



Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

**PEOPLE OF THE
PHILIPPINES,**
Plaintiff,

CRIM. CASE NO. 26584
For: Violation of Sec. 3 (e) of
R.A. 3019

-versus-

**JOSEPHINE ANGSICO, ET
AL.,**
Accused.

Present:
Herrera, Jr., J. Chairperson
Musngi, J. &
Pahimna, J.

Promulgated:

December 7, 2018

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DECISION

PAHIMNA, J.:

Accused **ROBERT BALAO, JOSEPHINE ANGSICO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA, NOEL A. LOBRIDO and JOSE M. CRUZ** are charged before this Court with *Violation of Sec. 3(e) of R.A. 3019, otherwise known as Anti-Graft and Corrupt Practices Act*, under an *Information*¹ dated March 5, 2001, filed by Ombudsman Prosecution II Raul V. Cristoria of the Office of the Special Prosecutor, which bears the approval of then Ombudsman Aniano Desierto, the accusatory portion of which reads:

¹ Records, Vol. I, pp. 1-3

That in or about the month of September 1992, at Bacolod City, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, above-named accused ROBERT P. BALAO, JOSEPHINE ANGSICO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA and NOEL A. LOBRIDO, public officers, being the General Manager, Visayas Mgt. Office Division Manager (Visayas), Manager, RPD, Proj. Mgt. Officer A and Supervising Engineer, respectively, of the National Housing Authority, 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 Jose M. Cruz, a private individual and President of Triad Construction and Development Corporation, with address at Ben-lor Bldg., Quezon Ave., Quezon City, with deliberate intent, with manifest partiality and evident bad faith, did then and there wilfully, unlawfully and feloniously cause to be paid, to Triad Construction and Development Corporation public funds in the amount of ONE MILLION TWO HUNDRED EIGHTY THOUSAND NINE HUNDRED SIXTY FOUR PESOS AND TWENTY CENTAVOS (P1,280,964.20) PHILIPPINE CURRENCY, supposedly for the final work accomplishment of Triad Construction on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that the Final Quantification of the Actual Work Accomplishment on the said Project amounted to THREE HUNDRED THIRTY THOUSAND SEVENTY FIVE PESOS AND SEVENTY SIX CENTAVOS (P330,075.76) 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 Jose M. Cruz and Triad Construction and Development Corp and themselves, to the damage and prejudice of the Government.

CONTRARY TO LAW.

ANTECEDENT FACTS

On June 1, 2001, all named accused through counsel filed a ***motion for reinvestigation***² alleging therein that there was no actual preliminary investigation conducted before the Office of the Honorable Ombudsman, since they were not notified of the existence of such case and they were not

² Records, pp. 99-101, Vol. 1

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able to controvert evidences against them. They were thus, deprived of their right to due process of law. Accused Josephine Espinosa likewise filed a separate Motion for Reinvestigation.³

By way of **Comment/Opposition**⁴ to the Motion for Reinvestigation filed by Accused Balao, Lazarte, Angsico and Dacalos, the prosecution, through the Office of the Special Prosecutor, argues that contrary to their allegation, accused filed a Motion to Transfer Investigation with request for Extension of Time to File Counter-Affidavit dated April 7, 1998 for a period of twenty (20) days. This is a clear indication that they received the Order to file counter-affidavit. However, even up to the issuance of the Resolution, accused failed to file the same. As for accused Espinosa, the prosecution argues that she was afforded the right to file counter-affidavit, which she did on April 23, 1998.

In **reply**⁵ thereto, accused Balao, Lazarte, Angsico and Dacalos alleged that the case before the Ombudsman, which became the basis of the Information, is OMB-VIS-CRIM-99-0727. When this case was still before the Ombudsman, not one of the accused was able to file any counter-affidavit because they were not informed nor given notice by the OMB-Visayas that such a case ever existed.

By **Resolution**⁶ dated September 6, 2001, the Court ordered the reinvestigation of the instant case and the prosecution was given an inextendible period of sixty (60) days from receipt to terminate the same and submit its report.

Pending reinvestigation of the instant case, Accused Angsico was arraigned⁷ and she pleaded "Not Guilty" upon arraignment.

On December 4, 2003, a **Manifestation**⁸ was filed by the prosecution attaching therewith the report of the reinvestigation it conducted.

When arraigned on January 19, 2014, accused Balao, Dacalos, Lazarte, Jr., Angsico, Espinosa and Lobrido, assisted by their respective counsels, entered a plea of "Not Guilty"⁹. Trial ensued thereafter.

³ Ibid, pp. 143-145 Vol. I

⁴ Ibid, pp. 188-190 Vol. I

⁵ Ibid, pp. 200-205 Vol. I

⁶ Ibid, p. 217 Vol. I

⁷ Certificate of Arraignment dated Oct. 2, 2002, p. 332. Vol 1

⁸ Records p. 496 Vol. II

⁹ Ibid, pp. 523-528, Vol. II



Meantime, on June 3, 2004, the Court resolved¹⁰, upon motion¹¹ of the prosecution, to suspend accused Balao, Lazarte, Angsico, Dacalos, Lobrido and Espinosa pendente lite for a period of ninety (90) days pursuant to Sec. 13 of Republic Act No. 3019.

After the admission of the prosecution evidence, Accused **NOEL LOBRIDO**, through counsel, filed a **Motion for Leave of Court to File Demurrer to Evidence**¹² alleging therein that based on the evidence adduced, the prosecution allegedly failed to prove the allegation in the Information that the Final Quantification of the Actual Work Accomplishment amounted only to P330,075.76.

On July 20, 2006, Accused **JOSEPHINE ESPINOSA**, through counsel, filed a similar **Motion for Leave of Court to File Demurrer to Evidence**¹³ arguing insufficiency of prosecution evidence to convict the accused beyond reasonable doubt of the crime charged.

On October 3, 2006, Accused **NOEL LOBRIDO** filed his **Demurrer to Evidence**¹⁴ while Accused **JOSEPHINE T. ESPINOSA** filed a similar **Demurrer**¹⁵ on September 22, 2006. Likewise, Accused **ROBERTO BALAO, JOSEPHINE ANGSICO, FELICISIMO F. LAZARTE AND VIRGILIO V. DACALOS** filed their **Motion to Admit Demurrer to Evidence**¹⁶ on October 4, 2006. They posit insufficiency of prosecution's evidence to prove (1) conspiracy among them; (2) that in the alleged payment of the amount of P1,280,964.20, they acted with deliberate intent; and (3) that a document labeled as Final Quantification for Actual Work Accomplished showing the amount of P330,075.76 does not exist.

Pending resolution of the incidents, Counsel for accused Balao manifested that the latter has already succumbed to his recurring heart ailment and died on March 24, 2007.¹⁷

In the **Resolution**¹⁸ promulgated on January 29, 2008, this Court resolved to deny the **Demurrer** filed by all accused, stating that there is basis to conclude that there is a connivance between and among the accused and that the government incurred injury because it was actually made to pay for non-existing works.

¹⁰ Ibid, pp 621-624 Vol II

¹¹ Ibid, pp. 543-545 Vol II

¹² Ibid. p. 936

¹³ Ibid. p. 944

¹⁴ Records, Vol. II, p. 958

¹⁵ Ibid. p. 970

¹⁶ Ibid. p. 991

¹⁷ Records, Vol. III, p. 1072

¹⁸ Ibid. p. 1085

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Thereafter, all accused filed their respective **Motion for Reconsideration** which the Court denied per **Resolution**¹⁹ dated February 18, 2010.

Aggrieved, all accused filed their respective **Petitions for Certiorari Under Rule 65**²⁰

Considering the Notice of Death of accused Jose M. Cruz, and after compliance of the Prosecution, the case against accused was dismissed.²¹

EVIDENCE FOR THE PROSECUTION

To prove the charges against the accused, the prosecution presented the following witnesses:

1. CANDIDO M. FAJUTAG, JR.

He narrated that in April 1991, he was the NHA Project Engineer assigned in Iloilo and was later transferred to Bacolod City until he was promoted to Principal Engineer of the National Housing Authority. His superiors were Roberto Balao as General Manager, Felicisimo Lazarte as Department Manager of the RKB, Virgilio Dacalos as Division Manager for Visayas, Josephine Espinosa as Project Manager for Bacolod Project Office.

While assigned as the Project Engineer in April 1991, the said project was suspended as the contractor, A.C. Cruz Construction partially suspended some of its operation due to some problems but the Works resumed immediately after receipt of the approval of the Extra Work Order Variation No. 1²² which pertains to alleged excavation of unsuitable materials and filling up the same with road fill materials and two other items.

When asked by the Court as to the percentage of accomplishment of the works when he came into the project, he answered that there were already two (2) progress payments already paid and the total is about 30+%.

At the time of his appointment as Project Engineer from April to November 1991, the Contractor was Arceo A.C. Cruz Construction. He was later pulled out of the project supervision by the Project Manager

¹⁹ Ibid., p. 1211

²⁰ Ibid., pp.1223-1578

²¹ Records, Vol. I p. 471

²² TSN, 14 June 2004, p.50

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considering his refusal to sign the fourth (4th) billing because it calls for the payment of that item in the Extra Work Order Variation No. 1 amounting to P700,000.00+ when in fact as observed at the site, these items were non-existent.

He took photos of the project using his own camera on July 6, 1993 for future reference to show the defects of the said project although the same has been completed by the new contractor at that time. In the said photos, it was visible that there were cracks which were filled by the new contractor and were caused by the deficiency in the required thickness of the pavement.²³

On cross-examination, Mr. Fajutag, Jr. admitted that he was not able to secure the built plan as there was no turnover of records from the previous Project Engineer and when he was pulled out from the project, there was no written order or memo but only a verbal advice from the Project Manager. Instead of him, it was Noel Lobrido who was assigned as the Project Engineer.

When asked if he has personal knowledge of any conspiracy between Triad Construction and NHA, he admitted that he does not have such personal knowledge as he was on leave from January 1992 to November 1992.²⁴ However, he insisted that he can still say that there was anomaly made concerning the project because he knows the extent of the works made by the previous contractor. He also narrated that he got hold of the contract between NHA and Triad only through COA when he initiated the complaint against the accused.

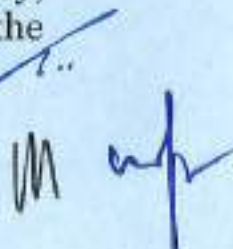
He further admitted that prior to the filing of the complaint against the accused, he likewise filed several cases in different venues such as Commission on Audit, Presidential Commission Against Graft and Corruption and the Office of the Ombudsman against the accused and these cases were dismissed because of his lack of personality to initiate these cases.

