

**ROGELIO ALVIZO, FLORITO MONTECILLO, POMPEYO ALMAGRO
AND CATALINO MAGNO, JR., PETITIONERS, VS. THE HONORABLE
SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. Nos. 98494-98692. July 17, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us are the consolidated petitions for review on certiorari under Rule 45 of the Rules of Court filed by accused Rogelio Alvizo, Florito Montecillo, Pompeyo Almagro, Catalino Magno, Jr., Efren Coyoca, Oscar Belcina, Harvey Ruiz, Edgar Osmeña, Guilberto Hermosa, Aniceto Arriola, Santos Cabusas, Sofronio Mag-uyon, Rafael Rabaya, Jr., Nestor Rabaya and Joselito Genson which seek to annul the Decision dated October 24, 1990 of the Sandiganbayan[1] in Criminal Cases Nos. 1143-1341 finding them guilty on different counts of violation of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and the Resolution[2] dated April 15, 1991 denying their respective motions for reconsideration.

The factual background of the consolidated petitions are as follows:

Sometime in 1978, a team from the Commission on Audit (COA) was organized by Sofronio Flores, Jr., the COA Region VII Director, to verify the alleged issuances of fake Letters of Advice of Allotments (LAAs) and Sub-Advices of Cash Disbursement Ceilings (SACDCs) during the period of 1976-1978 in various Highway Engineering Districts (HEDs) of Region VII. The special audit team was composed of auditors Victoria C. Quejada and Ruth Paredes. Then President Marcos also created a Special Cabinet Committee composed of the heads of the COA, Ministry of Justice, Office of the Budget and Management, Bureau of Treasury and the National Bureau of Investigation to investigate the fund anomalies in Region VII. This Special Cabinet Committee created a Special Task Force made up of various teams, among others, Team II, headed by Supervising Agent Amado de Coco to cover the Cebu 2[nd] HED. The task force worked with the Audit team and retrieved documents and records from the Regional Office and the Cebu 2[nd] HED. The Audit team found out that fake LAAs and SACDCs were issued in the year 1977 leading to irregular disbursements of public funds for the payment of "ghost" projects.

The investigations resulted in the filing of 397 criminal cases with the Sandiganbayan charging certain officials and employees of the government as well as private contractors with violation of the Anti-Graft and Corrupt Practices Act.

In the 198 cases docketed as Criminal Cases Nos. 5585-5782, the accused were officials and employees of Central Office of the then Ministry of Public Highways, Manila (MPH for brevity), now Department of Public Works and Highways. They were all acquitted by the Sandiganbayan for failure of the prosecution to prove their guilt beyond reasonable doubt.[3]

In the 199 cases docketed as Criminal Cases Nos. 1143-1341, subject-matter of herein petitions, the following officials and employees of the Cebu 2[nd] HED were charged: Manuel de Veyra (Regional Director), Rolando

Mangubat (Regional Accountant), Delia Preagido (Regional Accountant III), Santos Cabusas (District Property Custodian), Sofronio Mag-uyon (District Accountant), Adventor Fernandez (Highway District Engineer), Jose Genson (Highway District Engineer), Domingo Rayos (Highway District Engineer), Rafael Rabaya, Jr. (Assistant Highway District Engineer), Godofredo Lagura (Assistant Highway District Engineer), Nestor Rabaya (Material Testing Engineer), Oscar Belcina, Sr. (Civil Engineer), Rogelio Alvizo, (Civil Engineer), Florito Montecillo (Supervising Civil Engineer I), Catalino Magno, Jr. (Supervising Civil Engineer), Perseverando Licen (Civil Engineer), Pompeo Almagro, (Civil Engineer), Efren Coyoca (Auditor), Harvey Ruiz (Auditor), Edgar Osmeña (Auditor), Fe delos Reyes (Auditing Examiner), Guilberto Hermosa, Aniceto Arriola and Graciano Navales, Jr. (COA Auditing Aides); together with private contractors/suppliers Rufino Nuñez, Antolin Jariol, Erasmo Gabison, Feliciano Echavez, Joselito Genson and Pablo Guinocor.

The 199 Informations are identically worded, except as to names of the persons charged, dates of the commission, amounts defrauded, and supplies/materials involved. We adopt the same format used by the Sandiganbayan in its decision by reproducing only the Information filed in Criminal Case No. 1143, leaving blank and unfilled the proper spaces corresponding to the above-mentioned particulars, thus:

That in, about and during the period from [period specified] in the City and Province of Cebu, within the jurisdiction of this Honorable SANDIGANBAYAN, the accused [name][4] all public officers and employees in the Ministry of Public Highways and Commission on Audit, Republic of the Philippines, conspiring, confederating, conniving and cooperating with each other, and conspiracy, confederation, connivance and cooperation with [name][5] a private contractor for the supply of materials, with manifest partiality, evident bad faith and/or inexcusable negligence in the discharge and performance of their official and administrative functions, did then and there unlawfully and feloniously cause undue injury, loss and prejudice to the Government of the Philippines by causing, allowing, approving and receiving the illegal and unauthorized disbursement and expenditure of public funds, out of the National Treasury, in the amount of x x x x x Philippine Currency, thru General Voucher No. x x x x x and charged against spurious and fake 'Letter of Advice of Allotment' (LAA) and fake 'Advice of Cash Disbursement Ceiling' (ACDC); supported by simulated and falsified public bidding proposals, abstract of sealed quotations, Requisitions, Purchase Order, Delivery Receipts, Inspection of Reports and Tally Sheets thus making it appear (1) that said expenditures and disbursements were legally funded out of authorized budgetary appropriations of the Ministry of Public Highways; (2) that the accounting and auditing rules and requirements on public biddings in relation to government purchases of equipment supplies and materials were complied with; (3) that a valid purchase order was prepared and approved; and (4) that ...worth ... were needed, ordered, delivered, receipted, inspected and consequently, paid for - when in truth and in fact, as all the aforementioned accused very well knew, that such were all false and falsified as same were prepared to merely give semblances of regularity of the transactions and as designed means to pursue and cover-up the fraud; and finally, upon receipt of the aforesaid amount the accused misappropriated, converted and misapplied the same for their own personal benefit, uses and gain thus, causing injury to the government in the aforesaid amount of ...

CONTRARY TO LAW.[6]

The following tabulation specifies the data corresponding to the particulars alleged in each of the Information under which the petitioners are charged:

Crim. Case

Date of

Amount

GV[7]

Treasury

Material

No.

commission

No.

Check No.

1143

Dec. 1976 - Feb. 23, 1977

25,220.00

288

2400749

Aggregate base course

1144

Dec.-Feb. 28, 1977

38,446.92

145

959604

-do-

1145

-do-

47,530.00

261

240072

-do-

1146

-do-

27,645.00

139

959598

-do-

1147

Nov. 1976 - Feb. 1977

25,220.00

134

959592

-do-

1148

Dec. 1976-Feb. 28, 1977

40,123.08

138

959597

-do-

1149

Nov. 1976-Feb. 1977

47,530.00

133

959591

-do-

1150

Nov. - Feb.28, 1977

38,446.92

105

959563

-do-

1151

Nov. 1976 - Jan. 1977

40,123.00

77

959535

-do-

1152

Nov. 1976 -Feb. 1977

27,645.00

76

959534

-do-

1153

Feb. 28, 1977

37,927.81

71

959529

-do-

1154

Dec. - Jan. 1977

43,527.00

38

959495

-do-

1155

Nov. - Feb. 28, 1977

26,645.00

35

959492

-do-

1156

Nov. - Feb. 10, 1977

37,870.74

30

959487

-do-

1157

Nov. - Jan. 30, 1977

26,675.00

18

959475

-do-

1158

Nov. - Feb. 28, 1977

46,075.00

15

959472

-do-

1159

Nov. - Feb. 1977

40,699.26

08

959465

-do-

1160

Sept. 1977-Jan. 1978

40,740.00

1773

4217072

Bituminous concrete Surface Course

1161

Oct. 1976 - Jan. 1977

38,800.00

1769

4217068

Bituminous concrete surface course

1162

Sept. - Nov.30, 1977

38,800.00

1682

4216981

-do-

1163

Aug. - Nov. 1977

38,800.00

1556

4216480

-do-

1164

Aug.-Nov. 15, 1977

38,800.00

1497

4216421

-do-

1165

Aug.-Oct. 30, 1977

38,800.00

1397

2887321

-do-

1166

July-Oct. 15, 1977

38,800.00

1384

2887278

-do-

1167

July - Sept. 30, 1977

38,800.00

1286

2887208

-do-

1168

July - Sept. 30, 1977

38,800.00

1266

2887188

-do-

1169

Aug. - Nov. 1977

33,465.00

1481

4216405

Aggregate base course

1170

July - Oct. 1977

30,555.00

1362

2887286

-do-

1171

July - Sept. 30, 1977

29,100.00

1241

2887163

-do-

1172

Aug. - Nov. 1977

48,015.00

1462

4216386

-do-

1173

Aug.- Oct. 30, 1977

39,900.37

1402

2887326

Bituminous concrete surface course

1174

Aug.-Nov. 1977

48,132.18

1401

2887325

-do-

1175

Aug.-Oct. 30, 1977

48,158.56

1400

2887324

-do-

1176

-do-

48,301.34

1399

2887323

-do-

1177

Aug-Sept. 1977

48,253.23

1398

2887322

-do-

1178

July - Oct. 1977

47,118.19

1380

2887304

-do-

1179

-do-

48,364.59

1361

2887285

-do-

1180

July-Oct. 1977

43,650.00

1360

2887284

Aggregate base course

1181

-do-

32,010.00

1358

2887282

-do-

1182

Sept.-Nov. 15, 1977

29,100.00

1357

2887281

-do-

1183

July-Oct. 1977

48,283.40

1355

2887279

Bituminous concrete surface course

1184

July-Oct. 1977

43,650.00

1353

2887277

Aggregate base course

1185

-do-

48,384.13

1343

2887267

Bituminous concrete surface course

1186

-do-

48,409.69

1342

2887266

-do-

1187

-do-

13,849.66

1288

2887210

Aggregate base course

1188

June - Nov. 30, 1977

43,768.34

1287

2887209

-do-

1189

July - Sept. 1977

32,010.00

1242

2887164

-do-

1190

-do-

48,257.50

1237

2887159

-do-

1191

Aug. - Sept. 1977

24,492.50

1236

2887158

-do-

1192

June - Aug. 15, 1977

29,100.00

1233

2887155

-do-

1193

June - Sept. 30, 1977

180.00

1110

2886407

-do-

1194

May - Aug. 15, 1977

29,100.00

1070

2886267

-do-

1195

-do-

29,100.00

997

2886294

-do-

1196

April - June 1977

29,100.00

756

2886051

-do-

1197

Jan.-April 1977

29,100.00

462

2400925

-do-

1198

-do-

27,465.43

398

2400860

-do-

1199

-do-

24,390.77

386

2400847

-do-

1200

-do-

29,100.00

345

2400806

-do-

1201

Jan.-Mar. 1977

28,247.97

309

2400770

-do-

1202

Sept.-Dec. 30, 1977

47,294.29

1607

4216906

-do-

1203

Aug.-Nov. 30, 1977

48,257.50

1461

4216385

-do-

1204

July-Oct. 30, 1977

30,433.75

1379

2887303

-do-

1205

-do-

42,316.25

1352

2887276

-do-

1206

-do-

39,285.00

1268

2887190

-do-

1207

-do-

48,015.00

1239

2887161

-do-

1208

Oct. 1977- Jan. 1978

44,232.00

1756

4217055

-do-

1209

Oct. 1977- Jan. 1978

43,068.00

1761

4217060

-do-

1210

Sept.-Dec. 15, 1977

48,290.29

1618

4216917

Bituminous concrete surface course

1211

Oct.-Dec. 15, 1977

33,465.00

1617

4216916

Aggregate base course

1212

Sept. - Nov. 30, 1977

30,355.00

1615

4216914

-do-

1213

-do-

47,025.60

1613

4216912

-do-

1214

Sept.-Dec. 1977

46,094.40

1605

4216904

-do-

1215

Sept.-Nov. 30, 1977

6,945.59

1562

4216486

Bituminous concrete surface course

1216

Aug.-Nov. 1977

47,840.79

1560

4216484

-do-

1217

-do-

48,343.73

1559

4216483

-do-

1218

-do-

48,340.43

1557

4216481

-do-

1219

Aug.-Oct. 1977

47,863.87

1524

4216448

-do-

1220

-do-

48,015.58

1520

4216444

-do-

1221

Aug.-Nov. 1977

39,285.00

1494

4216418

Aggregate base course

1222

-do-

29,100.00

1488

4216412

-do-

1223

-do-

8,962.80

1473

4216397

-do-

1224

-do-

30,555.00

1472

4216396

-do-

1225

-do-

43,999.20

1470

4216394

-do-

1226

Sept.-Dec. 15, 1977

48,229.47

1625

4216924

Bituminous concrete surface course

1227

Sept.-Nov. 30, 1977

46,696.19

1624

4216923

-do-

1228

-do-

48,133.44

1622

4216921

-do-

1229

-do-

29,100.00

1619

4216918

Aggregate base course

1230

Aug.-Nov. 1977

24,492.00

1469

4216393

-do-

1231

Sept.-Nov. 1977

48,015.00

1606

4216905

-do-

1232

Oct. 1977 - Jan. 1978

32,010.00

1760

4217059

-do-

1233

-do-

33,465.00

1759

4217058

-do-

1234

June-Sept. 1977

38,800.00

1203

2886500

Bituminous concrete surface course

1235

June-Sept. 1977

38,800.00

1202

2886499

Bituminous concrete surface course

1236

-do-

38,800.00

1112

2886409

-do-

1237

-do-

240.00

1111

2886408

Hollow blocks

1238

April - Aug. 28, 1977

38,800.00

1079

2886376

Bituminous concrete surface course

1239

May-Aug. 1977

38,800.00

1048

2886345

-do-

1240

April-July 15, 1977

38,800.00

996

2886293

-do-

1241

April-June 30, 1977

36,860.00

773

2886069

-do-

1242

Jan.-April 1977

41,111.12

327

2400788

-do-

1243

Dec.-Mar. 30, 1977

44,693.62

282

2400742

-do-

1244

Jan.-Mar. 1977

46,616.65

259

2400719

-do-

1245

Dec. 1976- Mar. 30, 1977

44,118.61

215

999675

-do-

1246

Nov. 1976- Feb. 28, 1977

34,920.00

146

959605

-do-

1247

-do-

34, 920.00

131

959589

-do-

1248

-do-

33,950.00

37

959494

-do-

1249

-do-

33,950.00

05

959462

-do-

1250

June-Aug. 30, 1977

43,650.00

1081

2880378

Aggregate base course

1251

May-Aug.1977

43,650.00

1065

2886362

-do-

1252

May-Aug. 15, 1977

39,721.50

961

2886258

-do-

1253

Oct. 1977-Jan. 1978

41,147.40

1762

4717061

-do-

1254

May-Aug 15, 1977

47,578.50

959

2886256

-do-

1255

Mar.-June 30, 1977

43,795.50

753

2886048

-do-

1256

Mar.-June 15, 1977

43,504.50

751

2886046

-do-

1257

Oct. 1976-Jan. 15, 1977

40,332.60

1757

4217056

Aggregate base Course

1258

Sept.-Nov. 1977

48,015.00

1672

4216911

Aggregate base course

1259

Sept.-Dec. 1977

18,180.71

1614

4216913

-do-

1260

Oct. 1977- Jan. 15, 1978

29,100.00

1768

4217067

-do-

1261

Dec.-Mar. 31, 1977

23,608.23

298

2400759

-do-

1262

Nov. 1976 -Mar. 1977

6,790.00

227

2400687

-do-

1263

Nov. 1976- Feb. 28, 1977

29,100.00

142

959601

-do-

1264

Nov. 1976-Feb. 28, 1977

47,142.00

132

959590

-do-

1265

-do-

29,100.00

69

959527

-do-

1266

Nov. 1976- Feb. 1977

29,100.00

31

959488

-do-

1267

May-Aug. 1977

33,465.00

1067

2886364

-do-

1268

May-Aug.15, 1977

33,465.00

998

2886295

-do-

1269

April-June 3, 1977

29,100.00

766

2886062

-do-

1270

Jan.-April 1977

33,465.00

466

2400929

-do-

1271

-do-

26,190.00

464

2400927

-do-

1272

-do-

32,010.00

402

2400864

-do-

1273

Jan.-Mar. 1977

26,190.00

355

2400816

-do-

1274

-do-

33,465.00

350

2400811

-do-

1275

Dec. 1976-Mar. 1977

26,190.00

252

2400712

-do-

1276

Dec. 1976-Feb. 28, 1977

26,190.00

143

959602

- do-

1277

-do-

33,465.00

140

959599

-do-

1278

Nov. 1976-Feb. 1977

33,465.00

90

959548

-do-

1279

-do-

26,190.00

70

959528

-do-

1280

-do-

33,465.00

36

959493

-do-

1281

Nov. 1976- Jan. 30, 1977

26,190.00

33

959490

Aggregate base Course

1282

May-Aug. 30, 1977

29,100.00

1066

2886363

Aggregate base course

1283

May-July 30, 1977

29,100.00

993

2886290

-do-

1284

April-July 1977

32,010.00

767

2886063

-do-

1285

Jan.-Mar. 1977

30, 32,010.00

465

2400928

-do-

1286

Jan.-Mar. 9, 1977

32,010.00

351

2400812

-do-

1287

Nov. 1976-Jan. 3, 1977

32,010.00

141

959600

-do-

1288

Nov. 1976-Jan. 30, 1977

32,010.00

89

959547

-do-

1289

Nov. 1976-Jan. 1977

32,010.00

32

959489

1290

Jan.-April 1977

42,427.80

337

2400798

-do-

1291

Dec.1976-Mar. 31, 1977

48,476.53

299

2400760

Bituminous concrete Surface Course

1292

Nov. 1976-Mar. 1977

48,392.33

296

2400757

-do-

1293

Dec.-Mar. 31, 1977

34,744.16

295

2400756

Aggregate base course

1294

-do-

46,735.84

294

2400755

-do-

1295

-do-

48,422.21

291

2400752

Bituminous concrete surface course

1296

Jan.-April 1977

41,104.33

352

2400813

Aggregate base course

1297

-do-

39,285.00

348

2400809

-do-

1298

-do-

27,645.00

347

2400808

-do-

1299

-do-

46,195.67

346

2400807

-do-

1300

-do-

36,142.00

344

2400805

-do-

1301

-do-

44,083.40

326

2400787

Bituminous concrete surface course

1302

-do-

35,036.40

401

2400863

Aggregate base course

1303

-do-

10,289.76

400

2400862

-do-

1304

-do-

48,443.60

399

2400861

-do-

1305

Dec. 1976-Apr. 30, 1977

46,280.64

387

2400848

-do-

1306

Jan - Mar. 30, 1977

33,465.00

354

2400815

Aggregate base course

1307

Apr.-June 1977

33,683.25

754

2886049

-do-

1308

Mar.-June 1977

39,066.75

752

2886047

-do-

1309

Feb.-May 1977

20,802.13

504

2400968

Bituminous concrete surface course

1310

-do-

31,187.73

503

2400967

-do-

1311

Jan.-Apr. 1977

41,132.70

497

2400961

-do-

1312

-do-

48,361.10

484

2400947

-do-

1313

-do-

48,370.94

483

2400946

-do-

1314

-do-

48,188.10

482

2400945

-do-

1315

-do-

47,160.33

468

2400931

-do-

1316

-do-

27,645.00

463

2400926

Aggregate base course

1317

-do-

46,711.17

461

2400924

Bituminous concrete surface course

1318

-do-

48,352.79

460

2400932

-do-

1319

Apr.-June 1977

33,465.00

757

2886052

Aggregate base course

1320

Oct. 1976-Jan. 30, 1977

29,100.00

1770

4217069

-do-

1321

Sept.-Dec. 1977

29,100.00

1621

4216920

-do-

1322

Aug.-Nov. 30, 1977

29,100.00

1487

4216411

-do-

1323

July-Oct. 1977

29,100.00

1359

2887283

-do-

1324

July-Sept. 30, 1977

29,100.00

1238

2887160

-do-

1325

Oct. 1977-Jan. 1978

30,555.00

1758

4217057

-do-

1326

Sept.-Dec.1977

32,010.00

1616

4216915

-do-

1327

Aug.-Nov. 1977

32,010.00

1471

4216395

-do-

1328

July-Oct.1977

33,465.00

1356

2887280

-do-

1329

July-Sept.30, 1977

33,465.00

1240

2887162

-do-

1330

May-Aug. 30, 1977

46,349.80

1151

2886448

Bituminous concrete surface course

1331

June-Aug. 1977

46,792.85

1150

2886447

-do-

1332

June-Sept. 30, 1977

47, 496.10

1149

2886446

-do-

1333

June-Aug. 1977

29,318.25

1082

2886379

Aggregate base course

1334

May-Aug.1977

29,100.00

1069

2886366

-do-

1335

-do-

32,010.00

1068

2886365

-do-

1336

-do-

43, 431.75

1064

2886361

-do-

1337

-do-

29,100.00

1008

2886305

-do-

1338

-do-

32,010.00

994

2886291

-do-

1339

April-July 31, 1977

35,211.00

962

2886259

-do-

1340

April-June 30, 1977

29,100.00

771

2886067

-do-

1341

April-July 31, 1977

37,539.00

960

2886257

-do-

Accused Domingo Rayos, Graciano Navales, Jr., Basilisa Galvan, Edgardo Cruz and Agripino Pagdanganan are at large.[8]

After the judgment was rendered in these cases, accused Pablo Guinocor surrendered and was charged in Criminal Cases Nos. 1267-1281, 1325-1329. He pleaded guilty and was convicted by the Sandiganbayan in a decision dated April 20, 1994.[9]

Accused Rufino Nuñez, Adventor Fernandez and Heracleo Faelnar are already deceased.[10]

Accused Fe delos Reyes (District Auditing Examiner) and Delia Preagido (Region VII Accountant III) were discharged and utilized as state witnesses.

Upon being duly arraigned under each of the separate Informations wherein they were charged, all the rest of the accused pleaded "not guilty".[11]

All these cases were tried jointly by agreement of the parties except as to accused private contractor Joselito Genson who, upon his motion, was granted a separate trial when it was his turn to present evidence.[12]

During the trial, accused Rolando Mangubat (Region VII Accountant) who signed all the fake LAAs and SACDCs,[13] and co-accused contractors/ suppliers Erasmo Gabison and Feliciano Echavez who delivered the materials and "prosecuted" the ghost projects, changed their previous pleas of "not guilty" to "guilty" to the crimes charged against them.[14]

The evidence of the prosecution, through the testimony of the then Supervising COA Auditor Ruth Paredes, established the standard operating procedure in the releases of allotments to fund the highway projects or the maintenance and repair of the existing ones in the different regions of the MPH, as follows:

Based on the appropriation law and upon the request made by the head of the MPH, the Ministry of Budget releases funds to the MPH by means of an Advice of Allotment (AA) which is the authority to obligate funds, and the Cash Disbursement Ceiling (CDC) which is the authority to disburse the funds so obligated. In turn, the MPH issues a Sub-Advice of Allotment (SAA) and the corresponding Advice of Cash Disbursement Ceiling (ACDC) addressed to the Regional Director concerned which are duly recorded in the appropriate book of account of the Central Office of the MPH. These SAAs and ACDCs serve as the authority for the Regional Offices to obligate and disburse funds which become the sources of funds of the various Engineering Districts apportioned throughout each region. The Engineering District then submits a Program of Work to the Regional Director for the release of these funds. Upon approval of said request by the Regional Director, the Regional Finance Officer issues a Letter of Advice of Allotment (LAA) and the corresponding Sub-Advice of Cash Disbursement Ceiling (SACDC), as authority to incur obligation and to disburse the funds so obligated, to the District Engineer. The LAA and the SACDC are then duly recorded in the logbook of the Regional Office and are sent to the district engineer's office.

The testimony of Auditor Paredes as to the implementation of the project in the district level is summarized by the Sandiganbayan as follows:

Implementation of the district's programs of work now go into the requisition stage, wherein the proper Requisition for Supplies and Equipment (RSE), needed for the prosecution of its projects and embodied in the approved program of work, is prepared by the requisitioning officer, certified as to the availability of funds by the District Accountant, and approved by the District Engineer. The Project Engineer also prepares a Request for Obligation of Allotment (ROA) which the Accountant certifies as to availability of funds. The RSE, together with a copy of the program of work, is then transmitted to the Regional Office for the approval of the Regional Director and thereafter returned to the district concerned for prosecution of the project after compliance with bidding and award procedures.

