalies at the Halsema Highway, and Dominguez suggested that the governor should talk to Paragas about the matter. At the governor's suggestion, Dominguez scribbled some notes which meant: Firstly, that Paragas should be transferred, otherwise Dominguez would initiate a case against Paragas; secondly, the "foolishness" with respect to the awards of the BHED projects should be stopped after intimating to the governor that he should have been declared the winning bidder of the Halsema Highway project; and thirdly, the governor himself, Cosalan, Dominguez and Caoile should be given quotas for every project of the BHED, adding that no contracts should be given to "lowlanders." Dominguez indicated 29 August 1978 to be the date when Paragas should give his decision on the matter or else Dominguez would file the case. The governor "okayed" the requests.

After about a week, Dominguez called up the governor reminding him that he should talk to Paragas. A few days thereafter, Dominguez again called up the governor on the matter but the latter told him that he had not yet been able to talk to Paragas. After about the third week, Dominguez sent a telegram to the governor giving the latter an ultimatum.^[37] Since the governor had not acquiesced to the demands of Dominguez, the latter told him, "You are challenging me." To that, the governor replied, "You file the case."

When Fonacier learned that the DRs were missing, he confronted Buccat and asked him if he had them. Buccat said, "I'll see." Fonacier construed Buccat's answer to mean that he (Buccat) took the DRs. Thus, Fonacier instructed Buccat to produce the receipts. In October 1978, Fonacier told Del Moral that the project was questioned because of the missing DRs. Del Moral told Fonacier that he left the DRs at the BHED office.

NBI agent Villar examined the GVs. Seeing that the DRs and the TSs were not attached to the GVs, he instructed his personnel to locate the documents. The search, however, proved futile.

Findings of the Sandiganbayan

In its questioned decision,[38] promulgated on 28 December 1979, the Sandiganbayan gave more credence and weight to the evidence presented by the prosecution than that given by the defense which it described to be "bogged down in a quagmire of contradictions and enmeshed in a web of fabrications." [39] In sum, it concluded:

1. There was no "regular or legitimate program of work" in accordance with standard operating procedures for Item 108. The Sandiganbayan said:

"What actually appears from the evidence on record is that, after the discarding of the first program of work and while the revised program of work was still pending approval by the MPH (in fact it was approved only in January, 1979 according to Regional Director Manalo), the accused district officials took it upon themselves to 'resurrect' the discarded program of work by lifting that portion of the revised program of work referring to Phase II and implementing it separately without waiting for the approval of the entire program. Such a machination is clearly apparent by comparing the Phase II portions of the revised program of work (Exhs. 1-a-Paragas and 1-d-Paragas) and the Detailed Estimates for Phase II signed by Buccat and Fonacier which is attached to the RSE (Exh. C-8). And assuming, arguendo, that the Detailed Estimate and Time Spot Schedules (Exhs. C-8 to C-9) were originally prepared by Buccat and Fonacier, yet there is no showing that the same constitute or form part of an approved program of work, involving as they do an estimated amount of P270,500.00 obligated by Acting Accountant Remedios Gacad, hence, such program, if it can be called that, must be approved by the regional office. Moreover, Regional Director Manalo could not legally approve such a program involving Phase II as he himself admitted that a revised program of work for the entire project covering Phases I to IV and involving P10,000,000.00 had been forwarded already to the MPH for approval, so that such a piece-meal program of work must have to be discarded." [40]

2. Director Manalo could not have approved a requisition for Item 108, Phase II, between 20 April 1978 (Exhs. C-10 and D-2) and 22 May 1978 (Exh. D-2-a) for being in violation of the COA circular (Exh. I) against "splitting" and of his own revised program of work. Furthermore, it would have entailed the implementation of Phase II much ahead of Phase I which was not yet completed at the time.

3. Buccat did not witness the deliveries of the supposed 5,550 cu. m. of road materials covered by Item 108 in May 1978, nor did he prepare the corresponding DRs and the TSs he was directed to accomplish. Buccat was, in fact, busy at the time supervising elsewhere the asphaltting project of Kms. 257-262.

4. There could not have been deliveries of 5,550 cu. m. of Item 108. Del Moral's testimony that he started the deliveries at 3:00 in the afternoon of 28 April 1978, the date of the bidding, and that he alerted and mobilized his truck drivers two days earlier, strained credulity. Even Fonacier, Sarmiento and Gonzales could not testify with certainty that, between 28 April and 23 May 1978, BHED representatives were at the site to witness and record all such alleged deliveries.

