

EN BANC

[G.R. No. 180122, March 13, 2009]

**FELICISIMO F. LAZARTE, JR., PETITIONER, VS. SANDIGANBAYAN
(FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

TINGA, J.:

This is a Petition for Certiorari^[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolution^[2] dated 2 March 2007 of the First Division of the Sandiganbayan in Criminal Case No. 26583 entitled, "*People of the Philippines v. Robert P. Balao, et al.*," which denied petitioner Felicisimo F. Lazarte, Jr.'s Motion to Quash. The Resolution^[3] dated 18 October 2007 of said court denying petitioner's motion for reconsideration is likewise challenged in this petition.

The antecedents follow.

In June 1990, the National Housing Authority (NHA) awarded the original contract for the infrastructure works on the Pahanocoy Sites and Services Project, Phase 1 in Bacolod City to A.C. Cruz Construction. The project, with a contract cost of P7,666,507.55, was funded by the World Bank under the Project Loan Agreement forged on 10 June 1983 between the Philippine Government and the IBRD-World Bank.^[4]

A.C. Cruz Construction commenced the infrastructure works on 1 August 1990.^[5] In April 1991, the complainant Candido M. Fajutag, Jr.(Fajutag, Jr.) was designated Project Engineer of the project.

A *Variation/Extra Work Order No. 1* was approved for the excavation of unsuitable materials and road filling works. As a consequence, Arceo Cruz of A.C. Cruz Construction submitted the fourth billing and Report of Physical Accomplishments on 6 May 1991. Fajutag, Jr., however, discovered certain deficiencies. As a result, he issued *Work Instruction No. 1* requiring some supporting documents, such as: (1) copy of approved concrete pouring; (2) survey results of original ground and finished leaks; (3) volume calculation of earth fill actually rendered on site; (4) test results as to the quality of materials and compaction; and (5) copy of work instructions attesting to the demolished concrete structures.^[6]

The contractor failed to comply with the work instruction. Upon Fajutag, Jr.'s further verification, it was established that there was no actual excavation and road filling works undertaken by A.C. Cruz Construction. Fajutag, Jr.'s findings are summarized as follows:

1. No topographic map was appended, even if the same is necessary in land development works; a discarded drawing sheet: "Spot Elevations and Existing Gradelines" of the project site was found, but this contrasted significantly with the alleged joint-survey results in support of the Variation/Extra Work Order No. 1;
2. No laboratory tests were conducted to ascertain unsuitability of materials, even if the same should have been required as essential basis thereof;
3. There were no records of the excavation and disposal of unsuitable materials and of road filling works having been made by the previous engineers, Rodolfo de los Santos and Noel Lobrido at the time said activities were allegedly executed;
4. The excavation of unsuitable materials and road filling works were overestimated to the prejudice of the government:
 - a. in a 10.00 meter right-of-way (ROW) road, the entire width of 10.00 meters was used in calculating the volume of cut of unsuitable materials when the undisturbed natural grounds on both sides of the road was only 6.00 meters;
 - b. the mathematical calculation in determining the volume of cut of unsuitable materials are contrary to the contract's technical specifications which provides for cut measurements, *i.e.*[,] by end-area method;
 - c. in a 10.00 ROW road, an effective width of 8.70 meters was used in calculating the volume of road fill when the undisturbed natural grounds on both sides of the road was only 6.00 meters apart;
 - d. the mathematical calculations in determining the volume of roadfill are contrary to the contract's technical specifications, specifically Section 3.11 thereof, *i.e.*, by end-area method.
5. No laboratory test was made to ascertain the quality of imported road fill materials.^[7]

In a Memorandum dated 27 June 1991, the Project Office recommended the termination of the infrastructure contract with A.C. Construction.^[8]

In its Report dated 12 August 1991, the Inventory and Acceptance Committee determined the total accomplishment of the contractor at 40.89%, representing P3,433,713.10 out of the total revised contract amount of P8,397,225.09 inclusive of *Variation Order No. 1* in the amount of P710,717.54. Thereafter, said Committee recommended that the temporary project suspension imposed by the contractor, which incurred delays in the project completion, be referred to the Legal Department for appropriate action.^[9]

On 19 August 1991, the Manager of the Legal Department issued a Memorandum addressed to the General Manager of NHA endorsing approval of the Regional Projects Department's (RPD's) recommendation. The NHA General Manager through a letter dated 29 August 1991 informed the contractor of the rescission of his contract for the development of the said project upon his receipt thereof without prejudice to NHA's enforcing its right under the contract in view of the contractor's unilateral and unauthorized suspension of the contract works amounting to abandonment of the project. Despite the rescission notice issued by the NHA per letter dated 29 August 1991, the contractor continued working intermittently with very minimal workforce until such time as the award of remaining infrastructure works is effected by NHA to another contractor.^[10]

In March 1992, the NHA Board of Directors, per Resolution No. 2453, approved the mutual termination of the A.C. Cruz Construction contract and awarded the remaining work to Triad Construction and Development Corporation (Triad). The contract amount for the remaining work was P9,554,837.32.^[11] Thereafter, representatives from A.C. Cruz Construction, Triad and NHA-Bacolod conducted a joint measurement at the site to determine the total accomplishment of A.C. Cruz Construction inclusive of accomplishments after NHA inventory.