Based on the approved RSE, the district's Property Custodian or Purchasing/Supply Officer, with the approval of the District Engineer, sends out Request for Sealed Quotations to various contractors or suppliers requesting them to submit, on or before a date fixed therein, their quotations for the materials or supplies. Notices thereof are likewise publicized through either newspaper publications or postings in public places. Within the reglementary period, the sealed bid forms are opened by the Committee on Bidding and Award in the presence of representatives of the District Engineer and the District/City Auditor. The lowest price quotation or bid is determined and the corresponding Abstract of Bids is prepared and signed by the members of the committee, as well as the auditor's and district engineer's representatives, after which the corresponding award is made to the said lowest bidder, duly approved by the District Engineer. A Purchase Order (PO) is thereafter prepared by the Property Custodian, addressed to the winning bidder, certified as to availability of funds by the Accountant and approved by the District Engineer.

Delivery is then effected by the winning bidder, in accordance with the terms and conditions of the PO, which may include the time required to start and terminate said deliveries and the places of delivery. Inspection of deliveries are made at the delivery or project sites by a representative of the Auditor's office upon receipt of a

verbal or written request for such inspection prepared by the Property Custodian to the Auditor. The Auditor's representative inspects the deliveries, signs the Delivery Receipts (DRs) and, finally, the Report of Inspection (ROI), duly concurred in by the Property Custodian. During said deliveries, samples of the materials are also tested for their conformity with specifications and the results of such tests are submitted to the District Engineer to be attached to the payment vouchers, together with all other supporting documents.

After completion of deliveries, the corresponding General Voucher (GV) for the payment of the supplies or materials delivered is prepared, usually by someone at the district office. Said GV contains on the face thereof five (5) certifications to be signed by the proper officials, namely, the Property Custodian, the Project Engineer, the District or City Engineer, the Accountant and the District or City Auditor attesting and certifying to the correctness, legality and propriety of the transactions covered by said GV. Attached to said GV and required to be examined and verified by the proper district officials and their subordinates are the requisite supporting documents, such as, the RSE, ROA, Program of Work, Detailed Estimates, Request for Sealed Quotations, Abstract of Bids, PO, DRs, Request for Inspection, Test Reports and Tax Clearance Certificate of the supplier-contractor. After the GV is processed, pre-audited and approved, the papers are brought to the Cashier for the preparation of the check or treasury warrant or TCAA check, which is also pre-audited. The check is then released to the supplier-contractor or his duly authorized representative who issues the corresponding official receipt.

At the end of each calendar month, the District Accountant prepares several reports, including the Report of Obligations Incurred (ROI) and the Report of Checks Issued (RCI), which are submitted to the Regional Office. At the Regional Budget and Finance Division, these reports, together with those coming from other districts, are entered in the proper journals and, in the course of ordinary accounting procedures, are entered in the General Ledger. In turn, the entries in the General Ledger become the basis for monthly Trial Balances (TBs) which are prepared cumulatively by the Regional Accountant, recommended for approval by the Regional Finance officer and approved by the Regional Director, which TBs are also submitted every month to the Central Office of the MPH. At the end of the fiscal calendar year, the final Trial Balance is prepared by the Regional Office and likewise submitted to the MPH.[15]

Paredes further testified: Her team prepared a working paper containing the summary of Sub-Advice of Allotments (SAAs) received by Region VII from the MPH, Central Office in 1977.[16] The summary was based on the (1) certifications from the Regional officials[17] (2) the copies of the SAAs themselves and (3) the logbook of the Regional Offices.[18] They prepared another working paper to match the SAAs and the Letters of Advice of Allotments (LAAs) released by the Region to Cebu 2nd HED for 1977.[19] While they found some LAAs[20] that matched with the SAAs and these LAAs were entered in the logbook of the Regional Office, they also found another set of LAAs[21] which were fake or irregular as they were (1) not stamped released by the accounting section of the region at the topmost portion of the sheet, (2) undated and not numbered consecutively, (3) not recorded in the Regional Office logbook, (4) not covered by any appropriation law and (5) not supported by SAA number coming from the MPH which must be reflected in the LAA.[22] It was possible to release several LAAs but not exceeding the amount of the SAA and she found no fake SAAs released by the MPH, Central Office. They found out that the Regional Office manipulated the amount in such a way that they deleted certain amounts which they charged against the fake allotments and thus the trial balance sent to the Central Office did not reflect the true and correct expenditures of the district.[23] They also prepared a summary of the Advice of Cash Disbursements Ceilings (ACDCs) released by the Central Office to the Regional Office in 1977 and they had found some Sub-Advice of Cash Disbursement Ceilings (SACDCs)[24] released by the Region to the district which could not be traced from these ACDCs.[25] They identified the general vouchers charged against the fake allotments based on the general vouchers themselves, cost ledger sheets maintained by Cebu 2nd HED and the Report of Checks Issued by the Deputized Disbursing Officer (RCIDDO).[26] All the general vouchers charged against the fake LAAs were all for amounts below P50,000.00 in order to avoid review of said vouchers in the

COA Regional Office since under existing auditing rules and regulations, all disbursements exceeding P50,000.00 would have to be countersigned by the officials in the COA Regional Office.[27]

Prosecution witness Felicitas Ona, then Auditor V, was assigned as a member of the team formed by the Performance Audit Office to investigate the extent of the anomaly in the MPH Central and the Regional Offices. Her testimony is as follows: She assisted in the interpretation and analysis of the region's trial balance, journal of checks issued and books of accounts submitted to the Central Office.[28] Her team analyzed the trial balance per month based on the journal where all the checks issued for the month were recorded. They discovered discrepancies because the trial balance did not match the amounts recorded in the journal. The region made adjusting entry in the journal voucher so as to take out the checks issued from the fake LAAs, enclosed them in parenthesis and transferred them to another account so as not to show that the actual disbursements made were much higher than the accounts payable.[29] Negative entries were made so that the regional trial balance will no longer show such manipulation when forwarded to MPH Central Office for consolidation.[30]

Prosecution witness Manuel Dionisio, a Senior Agent of the NBI and member of the Special Task Force of the Cabinet Committee, testified that he concentrated on the angle of splitting of the general vouchers into amounts less than P50,000.00 and that most of these vouchers were supported by the same RIVs.[31]

Accused-turned-state witness, Delia Preagido testified as follows:[32] She was employed in the MPH, Region VII, holding the position of Accountant III. Her duties consisted in the handling of books of accounts like journal of collections and disbursements, general journals, preparation of the trial balance for the entire region and other related works.[33] Sometime in the last week of January 1977, accused Rolando Mangubat,[34] Chief Accountant of Region VII, asked her to stay after office hours and they proceeded to the Town and Country Restaurant Club. While they were there, Mangubat told her that they could get a big money out of the simulated LAAs by selling them to the Contractors, District Accountant, District Engineer and the Assistant District Engineer.[35] Mangubat told her that some officers and employees in the Region and the Central Office would be part of the arrangement.[36] They also discussed the percentages to be given to the participants, i.e., 26 percent to the Regional Office, 20 percent to the Central Office, 6 percent to the signatories of the fake LAA, while the balance will go to the contractors and District Engineers.[37] She agreed to be a part of the fraudulent scheme after she was assured that the conspiracy was not only in the Regional Office but included the Central Office.[38] After a while, accused Jose Sayson[39] (Budget Examiner II) and Edgardo Cruz[40] (Accountant I) of Region VII, arrived and joined them in their discussion. Sayson and Cruz also typed the fake LAAs and were in charge in the negotiation and selling of the fake LAAs.[41] After they had typed the simulated LAAs and SACDCs and released them to the district concerned, she received her share from the fake LAAs.[42] For around one year, Mangubat gave her amounts varying from P500.00 to P700.00 every week totaling to around P70,000.00.[43] She also distributed money to the other Regional officials and employees based on the handwritten lists prepared by Mangubat and she together with Mangubat brought the amounts intended for the Central Office people.[44] The amounts covered by the fake LAAs were all reflected in the journals of checks issued, general journals and lists of checks issued and cancelled but the amounts were no longer reflected in the trial balance submitted to the Central Office because of the manipulation of the journal voucher through negation of entries.[45] She identified Exhibits K, K-1 to K-18 as fake LAAs and Exhibits Q, Q-1 to Q-18 as fake SACDCs issued to Cebu 2[nd] HED in 1977.[46]

Fe delos Reyes, then Auditing Examiner II at the Cebu 2[nd] HED, likewise an accused-turned-state witness, testified as follows: Among her duties was to conduct the inspection of the deliveries of supplies and materials made by the contractors/suppliers in the job sites.[47] Sometime in the first quarter of 1977, she was instructed by petitioner Auditor Efren Coyoca to inspect the delivery of supplies and materials at the project site of the Argao

Dalaguete project but she found no deliveries therein. She then reported the non-delivery to petitioner Coyoca who told her that he had to confer the matter with petitioner Engr. Rafael Rabaya, Jr..[48] After a day later, she was called by petitioner Coyoca to his office and told her, in the presence of petitioner Rabaya, to just sign all the prepared tally sheets and inspection reports as Coyoca would assume the responsibility if anything went wrong. Upon such assurance, she signed the tally sheets and inspection reports.[49] Thereafter, she just signed tally sheets and reports without actually going to the jobsites to inspect the deliveries of supplies and materials because she knew that there would be no deliveries to be made.[50] The contractors who participated in the alleged deliveries of materials were accused Rufino Nuñez,[51] Antolin Jariol,[52] Pablo Guinocor,[53] Feliciano Echavez[54] and Erasmo Gabison[55] and herein petitioner Joselito Genson. The practice of signing the tally sheets and inspection reports without actual inspections of deliveries of materials at the job sites was done during the time of petitioner Auditor Efren Coyoca and was continued even after he was replaced by petitioner Auditor Harvey Ruiz and the latter by petitioner Edgar Osmeña.[56] On separate occasions, she called the attention of all the petitioners Auditors on the non-deliveries of materials but after these Auditors conferred with petitioner Engr. Rabaya, Jr., she was just told to continue with the practice. The signed tally sheets and inspection reports were used by the contractors to claim for the payments of the alleged deliveries of materials. She saw Marcia Maruda, an employee in the Engineering District Office, distributing several mailing envelopes containing money to petitioners Aniceto Arriola, Guilberto Hermosa, Sofronio Mag-uyon, Santos Cabusas, Florito Montecillo, Rogelio Alvizo, Oscar Belcina, Pompeyo Almagro, Sr., Nestor Rabaya and accused Graciano Navales, Perseverando Licen and Patalinghog.[57] She also received envelopes with money inside from Maruda who told her that they were given by petitioner Engr. Rabaya, Jr. for her signature in the tally sheets and inspection reports.[58]

Eduardo Selma, operations manager of the Selma Mananga Rocks, owned by his deceased father, Moises Selma, testified: Sometime in 1979, he and his late father were summoned by the NBI for investigation as to whether they had participated in any government projects. He and his father had issued separate certifications[59] stating that they had never participated in any bidding conducted by the Cebu 2nd HED.[60] They were not shown any abstract of bids prior to the signing of the certifications. The signatures on the quotations[61] were not his signatures and neither had he authorized anybody to sign for him. It was possible that said abstracts of bids were prepared for the company without his knowledge but they are not licensed contractors and never participated in any government contract.[62]

On the other hand, all the accused from the District Office denied that they had anything to do with the preparation and simulation of the LAAs and SACDCs which originated from the Regional Office. The project engineers maintained that the projects were implemented in accordance with the programs of work. The auditing examiners declared that they inspected the materials delivered in the project sites. The auditors, accountant and property custodian asserted that the documents submitted in support of the general vouchers were complete. All the district officials asserted that there were no splitting of payments but only partial payments which was allowed. The private contractors declared that they delivered the materials to the project sites as shown by the delivery receipts and the tally sheets.

After a long tedious trial, a joint decision was rendered by the Sandiganbayan on October 24, 1990. It made the following findings:

(1) Region VII had released the regular maintenance allocation of Cebu 2nd HED for the year 1977 through 33 regular LAAs and 19 SACDCs which amounted to P5,735,197.97 and P6,529,063.29, respectively. There was no basis for the additional disbursements of P7,005,477.22 made by the district through the 199 general vouchers covered by 18 LAAs and 8 SACDCs to co-accused contractors/suppliers for the supposed deliveries of aggregate base course, bituminous concrete surface course, hollow blocks and cover coat materials from January to

December 1977. Although the defense claim that the regular allocations for 1977 were insufficient, they failed to prove that proper written requests had been made by the district officials to the Regional and Central Offices for approval and implementation;

(2) The issuances of 18 LAAs and 8 SACDCs from which the 199 general vouchers were based were clearly established to be fake or spurious. Badges of fraud were patently shown on the faces of the LAAs, to wit:

(a) six LAAs were undated while one was only dated October 1977;

(b) five LAAs were improperly charged to alleged prior years' obligations (1973-76);

(c) fake LAAs have a letter A after the number 8;

(d)

the improper charging of the illegal disbursements to "savings on equipment rentals" and for salaries when there were no programs of work;

(e) fake LAAs were not numbered in sequence;

(f) no references were made to the mother SAA numbers which were always cited in the regular LAAs;

(g) fake LAAs could not be traced in the logbook maintained by the Regional Office;

(h)

the rubber stamps for the certification of availability of funds in the fake LAAs were all signed by convicted accused Rolando Mangubat as Chief Accountant I, while in the regular LAAs, it was his assistant Delia Preagido who signed such certifications;

(3) The SACDCs were found to be fake since they could not be matched up against the ACDCs released by the MPH Central Office to the Regional office; they could not be found in the subsidiary ledger maintained by the Regional office;

(4) There were "splitting" of Requisitions for Supplies and Equipments (RSEs), Purchase Orders (POs) and General Vouchers (GVs) so that the checks in payment of the items purportedly delivered were split into amounts less than P50,000.00 in order that the general vouchers would only be pre-audited by the Cebu Second HED Resident Auditor and would not be subject to action, review and approval by the COA Regional Auditor as required in COA Circular No. 76-41 dated July 30, 1976 in relation to COA Circular No. 16-16-A dated March 23, 1976 clarifying COA Circular No. 76-A dated February 10, 1976;

(5) There were illegal charging to fund 81-400 (prior year obligation);

(6) No programs of works were attached to the general vouchers;

(7) There were no deliveries made by the accused contractors/ suppliers, thus:

(a)

the execution and preparation of the supposed delivery receipts(DRs), summaries of deliveries (tally sheets), reports of inspections and the reports of analysis of the materials, were all manufactured en-masse and ante-dated to give some semblance of justification for the questioned transactions,

(b)

the projects undertaken in 1977 involving the 199 GV's were in connection with the regular maintenance projects and not part of the rehabilitation or improvement as claimed by the defense,

(c)

the seven accused contractors/suppliers could not have made the deliveries on the limited period appearing in the delivery receipts and tally sheets,

(d)

there were inordinate haste in the alleged inspections and payments,

(e)

two of the seven contractors/suppliers had admitted non-delivery of materials when they pleaded guilty of the charges against them;

(8) No foremen or maintenance engineers of Cebu 2nd HED supervised and inspected the alleged projects. There were no laborers who did the spreading and steam rolling of the materials. No record of the proper travel orders and cash advances or reimbursable expense receipts (RERs) in the travels of personnel from the district office to the project sites and no daily time records (DTRs) were presented to show that the employees who performed the works in the project sites were absent from the district office on the dates reflected in the supporting documents. There was no payroll for the payment of laborers who worked on the project. There were no proper travel orders or lease documents from the Engineering depot concerned which showed that heavy equipments were utilized in these projects;

(9) The GVs and their supporting documents were produced en masse and processed hastily by the Cebu 2nd HED officials and contractors since all the 199 transactions were paid within 3-4 weeks from dates of requisition;

(10) The case of the prosecution was strengthened by the pleas of guilty of accused Rolando Mangubat and co-accused contractors Erasmo Gabison and Feliciano Echavez thus constituting judicial admissions which clearly and positively confirmed not only the issuances of fake or simulated LAAs and SACDCs as well as the irregular, illegal preparation, execution and processing of the GVs and their supporting documents as a consequence of the receipt by the Cebu 2nd HED but also the non-delivery of materials and the non-prosecution of the ghost projects;

(11) The amount of P7,005,477.22 was received by the contractors/ suppliers as follows: Rufino Nuñez - P3,470,428.58; Antolin Jariol - P935,320.40; Joselito Genson - P731,685.09; Pablo Guinocor - P889,963.75; Feliciano Echavez - P540,124.40; Erasmo Gabison - P94,575.00 and Jose Abatayo - P343,380.00;[63]

(12) There was conspiracy among the accused as shown by the following:

Accused Sofronio Mag-uyon's liability, as District Accountant, emanates from his signing GVs, ROAs, RIVs, and Abstract of Proposals for Furnishing Supplies, Materials and Equipments which were all irregular and which cover "ghost projects". He also cannot feign ignorance of the fake and/or fictitious nature of the LAAs and SACDCs which were received by him as chief financial officer of the district and on the basis of which he certified as to the availability of unauthorized funds or allotments in said GV, ROAs and RSEs.

Accused Santos Cabusas' liability, as Property Custodian, in all the 199 cases wherein he stands charged can readily be seen, as he signed all the GVs and many RIVs, POs, Reports of Inspection and Abstract of Proposals for Furnishing Supplies, Materials and Equipments which were all irregular and covered "ghost projects". As Property Custodian, he is not supposed to sign Reports of Inspection and Abstracts.

Accused Rafael Rabaya, Jr., Godofredo Lagura, Catalino Magno, Jr. Pompeyo Almagro, Florito Montecillo, Rogelio Alvizo, Oscar Belciña, Perseverando Licen, and Nestor Rabaya; their liabilities as Asst. Highway District Engrs., Supervising Civil Engr. I, Sr. Civil Engr., Supervising Civil Engr. I, Senior Civil Engrs., Civil

Engr., and Material Testing Engr., arise and/or emanate from their individual and collective preparation, execution and approval of irregularly-processed and simulated public documents which purported to be in pursuance of regular and authorized allotments for actual projects within the district but which were really based on fake, irregular and unauthorized LAAs and SACDCs and the projects were fictitious and non-existent, thus enabling their co-accused contractors to receive public funds to which they are not entitled.

Accused Efren Coyoca, Edgar Osmeña, Harvey Ruiz, Aniceto Arriola, and Guilberto Hermosa; their liabilities as District Auditor, District Auditor, District Auditor, Auditing Aide and Auditing Aide, respectively, arise and/or emanate from their individual and collective execution, processing and approval of GVs, ROIs, Delivery Receipts and Daily Tally Sheets which were irregular and/or fictitious and covered "ghost projects" and, because of the deliberate and/or grossly negligent performance of their auditing duties and functions, their co-accused contractors were able to collect payments of public funds to which they are not entitled.

Contractors Joselito Genson and Antolin Jariol, Jr. liabilities arise and/or emanate from their individual and collective participation in the preparation of fake or simulated bid quotations, POs, ROIs, Delivery Receipts, Daily Tally Sheets, ORs and GVs for fictitious or non-existent deliveries of aggregate base course and asphalt on "ghost projects" and for which they illegally collected public funds to the damage and prejudice of the Government.[64]

Based on the foregoing, the Sandiganbayan convicted the accused under Section 3, paragraph (e) of RA 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act which provides:

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:

...

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

...

Under paragraph (e), the requisite elements to constitute corrupt practices are (1) the accused are public officers or private persons charged in conspiracy with them; (2) said public officers commit the prohibited acts during the performance of their official duties or in relation to their public position; (3) they caused undue injury to any party, whether the Government or a private party; (4) such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officers have acted with manifest partiality,[65] evident bad faith[66] or gross inexcusable negligence.[67]

As aptly found by the Sandiganbayan, all these elements are present, thus:

In the cases at bar, all the above-cited requisites elements are present. When accused Fernandez, Faelnar and Mangubat, as Asst. Regional Directors and Regional Accountant, respectively, issued the fake LAAs and corresponding SACDCs to the Cebu 2nd HED knowing fully well that the allotments and/or allocation thereunder were not properly authorized by the Ministries of the Budget and the Public Highways and neither have they been programmed for release in accordance with standard operating procedure, they thus acted with evident bad faith. Accused District Engineer Jose Genson, Assistant District Engineers Rafael Rabaya, Jr. and Godofredo Lagura and District Accountant Sofronio Mag-uyon likewise acted with evident bad faith, gross inexcusable negligence and manifest partiality in receiving and implementing the fake LAAs and SACDCs

since they should have known and noticed that all the allotments released thereunder were not for 'regular maintenance', especially so when the district had been receiving its regular maintenance allocations for 1977; that they had not requested formally for such extra allocations; that the LAAs and SACDCs were fake or spurious on their faces and signed by unauthorized officials, and that they had not prepared any program of work to justify such extra allocations.

All the other accused officials from the Cebu 2nd HED, namely, Santos Cabusas, Nestor Rabaya, Almagro, Montecillo, Alvizo, Magno, Jr., Belciña and Licen who are all engineers, together with those involved in auditing functions, namely, District Auditors Harvey Ruiz, Edgar Osmeña and Efren Coyoca, and Auditing Aides Aniceto Arriola and Guilberto Hermosa, likewise acted with evident bad faith and manifest partiality in participating in the preparation, processing and approval of the GVs and supporting documents, such as RSEs, Requests for Obligation of Allotment (ROAs), Abstracts of Bids, POs, Delivery Receipts (DRs), Summary of Deliveries, Reports of Inspection (ROIs) and Checks in payment of 'ghost projects' to fake or spurious contractors-suppliers, among whom are Jariol and Joselito Genson. They not only connived and confederated in the hasty and mass production of such ante-dated documents, excluding programs of work, but also allowed their names, positions and signatures to be used in completing the cycle which would lend a semblance of legality or regularity to the questioned transactions and illegal disbursements and which caused undue injury to the Government in the total amount of P7,005,477.22. Even assuming, for the sake of argument, that their claims and pretensions as to their lack of expertise or means to determine the validity or nullity of the LAAs and SACDCs in questions have any bases, however, they are still liable for having acted with gross inexcusable negligence in the performance of their respective duties.[68]

Except for Manuel de Veyra, who was acquitted, all the other accused in Criminal Cases Nos. 1143-1341, which include herein petitioners, were convicted in all the criminal cases they were respectively charged. They were sentenced in each of the 199 cases to an indeterminate penalty ranging from Four (4) Years and One (1) Day as the minimum, to Eight (8) Years and One (1) Day as the maximum and to indemnify the Government of the amounts defrauded in each case.[69]

Petitioners filed their respective motions for reconsideration which were all denied by the Sandiganbayan in a Resolution dated April 15, 1991.

Hence, the herein consolidated petitions for review.

Auditor Harvey Ruiz is one of the petitioners together with Edgar Osmeña, Guilberto Hermosa and Aniceto Arriola in G.R. Nos. 99412-99416 and 99436-99636. However, Ruiz had filed a separate petition, entitled "Harvey Ruiz vs. Sandiganbayan and People of the Philippines", docketed as G.R. Nos. 98715-98913 which we dismissed in a Resolution dated June 20, 1991 pursuant to paragraph 3 of Circular 1-88 which took effect on January 1, 1989.[70] Ruiz filed a motion for reconsideration but was denied in a Resolution dated August 6, 1991. The corresponding entry of judgment was made on September 9, 1991. Considering that the decision of the Sandiganbayan is already final and executory as to Ruiz, his inclusion as one of the petitioners in G.R. Nos. 99412-99416 and 99436-99636 could no longer be entertained and his name should be deleted from the petitions.

Also, in our Resolution[71] dated September 29, 1994, we dismissed the petition filed by Oscar Belcina in G.R. Nos. 99309-99318 pursuant to paragraph 3 of Circular No. 1-88.[72] No motion for reconsideration having been filed, the decision appealed from had already attained finality.

In a Resolution,[73] dated November 16, 1999, the cases against Florito Montecillo (a co-petitioner of Rogelio Alvizo, Pompeyo Almagro and Catalino Magno, Jr.) in G.R. Nos. 98494-98692 were dismissed by reason of his death on April 17, 1998. The corresponding partial entry of judgment was made insofar as Florito Montecillo is concerned on March 27, 2000.[74]

The following are the respective contentions of herein petitioners:

In G.R. Nos. 98494-98692

(Criminal Cases Nos.