5. The supposed 28 April 1978 bidding was not merely irregular but it was "fixed or pre-arranged." The bidding originally scheduled for 31 March 1978 was a "general" bidding aimed primarily at securing a price index or quotations for future requisitions. The defense failed to explain satisfactorily "why the advertised bidding for 31 March 1978 was cancelled or why the notices of postponement thereof were received by some contractors-suppliers on 26 April 1978 (Exh. 1-Del Moral) when all the supposed 'sealed' proposals were dated 17 April 1978" (Exhs. D-7-a, D-8 to D-13, inclusive). The Sandiganbayan added:

"Apparently, the bidding previously scheduled on March 31, 1978 was for the purpose of filling up the expected requisitions for the first program of work prepared by Buccat and which was not approved by the regional office. Thereafter, the district officials, in their inordinate haste to defraud the government, decided to revive a portion of said discarded program of work referring to kms. 271-276 and seized upon the quotations

given as early as April 17, 1978 to commence the procurement process, as shown by the preparation of an RSE on April 20, 1978, holding a supposed bidding on April 28, 1978, preparing a GV on May 15, 1978 and having the RSE approved by the regional office only on May 22, 1978 and, thereafter splitting the RSE and PO into two, after which processing and pre-auditing was railroaded with clock-like precision within the district office." [41]

6. While Paragas claimed that Del Moral, a winning bidder, was allowed to deliver Item 108, he, however, admitted in the same vein that Anitos Construction, winning bidder for Items 200, 300, 306-1 and 405, did not deliver said items since the implementation of the project was stopped.

7. On Almoite's testimony that no certificate of test was attached to the GV when it was presented to her, the Sandiganbayan said:

"x x x. If such was the case, then Villanueva, Fonacier, Paragas, Gacad and Carantes, should have noticed this deficiency as they signed or initialed the GVs ahead of Almoite and Padilla, and therefore, their claims that they passed the GVs because the supporting papers were complete miserably fail of their own accord. Del Moral also admitted this particular facet of the processing by Almoite and was also corroborated by Ramos and Gonzales, when the latter two admitted that Del Moral came to them only on May 25, 1978 to get the certificate of test because Almoite was asking for it, hence, Gonzales prepared the certificate of test that same date (Exhs. C-4, and D-5) and had it signed by Ramos who gave it to Del Moral for delivery to Almoite. Under these circumstances, then the Court must also reject outright the testimonies of Gonzales and Ramos to the effect that samples were taken by the former at the job site on April 30, 1978 and five more times in May, 1978, that he made the necessary laboratory tests on said samples and made written reports to Ramos on each occasion and that Ramos also submitted written reports to Fonacier, which testimonies the Court finds to be patently fabricated and perjured. If such taking of samples, performance of laboratory tests, and making of reports were actually made, then these reports would have been attached to the GVs or in the possession of Fonacier, Paragas or Villanueva, and the certificate of test would not have to be hastily prepared on May 25, 1978. As Mr. Justice Fernandez himself observed during the trial, the certificate of test showed only one laboratory test conducted (BBR-15a-78) although Gonzales claimed that he took samples and tested them on six occasions in the month of May, 1978." [42]

8. The Item 108 transaction was in violation of the provision of COA Circular No. 76-41, dated 30 July 1976, [43] against "splitting" of the RSE, POs and GVs. At P18.00 per cu. m., the 5,550 cu. m. of Item 108 would have been purchased at P99,900.00. Thus, the check(s) in payment of the item delivered would have been in excess of P50,000.00 and therefore would have required the voucher to be processed, pre-audited and approved by the regional highway auditor, instead of by merely the BHED auditor, in accordance with COA Circular No. 76-16 of 10 February 1976. Evidently, in order to avoid action, review or approval by the regional highway auditor on a check of P99,900.00, the RSE, PO and GV were split into two. It was feared that the regional auditor would "discover that there (were) (1) no regular biddings, (2) no deliveries of materials, (3) no actual inspection at the job site, and (4) no actual tests conducted."

9. Relative to the alleged selfish motives of Jose Dominguez, the Sandiganbayan said, "the very evidence of the defense strongly tends to show that desperate measures were even resorted to by Paragas and Padilla to seek an amicable settlement with Dominguez, in the process utilizing Governor Ben Palispis and Assemblyman Antonio Villar to intercede for them. Gov. Palispis' testimony, in fact, boomeranged against the defense since by the very nature thereof it is clear and patent that his intercession was not intended to promote the ends of justice but to subvert them, even going to the extent of trying to persuade Dominguez to delay, if not interfere with, the preliminary investigation then pending in the Benguet Provincial Fiscal's Office." [44]

All considered, the Sandiganbayan held that Section 3, paragraph (e), of the Anti-Graft and Corrupt Practices Act

had, indeed, been violated by nine (9) of the accused who acted in conspiracy to defraud the Government "in the amount of P96,903.00, which excludes x x x the 3% BIR contractor's tax on the amount of P99,999.00, through the utilization of fictitious and/or fraudulent public documents which certified to the alleged requisition of supplies or materials intended for a non-existing project, resulting in the payment of public funds for non-existent deliveries." [45] The Sandiganbayan acquitted accused Nabus since his participation was in merely issuing the checks in payment of the GVs, and that it was not shown that he had the "legal duty to process the said GVs and supporting papers or to verify the correctness of each and every document prior to his causing the preparation and issuance of said checks." [46]

