

HONORATO MALIG AND ANTONIO LACSON.PETITIONERS, VS. SANDIGANBAYAN (SECOND DIVISION), AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 71712. April 15, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal from the Decision of the Sandiganbayan, dated June 26,1985, convicting herein petitioners-accused, Honorato Malig and Antonio Lacson, of violating Section 3(b) of the Anti-Graft & Corrupt Practices Act (Republic Act No. 3019, as amended), and sentencing them to suffer an indeterminate penalty of imprisonment ranging from three (3) years, as minimum, to six (6) years, as maximum; to suffer perpetual disqualification from public office; and to pay the costs.

The Amended Information, charging them with the offense, reads:

"That on or about the 15th and the 21st day of March 1983, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this honorable court, accused Honorato Malig and Antonio Lacson, both duly appointed Senior Technical Property Inspectors of the Commission on Audit for Region III and as such conduct verification and post inspection of government infrastructure projects, did then and there wilfully and unlawfully request Celso R. Halili, President and General Manager of Halrey Construction Inc: who had a contract with the Provincial Government of Bulacan for the construction of Bocaue-San Jose Road (Bagbaguin Section) thru his employee to give P20,000.00 in connection with said contract wherein said accused had to intervene under the law in their official capacity in violation of RA 3019."

The testimonial evidence has been aptly summarized by the Sandiganbayan:

"Testifying as first witness for the prosecution, Danilo Francisco y Radam, 39, declared that he is the foreman of the Halrey Construction, Inc., with office of Bagbaguin, Santa Maria, Bulacan. He recalled that on March 15, 1983, he reported for duty at their construction office and his tour of duty was from 8:00 o'clock in the morning up to 5:00 o'clock in the afternoon. At about 10:00 o'clock in the morning of that same day, while he was at the shop of Halrey Construction, somebody called and informed him that the construction secretary, one Emiliana Gerona, was calling for him. Responding to the call, he immediately proceeded to the office of the secretary who instructed him to accompany the two COA inspectors, accused Malig and Lacson, as they were going to conduct an inspection on the Bocaue-San Jose Road (Bagbaguin Section) project which had just been completed. Thereupon, he accompanied the two accused and boarded the car, a Toyota Corolla four-door, with Plate No. CCW-551, which they (accused) were using at the time. Lacson was driving the car and Malig was seated in front while he in turn was seated at the rear seat of the car. When they reached the beginning of the project, Malig told him that they were going to start with the measurement of the project. He (witness) suggested that the project be measured with a tape which he had brought with him. However, Malig replied that instead of using the tape, they will just measure it by using the odometer which they had attached in their car. He continued by saying that Dominador Nicolas, the construction supervisor, later followed them at the project site upon his instruction. He pointed to the two accused the beginning of the project and from there,

they rode on towards Bocaue, Bulacan, up to Bagbaguin Road which is the end of the project. After that, Malig told him that they were already through with the measurement and so they returned to the office of Halrey Construction. He and Dominador Nicolas alighted from the car at the construction office and then Malig, who was then beside Lacson in the car, called for him. He approached Malig in front of the right door of the car and the latter told him to inform his boss to prepare P20,000.00 so that the report will be finished (TSN, October 18, 1984, p. 15). Malig was referring to Celso Halili, the President and Manager of Halrey Construction. Malig also informed him that they will come back to their office before the Holy Week. After their conversation, he went to their office and told the secretary, Emiliana Gerona, to inform him as soon as their manager who was attending to another project, arrives from Iloilo.

"On March 21, 1983, at about 10:00 o'clock in the morning during their work breaktime, he again saw the two accused in front of their construction office near their car parked at the office gate. He approached them and the two accused inquired if he had already told his boss, Celso Halili, regarding the amount which they were asking (p. 16, Ibid.). He replied that his boss had not yet arrived from Iloilo and the two accused then boarded their car, pouting, as they left.

"On March 25, 1983, their Manager, Celso Halili, arrived from Iloilo. He talked to him in his office and related to him about the arrival of the two accused CO A inspectors on March 15 and 21, 1983, the inspection the two had conducted on the project, as well as the amount of P20,000.00 which they were asking. Halili did not make any comment relative to the amount the two had requested."

Then follows the testimony of Emiliana Geronaj' Agapito, 32 Secretary of the Halrey Construction, Inc., who testified to the following facts:

"xxx at about 10:00' clock in the morning of March 15, 1983 as she was performing her duties inside the construction office. two inspectors from the Commission on Audit, Region III. accused Honorato Malig and Antonio Lacson, arrived. The two inquired if their Manager, Celso Halili, was around because they were going to inspect and measure the San Jose-Bocaue Road project. Bagbaguin Section. She told them that Halili was not in the office at the time. as he was in Iloilo. Nevertheless, she told them that she will ask the foreman, Danilo Francisco, to accompany them to the project site. She then called up Danilo Francisco to come to the office and upon the latter's arrival, she told him to accompany the two accused COA inspectors to the site of the project. Francisco rode in the car with the two accused and proceeded to the project site. After the lapse of more or less 15 minutes, the three returned and she saw them conversing near the gate about three meters away from the office. Malig was then seated on the front right seat of the car while Lacson was behind the steering wheel and Francisco was standing outside. They conversed for about one minute, after which the two accused left in the car they were using at the time. Francisco went inside the office and asked her to inform him the moment their manager arrives because he was going to tell him something important about the project. On March 21, 1983, the two accused again came back at about 10:00 o'clock in the morning during merienda time. She saw them near the gate of the office talking for a while with Francisco, after which they left.