1153-1159, 1161-1163, 1165, 1170-1171, 1173-1177, 1182, 1187-1188, 1192, 1194-1197, 1200, 1201, 1203-1205, 1215-1218, 1222, 1227, 1230, 1231-1233, 1236, 1238, 1241-1246, 1249, 1253, 1255, 1257, 1258, 1261, 1263-1266, 1272, 1280, 1281, 1284, 1288, 1291-1295, 1301-1302, 1304, 1307, 1319-1324, 1330-1332, 1334 and 1337)

Engineers Rogelio Alvizo, Pompeyo Almagro and Catalino Magno, Jr. assail the decision of the Sandiganbayan, as follows:

THE RESPONDENT SANDIGANBAYAN PALPABLY DISREGARDED THE FUNDAMENTAL RIGHT OF THE PETITIONERS TO BE PRESUMED INNOCENT AND, INSTEAD, REVERSED THE PRESUMPTION AND CONVICTED THE PETITIONERS OF VIOLATION OF THE ANTI-GRAFT LAW IN SPITE OF THE CONCEDED FACT THAT PETITIONER-ENGINEERS ACTUALLY PROSECUTED THE ENGINEERING PROJECTS ASSIGNED TO THEM, THE CONVICTION RESTING NOT ON THE BASIS OF CONCRETE INCULPATORY EVIDENCE BUT ON RATIOCINATION THRU "LOGIC AND COMMON SENSE" THAT, WITHOUT THE SUSPICION THAT OBVIOUSLY SWAYED THE JUDGMENT, SHOULD HAVE INEVITABLY, AS SHOWN BY UNDEBATABLE PREMISES, RESULTED IN A FINDING THAT THE PETITIONERS COULD NOT HAVE BEEN CO-AUTHORS OF THE CRIMES IMPUTED TO THEM BUT THEY WERE MADE THE UNWITTING TOOLS OF THE CRIMINAL MINDS THAT PLANNED AND EXECUTED THE DEFRAUDATION OF THE GOVERNMENT.[75]

In G.R. Nos. 99006-99020

(Criminal Cases Nos. 1202-1207, 1230, 1231, 1250-1259)

Joselito Genson, private contractor/supplier of materials, raises the following errors:

- THE RESPONDENT COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN CONSIDERING EXTRANEOUS EVIDENCE IN CONVICTING ACCUSED JOSELITO GENSON.
- THE RESPONDENT COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN FINDING CONSPIRACY BETWEEN AND AMONG THE CONVICTED ACCUSED DESPITE FAILURE OF PROSECUTION TO ESTABLISH CONSPIRACY BEYOND REASONABLE DOUBT.
- THE RESPONDENT COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN UTTERLY FAILING TO ANALYZE AND EVALUATE THE EVIDENCE OF THE PROSECUTION WHICH DO NOT CONTAIN ANY INCULPATORY EVIDENCE WHATSOEVER AGAINST PETITIONER.
- THE RESPONDENT COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN OVER-LOOKING RELEVANT AND UNREBUTTED FACTS TESTIFIED TO BY ACCUSED/PETITIONER WHICH JUSTIFIES HIS ACQUITTAL.
- THE RESPONDENT COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN CONVICTING THE PETITIONER BASED UPON THE PROSECUTION EVIDENCE NOT SUFFICIENT TO CONVICT AND OVERCOME PETITIONER'S PRESUMPTION OF INNOCENCE (SEC. 14, SUB-PAR. [2], ART. III, BILL OF RIGHTS, 1987 CONSTITUTION).
- THE RESPONDENT COURT COMMITTED GRAVE AND REVERSIBLE ERROR IN FAILING TO APPLY THE MANDATORY REQUIREMENT OF PROOF BEYOND REASONABLE DOUBT IN ORDER TO ESTABLISH GUILT OF PETITIONER (SEC. 2, RULE 133, THE REVISED RULES OF COURT)[76]

In G.R. Nos. 99059-99259

(Criminal Cases Nos.

1143-1153, 1155-1159, 1197-1201, 1242-1249, 1261-1266, 1270-1281, 1285-1288, 1290-1306 and 1309-1318)

District Auditor Efren Coyoca alleges the following errors:

I

THE SANDIGANBAYAN GRAVELY ERRED IN ENTERTAINING THE CASES.

II

THE SANDIGANBAYAN ERRED IN FINDING THE PETITIONER TO HAVE CONSPIRED WITH HIS CO-ACCUSED.

III

THE SANDIGANBAYAN ERRED IN FINDING THAT THE FUND RELEASES, EXPENDITURES AND DISBURSEMENTS WERE WITHOUT BUDGETARY ALLOCATION.

IV

THE SANDIGANBAYAN ERRED IN FAULTING THE PETITIONER FOR THE EXCLUSIVE ACT OF THE REGIONAL ACCOUNTANT IN CHARGING OF EXPENDITURES AND DISBURSEMENTS TO PRIOR YEAR OBLIGATION WITH ACCOUNT SYMBOL 81-400.

V

THE SANDIGANBAYAN ERRED IN FINDING THE EXISTENCE OF SPLITTING OF VOUCHERS, ETC., IN THESE CASES AND IN CONSIDERING THE SAME TO BE ILLEGAL.

VI

THE SANDIGANBAYAN ERRED IN FINDING THE PETITIONER GUILTY OF THE CRIME CHARGED.[77]

In G.R. Nos. 99412-99416 and 99436-99636

(Criminal Cases Nos.

1143-1163, 1165-1167, 1169-1177, 1180-1181, 1184, 1190-1191, 1193-1194, 1196, 1198-1200, 1208-1214, 1217, 1221-1224, 1226-1229, 1233, 1236-1237, 1239-1240, 1245, 1253, 1255-1260, 1262-1263, 1265-1272, 1277, 1281-1285, 1288-1289, 1291-1299, 1301, 1306, 1311, 1315, 1317-1323, 1325-1336, 1338, 1339-1341)

District Auditor Edgar Osmeña, and Auditing Aides Guilberto Hermosa and Aniceto Arriola raise the following issues:

I

WHETHER OR NOT THESE CASES WERE VALIDLY FILED.

II

WHETHER OR NOT THE PETITIONERS ARE PARTIES TO THE ALLEGED CONSPIRACY.

III

WHETHER OR NOT THE DECISION OF THE RESPONDENT COURT IN SO FAR AS THE PETITIONERS ARE CONCERNED WAS SUPPORTED BY ESTABLISHED FACTS AND LAW OF THE CASES.

IV

WHETHER OR NOT RESPONDENT SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING ITS SUBJECT DECISION.[78]

In G.R. Nos. 99417-99421
(Criminal Cases Nos. 1143-1341)

Property Custodian Santos Cabusas and District Accountant Sofronio Mag-uyon anchor their petition on the following grounds:

- THEIR RIGHT TO DUE PROCESS MAY HAVE BEEN IMPAIRED.
- THE DECISION OF THE SANDIGANBAYAN CONVICTING HEREIN PETITIONERS IS NOT SUPPORTED BY THE EVIDENCE ADDUCED DURING THE TRIAL. THUS, THE SANDIGANBAYAN DISREGARDED THE FUNDAMENTAL CONSTITUTIONAL RIGHTS OF THE ACCUSED TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY BEYOND REASONABLE DOUBT.[79]

In G.R. Nos. 99887-100084
(Criminal Cases Nos. 1143-1341 except 1289)

Assistant District Engineer Rafael B. Rabaya, Jr., and Material Testing Supervisor Nestor Rabaya assign the following errors:

- THE CONCLUSION OF THE HONORABLE SANDIGANBAYAN IN DENYING CREDENCE TO THE EVIDENCE OF THE PETITIONERS IS A FINDING GROUNDED ENTIRELY ON SPECULATIONS, SURMISES OR CONJECTURES AND THE INFERENCES MADE BY IT ARE MANIFESTLY MISTAKEN, ABSURD OR IMPOSSIBLE.
- THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE SANDIGANBAYAN IN GIVING WEIGHT TO THE EVIDENCE OF THE PROSECUTION DESPITE THE CLEAR AND CONVINCING EXPLANATION BY THE PETITIONERS THAT THERE WERE IN FACT DELIVERIES OF ROAD CONSTRUCTION MATERIALS AND THE PROJECTS PAID FOR AS REFLECTED IN THE GENERAL VOUCHERS IN EACH OF THE 199 CASES WERE IN TRUTH AND IN FACT UNDERTAKEN AND WERE IN EXISTENCE AT THE TIME AN OCULAR INSPECTION WAS MADE BY MEMBERS OF THE NBI INVESTIGATING TEAM AND THAT THE LAAs FUNDING THEM WERE VALID.
- THE JUDGMENT OF CONVICTION RENDERED BY THE HONORABLE SANDIGAN-BAYAN IS BASED ON GRAVE MISAPPREHENSION OF FACTS.
- THE SANDIGANBAYAN COMMITTED A GRAVE ERROR OF LAW WHEN IT GAVE WEIGHT TO THE PLEAS OF GUILTY OF SOME OF THE CO-ACCUSED IN THE AFOREMENTIONED CASES AND CONSIDERED SAID PLEAS OF GUILTY AS COMPETENT AND ADMISSIBLE AGAINST THE ABOVE-NAMED PETITIONERS.[80]

The common issues raised by petitioners may be summarized as follows:

- (a) Whether the evidence of the prosecution has sufficiently proven that the offense charged was committed.
- (b) Whether the prosecution has duly established conspiracy among the petitioners in the commission of the crimes charged.

Before delving into the merits of these cases, we shall first discuss the preliminary matters put in issue.

Petitioners Cabusas and Mag-uyon argue that their right to due process had been impaired due to the following:

(a) adverse publicity about the Central Visayas highway anomalies in the tri-media; (b) they were not able to fully exercise their basic right to confront witnesses against them by reason of poverty because attendance in hearing which were held in Manila entailed a lot of expenses for transportation and lodging and they were not represented by counsel of their choice; (c) the respondent court had probably made a pre-judgment of their cases since it also previously heard the other criminal cases filed against officials and employees of the other districts.

Said arguments deserve scant consideration.

These cases were filed in 1978 while the hearing started only in June 1984. Hence any alleged adverse publicity in 1978 had already waned or ceased by 1984. Petitioners Mag-uyon and Cabusas have no basis in claiming that they have been denied due process since the records show that they were given ample opportunity to present their cases and to cross-examine the witnesses.

The Sandiganbayan has, in fact, decided these cases on the basis of the documentary and the testimonial evidence presented by the prosecution in these cases. Aware of the possible concern of the accused, respondent court declared:

Considering that there are other similar cases pending trial before the First and Third Divisions of this Court, resolution of the instant charges shall be confined only to such evidence which have been presented in the cases at bar, despite the similarity of the legal and factual issues involved in all of these cases.[81]

Petitioners Auditors, Efren Coyoca and Edgar Osmena; and Auditing Aides, Aniceto Arriola and Guilberto Hermosa, complain that the Informations against them were filed without the preliminary investigations conducted by the Tanodbayan as mandated by PD 1630; and that the Informations were filed by Atty. Meliton R. Reyes who had no authority because he was not from the Tanodbayan but the Chief of the Administrative Services of the Bureau of Treasury.

Said claim is without merit.

Under Section 17 of PD 1630, while it is the Office of the Tanodbayan which has the exclusive authority to conduct preliminary investigations of all cases and to file the corresponding Informations, cognizable by the Sandiganbayan, the Tanodbayan, with the approval of the President, may utilize, designate or deputize any lawyer in the government to act as special prosecutor to assist him in the investigation of said cases. As stated by petitioners in their respective petitions, the conduct of the investigation was made by the composite team whose finding and resolution to file Information was approved by the Tanodbayan. Hence, the designation of Atty. Meliton Reyes as Investigating Prosecutor of the Tanodbayan was valid.

Moreover, the absence of a preliminary investigation does not impair the validity of the criminal information or render it defective.[82] The question of whether or not a preliminary investigation has been properly conducted should be raised prior to arraignment.[83] It can not be invoked for the first time at the appellate level.[84] Besides, the posting of bail made by petitioners expressly waived any irregularity in the preliminary investigation.[85] The Sandiganbayan had rendered, after trial on the merits, a judgment of conviction. It is too late in the day for petitioners to make an issue of their right to a preliminary investigation.

We now proceed to resolve the issue whether the evidence of the prosecution has proven beyond reasonable doubt that the crime charged was committed by petitioners.

The petitioners question the conclusions of the Sandiganbayan insofar as its appreciation of the facts is concerned.

Generally, the factual findings of the Sandiganbayan are binding upon the Court. However, this general rule is subject to some exceptions, among them: 1) when the conclusion is a finding grounded entirely on speculation,

surmise and conjectures; 2) the inference made is manifestly mistaken; 3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) said findings of facts are conclusions without citation of specific evidence on which they are based and 6) the findings of fact of the Sandiganayan are premised on the absence of evidence on record.[86]

Petitioners claim that these cases are exceptions to the general rule because the findings of Sandiganbayan are contrary to the established facts and based on speculations, surmises or conjectures and the inferences made by it are manifestly mistaken, absurd or impossible.

We are not persuaded.

The scheme to defraud the government started with the issuance of 18 fake LAAs and 8 SACDCs to Cebu 2[nd] HED which were admittedly signed by Regional Accountant Rolando Mangubat.

The evidence for the prosecution had clearly established the existence of these fake LAAs and SACDCs which became the bases of the subject 199 general vouchers and checks issued to contractors/suppliers in payment for the alleged deliveries of materials in the different project sites. Prosecution witnesses Ruth Paredes and Felicitas Ona, both COA Auditors who were tasked to investigate the issuances of these fake LAAs and SACDCs, had clearly identified the badges of fraud in the issuances of these fake LAAs which were released to Cebu 2[nd] HED. It was established among others that while the regular LAAs were recorded in the logbook maintained by the Regional Office, the fake LAAs and SACDCs following their issuances were not entered in the logbook. The entry in the logbook is an important safeguard against fraud; thus, the failure to enter the LAAs and SACDCs in the logbook necessarily indicates irregularity and fraud.

The COA findings were corroborated by no less than prosecution witness Delia Preagido, an accused-turned-state witness, who had a first hand knowledge of how such falsification was done, testifying as follows:

Q -

What were the other occasions wherein Mr. Rolando Mangubat requested you to remain after office hours?

A -

In the first week of February 1977, he told me to remain after office hours and to discuss important matters.

PROS. GUERRERO -

Q - Where were you?

WITNESS -

A - In the office.

Q - What time was it?

A - About 4:30.

Q - And did you comply with the request of Mr. Rolando Mangubat?

A - Yes sir.

Q -

Now, what happened when you remained after office hours?

A - He told me to pack up my things and that we will go to the Town and Country Restaurant.

PROS. GUERRERO -

Q - And did you go to the Town and Country Restaurant?

WITNESS -

A - Yes sir.

Q - Now, what time did you go to the Town and Country Restaurant?

A - After office hours.

Q - Could you recall the exact time?

A - After 5:00 o'clock.

Q - Now, at the Town and Country Restaurant, will you kindly tell us what happened?

A -

He discussed about the letter of advice of allotment and he told me that we can get big money out of simulated letter of advice of allotment.

PRESIDING JUSTICE -

(To the witness)

Q - How many were you then?

WITNESS -

A - Only two, Your Honor.

Q - You and Mangubat only?

A - Yes, Your Honor.

PROS. GUERRERO -

Q -

Aside from your being superior officer, is there any other relationship that you have with Rolando Mangubat at that time?

A - I am next in rank, and we are close friends.

Q - In what way are you close friends with each other?

A - He tells me his personal and office problems; his No. 2, he told me.

Q -

Now, what was your reaction to the things that were told to you by Rolando Mangubat regarding these allotments?

A - I told him, how can we get money out of fake letters of advice of allotments?

PROS. GUERRERO -

Q - And what did Rolando Mangubat tell you?

WITNESS -

A - Mr. Mangubat told me that by selling the fake LAAs we can get big money.

PROS. GUERRERO -

Q - And to whom will these fake LAAs be sold?

WITNESS -

A - To the different contractors, the District Accountant, the District Engineer and the Assistant District Engineer.

Q - Now, on these occasions, did Mangubat tell you how the fake LAAs would be affected (sic)?

ATTY. DE SANTOS -

Objection. Asking for hearsay evidence.

PRESIDING JUSTICE -

May answer.

WITNESS -

A -

Yes sir.

PROS. GUERRERO -

Q - How.

WITNESS -

A -

If we will sell the LAAs to the contractors or to the district engineers, we can get big amount of money and we can receive the proceeds of the fake LAAs.

ATTY. DE SANTOS -

I move to strike out the answer for being hearsay and hypothetical.

PRESIDING JUSTICE -

May remain.

PROS. GUERRERO -

Q -

Now, were you informed on that occasion who will be the persons involved in this scheme that was mentioned to you by Rolando Mangubat?

WITNESS -

A -

In the regional office, I told him that there is difficulty to sell fake LAAs because it can be easily discovered by Mrs. Angelina Escaño. But he told me that Mrs. Angelina Escaño is a part of the arrangement.

ATTY. DE SANTOS -

I move to strike out the answer for being hearsay.

PRESIDING JUSTICE -

May remain.

PROS. GUERRERO -

Q - What else?

WITNESS -

A - And the big boss(sic) already knows about it.

Q - Now, who is this big boss that you mentioned?

ATTY. DE SANTOS -

Asking for strictly hearsay evidence.

PRESIDING JUSTICE -

May answer.

WITNESS -

A -

He told me the regional director, the assistant regional director and other high ranking officers in the central office.[87]

...

Q - Now, what else was discussed inside the Town and Country Restaurant between you and Rolando Mangubat?

WITNESS -

A - Mr. Rolando Mangubat and I discussed about the percentage of the selling of the LAAs.

PROS. GUERRERO -

Q - Percentage of whom?

WITNESS -

A - From the contractors and from the district engineers.

We discussed about the LAAs and I told him that even if the arrangement is between the regional office only it is easily discovered by the central office people because of our report of checks issued and cancelled, and he told me not to worry because the officers or the people in the central office are part of the conspiracy.

ATTY. JIMENEZ -

Central office? Hearsay.

ATTY. DE SANTOS -

We joined the objection of counsel.

PRESIDING JUSTICE -

Part of her testimony.

PROS. GUERRERO -

Q - What did you discuss about?

WITNESS -

A - About the percentage of the LAAs - 26 per cent of the fake LAA.

Q - What is this 26 per cent?

A -

The contractors or the district engineers concerned will give us 26 percent - like for example P5,000.00, 26% of the P5,000.00 is our percentage, and 20% goes to the central office and 6% to the signatories of the fake LAA; the 20% we divide, $\frac{3}{4}$ of the 20% goes to the regional office and $\frac{1}{4}$ goes to the central office people.

Q -

Now, Mrs. Preagido, will you kindly tell us why your superior officer, Rolando Mangubat, discussed to you these things that you have mentioned about the fake LAAs and the selling of these fake LAAs to contractors?

ATTY. DE SANTOS -

We object to her previous answer for being hearsay.

ATTY. BAUTISTA -

Objection to the question. Calling for opinion.

PRESIDING JUSTICE -

May answer.

WITNESS -

A -

Being an intimate friend of Mr. Rolando Mangubat and I am the one who makes the trial balance for the entire region and for the posting of the journal entries to the journal voucher.

PROS. GUERRERO -

Q - And what would be the significance of this duty that you mentioned to the fake LAAs and the selling thereof?

ATTY. DE SANTOS -

Asking for an opinion.

PRESIDING JUSTICE -

May answer.

WITNESS -

A -

For the journal voucher, there is a regulation in the journal to be posted in the general journal and from the general journal to the general ledger, then the preparation of the trial balance.

PROS. GUERRERO -

Q -

The discussion that you had with Rolando Mangubat at the Town and Country Restaurant, was that the first time that Rolando Mangubat ever discussed out this fake LAA and the selling of the same to the contractors?

WITNESS -

A - Yes sir.

JUSTICE BUENAVENTURA J. GUERRERO -

(To the witness)

Q - Were the people in the central office allegedly involved, were the names mentioned to you?

WITNESS -

A - Mr. Rolando Mangubat mentioned their names during our conversation, Your Honor.

Q - And who are they?

A -

Mrs. Leonila del Rosario; Mrs. Engracia Escobar, our chief accountant; and Mr. Abelardo Cardona, our assistant chief accountant; Mr. Leonardo Tordecilla, our supervising accountant; and Mr. Pagdanganan, our budget officer.

Q - All of the central office?

A - Yes sir. Yes, Your Honor.

PROS. GUERRERO -

Q -

What did you tell Mr. Rolando Mangubat when you were told about this scheme of faking LAAs and selling these to the contractors?

WITNESS -

A - I said, how can that be possible when there are some officers who can easily discover.

Q - And what was his reply?

A - He answered not to worry because they are part of the conspiracy.

Q - Why did you tell Rolando Mangubat the possibility that these fake LAAs will be detected?

A -

Because of our reports. It can be easily detected in our reports especially in the list of checks issued and cancelled. All checks issued in the district will be signed, all checks issued and cancelled.

Q - Now, on that occasion, did Rolando Mangubat tell you to join them in the fraudulent scheme?

ATTY. DE SANTOS -

Leading.

PRESIDING JUSTICE -

May answer.

WITNESS -

A - Yes sir.

PROS. GUERRERO -

Q - And what did you tell Rolando Mangubat when you were invited to join them?

ATTY. DE SANTOS -

Objection. Asking for hearsay evidence.

PRESIDING JUSTICE -

May answer.

WITNESS -

A -

I told Mr. Rolando Mangubat, if the conspiracy is not only for the regional office by including the central office, I will consent to be part of the conspiracy.

...

PROS. GUERRERO -

Q -

Now, you mentioned also of Jose Sayson, an employee of Region 7, as being involved in this conspiracy that you discussed with Rolando Mangubat. Now, my question is, on that occasion when Rolando Mangubat discussed with you these fake LAAs and the selling thereof to contractors, do you recall having met Jose Sayson?

WITNESS -

A - Yes sir.

Q - Where did you meet him, Jose Sayson?

A - In the Town and Country Restaurant.

Q - How many days after that meeting with Rolando Mangubat?

A - After a few minutes on that day.

Q - How did you meet him?

A -

Mr. Rolando Mangubat called by phone. After two minutes, he joined our table with Edgardo Cruz, Accountant I of Region 7.

Q - With your office?

A - Yes sir.

Q - In the accounting division?

A - Yes sir.

Q - What is the position of Jose Sayson?

A - Budget Examiner II, Ministry of Public Highways, under Angelina Escaño.

Q -

What happened when these Jose Sayson and Edgardo Cruz joined your table inside the Town and Country Restaurant?

ATTY. DE SANTOS -

Objection. Nothing was said by this witness regarding Edgardo Cruz.

PROS. GUERRERO -

Q - Who arrived after making that phone call?

WITNESS -

A - Mr. Edgardo Cruz and Mr. Jose Sayson.

Q -

What happened?

A - They joined our table.

Q - And what was discussed?

A - At that time, I knew that Mr. Edgardo Cruz and Mr. Jose Sayson will be ones to do the selling of fake LAAs.

Q - Who brought up the proposition when the two arrived?

A - Mr. Rolando Mangubat.

Q - What did he say?

A -

He told to us, Mr. Jose Sayson and Mr. Edgardo Cruz will be the ones to take charge of negotiating and selling the fake LAAs.

Q - What was the reply of Cruz?

A - They answered, yes.

Q - I am only asking you about Cruz.

A - Mr. Cruz answered yes.

Q - How about Sayson?

A -

He said also, yes.

Q - And then?

A -

Mr. Mangubat told us that Mr. Sayson and Mr. Cruz are the ones who typed the fake LAAs, or sometimes by me.

Q - You said, are the ones. Why, was there anything typewritten already?

A - The amount of fake LAAs because we have only the forms.

Q - Now, what else what discussed in that meeting? What was the reply of - how about you, what was your reply?

A - I told Mr. Mangubat that if I have no work, I will type.

Q - How about Jose Sayson?

A - He said, yes.

Q - How about Edgardo Cruz?

A - Yes.

Q - What happened after you agreed?

A - We started to make the LAAs.

Q - About that meeting, nothing more?

A - Nothing more.

Q - You separated already?

