

SECOND DIVISION

[G.R. No. 156577, December 03, 2014]

**ALEJANDRO C. RIVERA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. NO. 156587]

**ALFREDO Y. PEREZ, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. NO. 156749]

**LUIS D. MONTERO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the August 30, 2002 Decision^[1] and the January 16, 2003 Resolution^[2] of the Sandiganbayan in Criminal Case No. 18684, which found accused Luis D. Montero (*Montero*), Alfredo Y. Perez (Perez) and Alejandro C. Rivera (*Rivera*), guilty beyond reasonable doubt of the crime of violation of Section 3 (e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.^[3]

The Facts

On February 3, 1988, the Memorandum of Agreement (*MOA*) entered into by the Department of Health (*DOH*), the Department of Public Works and Highways, Department of Interior and Local Government, and the Development Coordinating Council for Leyte and Samar, for the construction of riverine boats to be used as floating clinics was executed and signed.^[4] The construction of seven (7) units of these floating clinics was proposed for the delivery of health care services to the remote barangays in Samar and Leyte. Subsequently, on December 8, 1988, the DOH Region VIII entered into a negotiated contract with PAL Boat Industry (*PAL Boat*), managed by Engineer Norberto Palanas (Palanas), with a contract price of P700,000.00.^[5]

This controversy was generated by an anonymous letter from a concerned citizen sent to the Office of the Ombudsman (*Ombudsman*), dated June 16, 1990, stating that there were small white boats for the DOH in a small shipyard within their neighborhood. It further stated that the boats were built many months ago but they had been left rotting on land, not on water. Appearing like dead ducks, they are

leaning on their sides.^[6] The concerned citizen asked why the boats were not delivered to the DOH. He was of the view that the country was losing money out of this deal.

On November 19, 1990, Graft Investigation Officer Avito Cahig of the Ombudsman (Visayas) issued the order directing Palanas– Contractor/PAL Boats; Luis Montero (*Montero*), M.D., DOH Region VIII Regional Director; Alfredo Perez (*Perez*), M.D., DOH Region VIII Assistant Regional Director; Engr. Alejandro C. Rivera (*Rivera*), Sanitary Engineer; Rufino Soriano (*Soriano*), Project Coordinator; and Emilia Elazegui (*Elazegui*), Chief Accountant, to file their “comment, answer and/or controverting evidence.”

Except for Palanas, who had already passed away by then, all the others filed their respective comments. The Commission on Audit (COA), Region VIII was required to conduct a technical-financial audit on the project. On July 10, 1991, Internal Auditor Luz V. Ramos (*Ramos*) submitted the Memorandum reporting the anomalies in the floating clinics project.^[7] On July 13, 1992, the COA issued its Joint Resolution recommending the filing of a criminal information for violation of Section 3(e) of R.A. No. 3019 against Montero, Perez, Rivera, Soriano and Elazegui.^[8] On December 24, 1992, the Office of the Special Prosecutor (OSP) modified the resolution and dismissed the case against Elazegui for insufficiency of evidence. On February 11, 1993, the Amended Information was filed with the Sandiganbayan. It reads:

That during the period September 1, 1988 up to September 30, 1989, at Tacloban City, Philippines, and within the jurisdiction of this Honorable Court, accused public officers of the Department of Health Regional Health Office No. VIII, Tacloban City, namely: Dr. Luis D. Montero, Regional Director, Dr. Alfredo Y. Perez, Assistant Regional Director and Chairman of the Prequalification Bids and Awards Committee, Alejandro C. Rivera, Regional Civil Works Implementation Officer and Rufino P. Soriano, Supervising Planning Officer and Project Coordinator, through evident bad faith and manifest partiality towards PAL Boat Industry represented by its manager Engr. Norberto Palanas, conspiring, confederating, and mutually helping one another, did then and there wilfully and unlawfully enter into a negotiated contract with said PAL Boat Industry for the construction of seven (7) Floating Clinics for a contract price of P700,000.00 the said seven units not being operational and with blatant defects despite payment of P630,000.00, accused Montero entering into said negotiated contract without waiting for approval of the project’s plans and specifications by the Maritime Industry Authority (MARINA) and approving payments to PAL Boat Industry in the total amount of P630,000.00, accused PEREZ approving the commencement of the project without determining the contractor’s financial capacity to undertake the same and despite lack of approval of the project’s plans and specifications by MARINA and also approving payments to the contractor, accused RIVERA and SORIANO failing to monitor, supervise and inspect the project in accordance with approved plans and specifications in order to safeguard the interest of the government, thereby causing undue injury to the government in the total amount of

P630,000.00 and giving unwarranted benefits to PAL Boat Industry in the discharge of their official functions.