"Gerona claims she had known the two accused even before March 15, 1983 when the bridge project in Matictic Norzagaray, Bulacan, was under construction as she used to give them the representation expenses they usually ask from their manager, Celso Halili, during their inspection trips to the project site. She identified cash vouchers (Exhibits C.-C-1, C-2 and C-3) as well as the entries recorded in the journal Exhibits, D, D-1, D-2, E, E-1, F and F-1) showing the various amounts the accused received, to wit: (a) Cash voucher (Exhibit C) dated December 16, 1982 for representation expenses in the Matictic project for the amount of P25,000.00 with the annotation Malig/Lacson' (Exhibit C-4) at the back thereof; (b) Cash voucher (Exhibit C-1) for representation expenses for Matictic project dated August 18, 1982 for the amount of P5,000.00 with annotation at the back thereof "Eng. Malig & Co.' (Exhibit C-5); (c) Cash voucher (Exhibit C-3) dated July 21, 1982 for representation expenses for Matictic project for the amount of P2,000.00 with notation "c/o Engr. Malig (Exhibit C-1) at the back thereof; (d) Entry (Exhibit D-1) in the columnar pad (Exhibit-D) dated July 28, 1982 for representation expense STPI, Matictic project for the amount of P3,000.00; (e) Another entry (Exhibit

D-2) in Exhibit D corresponding to the date July 21, 1982 for the amount of P2,000.00 for representation expenses; (b) Another entry (Exhibit E-1) in the columnar pad (Exhibit E) corresponding to the month of August 1982 for 'COA representation expenses, Matictic' in the amount of P5,000.00; (g) Another entry (Exhibit F-1) in the columnar pad (Exhibit F) corresponding to the date December 16, 1982 for 'Cash-COA Region 3, San Fernando, Representation Expenses, Matictic' in the amount of P25,000.00. She stated that she personally gave the said amounts appearing in the above-mentioned cash vouchers to the persons whose names appear at the back thereof as well as the amounts reflected in the entries in the columnar pads."

Next is the declaration of Celso Halilij Reyes, 50, contractor, President of Halrey Construction, Inc., who stated:

"xxx he commenced the construction of the Bocaue-San Jose Road, Bagbaguin Section, as per their contract (Exhibit A) on November 2, 1982 by virtue of a Notice to Proceed (Exhibit G) dated October 29, 1982 which he received from the Office of the Provincial Engineer of Bulacan. As the work went on and before the project could be finished, he received a letter (Exhibit K) dated November 24, 1982 instructing him for the revision of the station limits on the project as stipulated in the contract. He then went to the Office of the Provincial Engineer and while there, the latter told him that the Provincial Governor had said that the end of the project was much better than the start of the project, hence, the Provincial Governor suggested that the 200 linear meters at the end be instead placed at the beginning of the project (TSN. December 6, 1984. p. 16). He received two blue print plants (Exhibits L and L-1) from the Provincial Engineer's Office in connection with said revision. In compliance with said instruction of the Provincial Governor and the Provincial Engineer, he called up his men and instructed them that the 200 meters be placed instead at the beginning of the project. In turn, his men followed his instruction and the construction of the project with the revised station limits was finished on February 16, 1983. He admitted that he had not seen the two accused, Malig and Lacson, even during the period that the project in question was still under construction. In fact, on March 15, 1983, he was then in Iloilo and only returned to his house in Bagbaguin, Sia. Maria, Bulacan, on March 25, 1983. On that same day, March 25, he was told by his foreman, Danilo Francisco, that the two accused had been asking P20,000.00 from him in connection with the Bocaue-San Jose Road project that their report thereon will be fixed (TSN, December 6, 1984, p. 23). Their request for the amount was made on March 15, 1983 after they made an inspection on the project. When this information was relayed to him by Francisco, he did not say anything about it. However, later, on March 29, 1983, he went to the Office of the Provincial Engineer in the Provincial Capitol of Bulacan because of the Post-Inspection Report (Exhibit B) which states that the project as undertaken was short of 200 linear meters and that the completion thereof was also delayed (TSN. p. 24. *ibid.*). He claimed that there was no truth to the report of accused that there was a shortage of 200 linear meters in the project and that the construction of the project had been delayed. At that time, he added, he had not yet been paid in full for the project as he had not yet collected his 10% retention fee (p. 25. *ibid.*). The retention fee was supposed to be released only after the post-inspection report has been submitted by the Commission on Audit, as the report itself will show whether the project had been completed in accordance with the stipulations of the contract or that all the requirements had been fully satisfied, for the payment thereof. He was supposed to collect a retention fee of P69,161.97 in connection with the project in question, but because the accused were asking from him the amount of P20,000.00, he inquired and consulted his fellow contractors and his lawyer on the matter. He was determined to file the complaint because he felt that what they have done was too much and they had been doing it oftentimes (p. 26, *ibid.*). He cited the bridge project in Matictic, Norzagaray, Bulacan, where he claimed the same accused had asked money from him and he gave them what they wanted (p. 27, *ibid.*). He knew very well that such act of giving was illegal but with his experience as a contractor, he knew that the accused will not sign the required papers unless he gave them money. Consequently, he filed the instant case because he felt that he has had enough (p. 23, *ibid.*). He identified the contract (Exhibit M) regarding the construction of the Matictic bridge project which he and the Provincial Governor of Bulacan entered into on April 16, 1982. He also recalled that on four different occasions during the construction of the Matictic bridge project, he gave the two accused money through his secretary, Mely Gerona. He further claimed that he has not secured any contract anymore after he filed the case on April 14, 1983 because the accused had told him that they would retaliate against him. In fact, he, along with six engineers in the Office of

the Provincial engineer of Bulacan. were charged for Diversion of Public Funds, although he stated the complaint filed against him and his co-accused by COA Chairman Francisco Tantuico was subsequently dismissed. He also recalled that before the trial of this case on October 17, 1984 started, and while waiting for the case to be called for trial outside the courtroom of this Court, the accused asked him to withdraw the case he had filed against them. The same request was also made to him by the accused during the hearing of the other case is Bulacan. during which time, they admitted that their Report on the project was wrong and that, actually the Bocaue-San Jose Road project was not short of 200 linear meters (p. 31. *ibid.*)."

