

THIRD DIVISION

[G.R. No. 202408, June 27, 2018]

**FAROUK B. ABUBAKAR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. No. 202409]

**ULAMA S. BARAGUIR PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. No. 202412]

**DATUKAN M. GUIANI PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

LEONEN, J.:

The rules on competitive public bidding and those concerning the disbursement of public funds are imbued with public interest. Government officials whose work relates to these matters are expected to exercise greater responsibility in ensuring compliance with the pertinent rules and regulations. The doctrine allowing heads of offices to rely in good faith on the acts of their subordinates is inapplicable in a situation where there are circumstances that should have prompted the government officials to make further inquiries.

For this Court's resolution are three (3) consolidated Petitions for Review on Certiorari^[1] concerning alleged anomalies in the implementation of infrastructure projects within the Autonomous Region of Muslim Mindanao (ARMM). The Petitions, separately docketed as G.R. Nos. 202408,^[2] 202409,^[3] and 202412,^[4] question the Sandiganbayan's December 8, 2011 Decision^[5] and June 19, 2012 Resolution^[6] in Criminal Case Nos. 24963-24983. The assailed judgments declared Farouk B. Abubakar (Abubakar) guilty beyond reasonable doubt of 10 counts of violation of Section 3(e) of Republic Act No. 3019, and Ulama S. Baraguir (Baraguir) and Datukan M. Guiani (Guiani) guilty beyond reasonable doubt of 17 counts of violation of Section 3(e) of Republic Act No. 3019.^[7]

Abubakar, Baraguir, and Guiani were public officials of the Department of Public Works and Highways in ARMM (DPWH-ARMM) when the offenses were allegedly committed. Abubakar held the position of Director III, Administrative, Finance Management Service. Baraguir was the Director of the Bureau of Construction, Materials and Equipment, and a member of the Pre-Qualification Bids and Awards Committee, while Guiani was the DPWH-ARMM Regional Secretary.^[8]

Guiani v. Sandiganbayan^[9] is the procedural antecedent of this case.

After the creation of ARMM, the national government earmarked P615,000,000.00 for the implementation of regional and provincial infrastructure projects. In 1991, the funds were transferred to the Office of the ARMM Regional Governor. Later, a portion of the funds was then transferred to DPWH-ARMM.^[10]

During the incumbency of then President Fidel V. Ramos (President Ramos), the Office of the President received reports of irregularities attending the implementation of the DPWH-ARMM infrastructure projects. The Commission on Audit was directed to conduct an investigation.^[11]

Acting upon then President Ramos' instruction, the Commission on Audit created a special audit team headed by Heidi L. Mendoza (Mendoza) to look into the implementation of four (4) road concreting projects, namely: (1) the Cotabato-Lanao Road, Sections 1-13; (2) the Awang-Nuro Road; (3) the Highway Linek-Kusiong Road; and (4) the Highway Simuay Seashore Road.^[12] Physical inspections were conducted on October 15, 1992 to validate the existence of the projects and the extent of their development.^[13]

The audit team made the following findings:^[14]

First, an overpayment amounting to P17,684,000.00 was incurred on nine (9) road sections. The audit team discovered the existence of bloated accomplishment reports that allowed contractors to prematurely claim on their progress billings.^[15]

Second, advance payments totaling P14,400,000.00 were given to nine (9) contractors for the procurement of aggregate sub-base course in violation of Section 88(I) of Presidential Decree No. 1445.^[16]

Third, public bidding for the Cotabato-Lanao Road Project was done without a detailed engineering survey.^[17] The bidding was reportedly conducted on January 14, 1992. However, the engineering survey was only completed sometime in August 1992. The audit team also observed bidding irregularities in the Awang-Nuro Road Project and in six (6) road sections of the Cotabato-Lanao Road Project. Public bidding for the two (2) projects was reportedly conducted on January 14, 1992 but records disclose that the contractors already mobilized their equipment as early as January 4 to 7, 1992.^[18]

