

THIRD DIVISION

[G.R. No. 140183, July 10, 2003]

**TEODORO K. KATIGBAK AND BIENVENIDO E. MERELOS,
PETITIONERS, VS. THE SANDIGANBAYAN AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CORONA, J.:

The instant petition for *certiorari* and prohibition under Rule 65 of the Rules of Court seeks to annul and set aside the Resolution^[1] dated April 7, 1999 of the Sandiganbayan's Second Division, in Criminal Case No. 22647 denying petitioners' motion to dismiss the case against them on demurrer to evidence and the Resolution^[2] dated August 9, 1999 which denied their motion for reconsideration.

The antecedent facts show that, on July 18, 1990, the National Housing Authority (NHA) entered into a contract for the land development of the Pahanocoy Sites and Services, Phase I, in Bacolod City with Arceo Cruz of A.C. Cruz Construction. After the contract was confirmed by the NHA Board of Directors, the work commenced on August 1, 1990. Before the project could be completed, however, the NHA rescinded the contract on August 29, 1991 and engaged the services of Jose Cruz of Triad Construction and Development Corporation for the unfinished portion thereof.

Consequently, Arceo Cruz lodged a complaint with the Office of the Ombudsman. After preliminary investigation, an information^[3] was filed with the Sandiganbayan on May 3, 1995, docketed as Criminal Case No. 22647, charging the petitioners and their co-accused with the crime of violation of Section 3, paragraph (e) of RA 3019, ^[4] as amended. Specifically, the petitioners and their co-accused were indicted for having allegedly conspired, through evident bad faith and manifest partiality, in unilaterally rescinding the contract for land development with the private complainant, Arceo Cruz, and subsequently awarding the same, without public bidding and at an exorbitant rate, to private respondent, Jose Cruz, thereby granting unwarranted benefits to said private respondent while causing damage and undue injury to the government and the private respondent.

On March 20, 1996, the information in Criminal Case No. 22647 was amended to read as follows:

The undersigned Special Prosecution Officers, Office of the Special Prosecutor, hereby accuses ROBERT ANTHONY P. BALAO, TEODORO K. KATIGBAK, BIENVENIDO MERELOS, HARRY PASIMIO, JOEL LUSTRIA and JOSE CRUZ, of violation of Section 3 (e), R.A. 3019 as amended, committed as follows:

That on or about March 16, 1992, and for sometime prior or subsequent thereto, in Bacolod City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused

ROBERT ANTHONY P. BALAO, General Manager and Member of the Board of Directors; TEODORO K. KATIGBAK, Chairman, Board of Directors and the following members of the Board of Directors, namely: BIENVENIDO MERELOS, HARRY PASIMIO, and JOEL LUSTRIA, all of the National Housing Authority (NHA) all public officers, while in the performance of their official functions, committing the offense in relation to their office, and conspiring and confederating with each other and with accused JOSE CRUZ, General Manager of the Triad Construction and Development Corporation, did then and there wilfully, unlawfully, criminally and through evident bad faith and manifest partiality, unilaterally rescind the contract for the land development of Pahanocoy Sites and Services Project, Phase I of (sic) Bacolod City, an Infrastructure Development Project of the National Housing Authority which was awarded to A.C. CRUZ CONSTRUCTION and thereafter awarded the contract for the completion of the remaining civil works in the said NHA project to TRIAD CONSTRUCTION AND DEVELOPMENT CORPORATION represented by JOSE CRUZ, without public bidding and at a contract price of P10,027,970.97 which is much more than the estimated cost of the remaining project work of P4,963,511.99 to which A.C. CRUZ would have been entitled if the original contract was not rescinded, thereby causing undue injury to A.C. CRUZ and to the Government.