On his behalf, petitioner-accused, Honorato Malign Carreon, 35, Senior Technical Property Inspector (STPI) of the Commission on Audit (COA), Region III, and a resident at St. Jude Village, San Fernando, Pampanga, testified:

"xxx he has been a Senior Technical Property Inspector of the Commission on Audit, Region III, since 1978. Among his duties were to review contracts as to its technical aspect and to conduct inspections on government infrastructure projects. He recalled that on March 15, 1983, he went to Sta. Maria, Bulacan, from their office at San Fernando, Pampanga, accompanied by accused Engineer Lacson, to inspect the road project at Bocaue-San Jose, Bagbaguin Section. His inspection was for the purpose of contract review to determine whether the quantity of construction materials involved in the project conforms to the submitted plans and specifications. His inspection was duly authorized by Regional Director Arturo Dadulfaza, as shown by the duly approved Personnel Locator Slip (Exhibit 12) dated March 15, 1983. From their office, they passed by the office of the contractor, Celso Halili, but was unable to talk to him as the latter was not around. He only talked to a woman employee whom he came to know later on as Zenaida Calma. Calma asked a driver to accompany them to the project site and when a construction driver came, they proceeded to the project site. He did not know the name of the driver since he did not ask his name as he was not interested. They used the car owned by Engineer Lacson. He denied having talked with Emiliana Gerona, the secretary of Halrey Construction, at the same office. They inspected the beginning to the end of the project for about fifteen minutes, after which, he and his companion, Engineer Lacson, brought the driver who had guided them back to the construction office and they left thereafter. He did not see Danilo Francisco on that same occasion when they made the inspection. On their way back to the COA regional office, they passed by the Provincial Auditor's Office of Bulacan situated at the Provincial Capitol of Malolos and stayed there for about ten minutes. They talked with the Provincial Auditor and found that there were some documents which, the latter had endorsed to the COA regional office. These were the certificate of completion and request for post inspection of the San Jose-Bocaue Road project, Bagbaguin Section, which papers were hand carried by them to the COA regional office.

"On March 21, 1983, he, Antonio Lacson and Gregorio Yamzon again returned to Bulacan to conduct a post-inspection of the San Jose-Bocaue Road project, Bagbaguin Section. The same inspection was authorized and approved by COA Regional Director Arturo D. Dadulfaza on March 21, 1983 as evidenced by the COA Personnel Locator Slip (Exhibit 7). They left the Regional office of the COA to conduct the inspection at the project site at about 1:00 o'clock of the same day. They measured the project as completed and found out that the project was short by 200 meters. Thereafter, they returned to their office and did not pass by any other place anymore. They prepared the post-inspection report (Exhibit 6-B) dated March 22, 1983 which he, Yamzon and Lacson submitted to their superior. He denied having had any occasion to talk with the contractor, Celso Halili, either in connection with the San Jose-Bocaue Road project or with the Matictic Bridge project. Neither had he any occasion to talk to Halili in connection with the case at bar or of having approached him (Halili) some time in October 1983 in the premises of the Court for the purpose of pleading to him for the withdrawal of the instant case filed Against him. He branded the instant charge of Halili as fabricated. He declared further that when the COA central office learned of the case filed against them, the said central office sent a team of inspectors to Bulacan for the purpose of determining whether administrative charges should be filed against them or whether legal assistance will be extended to them by their office relative to the charge filed against them. He learned later that as a result of the inspection conducted by the COA national office, COA Chairman Francisco Tantuico sustained their findings in their reports as shown by Decision No. 324

(Exhibit 4) dated October 20, 1983. They were not charged administratively in connection with the inspection reports they submitted but the COA national office sought the assistance of the Office of the Solicitor General to represent them in the case, as a result of which the said office filed a motion for reconsideration and reinvestigation.