The Sandiganbayan disposed of the case thusly:

"WHEREFORE, the Court finds the accused Santiago G. Paragas, Eusebio V. Fonacier, Joseph U. Gonzales, Rogelio R. Ramos, Francisco M. Villanueva, Jr., Apolinario T. Padilla, Francisco T. del Moral, Arnulfo B. Sarmiento and Remedios B. Almoite GUILTY beyond reasonable doubt of the violation of Section 3, paragraph (e), of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and hereby sentences each of said accused to suffer the indeterminate penalty of FOUR (4) YEARS and ONE (1) DAY as minimum, to SEVEN (7) YEARS and ONE (1) DAY as maximum, to further suffer perpetual disqualification from public office, to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of P96,903.00, representing the undue injury that it suffered, and to pay the costs of this action proportionately.

Accused Hubert Nabus, however, is hereby ACQUITTED of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt, with costs de officio. The bail bond posted by him for his provisional liberty is hereby cancelled and the bondsmen are henceforth relieved from any responsibility thereunder.

It appearing from the evidence adduced during the trial that Regional Director Eugenio Manalo and Regional Administrative Officer Ricardo Ruñez had approved the Requisition and Issue Voucher despite the absence of a properly-approved program of work but on a discarded one, that District Administrative Officer Cipriano Ismael had also participated in the hasty, fixed and pre-arranged 'public bidding' and processed the RSE; that Remedios Gacad, district acting accountant, and Josephine Carantes, acting chief, district internal control unit, had processed the GVs in question in an irregular manner, the Tanodbayan is hereby directed to conduct an investigation of the aforesaid officials and to take the proper actions.

"SO ORDERED." [47]

Rogelio T. Ramos, Joseph U. Gonzales, Francisco T. del Moral, Apolinario T. Padilla and Arnulfo Sarmiento filed motions for the reconsideration of the decision of the Sandiganbayan. [48] Remedios Almoite filed her own "petition for reconsideration" contending that her exoneration was demanded by the fact that she was just used as an "unwitting instrument" in the conspiracy. [49] On 22 February 1980, the Sandiganbayan denied the various motions for reconsideration for lack of merit. [50]

Petitions filed with this Court

Before the start of the trial in Criminal Case No. 010, Fonacier, Ramos, Gonzales and Villanueva filed a petition for certiorari and prohibition with this Court. Docketed G.R. No. 50691, the petition sprung from the denial on 21 May 1979 of their motion to quash the information filed against them by the Tanodbayan before the Sandiganbayan where they contended that Presidential Decree No. 1487 (creating the Office of the Ombudsman or Tanodbayan) and Presidential Decree No. 1606 (amending P.D. 1486, creating the Sandiganbayan) were unconstitutional. On 10 August 1979, G.R. No. 50691 was consolidated with G.R. Nos. 50581-617 entitled "Rufino V. Nuñez v. Sandiganbayan." Only the Nuñez case, however, was decided, on 30 January 1982, by this Court, [51] The decision upheld the constitutionality of Presidential Decree No. 1486, as amended, creating the

Sandiganbayan.[52]

In G.R. No. 52263, petitioner Paragas asserts that Presidential Decree No. 1486, as amended by P.D. 1606, is "unconstitutional as an ex post facto law." [53] This issue has already been squarely passed upon in the Nuñez case, upholding the constitutionality of that law, and we see no need for any further disquisition on the matter.

In G.R. No. 50691, petitioners would assail the constitutionality of the decrees creating the Sandiganbayan and the Tanodbayan, this time, upon the thesis that it was the National Assembly that could have, under Sections 5 and 6, Article XIII of the (1973) Constitution, created both the Sandiganbayan and Tanodbayan.[54] Although this question was not specifically raised in the Nuñez case, this Court, nonetheless, declared categorically that:

"x x x While such competence under the 1973 Constitution contemplated that such an act should come from the National Assembly, the 1976 Amendments made clear that he as incumbent President 'shall continue to exercise legislative powers until martial law shall have been lifted.' Thus, there is an affirmation of the ruling of this Court in *Aquino Jr. v. Commission on Elections* (L-40004, January 31, 1975, 62 SCRA 275) decided in 1975. In the language of the ponente, Justice Makasiar, it dissipated 'all doubts as to the legality of such law-making authority by the President during the period of Martial Law, * * *.' As the opinion went on to state: 'It is not a grant of authority to legislate, but a recognition of such power as already existing in favor of the incumbent President during the period of Martial Law.'" [55]

P.D. No. 1606, furthermore, has since undergone several amendments in P.D. No. 1629, B.P. Blg. 129, P.D. No. 1861 and Executive Order Nos. 101 and 184. Article XI, Section 4, of the 1987 Constitution now provides that "(t)he present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law."