Lastly, the engineering survey for the centerline relocation and profiling of the Cotabato-Lanao Road, which cost P200,000.00, appeared to be unnecessary due to the existence of a previous engineering survey. Furthermore, advance payment was given to the contractor in excess of the limit provided under the implementing rules and regulations of Presidential Decree No. 1594.^[19]

Based on the report submitted by the Commission on Audit, the Office of the Ombudsman conducted a preliminary investigation and found probable cause to indict the regional officials of DPWH-ARMM for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. On July 31, 1998, 21 separate Informations were filed against Abubakar, Baraguir, Guiani, and other

officials of DPWH-ARMM. The consolidated cases were docketed as Criminal Case Nos. 24963-24983.^[20]

Charged in Criminal Case Nos. 24963 to 24969 were Guiani, Baraguir, and several other DPWH-ARMM officials for allegedly awarding projects to contractors without the required public bidding.^[21]

Abubakar, Guiani, Baraguir, and two (2) employees of DPWH-ARMM were charged in Criminal Case No. 24970 for allegedly awarding excessive mobilization fees to Arce Engineering Services.^[22]

Guiani was charged in Criminal Case No. 24971 for entering into an unnecessary contract with Arce Engineering Services for the conduct of another detailed engineering survey.^[23]

Abubakar, Baraguir, Guiani, and two (2) other officials of DPWH-ARMM were charged in Criminal Case Nos. 24972, 24975 to 24980, and 24982 to 24983 for allegedly advancing P14,400,000.00 to several contractors for sub-base aggregates.^[24]

Lastly, Abubakar, Baraguir, Guiani, and several other DPWH-ARMM officials were charged in Criminal Case Nos. 24973, 24974, and 24981 for allegedly causing overpayment on several projects due to bloated accomplishment reports.^[25]

All the Informations charged the accused with conspiracy except for Criminal Case No. 24971.^[26]

Upon arraignment, Abubakar, Baraguir, Guiani, and some of their co-accused entered a plea of not guilty. Seven (7) of their co-accused remained at large while one (1) died prior to the scheduled arraignment.^[27]

During trial, the prosecution presented Leodivina A. De Leon (De Leon) and Mendoza to testify on the findings of the Commission on Audit.^[28]

De Leon testified on the alleged irregularities attending the bidding procedure. She explained that some contractors were allowed to mobilize their equipment even before the conduct of the bidding and the perfection of the contracts for six (6) road sections of the Cotabato-Lanao Road and the Awang-Nuro Road Projects.^[29]

Mendoza testified on the alleged irregular payment scheme for the procurement of sub-base aggregates. She stated that the concerned DPWH-ARMM officials made it appear that they were requesting for the pre-payment of cement. However, the disbursement vouchers indicate that the payment was made for the procurement of sub-base aggregates. The words "sub-base aggregates" were superimposed on the disbursement vouchers.^[30]

After the prosecution rested its case, several of the accused filed their respective Motions for Leave to file Demurrer to Evidence. These Motions were denied by the Sandiganbayan in its March 18, 2008 Resolution. The defense then proceeded to the presentation of its evidence.^[31]

Presented as witnesses for the defense were some of the accused: (1) Nelfa M. Suasin (Suasin), an accountant of DPWH-ARMM; (2) Guialoson A. Mamogkat (Mamogkat), the DPWH-ARMM Director for Operations; (3) Taungan S. Masadag (Masandag), the DPWH-ARMM Regional Assistant Secretary and the designated Chair of the Pre-Qualification Bids and Awards Committee; (4) Abubakar; and (5) Baraguir. Commission on Audit's Records Custodian Nenita V. Rama was also presented as a defense witness.^[32]

Suasin testified that she consulted her superiors, particularly Abubakar, Baraguir, and Guiani, regarding the 30% mobilization fees awarded to Arce Engineering Services. They explained to her that the mobilization fee was increased as no other surveyor was willing to undertake the work due to the peace and order situation in the area. Suasin raised the same defense on the P14,400,000.00 advance payment. She claimed that she signed the disbursement vouchers after seeking approval from her superiors. She also testified that the item typewritten on the disbursement vouchers was "cement" and not "sub-base aggregates."^[33]