xxx xxx xxx

"xxx He admitted having gone to the project site on March 15, 1983 to conduct a contract review and in order to see the actual as built condition of the project. He returned to the same project site on March 21, 1983 - to conduct a post-inspection for purposes of the requirement in the Office of the Provincial Auditor of a post-inspection report in its post-audit work as well as to verify whether the certificate of completion is correct and in accordance with the plans and specifications. They prepared their joint report dated March 22, 1983 for both their contract review conducted on March 15, 1983 and the post-inspection conducted on March 21, 1983. As of March 15, 1983, they found out that the quantity of materials supposedly used for the project were not totally placed thereon as they were some items that were not delivered. He did not know if the project had already been completed when they went there on March 15, 1983 since their inspection was only for contract review purposes. He admitted that it was upon their own initiative that they were assigned to undertake the contract review and post-inspection because their requests were approved by their Regional Director as shown by the two Personnel Locator Ships (Exhibits 7 and 12). Both locator ships, however, indicated that the purpose was for the inspection of the San Jose-Bocaue Road project (Bagbaguin Section) and not for contract review. He also admitted having inspected the Matictic Bridge project of the Halrey Construction and recalled that the said project was paid in two installments. As regards the Bocaue-San Jose Road project, he said that the project was paid only once and the same had been accepted by the Provincial Engineer and the Provincial Governor of Bulacan. There was no pre-audit made on the voucher for the amount paid on March 7, 1983 for the project such that at the time of their inspection, the project had already been fully paid. He said that payment could still be made even without the inspection report from the COA because the same report is needed only for purposes of post-audit. Thus, after a post-audit has been conducted, they have to make recommendation as to the amount of refunds to be made by the contractor. He also declared that the Provincial Engineer issued a certificate of completion on the San Jose-Bocaue Road project and he accepted the same as having been fully completed. As a result of the certificate of completion issued and the acceptance of the Provincial Engineer, the contractor was paid for the price under the contract. He admitted that their Inspection revealed deficiencies in the project such that the Chairman of the COA recommended the prosecution of the Provincial Engineer and others although the latter's case was dismissed. He did not seek the voucher for the amount paid for the project the time of their inspection and was not aware if the contractor has been paid for the contract price of the project. However, he assumed that the contractor had already been paid because, usually, after a certificate of completion has been accepted, the project should automatically be paid without necessity of pre-audit. He also did not see the Notice to Proceed (Exhibit G) during his inspection on March 15, 1983 which showed that the construction of the project was supposed to start on November 2, 1982 but he said that the same was no longer necessary because the commencement of the work was already stated in the contract. He indicated in the original plan (Exhibit L) by placing point 'A' on the start of the project and point 'B' at the end of the station limit 1+ 020. He said that when he measured the beginning up to the end of the project, it was only 820 meters and deficient by 200 meters. He further declared that once a project is accepted by the agency as complete, the 10% retention fee can already be collected by the contractor and a post-audit is no longer necessary for the contractor to collect the same even if the post-inspection report shows that there are defects or deficiencies in the project. He admitted that on the basis of their post-inspection report on the project, the COA made some disallowance on the contract price as shown by the computation in the voucher marked in evidence as Exhibit A-l.

"He knew for a fact that the implementing official for the contract (Exhibit A) signed by the Provincial Governor is the Provincial Engineer and that pursuant to the implementing rules and regulations of P.D. 1594 (Exhibit P), a change order can be made by the implementing official subject to the approval of the Provincial Governor. He further admitted that the inspection made by Gulmatico on the project was after the contractor,

Celso Halili, had filed a complaint against them and they only learned that the COA central office took action by sending a team of inspectors to the project site to determine whether administrative charges could be filed against them or whether legal assistance will extended to them."

For his part, petitioner-accused Antonio Lacsonj' Santos, 40. Technical Property Inspector (TPI) of the COA, Region III, residing at 215 Ventura St., Marisol, Angeles City, declared that:

"xxx he became the Technical Property Inspector of the COA, Region III. since April 1980. Among his duties were to conduct inspection and review of instructure projects. He recalled that at around 1:00 o'clock in the afternoon of March 15. 1983. they went to the project site in question to conduct the post-inspection. From the COA regional office, they went direct to the office of the contractor, Celso Halili, of Sta. Maria. Bulacan, purposely to ask for a companion to pinpoint to them the exact location of the project. Upon reaching the office of the contractor, a lady approached them and they introduced themselves to her. The lady then looked for someone who could accompany them and when a driver of the construction firm came, she instructed him to accompany them to the project site. He did not know the name of the lady he talked to at the time but he came to know later that she was Zenaida Calma. He demed having met Emiliana Gerona or Danilo Francisco on that same occasion when they went to the construction office of Halili. He only came to know the said persons during the preliminary investigation of the case in Bulacan. He also had no occasion to talk to the man who accompanied them to the project site and neither did he ask him his name as he was not interested. From the office of the contractor, they proceeded to the project site with accused Malig and the driver. They verified and passed through the project for about 10 to 16 minutes after which they went back and dropped the driver who accompanied them at the construction office. Then they returned to their regional office passing by the Office of the Provincial Auditor of Bulacan where they learned of a certain indorsement on the certificate of completion of the project in question that they were inspecting. They were asked by the Provincial Auditor to handcarry the said documents and upon reaching the regional office, they had the same received by the receiving section of their office and they continued with their evaluation of the project.

In the morning of March 21, 1983, he and Malig reported for duty at the regional office and took their lunch in front of their office. At about 1:00 o'clock in the afternoon of that same day, he and Malig returned to the project which had already been accepted as completed to conduct a post-inspection upon the request of the Provincial Auditor of Bulacan. They proceeded directly to the project site and upon arrival thereat, they started measuring the total length of the project with a measuring tape, after which they returned to their office. As a result of their inspection on March 15 and 21, 1983, they submitted a post-inspection report (Exhibit 6-B) to their superior. Consequently, a case of technical malversation was filed against the contractor and the provincial engineers. Insofar as the complaint for anti-graft filed against him and Malig, they requested for legal assistance from the COA central office and the COA Chairman asked the assistance of the Office of the Solicitor General regarding the case."