A -

But Edgardo Cruz, Jose Sayson and Mr. Mangubat stayed in the Town and Country Restaurant and I went home.

Q - After that meeting, what happened?

A - We started typing the fake LAAs.

Q - You said, we. Who were your companions?

A - Mr. Jose Sayson and Edgardo Cruz.

Q -

Now, how many documents did you prepare in connection with these allotments that were discussed between you and Mr. Rolando Mangubat?

ATTY. DE SANTOS -

Objection. Leading.

PRESIDING JUSTICE -

May answer.

WITNESS -

A -

I cannot remember because we typed in bunch, not individually.[88]

...

Q -

But aside from you, just to be clear, aside from you, Edgardo Cruz and Jose Sayson, nobody else typed the fake LAAs.

A - Nobody else, Your Honor.

Q - How can you be sure about that?

A -

Our agreement with Mr. Mangubat was that we will be the ones who will type the fake LAAs, the three of us, Your Honor.

Q - You do not know if Mangubat also made arrangements with others?

A -

He told me that only three of us, Your Honor.[89]

...

JUSTICE B. GUERRERO -

(To the witness)

Q - What happened to these fake LAAs and fake CDCs after Mangubat signed them?

WITNESS -

A -

The Regional Director, or the Assistant Regional Director, or the District Highways Engineer countersigned them for approval.

Q - Who were these people that you mentioned? What are their names?

A - Mr. Rolando Mangubat, Adventor Fernandez and Jose Bagasao, Your Honor.

Q - Why do you know that they signed these documents?

A - I am familiar with their signatures. Besides, I saw Mr. Bagasao signed (sic) in his office.

PROS. GUERRERO -

Q -

Now, you mentioned that these fake LAAs and fake CDCs were released to the district. After they were duly signed, what happened to the fake LAAs and fake SACDCs?

WITNESS -

A -

Mr. Edgardo Cruz and Mr. Jose Sayson started selling them to the different contractors.[90]

The plea of guilty[91] entered by accused Regional Accountant Rolando Mangubat as the author of such fraud and the signatory of all the fake LAAs and SACDCs, in effect, confirms the testimony of Delia Preagido on the falsity of the LAAs.

We find it significant to mention that we have already affirmed the conviction of Mangubat by the Sandiganbayan in the other ghost project anomalies involving the same scheme as in this case, which was committed in the other engineering districts of the MPH-Region VII in 1977 and 1978, to wit: the Danao City Highway Engineering District[92] and the Tagbilaran City Engineering Office.[93]

Pursuant to the 18 LAAs and 8 SACDCs addressed to Cebu 2[nd] HED, purportedly issued by Region VII, it appears that the Cebu 2[nd] HED had prepared the necessary papers for the procurements of supplies and materials. Evidence shows that initially, the Requisition and Issue Vouchers (RIVs) and the Requests for Allotments (ROAs) were both prepared by petitioner Property Custodian Santos Cabusas upon instructions of the project engineer.[94] These RIVs[95] and ROAs[96] show that they were signed by the requisitioning officer, herein petitioner Assistant District Engineer Rafael Rabaya Jr., or by any one of his co-petitioners Project Engineers, namely: Rogelio Alvizo, Pompeyo Almagro, Catalino Magno, Jr., and co-accused Florito Montecillo. After having been certified as to the availability of funds by petitioner District Accountant Sofronio Mag-uyon,[97] the RIVs and the ROAs were approved by the District Engineer Jose Genson or Domingo Rayos.[98]

Evidence clearly show that during approximately the same period of time, separate RIVs[99] and ROAs[100] were prepared for the same project involving the same materials and requested by the same requisitioner. Thus, as correctly found by the Sandiganbayan, there was indeed a splitting of requisition which is not allowed under COA Circular No. 76-41, dated July 30, 1976.

Based on the abstracts of proposals,[101] various contractors/suppliers whose names appeared therein purportedly submitted their bids which were opened on the specified date by the Committee on Bidding, witnessed and signed by petitioner Aniceto Arriola or petitioner Guilberto Hermosa or co-accused Graciano Navales or co-accused-turned-state witness Fe delos Reyes as COA representative and by petitioner Property Custodian Cabusas. In the same abstract, the award was given to the lowest bidder signed by three members of the Committee on Award, composed of Administrative Officer Vicente C. Licen, petitioner Assistant District Engineer Rafael Rabaya, Jr. and petitioner District Engineer Jose Genson or District Engineer Domingo Rayos.[102]

Purchase orders for the materials needed addressed to the winning contractor/supplier were either signed by the requisitioning officer, petitioner Assistant District Engineer Rafael Rabaya, Jr. or the other petitioners Project Engineers, Property Custodian Cabusas and the District Engineer.[103] The tally sheets based on the delivery receipts of materials were signed by a Property Inspector from COA, herein petitioners Arriola, Hermosa, Navales or delos Reyes or one of the Project Engineers, petitioners Alvizo, Magno, Jr. or Almagro.[104] The reports of inspection were signed by a COA inspector, petitioners Arriola, Hermosa, Navales or delos Reyes, with the concurrence of petitioner Property Custodian Cabusas and approved by the Auditor concerned, petitioners Efren Coyoca or Edgar Osmeña.[105] The worksheets for mechanical analysis that samples of materials delivered were tested for conformity with the specifications were signed by the Material Testing Supervisor petitioner Nestor Rabaya or Rogelio Alvizo.[106]

It is established by prosecution witness COA Examiner Fe delos Reyes, an accused-turned-state witness, who was one of the inspectors assigned to inspect deliveries on the project sites, that no actual deliveries were made when she made the inspections on the specified date. She testified that on the two separate days that she went to the job sites where the deliveries were to have been made, she found none; that she called the attention of the Auditor, petitioner Efren Coyoca regarding the non-delivery but he told her to sign the tally sheets and inspection reports even without actual deliveries and assured her that he will be responsible if something went wrong. She did not go to the jobsite after her first and second inspections because petitioner Auditor Coyoca told her to just sign the tally sheets and there was no need to go to the site since there would be no delivery at all. Petitioner Auditor Coyoca was replaced by petitioner Auditor Edgar Osmeña and later by petitioner Auditor Harvey Ruiz. Delos Reyes brought the matter of non-delivery to the attention of these replacement Auditors who just told her to continue with what had been the practice.

The Sandiganbayan found no actual deliveries of materials and aptly made the following disquisition:

With respect to the issue as to whether there was actual compliance and deliveries made by the accused-contractors herein, the Court must necessarily adjudge that there was no such compliance or deliveries and that the execution and preparation of the supposed DRs, Summaries of Deliveries (Tally Sheets), and Reports of Inspection, together with the Reports of Analysis of the materials, were all manufactured en masse and ante-dated to give some semblance of justification for the questioned transactions. Even if it will be admitted, for the sake of argument, that there were projects during 1977 within the Cebu 2nd HED involving re-gravelling and asphaltting and that there were deliveries made on such projects, the Court concludes that these were in connection with the 'regular maintenance' projects and not, as claimed by the defense, part of 'routine, periodic, or progressive maintenance' or for 'rehabilitation, betterment or improvement.' Considering the allotments released to the Cebu 2nd HED for regular maintenance in 1977, and there being no showing at all that dire calamities, such as typhoons and earthquakes, had occurred over Cebu province during said year which would have necessitated or required additional allotments, then the defense theory to that effect must be rejected. Such a theory appears to be a desperate and last minute concoction by the accused which they seek to impose on the Court in the total absence of any meritorious or valid defense.

This Court's credulity and powers of imagination would have to be stretched ten-fold to conceive that the seven (7) accused-contractors could make the deliveries alleged by them within the limited periods appearing in the supporting papers to the GVs in question, notably, the DRs and the Tally Sheets. The convergence of the dates when some of these deliveries were alleged to have been made and the monumental, if not stupendous, efforts required to perform such tasks, together with the inordinate haste with which the alleged inspections were made, resulting in similarly hasty payments, all these circumstances indicate that no such deliveries were actually made. In fact, the defense theories put up by the accused who are officials of the Cebu 2nd HED suffer from an intrinsic flaw or defect, which is, that two of the seven (7) contractors suppliers had admitted non deliveries by pleading guilty in the cases wherein they were charged. As reflected in the record, accused Gabison and Echavez had withdrawn their previous pleas of 'not guilty' in all of cases wherein they were charged and, upon re-arraignment, pleaded guilty, thus, admitting that they had participated in the conspiracy by submitting simulated bids, making fictitious deliveries and receiving payments for them. Accused Pablo Guinocor, on the other hand, has remained at-large up to this date while Rufino Nunez had died after having been convicted by final judgment in the Danao '78 and Lapu Lapu '78 cases wherein he was also similarly charged.[107]

...

Furthermore, even assuming, arguendo, that actual projects were being prosecuted by the Cebu 2nd HED during the period from January to December, 1977 and that there were actual deliveries of Items 200 and asphalt made on such projects, the Court logically assumes that these were in connection with "regular maintenance" and not for "periodic maintenance", or for "rehabilitation, betterment or improvement" (RBI) as

claimed by the defense. Considering that, as previously stated, the Cebu 2[nd] HED had already been issued regular LAAs and SACDCs in the amounts of P5,737,197.97 and P6,529,063.39 respectively, for the entire year 1977, and there is no showing whatsoever, that, firstly, such allocations were insufficient; secondly, that extreme emergencies, calamities or "force majeure" had actually occurred during said year to justify additional allocations and, thirdly, that the proper request or requests had been made to the Central Office, MPH, through the Regional Office, then the inevitable conclusions which arise are that the alleged "periodic maintenance" or "RBI" were not actually done but had been prosecuted as part and parcel of "regular maintenance" and that such theory had been concocted by the defense to justify the illegal disbursements made through the 199 GVs. For it defies logic and reason to accept the defense posture that illegally-disbursed and misappropriated public funds would be actually spent for any project at all. Instead, the co-conspirators would naturally divide the spoils among themselves rather than look for ways and means to disburse them pursuant to the generally-accepted accounting and auditing procedures. Such a situation we find to be completely in accord with the facts and circumstances appearing on the record.

Moreover, attempts by the defense to discredit the testimony of discharged state witness Fe delos Reyes to the effect that, as Auditing Aide or Examiner, she signed Daily Tally Sheets and Reports of Inspections for supplies and materials supposedly delivered at the project sites by accused-contractors when there were actually no deliveries or inspection, do not gain our acceptance or approval. Aside from the fact that delos Reyes' testimony appears to be convincing and credible, the facts testified to by her have been substantiated and/or corroborated by the pleas of 'guilty' of accused-contractors Gabison and Echavez. If such modus operandi was resorted to with respect to these two contractors, then there is no reason for its non-application or non-compliance as regards accused-contractors Joselito Genson and Jariol, Jr. and also Nunez, Guinocor and Abatayo. Again, logic and common sense dictates that the disbursement of public funds emanating from the fake or irregular LAAs and SACDCs and the utilization of simulated RSEs, POs, Tests Reports, DRs, DTSS, ROIs and GVs would not include or cover the actual deliveries of supplies and materials since the co-conspirators would not be able to profit therefrom.[108]

...

Thus, if We are to believe and accept the accused-contractors' theories, more particularly those of accused Jariol and Joselito Genson, with respect to their alleged prosecution of projects in 1977 within the Cebu 2[nd] HED, involving P7,005,477.22, We can just imagine the monstrous traffic jams and problems which would have occurred within the district throughout the year, considering that, at the same time and during the same months, projects involving regular maintenance worth P5,735,197.97 were on-going. Considering further, that during the same year, contractors Rufino Nunez, Juliana delos Angeles, Antolin Jariol and Erasmo Gabison were involved in allegedly similar projects in the Cebu 1[st] HED, Mandaue City HED, Davao City HED and Lapu-Lapu City HED, then it could be logically and reasonably concluded that they would have run short of supplies and equipment, such as trucks, payloaders, bulldozers and rollers, as well as manpower. Furthermore, no attempt whatsoever had been made by the accused district officials and the accused-contractors to show or prove that there was no overlapping or regular maintenance projects with the projects in question, there being no showing that the district's records for 1977 are not available or complete.[109]

The general vouchers were prepared for payment to the contractors/ suppliers concerned, one of whom was petitioner Joselito Genson. The documents submitted by the contractor to ask for payment and to support the general vouchers were the RIV, ROA, abstract of bids, PO, delivery receipts, tally sheets, inspection report and the test report which were all signed by herein petitioners. The general vouchers contain on the face thereof five certifications signed by the proper officials, to wit: (1) a certification of receipt of supplies accomplished by the Property Custodian; (2) a certification of correctness, that is, that the expenses are necessary and lawful and that the prices are just and reasonable and not in excess of current rates in the locality accomplished by the Project Engineer; (3) approval by the District Engineer; (4) a certification accomplished by the Accountant, that the GV

had been properly approved, its account codes proper, and that it is supported by the proper documents; (5) a certification that the GV has undergone pre-audit accomplished by the Auditor.

The general vouchers and the supporting documents attached thereto were processed, pre-audited and approved for payment by the District Auditor, petitioners Efren Coyoca or Edgar Osmeña.[110]

The Sandiganbayan found that there were patent splitting of payments in the general vouchers as shown by the supporting documents which was in violation of COA Circular No.76-41. One glaring fact which cannot be overlooked is that all the 199 general vouchers were for amounts less than P50,000.00 even if most of these vouchers were supported by the same set of documents worth much higher than the said amount. Under COA Circular No. 76-41, the District Auditor can approve vouchers in amounts not exceeding P50,000.00. All the general vouchers more than P50,000.00 must have to be pre-audited and approved for payment by the Regional Auditor instead of the herein petitioner District Auditors. In fact, COA Examiner Ruth Paredes testified that during their investigation, they found out that the Regional Auditor who routinely receives copy of the LAAs and SACDCs from the Regional Office, was not furnished copies of the fake LAAs. Paredes explained that this was due to the fact that the Regional Auditor who received copies of the SAA released by the Central Office to the Regional Office would disapprove the voucher since he could easily see that the fake LAAs were beyond the SAA issued.

With the approval of the general vouchers, checks were prepared by the Cashier and released to the supplier/contractor or his representative who then issued the corresponding official receipts. Petitioner contractor Joselito Genson issued company receipts[111] acknowledging that he had received the checks pursuant to the subject general vouchers from the Cebu 2nd district.

Fe delos Reyes testified that she had received envelopes containing money for her signatures in the tally sheets and reports of inspection certifying that deliveries were made but in reality there were none. The first envelope she received was personally given to her by Engr. Rafael Rabaya, Jr. while the subsequent envelopes were given by Marcia Maruda, a Clerk from the Cebu 2nd HED. The tally sheets and reports of inspections which she signed were some of the documents which supported the general vouchers based on the fake LAAs.

It is positively demonstrated by the prosecution evidence that the amounts covered by the subject 199 general vouchers and checks based on the fake LAAs were not reflected in the trial balances submitted by Region VII to the Central Office since they were negated through the journal vouchers to cover up the fraud. [112]

As established in *Mangubat vs. Sandiganbayan*,[113] the ghost projects anomalies that beset the different engineering districts of the MPH-Region VII in 1977 and 1978 was masterminded by a core group of officers and employees of the Regional Office headed by the Chief Accountant, Rolando Mangubat. The scheme made use of fake LAAs, SACDCs and supporting documents such as RSEs or RIVs, ROAs, abstracts of bids, purchase orders, delivery receipts, tally sheets, reports of inspections which had to be accomplished before a check could be issued and released to the supplier or contractor in payment of the materials purportedly purchased from and delivered by him.[114]

The Sandiganbayan found petitioners, who were officers and employees of the Cebu 2nd HED and the COA, to have perpetuated the crime by signing the general vouchers and the supporting documents. Their convictions were based upon a finding of conspiracy. The evidence on record shows that such conspiracy existed considering the issuances of fake LAAs, followed by the irregular preparation, processing and approval of the 199 GVs supported by simulated supporting documents and the payment to the contractors for ghost projects.

All the foregoing documents were prepared and processed by petitioners Regional and District officials in

connection with the performance of their official functions without which collusion the anomalies charged could not have been committed.

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole.[115] If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved.[116] Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.[117]

All the herein petitioners contend that they had nothing to do with the preparations and issuances of the LAAs and SACDCs, which turned out to be fake or irregular. While it is true that the fake LAAs and SACDCs originated from the regional office, the falsity of such allotments would be useless if the district officials and employees did not consent to its implementation by making it appear that there were valid requisitions, deliveries, inspections, processing, pre-auditing and approval of the general vouchers and the checks paid to the contractor/supplier. The individual acts of the petitioners including petitioner contractor Genson pointed to a single criminal intent, one performing one part of the transaction and the others another part of the same transaction, so as to complete it with a view to attaining the object which they were pursuing, i.e., to defraud the government.

We will now discuss the respective liabilities of the petitioners.

Petitioners Assistant District Engineer Rafael Rabaya, Jr., Engineer Nestor Rabaya, Material Testing Supervisor, Project Engineers Rogelio Alvizo, Pompeyo Almagro and Catalino Magno, Jr. were convicted for signing the RIVs, worksheet for mechanical analysis and tally sheets. The documents they signed were used as the supporting papers of the general vouchers and the corresponding checks issued for payment to the contractors/suppliers. The general vouchers were traced to the fake LAAs. Petitioners made it appear that there were valid requisitions and deliveries of materials, that projects were indeed undertaken. However, the Sandiganbayan found that although there were deliveries in 1977 in Cebu 2[nd] HED, these deliveries were in connection with the regular maintenance projects covered by the regular LAAs and SACDCs and not part of the routine, periodic or progressive maintenance as claimed by the petitioners which were based on the fake LAAs and SACDCs; and that no deliveries were made under the fake LAAs and SACDCs since payments to the vouchers went to the pockets of the co-conspirators.

Liability of Asst. District Engineer Rafael Rabaya, Jr.:

Rafael was the then Assistant District Engineer of the Cebu 2[nd]HED. He was second in command in the over-all supervision of the district office which includes the proper implementation of the maintenance, construction and improvement of the district's national roads and bridges.[118] It was established and un rebutted that the district had received 33 regular LAAs in 1977 for the regular maintenance of the district's national roads and bridges. It was also shown that when the district would ask for supplementary allocations outside of the regular allocations given, a written communication must be made by the District Engineer to the Regional Director who would refer the request and the copy of the program of work attached thereto to the Central Office for approval. Petitioner Rafael, in his petition, insists that requests for additional allotments which covered the alleged ghost projects were indeed made but these requests and the programs of work were all taken by the NBI

agents when the latter retrieved documents from the district office. If these documents really existed, petitioner Rafael could have easily secured a certification from the Regional Office where the requests were made or from the Central Office where the alleged written requests and programs of work were supposed to have been forwarded to prove his claim. It is an essential part of standard operating procedure that these documents have copies for each office where they customarily pass through. Without such written request accompanied by a program of work, the district had no basis for additional releases of funds.

Petitioner Rafael had signed so many RIVs as the requisitioning officer and a painstaking review of these RIVs showed that even if the projects undertaken refer to the same road for the same materials and for almost the same period of time, there were splitting of RIVs which resulted in separate biddings for each RIV and separate purchase orders. We find no compelling reason to disregard the finding of the Sandiganbayan that such splitting had been deliberately resorted to in order to avoid said transactions to be sent to the higher authorities for approval.

Petitioner Rafael was also held liable for affixing his signature in the general vouchers certifying that the expenses are necessary, lawful and incurred for. His signature signified that the expenses are necessary in the prosecution of the project and in accordance with the program of work. As admitted in his petition, there is one RIV for every program of work; but despite the fact that so many RIVs[119] had been issued, petitioner failed to present a single program of work which would have justified the additional allotments. Moreover, his defense of denial does not relieve him from the fact that had he exercised due diligence, he would have known the badges of fraud enumerated by the Sandiganbayan in its decision and refused to be a part of the conspiracy.

We therefore sustain the conviction of petitioner Rafael Rabaya, Jr. in 184 counts.[120]

Rafael was not charged in Criminal Case No. 1232 but the Sandiganbayan convicted him in said case. Thus, his conviction in said case must be set aside. Further, Rafael was charged and tried in Criminal Cases Nos. 1180 1283 and 1289 but he was neither convicted nor acquitted in the assailed decision of Sandiganbayan. Records of said cases should be remanded for proper disposition by the Sandiganbayan.

Liability of petitioner Project Engineer Nestor Rabaya:

Petitioner Nestor affixed his signature as material testing supervisor in the laboratory test reports certifying that he had checked the samples taken from the alleged materials delivered and they passed the required tests. Notably, the laboratory test reports indicated that samples were taken by a certain Soledad F. Pansacala and Honorio A. Capa, laboratory technicians, but they were not presented to corroborate his claim that samples were presented to him and he had checked them. The evidence of the prosecution clearly show that no deliveries were actually made, thus, Nestor is guilty of affixing his signature in the worksheets for mechanical analysis when in fact there were no deliveries and no analysis were made by him. He allowed his name and position to complete the process of defrauding the Government.

Nestor as well as Rafael tried to cast doubt on the testimony of prosecution witness Ruth Paredes, COA Supervising Auditor, regarding her findings that the subject LAAs and SACDCs were fake or irregular as they could not be traced from the mother SAA. Petitioners Rabayas argue that why should Paredes insist on tracing the subject LAA's to the mother SAA when they could be traced to the obligation numbers reflected in the ROA which, they claim, were taken by the NBI.

We are not convinced.

COA Auditor Ruth Paredes had satisfactorily explained the irregularity of indicating the obligation number in the fake LAAs, thus:

Q. In these LAAs that you have examined, the obligation number is indicated in the LAAs, these alleged LAAs.

A. In the LAAs marked Exhs. "K-1" to "K-18" there are obligation numbers, the obligation numbers are indicated.

CHAIRMAN ESCAREAL:

Q. Were they correct obligation numbers?

A.

No, sir, obligation number should not be indicated because the LAA is the authority to incur obligation--that means funds are still available for obligation, not that part that it has already been obligated.

Q. What is wrong in putting the obligation number in these?

A. Because it would appear that funds were already obligated in the past.

Q. So there is no necessity for an LAA?

A. But the CDC if the obligations have been already obligated in the past. [121]

We find no basis for petitioners Rabayas' insistence on the regularity of the LAAs. The prosecution had sufficiently established the falsity of the same. All the LAAs which were regularly issued by the Regional Office were recorded in their logbook. The fact that the fake LAAs were not recorded conclusively established their falsity.

Petitioners Rabayas further contend that although the total amount released to Cebu 2[nd] HED for 1977 through the 33 LAAs was P5,735,197.97, only the amount of P1,919,385.71 was actually released for the regular maintenance of the national roads and bridges which amount was inadequate to meet the total effective maintenance kilometrage (EMK) of 294.54 a year.

We find the argument devoid of merit.

The 33 regular LAAs issued to Cebu 2[nd] HED provided also for calamity funds for the repair of the national and barangay roads hit by typhoons. There were also funds released for the construction, rehabilitation, betterment and improvement of the other national and barangay roads. These funds were released together with the amount of P1,919,385.71 for the regular maintenance of the national roads and bridges; thus, the claim of petitioners Rabayas is misleading. Assuming arguendo that the funds released were inadequate to maintain the national roads, such deficiency, in the absence of a written request for additional allotment did not give authority to petitioners to obtain the release of these funds in violation of the standard operating procedure. To reiterate, the LAAs are issued by the Regional Office based on the SAA from the MPH. The fake LAAs did not have the SAA No. from which the allotment was based and were not recorded in the logbook of the Regional Office.

The contention of petitioners Rabayas that the court erred in giving evidentiary value to the pleas of guilty of accused Mangubat, Gabison and Echavez as it violated the hearsay and res inter alios acta rule, is devoid of merit.

The Solicitor General, in the Brief for respondent State, aptly refuted the argument of petitioners, as follows:

In their fourth and last argument, petitioners maintain that the Sandiganbayan erred in giving evidentiary value to the pleas of guilty of Mangubat, Gabison and Echavez, petitioners' co-accused. According to petitioners, the admission or confession of a party may be presented as evidence only against himself pursuant to Sec. 33 of Rule 130 of the Rules of Court and under Sec. 26 of the same Rule; that, therefore, admission of the pleas of

guilty of Mangubat, Gabison and Echavez against petitioners violated the hearsay and res inter alios acta rules.

Sections 26 and 33 of the Rule 130 of the Rules of Court, cited by petitioners, provide as follows:

Section 26. Admissions of a party. - The act, declaration or omission of a party as to relevant fact may be given in evidence against him.