Contrary to law.”^[5]

Upon arraignment, the petitioners and their co-accused, assisted by their counsels, entered the plea of “not guilty” to the charge in the amended information. Pre-trial was waived by the parties per Order dated March 18, 1997. Thereafter, trial on the merits ensued during which the prosecution presented four witnesses, namely: Adelino M. Amurillo, Principal Engineer, stationed at the NHA Management Office on Elliptical Road, Diliman, Quezon City; Felicisimo F. Lazarte, Jr., Department Manager, NHA Regional Projects Department; Virgilio V. Dacalos, Division Manager, NHA Regional Projects Department; and private complainant Arceo C. Cruz. The prosecution rested its case after the admission of its Exhibits “A,” “B,” “C,” “D,” “E,” “F,” “G,” “H,” “H-1,” “J,” “K,” “L,” “M,” “N,” “O,” “Q,” “R” and “S” with submarkings. The descriptions and the purposes for which each of the said prosecution exhibits were offered in evidence were specifically stated in the written Formal Offer of Exhibits^[6] dated September 22, 1997 quoted hereunder in full:

1) Exhibits “A,” “B” and “C” are the Notice of Award dated July 5, 1990, the Contract For Infrastructure Development of Pahanocoy Sites and Services Project, Phase I, Bacolod City and the Notice to Proceed dated July 18, 1990, respectively, signed by Arceo C. Cruz as contractor and Monico V. Jacob as General Manager of National Housing Authority (NHA), Quezon City. The purposes for which these exhibits are offered is to prove that the private offended party and the NHA have entered into a contract whereby the latter shall pay the former the amount of P7,686,507.55 to develop road works, drainage, and water works for a

project of NHA located at (sic) Bacolod City and known as Pahanocoy Sites and Services Project, Phase I, Bacolod City.

2) Exhibit "D" is a Memorandum dated August 1, 1989 addressed to All Concerned Departments/Projects, issued by Monico V. Jacob, the subject matter of which was the establishment of an "express lane" to expedite the payment to contractors' claims for accomplished work at the regional projects area as in this case. That the salient factor in this memorandum is found in paragraph 2 of page 2 thereof which clearly limited the period for approving and signing by the (NHA) General Manager of claims for payment to only one (1) working day from the time the claims of a contractor is submitted for approval and signature.

The attached Department Order No. 99 Series of 1991 dated April 19, 1991 issued by the Secretary of Department of Public Works and Highways, JOSE P. DE JESUS to Exh. D (page 576 of Volume II the record of the case) is also offered to show that contractors were vested with the right to suspend their work operations if their claim for payment is not made within the period. Said Department Order declares in essence that, and we quote for the easy reference of the Honorable Court:

'the contractor will have an option to suspend the work if there is no Government response within fifteen (15) calendar days from the date of the written notice from the contractor.'

In addition, the purpose of this exhibit and its annex is to show that accused ROBERT ANTHONY P. BALAO grossly violated the guideline set up by his predecessor Monico V. Jacob. On the other hand this exhibit is offered to show the good faith and sincerity of the private offended party. Mr. Arceo Cruz, instead of availing of his right to suspend his work because he was not paid for what he had accomplished went on to complete his work on the project until illegally stopped and forcibly ejected by the accused.

That lastly, the said exhibit and its annex are also offered to show that inspite of compliance of the private offended party of the conditions put up by the NHA and the Department of Public Works and Services the approval and signing of payment was illegally, fraudulently and immorally withheld by the accused Balao. This illegal act of accused Balao continued even after his own field officers had already signed and recommended the payment of the private offended party's claim for payment as specified by the NHA's own guideline.

3) Exhibit "E" is the memorandum addressed to accused Balao as General Manager of NHA dated February 19, 1992 by field officers. The subject of this memorandum is the recommendation for the approval and payment of the private offended party(s) claim for the latter's accomplished work described in his fourth billing in the amount of P1,554,379.55 (NET) which was also again recommended by accused(s) own field officer in the person of FELICISIMO E. LAZARTE, JR., Manager, Regional Projects Department.

Exhibit "F" is the Abstract Of the Physical Accomplishment which evidences the work accomplished by the private offended party worth

P2,888,918.29 (GROSS) as of January 20, 1992 as confirmed to (sic) by all field officers of the NHA namely: NOEL A. LOBRIDO, NHA Supervising Engineer, VIRGILIO V. DACALOS, Division Manager Visayas, and FELICISIMO E. LAZARTE, JR., Regional Project Department Manager.

Exhibit "G" is the Summary Of Payment Estimate accomplished by the NHA itself, through its Division Manager, Visayas Division and Manager of the Regional Project Department.