From all the foregoing, the following salient points emerge:

- On October 29, 1982, after public bidding, a contract was entered into between the Provincial Governor of Bulacan and Halrey Construction, Inc., represented by its President, Celso Halili, for the construction of the Bocaue-San Jose Road (Bagbaguin Section) with a total length of 1,020 lineal meters for the total amount of P963.850.00. The contract provided for a period of completion of 120 calendar days from date of award, and liquidated damages of no less than 20% of the total agreed contract price in case of failure to comply with the terms and conditions of the contract, and a ten (10%) percent retention fee.
- The Notice to Proceed was issued on the same date, the work to commence from November 2, 1982 and the "Contract Time" to begin from the same date (Exhibit "0-1"). That Notice was approved by the Provincial Governor upon recommendation of the Provincial Engineer, Eduardo M. Isidro, Jr. (Exhibit "G").
- On November 24, 1982, the Provincial Engineer addressed a letter to Halrey Construction changing the

"station limits" in the contract by eliminating the end portion of 200 meters, more or less, and transferring it to the starting point. "No change in length is involved, the original quantities and total cost of the project will remain in their original amount" (Exhibit "K"). Petitioners-accused maintain, however, that they knew nothing of said change at the time they inspected the project on March 15 and 21, 1983 because it was not included in the documentation furnished them.

- On March 3, 1983, Celso R. Halili, President of Halrey Construction wrote the Provincial Engineer stating that the project had been completed and requesting for the first and final payment (Exhibit "I").

- On March 8, 1983, a Certificate of 100% completion as per plans and specifications based on the Statement of Work Accomplished as of February 16, 1983 (Exhibits "H" & "9"), was made by the Provincial Engineer, among others, and approved by the Provincial Governor (Exhibits "J" & "10"). The Statement of Work Accomplished (Exhibits "H" & "9") clearly stated a length of 1,020 meters (1.2 kms).

- On March 7, 1983, Disbursement Voucher No. 11-199 was prepared in the amount of P834,212.18, net of P96,385.00 or the ten (10%) percent retention (Exhibit "A-I"). Check No. 047164, dated March 10, 1983, was thereafter issued in payment.

- On March 15, 1983, allegedly unaware of the completion of the project, petitioners-accused went to the contractor's office in Bulacan around 10:00 in the morning. As narrated by prosecution witness, Danilo Francisco, it was then that they asked for the amount of P20,000.00. Petitioners stoutly deny it contending that they saw neither Danilo Francisco nor Emiliana Gerona thereat that morning but merely talked to one Zenaida Calma.

- On March 21, 1983, the versions of what transpired also differ. The prosecution maintains that petitioners went to the contractor's office again at 10:00 in the morning and asked Danilo Francisco whether he had told his boss of the amount they were asking for. When told that the latter had not yet arrived from the province, petitioners left "pouting." Petitioners deny having gone to complainant-contractor's office that day and contend, instead, that they went direct to the project site at 1:00 P.M., together with Engineer Yamzon and took measurements of the project.

- The day after, or on March 22, 1983, Petitioners-accused together with Engineer Yamzon submitted a Contract Review Report and a Contract Review Work Sheet, which, aside from data given, stated that "the stipulated contract amount was found to be excessive." Jointly submitted was a Post Inspection Report stating that only 820 lineal meters were completed out of the entire contractual length of 1,020 lineal meters, or a shortage of 200 meters, and recommending payment of only P691,619.72 on account of the contractual deficiency as well as a penalty of P192,770.00 for the delay in the completion of the project leaving a balance of only P498,849.72 due complainant contractor out of the total contract price of P963,850.00.

- On April 14, 1983, Celso R. Halili, President of Halrey Construction Inc., fed up by the actuations of petitioners, which were just "too much" for him, filed an Anti-Graft case against petitioners and Yamzon. The case against the latter, however, was dismissed for insufficiency of evidence.

- On April 19, 1983, Voucher No. 11-199 covering the payment to the contractor was post-audited by the Provincial Auditor. On the basis of the Post Inspection Report submitted by petitioners, the Auditor made a total disallowance of P373,944.75 therefrom.

It appears that in a letter-complaint of former COA Chairman Francisco S. Tantuico, Jr., dated July 27, 1983, to former Tanodbayan Bernardo Fernandez, the former charged the Provincial Engineer, complainant-contractor Celso R. Halili, and four other provincial officials of Malolos, Bulacan, having to do with the road project, with violation of the Anti-Graft Law and Article 220 of the Revised Penal Code (Exhibit "2"). The basis for the charge was the Post Inspection Report dated March 22, 1983 submitted by petitioners-accused and Yamzon (Exhibits "B" & "6-B"), and another Inspection Report, dated July 20, 1983 by Technical Property Inspectors Gulmatico, Jr.,

and Lasmarinas (Gulmatico Report), both of whom are from the COA Technical Service Office (Exhibit "3") who were sent to inspect the project after the complainant-contractor had filed the anti-graft case against petitioners. The Gulmatico Report stated that only 820.19 lineal meters were completed instead of 1,020 lineal meters as contracted for and as alleged in the contractor's complaint before the Sandiganbayan; and that "the remaining length of 201.70 meters was diverted to Paso Road or the road to San Jose, which was constructed not in accordance with original approved plans and specifications. Of note is the fact that the Report did not consider the "diverted" portion as part of the road project, hence the finding of shortage.