Section 33. Confession. - The declaration of an accused [expressly] acknowledging his guilt of the offense charged, OR OF ANY OFFENSE NECESSARILY INCLUDED THEREIN, may be given in evidence against him.

On the other hand, the rule of res inter alios acta, mentioned by petitioners, is embodied in Section 28 of Rule 130, Rules of Court states:

Section 28. Admission by third party. - The rights of a party cannot be prejudiced by an act, declaration, or omission of another and proceedings against one cannot affect another, except as hereinafter provided.

However, this aforecited rule allow exceptions one of these being Section 30 on admissions by a co-conspirator, to wit:

Section 30. Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

Petitioners contend that the Sandiganbayan violated the rule of res inter alios acta when said Court made reference to the pleas of guilty of Mangubat, Gabison and Echavez. It is submitted that this contention is untenable.

Gabison, Mangubat and Echavez were charged together with petitioners for having acted in conspiracy with one another to commit the offenses. The pleas of guilty of some of the accused are admissions of the truth of the accusations that they committed acts of falsifications done during the existence of the conspiracy.

The Sandiganbayan merely declared that the pleas of guilty confirmed the issuance and release of fake or simulated LAAs and SACDCs, the irregular, improper and illegal preparation, execution and processing of the general vouchers and their supporting documents, and the non-delivery of materials and non-prosecution of ghost projects. In short, the pleas of guilty were merely confirmatory: they confirmed the facts already established by other evidence of the prosecution. Said pleas were not used by the Sandiganbayan to convict petitioners for, as already mentioned, even if the pleas were completely disregarded, the prosecution had already succeeded in proving petitioners' guilt beyond reasonable doubt.

It could be conceded, as petitioners assert, that the confession, i.e., the pleas of guilty, were not made during the existence of the conspiracy (Rules of Court, Rule 130, Sec. 30). However, it is submitted that said pleas are nonetheless admissible against petitioners as co-conspirators because the pleas were made in open court. In other words, they are judicial confessions. The rule embodied in Sec. 30 that the declaration of a conspirator made after the termination of the conspiracy is inadmissible against his co-conspirator applies only to an extra-judicial confession, and not to a plea of guilty, which is a judicial confession. In this very specific instance, the rule of res inter alios acta does not apply because the confessions embodied in the pleas of guilty are judicial confessions, not extra-judicial ones.

...

The hearsay rule being put up by petitioners apply only if Gabison, Mangubat and Echavez' admission of guilt was testified to by another person or by means of affidavit. In this case the three co-accused personally confessed their guilt during arraignment where petitioners were likewise present. If petitioners wanted to dispute the

circumstances surrounding the confession of guilt of Gabison, Mangubat and Echavez, petitioners had the right to present the three as hostile witnesses during the trial or petitioners could even have presented the three as their own witnesses. And this fault should not be translated in terms of absence of opportunity to cross-examine the three.

Petitioners invoke the rule on *res inter alios acta* alleging that the pleas of guilty of the three should have not been given weight because they were made after the conspiracy had terminated (Petition, p. 29). This is erroneous because the Sandiganbayan did not convict petitioners on the basis of the pleas of guilty. The Sandiganbayan merely said that the prosecution's case had been amply supported and strengthened by the pleas of guilty entered by the three. The pleas of guilty are in themselves evidence that the pleaders committed the acts mentioned in the Informations. The pleas certainly have corroborative effect on the evidence-in-chief of the prosecution. There is no rule violated by the Sandiganbayan when it considered the pleas of guilty.

The motive of the three in pleading not guilty is both speculative and insignificant. Petitioners could imagine the motives of the three for pleading guilty, but the fact remains that the consequence of their pleas is that they admitted the commission of the crimes charged. Petitioners cannot escape the effects of this admission.

Nevertheless, it should be stressed that the portion of the Decision referring to the pleas of guilty of Gabison, Mangubat and Echavez is not the basis for the conviction of petitioners. Even if said portion is disregarded, the decision is still supported by evidence which proved petitioners' guilt beyond reasonable doubt. In other words, even if there were no pleas of guilty by Mangubat, Gabison and Echavez, the prosecution was able to prove petitioners' guilt beyond reasonable doubt.

Assuming that it was error for the Sandiganbayan to consider and refer to the pleas of guilty, this is not reversible error because after disregarding the pleas of guilty there remains sufficient evidence to establish the guilt of petitioners beyond reasonable doubt, and the substantial rights of petitioners were not, therefore, prejudice by its admission (See *U.S. vs. Empeinado*, 9 Phil. 613, 616 [1908]."[122] (Emphasis supplied).

We uphold the conviction of petitioner Nestor Rabaya in 184 counts.[123]

Liabilities of Project Engineers Rogelio Alvizo, Catalino Magno, Jr. and Pompeyo Almagro:

Project Engineers Alvizo, Almagro and Magno, Jr. claim that they received the materials delivered in their respective projects; that they signed the tally sheets certifying receipt of materials after they had checked and verified the deliveries; that all projects assigned to them were prosecuted in accordance with the program of work. However, the Sandiganbayan rejected such claim of completion of projects, which we uphold, thus:

And since it goes without saying that the projects in question involved re-gravelling and asphaltting wherein the presence of the maintenance engineers or foremen would be required, as well as laborers to do the spreading and steam rolling, accused district officials should have presented evidence that the officials and employees concerned were issued the proper travel orders and either cash advances or reimbursable expense receipts (RERs) in traveling from the district office to the project sites and in supervising and inspecting the project sites on the dates concerned; that their Daily Time Records would show their absence from the district office on the dates reflected in the GVs' supporting documents and that the proper payrolls had been prepared for payment of the laborers who worked on the project. If heavy equipments were utilized in these projects, then the proper travel orders or lease documents from the Engineering depot concerned would show that such equipment had, indeed, been used in the prosecution of said projects. None of these have been submitted by the accused concerned.[124]

Petitioner Alvizo testified during his cross-examination that road graders and rollers of the government were used to spread the base course materials and to compact the same; that the laborers required were the operator of the

road graders, the assistant of the road grade operator and an assistant laborer; and that reports were made for the use of such equipments but he could no longer recall where the operators submitted their reports.[125] Taking note of his testimony, Justice Escareal asked petitioner Alvizo, thus:

Q.

Mr. Alvizo in 1977 do you still remember how many road rollers and graders were being used by Cebu Second Engineering District?

A. The project, on road grader and road roller.

Q. In your district, do you remember?

A. We have wide area. I could not count how many were there.

Q. But there will be more than two?

A. I am not very sure.

Q. But at least two are assigned to you.

A. In my project, one.

Q. So there are more than two?

A. Maybe sir.

Q. If there are other projects they will also be entitled to two?

A. If there are...

Q.

And since you were assigned to several projects then in those projects at least two or more road rollers and graders were assigned in those projects where you are the project engineer?

A. Sometimes the equipment will be utilized first in the first project and transfer (sic) to the second project.

Q.

In other words the road rollers will be used by other project engineers and after you can use them in your project?

A. Yes, your honor.

Q.

Following your testimony that Cebu Second Engineering District is quite wide you are referring to the area south of Cebu City from Talisay up to the tip, Southern tip of Cebu?

A. Yes, that is the area.

Q. On both course of Cebu Island and inland going south?

A. Yes, your honor.

Q.

If there is a project down south in Cebu down south of Cebu City such as Alcoy, the road roller and grader will have to travel? In connection with the grader, is it not?

A.

Yes, sir.

Q. Then the operator will have to get trip ticket because they could not travel without the trip ticket, is it not.

A. Yes your honor.

Q. You all project engineers should know that? Not only that but the operator has to file daily time record?

A. Yes, your honor.

Q. If it exceeds the number of hours, it requires over time?

A. We are not allowed overtime, your honor.

Q. If you work only during the regular hours?

A. Sometimes we go home late at night but we do not claim overtime.

Q.

But the workers stay there until completed? If you make projects in Argao the road rollers, the graders will not be able to come back in the afternoon?

A. They will stay in the project site.

Q.

So there will be a record of the Engineering office of the length of time a road roller and road grader is stationed in a project.

A. I could no longer recall, your honor.

Q.

We are talking about procedure. If a road roller is assigned in Argao will there be a record of the Engineering Office at the time it left and was issued a trip ticket, the amount of gasoline used in going there in completing the project and in coming back to Cebu City?

A. Yes your honor.

Q. So unless assigned and the same thing will follow the number of hours it is used in completing the project, correct?

A. Yes your honor

Q.

So if this project was really projected (sic) these cases which are now being tried were really prosecuted, you just look into the record of the Cebu Engineering District and it supports there the completing of the project. Is it not?

A. Yes, Your honor.[126]

Yet, Alvizo did not present any record of machine utilization reports nor evidence of workers who performed the work of spreading the materials to corroborate that work had actually been done. If indeed there were reports, they should have been readily available. Bare allegations which are not supported by any other evidence, document or otherwise, fall short to satisfy the degree of proof needed.

Likewise, petitioner Magno asserted during his cross-examination that the use of the road graders and rollers for a certain project and a certain date was reflected in the record of the district and that even their office had a record of the trip tickets of these machines.[127] However, like Alvizo, he also failed to present the records and the trip tickets to corroborate his defense. Aside from his bare allegation, no competent evidence was adduced to substantiate his claim. The failure to request for the record gives rise to a presumption that the evidence willfully suppressed would be adverse if produced.[128]

Petitioner Almagro testified on cross-examination that he was the requisitioning officer in all the projects he prosecuted which, however, was belied by the RIVs which were all signed by Assistant District Engineer Rafael Rabaya, Jr.. If he were not part of the conspiracy he should have easily noticed that something was unusual with the RIVs considering that they were split[129] even if the projects undertaken refer to the same road and for the same kind of materials and called the attention of Rabaya. Such conspiracy was shown when he affixed his signatures in the tally sheets as project engineer certifying receipt of non-existent materials and projects. There would have been no need to resort to splitting of requisitions and the use of fake LAAs and SACDCs if materials were really delivered and projects were prosecuted.

The claim of petitioners Engineers' Alvizo, Magno, Jr. and Almagro that the supporting documents on which their signatures appeared were only re-used to validate or give semblance of validity to the fake LAAs and SACDCs deserves scant consideration. The records disclose that petitioners raised this issue for the first time on appeal. It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process.[130]

We uphold the conviction of petitioner Alvizo only in 25 counts[131] instead of 31 counts; of petitioner Magno, Jr. in 22 counts[132] instead of 28 counts; and of petitioner Almagro in 24 counts[133] instead of 26 counts. The conviction of petitioners Alvizo in Criminal Cases Nos. 1203, 1204, 1205, 1230, 1281 and 1288; Magno, Jr. in Criminal Cases Nos. 1162, 1163, 1215, 1217, 1236 and 1238; Almagro in Criminal Case No. 1227, cannot be sustained for the reason that their signatures do not appear in the general vouchers and its supporting documents.[134]

Moreover, records disclose the following:

In Criminal Case No. 1241, petitioner Magno, Jr. was neither convicted nor acquitted by the Sandiganbayan in its assailed decision although he was charged in the Information and duly tried therefor. Records of said case should be remanded to the Sandiganbayan for proper disposition thereof insofar as petitioner Magno, Jr. is concerned.

In Criminal Case No. 1232, petitioner Almagro was convicted by the respondent court although Almagro was not charged in the Information. Thus, the conviction of Almagro in said case should be set aside.

Liability of petitioner District Accountant Sofronio Mag-uyon:

Petitioner Mag-uyon was held liable by the respondent Sandiganbayan in this wise:

Accused Sofronio Mag-uyon's liability, as District Accountant, emanates from his signing GVs, ROAs, RIVs, and Abstract of Proposals for Furnishing of Supplies, Materials and Equipments which were all irregular and which cover "ghost projects." He also cannot feign ignorance of the fake and/or fictitious nature of the LAAs and SACDCs which were received by him as chief financial officer of the district and on the basis of which he certified as to availability of unauthorized funds of allotments in said GVs, ROAs and RSEs.[135]

He was the District Accountant of Cebu 2nd HED since 1973 up to 1981[136] and he had received copies of the LAAs for the quarterly allotments of the district which made him familiar with the LAAs.

In the regular LAAs for 1977 which petitioner Mag-uyon received, the SAA number from which the LAA was taken and the date it was issued are indicated in typewritten words. To show where they were derived from, the SAA number is specified in the regular LAAs. On the other hand, the fake LAAs, although signed by Regional Accountant Rolando Mangubat who was also authorized to sign the LAAs and SACDCs in the absence of the finance officer, have no SAA Number. Instead, the fake LAAs were charged to account 81-400 (prior years' obligations) which was not a normal procedure and should have put Mag-uyon on guard. These fake LAAs were supposed to be issued for current allotments so that they should not refer to prior obligation numbers. Supervising COA Auditor Felicitas Ona, a member of the Performance Audit team, who investigated the anomaly, testified, during her cross-examination, on such anomalous practice:

Q - Now, let's go to Exhibit K-3. This is a letter of advice of allotment for a total sum of P350,000.00[137]

A - Yes, Sir.

Q - Again, will you please enlighten this Honorable Court what these entries mean, this 101-7?

A - 101 is the fund, 7 is the month, 292 is the number of ROA issued for the year 1975.

Q -

Again, these were requested for obligation of funds made in 75 but as per letter of advice of allotment, they were being done for the year 1977 as per Exhibit K-3, is it not?

...

Q -

I am driving at this. These were the funds that were appropriated in 75 but these funds were obligated and actually spent for 1977?

A - Yes, Sir.

Q - Is that allowable?

A - No, Sir.

Q - Why?

A -

In fact, this is really questionable because, Sir, an allotment is an authority to obligate. So much so now that if the region had already obligated this in 1975, they don't need an allotment to be issued to the district because all that they need is the CDC to pay this obligation. Because, they are an authority to obligate.

Q -

Now, if an LAA such as K-3 which was received by the district and which you claim cannot be done or should not be done...

A -

Not regularly done.

Q - Because it is irregular, what should the district do upon receipt of such LAA?

A -

I will question... If I am the district, I will question the region why are you giving me this fund when it is

obligated, how will I spend the money. You have already obligated, so I cannot spend it." [138]

All the regular LAAs bore the rubber stamps of the Accounting Division of Region VII indicating the date when they were released and the signature of the person who released the same which the fake LAAs did not have. The appropriation law which authorized such expenditure was indicated in the regular LAAs but it was not so indicated in the fake LAAs.

All regular LAAs were dated while five fake LAAs were undated. COA Auditor Paredes explained during her cross-examination that the LAA must be dated because under budgetary regulations, the funds intended for a particular quarter becomes self-executory only at the beginning of that quarter; and that the LAA has to be dated to indicate when it is supposed to take effect because obligation which may not be incurred in the particular quarter is chargeable against the allotments of subsequent quarters.[139] Thus, in the absence of the date in the fake LAA, Mag-uyon would not know when it is to take effect and to what period of obligation it should be applied.

These were patent irregularities on the faces of the LAAs which Mag-uyon could not have failed to see but still, he affixed his signature on the RIV and ROA certifying to the availability of funds.

Notably, petitioner Mag-uyon had approved 199 general vouchers which were all for amounts less than P50,000.00. Looking at the RIVs where Mag-uyon's signatures appeared certifying "Ok as to funds", and the POs supporting the general vouchers, he should have easily noticed that the items requisitioned were actually worth more than P50,000.00, thus unmistakably signifying that Mag-uyon had knowingly and deliberately participated in the splitting of the accounts.

The splitting of accounts is very glaring to be ignored. The number of transactions in which petitioner is involved prevent a reasonable mind from accepting the proposition that petitioner was merely careless or negligent in the performance of his functions.[140] His signatures on the general vouchers, as the District Accountant, certifying to the availability of funds, were an indispensable link to the accomplishment of the fraud. We entertain no doubt that Mag-uyon's participation in the conspiracy was proven beyond reasonable doubt.

Moreover, the fact that several of these vouchers were made in payment for the same kind of materials to be delivered to the same project and payable to the same suppliers could not have escaped his attention and alerted him of the anomalies in said transactions.

Mag-uyon contends that he could not be considered a conspirator because he entered all the funds received by the district from the Regional Office as well as all the disbursements of the district in the cost ledger sheet which he submitted to the Region. We are not convinced. It has been established that there was conspiracy among the district and regional officials and employees thus, Mag-uyon had to record all the transactions done in the district to enable his co-conspirators in the region, who received the cost ledger sheet, to manipulate the books of accounts. Such manipulation was done by taking out the transactions covered by the fake LAAs through negation of entries in the journal voucher, thus, the checks issued and paid, based on the fake LAAs would no longer be reflected in the trial balance submitted by the Regional Office to the Central Office.

Liability of petitioner Property Custodian Santos Cabusas:

Property Custodian Cabusas was held liable for affixing his signatures in the 199 GVs and in the Reports of Inspection certifying receipt of materials requisitioned and in the Abstracts of Proposals for furnishing supplies, materials and equipments which were all irregular and covered "ghost" projects. He was the one who prepared all the RIVs and the purchase orders to the winning suppliers of the materials needed for the alleged projects.

Prosecution evidence showed that there were many RIVs issued for the same project with the same materials and

for almost the same period of time and made by the same requisitioner. It boggles our mind why as property custodian, Cabusas had not been suspicious of the fact that he was asked by Assistant District Engineer Rabaya, Jr. or by the project engineers to prepare separate RIVs and separate notices of public biddings and purchase orders for the same projects and materials. He was also the one who prepared the general vouchers, where a number of these general vouchers were supported by the same RIV, PO and other documents. In fact, the Sandiganbayan took notice of the circumstances and propounded questions to Cabusas as follows:

JUSTICE DEL ROSARIO:

Q -

You said that before you signed vouchers you scrutinize the delivery receipts and tally sheets and other documents that are necessary and since you find out that there is nothing wrong you approve and sign the voucher?

A - Yes, your honor

Q -

What bothers the Court, if there were only one or a few vouchers it will be all right but did it not ever arouse your suspicion that there might be something wrong due to the unusual volume of materials purchased and number of vouchers being prepared a number, the similar identities of suppliers and contractors, did it never occur to you to suggest that instead of so many vouchers and purchase orders you prepare why not lump sum them all in one voucher?

A - No sir.

Q - Why?

A - Because I am only the Property Custodian. I only do what I am told to do.

JUSTICE DEL ROSARIO:

Q - But you are the one in charge of preparing purchase order?

A - Yes sir.

Q -

And since that involved a lot of repeated work for you for the purchase of materials for the same project involving the same suppliers, it is unusual that you would not even think of suggesting to put only all in one voucher or one specific purchase order?

A - Mine is not to question them because I only perform my duty.

Q -

All right, you said you merely depend on delivery receipts and tally sheet. Since you are the property custodian would you ever try to verify on your own in these delivery receipts or tally sheets were being correct or accurate say by making an inspection on you own?

A -

I make inspections but very seldom because of the very nature of my duty as property custodian requires that I stay more in office because I have also to take the needs of the project, project engineers. I have to take care of the issuance of gasoline and equipments so I am tied mostly.

Q -

Did it not occur to you that just to make sure that these vouchers that what you are signing is regular and proper to go out on your own and find out? It did not even occur to you?

A -

I go out but not often. Very seldom so that I have to rely on them because I do not have reason to doubt the honesty and integrity of the project engineers and the COA representatives.

JUSTICE DEL ROSARIO:

Q - Despite the numerous vouchers and orders?

A - They certify to the inspection and receipts.

Q -

In going over the delivery receipts did you ever notice that problem the same trucks made several trips a day which may not have been physically possible?

A -

My checking is the mathematical computation. I am not concerned with the quantity, the total number of cubic meter that is being delivered and recommended for payments.

Q -

So you did not go deep enough?

A - No, I did not, Your Honor."[141]

Petitioner Cabusas could not simply say that he signed the documents as mandated by the nature of his functions pursuant to the standard operating procedure. His signature in the 199 general vouchers certifying that he received the supplies and materials served as a vital link to perpetuate such anomaly. As Property Custodian, he discharges a very sensitive function in the work of the Ministry of Public Highways, even in such areas that may be said to be routine. It is of no defense therefore to say that since there were engineers to inspect and supervise the projects as well as the materials requisitioned therefore, he need not have intervened therein. Otherwise, he would have allowed unbridled fraud in the office itself, an eventuality against which he, as property custodian, had been precisely designated to install safeguards.[142] As such Property Custodian, the petitioner is the first person to determine whether or not supplies (not only for specific programs but for perfunctory projects as well) are properly delivered based on the specifications. The fact that the orders therefore had previously passed through the higher-ups and had merited their sanction does not deprive him of the right, nay his bounden duty, to ascertain the correctness of such orders, that is to say, whether or not they conform to the said specifications. Indeed, had he performed this duty he would have discovered the anomaly then going on and prevented it had he desired.[143]

Liabilities of petitioners Guilberto Hermosa and Aniceto Arriola:

Petitioners Hermosa and Arriola, both COA Auditing Aides of the same district, were convicted of 26[144] and 100[145] counts, respectively, for signing abstract of proposal, reports of inspections and tally sheets of materials delivered, covered by fake LAAs and SACDCs.

Both were convicted for signing the abstracts of proposals, tally sheets and reports of inspections, certifying to the receipts of certain deliveries in the jobsites which deliveries, however, were found to be non-existent. As Auditing Aides, they were charged with the duty to make sure that materials conformed to the specifications in the

purchase order. However, they allowed the irregularities to be committed by making it appear in the inspection reports they prepared and signed that materials had been delivered in the project sites. The tally sheets and the inspection reports were attached as supporting documents to the general vouchers, which allowed the co-accused contractors and suppliers to collect payments for ghost projects. Their signatures facilitated the consummation of the crime.

Petitioner Hermosa was not charged in Criminal Case No. 1163 but he was convicted and therefore the decision of the Sandiganbayan must be set aside against him insofar as said case is concerned. Petitioner Arriola was charged in Criminal Cases Nos. 1163 and 1232 but the Sandiganbayan neither convicted nor acquitted him and therefore the records of said cases must be remanded for proper disposition by the Sandiganbayan.

Liabilities of petitioners District Auditors Efren Coyoca and Edgar Osmeña:

Petitioner Coyoca was convicted of 78 counts.[146] Petitioner Osmeña was convicted of 24 counts.[147]

The Sandiganbayan convicted petitioners Coyoca and Osmeña for pre-auditing and approving the general vouchers, and the reports of inspections which were irregular and/or fictitious covering "ghost projects". They were found to have conspired with the other petitioners to defraud the government when they allowed splitting of RIVs, POs and GVs into amounts less than P50,000.00 so that their approval of the vouchers would suffice. A higher amount of the vouchers would have required the vouchers to be forwarded to the Regional Auditor for action and review. The Sandiganbayan described the details of splitting, thus:

V. Another significant circumstance patent on the record which supports the perpetration of irregularities in the preparation and processing of the GVs and supporting papers and the corollary aspect of conspiracy between and among the accused coming from the Regional Office and the Cebu 2nd HED is the 'splitting' of the RSEs (RIVs), POs and the GVs into amounts less than P50,000.00. Noteworthy is the fact that sixteen (16) of the eighteen (18) fake LAAs were for amounts over P350,000.00,[148] while the eight (8) fake SACDCs were for amounts over P500,000.00.[149] Therefrom, 199 GVs were prepared for the payments of separate transactions below P50,000.00.

Under the COA Circular No. 76-41, dated July 30, 1976, in relation to COA Circular No. 16-16A, dated March 23, 1976, clarifying COA Circular No. 76-4, dated February 10, 1976, of which the Court can take judicial notice,[150] it is provided that 'Resident Auditors of bureaus, offices and agencies of the National Government in Metropolitan Manila, as well as other Auditors for District/City Highway, Public Work/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' (Underlining supplied). Consequently, all GVs in amounts exceeding P50,000.00 must have to be processed, pre-audited and approved for payment by the Regional Auditor of the COA, instead of the Cebu 2nd HED resident auditors, accused Harvey Ruiz, Edgar Osmeña and Efren Coyoca.