As regards the Tanodbayan, Article XI, of the 1987 Constitution states that the Ombudsman created therein shall henceforth be "known as Tanodbayan" (Sec. 5) and that "(t)he existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor" which "shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution" (Sec. 7). Pursuant to the 1987 Constitution, President Corazon C. Aquino promulgated, on 24 July 1987, Executive Order No. 243 and Executive Order No. 244 declaring the effectivity, respectively, of the Office of the Ombudsman and the creation of the Office of the Special Prosecutor. Section 2 of the latter executive order expresses that the Office of the Special Prosecutor "shall exercise powers presently exercised by the Tanodbayan except those conferred on the Office of the Ombudsman under the Constitution." On 17 November 1989, President Aquino approved into law Republic Act No. 6770, which provides for the "functional and structural organization of the Office of the Ombudsman." Section 13 thereof states:

"SEC. 13. Mandate. - The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people."

With the ratification of the Constitution and the enactment of subsequent laws, any further doubt on the constitutionality of the Sandiganbayan and the Tanodbayan must now be dispelled.

The so-called "jurisdictional issue" being raised by petitioner Ramos in G.R. No. 52821, i.e., that since, the crime charged is said to have been committed before the creation of the Sandiganbayan and that, therefore, the ordinary courts should not be divested of their jurisdiction thereover,[56] deserves scant consideration. Suffice it to state that in *Manuel vs. De Guzman*[57] and subsequent cases, this Court has sanctioned the transfer to the

Sandiganbayan, pursuant to Section 8 of P.D. 1606, of criminal cases falling under its jurisdiction but still pending with the regular courts at the time of the decree's enactment.

The petition in G.R. No. 52263 filed by Paragas was denied by the Court on 05 August 1980 "for being factual and for lack of merit." [58] His motion for reconsideration, however, was granted by the Court in its Resolution of 07 October 1980 [59] which then consolidated the petition with those in G.R. Nos. 53350, 53397, 50691, 52766, 53520, 52821 and 53415.

In G.R. No. 53350, [60] counsel for petitioner filed a motion to dismiss the petition for review on certiorari on the ground that petitioner Francisco T. Del Moral had died on 08 October 1980. [61] The Solicitor General commented that "petitioner's appeal should only be dismissed insofar as his criminal liability is concerned." [62] On 29 January 1981, the Court dismissed the petition only with regard to Del Moral's criminal liability, [63] and entry of judgment was made on 09 March 1981. [64]

We now must likewise hold that the death of Del Moral has extinguished the civil liability based on *ex delicto*. In the recent case of *People vs. Rogelio Bayotas y Cordova*, G.R. 102007, promulgated on 02 September 1994, we have ruled, and might now reiterate, that -

"1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, 'the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *senso strictiore*.'

"2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than *delict*. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

"a) Law

"b) Contracts

"c) Quasi-contracts

"d) x x x

"e) Quasi-delicts

"3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

"4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription."

And now, on the merits of the petitions.

The particular provision of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) with which violation petitioners have been charged states:

"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:

"x x x x x x x x

"e. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, 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."

The elements of the offense defined in this provision are that: (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 any 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.[65]

In this case at bench, it is undisputed that herein remaining petitioners are public officers with whom private contractor Del Moral, now deceased, has been charged also as a co-principal.[66] The first element required for the commission of the offense charged is thus clearly extant.

The second element enumerates the different modes by which means the offense penalized in Section 3(e) may be committed. "Partiality" is synonymous with "bias"[67] which "excites a disposition to see and report matters as they are wished for rather than as they are."[68] "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud."[69] "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[70] These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

The use of the three phrases "manifest partiality," "evident bad faith" and "gross inexcusable negligence" in the same information does not mean that the indictment charges three distinct offenses[71] but only implies that the offense charged may have been committed through any of the modes provided by the law. In Criminal Case No. 010, all three modes of committing the offense under Section 3(e) are alleged in the information.

The third element of the offense 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 not thus essential; it should be sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible.

We have examined the voluminous records of the cases at bench, and we cannot decry the findings and conclusions of the Sandiganbayan to be bereft of factual bases.

Petitioners, except for Del Moral who was charged a co-principal, were all public officials and alleged to have acted as such in the commission of the offense.