In a Resolution, dated September 4, 1984, the Tanodbayan dismissed the Tantuico Complaint for lack of prima facie showing of violation of the Anti-Graft Act since it found, among others, that:

"xxx The contract, therefore, is not disadvantageous to the Government. Neither could it be said that damages to the Province of Bulacan resulted because of the said contract. On the contrary, respondent Halili directly sustained damage and prejudice due to the erroneous Post Inspection Report made by the TPI Engineers, Malig, Yamzon and Lacson, whose report resulted to the disallowance of P373,944.75 by the Provincial Auditor of Bulacan, in spite of the fact that the total 1,020 lineal meters of concreted road subject of the contract was fully constructed and completed in accordance with the terms, specifications and conditions agreed upon by the contracting parties, xxx"

"xxx The revision was made upon the instruction of the Provincial Governor and conformed to by respondent Halili. Had Engineers Malig, Yamzon' and Lacson inspected the project in question thoroughly and in good faith without any ulterior motive, they could have arrived at a correct conclusion and report to the Honorable COA Chairman Francisco Tantuico, Jr.

"xxx What was changed, xxx was the starting point of the construction of the road which benefited the province of Bulacan because the portion of the road supposed to be covered by the 200 L.M. in question could still be economically maintained with little expense. It was also satisfactorily shown that the total 1.020 lineal meters of the concreted road subject of the contract was completed contrary to the allegation that only 820 L.M. was completed, xxx."

It further appears that on January 29, 1985, while trial before the Sandiganbayan was in progress and almost two (2) years after the completion of the project, COA Senior Technical Property Inspectors De la Cruz, Pineda and Dimalanta submitted still another Report to the COA Regional Director, Region III (the De la Cruz Report) of an ocular inspection of the project conducted by them on January 14, 1985, wherein they concluded inter alia:

"5. Using the specifications required for the Bagbaguin Section. it is very obvious that the constructed road at Paso Section, although meeting the required length, is still deficient in width and shoulder. xxx"

and that there were

"deficiencies in the computations of quantities of items involved with an equivalent amount of P80,792.28, exclusive of the 2096 of the total contract price as penalty for unsatisfactory completion of the project as stipulated in the contract."

This time, the required length was deemed to have been met but other deficiencies were unearthed.

After trial, and as heretofore stated, the Sandiganbayan rendered a guilty verdict.

In this appeal, petitioners aver that:

- The Sandiganbayan erred in concluding that the Post- inspection report prepared by the accused and Gregorio B. Yamzon were done in bad faith and precipitated by the failure of the complainant (Celso Halili) to give the amount of P20,000.00 which they demanded from the complainant for favorable post-inspection report.

- The Sandiganbayan erred in ruling that the said Post- inspection report in question is erroneous which circumstance is purportedly evidence of guilt of the accused, notwithstanding the fact that the findings of the accused had been sustained by the COA.
- The Sandiganbayan erred in admitting in evidence exhibits C to C-7, D, D-1, D-2, E, E-1, F, F-1, G, K, despite their inadmissibility for being purely hearsay, self-serving and immaterial.
- The Sandiganbayan erred in giving weight to the testimonies of the prosecution witnesses which are likewise purely hearsay, self- serving and incredible.
- The Sandiganbayan erred in convicting the accused despite the lack of evidence to establish their guilt beyond reasonable doubt.

In a Manifestation and Motion filed on January 2, 1986, the Office of the Solicitor General, then headed by Hon. Estelito Mendoza, disclosed that upon request for legal assistance of petitioners, his office appeared as counsel on their behalf when the case was before the Tanodbayan for preliminary investigation and that they asserted, after a review of the records, that petitioners were innocent of the charges against them; that the Tanodbayan, however, believed otherwise and filed the corresponding Information against petitioners before the Sandiganbayan; and that it maintains its position that petitioners' guilt has not been proven beyond reasonable doubt.

That is now the question before the Court.

The former Solicitor General maintains that the lone testimony of prosecution witness, Danilo Francisco, who testified that petitioners-accused told him to inform his employer, Celso Halili, to give them P20,000.00 for their investigation report on the project is insufficient to convict, for being inconsistent with human experience and showing irreconcilable contradiction.

We disagree. Notwithstanding petitioners' denials, Danilo Francisco was not a complete stranger to them. Danilo knew them as early as the Matictic Bridge Project awarded to the same already Construction in 1981. The secretary of the construction firm, Emiliana Gerona, did not have to introduce Danilo to petitioners. She just asked the latter to accompany them to the project. That petitioners choose to ask Danilo, instead of Emiliana, to relay their demand to complainant-contractor is neither strange since Danilo was also an employee of the construction firm.

It can hardly be claimed that good faith attended the actuations of petitioners-accused in the preparation of their Post Inspection Report, based on the following considerations: 1) petitioners' first trip to the project site on March 15, 1983 was ostensibly for "inspection" and, on second thought, for "contract review" but in reality, to demand for P20,000.00. Thus, a) the Personnel Locator Slip authorizing them to make the "inspection" on March 15, 1983 (Exhibit "12") never mentioned "contract review" as the purpose but merely "to conduct inspection in connection with the construction of Bocaue-San Jose Road (Bagbaguin Section) at Sta. Maria, Bulacan." And as petitioners themselves admit, the assignment was secured at their instance; b) the project having been completed on February 16, 1983. it was too late to conduct a "contract review;" c) a contract review would not have necessitated an ocular inspection of the project. In fact, their Contract Review Report merely stated that "the stipulated contract amount was excessive;" d) that the so-called "contract review" was merely a ploy to make the trip official is shown by the fact that their "inspection" on March 15 was merely to drive from the beginning to the end of the project. They asked no questions from Danilo Francisco and they got no answers. They saw nothing, or they chose not to see, not even the change in the end and starting points, which could not but have been visible to the naked eye, if they had made an honest-to-goodness inspection. They made no measurements whatsoever despite the suggestion of Danilo Francisco that a tape be used, petitioners opting instead to rely merely on the "odometer" in their car; e) it was only on March 22, 1983 that petitioners submitted their Contract Review Report jointly with

their Post Inspection Report after having been informed by Danilo Francisco on March 21 that his boss had not arrived from the province and inferentially, that the amount they were asking for was not forthcoming.