Thus, in the very wording of COA Circular No. 76-41, 'to avoid action, review or approval by higher authorities', the district officials herein resorted to the splitting of the RSEs, POs, and the GVs involved in the fake LAAs with 199 GVs evolving into separate transactions involving the amounts of less than P50,000.00. Otherwise, if such transactions were to be reviewed and pre-audited by the Regional COA Auditor, who might be adverse to joining the conspiracy then the GVs and supporting papers may be found to be the result of (1) inexistent or ante-dated programs of work, (2) illegal funding, (3) irregular bidding, (4) fictitious or simulated deliveries and inspection, and other anomalies. Consequently, the Court considers such 'splitting' as an integral and/or essential element or link in the conspiracy to defraud the Government inasmuch as such practice was consciously and deliberately resorted to in order to hide the massive misappropriation being undertaken by some of the accused herein.[151]

The participation of petitioners Coyoca and Osmeña in the conspiracy were established by the testimony of

prosecution witness Fe delos Reyes who positively identified them, to wit:

Q -

Now in the early part of 1977 would you recall if the Cebu 2nd Highway Engineering District have ever undertaken projects concerning the maintenance or repair of the highway under its jurisdiction?

A - Yes, sir.

Q - Now, why do you know this fact?

A - Because, I was assigned as one of the property inspectors during that time.

Q -

As property inspector, what do you usually perform with respect to these projects being undertaken or prosecuted by the district?

A - I usually perform the inspection.

Q - Inspection of?

A - Of deliveries of supplies and materials.

Q - And where do you usually make the inspection of these materials that would be delivered?

A - At the job site.

Q - When you said 'at the job site', to what place are you particularly referring to?

A - It depends upon my office memorandum issued by the auditor.

Q - Now, usually who assigns you to inspect deliveries of materials for projects being undertaken by the district?

A - It is the auditor.

Q - And how are you assigned - verbally or in writing?

A - I am covered by an office memorandum.

Q - Issued by whom?

A - Issued by the auditor.

Q -

Now, in the early part of 1977 would you recall if you received any instructions from your immediate superior, Auditor Coyoca, concerning the inspection of materials?

A - Yes, sir.

Q - Now, would you recall the specific month of 1977 when you were directed to perform inspection?

A - As I recall, it was sometime in the first quarter.

Q - Of 1977

A - Yes, sir.

Q - Can you not recall the month?

A - I cannot.

Q - Now, were you able to comply with that directive of your auditor, Efren Coyoca?

A - Yes, sir.

Q - And what did you do when you went to inspect the materials?

A - When I went to inspect the first time at the job site, I found out that there was no delivery made.

Q - So, what did you do when you discovered that there were no deliveries of materials made by the contractor?

A - I told that matter immediately to Auditor Coyoca.

Q - And what did Auditor Coyoca say?

A - He told me I will just confer that matter first to Engineer Rafael Rabaya, Jr.

Q - Now, this Rafael Rabaya, Jr., what is his position at the district in the early part of 1977?

A - He was the Assistant District Engineer.

Q -

And would you know if Auditor Coyoca has some conversation with Engineer Rabaya concerning your report?

A - Yes, sir.

Q - Why? Why do you know that he was able to talk with Engineer Rabaya?

A - Because after the day later, Coyoca called me up in his office.

Q - And were you able to talk with Auditor Coyoca?

A - Yes, sir.

Q - Now, when you talked with Auditor Coyoca were there other persons present?

A - There was.

Q - Who?

A - It was Engineer Rafael Rabaya, Jr.

Q - What did Engineer . . . Auditor Coyoca tell you, if any?

A - That you just sign all those prepared tally sheets and inspection reports.

CHAIRMAN

Q - Who said that?

A - That inspection reports and that if anything goes wrong, I will assume the full responsibility being your chief. (sic)

PROS. GUERRERO

Q - Now, when Auditor Coyoca told you that, what did you do?

A -

Then, because of that assurance, I was compelled to sign all those prepared tally sheets and reports of Inspection.

Q -

Now, let's go back to that inspection which you made on the job site. Would you recall who was the contractor involved in that project wherein you were required to make an inspection of deliveries?

A - I think it was Rufino Nuñez.

Q -

Now, in connection with that inspection that you made on Rufino Nuñez, would you recall if you ever signed inspection reports and tally sheets concerning deliveries of materials?

A - Yes, sir.

Q -

Now, you said from this first inspection that you conducted were you also assigned to conduct other inspections in the succeeding quarters of 1977?

A - Yes, sir.

Q -

And what would be the procedure that you would adopt in connection with this inspection that you would conduct?

A - It was just the same procedure.

Q -

In this inspection that you subsequently conducted what were your findings? Were there deliveries of materials or not?

A -

The second order that they gave me, I did not go to the job site anymore because I know that there were no deliveries.

...

PROS. GUERRERO

Q - For how long did Auditor Coyoca act as your immediate superior in the year 1977?

A - That was the first quarter, sir.

Q - Up to the first quarter?

A - Up to the first quarter.

Q -

During Auditor Coyoca's incumbency would you recall how many inspections or - yes, inspections were you required to conduct in the district?

A - I cannot recall it anymore, sir.

Q -

But would you recall the contractors involved, in this alleged delivery of materials that you are supposed to inspect?

A - Yes, sir.

Q - And aside from Rufino Nuñez who are the other contractors?

A - Antolin Jariol, Pablo Guinocor, Feliciano Echavez, Gabison. I think that is all.

Q - After Auditor Coyoca ceased to be your immediate superior who replaced him?

A - He was replaced by Atty. Harvey Ruiz.

PROS. GUERRERO

Q -

Now, would you recall the specific date when Atty. Harvey Ruiz assumed the position of resident auditor of the engineering district?

A - It was sometime in April, 1977.

Q - And upon the assumption of Auditor Ruiz what happened to your practice of inspecting?

A -

Upon assumption, the first day he assumed office I told him of the anomalies regarding the delivery of materials and supplies in the contract.

Q - And what did Auditor Ruiz do or say to your report?

A - He also told me to, we will just refer it to Engineer Rabaya.

Q - Did Auditor Ruiz confer with Engineer Rabaya?

A - Yes, sir.

Q - When did Auditor Ruiz confer with Engineer Rabaya?

A - After I told him about the anomalies.

Q - Why do you know that Auditor Ruiz was able to talk with Engineer Rabaya concerning your report to him?

A - Because Engineer Rabaya came also to the office of Auditor Harvey Ruiz.

PROS. GUERRERO

Q - Why? Were you able to talk with Engineer Rabaya when he came to you?

A -

The first time he came he talked with Auditor Ruiz and Auditor Ruiz called me up in the office and in the presence also of Engineer Rabaya.

Q - And what did he tell you during that occasion?

A -

To just continue what has been done during the time of Coyoca.

Q -

Now, during the time of Auditor Ruiz how many inspection reports were signed by you in your capacity as Auditing Examiner II of the district?

A - I cannot recall it anymore, sir.

Q - Would you recall the contractors involved in this inspection report that you signed?

A - Yes, sir.

Q - Who are these contractors involved?

A - They are Jariol, Nuñez, Gabison, Echavez, Guinocor.

Q - Mrs. delos Reyes, do you know a person by the name of Joselito Genson.

A - Yes, sir.

Q -

In the year 1977 when you were made to sign inspection reports and tally sheets did you have the occasion of meeting this Joselito Genson?

A - Yes, sir.

Q - Under what circumstance did you come to know Joselito Genson?

A - Because, as I recall now, he is one also of the contractors.

Q - Contractors of what district?

A - Of Cebu 2nd.

Q - In what year did he contract with Cebu 2nd Highway Engineering District?

A - In 1977.

Q - Of course you know the accused, Jose Genson?

A - Yes, sir.

Q - Would you know if there is a relation between Jose Genson and Joselito Genson?

A - Yes, sir.

Q - What is the relationship between the two?

A - Contractor Joselito Genson is the son of the district engineer, Genson.

Q -

Now, in the year 1977 would you know if Jose Genson was ever employed with the Cebu 2nd Engineering District?

A - No, he is not.

Q -

For how long did Auditor Ruiz act as the resident auditor of Cebu 2nd Highway Engineering District?

A - It was from April up to October.

Q - Why, what happened to him in October, 1977?

A - He was then replaced by Auditor Edgar Osmeña.

Q -

Now, when Auditor Edgar Osmeña took over what was the practice that you adopted in connection with the deliveries of materials to be inspected by you?

A - It was just the same practice.

Q - When Auditor Osmeña assumed his office did you have occasion to talk to him?

A - Yes, sir.

Q - And what did you tell him?

A -

I told him about the practice that there is no delivery of supplies and materials and that if possible I would like to be assigned to another (sic) activities other than inspection of materials and supplies." [152]

The positive declaration of prosecution witness Fe de Los Reyes was corroborated by the voluminous documentary evidence consisting of the 199 general vouchers and checks as well as the supporting documents attached thereto which were submitted by the prosecution establishing the complicity of petitioners in the illegality of the subject transactions.

A careful review of the 199 general vouchers and the supporting documents revealed that there were splitting of requisitions, purchase orders and general vouchers which were all in violation of COA Circular No. 76-41, dated 30 July 1976. As defined by the Circular, "splitting" in its literal sense, means 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.

Splitting may be in the form of (1) Splitting of Requisitions which consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner; (2) Splitting of Purchase Orders which consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by the different requisitioners; and (3) Splitting of payments which consists in making two or more payments for one or more items involving one purchase order. These forms of splitting are resorted to in order to avoid (a) inspection of deliveries, (b) action, review of approval by higher authorities; (or) public bidding.[153] We find that all these forms of splitting were used in all the transactions brought to the attention of the auditors. Thus, even if the projects undertaken refer to the same road and for the same materials and for almost the same period of time, separate requisitions were prepared and separate purchase orders were made corresponding to each requisition. Also, payments were split into amounts less than P50,000.00 although the general vouchers were supported by the same RIVs and POs. All, to avoid action or review by the higher authorities.

The petitioners District Auditors were tasked to safeguard expenditures and uses of government funds hence they had to be on the look-out for cases of splitting in varied forms. The job of an auditor is to pre-audit the general voucher and review the documents attached thereto before a check is to be issued. Petitioners auditors could not have failed to notice that the 199 general vouchers were all for amounts less than P50,000.00 despite the fact that most of these vouchers were supported by the same set of documents, i.e., RIVs and POs, which were worth

higher than such amount. To reiterate, several of the general vouchers were made in payment for the same kind of materials to be delivered to the same project for almost the same period of time and payable to the same contractor.[154] Notably, some of the checks issued pursuant to these general vouchers bore the same date[155] or were dated very close to each other.[156]

All the herein petitioners insist that there were no splitting of payments but only partial payments in accordance with the progress of work. They claim that partial payments are allowed under existing rules of the MPH particularly Art. 9.06 of the Standard Specification for Highways and Bridges which reads:

Art. 9.06. PARTIAL PAYMENTS. Once each month, or oftener if warranted, as the work progresses, the Engineer and the representative of the Contractor will make an estimate of the value of the work performed and materials complete in place in accordance with the contract. Materials on hand but not complete in place shall not be included for payment.

Each consecutive estimate shall be filed by the Contractor as a claim against the government and certified to by the Engineer. Ten per cent of each estimate shall be deducted and retained until final acceptance of the entire contract as guarantee for good performance. The monthly payments shall be considered as approximate only and shall not be evidence of acceptance of unsatisfactory work or material. The retention of ten per cent on every partial payment shall be made regardless of whether or not claims for labor and materials have been paid, and shall not be released or authorized to be paid to the contractor until after sixty calendar days have elapsed, counting from the date the final payment on the contract is made.

We are not convinced. Petitioners' reliance on Art. 9.06 is misplaced for the following reasons: Firstly, the RIVs pertained to the procurement of supplies and materials and the purchase orders covering these procurements did not indicate therein any partial payment that may be allowed to the contractor. Hence, the suppliers were obligated to deliver the materials within the period agreed upon and to be paid only after completion of the delivery. Secondly, based on the delivery receipts and checks paid to the suppliers, the alleged deliveries of materials were completed within 10-15 days from the start of the deliveries and paid within 3-4 weeks from the issuance of the RIVs. A reading of Art. 9.06 would show that the allowed partial payments refer to long term project which is precisely why the frequency of the said payments is generally on a monthly basis. Thirdly, the almost one hundred checks issued to the suppliers which were based on the general vouchers supported by the same RIVs and purchase orders were dated on the same date or were dated very close to each other; therefore, partial payments did not serve its alleged purpose of helping the suppliers to defray their expenses. It bears stressing that when these contractors/ suppliers participated and were awarded the whole quantity of what they bid, they were expected that they had their own resources to comply in order to attain uniformity of the materials delivered. Finally, it is incredibly astonishing that all the alleged partial payments were uniformly pegged at amounts below P50,000.00 when this circumstance only shows that the scheme was deliberately employed by petitioners to make sure that said payments would no longer be made subject to the approval of the Regional Auditor.

Thus, we agree with the Sandiganbayan that the prosecution has amply established the guilt of petitioners Auditors Coyoca and Osmeña, as well as the Auditing Aides Hermosa and Arriola.

Records disclose that although petitioner Osmeña was convicted in Criminal Case No. 1163, he was not charged in said case; and in Criminal Case No. 1232, he was neither convicted nor acquitted by the Sandiganbayan although he had been duly charged and tried in said case. The assailed decision must be set aside insofar as Osmeña is concerned in Criminal Case No. 1163 and the records should be remanded to Sandiganbayan for proper disposition of Criminal Case No. 1232.

Petitioner Coyoca was charged in Criminal Case No. 1289 and tried but was neither convicted nor acquitted by

the Sandiganbayan. Consequently, records of said case must be remanded to respondent court for proper disposition.

While there are cases where heads of offices, whose actions involved the very function he had to discharge, cannot be swept into a conspiracy conviction,[157] we find the same to be inapplicable in the present cases before the Court. Herein petitioners, Engineer Rafael Rabaya, Jr., District Accountant Mag-uyon, Property Custodian Cabusas and the District Auditors who were heads of their respective divisions in the Cebu 2nd HED were knowing participants in the conspiracy considering that despite the patent irregularities in the documents presented to them, they still affixed their signatures thereto. In fine, all the individual acts of petitioners were so synchronized and concerted leaving no room for any doubt that there was conspiracy and connivance among them.

Liability of petitioner contractor Joselito Genson:

Petitioner Genson was one of the private contractors who was convicted of 19 counts[158] of violation of section 3(e), RA 3019 for having conspired, cooperated and confederated with the other petitioners in a fraudulent scheme that defrauded the government.

Genson was not charged in Criminal Case No. 1232 but he was convicted. The Solicitor General, in his Comment, points out that Genson was not charged in Criminal Case No. 1251 as the name of contractor Rufino Nuñez appeared in the body of the Information. A reading of the Information would show that Genson's name appeared in the title as well as in the first paragraph of the Information but not in the body of the Information. However, Genson never raised any objection thereto when he entered his plea of not guilty to the Information nor did he raise the same before, during, after trial, in his memorandum or in his petition. In fact, he included Criminal Case No. 1251 as one of the appealed cases. Thus, unlike the other petitioners heretofore mentioned, Genson is considered as having been validly charged and tried in Criminal Case No. 1251.

Petitioner Genson basically raises the issue of sufficiency of the prosecution evidence to sustain his conviction on the basis of conspiracy. He claims that Sandiganbayan's statement that "a meticulous examination and analysis of the mass of testimonial and documentary evidence presented by the prosecution tends to show the existence of a conspiracy..." was not the kind of proof required to establish conspiracy.

We are not persuaded.

Although the findings of the Sandiganbayan started with such a statement, the entirety of the decision discussed how the crime was committed by means of conspiracy between petitioner Genson and his co-accused. The Sandiganbayan had discussed lengthily how such conspiracy was carried out by the individual collective actions of the regional and district employees which began with the issuances of the fake LAAs and SACDCs, followed by the irregular processing of the supporting documents and the approval of the general vouchers which ended with the payment of the checks to the accused supplier or contractor.

We agree with the findings of the Sandiganbayan that petitioner Joselito Genson conspired with the other petitioners to commit the crime. Such agreement was manifested in the general vouchers and the checks paid to petitioner Joselito Genson, to wit:

CC

RIV

GV No.

Date of

Amount

Project

No

Check

Pinamungahan -

1255[159]

345

B-751

5-31-77

P 43,795.50

Aloguinsan Rd.

1256[160]

- do -

753

- do -

43,504.50

- do -

1250[161]

451

1081

7-28-77

43,650.00

- do -

1251[162]

- do -

1065

8-1-77

43,650.00

- do -

1252[163]

421

961

7-13-77

39,721.50

- do -

1254[164]

- do -

959

- do -

47,578.50

- do -

1207[165]

- do -

1239

9-1-77

48,015.00

- do -

1204[166]

607

1379

9-20-77

30,433.75

Cebu Toledo Rd

1205[167]

- do -

1352

9-29-77

42,316.25

- do -

1203[168]

632

1461

10-17-77

48,257.50

- do -

1230[169]

- do -

1469

- do -

24,492.00

- do -

1253[170]

755

1762

12-21-77

41,147.40

- do -

1257[171]

- do -

1757

- do -

40,332.60

- do -

Mantalongon-

1231[172]

685

1606

11-9-77

48,015.00

Dalaguete Rd.

1258[173]

- do -

1612

11-30-77

- do -

- do -

1202[174]

691

1607

11-9-77

47,294.29

Argao

1259[175]

- do -

1614

11-14-77

18,180.71

- do -

Notably, there were two general vouchers corresponding to each RIV, thus a clear case of splitting of payments by the issuances of two checks below P50,000.00 each for only one RIV. Such fact supports the findings of respondent court that there was splitting of payments to avoid review by the Regional COA Auditor. Petitioner Genson admits the receipt of said payments[176] but claims that he had asked for partial payments to answer for the fuel and oil used and as a down payment for the rented dump trucks and other equipments. However, the summary shows that some checks supported by the same RIV bore the same date or were dated very close to each other. How could such partial payments serve their purported purpose when the checks were received by petitioner supposedly after the alleged deliveries were completed as shown by the tally sheets attached to the general vouchers.

Petitioner Genson further contends that his conviction was merely based on the pleas of guilty of the two co-accused contractors/suppliers, namely, Erasmo Gabison and Feliciano Echavez;[177] that said pleas are not admissible against him considering that he was granted a separate trial by the court.

We are not convinced.

It is settled that if a separate trial is allowed to one of two or more defendants, his testimony therein imputing guilt to any of the co-accused is not admissible against the latter who was not able to cross-examine him.[178]

We have carefully studied the decision of the Sandiganbayan and we find that petitioner Genson, like the petitioners Engineers, was not convicted on the basis solely of the pleas of guilty of his co-accused private contractors/suppliers. The evidence of the prosecution had fully established the conspiracy among the accused and the pleas of guilty of the two contractors were merely considered as confirmatory. Thus, even without such pleas, petitioner Genson's participation in the scheme to defraud the government was proven beyond reasonable doubt.

Petitioner Genson claims that the respondent court did not consider the testimonies of his witnesses proving that

he prosecuted the questioned projects. We have gone over the testimonies of Genson's witnesses and we find no error committed by the respondent court in not giving them probative value.

Defense witness Mariano Castro testified that petitioner Genson requested him to utilize his house as resting place for his men while hauling gravel and sand; that their place was not a boarding house nor was he engaged in the business of accepting transients; that he did not know Genson personally;^[179] that Genson's men stayed in his house for 2-3 weeks which began on the 9th of November;^[180] that he did not accept any rental fees from Genson since the road construction was just in front of his house thus, will be beneficial to him;^[181] Based on the prosecution's evidence, however, the alleged deliveries of the materials in the Argao section were supposed to have started on November 5 up to 10, 1977,^[182] or a total of 6 days only contrary to Castro's testimony that Genson's men stayed in his house for 14 to 21 days.^[183] Moreover, it is quite unusual that witness Castro would allow the workers of Genson to stay in his house and for free at that when Castro admitted that he did not even know Genson personally, much more the workers.

Defense witness Perpetua Mercado, barangay captain of Ubo and owner of the quarry where petitioner allegedly hauled limestone, testified that she met Genson for the first time when he asked her permission to allow his men to stay in her sister-in law's house; that she agreed on condition that Genson will fill up the barangay road with grinded materials. There was nothing, however, in Perpetua's testimony explaining why it was her permission that was sought and not of her sister-in-law who lives in the house where Genson's men were supposed to stay. The name of Perpetua's sister-in law was not even made known nor was she presented in court to confirm that Genson's men indeed stayed in her place.

Perpetua further stated that it took petitioner a month or more to deliver the piles of limestone used in leveling the 12 kms. Montalongon road,^[184] however, the delivery receipts show that it purportedly took petitioner only 5 days, i.e., November 7 to 12, 1977, to deliver the materials to the project site.^[185]

Moreover, Perpetua's testimony on cross-examination that she was not requested by Genson to testify for him is quite unbelievable. She testified that the last time she saw Genson was in 1977 when the project was still undergoing; that since then she had no communication with him until twelve years later, she received a note at 7:00 a.m. of April 11, 1989 signed by Genson telling her to meet him on the same day at the Capitol building without specifying the subject matter of the meeting;^[186] that she had traveled ninety kilometers from Barangay Ubo, Dalaguete to Cebu City in order to meet Genson and on the same day was presented as Genson's witness;^[187] that she only came to know that there were cases filed against Genson involving non-deliveries of materials when she was already being questioned in court; that she was not able to talk to Genson or his lawyer before she was presented as a witness. The behavior shown by Perpetua is contrary to ordinary human experience since a note from somebody whom she was not in close association with and without even a slightest hint on what the meeting would be about, would not prompt her to act on it specially when it was made on such a short notice and such meeting would not only entail expenses on her part but also the inconvenience of traveling a ninety kilometer road just to reach the meeting place.

Felicidad Obejero testified that she met Genson when he came to haul materials at the river bank of Mananga, Campo 2, in Talisay, Cebu; that after hauling the materials, she collected P1 for every truck that passed by their private road; that she did not know where those gravel and sand taken from the river were unloaded.^[188] Obviously, this testimony has no probative value as it is too general and does not specifically refer to the projects in question.

We find that the testimonies of petitioner Genson's witnesses do not outweigh the evidence presented by the prosecution that no deliveries were actually made in 1977 in the Cebu 2nd HED and that the Sandiganbayan did

not commit any error in convicting him.

WHEREFORE, the convictions of petitioners Rogelio Alvizo in Criminal Cases Nos. 1153-1159, 1196-1197, 1200, 1242-1245, 1249, 1263-1266, 1272, 1280, 1293-1294, 1302 and 1304, Pompeyo Almagro in Criminal Cases Nos. 1170-1171, 1182, 1192, 1194-1195, 1201, 1222, 1231, 1233, 1258, 1261, 1291-1292, 1295, 1301, 1319-1324, 1334 and 1337, Catalino Magno, Jr. in Criminal Cases Nos. 1161, 1165, 1173-1177, 1187-1188, 1196, 1216, 1218, 1246, 1253, 1255, 1257, 1284, 1307, 1319, 1330-1332, Efren Coyoca in Criminal Cases Nos. 1143-1153, 1155-1159, 1197-1201, 1242-1249, 1261-1266, 1270-1281, 1285-1288, 1290-1306 and 1309-1318, Edgar Osmeña in Criminal Cases Nos. 1160-1162, 1208-1213, 1226-1229, 1233, 1253, 1257-1260, 1320-1321 and 1325-1326, Guilberto Hermosa in Criminal Cases Nos. 1160, 1162, 1165, 1172, 1180-1181, 1184, 1190-1191, 1193, 1213-1214, 1221, 1223, 1237, 1240, 1253, 1255-1257, 1262, 1333, 1336, 1339 and 1341, Aniceto Arriola in Criminal Cases Nos. 1143-1159, 1166-1167, 1169-1171, 1173-1177, 1181, 1189-1190, 1194, 1196, 1198-1200, 1210, 1217, 1221-1222, 1224, 1226-1229, 1233, 1236-1237, 1239-1240, 1245, 1256, 1263, 1265-1272, 1277, 1281-1285, 1288-1289, 1291-1299, 1301, 1306, 1311, 1315, 1317-1319, 1321-1323, 1325, 1327-1332, 1334-1336, 1338, 1340 and 1341, Sofronio Mag-uyon in Criminal Cases Nos. 1143-1341, Santos Cabusas in Criminal Cases Nos. 1143-1341, Rafael Rabaya, Jr., in Criminal Cases Nos. 1143-1159, 1162-1179, 1181-1195, 1197-1207, 1210-1231, 1234-1252, 1254-1256, 1258-1259, 1261-1282, 1284-1288, 1290-1319, 1321-1324 and 1326-1341, Nestor Rabaya in Criminal Cases Nos. 1143-1152, 1155, 1157-1158, 1160-1172, 1174-1192, 1194-1206, 1208-1236, 1238-1247, 1250-1261, 1263-1265, 1267-1276, 1278-1279, 1281-1288 and 1290-1341, and Joselito Genson in Criminal Cases Nos. 1202-1207, 1230-1231, 1250-1259 of violation of Section 3(e) of RA 3019 are hereby AFFIRMED.