These exhibits are all offered to show that the amount of P2,888,918.30 (GROSS) being claimed by the private offended party of (sic) his accomplished work from October 1, 1991 to January 20, 1992 was due, justified, and complete in all the necessary papers needed for its processing and payment.

As it will be later shown in 2nd paragraph, page one of EXHIBIT "E" the NHA field officers in their memorandum to accused Balao clearly and specifically declared, state and are quote(d) for this Honorable Court's ready reference:

'Attached as support are pertinent documents and including detailed analysis.'

4) Exhibit "H" is the Voucher of the NHA dated January 27, 1992 which was already processed by the NHA own personnel in the person (of) Ofelia A. Capistrano upon request of Virgilio Dacalos (Division Manager-Visayas Division) and certified by Felicisimo E. Lazarte, Jr., Manager RPD setting aside for (sic) the gross amount of P2,888,918.29, from which the private offended party is claiming as payment the NET amount of P1,108,288.10 and Exhibit "I" is another Disbursement Voucher by the same NHA field officers showing a billing of the same gross amount of P2,888,918.29 for which the private offended party has a net claim of P466,091.49 or a total NET claim of P1,674,379.59 for the two (2) vouchers, the purpose of which is to show that the claim of Mr. Arceo C. Cruz the private complainant of this case had already been prepared by all the departments of the NHA concerned but for reasons only known to him was illegally, immorally and maliciously withheld by the accused Balao.

5) Exhibit "H-1" is a letter dated August 29, 1991 of accused Balao addressed to the private offended party informing the latter that his contract with the NHA is being rescinded for the reasons that:

- a) private offended party had allegedly unilaterally suspended his work on the project.
- b) that the work have suffered negative slippage or unaccomplished work of 59.11%.
- c) That the contract has expired as of July 1, 1991.

That the said exhibit is being offered to show the malice and bad faith of accused Balao whose reasons for rescinding the contract between the private offended party and the NHA are completely contradictory to the finding of his own field personnel.

a) As above mentioned private offended party never suspended his work operation.

b) The work of the private offended party never have (sic) a negative slippage of 59.11%. But even if granting, though not admitting that there was slippage the same could not be attributable to the private offended party and could easily be corrected as Exhibits "E," "F," "G," "H" and "H-1" show remedies were already being taken.

This baseless conclusion is aggravated by the fact that accused Balao never actually personally conducted his own survey at the project job sites and therefore has no basis to form his own personal conclusion and ought to have rel(ied) on the written report of his field officers above-mentioned.

c) That the expiry date of the contract was changed by way of extending the same.

6) Exhibit "J" is the private offended party's letter dated October 17, 1991 to accused Balao as General Manager of NHA requesting the latter to lift his rescission order of the contract for the reasons stated in the letter. The last paragraph of the last page of this letter stated that and we quote for the easy reference of the Honorable Court:

'Furthermore in consideration of the actual findings/result of the Inventory Acceptance Committee with a substantial accomplishment from 01 October 1991 to date, we are requesting for payment so as it will help our cash flow on the completions of the remaining portion of the project.'

This exhibit is offered for the purpose of showing that the rescission order of accused Balao has no legal nor moral basis and his continued refusal to release the payment due to the private offended party caused and is causing the government and the private offended party more damage and prejudice.

7) Exhibit "K" is a letter dated January 29, 1992 sent by the private offended party to the Board of Directors of the NHA through its Chairman. The purpose of this exhibit is to show that accused Balao(s) act of rescinding the NHA contract with the private offended party is illegal and therefore cannot be justifiably enforced. As testified to by the private offended party, the Board Secretary informed him that his letter to the Board cannot be calendared and cannot be taken up by the Board in its meeting because the Board never rescinded the contract between the private offended party and the NHA. That the act of rescission of the contract according to the Board Secretary, a certain Mr. De las Alas, was the personal act of accused Balao.

8) Exhibit "L" is a memorandum dated July 14, 1992 by the Management Committee (MANCOM) of the NHA to its General Manager, accused Balao, recommending for the lifting and the reconsideration of the latter's rescission order of the contract of the private offended party with the NHA.