From the testimony of Director Eugenio Manalo of Region I of the then Ministry of Public Highways, projects undertaken by the BHED would undergo the following procedures, briefly narrated by the Sandiganbayan thusly:

"x x x. Projects within the region were prosecuted after the Ministry issued sub--advices of allotments (SAA) to the region which in turn releases letters of advice of allotments (LAA) to the districts based on allocations and programs of work for specific projects prepared by the district engineers. If below P100,000.00, said programs of work can be signed by the district engineer, and above that amount, they are referred to the regional director who can approve them up to the amount of P300,000.00. Beyond the latter amount, the approval of the Minister of Public Highways must be secured. After the preparation of the program of work and its approval by the regional office, it is returned to the district office for execution. A Requisition for Supplies or Equipment (or RSE) is prepared by the project engineer and approved by the regional director regardless of the amount, after which it is returned to the district engineer for implementation. The procurement of materials is then made by advertisement or canvass. If the amount to be requisitioned is more than P5,000.00, there must be an advertisement for public bidding, but if the requisition is P5,000.00 and below, canvass may be made for bidders' proposals. In case of newspaper advertisement or publication, the same must be made three times in newspapers of general circulation in the province or city and posted on bulletin boards in three public places. When the bids are submitted on the day of the bidding, the Committee on Bids and Award in each district makes the award to the supplier on the basis of the lowest bid. A Purchase Order (or PO) is prepared stating the period to deliver and other conditions and is signed by the winning bidder or supplier. The supplier then starts delivering the requisitioned materials and notifies the district engineer or project engineer, as well as the auditor, of the start of deliveries so that the same may be checked. Delivery receipts (DRs) in four or five copies are usually signed by the resident engineer together with the tally sheets (TSs) which contain a summary of the deliveries. Upon the completion of the deliveries, the supplier demands payment. The DRs, TSs, the Certificate of Testing, RSE, SWA, abstract and program of work are then attached to the general vouchers (GVs) which are prepared for the collection of payments due to the supplier. The GV's and supporting papers are processed as to funding and deliveries and pre-audited by the auditor's office, after which the corresponding checks are prepared by the cashier, signed by the district engineer, and countersigned by the auditor." [72]

The Halsema Highway project was initiated upon the verbal directive of then President Marcos to the then Minister of Public Highways Baltazar Aquino in the presence of Regional Director Eugenio Manalo. Minister Aquino, in turn, directed petitioner Paragas, then Highway District Engineer of the locality, to prepare a program of work. The one prepared by the BHED for asphaltting the Halsema Highway, however, was disapproved due to the request of Governor Ben Palispis that "concrete" should instead be used for the project. Hence, the Regional Office itself, through engineers Purugganan and Collado, prepared the PW. Project engineer Fonacier brought the PW to the Regional Office for approval. Considering that the total allocation of P10,000,000.00 for the whole project, exceeded the jurisdictional limit set for approval merely by the Regional Director, the PW was transmitted to Minister Aquino. It was finally approved by Minister Aquino only in January 1979 or eight months after contractor Del Moral had supposedly delivered Item 108 at the jobsite.

According to Paragas, they proceeded with the "public bidding" for the materials required for the project because the copy of the PW, still unsigned by the Regional Director but which Fonacier retained, "was the basis of the preparation of the RIV or RSE." [73] Paragas claimed that they relied upon the verbal instruction of Minister Aquino to proceed with the implementation of the project because it was an "emergency" case. [74] Although he knew that the PW was yet to be approved, Paragas scheduled, nevertheless, the holding of a public bidding upon learning that the funds for the project were already made available. [75] He directed Assistant District Engineer Felimon Garcia to cause the publication of a notice of a general bidding for the supply of materials which did not indicate any quantity or volume thereof [76] considering that the PW was yet pending approval by the Regional Director. [77] The items were also not detailed on the excuse that the itemization of the materials needed would "involve great space for publication." [78] Instead of the required three publications, the notice for public bidding scheduled for 28 to 31 March was published only twice in the Midland Courier, a newspaper in Baguio City, on 19 March and 26 March of 1978.

According to the BHED administrative officer, Cipriano G. Ismael, he gave invitations to bid to interested bidders. Del Moral was first informed of the reset bidding because he was the first to come to the office to get a copy of the invitation to bid.[79] Del Moral talked to Ismael and Fonacier to know what materials would still be bid but he did not bother to ask Fonacier on the quantity of materials needed because he was "sure of winning the bidding." [80] Ordinarily, bidders were required to post bonds but Garcia could not remember if Del Moral submitted a bidder's bond.[81]

At the reset bidding on 28 April 1979, Del Moral emerged the winning bidder for Item 108 having placed a bid of P18.00 per cu. m.[82] In the abstract of bids, Garcia annotated "Recommended as to Item 108 only" because "all the other items were priced too high." [83] Once he knew that he had won the bid for Item 108, Del Moral supposedly instructed his drivers to make the deliveries of Item 108 at the jobsite. Deliveries were said to have started in the afternoon of April 28 even though no purchase order had yet been issued.[84] The purchase order for 5,550 cu. m. of Item 108 at P18 per cu. m. for the total amount of P99,900.00 bore the date 02 May 1979.[85] Property custodian Francisco M. Villanueva, Jr., admitted having signed the purchase order only on 25 May 1979[86] although on the face of the original copy of the purchase order, Exh. D-4, his signature clearly appeared with the notations "5/15/75" and "2,775 cu. m. partial."