The convictions of Rogelio Alvizo in Criminal Cases Nos. 1203, 1204, 1205, 1230, 1281, and 1288; Catalino Magno, Jr. in Criminal Cases Nos. 1162, 1163, 1215, 1217, 1236 and 1238; Pompeyo Almagro in Criminal Case No. 1227 are hereby SET ASIDE and they are ACQUITTED for lack of evidence.

The convictions of Pompeyo Almagro in Criminal Case No. 1232, Edgar Osmeña in Criminal Case No. 1163, Guilberto Hermosa in Criminal Case No. 1163, Rafael Rabaya in Criminal Case No. 1232 and Joselito Genson in Criminal Case No. 1232 are hereby SET ASIDE considering that they were not charged in the Informations.

Considering that the Sandiganbayan did not acquit or convict Rafael Rabaya, Jr., in Criminal Cases Nos. 1180, 1283 and 1289; Efren Coyoca in Criminal Case No. 1289; Edgar Osmeña in Criminal Case No. 1232, Aniceto Arriola in Criminal Cases Nos. 1163 and 1232; and Catalino Magno in Criminal Case No. 1241, let the original records of the said cases be remanded to the Sandiganbayan for rendition of the proper verdict on the said petitioners.

The petition filed by Oscar Belcina in G.R.Nos. 99309-18 had already been DISMISSED in our Resolution dated September 29, 1994 which had already attained finality.

The name of petitioner Harvey Ruiz in G.R. Nos. 99412-16 and G.R. Nos. 99436-99636 is DELETED for the reason that his previous petitions in G.R. Nos. 98715-98913 assailing the same decision of the Sandiganbayan were dismissed in our Resolution promulgated on June 10, 1991 which had become final and executory.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., no part. I was a former counsel of a party.

Quisumbing, and Sandoval-Gutierrez, JJ., on official leave.

[1] Second Division, composed of Justice Romeo Escareal, Chairman and ponente, concurred in by Justices Jose S. Balajadia and Nathanael M. Grospe; Original Records, Volume VII, pp. 3189-3341.

[2] Records, Volume IX, pp. 4143-4144.

[3] Records, Volume VII, p. 3340.

[4] Manuel de Veyra, (Regional Director, MPH, Region VII), Rolando Mangubat (Regional Accountant, MPH, Region VII), Delia Preagido (Accountant III, MPH, Region VII), Santos Cabusas (Property Officer, Cebu Second HED) and Sofronio Mag-uyon (Accountant, Cebu Second HED) are all accused in Criminal Cases Nos. 1143-1341.

Rafael Rabaya, Jr., (Assistant Highway District Engineer, Cebu 2nd HED), accused in Criminal Cases Nos. 1143-1159, 1162-1195, 1197-1207, 1210-1231, 1234-1252, 1254-1256, 1258-1259, 1261-1319, 1321-1324, 1326-1341.

Nestor Rabaya (Material Testing Engineer, Cebu 2nd HED), accused in Criminal Cases Nos. 1143-1152, 1155, 1157-1158, 1160-1172, 1174-1192, 1194-1206, 1208-1236, 1238-1247, 1250-1261, 1263-1265, 1267-1276, 1278-1279, 1281-1288 and 1290-1341.

Oscar Belciña (then Sr. Civil Engineer, Cebu 2nd HED), accused in Criminal Cases Nos. 1144, 1148, 1150, 1151, 1156, 1159, 1215-1220, 1223, 1225, 1233, 1260, 1262, 1290, 1296, 1299-1300 and 1320.

Rogelio Alvizo (Sr. Civil Engineer, Cebu 2nd HED), accused in Criminal Cases Nos. 1153-1159, 1196-1197, 1200, 1203-1205, 1230, 1242-1245, 1249, 1263-1266, 1272, 1280-1281, 1288, 1293-1294, 1302, and 1304.

Florito Montecillo (Supervising Civil Engineer I, Cebu 2nd HED), accused in Criminal Cases Nos. 1153-1154, 1169, 1172, 1178-1180, 1183-1186, 1202, 1206, 1210, 1221, 1226-1228, 1232, 1248, 1250-1252, 1254, 1259, 1265, 1268, 1270, 1274, 1277-1278, 1280, 1282-1289, 1293, 1296, 1299, 1302-1305, 1307-1310, 1312-1314, 1319, 1325, 1335, 1338 and 1340.

Catalino Magno, Jr., (Supervising Civil Engineer, Cebu 2nd HED), accused in Criminal Cases Nos. 1161- 1163, 1165, 1173-77, 1187-1188, 1196, 1215-1218, 1236, 1238, 1241, 1246, 1253, 1255, 1257, 1284, 1307, 1319, 1330-1332.

Pompeyo Almagro (Civil Engineer, Cebu 2nd HED), accused in Criminal Cases Nos. 1170-1171, 1182, 1192, 1194-1195, 1201, 1222, 1227, 1231, 1233, 1258, 1261, 1291-1292, 1295, 1301, 1319-1324, 1334 and 1337.

Efren Coyoca (Auditor, Cebu 2nd HED), accused in Criminal Cases Nos. 1143-1153, 1155-59, 1197-1201, 1242-1249, 1261-1266, 1270-1281, 1285-1306 and 1309-1318.

Harvey Ruiz (Auditor, Cebu 2nd HED), accused in Criminal Cases Nos. 1163-1177, 1179-84, 1187-1196, 1202-1203, 1205-1207, 1214-1225, 1230-1231, 1234-1241, 1250, 1252, 1254-1256, 1267-1268, 1282-1284, 1307-1308, 1319, 1321-1324, 1327-1338 and 1340-1341.

Edgar Osmeña (Highway District Auditor, Cebu 2nd HED), accused in Criminal Cases Nos. 1160-1162, 1208-1213, 1226-1229, 1232-1233, 1253, 1257-1260, 1320-1321, 1325, 1326.

Aniceto Arriola (COA Auditing Examiner, Cebu 2nd HED), accused in Criminal Cases Nos. 1143-1159, 1163, 1166-1167, 1169-1171, 1173-1177, 1181, 1189-1190, 1194, 1196, 1198-1200, 1210, 1217, 1221-1222, 1224-, 1226-1229, 1232-1233, 1236-1237, 1239-1240, 1245, 1256, 1263, 1265-1272, 1277, 1281-1285, 1288-1289,

1291-1299, 1301, 1306, 1311, 1315, 1317-1319, 1321-1323, 1325, 1327-1332, 1334-1336, 1338, 1340 and 1341.

Guilberto Hermosa (Auditing Aide II, Cebu 2[nd] HED), accused in Criminal Cases Nos. 1160, 1162, 1165, 1172, 1180-1181, 1184, 1190-1191, 1193, 1213-1214, 1221, 1223, 1237, 1240, 1253, 1255-1257, 1262, 1333, 1336, 1339 and 1341.

[5] Rufino Nuñez, in Criminal Cases Nos. 1143-1159, 1172-1192, 1208-1229, 1290-1319 and 1330-1341.

Antolin Jariol, in Criminal Cases Nos. 1160-1168, 1234-1249.

Erasmus Gabison, in Criminal Cases Nos. 1169-1171, 1232-1233, 1260 and 1282-1289.

Feliciano Echavez, in Criminal Cases Nos. 1193-1201, 1261-1266 and 1320-1324.

Joselito Genson, in Criminal Cases Nos. 1202-1207, 1230-1231, 1250-1259.

Pablo Guinocor, in Criminal Cases Nos. 1267-1281 and 1325-1329.

[6] Records, Volume I, pp. 1-3; Volume VII, pp. 3191-3201.

[7] General Voucher.

[8] Records, Volume VIII, p. 3,343.

[9] Records, Volume IX, p. 4,422.

[10] Records, Volume VII, p. 3204.

[11] Records, Volume I, pp. 176-192.

[12] Genson's counsel, Atty. Emerito M. Salva, actively participated in the cross-examination of the prosecution witnesses.

[13] Records, Volume VI, p. 2570.

[14] Records, Volume VI, p. 2571-2572.

[15] Records, Volume VII, pp. 3208-3211.

[16] Exhibits "E", "E-1" and "E-2".

[17] Exhibits "F", "F1 to F6", inclusive.

[18] Exhibits "H-1" to "H-19".

[19] Exhibits "I" and "I-1".

[20] Exhibit "J" to "J-33", inclusive.

[21] Exhibits "K-1" to "K-18".

[22] TSN, June 4, 1984, pp. 47-50.

[23] Id. at p. 57.

[24] Exhibits "Q-1" to "Q-8".

[25] TSN, June 4, 1984, p. 59.

[26] Id. at p. 62; Exhibits "V" to "V-134".

[27] Id. at p. 66.

[28] TSN, August 13, 1984, pp. 9-10.

[29] Id. at pp. 20-30.

[30] Id. at p. 32.

[31] TSN, August 20, 1985, p. 33.

[32] Exhibit "JJ", TSN, May 18, 1982, direct testimony given in "People vs. Paterno Diez, Jr. et al, Criminal Cases Nos. 889; 927-935; 1052-1071; 1116-1137; 1540-1546; 1582-1588; 1945-1958; 3253-3317, anomalies involving irregular disbursements in Mandaue City.

[33] TSN, May 18, 1982, p. 15.

[34] Pleaded guilty. See Note 13.

[35] TSN, May 18, 1982, pp. 19-22.

[36] Id. at pp. 25-29.

[37] Id. at p. 31.

[38] Id. at p. 35.

[39] Acquitted by the Sandiganbayan in the herein assailed decision.

[40] At large. See Note 8.

[41] TSN, May 18, 1982, pp. 37-38.

[42] Id. at p. 72.

[43] Id. at pp 74-75.

[44] Id. at pp. 76-80.

[45] TSN, May 19, 1982, pp. 50-70.

[46] TSN, August 23, 1988, pp. 9-15.

[47] TSN, August 20, 1986, p. 6.

[48] Id. at p. 8.

[49] Id, at p. 9.

[50] Id. at p. 10.

[51] Deceased, see Note 10.

[52] Convicted by the Sandiganbayan but not included as petitioner in the above-entitled cases.

[53] Pleaded guilty and convicted by Sandiganbayan. See Note 9.

[54] Pleaded guilty. See Note 14.

[55] Ibid.

[56] TSN, August 20, 1986 at pp. 13-15.

[57] *Id.*, at p. 31.

[58] *Id.* at p. 35.

[59] TSN, January 14, 1987, p. 4; Exhibit "BB".

[60] TSN, January 14, 1987, p. 6.

[61] Exhs. "R", "R-2-g", "R-89-g", "R-13-g", "R-16-g", "R-54-g", "R-119-g", "R-121-g", "R-123-g", "R-125-g", "R-133-g", "R-125-g", "R-137-g", "R-140-g", "R-144-g", "R-195-g".

[62] TSN, January 14, 1987, pp. 12-16.

[63] Records, Volume VII, p. 3295.

[64] Records, Volume VII, pp 3287-3291.

[65] There is "manifest partiality" when there is a clear notorious or plain inclination or predilection to favor one side or person rather than another (Webster, Third New International Dictionary, p. 1646, Bouvier's Law Dictionary, Third Edition, p. 2083).

[66] "Bad faith" does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of wrong; a breach of known duty through some motive or interest or ill will; it partakes of the nature of fraud (*Spiegel vs. Beacon Participations*, 8 N. E. 2d. Series, 895, cited in *Board of Liquidators vs. Kalaw*, L-18805, August 14, 1967, 20 SCRA 987, 1007). It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes (*Air France vs. Carrascoso*, L-21438, September 28, 1966, 18 SCRA 155).

"Evident" means clear to the understanding and satisfactory to the judgment; manifest, plain, obvious, conclusive (*Russel vs. State*, 71 Fla. 236, *Black's Law Dictionary Revised Fourth Edition*, p. 668).

[67] "Inexcusable neglect or negligence" implies something more than the unintentional inadvertence or neglect to do something that a reasonable and prudent man would ordinarily have done under the circumstances and which proximately causes injury to another. "Gross negligence is 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 willfully and intentionally with conscious indifference to consequence, so far as the other person may be affected (*Ballantine's Law Dictionary* 3 Ed. p. 537).

[68] Records, Volume VII, pp. 3293-3295.

[69] *Id.* at pp. 3300-3340.

[70] Paragraph 3 of Revised Circular No. 1-88 provides:

(3) Copies of judgment or resolution sought to be reviewed - Petitions filed with the Supreme Court, whether under Rule 45, Rule 65, R.A. No. 5440 or P.D.No. 1606, shall be accompanied by a clearly legible duplicate original or certified true copy of the decision, judgment, resolution or order subject thereof, and the requisite number of plain copies thereof. The certification shall be accomplished by the proper Clerk of Court or by his duly authorized representative or by the proper officer of the court, tribunal, board, commission, or office involved, or by his duly authorized representative. Certification by the parties themselves, their counsel or any other person shall not be allowed.

[71] Rollo of G.R. Nos. 99309-18, pp. 184-185.

[72] Par. 3 of Circular No. 1-88.

[73] Rollo of GR Nos. 98494-98692, p. 364.

[74] Id. at p. 367.

[75] Rollo, p. 13.

[76] Rollo, p. 17.

[77] Rollo, pp. 8-9.

[78] Rollo, p.12.

[79] Rollo, p. 15.

[80] Rollo, pp 9-10.

[81] Records, Volume VII, p. 3262.

[82] Paderanga vs. Drilon, 196 SCRA 86 (1991); People vs. Umbrero, 196 SCRA 821 (1991).

[83] People vs. Lapura, 255 SCRA 85 (1996).

[84] People vs. Lazo, 198 SCRA 274 (1991).

[85] People vs. Hubilo, 220 SCRA 389 (1993).

[86] Cesar vs. Sandiganbayan, 134 SCRA 105, [1985].

[87] TSN, May 18, 1982, pp. 19-24, Exhibit "JJ".

[88] Id. at pp. 29-39.

[89] Id. at pp. 43-44.

[90] Id. at pp. 65-66.

[91] See pp. 85-88 of this Decision.

[92] Mangubat vs. Sandiganbayan, 147 SCRA 478.

[93] Mangubat vs. Sandiganbayan, 163 SCRA 52.

[94] TSN, April 13, 1989, pp.14-15.

[95] Exhibits "R-c, R-1-c, R-2-c, R-3-d, R-4-c, R-5-c, R-6-c, R-7-c, R-8-c, R-9-c, R-10-c, R-11-c, R-12-c, R-13-c, R-14-c, R-15-c, R-16-c, R-17-c, R-18-c, R-19-c, R-20-c, R-21-c, R-22-c, R-23-c, R-24-c, R-25-b, R-26-c, R-27-c, R-28-c, R-29-c, R-30-c, R-31-c, R-32-c, R-33-c, R-34-c, R-35-c, R-36-c, R-37-d, R-38-d, R-39-c, R-40-c, R-41-d, R-42-c, R-43-c, R-44-d, R-45-d, R-46-c, R-47-c, R-48-c, R-49-c, R-50-c, R-52-c, R-53-c, R-54-c, R-55-c, R-56-c, R-57-c, R-58-c, R-59-c, R-60-c, R-61-c, R-62-b, R-63-c, R-64-c, R-65-c, R-66-c, R-67-c, R-68-c, R-69-c, R-70-c, R-71-c, R-72-c, R-73-c, R-74-b, R-75-c, R-76-c, R-77-c, R-78-c, R-79-c, R-80-b, R-81-c, R-82-d, R-83-c, R-84-c, R-85-b, R-86-c, R-87-c, R-88-c, R-89-c, R-90-c, R-91-c, R-92-c, R-93-h, R-94-c, R-95-c, R-96-c, R-97-c, R-98-c, R-99-b, R-100-c, R-101-c, R-102-c, R-103-c, R-104-c, R-105-c, R-106-c, R-107-d, R-108-c, R-109-c, R-110-c, R-111-c, R-112-c, R-113-e, R-114-c, R-115-b, R-116-c, R-117-c, R-118-c, R-119-c, R-120-c, R-121-c, R-122-c, R-123-c, R-124-c, R-125-d, R-126-c, R-127-c, R-128-c, R-129-c, R-130-d, R-131-d, R-132-c, R-133-c, R-134-c,

R-135-d, R-136-d, R-137-c, R-138-d, R-139-c, R-140-c, R-141-c, R-142-c, R-143-d, R-144-c, R-145-c, R-146-d, R-147-c, R-148-c, R-149-c, R-150-c, R-151-c, R-152-c, R-153-c, R-154-c, R-155-b, R-156-d, R-157-c, R-158-c, R-159-c, R-160-c, R-161-j, R-162-c, R-163-c, R-164-c, R-165-c, R-166-c, R-167-c, R-168-c, R-169-b, R-170-c, R-171-c, R-172-c, R-173-c, R-174-b, R-175-c, R-176-c, R-177-c, R-178-c, R-179-c, R-180-c, R-181-c, R-182-d, R-183-c, R-184-c, R-185-d, R-186-c, R-187-c, R-188-c, R-189-c, R-191-c, R-192-c, R-193-c, R-194-c, R-195-c, R-196-c, R-197-c, R-198-d."

[96] Exhibits "R-b, R-1-b, R-2-b, R-3-c, R-4-b, R-5-b, R-6-b, R-7-b, R-8-b, R-9-b, R-10-b, R-11-b, R-12-b, R-13-b, R-14-b, R-15-b, R-16-b, R-17-b, R-18-b, R-19-b, R-20-b, R-21-b, R-22-b, R-23-b, R-26-b, R-27-b, R-28-b, R-29-b, R-30-b, R-31-b, R-32-b, R-33-b, R-34-b, R-35-b, R-36-b, R-37-c, R-38-c, R-39-b, R-40-b, R-41-c, R-42-b, R-43-b, R-44-c, R-45-c, R-46-b, R-47-b, R-48-b, R-49-b, R-50-b, R-51-c, R-52-b, R-53-b, R-54-b, R-55-b, R-56-b, R-57-b, R-58-b, R-59-b, R-60-b, R-61-b, R-62-b, R-63-b, R-64-b, R-65-b, R-66-b, R-67-b, R-68-b, R-69-b, R-70-b, R-71-b, R-72-b, R-73-b, R-75-b, R-76-b, R-77-b, R-78-b, R-79-b, R-81-b, R-82-c, R-83-b, R-84-b, R-86-b, R-87-b, R-88-b, R-89-b, R-90-b, R-91-b, R-92-b, R-93-b, R-94-b, R-95-b, R-96-b, R-97-b, R-98-b, R-100-b, R-101-b, R-102-b, R-103-b, R-104-b, R-105-b, R-106-b, R-107-c, R-108-b, R-109-b, R-110-b, R-111-b, R-112-b, R-113-d, R-114-b, R-117-b, R-118-b, R-119-b, R-120-b, R-121-b, R-122-b, R-123-b, R-124-b, R-125-c, R-126-b, R-127-b, R-128-b, R-129-b, R-130-c, R-131-c, R-132-b, R-133-b, R-134-b, R-135-c, R-136-c, R-137-b, R-138-c, R-139-b, R-140-b, R-141-b, R-142-b, R-143-c, R-144-b, R-145-b, R-146-c, R-147-b, R-148-b, R-149-b, R-150-b, R-151-b, R-152-b, R-153-b, R-154-b, R-156-c, R-157-b, R-158-b, R-159-b, R-160-b, R-161-c, R-162-b, R-163-b, R-164-b, R-165-b, R-166-b, R-167-b, R-168-b, R-170-b, R-171-b, R-172-b, R-173-b, R-175-b, R-176-b, R-177-b, R-178-b, R-179-b, R-180-b, R-181-b, R-182-c, R-183-b, R-184-b, R-185-c, R-186-b, R-187-b, R-188-b, R-189-b, R-190-c, R-191-b, R-192-b, R-193-b, R-194-b, R-195-b, R-196-b, R-197-b, R-198-c."

[97] See Notes 95-96.

[98] Genson was District Engineer from January to March 1977 until replaced by Rayos who served as District Engineer up to December 1977.

[99] Exhibits "R-1-c and R-5-c, R-7-c and R-8-c, R-13-c and R-16-c, R-147-c and R-157-c, R-153-c and R-156-d; R-38-d, R-65-c and R-66-c, R-78-c; R-2-c, R-4-c and R-5-c, R-6-c, R-14-c and R-15-c; R-164-c, R-165-c, R-193-c, R-196-c and R-198-d; R-3-d, R-9-c, R-155-b, R-173-c; R-79-c, R-86-c; R-67-c, R-83-c, R-84-c, R-85-b, R-72-c, R-73-c, R-74-b, R-75-c, R-76-c, R-77-c, R-80-b, R-82-d; R-168-c, R-172-c, R-174-b, R-175-c, R-148-c, R-149-c, R-152-c, R-158-c, R-177-c, R-178-c, R-179-c; R-130-d, R-132-c, R-134-c, R-138-d, R-152-c; R-10-c, R-11-c, R-150-c, R-151-c, R-159-c, R-161-j, R-119-c; R-70-c, R-71-c; R-69-c, R-81-c, R-139-c; R-140-c, R-182-d; R-120-c, R-123-c, R-160-c, R-162-c, R-166-c, R-167-c, R-169-b, R-170-c, R-171-c, R-17-c, R-18-c, R-25-b, R-19-c, R-20-c, R-21-c, R-22-e, R-23-c, R-24-c, R-91-c, R-93-h, R-94-c, R-95-c, R-96-c, R-97-c, R-98-c, R-99-b, R-100-c, R-101-c, R-102-c; R-103-c, R-104-c, R-105-c, R-106-c, R-90-c, R-124-c, R-125-d, R-185-d, R-186-c, R-127-c, R-128-c, R-131-d, R-133-c, R-135-d, R-136-d, R-137-c; R-81-c, R-183-c, R-184-c, R-142-c, R-143-d, R-141-c, R-145-c, R-146-d."

[100] Exhibits "R-1-b, R-5-b, R-7-b, R-8-b, R-13-b, R-16-b, R-147-b, R-157-b, R-153-b, R-156-c, R-29-b, R-38-c, R-65-b, R-66-b, R-78-b; R-2-b, R-4-b, R-6-b, R-14-b, R-15-b; R-164-b, R-165-b, R-190-c, R-193-b, R-196-b, R-198-c; R-3-c, R-9-b, R-173-b; R-79-b, R-86-b; R-67-b, R-83-b, R-84-b, R-72-b, R-73-b, R-75-b, R-76-b, R-77-b, R-82-c; R-168-b, R-172-b, R-175-b, R-148-b, R-149-b, R-152-b, R-158-b, R-177-b, R-178-b, R-179-b; R-130-c, R-132-b, R-134-b, R-138-c, R-11-b; R-150-b, R-151-b, R-159-b, R-161-c, R-119-b; R-70-b, R-71-b; R-69-b, R-81-b, R-139-b, R-140-b, R-182-c; R-120-b, R-123-b, R-160-b, R-162-b, R-166-b, R-167-b, R-170-b, R-171-b, R-17-b, R-18-b, R-19-b, R-20-b, R-21-b, R-23-b, R-24-b; R-91-b, R-93-b, R-94-b,

R-95-b, R-96-b, R-97-b, R-98-b; R-100-b, R-101-b, R-102-b; R-103-b, R-104-b, R-105-b, R-106-b; R-90-b, R-124-b, R-125-c, R-185-c, R-186-b, R-127-b, R-128-b, R-131-c, R-133-b, R-135-c, R-136-c, R-137-b; R-81-b, R-183-b, R-184-b, R-142-b, R-143-c, R-141-b, R-145-b, R-146-c."