2. ATTY. SHEILA U. VILLA

Witness is the Regional Cluster Director assigned to Local Government Sector, COA Regional Office No. VI, Iloilo City. In 1993, she was a State Auditor III. She was a staff of the Regional Office and at the same time a Resident Auditor of the National Housing Authority, Iloilo Project Office. At that time, she used to be a member of the

²³ TSN, June 15, 2004 p.25

²⁴ TSN, June 15, 2004, p. 54



Collective Proficiency Audit group (CPAG) and as such, she was covering different special audit assignments.

She narrated that her team received a COA Assignment Order No. 93-1683, dated April 23, 1993 signed by their Chairman²⁵ and conducted a special audit investigation from July 5, 1993 to July 31, 1993. She was accompanied by her teammates Ely D. Manikan, a resident Auditor of the NHA Bacolod Project Office and Rosalie T. Molo, the civil engineer. Their special audit team along with the Engineers for the DPWH First Engineering District of Negros Occidental commenced with the site inspection and undertook some testing that lasted for a week.

At the inspection site, she and her team took samples and found out that there were no unsuitable materials in those areas and in fact there were no imported road field materials. As far as core drilling was concerned, it was proven that the thickness of the pavement that they got samples of, fell short of the required thickness.²⁶

She also mentioned that they were able to review two (2) contracts but not all supporting documents were furnished their team and it was only obtained belatedly from the Project Manager of Iloilo-Bacolod Project Office. After the audit investigation, it took the team 5 months to finalize the report composing of thirty (30) pages and identified as Exhibit "F".

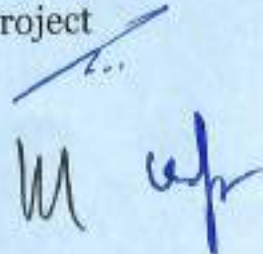
After writing the draft report, they requested for an exit interview from the National Housing Authority which was conducted on February 4, 1994.

In the said final report, there were four (4) findings which were actually anchored on the complaint of Engr. Fajutag. The most significant of these are Findings Nos. 3 and 4. Finding No. 3 has something to do with the granting of the remaining works to Triad Construction since it was considered in excess of the allowed ceiling for price escalation. As to Finding No. 4, it was concluded that the final billing of Triad appeared to have been altered from three Hundred Thirty Thousand (P330,000.00) to One Million Two Hundred Eighty Thousand (P1,280,000.00) Pesos and that overruns reported in order to justify such alteration, was not covered by contract variation order.

She concluded that there was an alteration because she had with her the Memorandum for the General Manager by the Project

²⁵ TSN, September 13, 2004, p. 9

²⁶ Ibid. p. 23

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Management Officer A which she later identified as Exhibit "A" and the Summary of Payment Estimates for the final billing of Triad. She identified the Summary of Payment Estimates which included the final billing from March 28, 1992 to May 1, 1992 and the second document, final billing from March 28, 1992 to March 31, 1992 as Exhibit "B".

She likewise identified the following documents: letter request dated June 16, 1992 submitted by Engr. Jimmy Bangero, Project Manager of Triad Construction, requesting for the release of the final billing as Exhibit "C"; two Abstracts of Physical Accomplishment as Exhibit D reflecting the net gross amount of P351,144.42 with a Certificate of Completion duly signed by Engr. Noel Lobrido, Project Management Officer A, where the date of completion is May 1, 1992; the other Abstract reflecting the amount of P1,362,727.87 signed by the wife of Mr. Cruz, Mildred Cruz and the Certificate of Completion attached where the date of completion was altered from May 1 to March 31, 1992; the Abstract of Physical Accomplishment with the period covered March 28, 1992 to March 31, 1992 composed of two (2) pages as Exhibit "E"; the Inspection Report for the Remaining Works in Pahanocoy Phase I, Bacolod City as Exhibit "I".

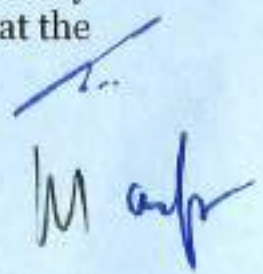
During the exit conference with Assistant General Manager Arghani Saldua and then Corporate Auditor Salvador Vasquez and Director Linda Solite and all the team regarding the four findings in relation to Finding No. 4, management admitted that there were two (2) billings but they tried to explain the reason for the operations why it was increased from Three Hundred Thirty Thousand (P330,000.00) plus to One Million Two Hundred Eighty Thousand (P1,280,000.00+) plus.

On cross-examination, she testified that the basis for conducting the audit was COA Assignment Order No. 93-1683 dated April 23, 1993 constituting a special audit to conduct audit and investigation on the alleged irregularity as they are not privy to whatever Affidavit Engr. Fajutag sent to the Office of the Ombudsman²⁷. She also admitted that they proceeded with the audit despite knowing that Mr. Fajutag served as the Project Engineer from April to November 1991 because their Office Order did not limit their audit investigation covering the period up to 1991.²⁸

She also admitted that the Summary of Payment Estimates was only signed by one Officer Josephine Espinosa and was not signed by Virgilio Dacalos, Felicisimo Lazarte, Jr and Roberto Balao and that the

²⁷ TSN, March 14, 2005, Ibid. p. 9

²⁸ Ibid. p. 18



Abstract of Physical Accomplishment was only signed by Mr. Jose Cruz, Noel Lobrido and Josephine Espinosa while Virgilio Dacalos and Felicisimo Lazarte did not sign the same.

When asked if she has a copy of the Final Quantification of the Actual Work Accomplishment which indicated the amount P330,075.76 as alleged in the Information, she insisted that it is the Abstract of Physical Accomplishment which supports the billing but when pressed by the Court if there is such document as the Final Quantification of the Actual Work Accomplishment, she replied that there is no such document.²⁹ She also stated that the final billing of P330,075.76 was not processed not because the documents were incomplete but because the people who should have signed it refused to sign it.³⁰

On re-direct examination, she testified that the Final Quantification as pointed out by the defense counsel is to show the difference why the Three Hundred Thirty Thousand was increased to One Million plus but argues that it is rather questionable because the first report which was Three Hundred Thirty Thousand reported an underrun and because of that alleged Final Quantification whether there were overruns, this was increased to One Million.³¹

She further stated that a Variation Order should be the legal basis for whatever increase in payment that is more a contract price in laymen's term which should be approved by the head of the agency.

3. ENGR. ROSALIE MOLO SALES

Engr. Rosalie Molos Sales was a Senior Technical Property Inspector stationed at COA Regional Office, No. VI, Iloilo City and as such she is tasked to conduct inspection of various infrastructure projects of government agencies.

In 1993, she recalled having been assigned to inspect the Pahanocoy Sites and Services located at Bacolod City by virtue of the COA Assignment Order No. 93-1683 of the Region which she identified as Exhibit "F-30".

After conferring with the team leader of the special audit investigation team, they proceeded to the Bacolod Field Office and secured documents from the NHA Bacolod Office such as the plans, the

²⁹ TSN, March 14, 2005, p. 35

³⁰ Ibid. p. 49

³¹ TSN, July 13, 2005, p. 10

specification, the program of work, the contract and other supporting documents for the said project and in doing so, she was made aware that the contractors for the subject project were A.C. Cruz and then followed by Triad. However, they were not able to get these documents the first time and they had to contact the previous Project Engineer Candido Fajutag, Jr. to ask for these documents but to no avail because they were told that when he was still the project engineer, he does not have these documents and they were merely given an *as built plan* prepared by him which when shown to her, she identified as Exhibit "H".

In order to prove the allegations made by Engr. Fajutag, they contacted a DPWH laboratory personnel to determine the thickness of the concrete pavement and for soil classification. Thereafter, they went to conduct a site inspection where the Audit Team, the team leader, auditor of the NHA field office, the engineer from the NHA field office, the DPWH personnel and Engr. Fajutag, Jr. were present.

As per result of the DPWH laboratory test, the thickness required for the concrete pavement was not attained while out of the 12 samples taken for soil classification, only one sample has a mixture of sand and gravel and the rest shows that the unsuitable materials were not undertaken by the Triad Construction.³²

During the audit investigation, she was able to evaluate only the Physical Abstract Accomplishment, the Final Quantification and the Memorandum dated September 24, 1992 she identified as Exhibit "L" containing the final billing and addressed to the General Manager from Josephine Angsico for the total contract cost of the project amounting to Ten Million Twenty Four thousand Nine Hundred Seventy and Seventy Nine Centavos (P10,024,970.79) Pesos with the accomplishment date indicated March 31, 1992. This Memorandum was signed by Josephine Angsico, Team Head, Visayas Area Management Task Force and approved by Robert P. Balao, General Manager.

Witness likewise confirmed the existence of a Contract identified as Exhibit "J" consisting of four (4) pages between Triad Corporation and NHA for Nine Million Five Hundred Fifty Four Thousand Eight Hundred Thirty Seven Pesos and Thirty Two Centavos (P9,554,837.32) where the scope of works include roadwork, bridge work, waterworks and sewerage. Further, based on the second page of the Final Quantification, there is an Item No. 5, Extra Work Order No. 1 where 5.01 is indicated therein as excavation of unsuitable material, with

³² TSN, September 27, 2005, p. 15

original quantity of 2,018,84 cubic meters and that as per their Audit Report, there was no record of the excavation and disposal of unsuitable materials nor of road filling works and the reported volume for august 12, 1991 inventory totalled 1,675.06 cubic meter for each activity. Likewise, as per their audit report, it was found out that there were no reported materials present in the other section where they have taken their sample for soil classification test and it means that those materials were newly ford at that job site granting that unsuitable materials were replaced and then it was put by another material.³³

She also narrated that during the technical inspection, they were not able to verify if indeed 1,428.94 cubic meter of road fill was actually made by Triad Construction as the quantity involved will not be accomplished in four (4) days alone as stated in the Abstract of Physical Accomplishment where it was indicated that the period covered for this accomplishment is March 28-31 1992 and with this quantity it would be impossible to do so as it involves several works such as compacting the road fill, watering the gravel, laboratory testing and then concreting work will follow.

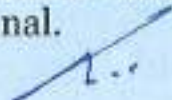


On cross-examination, she mentioned that she recalled NHA had organized an Inventory and Acceptance Committee which inspected the work accomplished by the first contractor which rescinded the contract. Hence, the project was given to a second contractor. She also stated that they have gone to inspect the site and was able to distinguish the cracks on the pavement but could no longer remember how many cracks there were exactly nor was she ever aware that the Final Quantification mentioned P330,000. She explained that as an engineer, she limits her responsibility to the technical side of the audit investigation while the accountants are the one tasked for the financial aspect.