The deliveries were reportedly checked by Arnulfo Sarmiento, the auditing office representative. Ruben Buccat, the resident engineer designated by Paragas for the project, upon the other hand, denied that there were such deliveries although he admitted having prepared some DRs and TSs only upon the persistent prodding of project engineer Fonacier. He swore that he had prepared not more than 10% of the DRs which he also tore up to pieces upon learning that the materials said to have been delivered had already been paid for. Del Moral presented to the processors of the vouchers what appeared to be bundles of delivery receipts but later admitted that there were blank forms in the DRs he submitted for examination,[87] lamely explaining that whoever prepared them did not press hard enough the ballpen used in filling them up or that no carbon paper was placed between the copies.[88]

No report was prepared on whether the materials met the standards set therefor and no certificate of test was accomplished until after the absence of that vital document was discovered by auditing examiner Remedios Almoite. That a certificate of test was eventually submitted did not diminish the negligence of Ramos; on the contrary, its belated submission compounded his complicity. For his part, Fonacier also proved to have been recalcitrant to his duty by failing to verify that the materials delivered were not only quantitatively but also qualitatively in accordance with the specifications set for the project.

Del Moral himself admitted that he requested for "partial" payment from Fonacier "in the middle of May." [89] The property custodian, Villanueva, prepared and signed the voucher without having seen the actual deliveries but merely relied on the signature of Fonacier thereon and the dubious DRs and TSs presented by Del Moral.[90]

Auditor Padilla can hardly profess ignorance of Commission on Audit Circular No. 76-41, dated 30 July 1976,[91] prohibiting the splitting of requisitions, purchase orders, vouchers and the like. "Splitting" has been defined to mean -

"x x x dividing or breaking up into separate parts or portions, or an act resulting in a fissure, rupture, breach. Within the sphere of government procurement, splitting is associated with requisitions, purchase orders, deliveries and payments." (Underscoring supplied.)

"Splitting of payments," likewise prohibited, arises when "two or more payments for one or more items involving one purchase order" are made in order to "avoid inspection of deliveries; x x x avoid x x x action, review or approval by higher authorities; (or) x x x avoid public bidding." [92]

Auditor Padilla asseverated that when the vouchers reached him after it had been pre-audited by Remedios

Almoite, he only "took a cursory examination" of the signatures thereon, "verified the supporting documents attached" and saw the list of documents attached, as well as the computation made by the auditing examiner.[93] If indeed, however, he verified the documents attached to the vouchers, he could not have escaped noticing that the quantity of Item 108 indicated in the attached purchase order, Exh. D-4, was for 5,550 cu. m. Ordinary diligence and a working knowledge of the pertinent COA circulars, specifically Circular No. 76-41, expected of someone in his position, would have sounded a warning bell upon Padilla before affixing his signature.

Another circular which Padilla had grossly overlooked was COA Circular No. 76-16A, dated 23 March 1976, "clarifying COA Circular No. 76-16, dated 10 February 1976, on the limitation for the countersignature by different officials of the Commission on Audit." Hence -

"1) Resident Auditors of bureaus, offices and agencies of the National Government in Metropolitan Manila, as well as other Auditors for District/City Highway, Public Works/School, State Colleges and Universities, Military Areas and Zones outside Metropolitan Manila, are authorized to countersign checks and warrants in amounts not exceeding P50,000.00 in each case. This revokes the previous Orders issued to some Resident Auditors and to Highway, District, City and other Auditors authorizing them to countersign treasury warrants and checks in excess of P50,000.00 and/or without limit."

The checks issued in favor of Del Moral, i.e., PNB Checks No. SN 4-6394572 and No. SN 4-6394573, each for P48,451.50 bearing the signatures of both Paragas and Padilla bore the date 26 May 1979.[94] Granting that Padilla failed to notice that the quantity of the materials delivered indicated on the PO was clearly halved by Villanueva and that he also missed seeing the two vouchers to be supported by the same set of documents, the issuance of two checks indicating amounts close to P50,000.00 each on the same day to the same person should have easily put him on guard. Hardly could he thus seek protection under our ruling in *Arias v. Sandiganbayan*. [95]

From all that appear on record, we cannot disregard the Sandiganbayan in finding guilt on - Paragas, in knowingly ordering the implementation of an unapproved program of work, instructing the holding of the starkly irregular bidding, and in signing the pertinent documents leading to the issuance of checks in favor of Del Moral; Fonacier, in knowingly going along with the irregular directives of Paragas in so misperceived a role as the "trusted" project engineer of Paragas; [96] Villanueva, for preparing the documents or ordering their preparation notwithstanding the non-observance of the applicable procedures therefor; Padilla, for negligently agreeing to the splitting of payments in gross violation of COA circulars and closing his eyes to irregularities glaringly indicated on the documents supporting the two vouchers; and Ramos for the grossly lackadaisical performance of his duty to see to it that the materials allegedly delivered were in accordance with government standards.