Mamogkat testified that DPWH-ARMM had to re-survey some areas of the Cotabato-Lanao Road Project because they could no longer locate the reference points marked in the original survey. He denied the charge that some contractors were overpaid, and attributed the discrepancy between the audit team's report and DPWH-ARMM's report on several factors. He pointed out, among others, that the physical inspection conducted by the DPWH-ARMM team was more extensive compared to the audit team's one (1)-day inspection.^[34]

Masandag insisted that the Pre-Qualification Bids and Awards Committee followed the bidding procedure laid down in Presidential Decree No. 1594. He denied knowledge and participation on the alleged early mobilization of contractors, and claimed that it was the Regional Secretary who authorized the issuance of the certificates of mobilization.^[35]

Abubakar claimed that he was only implicated due to the presence of his signature in the disbursement vouchers. He asserted that he examined the supporting documents and the certifications made by the technical experts before affixing his signature.^[36]

Last to testify for the defense was Baraguir. He claimed that some contractors took the risk of mobilizing their equipment before the conduct of public bidding on the expectation that the winning bidders would sub-lease their equipment. He also testified that construction immediately began on some projects after the engineering survey to fast track the implementation of the projects.^[37]

On December 8, 2011, the Sandiganbayan rendered judgment^[38] finding Guiani, Baraguir, and Masandag guilty beyond reasonable doubt of seven (7) counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 24963 to 24969.^[39]

The Sandiganbayan held that Guiani, Baraguir, and Masandag conspired with each other and gave unwarranted benefits, preference, and advantage to seven (7)

contractors by allowing them to deploy their equipment before the scheduled public bidding. Records show that the public bidding for the Cotabato-Lanao Road and Awang-Nuro Road Projects was conducted after the issuance of the certificates of mobilization:[40]

Project	Contractor	Date of Certification	Date of Bidding	Date of Contract
Awang-Nuro Road	HMB Construction and Supply	Jan. 7, 1992	Jan. 14, 1992	Jan. 16, 1992
Cotabato-Lanao Road Section 8	Kutawato Construction	Jan. 5, 1992	[Jan. 14, 1992]	[Jan. 16, 1992]
[Cotabato-Lanao Road] Section 7	Al Mohandiz Construction	Jan. 5, 1992	[Jan. 14, 1992]	[Jan. 16, 1992]
[Cotabato-Lanao Road] Section 2	JM Construction	Jan. 7, 1992	[Jan. 14, 1992]	[Jan. 16, 1992]
[Cotabato-Lanao Road] Section 5	PMA Construction	Jan. 6, 1992	[Jan. 14, 1992]	Jan. 20, 1992
[Cotabato-Lanao Road] Section 3	Al-Aziz-Engineering	Jan. 4, 1992	[Jan. 14, 1992]	Jan. 8, 1992
[Cotabato-Lanao Road] Section 1	MGL Construction	Jan. 5, 1992	[Jan. 14, 1992]	Jan. 15, 1992[41]

According to the Sandiganbayan, HMB Construction and Supply, Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz-Engineering, and MGL Construction were already identified as contractors for the abovementioned projects even before the scheduled public bidding. For instance, the certification issued to HMB Construction and Supply stated:

CERTIFICATION

THIS IS TO CERTIFY that HMB CONSTRUCTION AND SUPPLY, **Contractor for the construction of AWANG-NURO, UPI ROAD**, had already mobilized a minimum number of equipments (sic) necessary for the implementation of the said project.

This certification is being issued to HMB CONSTRUCTION AND SUPPLY in connection with his legal claim under P.D. 1594 as stated for the payment of fifteen (15) percent mobilization fee.

Issued this 7th day of January, 1992.[42] (Emphasis in the original)

Similar certifications were issued to Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz Engineering, and MGL Construction.[43]

The Sandiganbayan rejected the defense's justification regarding the early