On re-direct, she testified that the date of the Notice of Award is March 17, 1992 while it was notarized on March 26, 1992.

On re-cross, she stated that the Notice to Proceed is March 17, 1992 and this is also the start of the contract.

The fourth witness was **ATTY. JOSE M. AGUSTIN**. His testimony was, however, dispensed in view of the stipulation by the defense counsels admitting that the photocopies of the checks which he was called to identify and testify are faithful reproductions of the original.

³³ TSN, September 27, 2005, pp. 23-24

DOCUMENTARY EVIDENCE

On March 8, 2006, Prosecution filed its Formal Offer of Exhibits and the Court admitted the following documentary Evidence inclusive of its sub-markings, to wit:³⁴

EXHIBITS	DESCRIPTION
"A"	Certified true copy of Memorandum dated June 24, 1992 addressed to NHA Gen. Manager, re: Triad Construction final billing of P330,075.76 from accused Espinosa (one page).
"B"	Certified true copy of Summary of Payment Estimate for remaining works at Pahanocoy Sites and Services, Phase I, final billing in the amount of P330,075.76 from accused J. Espinosa (one page).
"B-1"	Summary of Payment Estimate for remaining works at Pahanocoy Sites and Services, Phase I, final billing in the amount of P1,280,964.20 was for a shorter period of final billing covering March 28, 1992 to March 31, 1992.
"C"	Letter-request dated June 16, 1992 from Triad Construction and Development Corp. requesting for release of final billing (one page).
"D" & "D-1"	Certified Photocopy of Abstract of Physical Accomplishment for period covering March 28, 1992 to May 1, 1992 (consisting of 2 pages).
"D-1-a"	Bracketed entry showing total amount of P331,144.42.
"D-1-b"	Bracketed entry showing printed name and signature of Jose M. Cruz, President of Triad.
"D-2"	Certified photocopy of Certificate of Completion issued by accused Noel Lobrido, Supervising Engineer and Josephine Espinosa, Project Manager.
"E" & "E-1"	Certified True Copy of Abstract of Physical Accomplishment for final billing covering the period March 28, 1992 to March 31, 1992, in the total amount of P1,362,727.87 (2 pages).
"E-2"	Certified photocopy of Certificate of Completion (one page).
"F", "F-1" to "F-29"	Certified True Copy of Report on the Results of Audit of NHA-Bacolod Project Office Pahanocoy Site and Services Project, Phase I.
"F-3-a"	Bracketed entry in Page 4 of the Report containing the finding that <i>"There was no record of excavation and disposal of unsuitable materials nor of roadfilling works. x"</i>
"F-4-a"	Bracketed entry in Page 5 of the Report (par. 5) containing the finding that <i>"Per logbook of daily work activities prepared by Engr. Delos Santos, the only entry on excavation of unsuitable materials and roadfill was dated January 19, 1991."</i>

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"F-4-b"	Bracketed entry in Page 5 of the Report (par. 6) containing the finding that <i>"Results of laboratory tests conducted for the classification of soil taken from twelve samples x seemed to prove that except for a portion of collector road (CR) 3, x there were no imported materials present on the other sections."</i>
"F-5-a"	Bracketed entry in Page 6 of the Report (1 st par., 3 rd sentence) containing the statement <i>"The test results proved that the types of soil from all four holes are the same. They are not unsuitable considering that the liquid limit and plasticity index were way below the limits of 80% and 55%, respectively. Neither are they imported."</i>
"F-17"	Page 19 of the Report containing Item 4 of Other Findings which states: <i>"The final billing of Triad Corporation appeared to have been altered from P330,075.76 to P1,280,964.20 with a reported quantity overrun not duly supported by a contract variation order."</i>
"F-18" to "F-22"	Pages 19 to 23 of the Report containing comparison and contrast of the two Abstract of Physical Accomplishments (Exhibits "D" & "E") submitted by Triad.
"F-27"	Page 28 of the Report containing a listing of six items (data and documents) requested by the Audit Team but were NEVER submitted by the NHA-Bacolod Project Office to them.
"F-28"	Page 29 of the Report containing the discussion on leakage test of pipeline conducted and revised accomplishments of Triad which DO NOT appear in the records of the Project.
"F-30"	Certified true copy of COA Assignment Order No. 93-1685, constituting a Special Audit Investigation Team (one page).
"F-31" to "F-40"	Certified true copies of Indorsements and memorandums transmitting the COA Report thru channels to the Chairman of COA for review and approval.
"G", "G-1" to "G-66"	Sixty-seven (67) original Photographs taken by Engr. Candido Fajutag, Jr. in 1993, depicting the repaired cracks on collector roads, alleys, service roads and repaired footpaths and sidewalks in Pahanocoy Sites and Services Phase I Project.
"H"	Original As-Built Plan made by witness Engr. Candido Fajutag, Jr. when he was still the NHA Project Engineer of Pahanocoy Sites and Services Phase I Project in 1991.
"I"	Certified True copy of Memorandum dated April 13, 1992 for the NHA General Manager from the Inventory/Acceptance Committee.
"I-1"	Bracketed entry showing the date of the Memorandum;
"I-1-a"	Bracketed entry showing April 15, 1992, as completion date of remaining works in Pahanocoy Sites and Services Phase I.
	Second page of the Memorandum showing the name and signature of accused Felicisimo Lazarte, Jr. as Chairman of the

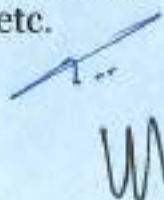
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"I-2"	Inventory/Acceptance Committee as well as the name and signature of accused Roberto Balao who approved the Memorandum.
"I-3"	Certificate of Completion and Acceptance dated April 13, 1992.
"I-3-a"	Bracketed entry showing the date of the Certification as April 13, 1992.
"J" & "J-1 to J-3"	Certified True Copy of Contract for remaining works in Pahanocoy Sites and Services Project Phase I (4 pages).
"J-4 to J-6"	Certified true copy of the Notice of Award (3 pages).
"J-7"	Certified true copy of Certificate of Availability of Funds dated March 20, 1992.
"J-8"	Certified true copy of Request for Fund Allotment.
"J-9"	Certified true copy of Performance Bond submitted by Jose M. Cruz of Triad Construction and Development Corp. (one page).
"K" & "K-1"	Certified True Copy of Final Quantification prepared by the Inventory/Acceptance Committee and approved by the accused Robert Anthony Balao.
"L", "L-1" to "L-2"	Certified True Copy of Memorandum dated September 24, 1992 re: Final Billing and Retention Money of Triad (3 pages).
"L-1-a"	Bracketed entry in Exhibit "L-1" showing total contract cost of Php10,024,970.79 for remaining works of the Pahanocoy SS Project Phase I, with overrun of Php470,133.47.
M	Disbursement Voucher dated October 7, 1992
M-1	Check No. 549280 dated october 9, 1992
M-2	Official Receipt issued by Triad Construction and Development Corp. Dated October 12, 1992

EVIDENCE FOR THE DEFENSE

1. JOSEPHINE T. ESPINOSA

Josephine T. Espinosa held the position of a Project Manager during the Pahanocoy Sites and Services Project at Bacolod City and as such, she was tasked to oversee the implementation of the project and programs of the NHA in Bacolod City, Negros Occidental to include the design, monitor the engineers, collate report, evaluate and review the recommendations of the project engineers and other staff, sign documents and also oversee the activities, targets and accomplishments and other programs of NHA such as livelihood, estate management, committee relations and information, administrative, finance, log cases, etc.





At the time of the said Project, there were four engineers assigned to different projects in Bacolod City, namely; Engr. Rodolfo delos Santos, Engr. Noel Lobrido, Alejandro Sujico and Engr. Candido Fajutag, Jr. Engr. Fajutag, Jr. was reassigned for Pahanocoy sometime in April 19, 1991 and went AWOL beginning 1992 and for the whole year until his re-assignment to NHA Iloilo in 1992.

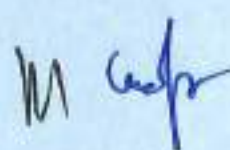
The original contractor for the said Pahanocoy Project was A.C. Construction but it was not able to finish the same so NHA issued a Termination Decision Notice signed by the NHA Manager in August 1991. Thereafter, Triad Construction was contracted for the unfinished works at the Project left by A.C. Construction.

Triad was able to finish the thirty-day contract amounting to P9.5M under Engr. Noel Lobrido which contract officially commenced on April 2, 1992 until May 1, 1992 but because of the limited time, Triad began works ahead.

That the amount of P330,075.76 actually represents the unpaid balance of Triad's contract cost in the amount of Nine Million Five Hundred Thousand (P9,500,000.00) Pesos and this amount considered as the final billing for the remaining balance of the original contract of Triad was not processed at the NHA main office because it was then that the final billing shall include the additional works, with the approximate value of One Million (P1,000,000.00) Pesos which works were left behind by the previous contractor, A.C. Cruz Construction. This includes the water lines and the aggregate sub-base course and base course.

The main office was able to take hold of the final billing of more than Three Hundred Thirty Thousand (P330,000.00) since the Bacolod Project Office was given instruction to revise and re-submit the final total billing to include the unpaid balance based on the original contract of Triad and the additional works which were left behind by A.C. Cruz. Thereafter, she requested the Engineer-in-charge, accused Engr. Lobrido to prepare the abstract of physical accomplishment and together with the other support documents like logbook, pictures, quantity derivation and the the final quantification for the 1.2M plus.³⁵ Then after Engr. Lobrido submitted to her the abstract of accomplishment, she prepared a Memo for the total final billing of 1.2M plus and collated the reports attendant to, and in support of its proposed final billing of 1.2M and

³⁵ TSN, April 23, 2002



sent the same to NHA main office including the logbook, pictures, quantity derivation and other supporting documents.

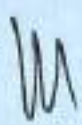
Relative to the COA report marked as Exhibit "F" where excavation and disposal of materials were mentioned, the same were not included in the additional work items and denied that there were alterations made in the final billing to make it appear that instead of P330,000, the amount is P1,200,000.00 because the said amount represents the remaining unpaid balance of the original contract plus the additional cost done by Triad.

When the pictures were shown to her of the alleged cracks, she argues that the same does not relate to the additional work made by Triad which comprises the water works, aggregate sub-base course and base course and based from the disbursement voucher, the actual amount paid to Triad is only Five Hundred Thousand Plus because of derivation.