Proof of the extent of damage sustained by the government with respect to the supposed deliveries of Item 108 is not indispensable for conviction. It is enough that Del Moral has obtained large payments through, using the language of the Sandiganbayan, "the utilization of fictitious and/or fraudulent public documents x x x for a non-existing project x x x and non-existing deliveries."

We, however, find lack of moral certainty in the conviction of petitioners Remedios Almoite, Joseph Gonzales and Arnulfo Sarmiento, whose guilt, considering their respective insignificant roles in the questioned anomalies, may only be justified on the basis of conspiracy with the other accused petitioners. There is no clear evidence of their knowledge of a conspiracy among their co-accused or of their intentional and active participation therein. [97] Conspiracy requires no less than proof beyond reasonable doubt. [98]

As regards the impossible penalty, Section 3 of the Anti-Graft and Corrupt Practices Act then prescribed an "imprisonment for not less than one year nor more than ten years." [99] The Sandiganbayan therefore correctly

applied Section 1 of the Indeterminate Sentence Law, i.e., that in offenses punishable by a law, other than the Revised Penal Code, the maximum term of the penalty should "not exceed the maximum fixed by said law and the minimum (should) not be less than the minimum term prescribed by the same."

WHEREFORE, the Decision of the Sandiganbayan is hereby AFFIRMED insofar as it finds petitioners Santiago G. Paragas, Eusebio V. Fonacier, Francisco Villanueva, Jr., Apolinario T. Padilla and Rogelio Ramos guilty beyond reasonable doubt of violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act and in imposing on them the indeterminate penalty of imprisonment of from four (4) years and one (1) day, as minimum, to seven (7) years and one (1) day, as maximum, as well as a perpetual disqualification from public office, and in ordering them to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of P96,903.00, and, proportionately, to pay the costs.

Petitioners Remedios T. Almoite, Joseph Gonzales and Arnulfo Sarmiento are hereby ACQUITTED of the offense charged without prejudice to the filing of proper administrative charges against Almoite and Sarmiento such as may be warranted.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.
Feliciano, J., on leave.

[1] Record of G.R. No. 52263, Vol. I, p. 153.

[2] Ibid., p. 196.

[3] Ibid., pp. 407-416.

[4] Sandiganbayan Decision, p. 4.

[5] Accused Fonacier, Villanueva, Ramos and Gonzales moved to quash the information on the grounds that the Tanodbayan had no authority to conduct the preliminary investigation and that Sandiganbayan had no jurisdiction over the case (Records, Vol. I, p. 285). The Sandiganbayan, however, denied the motion on May 21, 1979 (Ibid., p. 299).

[6] Exhs. C-8 and C-9.

[7] Exhs. C-10 and D-4.

[8] Exh. G.

[9] TSN, September 13, 1979, p. 9. Item 108 is needed to attain the required bearing capacity of the base of the road (TSN, October 25, 1979).

[10] Exhs. C and D.

[11] Exh. D.

[12] Exh. C.

[13] Exh. 5-Paragas.

[14] Exh. K.

- [15] Exh. CC.
- [16] Rollo of G.R. No. 52263, p. 78.
- [17] Exh. A.
- [18] Exh. B.
- [19] Exh. 14-Paragas.
- [20] Exhs. A, B, C and D-Paragas.
- [21] Exh. C-10.
- [22] Exhs. 9-Paragas.
- [23] Exh. 8-Paragas.
- [24] Exh. C-13.
- [25] Exh. L-1.
- [26] Exh. D.
- [27] Exh. D-4.
- [28] Exh. D-4a.
- [29] Exh. C.
- [30] Exh. C-1.
- [31] Exhs. D-C, 1-Almoite, C-C and 2-Almoite.
- [32] Exh. 1-Almoite.
- [33] Exhs. D-5 and C-4.
- [34] Exhs. C-5 and C-6.
- [35] Exh. J.
- [36] Exh. J-1.
- [37] Exh. 27-Paragas.
- [38] Penned by Associate Justice Romeo M. Escareal and concurred in by Associate Justices Manuel R. Pamaran and Bernardo P. Fernandez.
- [39] Decision, p. 55.
- [40] Rollo of G.R. No. 52263, pp. 159-160.
- [41] Rollo of G.R. No. 52263, p. 166.
- [42] Rollo of G.R. No. 52263, pp. 167-169.
- [43] Exh. I.
- [44] Rollo of G.R. No. 52263, pp. 171-172.

[45] Rollo of G.R. No. 52263, p. 177.

[46] Ibid., p. 179.

[47] Rollo of G.R. No. 52263, pp. 179-180.

[48] Record, Vol. III, pp. 118, 131, 136 and 159.

[49] Ibid at p. 221.