The Project Office was subsequently informed by the Central Office that the accomplishments made by A.C. Cruz Construction after the NHA inventory would be paid directly to said contractor by Triad. As of 27 March 1992, Triad had issued checks in favor of A.C. Cruz Construction amounting to One Million Pesos (P1,000,000.00) which were received by Arceo M. Cruz per Official Receipt No. 3003.^[12]

In its Memorandum dated 22 June 1992, the Regional Projects Department recommended to the General Manager that the fund settlement to A.C. Cruz Construction be effected.^[13]

Thereafter, Triad discovered that certain work items that had been in under the inventory report as accomplished and acceptable were in fact non-existent. Fajutag, Jr. brought these irregularities to the attention of the Commission on Audit (COA).

After its special audit investigation, the COA uncovered some anomalies, among which, are ghost activities, specifically the excavation of unsuitable materials and road filling works and substandard, defective workmanship. Laboratory tests confirmed the irregularities.^[14]

Further, according to the COA, while it is true that the fourth billing of A.C. Cruz Construction had not been paid its accomplishments after the August 1991 inventory found acceptable by NHA amounting to P896,177.08 were paid directly by Triad. Effectively, A.C. Cruz Construction had been overpaid by as much as P232,628.35, which amount is more than the net payment due per the computation of the unpaid fourth billing.^[15]

Consequently, petitioner, as manager of the Regional Projects Department and Chairman of the Inventory and Acceptance Committee, and other NHA officials were charged in an Information^[16] dated 5 March 2001, worded as follows:

INFORMATION

The undersigned Ombudsman Prosecutor II of the Office of the Ombudsman-Visayas, accuses ROBERT P. BALAO, FELICISIMO F. LAZARTE, JR., VIRGILIO V. DACALOS, JOSEPHINE O. ANGSICO, JOSEPHINE T. ESPINOSA, NOEL H. LOBRIDO AND ARCEO C. CRUZ for VIOLATION OF SECTION 3 (e) of REPUBLIC ACT No. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

That in or about the month of March, 1992 at Bacolod City, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, above-named accused, ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA, and NOEL H. LOBRIDO, Public Officers, being the General Manager, Team Head, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused ARCEO C. CRUZ, a private individual and General Manager of A.C. Cruz Construction with address at 7486 Bagtikan Street, Makati City with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to A.C. Construction public funds in the amount of TWO HUNDRED THIRTY TWO THOUSAND SIX HUNDRED TWENTY EIGHT PESOS and THIRTY FIVE CENTAVOS (P232,628.35) PHILIPPINE CURRENCY, supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact no such works were undertaken by A.C. Construction as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to accused Arceo C. Cruz and A.C. Construction and themselves to the damage and prejudice of the government.

CONTRARY TO LAW.^[17]

On 2 October 2006, petitioner filed a motion to quash the Information raising the following grounds: (1) the facts charged in the information do not constitute an offense; (2) the information does not conform substantially to the prescribed form; (3) the constitutional rights of the accused to be informed of the nature and cause of the accusations against them have been violated by the inadequacy of the information; and (4) the prosecution failed to determine the individual participation of all the accused in the information in disobedience with the Resolution dated 27 March 2005.^[18]

On 2 March 2007, the Sandiganbayan issued the first assailed resolution denying petitioner's motion to quash. We quote the said resolution in part:

Among the accused-movants, the public officer whose participation in the alleged offense is specifically mentioned in the May 30, 2006 Memorandum is accused Felicisimo Lazarte, Jr., the Chairman of the Inventory and Acceptance Committee (IAC), which undertook the inventory and final quantification of the accomplishment of A.C. Cruz Construction. The allegations of Lazarte that the IAC, due to certain constraints, allegedly had to rely on the reports of the field engineers and/or the Project Office as to which materials were actually installed; and that he supposedly affixed his signature to the IAC Physical Inventory Report and Memoranda dated August 12, 1991 despite his not being able to attend the actual inspection because he allegedly saw that all the members of the Committee had already signed are matters of defense which he can address in the course of the trial. Hence, the quashal of the information with respect to accused Lazarte is denied for lack of merit.

WHEREFORE, in view of the foregoing, the Court hereby resolves as follows:

(1) Accused Robert Balao, Josephine Angsico and Virgilio Dacalos' Motion to Admit Motion to Quash dated October 4, 2006 is **GRANTED**; the Motion to Quash dated October 4, 2006 attached thereto, is **GRANTED**. Accordingly, the case is hereby **DISMISSED** insofar as the said accused-movants are concerned.

(2) The Motion to Quash dated October 2, 2006 of accused

Engr. Felicisimo F. Lazarte, Jr. is hereby **DENIED** for lack of merit. Let the arraignment of the accused proceed as scheduled on March 13, 2007.

SO ORDERED. [19]

Subsequently, the Sandiganbayan issued the second assailed resolution denying petitioner's motion for reconsideration. Pertinently, it held:

The Motion for Reconsideration of accused Lazarte, Jr. merely reiterated the grounds and arguments which had been duly considered and passed upon in the assailed Resolution. Nonetheless, after a careful review of the same, the Court still finds no cogent reason to disturb the finding of probable cause of the Office of the Ombudsman to indict accused Lazarte, Jr., Espinosa, Lobrido and Cruz of the offense charged. In its Memorandum dated July 27, 2004 and May 30, 2006, the prosecution was able to show with sufficient particularity the respective participation of the aforementioned accused in the commission of the offense charged. The rest of the factual issues by accused Lazarte, Jr. would require the presentation of evidence in the course of the trial of this case.

The Court also maintains the validity and sufficiency of the information against accused Lazarte, Jr., Espinosa, Lobrido and Cruz. The information