On cross-examination, she narrated that the P300,000.00 final billing was not processed by the NHA Main Office because it wanted that the total final billing include the additional works approximately amounting to P1.2M left by A.C. Cruz Construction and undertaken by Triad Construction. These works included waterlines, sub-base course and base course works. However, she admitted that these works are already included in the waterworks and roadworks as stated in the contract between the NHA and Triad Construction which amounts to P9.5M.³⁶

She also admitted that it was Engr. Lobrido who prepared the Abstract of Physical Accomplishment³⁷ for the amount of P1.2M and that the latter also placed the name of Mildred Cruz, widow of late Jose Cruz, near the bottom of the said document. Although, Engr. Jimmy Bangero was the Project manager of Triad Construction for the completion of the works at Pahanocoy, he was not involved in the preparation of said Abstract. She also stated that there is only one logbook for the entire project which was submitted together with the Abstract of Physical Accomplishment to the NHA main office as attachment to the Disbursement Voucher. The said logbook contains vital entries as to the volume of road fill materials but it is no longer in their possession because it was submitted to the main office.

³⁶ TSN, June 10, 2014, p. 10
³⁷ Exh. E



According to her, the Final Quantification was undated and prepared by the members of the Inventory Committee composed of members from the central or main office and members from Bacolod City and although these members were not involved in the supervision of the construction or any of the works done at the Pahanocoy Phase I Project, they certified.

On re-direct examination, she admitted that she prepared a Breakdown of Work Accomplishment to show how the P1.2M final billing was derived, which was composed of the unpaid balance based on the original contract of Triad plus additional works left behind by A.C. Cruz.

On re-cross, she admitted that this Breakdown forms part of her counter-affidavit.

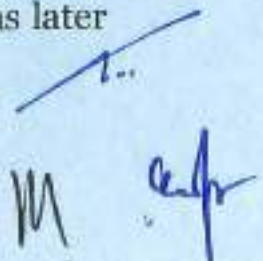
1. NOEL ADA LOBRIDO

He was employed at NHA Bacolod Project Office on February 1, 1989 as a Contractual Project Engineer and as such, he was tasked to handle projects such as Malalusan Slum Upgrading Project, Yulos Park Slum Upgrading Project, Phase I and Phase 2, Pahanocoy Sites and Services Project Phase 1-4, Talisay Joint Venture Project in Bacolod City and Community Mortgage Program in the Cities of Bacolod, Silay and Cadiz.

He personally knows Engr. Candido Fajutag, Jr. because the latter was assigned to the Bacolod Project Office sometime in March or April 1991. Upon his assumption, he was assigned to oversee the contract works of AC Cruz Construction at the Pahanocoy Sites and Services Phase I which was not completed because its contract was terminated by NHA due to abandonment of work and undue delays and so the remaining works left by AC Cruz was awarded and taken over by TRIAD Construction Development Corporation. Considering that Engr. Fajutag, Jr. went AWOL and in order to finish the work within the thirty (30) day period, he was assigned to take over Engr. Fajutag's duties in the Pahanocoy Sites and Services Phase 1 on April 2, 1992.

Triad Construction was able to finish the project on May 1, 1992 and afterwards, he came up with an Abstract accomplishment³⁸ of P330,000.00 more or less which was later

³⁸ Exhibit D



ordered revised by the Bacolod Project Office to include the works undertaken by TRIAD which were found not installed by A.C. Cruz and so a new document designated as Abstract of Accomplishment³⁹ but insists that the date was altered because in the Abstract of Accomplishment of TRIAD the date was March 28, 1992 to March 31, 1992 when it should have been March 28, 1992 to May 1, 1992⁴⁰. He believes it was altered because it would have been impossible for the TRIAD to finish the works within 3 days. Further, he signed a Certificate of Completion which shows that the TRIAD finished the works on May 1, 1992⁴¹ which he later identified and marked as Exhibit "1Lobrido".

When asked which of the two Abstracts of Physical Accomplishment of Triad is the accurate quantification, he answered that the Abstract which has the amount of P1.2M best reflects the work of TRIAD while the first Abstract with the amount of P330,000.00 does not include the installed item of work by TRIAD that he personally witnessed and which should have been undertaken by the former contractor, A.C. Cruz.

On cross-examination, he admitted that after he prepared the first Abstract with the amount of P330,000.00, he affixed his signature thereto and submitted the same to their then Project Manager, Josephine Espinosa. He also prepared the second Abstract that was asked of him to be revised by their Office but he was not the one who asked that the same be signed by Mildred Cruz as he did not personally witness the latter signing it. He denied knowing who altered the dates in the Second Abstract.

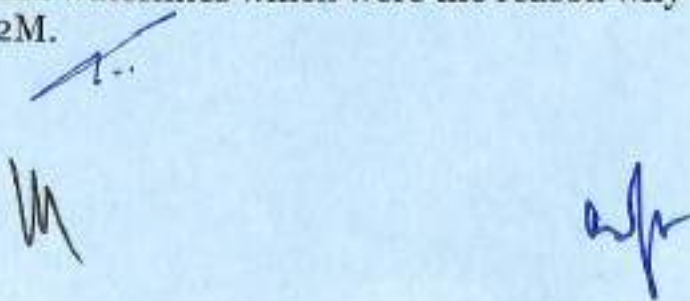
He also testified that the second abstract was the accurate one because he was personally present at Pahanocoy and saw the materials on site and since they measured the finished work done by TRIAD. He further said that the remaining works of AC Construction was only 50% and the contract given to TRIAD was only for thirty (30) working days.

On re-direct, he stated that after preparing the two Abstracts, the same were forwarded to the Project Manager who submitted the same to their Manila Office. He also clarified that the installed item works included the aggregate sub-base course, aggregate base course and waterlines which were the reason why the cost went up to P1.2M.

³⁹ Exhibit E

⁴⁰ TSN, September 9, 2014, p. 26

⁴¹ Ibid., p. 30

The block contains several handwritten marks in blue ink. At the top center, there is a signature that appears to be 'Mildred Cruz'. Below it, on the left side, are the initials 'MC'. On the right side, there is another signature that appears to be 'A.C. Cruz'.

On re-cross, he admitted that while it is true that whenever there are additional works to be undertaken, there should be a contract variation order, and in the case of the Abstract of Physical Accomplishment he prepared, there is no such variation order.

2. VIRGILIO V. DACALOS

In 1991 and 1992, he was then the Division Manager of the Visayas Division, Regional Project Department of the National Housing Authority, holding office at the NHA main office in Diliman Quezon City. As such he is tasked for the over-all planning, development, monitoring and directing all project operations in the Visayas region.

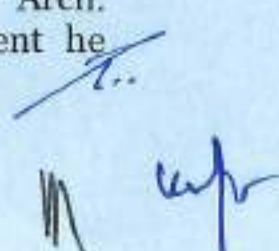
The Pahanocoy project involved two (2) contractors. First was A.C. Cruz Construction which was terminated by the management and subsequently awarded to Triad Construction. According to the NHA Inventory Inspection and Acceptance Committee, the accomplishment rate of A.C. Cruz was pegged at 40.89% while the COA Regional Office VI also evaluated the project and came up with a report and accomplishment rate of 45.44%⁴² per copy of the Inventory Report dated March 24, 1992 which he identified as Exhibit "1Dacalos".

When Triad Construction took over and started the remaining works in the project, they found out that there were uninstalled materials reported by A.C. Cruz as completed and for which reason, Triad could not proceed with the project. These uninstalled items include pvc water pipes and base course materials that were discovered when Triad was trying to connect to the water system reported by A.C. Cruz but failed as the same is non-existing in the field. Likewise, non-existent were base course materials which they discovered when Triad was about to do the concreting of the roads.

It was Engr. Lobrido and Arch. Espinosa who reported the matter and so they were furnished a copy of the report prepared by Engr. Jimmy Bangero dated May 6, 1992, identified as Exhibit "2Dacalos" wherein Engr. Bangero detailed the deficiencies of A.C. Cruz Construction.

There was also a handwritten report prepared by Arch. Espinosa addressed to the Regional Project Department he

⁴² TSN, December 1, 2014, p. 18



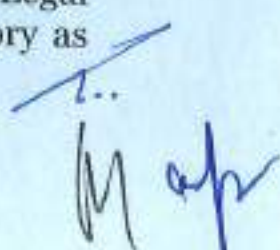
identified as Exhibit "3 Dacalos". He also alleged that they were furnished copies of the letter of Engr. Lobrido addressed to Arceo Cruz dated May 27, 1992 and to Jose M. Cruz of Triad Construction identified as Exhibit "4 Dacalos". There is also another document dated September 2, 1992 about a memorandum to the Area Management Office, Visayas signed by the Project manager for Funds Settlement identified and marked as Exhibit "5 Dacalos".

After receiving long distance calls relative to the uninstalled items, he sought the advice of the Legal Department and was told that the project must be completed considering that the closure date of the project was on March 31, 1992. It was also discussed with the Department Manager, Engr. Lazarte and also to the Division managers of Luzon and Mindanao where he was advised to follow the Legal Department and so he instructed Engr. Adelino Amorillo, the Principal Engineer in the department to inform the Bacolod Project Office what they should do in order to complete the project because time is of the essence as the project must be reported completed by March 31, 1992 as this date is the closure date for the loan from the World Bank which funded the said project.

In the event that the project will not be completed by March 31, 1992, the funding for the project like the reimbursement could not be released by the World Bank. In other words, seventy (70%) percent of the funding will be lost.

When Triad took over the project, the remaining works for the said Project is close to sixty (60%) percent and it was only on March 16, 1992 that the contract was awarded to Triad because the former contractor harrassed some members of NHA personnel, threatening them with lawsuits. There were in fact cases filed against Engr. Fajutag, Jr. and Arch. Espinosa before the Ombudsman. Cases were likewise filed against NHA Board of Directors including GM Balao before the Ombudsman and the Sandiganbayan.

Had time not been of the essence, there should have been a Variaton Order in the form of Extra Work Order that should have been processed first at the Bacolod Field Office and approved before it is implemented. However, since the project needs to meet the deadline, Triad Construction was allowed to continue without the variation order per advise of the Legal Department, saying that the Variation Order is not mandatory as



the justification for an Extra Work Order can be made through another document, in this case, a Final Quantification.⁴³

He denied that there is such document as a Final Quantification of Actual Work accomplishment purportedly stating that it amounted only to Three Hundred Thirty Thousand, Seventy Five Pesos and Seventy Six Centavos (P330,075.76). In fact, Ms. Sarabella of the COA Region VI, head of the audit team admitted that there is no such document.⁴⁴

In the Pahanocoy Project, there was a Certificate of Completion executed by Architech Josephine Espinosa and Engr. Noel A. Lobrido wherein it was indicated that the date of completion is May 1, 1992.