2) Petitioners' second trip in the morning of March 21, 1983 to complainant-contractors office was purposely to inquire about the answer to their request. Although petitioners deny having gone there and contend, instead, that they went direct to the project site at 1:00 P.M. that day in the company of Engineer Yamzon, presenting a Personnel Locator Slip (Exhibit "7") to prove the same, Danilo Francisco and Emiliana Gerona emphatically stated that petitioners were in their office at 10:00 A.M. of that day inquiring. Evidently, failing to get a favorable reply they pushed through with their second inspection that afternoon and with their adverse Post-Inspection Report the next day.

3) The Post-Inspection Report (Exhibit "B" & "6-B") lacks basis in fact, a) It reported a delay in the completion of the project when, actually, there was none. In fact, the project was completed ahead of time. Petitioners relied merely on the contract provision that the date of award was October 12, 1982 when on the face of the contract it clearly appears that it was signed only on October 29, 1982. Petitioners' insistence to reckon the contract time from October 12, 1982 betrays their determination to disregard facts that contradict their finding of delay. Even granting that they were not aware of the Notice to Proceed (Exhibit "G") indicating that the contract starts on November 2, 1982, since the project was completed on February 16, 1983, the period of completion was earlier than the 120 days stipulated in the contract reckoned from October 29, 1982, the date it was perfected.

b) The Report concluded that there was a shortage in the completed road project by approximately 200 lineal meters. But there was no such shortage. There was an authorized change in the station limits in that the 200 lineal meters at the end of the section to be repaired was transferred and added to the starting point of the project, without involving any change in the length of the project nor in the original quantities and total cost of the project. This is evident from the letter dated November 24, 1982 of the Provincial Engineer of Bulacan to Halrey Construction (Exhibit "K").

Petitioners claim, however, that they were unaware of such revision. The then Solicitor General's Office avers that the same was communicated only to the COA Central Office and not to its Regional office. Even granting those contentions, it is obvious that had petitioners made an honest-to-goodness inspection they could not but have noticed the change and could have asked about it, since the project was just one single stretch of concrete road within the same Barangay Bagbaguin.

c) Petitioners' Post Inspection Report also included a finding that the shoulder of the road was not completed and that the concrete pavement was defective, with no particulars mentioned. And yet, as admitted later in the De la Cruz Report of January 29, 1985, "no detail on the pavement and shoulder width were drawn on the plan" (Exhibit "11"). It is also significant that said Report admitted that the required length had been complied with and in open Court De la Cruz testified that the team saw the diverted portion of 200 lineal meters which should be considered as part of the project (t.s.n., February 18, 1985, pp. 15-16). Moreover, the so-called cost deficiency was estimated only at P80,792.28 exclusive of the 20% penalty.

The finding of Chairman Tantuico, Jr. in his 6th Indorsement (Decision No. 324) dated October 20, 1983 (Exhibit "4" & "O") that the change in plans was an attempt "in extremis to defeat the disallowance made by the Provincial Auditor of Bulacan is negated by the fact that the change order from the Provincial Engineer antedated the disallowance since the change was made as far back as November 24, 1982. And if, as claimed, the Provincial Engineer was not authorized to make that change, it could not have been the fault of complainant-contractor who merely followed instructions.

As concluded by the Tanodbayan "had they (petitioners) inspected the project in question thoroughly and in good

faith without any ulterior motive they could have arrived at a correct conclusion and report to the Honorable COA Chairman, Francisco Tantuico, Jr."

It is further averred that the vouchers and journals testified to and identified by witness Emiliana Gerona (Exhibits "C", "C-1" to "C-3"; Exhibits "D", "E," and "F") are hearsay and inadmissible in evidence in that they do not bear the signatures of petitioners acknowledging receipt of the money as representation expenses for the Matictic Bridge Project of complainant contractor. As testified to, however, by Emiliana Gerona, petitioners refused to sign, which, of course, was but natural considering its incriminatory implications.

That petitioner Lacson was assigned in Iba, Zambales, from November 1982 to January 1983, (t.s.n., March 29, 1985, p. 28; Exhibit "13") would not actually render it impossible for him to have joined his co-petitioner Malig in soliciting and collecting representation expenses from the contractor during that period considering the ease of travel to and from provinces specially if one has his own means of transportation as, apparently, petitioner Lacson had in this case.

While it may be that pursuant to Section 48, Rule 130 of the Rules of Court "evidence that one did or omitted to do a certain thing at one time is not admissible to prove that he did or omitted to do the same or similar thing at another time," the same Rule also provides that "it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage and the like." Emiliana Gerona's credible testimony regarding the amounts petitioners received from the Matictic project sufficiently establishes petitioners "intent" and/or "habit" of demanding and receiving money from the contractor-complainant, such that the latter, in exasperation, felt that enough was enough, to the prejudice of his future contracts.