[50] Ibid., p. 273.

[51] 111 SCRA 433.

[52] *Mangubat v. Sandiganbayan* (147 SCRA 478, 483) cites the following cases as having upheld the constitutionality of the decree creating the Sandiganbayan on the same grounds: *Calubaquib v. Sandiganbayan*, 117 SCRA 493; *De Guzman v. People*, 119 SCRA 337; *Rodriguez v. Sandiganbayan*, 120 SCRA 659; *Bayot v. Sandiganbayan*, 146 SCRA 304; *Alvia v. Sandiganbayan*, 137 SCRA 63.

[53] Petitioner's Brief in G.R. No. 52263, p. 9.

[54] Petition in G.R. No. 50691, p. 19; Rollo, p. 20.

[55] *Supra.*, at pp. 443-444.

[56] Petition, pp. 3-4; Rollo of G.R. No. 52821, pp. 5-6.

[57] *Manuel v. De Guzman*, 96 SCRA 398.

[58] Rollo of G.R. No. 52263, p. 246-A.

[59] Ibid., p. 344-A.

[60] Except for G.R. No. 50691, then Assistant Solicitor General Reynato S. Puno signed the comments for public respondents in the other petitions.

[61] Del Moral died from a bullet wound in his stomach (Rollo of G.R. No. 53350, pp. 187-189). Complainant Jose Dominguez "fell and died on March 4, 1980 on the same spot - Km. 271 - where he claimed there was a ghost project" (Rollo of G.R. No. 52263, p. 259).

[62] Rollo of G.R. No. 53350, p. 194.

[63] Ibid., p. 196.

[64] Ibid., p. 198.

[65] *Villanueva v. Sandiganbayan*, 223 SCRA 543, 547 citing *Jacinto v. Sandiganbayan*, 178 SCRA 254; *Medija, Jr. v. Sandiganbayan*, 218 SCRA 219 citing *Ponce de Leon v. Sandiganbayan*, 186 SCRA 745.

[66] *Meneses v. People*, 153 SCRA 303, 315. Sec. 1 states: "The policy of the Philippine Government, in line with the principle that a public office is a public trust is to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto." (Underscoring supplied.)

[67] 31 WORDS AND PHRASES 212.

[68] PHILIPPINE LAW DICTIONARY by F.B. Moreno, 3rd ed., p. 103.

[69] Marcelo v. Sandiganbayan, 185 SCRA 346, 349.

[70] Alejandro v. People, 170 SCRA 400, 405.

[71] Gallego v. Sandiganbayan, 115 SCRA 793, 796.

[72] Rollo of G.R. No. 52263, pp. 116-119; Decision, pp. 14-17. Basically the same procedure is outlined in Ponce de Leon v. Sandiganbayan, supra.

[73] TSN, November 15, 1979, p. 103.

[74] TSN, November 9, 1979, p. 29.

[75] Ibid., p. 37.

[76] Ibid. at p. 38; TSN October 25, 1979, p. 34.

[77] TSN, November 9, 1979, p. 42.

[78] TSN, October 25, 1979, pp. 38-40.

[79] TSN, October 25, 1979, at pp. 214 & 236.

[80] TSN, October 12, 1979, pp. 16-17 & 41.

[81] TSN, October 25, 1979, at p. 109.

[82] Exh. C-13.

[83] TSN, October 25, 1979, p. 55.

[84] TSN, October 11, 1979, pp. 120-122.

[85] Exhs. C-11 & D-4.

[86] TSN, October 19, 1979, p. 67.

[87] TSN, October 11, 1979, pp. 246-250.

[88] TSN, October 12, 1979, p. 96.

[89] TSN, October 11, 1979, p. 134.

[90] Ibid., pp. 169 & 178.

[91] Exh. I.

[92] Castillo v. Sandiganbayan, we said that the act of "splitting" subject of COA Circular No. 76-41 need not be accomplished with malice or deliberate intent nor does it require proof of loss to the government.

[93] TSN, November 8, 1979, p. 79.

[94] Exhs. J & J-1.

[95] 180 SCRA 309, which allows heads of offices, specifically auditors like him, to rely to a reasonable extent on the good faith of their subordinates in processing documents for their approval.

[96] Fonacier, like Paragas, is from Pangasinan and they had been "together" since 1966 (TSN, October 18, 1979, pp. 5-6). When Paragas was transferred to the BHED from his post in Pangasinan, Fonacier was one of the two engineers swapped for those who were transferred from BHED to the engineering district in Pangasinan.

[97] *Medija v. Sandiganbayan*, p. 224, *supra*.

[98] *Balmadrid v. Sandiganbayan*, 210 SCRA 68, 72.

[99] This penalty was later increased to "imprisonment for not less than six years and one month nor more than fifteen years" by the amendment introduced by Sec. 3 of B.P. Blg. 195 which was approved into law on March 16, 1982.

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