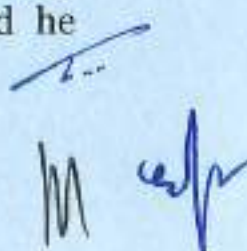
The first time he saw a similar Certificate of Completion bearing the date March 31, 1992 was when the said document was attached to the Inspection Report and the Certificate of Inspection and Acceptance Report that were forwarded to their office after the completion of the project as they wanted him to sign on the said documents in behalf of Engr. Lazarte, Chair of the Inspection and Acceptance Committee. However, he did not sign the documents because the date of completion reflected in the said document which is April 15, 1992 is different from the actual date of completion in other documents.

Thus, he went to see GM Balao to confirm the said document and the latter told him not to worry since the Management Committee allegedly have decided that even if the date of completion of Pahanocoy is beyond the closure date, there is still a remedy to be taken, and that is by ante-dating the date of completion and he was assured that GM Balao will also be signing the said document and so he signed on behalf of Engr. Lazarte. His act of signing the said document yielded him no benefit as he was never promised monetary consideration or promotion. He is also unaware if there are any other person who gained personal benefit from signing the said documents. He said that he signed the document for the benefit of NHA.

The said Inspection Report and the Certificate of Completion and Acceptance were completely signed by the members of the Inventory and Acceptance Committee and approved by the General Manager Robert P. Balao and he

⁴³ TSN, December 2, 2014, p. 12

⁴⁴ TSN, December 2, 2014, p. 13



identified the signatures as he is familiar with the signatures of the persons who signed the document.

He believes that those who signed the said document including him did not do something wrong despite indication of a date of completion different from the actual completion date because he did it with good intentions and for the benefit of NHA. He also narrated that only General Manager Balao and he among all other signatories, were charged.

When shown to him the Final Quantification, he pointed to the signatures thereon as belonging to Jose M. Cruz, Rommel P. Alimbuyao, Rodrigo L. Coral, Silverino Bolante because they are all familiar to him while he admits having signed on top of the printed name Engr. Felicisimo Lazarte, Jr., as the latter's representative.

He came to know of a final billing of the remaining works in the amount of P330,076.75 through Engr. Morillio when he was told that a set of billing documents was received from the Bacolod Project Office signed by Engr. Lobrido and Arch. Espinosa and after receipt of the said documents, he instructed Engr. Amorillo to inquire from the Bacolod Project Office and asked them if the extra work undertaken by the Triad Construction was included in the final billing. It was the position of the Bacolod Project office to submit two separate billings. One for the unpaid balance of the contract cost and the other is for the extra work undertaken by the Triad Construction. For clarification, he went to seek advise from their Legal Department and was told to return the documents to the Bacolod Office and instructed that they have to wait for the final notification by the Inventory and Acceptance Committee to have a legal basis for the inclusion of the extra work for the uninstalled items undertaken by the Triad Construction. Thus, a new set of billing documents from the Bacolod Project Office was received that includes the final quantification indicating an amount of P1,289,964.20. This billing with the final quantification was then reviewed all the way to the General Manager.

To look into the issue of uninstalled items, an investigation was conducted by their office created by GM Balao and the people involved were asked to submit an explanation and accordingly, it was just an honest oversight and because of lack of technical personnel as written in the Memorandum dated April 19, 1994 signed by Noel Lobrido and Josephine Espinosa. As for Triad Construction, in its letter dated April 9, 1994, it

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explained that during the implementation of the project they found out that the road they just levelled without waste, course and sub-discourse and the connecting point of the supposed pipe installed by A.C. Cruz does not exist.⁴⁵

On cross-examination, he narrated that before the Contract of A.C. Cruz Construction was terminated by NHA, it was already paid three (3) progress periods. He also stated that before the contract was awarded to Triad, the committee went to Bacolod and stayed there for about a week to do the inspection, evaluation and determination of the actual accomplishment of A.C. Cruz. He also admitted that he did not advise the committee who conducted a site inspection to test the quality of the soil materials and the compaction levels of the said soil materials nor advise them to study the logbook and as-built plan of Engr. Candido Fajutag, Jr. who discovered and reported the deficiencies as early as May 1991, in Pahanocoy Phase I project.

Going back to the result of the inventory, it was found out that the accomplishment was pegged at 40.89% which is the summation of all the specific items of work and does not include the uninstalled soil materials.

He stated that when Triad Construction made a report to Engr. Lobrido and Arch. Espinosa relative to the uninstalled materials inclusive of the pipes, aggregate sub-course and sub-base course sometime in March 1992, Arch. Espinosa informed him about this through a long distance phone call.

He likewise admitted that the Report of the Inspection and Inventory Committee on the accomplishment of the A.C. Cruz Construction did not reach his office.

With the rate of 40.89% completion by the A.C. Cruz, he said that they were expecting TRIAD to complete 60% of the remaining works within the period of March 16 to 31, 1992 but the TRIAD did not finish the construction on March 31, 1992. The first Abstract of Physical Accomplishment shows that the period covered is March 28, 1992 to May 1, 1992 but the same was not approved by the NHA and without his signature because what he signed was the first Abstract where the date of completion is March 28, 1992 to March 31, 1992.

⁴⁵ TSN, April 29, 2015, p. 38

Handwritten signatures and initials in blue ink, including a signature that appears to be 'E.' and another that appears to be 'M'.

The project should have been completed on March 31, 1992 but since there was no contractor from May 20, 1991 to March 16, 1992 to work on the said project as the contract with A.C. Cruz has been rescinded in August 1991 despite his willingness to pursue the same. Thus, A.C. Cruz lodged a complaint before this Court.

After finding about the deficiencies from Arch. Espinosa, he went to the legal department to seek advice because they are after improving immediate closure date of the World Bank. There were no formal written document from Triad or Architect Espinosa nor a formal written response from the Legal department. He was told by the Legal Department that a Contract Variation Order for overruns is not mandatory and he has to proceed with the project.

He also admitted that the Abstract of Physical Accomplishment amounting to P330,000.00 signed by Engr. Lobrido and Arch. Espinosa and the President of Triad was sent to his office for review along with the Memorandum of Project management Officer Josephine Espinosa dated June 16, 1992 including the demand letter for payment from Triad which was sent by its Project Engineer for the final billing. However, he was not able to review this billing as it was his staff, Engr. Amurillo who made the review and was tasked to inquire from the Bacolod Office if the uninstalled items of A.C. Cruz were the items installed by Triad. This billing was not processed though because it was sent back to the Bacolod office and instead, another final billing was actually processed bearing the period covered March 28, 1992 to March 31, 1992, signed not by the President of Triad but his wife, Mildred Cruz.

The inclusion of the uninstalled items accomplished allegedly by Triad for A.C. Cruz were not reflected in the first set of documents so there was no Contract Variation Order⁴⁶ for these additional work items, although in the Summary of Payment Estimates for the Final Billing March 28-31, 1992, it has the words "Contract Variation Orders", which he admitted was merely a pro forma but there was no actual Contract Variation Order for the amount of P470,133.47. Further, the Summary of Payment Estimate was certified by Josephine Espinosa concurred by him and recommended for approval by Josephine Angsico.

⁴⁶ Exhibit B-2

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Meanwhile the next set of bidding documents in the amount of One Million Two Hundred Eighty Thousand Nine Hundred Sixty Four (P1,280,964.00) was reviewed, processed and approved for payment.

3. JOSEPHINE CASEÑAS HOTTLE

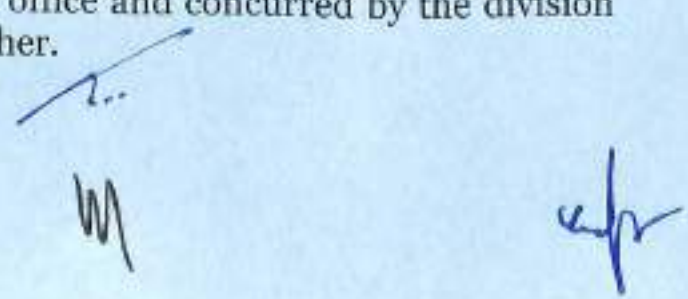
She is the same Josephine Angsico, accused in this case and she is familiar with the Pahanocoy Sites and Services Project that started in 1990 and was completed on March 31, 1992. While this project was ongoing, she was then the Director of the Corporate Planning Office of National Housing Authority based at the central office in Diliman, Quezon City and held the position until September 1992 per Board Resolution 2533.⁴⁷

Because of her work at the Corporate Planing Office, she could not immediately assume the position of Head of the Visayas office and reported to said office only on the first week of October 1992. Thus, when she assumed the position, the Pahanocoy Sites project has been fully implemented. Her only involvement in the project is that she signed the final billing documents, being the Head of the Visayas office of the NHA. These documents include the Abstract of Physical Accomplishment; the Summary of Payment Estimate; the Memorandum to the General Manager dated September 24, 1992 for the final billing and the voucher for the final billing of the contractor.⁴⁸ Her signature was needed as Head of the Visayas office to recommend approval of the billing. When the documents were presented for her signature, the same had already been processed, acted upon and signed by the other officers and the important supporting documents were already approved and signed by the General Manager of the NHA which includes the Abstract of Physical Accomplishment which was submitted by the contractor and it was reviewed, checked and confirmed by the project office and concurred by the main office staff.

The Abstract of Physical Accomplishment was prepared by the contractor and checked by the supervising engineer and confirmed by the project manager at the project office level and then reviewed at the main office and concurred by the division manager before it reached her.

⁴⁷ Exhibit 9

⁴⁸ TSN, Nov. 12, 2015, p. 14

Handwritten signatures and initials in blue ink at the bottom of the page. There are three distinct marks: a signature that looks like 'M', a signature that looks like 'W', and a signature that looks like 'W'. There is also a small mark that looks like '2..'.

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Also attached as supporting document to this billing are the Inspection Report and the Certificate of Completion and Acceptance prepared by the inventory and acceptance committee which have all been signed before her. Likewise, the Final Quantification for the contract which was also prepared by the members of the Inventory and Acceptance Committee and signed and approved by the General Manager.⁴⁹

The revised contract amount indicated in the Inspection Report was for P10.024M since the original contract price was around P9.5M. The gross amount due to the Contractor for the final billing was P1,362,727.87 but after all deductions such as retention money and withholding taxes due have been considered the amount paid by NHA was P538,190.62.⁵⁰

She recommended approval of the billing documents because these have all been processed and signed by the responsible officers and her superior. The approval of the General manager and his signature on those documents is tantamount to approval of the works that have been accomplished by the contractor, the physical accomplishment of the contractor.