CONTRARY TO LAW.^[9]

On February 12, 1993, an order of arrest was issued against all the accused. On separate dates, they posted bail for their temporary liberty. Thereafter, on March 10, 1993, they filed a motion for reinvestigation which was granted by the Sandiganbayan on April 2, 1993. On November 14, 1993, the OSP handed down the order maintaining its earlier findings. Thereafter, the Sandiganbayan resumed the criminal proceedings and scheduled the arraignment of the accused. Upon their arraignment, the accused pleaded "Not Guilty" to the offense charged.

On January 20, 1994, the OSP filed a motion to suspend the accused *pendente lite* pursuant to Section 13 of R.A. No. 3019. In a resolution, dated March 18, 1994, the Sandiganbayan granted the motion.

During the pre-trial, the parties marked their respective exhibits. Thereafter, the pre-trial stage was terminated.^[10] On May 31, 1995, Perez filed a motion to demurrer with leave of court.^[11] In its Resolution,^[12] dated May 27, 1996, the Sandiganbayan denied his demurrer and set the case for trial.

Evidence of the Prosecution

During the trial, the prosecution presented Internal Auditor Ramos and Engineers Elmer Tiber (*Tiber*), Jose Jocanao (*Jocanao*) and Loida Nicolas (*Nicolas*).

Ramos, former COA Resident Auditor of DOH Region VIII, testified that, at the request of the Ombudsman Visayas Office, she conducted a technical and financial audit of the negotiated contract between DOH Regional VIII and PAL Boat; and that as indicated in her audit report, she found that the project failed to comply with the pertinent provisions of Presidential Decree (P.D.) No. 1594, Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts, resulting in revenue losses to the government.

Tibe, Head of the Motorpool Department of DOH Region VIII, testified that he supervised the repair and maintenance of the service vehicles of the regional office; that he was instructed by Dr. Ortiz, Montero's successor after his transfer to Region VI, to inspect the floating clinics; that from October 3, 1989 to December 15, 1989, they inspected some of the said vessels; that during his inspection, the said units were already painted and afloat; and that the units he inspected needed repairs worth P39,500.00.

Jocanao testified that upon the request of Elsa Soriano, he inspected one of the units and found that the defect in the unit was worth P2,500.00 although the unit was still travel-worthy.

Nicolas, the Supervising Shipbuilding Specialist of the Maritime Industry Authority (*MARINA*), testified that their office checked, reviewed and approved plans submitted by shipbuilding companies; that the letter submitted by Palanas, dated

May 2, 1989, contained the blueprint plans which they initially checked, reviewed and approved; that in their letter-reply, dated May 17, 1989, they instructed Palanas to submit documents for the final approval of the plans; that Palanas, however, never replied to their letters; and that this fact led their office to believe that the project had been shelved.

The prosecution also adduced several documentary evidence along with the COA Audit Report of Ramos.

Evidence of the Defense

For its part, the defense presented all the accused and Soriano as witnesses.