[101] Exhibits "R-g, R-1-g, R-2-g, R-3-h, R-4-g, R-5-g, R-6-g, R-7-g, R-8-g, R-9-g, R-10-g, R-11-g, R-12-g, R-13-g, R-14-g, R-15-g, R-16-g, R-17-g, R-18-g, R-20-f, R-21-h, R-22-g, R-23-g, R-24-g, R-25-f, R-26-g, R-27-g, R-28-g, R-29-g, R-30-h, R-31-h, R-32-g, R-33-h, R-34-h, R-35-g, R-36-h, R-37-h, R-38-h, R-39-g, R-40-h, R-41-h, R-42-h, R-43-h, R-44-g, R-45-h, R-46-g, R-47-h, R-48-g, R-49-g, R-51-h, R-52-g, R-53-g, R-54-g, R-55-f, R-56-g, R-57-g, R-58-g, R-59-g, R-60-g, R-61-g, R-62-g, R-63-g, R-64-g, R-65-g, R-66-g, R-67-h, R-68-g, R-69-g, R-70-g, R-71-g, R-72-h, R-73-h, R-74-f, R-75-h, R-76-h, R-77-h, R-78-g, R-79-g, R-80-f, R-81-g, R-82-i, R-83-g, R-84-h, R-85-g, R-86-g, R-87-g, R-88-g, R-89-f, R-90-g, R-91-h, R-92-g, R-93-f, R-94-g, R-95-h, R-96-g, R-97-h, R-98-g, R-99-g, R-100-h, R-101-h, R-102-g, R-103-g, R-104-h, R-105-h, R-106-g, R-107-h, R-108-g, R-109-g, R-110-i, R-111-h, R-112-g, R-113-i, R-114-g, R-115-f, R-116-b, R-117-g, R-118-g, R-119-g, R-120-g, R-121-g, R-122-g, R-123-g, R-124-h, R-125-g, R-126-g, R-127-g, R-128-g, R-129-g, R-130-h, R-131-h, R-132-g, R-133-g, R-134-g, R-135-h, R-136-h, R-137-g, R-138-h, R-139-g, R-140-g, R-141-g, R-142-g, R-143-h, R-144-g, R-145-g, R-146-h, R-147-g, R-148-h, R-149-h, R-150-g, R-151-g, R-152-h, R-153-g, R-154-g, R-155-f, R-156-h, R-157-g, R-158-g, R-159-g, R-160-g, R-161-g, R-162-g, R-163-g, R-164-g, R-165-g, R-166-h, R-167-h, R-169-g, R-170-h, R-171-g, R-172-h, R-173-g, R-174-f, R-175-h, R-176-g, R-177-g, R-178-g, R-179-g, R-180-g, R-181-g, R-182-i, R-183-g, R-184-g, R-185-h, R-186-g, R-187-h, R-188-h, R-189-h, R-190-g, R-191-g, R-192-g, R-193-g, R-194-g, R-195-g, R-196-g, R-197-g, R-198-i."

[102] Ibid.

[103] Exhibits "R-d, R-1-d, R-2-d, R-3-e, R-4-d, R-5-d, R-6-d, R-7-d, R-8-d, R-9-d, R-10-d, R-11-d, R-12-d, R-13-d, R-14-d, R-15-d, R-16-d, R-17-d, R-18-d, R-19-d, R-20-d, R-21-d, R-22-d, R-23-d, R-24-d, R-25-c, R-26-d, R-27-d, R-28-d, R-29-d, R-30-d, R-31-d, R-32-d, R-33-d, R-34-d, R-35-d, R-36-d, R-37-e, R-38-e, R-39-d, R-40-d, R-41-e, R-42-d, R-43-d, R-45-e, R-46-d, R-47-d, R-48-d, R-49-d, R-50-d, R-51-e, R-52-d, R-53-d, R-54-d, R-56-d, R-57-d, R-58-d, R-59-d, R-60-d, R-61-d, R-62-d, R-63-d, R-64-d, R-65-d, R-66-d, R-67-d, R-68-d, R-69-d, R-70-d, R-71-d, R-72-d, R-73-d, R-74-c, R-75-d, R-76-d, R-77-d, R-78-d, R-79-d, R-80-c, R-81-d, R-82-F, R-83-d, R-84-d, R-85-c, R-86-d, R-87-d, R-88-d, R-89-d, R-90-d, R-91-d, R-92-d, R-93-c, R-94-d, R-95-d, R-96-d, R-97-d, R-98-d, R-99-c, R-100-d, R-101-d, R-102-d, R-103-d, R-104-d, R-105-d, R-106-d, R-107-e, R-108-d, R-109-d, R-110-d, R-111-d, R-112-d, R-113-f, R-114-d, R-115-c, R-116-d, R-117-d, R-118-d, R-119-d, R-120-d, R-121-d, R-122-d, R-123-d, R-124-d, R-125-e, R-126-d, R-127-d, R-128-d, R-129-d, R-130-e, R-131-e, R-132-d, R-133-d, R-134-d, R-135-e, R-136-e, R-137-d, R-138-e, R-139-d, R-140-d, R-141-d, R-142-d, R-143-e, R-144-d, R-145-d, R-146-e, R-147-d, R-148-d, R-149-d, R-150-d, R-151-d, R-152-d, R-153-d, R-154-d, R-155-c, R-156-e, R-157-d, R-158-d, R-159-d, R-160-d, R-161-d, R-162-d, R-163-d, R-164-d, R-165-d, R-166-d, R-167-d, R-168-d, R-169-c, R-170-d, R-171-d, R-172-d, R-173-d, R-174-c, R-175-d, R-176-d, R-177-d, R-178-d, R-179-d, R-180-d, R-181-d, R-182-f, R-183-d, R-184-d, R-185-e, R-186-d, R-187-d, R-188-d, R-189-d, R-190-d, R-191-d, R-192-d, R-193-d, R-194-d, R-195-d, R-196-d, R-197-d, R-198-f."

[104] Exhibits "R-f, R-1-f, R-2-f, R-3-g, R-4-f, R-5-f, R-6-f, R-7-f, R-8-f, R-9-f, R-10-f, R-11-f, R-12-f, R-13-f, R-14-f, R-15-f, R-16-f, R-17-f, R-18-f, R-19-f, R-21-f, R-22-f, R-23-f, R-24-f, R-25-e, R-26-f, R-27-f, R-28-f, R-29-f, R-30-f, R-31-f, R-32-f, R-33-f, R-34-f, R-35-f, R-36-f, R-37-g, R-38-g, R-39-f, R-40-f, R-41-g, R-42-f, R-43-f, R-44-f, R-45-g, R-46-f, R-47-f, R-48-f, R-49-f, R-51-g, R-52-f, R-53-f, R-54-f, R-55-e, R-56-f, R-57-f, R-58-f, R-59-f, R-60-f, R-61-f, R-62-f, R-63-f, R-64-f, R-65-f, R-66-f, R-67-f, R-68-f, R-69-f, R-70-f, R-71-f, R-72-f, R-73-f, R-74-e, R-75-f, R-76-f, R-77-f, R-78-f, R-79-f, R-80-e, R-81-f, R-82-h, R-83-f, R-84-f, R-85-e, R-86-f, R-87-f, R-88-f, R-89-e, R-90-f, R-91-f, R-92-f, R-93-e, R-95-f, R-96-f, R-97-f, R-98-f, R-99-e, R-100-f,

R-101-f, R-102-f, R-103-f, R-104-f, R-105-f, R-106-f, R-107-g, R-108-f, R-109-f, R-110-f, R-111-g, R-112-f, R-113-h, R-114-f, R-115-e, R-116-f, R-117-f, R-118-f, R-119-f, R-120-f, R-121-f, R-122-f, R-123-f, R-124-g, R-125-f, R-126-f, R-127-f, R-128-f, R-129-f, R-130-g, R-131-g, R-132-f, R-133-f, R-134-f, R-135-g, R-136-g, R-137-f, R-138-g, R-139-f, R-140-f, R-141-f, R-142-f, R-143-g, R-144-f, R-145-f, R-146-g, R-147-f, R-148-f, R-149-f, R-150-f, R-151-f, R-152-f, R-153-f, R-154-f, R-155-e, R-156-g, R-157-f, R-158-f, R-159-f, R-160-f, R-161-f, R-162-f, R-163-f, R-164-f, R-165-f, R-166-f, R-167-f, R-168-f, R-169-e, R-170-f, R-171-f, R-172-f, R-173-f, R-174-e, R-175-f, R-176-f, R-177-f, R-178-f, R-179-f, R-180-f, R-181-f, R-182-h, R-183-f, R-184-f, R-185-g, R-186-f, R-187-f, R-188-f, R-189-f, R-190-f, R-191-f, R-192-f, R-193-f, R-194-f, R-195-f, R-196-f, R-197-f, R-198-h."

[105] Exhibits "R-e, R-1-e, R-2-e, R-3-f, R-4-e, R-5-e, R-6-e, R-7-e, R-8-e, R-9-e, R-10-e, R-11-e, R-12-e, R-13-e, R-14-e, R-15-e, R-16-e, R-17-e, R-18-e, R-19-e, R-20-e, R-21-e, R-22-e, R-23-e, R-24-e, R-25-d, R-26-e, R-27-e, R-28-e, R-29-e, R-30-e, R-31-e, R-32-e, R-33-e, R-34-e, R-35-e, R-36-e, R-37-f, R-38-f, R-39-e, R-40-e, R-41-f, R-42-e, R-43-e, R-44-e, R-45-f, R-46-e, R-47-e, R-48-e, R-49-e, R-50-e, R-52-e, R-53-e, R-54-e, R-55-d, R-56-e, R-57-e, R-58-e, R-59-e, R-60-e, R-61-e, R-62-e, R-63-e, R-64-e, R-65-e, R-66-e, R-67-e, R-68-e, R-69-e, R-70-e, R-71-e, R-72-e, R-73-e, R-74-d, R-75-e, R-76-e, R-77-e, R-78-e, R-79-e, R-80-d, R-81-e, R-82-g, R-83-e, R-84-e, R-85-d, R-86-e, R-87-e, R-88-e, R-89-k, R-90-e, R-91-e, R-92-e, R-93-d, R-94-e, R-95-e, R-96-e, R-97-e, R-98-e, R-99-d, R-100-e, R-101-e, R-102-e, R-103-e, R-104-e, R-105-e, R-106-e, R-107-f, R-108-e, R-109-e, R-110-e, R-111-f, R-112-e, R-113-g, R-114-e, R-115-d, R-116-e, R-117-e, R-118-e, R-119-e, R-120-e, R-121-e, R-122-e, R-123-e, R-124-f, R-126-e, R-127-e, R-128-e, R-129-e, R-130-f, R-131-f, R-132-e, R-133-e, R-134-e, R-135-f, R-136-f, R-137-e, R-138-f, R-139-e, R-140-e, R-141-e, R-142-e, R-143-f, R-144-e, R-145-e, R-146-f, R-147-e, R-148-e, R-149-e, R-150-e, R-151-e, R-152-e, R-153-e, R-154-e, R-155-d, R-156-f, R-157-e, R-158-e, R-159-e, R-160-e, R-161-e, R-162-e, R-163-e, R-164-e, R-165-e, R-166-e, R-167-e, R-168-e, R-169-d, R-170-e, R-171-e, R-172-e, R-173-e, R-174-d, R-175-e, R-176-e, R-177-e, R-178-e, R-179-e, R-180-e, R-181-e, R-182-g, R-183-e, R-184-e, R-185-f, R-186-e, R-187-e, R-188-e, R-189-e, R-190-e, R-191-e, R-192-e, R-193-e, R-194-e, R-195-e, R-196-e, R-197-e, R-198-g".

[106] Exhibits "R-h, R-1-h, R-2-j, R-3-j, R-4-h, R-5-i, R-6-i, R-7-h, R-8-j, R-9-j, R-10-h, R-11-j, R-12-j, R-13-i, R-14-h, R-15-j, R-16-j, R-17-j, R-18-i, R-19-j, R-20-i, R-21-k, R-22-j, R-23-j, R-24-i, R-25-h, R-26-j, R-27-i, R-28-j, R-29-j, R-30-i, R-31-j, R-32-i, R-34-m, R-35-i, R-36-j, R-37-i, R-38-i, R-39-j, R-40-i, R-41-k, R-42-i, R-43-k, R-44-h, R-45-k, R-46-j, R-47-l, R-48-h, R-49-i, R-52-i, R-53-j, R-54-j, R-55-g, R-56-j, R-57-j, R-58-i, R-59-i, R-60-i, R-61-i, R-62-i, R-63-h, R-64-j, R-65-j, R-66-h, R-67-k, R-68-i, R-69-j, R-70-h, R-71-j, R-73-j, R-74-h, R-75-j, R-76-j, R-77-k, R-78-j, R-79-k, R-80-g, R-81-i, R-82-l, R-83-i, R-84-j, R-85-i, R-86-j, R-87-i, R-88-j, R-89-h, R-90-j, R-91-j, R-92-i, R-93-j, R-95-k, R-96-k, R-97-k, R-98-j, R-99-i, R-100-i, R-102-j, R-103-j, R-104-j, R-105-k, R-106-j, R-107-i, R-108-i, R-109-h, R-110-h, R-111-j, R-112-h, R-113-k, R-114-i, R-115-g, R-116-h, R-117-i, R-118-i, R-120-j, R-121-j, R-122-i, R-123-i, R-124-j, R-125-i, R-126-j, R-127-i, R-128-i, R-129-j, R-130-j, R-131-j, R-132-i, R-133-j, R-134-j, R-136-j, R-137-j, R-138-j, R-139-i, R-140-j, R-141-j, R-142-i, R-143-k, R-144-j, R-145-i, R-146-k, R-147-i, R-148-j, R-149-i, R-150-i, R-151-i, R-152-j, R-153-h, R-154-j, R-155-h, R-156-k, R-157-h, R-158-i, R-159-h, R-160-h, R-161-k, R-162-j, R-163-i, R-164-h, R-165-i, R-166-i, R-167-i, R-168-i, R-169-h, R-170-i, R-171-i, R-172-i, R-173-i, R-174-g, R-175-k, R-176-k, R-177-k, R-178-i, R-179-i, R-180-j, R-181-j, R-182-l, R-183-j, R-184-j, R-185-k, R-186-i, R-187-i, R-188-i, R-189-j, R-190-h, R-191-k, R-192-j, R-193-j, R-194-i, R-195-i, R-196-h, R-197-j, R-198-l."

[107] Records, Volume VII, pp 3274-3276.

[108] Id, at p. 3277-3279.

[109] Id. at p. 3283-3284.

[110] Exhibits "R to R-198" and submarkings.

[111] Exhibits "R-59-a, R-60-a, R-61-a, R-62-a, R-63-a, R-64-a, R-87-a, R-88-a, R-107-a, R-108-a, R-109-a, R-110-a, R-111-a, R-112-a, R-113-a, R-114-a, R-115-a, R-116-a".

[112] TSN, August 13, 1984, pp.20-30; TSN, May 19, 1982, pp. 50-70.

[113] 147 SCRA 478.

[114] Grefalde vs. Sandiganbayan, 348 SCRA 367, 378 (2000) citing Escaño vs. Sandiganbayan, 160 SCRA 429 (1998).

[115] People vs. Miranday, 242 SCRA 620, 627 (1995).

[116] Id, citing People vs. Carbonel, 48 Phil. 868; See also People vs. Viray, 147 SCRA 146 (1987).

[117] Miranday case, supra.

[118] TSN, February 27, 1990, p. 4.

[119] For the month of January, 1977, twenty-seven (27) RIVs were prepared; for February, 1977, thirty (30) RIVs; for March, 1977, five (5) RIVs; for May, 1977, eleven (11) RIVs; for June, 1977, eleven (11) RIVs for July, 1977, sixteen (16) RIVs; for August, 1977, twenty-five (25) RIVs; for September, 1977, eleven (11) RIVs; for October, 1977, thirty-four (34) RIVs; for November, 1977, two (2) RIVs; and for December, 1977, twenty-seven (27) RIVs.

[120] Criminal Cases Nos. 1143-1159, 1162-1179, 1181-1195, 1197-1207, 1210-1231, 1234-1252, 1254-1256, 1258-1259, 1261-1282, 1284-1288, 1290-1319, 1321-1324, 1326-1341.

[121] TSN, June 5, 1984, pp. 74-75.

[122] Rollo of GR Nos. 99887-100084, pp. 285-291.

[123] Criminal Cases Nos. 1143-1152, 1155, 1157-1158, 1160-1172, 1174-1192, 1194-1206, 1208-1236, 1238-1247, 1250-1261, 1263-1265, 1267-1276, 1278-1279, 1281-1288 and 1290-1341.

[124] Records, Volume VII, p. 3277.

[125] TSN, April 13, 1989, afternoon, pp. 33-35.

[126] Id, at pp. 37-40.

[127] Id. at p. 90.

[128] Rule 131 Section 3 (e), Rules of Court.

[129]

Road section RIV delivery dates Contractor

Dalaguete 099 Feb. 21-24, 1977 Echavez

Feb. 22-26, 1977 Echavez

100 Feb. 19-22, 1997 Nuñez

Feb. 21-24, 1977 Nuñez

Feb. 23-26, 1977 Nuñez

Feb. 25-26, 1977 Nuñez

Dalaguete Argao 416 July 5 - 14, 1977 Nuñez

445 July 18 - 21, 1977 Nuñez

602 Sept. 12 - 22, 1977 Nuñez

627 Oct. 8-15, 1977 Echavez

179 Nov. 7-11, 1977 Echavez

749 Dec. 12 - 16, 1977 Echavez

Dalaguete Alcoy 417 July 5-11, 1977 Echavez

446 July 18-26, 1977 Echavez

547 Aug. 18-27, 1977 Echavez

603 Sept. 12-22, 1977 Echavez

628 October 7-15, 1977 Echavez

Alcoy Boljoon 548 Aug. 20-28, 1977 Abatayo

604 Sept. 14-22, 1977 Abatayo

[130] Gevero vs. Intermediate Appellate Court, 189 SCRA 201, 208 (1990) citing Matienzo vs. Servidad, 107 SCRA 276 [1981]; Dela Santa vs. C.A., 140 SCRA 44 [1985]; Dihiansan vs. C.A., 157 SCRA 434 [1987]; Anchuelo vs. IAC, 147 SCRA 434 [1987]; Dulos Realty Development Corporation vs. C.A., 157 SCRA [1988].

[131] Criminal Cases Nos. 1153-1159, 1196-1197, 1200, 1242-1245, 1249, 1263-1266, 1272, 1280, 1293-1294, 1302, and 1304.

[132] Criminal Cases Nos. 1161, 1165, 1173-77, 1187-1188, 1196, 1216, 1218, 1246, 1253, 1255, 1257, 1284, 1307, 1319, 1330-1332.

[133] Criminal Cases Nos. 1170-1171, 1182, 1192, 1194-1195, 1201, 1222, 1231, 1233, 1258, 1261, 1291-1292, 1295, 1301, 1319-1324, 1334 and 1337.

[134] "R-61, R-62, R-87, R-138, R-145; R-19, R-20, R-72, R-93, R-95; R-84".

[135] Records, Volume VII, pp 3287-3288.

[136] TSN, April 14, 1989, p. 12.

[137] Should be P550,000.00, Exhibit "K-3".

[138] TSN, Oct 15, 1985, pp 44-45.

[139] TSN, June 5, 1984, p. 39.

[140] Veloso vs. Sandiganbayan, 187 SCRA 504, 509 (1990).

[141] TSN, April 13, 1989, pp. 31-33.

[142] Recamadas vs. Sandiganbayan, 155 SCRA 371, 377.

[143] Ibid.

[144] Criminal Cases Nos. 1160, 1162, 1163, 1165, 1172, 1180-1181, 1184, 1190-1191, 1193, 1213-1214, 1221, 1223, 1237, 1240, 1253, 1255-1257, 1262, 1333, 1336, 1339 and 1341.

[145] Criminal Cases Nos. 1143-1159, 1166-1167, 1169-1171, 1173-1177, 1181, 1189-1190, 1194, 1196, 1198-1200, 1210, 1217, 1221-1222, 1224, 1226-1229, 1233, 1236-1237, 1239-1240, 1245, 1256, 1263, 1265-1272, 1277, 1281-1285, 1288-1289, 1291-1299, 1301, 1306, 1311, 1315, 1317-1319, 1321-1323, 1325, 1327-1332, 1334-1336, 1338, 1340 and 1341.

[146] Criminal Cases Nos. 1143-1153, 1155-59, 1197-1201, 1242-1249, 1261-1266, 1270-1281, 1285-1288, 1290-1306 and 1309-1318.

[147] Criminal Cases Nos. 1160-1163, 1208-1213, 1226-1229, 1233, 1253, 1257-1260, 1320- 1321, 1325, 1326.

[148]

P 34,188.00 - Exhibit K-1 550,000.00 - Exhibit K-10

694,142.85 - Exhibit K-2 550,000.00 - Exhibit K-11

550,000.00 - Exhibit K-3 650,000.00 - Exhibit K-12

600,000.00 - Exhibit K-4 350,000.00 - Exhibit K-13

600,000.00 - Exhibit K-5 500,000.00 - Exhibit K-14

550,000.00 - Exhibit K-6 550,000.00 - Exhibit K-15

950,000.00 - Exhibit K-7 550,000.00 - Exhibit K-16

950,000.00 - Exhibit K-8 600,000.00 - Exhibit K-17

15,311.50 - Exhibit K-9 600,000.00 - Exhibit K-18

[149]

P 4,764,262.60 - Exhibit Q-1

502,113.58 - Exhibit Q-2

775,000.00 - Exhibit Q-3

1,750,000.00 - Exhibit Q-4

1,520,000.00 - Exhibit Q-5

1,100,500.00 - Exhibit Q-6

1,500,000.00 - Exhibit Q-7

1,056,189.26 - Exhibit Q-8

[150] Rule 129, Section 1, Revised Rules of Court; Section 3571, IX, Wigmore on Evidence, 3[rd] Ed.

[151] Records, Volume VII, pp. 3273-3274.

[152] TSN, August 20, 1986, pp. 6-16.

[153] COA Circular No. 76-41 dated July 30, 1976.

[154] Exhibits "R-7 and R-8; R-13 and R-16; R-29 and R-38; R-65 and R-66; R-147 and R-157; R-153 and R-156; R-2, R-4 and R-5; R-14 and R-15; R-35, R-36, R-40, R-42 and R-43; R-164 and R-165, R-190 and R-193; R-196 and R-198; R-67, R-83 to R-85; R-72 and R-77; R-80 and R-82; R-168, R-172, R-174 and R-175".

[155] Exhibits "R-14-x and 15-x; R-30-x to 34-x; R-42-x and 43-x; R-47-x and 48-x ; R-65-x and 66-x; R-73-x and 75-x; R-76-x and 77-x; R-80-x and 82-x; R-109-x and 111-x; R-112-x and 113-x; R-149-x and 152-x; R-166-x and 167-x; R-169-x to 171-x; R-172-x, 174-x and 175-x; R-187-x to 189-x; R-196-x to 198-x".

[156] Exhibits "R-4-x and 5-x; R-7-x and 8-x; R-13-x and 16-x; R-29-x and 38-x; R-72-x to 77-x; R-99-x to 102-x; R-153-x and 156-x; R-190-x and 193-x".

[157] Magsuci vs. Sandiganbayan, 240 SCRA 13 (1995); Arias vs. Sandiganbayan, 180 SCRA 309 (1989).

[158] Criminal Cases Nos. 1202-1207, 1230-1231, 1250-1259.

[159] Exhibit "R-112".

[160] Exhibit "R-113".

[161] Exhibit "R-107".

[162] Exhibit "R-108".

[163] Exhibit "R-109".

[164] Exhibit "R-111".

[165] Exhibit "R-64".

[166] Exhibit "R-61".

[167] Exhibit "R-62".

[168] Exhibit "R-60".

[169] Exhibit "R-87".

[170] Exhibit "R-110".

[171] Exhibit "R-114".

[172] Exhibit "R-88".

[173] Exhibit "R-115".

[174] Exhibit "R-59".

[175] Exhibit "R-116".

[176] See Note 111.

[177] Accused Gabison and Echavez changed their pleas of "not guilty" to "guilty" after the prosecution had already rested its case and when it was the turn of the defense to present their evidence.

[178] Talino vs. Sandiganbayan, 148 SCRA 598, 599.

[179] TSN, April 10, 1989, pp. 49-50.

[180] Id. at p. 48.

[181] Id. at p. 43.

[182] Exhibits "R-59-f" and "R-116-f".

[183] TSN, April 10, 1989, p.48.

[184] TSN, April 11, 1989, p. 11.

[185] Exhibits "R-88-f" and "R-115-f".

[186] TSN, April 11, 1989, pp. 23-24.

[187] Id. at p. 20.

[188] TSN, April 10, 1989, p. 32.

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