She identified the signature appearing on top of the name of the General Manager Roberto Balao as belonging to Arganani Saldua who was then the Assistant General Manager of NHA. Out of the other signatories in the disbursement voucher, no one else has been charged.

She is not aware of the existence of a Summary of Payment Estimate wherein the final billing amount due Triad was only P330,070.76 as the only documents she saw were the ones submitted to her in October which amounted to the revised contract cost of P10,024,970.79 and which has already been signed and approved by the General Manager.

Among those who were members of the Inspection and Acceptance Committee composed of five (5) members who prepared and signed the Inspection Report and Final Quantification indicating the revised contract cost of P10,024,970.79, only one was charged and he was Engr. Felicisimo Lazarte.

⁴⁹ Ibid., p. 20

⁵⁰ Ibid., p. 23



On cross-examination, she admitted that she never went to Bacolod as she never got involved in the implementation of the Pahanocoy Project. The contract price of P9.5M was increased because of the overruns or the amounts in excess of what was in the original contract.

She admitted that she was never aware of any deficiencies found in the documents that reached her signature but was able to discuss overruns and underruns with Engr. Dacalos as these are normal in construction and the reason for variance.⁵¹ She also admitted that she did not see any variation order as the only document that came with the quantification is the Abstract of Physical Accomplishment that were signed at the project level because that is the basis for the final quantification. Attached to this Abstract which she approved includes tests, as-built plans, pictures but no details. She could not have checked each and every detail of the Abstract from road works, drainage works, water works, the quantities and the amounts. As head of the office she relied on the review, confirmation, validation of people from the field to the area management office.

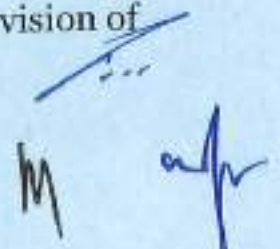
On re-direct, she testified that she is not required to investigate fellow NHA officers to check on the accuracy of their reports which have already been processed, signed and approved by her superior. She does not recall any request from COA for the documents that they need.

On re-cross, she stated that she is not required to check on the accuracy of the documents being asked for her signature. But she did sit down with Engr. Amurillo and Dacalos before she signed that document to ask them about the project and learned that it was rescinded and it was awarded to another contractor and then distinguished which was the original and the revised contract.

4. FELICISIMO FABELLA LAZARTE, JR.

He was then the Regional Projects Department Manager of the NHA and Pahanocoy Sites Project is one of the projects being implemented at that time under the Regional Projects Department. He was appointed January 3, 1990 up to August 3, 1992 holding office at NHA main office in Diliman, Quezon City. He was tasked for the overall implementation and supervision of

⁵¹ TSN, September 12, 2015 p. 50



all Regional Projects within the Philippines except for those in the NCR.

As far as he can recall, Pahanocoy Sites and Services project started in August 1990 and the contractor at that time was AC Cruz Construction. However, said company was not able to finish the project because the contract was terminated in August 1992 by the General Manager due to the deficiencies in workmanship and some irregularities and negative slippage. For which reason, a new contractor, Triad Construction was engaged to continue with the Project around March 1992. Triad Construction was not able to immediately take over the project because A.C. Cruz Construction tried to prevent the termination of its contract by submitting letters of reconsideration and filing of cases against NHA officials before the Office of the Ombudsman. However, the NHA Board and Officials were acquitted by the Sandiganbayan.

After his appointment as Regional Projects Department Manager, he was transferred to the Eastern Mindanao Management Office covering the Regions 10, 11 and 12.⁵²

When the final billings for the Pahanocoy Project were requested, he was no longer involved in the project. He admits that the signatures appearing on top of his name in the Inspection Report and identified as Exhibit "I" and the Final Quantification marked as Exhibit "K" was that of Virgilio Dacalos, Sr. who signed for and on his behalf since OIC are allowed to do that based on normal office procedures since Virgilio Dacalos was the designated OIC for the Visayas at that time.

There are actually two cases filed by the Prosecutors against them, one is the present case and the other was the one heard and decided by Sandiganbayan First Division where accused were acquitted of the charges.

On cross-examination, he admitted that as one who is tasked to see over-all projects all over the country, he is aware how the contract of A.C. Cruz was rescinded due to negative slippage and deficiencies which means that the project has already suffered intolerable delays in the completion of the project.

When the Inventory and Acceptance Committee was created, he was designated Chairman and as such, he was involved in the project. Based on the Report of the committee, when the contract of A.C. Cruz was rescinded, the accomplishment was 40.89% which is equivalent to Three Million Four Hundred Thirty Three Thousand Seven Hundred Thirteen (P3,433,713.00) Pesos leaving an unfinished work of 59.11% which was later awarded to Triad Construction which started on the unfinished work on March 17, 1992 and was completed on March 31, 1992. He pointed out that in the Abstract of Physical Accomplishment, the signature on top of his name is not his but that of Engr. Virgilio Dacalos, Jr. and this was made without his authorization. He vehemently denied having signed those documents although it appears that he was still involved in the project around that time, specifically when the document in question was signed as it bears the date April 13, 1992.

The testimony of **JOSEPHINE ESPINOSA** was dispensed with as the parties have entered into stipulation to authenticate marked exhibits which were not originals or certified true copies and these were Exhibit "3-Dacalos", Exhibit "4-Dacalos" and Exhibit "7-Dacalos".

DOCUMENTARY EVIDENCE FOR JOSEPHINE ESPINOSA

Exhibit	Description
1	Breakdown of Work Accomplishment: Final Quantification, Billing and Payment for Pahanocoy Sites and Services Phase I Bacolod City (Triad Construction & Devt. Corp consisting of two (2) pages
1-A	Second page thereof
1-B	Breakdown of Final Billing
1-B-1	Work Accomplishment to include over/underruns Gross: P351,144.41 Net: P330,075.76
1-B-2	Work accomplishment of TRIAD uninstalled by A.C. Cruz Gross: P1,011,583.46


**DOCUMENTARY EVIDENCE FOR VIRGILIO DACALOS,
JOSEPHINE C. ANGSICO-HOTTLE & FELICISIMO LAZARTE**

Exhibit	Description
1 Dacalos	Inventory Report dated March 24, 1992 by the COA Regional Office No. 6 Iloilo City
1-B	Second page thereof
1-C	Title of the document

M
wpr

x-----

1-D	Bracketed headings of the document
1-E	Estimated work percentage
1-F	Bracketed names and signature of the COA audit specialists, Catalina Miranda and Priscilla M. Muyuela
2 Dacalos	Physical accomplishment of A.C. Cruz dated May 6, 1992, prepared and signed by Engr. Jimmy Bangero
2-A	Page 2 thereof
2-B	Page 3 thereof
2-C	Item 2.03 details of overpayment due to uninstalled sub-base course
2-D	Item 2.04 details of overpayment due to uninstalled base course
2-E	Item 4.02 details of overpayment due to uninstalled pipelines and fittings
2-F	Bracketed name and signature of Jimmy Bangero
3 Dacalos	Handwritten transmittal letter dated May 20, 1992 from Josephine Espinosa for Dept. Manager of RPD furnishing the latter with Abstract of Physical Accomplishment as prepared by A.C. Construction and Physical Accomplishment Report of Jimmy Bangero
4 Dacalos	Letter dated May 27, 1992 by Noel A. Lobrido, Project Engineer for Mr. Arceo Cruz
4-A	Letter dated May 27, 1992 by Noel Lobrido Project Engineer for Mr. Jose M. Cruz
5 Dacalos	Memorandum dated September 2, 1992 for Josephine Angsico AMO Visayas thru Virgilio Dacalos, DAMO Visayas with subject: Fund settlement relative to the Contract A.C. and Final Billing of Triad
5A-5G	Pages 2-8
5H	Bracketed name and signature of Josephine Espinosa
6 Dacalos	Certificate as to availability of funds dated March 20, 1992
7 Dacalos	Memorandum dated April 19, 1994 for the General Manager, thru Josephine C. Angsico, Team Head AMTF -Visayas, from Josephine T. Espinosa, Project Manager and Noel Lobrido, Supervising Engineer, Bacolod Office
7-A to 7-G	Pages 2-8
7H	Bracketed name and signature of Noel Lobrido
7-I	Bracketed name of Josephine Lobrido
7-J	Bracketed explanation of the Bacolod Field Office as to why it did not know about the uninstalled items during the implementation of the contract of A.C. Cruz
8 Angsico	Letter to the General Manager of NHA dated April 9, 1994 from Jose M. Cruz, President of TRIAD
8-A	Bracketed printed name and signature of Jose M. Cruz
9 Angsico	NHA Resolution No. 2533 dated August 27, 1992 as certified by Ariel F. Aguirre, Corporate Secretary

M 

9-A	Bracketed name of Josephine Angsico and her assignment to the Visayas Area management Office
10 Lazarte	NHA Office Order No. 9241 dated August 3, 1992
10-A to D	Pages 2-5 thereof
10-E	Date of the Office Order -August 3, 1992
10-F	Bracketed name of Felicissimo F. Lazarte and his assignment at the western Mindanao Office covering Regions X, XI and XII
10-G	Bracketed name and signature of NHA General Manager Robert P. Balao

ISSUES

1. Whether or not the Final Quantification of the Actual Work Accomplishment on the Pahanocoy Sites and Services Project in Bacolod City amounted to Three Hundred Thirty Thousand Seventy-Five Pesos and Seventy-Six Centavos (P330,075.76) as revealed by the Special Audit conducted by the Commission on Audit; and
2. Whether or not all the accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to Jose M. Cruz and Triad Construction and Development Corporation and themselves, in the amount of One Million Two Hundred Eighty Thousand Nine Hundred Sixty-Four Pesos and Twenty Centavos (P1,280,964.20) Philippine Currency to the damage and prejudice of the government.

THE FACTS

To have a better understanding of what actually transpired in the subject NHA Project (Pahanocoy Sites and Services Project Phase I – Pahanocoy for brevity), a brief backgrounder as enumerated in the **Resolution**⁵³ is herein provided, to wit:

1. The original contract for the construction of Pahanocoy was awarded to A.C. Cruz Construction in 1990. The contract amount then was P7,686,507.55 which was subsequently increased to P8,397,225.09.⁵⁴

⁵³ Records, Vol. III, pp. 1114-1118

⁵⁴ 2nd Paragraph of Exh. F-12; p. 13 of the COA Special Audit Report.