In the final analysis, the errors assigned center on the issue of credibility of witnesses in respect of which we have consistently held that Appellate Courts will generally not disturb the findings of the Trial Court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value, that if considered, might affect the result of the case (People vs. Garcia, 89 SCRA 440). As the Sandiganbayan had concluded:

"We have carefully examined in detail the evidence adduced by both parties in the trial of the case under consideration, but WE failed to uncover any valid and cogent reason to suspect that the institution of this case has been improperly motivated. While it is true that the accused endeavored to question the sincerity and honesty of the testimonies of the prosecution witnesses, the reason ventured by the accused in an effort to cash serious doubts on the credibility of said witnesses, is insufficient to overcome the probable value or weight of their testimonies which are properly confirmed by the documentary and circumstantial evidence adduced by the prosecution in this case. It is hard to believe that the complainant who is a contractor would jeopardize and prejudice his business interests and risk being blacklisted in government infrastructure projects, knowing that with the institution of the case, he may find it no longer advisable nor profitable to continue in his construction ventures. It is hardly probable that the complainant would weave out of the blue a serious accusation just to retaliate and take revenge on the accused.

xxx xxx xxx

"It can be gainsaid, therefore, that a proper appreciation and reasonable consideration of the aforesaid testimonies of the prosecution witnesses, properly confirmed and sustained by documentary and circumstantial evidence flatly reject a favorable consideration of the claim of accused that the evidence presented against them were fabricated."

All told, the testimonial, documentary and circumstantial evidence point to the guilt of petitioners-accused beyond reasonable doubt.

WHEREFORE, the judgment appealed from is hereby AFFIRMED. Costs against petitioners Honorato Malig and Antonio Lacson.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Cortes, and Griño-Aquino, JJ., concur.

Gutierrez, Jr., J., joins in Justice Sarmientos' dissent.

Sarmiento, J., dissents in a separate opinion.

DISSENTING:

SARMIENTO, J.,

I am not convinced, based on the evidence of record, that the guilt of the petitioners has been shown beyond reasonable doubt. I therefore vote for acquittal.

The petitioners are charged under paragraph (b), of Section 3, of Republic Act No. 3019, as follows:

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any person, in connection with any contract or transaction between the Government and any other party wherein the public officer in his official capacity has to intervene under the law.

It is the gravamen of the offense that the accused should have "[d]irectly or indirectly requested] or receive[ed]" some consideration in connection with a government project in which the accused public officer "in his official capacity has to intervene under the law."

I regret that I see nothing on record that would evidence, beyond reasonable doubt, that the petitioners have indeed directly or indirectly requested or received the sum of P20,000.00 they had allegedly solicited. The circumstances the majority unveil that would allegedly point to the accused's guilt are not, in my view, sufficient to support a conviction.

The petitioners' trip to the project site on March 15, 1983 can not, by itself, be said to have been for the purpose of making the demand now complained of. Such a trip is not necessarily incompatible with their claim that they went to the site either for inspection or contract review. It is plain speculation to say that an inspection being improper, and a contract review being "too late," they would not have gone there except to demand grease money from the contractor. It is suspicious behavior, but still, it is no evidence that they in fact solicited a bribe.

Neither does the fact that they repaired thereto on March 21, 1983 establish such a charge. To be sure, there are testimonies to the effect that on both occasions, they did ask for P-20,000.00, that is the say-so of the contractor's witnesses. I do not find such testimonies sufficient to prove the fact of "demand" within the meaning of the Anti-Graft statute.

The Post-Inspection Report subsequently submitted by the petitioners were erroneous, even negligent, but they were nothing more. I do not see how it can furnish proof that it was the result of a deliberate effort by them to penalize the contractor for failing to come across with a kickback. For purposes of this case, I find the correlation unclear.

The petitioners' claim that there was a delay in the completion of the project mentioned by the petitioners in their Post-Inspection Report, a claim the majority would likewise reject, can withstand criticism. It is not necessarily at war with the facts. The contract is dated October 12, 1982 and 120 days therefrom is February 10, 1983. While it

would later turn out that the contract period should have been reckoned from November 2, 1982 pursuant to the Provincial Engineer's instructions, it is the petitioners' contention, a contention never seriously disputed, that they were never notified of any change of plans. My brethren would fault them nevertheless ("had petitioners made an honest-to-goodness inspection they could have asked about it xxx") but they would leave the vital inquiry unanswered: Is this evidence of an infraction of the Anti-Graft law? As I have noted, the petitioners are vulnerable to charges of negligence, but a conviction for corrupt practices is quite another question.

Prescinding from the Post-Inspection Report, what remains is the testimony of Danilo Francisco, foreman of the contractor, who insists that on March 15, 1983, the petitioners instructed him to "inform-his boss to prepare P20,000.00." I find that this is the only evidence that would directly link the petitioners to the offense charged. The petitioners, however, categorically deny having given such an instruction. I am not saying that mere disclaimers are enough to absolve one from liability, but it is equally true that the onus probandi lies upon him who alleges. I find the witness Francisco's bare testimony, without more, hardly sufficient to justify putting the petitioners in jail.

In ordinary civil cases that require mere preponderance of evidence, perhaps the majority's inferences would hold water, but I do not believe that they are enough for purposes of this petition, and of prosecutions of criminal cases in general that require evidence beyond reasonable doubt.

The majority decision states that there is evidence that the petitioners had, in the past, exacted similar bribe money from the same contractor in connection with other projects. Certainly, that is another case. But it is not proof that the petitioners are, ergo, guilty of this particular accusation, in this particular case. *Res inter alios acta*.

The majority would say that it is evidence of "intent" or "habit" pursuant to Section 48, of Rule 130, of the Rules of Court. But the question that remains is: Is it evidence of "guilt?"

In fine, I find the circumstances as narrated by the Sandiganbayan to be not inconsistent with innocence. At most, I entertain a reasonable doubt about the petitioners' guilt. On such a doubt alone, I vote for their acquittal.

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