Montero testified that, from September 1, 1988 to September 16, 1989, he was the Regional Director of the Regional Health Office No. VIII. Upon instruction of then President Corazon Aquino, the floating clinics project was to be implemented immediately. His office did not immediately proceed with the bidding process. There were two (2) prospective Manila-based contractors which were interested in the project. When they were informed that they should have a dockyard in Tacloban for easy monitoring and supervision, the two contractors did not anymore respond. Meanwhile, he received a letter from Palanas, dated February 8, 1988, showing his interest in the floating clinics project. *Upon learning that Palanas was the only qualified and registered naval architect in Tacloban, through a MARINA certification,* **[13] he called off the bidding** *because he found it useless considering that he (Palanas) was the only qualified boat builder.*

Montero further stated that on November 21, 1988, after the DOH approved the plan and specifications for the boat, he notified Palanas of the requirements and procedure as to when to commence work and the schedule of the release of the 15% mobilization fee; that he opted not to wait for the approval of MARINA as the latter's jurisdiction extended only to boats weighing three (3) tons or more, which was **more or?** less than the weight of the floating clinics; that the period to complete the project was extended beyond the 120-day period because their agency incurred delays in paying PAL Boat its percentage accomplishment payments; and that when he was transferred to Region VI, ninety percent (90%) of the project was already completed.

On cross-examination, Montero replied that he sent a notice to pre-qualify to three (3) other contractors but only PAL Boat replied. He admitted that he did not publish in any newspaper the notice to pre-qualify because of the MARINA letter stating that Palanas was the only registered naval architect in the area.

Perez testified that he was the Chairman of the Regional Infrastructure and Bid Committee (RIBAC) from September 1988 to September 1989; that the RIBAC prequalified bidders and issued awards to contractors; that he signed the Notice of Award in favor of PAL Boat for a negotiated contract; that as part of the pre-qualification process, he required Palanas to submit pre-qualification documents such as the profile list of company equipment and machineries, organizational set-up, manpower, financial status, facility layout, company background, location map, and track record; that he, together with Rivera and Soriano, visited the shipyard twice sometime in November 1988 to verify the information; and that thereafter, he reported that PAL Boat was technically and financially capable of undertaking the

project.

Perez likewise admitted that he recommended the approval of progress payments to PAL Boat based on the accomplishment reports of his staff. The office retained P70,000.00 of the contract price as guaranty for any defects or repairs to be made. After the units were accepted, defects in the units were discovered and were repaired using the funds retained by their office.

On cross-examination, Perez *admitted not asking from Palanas a copy of the company's paid-up capital because, based on his ocular inspection, he was convinced that the company was financially capable of handling the project.* He was aware that the capital of PAL Boat was only P50,000.00 and that its liabilities totalled P114,000.00. Nevertheless, he pre-qualified it because he also considered the company's other assets. The documents of Palanas *showed that the company project for the last six months involved only the construction of one banca and the repair of another.* He also admitted that he did not publish an invitation to pre-qualify although he posted notices on the bulletin board.^[14] Before the units were delivered to their respective end-users, the technical staff of the regional office first tested them.

Rivera, Civil Implementing Officer of the project, testified that he gave technical assistance to the project by conducting its weekly monitoring and inspection; that before the project was implemented, their office received copies of the plans and specifications and other supporting documents of the project from Palanas although these were not yet approved by the DOH Secretary; that prior to the approval of the project, he and the other accused inspected the construction site to check if Palanas was capable of undertaking the project; that during the course of the implementation of the project, Palanas requested for progress payments; and that he also submitted accomplishment reports by comparing the work progress with the plans and specification, detailed estimates, and program of work and by making a ratio and proportion in averaging every item of work.

On cross-examination, Rivera said that he pre-qualified PAL Boat utilizing the documents submitted to them; that he reviewed the lay-out, background of the contractor, dockyard site, list of equipment, and materials; and that during the inspection, defects were found in some of the units but these were eventually repaired and rehabilitated using the funds from the DOH Regional Office.

Finally, Soriano, the Supervising and Planning Officer, testified that his participation in the project involved the coordination and monitoring of the status of the project; that he frequently visited the construction site; that when the floating clinics were finished, their office did not accept them because of the defects found during the inspection and also because COA had not inspected them yet; and that during this hiatus, typhoon *Ruping* struck the area and totally destroyed all the units which were then docked at Palanas' dockyard.

Sandiganbayan Ruling

In the Decision,^[15] dated August 30, 2002, the Sandiganbayan found accused Montero, Perez and Rivera guilty of the crime charged but acquitted Soriano for failure of the prosecution to prove his guilt beyond reasonable doubt.