2. Before the contract was terminated on May 20, 1991, A.C. Cruz Construction had collected an advance payment of P1,152,976.13 and payments for three progress billings amounting to P2,869,605.94 or a total amount of P4,013,582.07.⁵⁵
3. Based on the official joint inventory conducted by an Inventory and Acceptance Committee on August 12, 1991, the actual work accomplishment of A.C. Cruz Construction in the project was determined at 40% quantified at P3,433,713.10. Hence, the remaining works of 59.11% still amounted to P4,963,511.99.⁵⁶
4. The NHA/A.C. Cruz Construction Contract was rescinded and the unfinished portion was awarded to Triad Construction on March 17, 1992 at a contract price of P9,554,837.32. The total payment was however increased to P10,024,970.79 without the required variation order. The award was questioned by the COA for not having been justified under the Rules (COA Circular No. 87-267-A dated March 26, 1987)⁵⁷ considering the increase of the contract price from P8,397,225.09 to P9,554,837.32.⁵⁸
5. The COA pegged the Allowable Price Escalation Rate (APER) to 52.50%⁵⁹ times the remaining balance of original contract price of P4,963,511.99 for the unfinished portion. The allowable escalation amount is P2,605,843.79 added to it the remaining balance of contract price which is P4,963,511.99 thus the Ceiling Contract Price with Price Escalation set by COA must be P7,569,355.78.
6. Although the contract price awarded to Triad is P9,554,837.32, the total quantification of accomplishment was valued and paid in the amount of P10,024,970.79. Hence, the total payment to Triad exceeded the Allowable Escalation Price by P2,455,615.01.
7. The contract amount awarded to Triad which already exceeded the AEP by P1,985,481.54 did not have prior approval by the President, contrary to the provisions of COA Circular No. 87-267-A.

⁵⁵ Ibid.

⁵⁶ 3rd paragraph, *ibid.*

⁵⁷ "All escalations computed thru parameters formula provided under PD 1594 shall be compared to the corresponding AERA and payment of those in excess of the AER shall not be allowed except with the prior approval of the President."

⁵⁸ 4th paragraph of Exh. F-12

⁵⁹ The 30% AER may be computed at 2.5% per month. Since 21 months have elapsed from the time of bidding of the original contract up to the date of notice of award to TRIAD, i.e. June 15, 1990 to March 17, 1992, the AER totals 52.50%

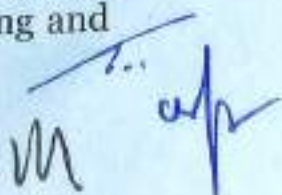
8. Meanwhile, during Triad's occupation in the Pahanocoy Project, Engr. Fajutag, Jr. was designated and served thereat as Project Engineer. However, his failure to approve in principle a Contractor's Fourth Progress Billing, owing to some irregularities that he discovered in the billing, cost him his job and was pulled out of the project. Prompted by these irregularities, which he later on brought to the attention of the COA, the Commission created a Special Audit Team to conduct an inspection of the Project as well as an audit investigation on the supporting documents relative to its implementation.
9. The result of the Special Audit Team's inspection and audit investigation confirmed that, indeed, there were irregularities surrounding the implementation of the project, one of which is the controversy now at bar. This (result) was eventually incorporated into a formal Audit Report that was indorsed to and properly reviewed by a COA review panel and thereafter, forwarded to the COA Chairman who approved the same with recommendation that appropriate charges be filed against the responsible official. Hence, the instant case.

THE COURT'S RULING

The alleged criminal liability of the accused stemmed from their alleged act of -

xxx conniving, confederating with accused Jose M. Cruz with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid, to Triad Construction and Development Corporation public funds in the amount of ONE MILLION TWO HUNDRED EIGHTY THOUSAND NINE HUNDRED SIXTY FOUR PESOS AND TWENTY CENTAVOS (P1,280,964.20) PHILIPPINE CURRENCY, supposedly for the final work accomplishment of Triad Construction on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that the Final Quantification of the Actual Work Accomplishment on the said Project amounted to THREE HUNDRED THIRTY THOUSAND SEVENTY FIVE PESOS AND SEVENTY SIX CENTAVOS (P330,075.76) 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 Jose M. Cruz and Triad Construction and Development Corp. and themselves, to the damage and prejudice of the Government. xxx

The controversy arose from two (2) different Abstract of Physical Accomplishment (Exhibits "D" & "E") which supports the final billing and



for better understanding of the scheming variation of these two documents, a graphical illustration of the details therein is hereto presented, to wit:

	First Abstract of Physical Accomplishment Exhibit D	Second Abstract of Physical Accomplishment Exhibit E
Original Cost per Contract	P9,554,837.32	P9,554,837.32
Quantity overrun/underrun	P541,449.98	P470,133.47
Less Previous Payments	P8,662,242.92	P8,662,242.92
Total Billing	P351,144.42	P1,362,727.87
Less 5% Retention Tax Withheld	P21,068.66	P81,763.67
Net Amount Due	P330,075.76	P1,280,964.20
Submitted for payment by	Mr. Jose M. Cruz, President TRIAD	Mildred Cruz
Checked by	Noel Lobrido Supervising Engineer	Noel Lobrido
Certified by	Josephine Espinosa Project Management Officer-A	Josephine Espinosa Project Management Officer-A
Concurred by	Not signed by Virgilio Dacalos, Visayas Division Manager	Virgilio Dacalos Visayas Division Manager
Recommended for approval	Not signed by Felicisimo Lazarte, Jr. Manager RPD	Josephine Angsico, Team Head Visayas management Office
Period of Completion per Certificate of Completion and Abstract of Physical Accomplishment	March 28, 1992 to May 1, 1992	March 28, 1992 to March 31, 1992

According to the prosecution, the presence of two (2) sets of final billing documents from Triad is definitely suspicious and the role and participation of the accused in the preparation of these two sets of documents are clear from the documents themselves and even admitted by the accused. They all agreed to increase the final bill and payment to Triad Construction from P330,075.76 to P1,280,964.20. Unfortunately, they failed to provide a credible, logical and truthful explanation for the increase in the final billing. Not even one single defense witness could provide real proof of discovered deficiencies and additional work accomplished.

(Handwritten signatures and initials)

Further, the contract between NHA and Triad Construction did not specify the items of civil works to be accomplished. It simply mentions roadworks, drainage works, water works and sewerage. The quantity of particular works is not stated in the contract. The soil testing at the Project site likewise revealed no excavation of unsuitable materials of 2,018.95 cubic meters shown under Item No. 5.01, Extra Work No. 1. The prosecution further contends the impossibility of accomplishing all the construction activities connected with Item No. 5.02, i.e., road fill quantity of 1,498.94 cubic meters within a work period of four days. These work items are indicated in the Final Quantification submitted by the accused in order to justify the second final billing of Triad Construction.

On the other hand, the accused argued that the prosecution failed miserably in establishing conspiracy among them and proving beyond reasonable doubt their guilt considering that there is no existing document such as Final Quantification of Actual Work Accomplishment in the amount of P330,075.76, which was made the basis for the Information and this was admitted by prosecution witness Atty. Sheila Uy-Villa in her testimony⁶⁰, thus:

"AJ Sandoval:

Do you have Final quantification for the P330,075.76?

Witness:

Your Honor, there is no such document."

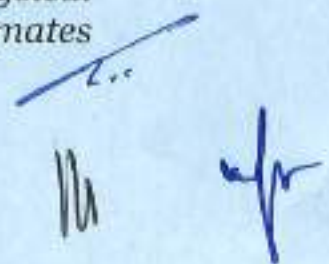
They maintained that the final quantification of the work accomplishment of Triad Construction and Development Corporation is P1,280,964.20 and not P330,075.76 because it included additional works that necessitates additional compensation. Accused likewise alleged that the defense evidence produced a just and rational belief that the final quantification of the work accomplishment of Triad Construction and Development Corporation is P1,280,964.20 and not P330,075.76, thus, the accusation that they acted with deliberate intent, manifest partiality and evident bad faith in the discharge of his official function must fail.

These arguments of the accused were made the basis in filing their **Demurrer to Evidence** which this Court denied in its **Resolution**⁶¹ ruling that:

"The Court needs an explanation from the accused on how come these two (2) sets of abstracts of physical accomplishments and summaries of payment estimates

⁶⁰ TSN, March 14, 2005, p.39

⁶¹ Records, Vol. III, p. 1085



were executed because inexplicably, manifest partiality and evident bad faith have attended the execution of the second set the apparent purpose of which is to justify the escalated amount of Triad's claim. And considering further that as revealed by the result of the Special Audit conducted by the COA Audit Team, the purported quantity overrun that emerged during Triad's occupation on the project which was the reason posited by the accused to give color of truth on why Triad's original claim of P330,075.76 was escalated to P1,280,964.20 is not justified as this was not duly supported by a contract variation order.

Nonetheless, the Court cannot overlook the fact that although the accused claimed that the discrepancy in the amount stated in the billing documents was due to alleged additional costs incurred by Triad Construction as a consequence of the additional works, it did not modify the deficiencies or those non-existent work items which it inherited from A.C. Cruz Construction and which were not covered by its contract. Further, this contention is without merit because the total work accomplishment of the first contract were already paid and these are presumed to have been inspected by the Project Engineer and by the Inventory and Acceptance Committee as early as August 1991 when the total works done by said first contractor were settled.

Accused Lobrido, Espinosa and Dacalos admitted that a Contract Variation Order is a basic requirement for additional works but none was issued before the preparation and approval of the Abstract of Physical Accomplishment⁶². According to Engr. Dacalos, upon advice of the Legal Department, a COA Variation Order was not necessary to make Triad undertake additional works or the deficiencies discovered by it because they were allegedly in a state of emergency as they were advised to complete the project on March 31, 1992.⁶³ But he admitted that in case there are deficiencies that need to be addressed, the same ordinarily should be documented as a normal course of procedure. He also admitted that although the words "Contract Variation Order" in the amount of P470,133.47 are written in Exhibit "B"⁶⁴, in truth, there was no such Contract Variation Order for the said amount and that he reviewed and signed the same even before it was approved for payment.⁶⁵

During his cross-examination, Engr. Virgilio Dacalos stated⁶⁶:

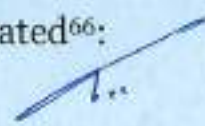
⁶² Exhibit E to E1

⁶³ TSN, August 6, 2015, p. 36

⁶⁴ Summary of Payment Estimate for Final Billing period March 28 to March 31, 1992

⁶⁵ TSN, August 6, 2015, pp. 55-56

⁶⁶ Ibid., p. 15



Q: *xxx So, I would like to be educated on the procedure. If the contractor finds a deficiency, or discovered a deficiency which is not actually part of his contract, that is going to meet an extra work. Is that correct, engineer?*

A: *Ordinarily, yes.*

Q: *Yes, and that deficiency should be documented. Do you agree with me?*

A: *Ordinarily, yes.*

Q: *Ordinarily, yes, and documented means it should be reported upon discovery. Do you agree, upon discovery, it should be reported to the Project Manager?*

A: *That's the procedure, ma'am.*

Q: *And the contractor should give notice to the project office that these items of work or deficiencies were discovered on this date. Ordinarily, that should be done, Engineer?*

A: *Yes ma'am.*

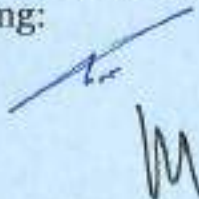
Q: *And then, the project office, after receiving the communication, the deficiencies were discovered, should communicate to NHA main about the discovered deficiencies. Correct?*

A: *That is based on normal condition. Ordinarily, yes.*

Yet, there was no specific defects or substandard works made by the first contractor that were reported by the Inventory and Acceptance Committee nor by the accused Project Manager. Likewise, Contractor Jose M. Cruz of Triad Construction failed to include in the first Abstract of Physical Accomplishment the alleged work items that are supposed to have been accomplished by A.C. Cruz Construction but were found to be non-existent and therefore had to be actually included in the contract of Triad.

The accused insist that the Final Quantification for P1,362,727.87 prepared by the Inventory and Acceptance Committee chaired by accused Lazarte and approved by Accused General Manager justifies the final bill and payment made for Triad and that the first set of billing documents submitted in the amount of P330,076.76 and which was not processed should be ignored as the same does not reflect the true billing that includes the deficiencies left by A.C. Cruz and undertaken by Triad Construction.

A closer perusal of the two Abstract of Physical Accomplishment further revealed the following:



	Abstract of Physical Accomplishment (Exh. D)		Abstract of Physical Accomplishment (Exh. E)	
Period covered	March 28, 1992 to May 1, 1992		March 28, 1992 to March 31, 1992	
Signatory for Triad Construction	Jose M. Cruz President		Mildred Cruz For Jose M. Cruz	
Bill Item	Original Quantity	Revised	Original Quantity	Revised
2.03 AGG Sub-Base Course	623.64	589.07	623.64	1,792.41
2.04 AGG Base Course	1,035.44	919.55	1,035.44	1,636.61

The above table shows revised quantities of work items but with higher values. Accused insisted that there are additional works caused to be done by Triad Construction justifying the need to change and increase the Final Quantification of Work Accomplishment. Unfortunately, as pointed out by the prosecution, when the Special Audit Team conducted the investigation and site inspection, they took samples and found out that there were no unsuitable materials in those areas and in fact there were no imported road field materials and as far as core drilling was concerned. Also, it was proven that the thickness of the pavement that they got samples of fell short of the required thickness.

During the technical inspection, the team was not able to verify if indeed 1,428.94 cubic meters of road fill was made by Triad Construction as the quantity involved will not be accomplished for four (4) days alone as stated in the Abstract of Physical Accomplishment because with this quantity it would be impossible to do so as it involves several works. As shown by the above table, longer period was required in accomplishing the quantity of work in the first abstract but not in the case of the second abstract where the period of coverage was only for four (4) days yet the quantity involved in the works is more than twice of the original quantity.

Per testimonies of the accused, the Final Quantification which justifies the increased billing was signed by all the members of the Inventory and Acceptance Committee which was Chaired by Accused Lazarte but when asked if the members or any of the members of the Inventory Committee were actually involved in the supervision of the construction, the answer was negative. No member was ever involved in the supervision of any of the alleged additional works conducted by Triad Construction yet they all certified and signed the Final Quantification of Work Accomplishment.

[Handwritten signatures and initials]

Indubitably, the second set of final billing documents was processed through the concerted efforts of the accused thereby causing undue injury to the government and extended unwarranted benefit to Triad Construction when additional payment was made and delivered for non-existent works.

At the onset, there was already manifest partiality and evident bad faith that attended the execution of the second set of the final billing documents or the Final Quantification of Work Accomplishment for P1,280,964.20, considering that the alleged quantity overrun that emerged during Triad's occupation was not duly supported by a contract variation order. The allegation of the accused that as per advice of the Legal department that a contract variation order is not mandatory has no leg to stand on. Neither could they find justification in their allegation of an alleged state of emergency to finish the contract on March 31, 1992 for fear of losing the World Bank funding. It runs counter to their allegation of an emergency when NHA rescinded the contract of AC Cruz Construction and waited eight (8) months before it decided to award the contract to Triad Construction without even undergoing public bidding. This was confirmed in the testimony of accused Virgilio Dacalos when he stated that the NHA Board decided to rescind the contract of A.C. Cruz Construction and eventually awarded the unfinished work to Triad Construction without consulting him or the Project Management Office of Visayas where the subject project is located.⁶⁷

It is very explicit under the COA Circular No. 87-267-A dated March 26, 1987 that all escalations computed thru parameters formula provided under PD 1594 shall be compared to the corresponding AERA and payment of those in excess of the AER shall not be allowed except with the prior approval of the President. In the instant case, the COA pegged the Allowable Price Escalation Rate (APER) to 52.50%⁶⁸ times the remaining balance of original contract price of P4,963,511.99 for the unfinished portion. The allowable escalation amount is P2,605,843.79 added to it the remaining balance of contract price which is P4,963,511.99. Thus, the Ceiling Contract Price with Price Escalation set by COA must be P7,569,355.78. Although the contract price awarded to Triad is P9,554,837.32, the total quantification of accomplishment was valued and paid in the amount of P10,024,970.79. Hence, the total payment to Triad exceeded the Allowable Escalation Price by P2,455,615.01. The contract amount awarded to Triad which already exceeded the AEP by P1,985,481.54 did not have prior approval by the President contrary to the provisions of the aforesaid COA Circular.

⁶⁷ TSN, Nov. 11, 2015, p. 29

⁶⁸ The 30% AER may be computed at 2.5% per month. Since 21 months have elapsed from the time of bidding of the original contract up to the date of notice of award to TRIAD, i.e. June 15, 1990 to March 17, 1992, the AER totals 52.50%

Section 3(e) of RA 3019 provides:

Section 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:

xxx

(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 impartiality, evident bad faith or gross inexcusable negligence. xxx.*

To be found guilty under said provision, the following elements must concur:

- (1) *the offender is a public officer;*
- (2) *the act was done in the discharge of the public officer's official, administrative or judicial functions;*
- (3) *the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and*
- (4) *the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.⁶⁹*

Verily, all elements are present in the instant case.

Anent the allegation that all accused connived and confederated with one another, established jurisprudence dictates that proof of conspiracy need not be direct or actual. Indeed, prosecutors would be hard-pressed to secure a conviction for those charged under R.A. 3019 if direct evidence were required to be established.⁷⁰

All the accused clearly conspired with one another and caused to be paid to Triad Construction a bloated amount of P1,280,964.20 when Triad Construction has no justifiable reason to receive such payment. As a matter of fact, Mr. Jose M. Cruz, president of Triad Construction himself, requested to be paid only the amount of P351,144.42 less the 5% retention tax yielding a net payment of P330,075.76.

⁶⁹ Bautista v. Sandiganbayan, G.R. No. 136082, 12 May 2000

⁷⁰ Engr. Ricardo L. Santillano, v. People Of The Philippines, G.R. Nos. 175045-46; March 3, 2010

Conspiracy became apparent in the instant case when the subject Final Quantification⁷¹ was signed and approved by the Inventory and Acceptance Committee chaired by accused Felicisimo Lazarte, Jr. to support the final billing including another Abstract of Physical Accomplishments which was signed by the wife of President of Triad Construction.

Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances. Once established, all the conspirators are criminally liable as co-principals regardless of the degree of participation of each of them, for in contemplation of the law the act of one is the act of all.⁷² (*citations omitted*)

Section 9 of R.A. 3019 provides:

Penalties for violations. (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any person guilty of violating Section 3 (e) of R.A. 3019 is punishable with imprisonment for not less than six years and one month nor more than fifteen years and perpetual disqualification from public office.⁷³

The prosecution's evidence has established conspiracy beyond reasonable doubt. The excuses given by the accused cannot overturn the same. The fact that they executed another Abstract of Physical Accomplishment to justify a larger payment when it was not clearly established that Triad Construction indeed accomplished such additional works or if there was any such additional work to begin with. All accused in processing the second Abstract of Physical Accomplishment without even verifying its veracity are clearly guilty of violating the provisions of the Anti-Graft law.





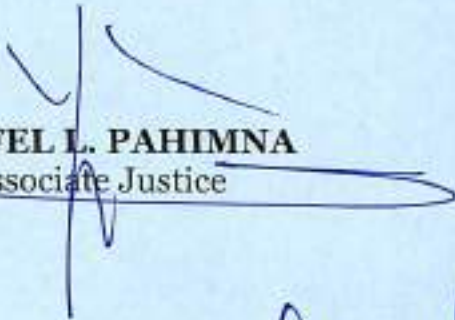
⁷¹ Exhibit K

⁷² Jaime H. Domingo, v. Sandiganbayan G.R. No. 149175, October 25, 2005

⁷³ See Section 9, RA 3019.

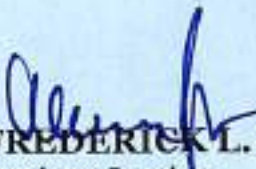
WHEREFORE, the Court finds accused **JOSEPHINE ANGSICO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA, NOEL A. LOBRIDO** guilty beyond reasonable doubt of violation of Section 3(e) of R.A. 3019. The Court hereby sentences each to suffer imprisonment of six (6) years and one (1) month, as minimum to ten (10) years, as maximum; and perpetual disqualification from holding public office.

SO ORDERED.


LORIFEL L. PAHIMNA
Associate Justice

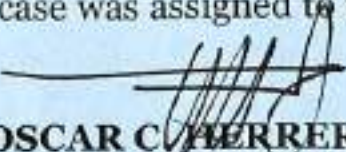
We concur:


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice