

EN BANC

DELIA PREAGIDO and ULRICO BOLOTAULO,
Petitioners,

G.R. No. 52341-46
Present:

- versus -

DAVIDE, JR., C.J.,
PUNO,
PANGANIBAN,
QUISUMBING,
YNARES-SANTIAGO,
SANDOVAL-GUTIERREZ,
CARPIO,
AUSTRIA-MARTINEZ,
CORONA,
CARPIO-MORALES,
CALLEJO, SR.,
AZCUNA,
TINGA,
CHICO-NAZARIO, *and*
GARCIA, JJ.

**THE SANDIGANBAYAN and THE PEOPLE OF
THE PHILIPPINES,**
Respondents.

Promulgated:
November 25, 2005

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DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioners Delia Preagido and Ulrico Bolotaulo seeking annulment of the Decision^[1] dated December 28, 1979 of the Sandiganbayan rendered in Criminal Case Nos. 195, 196, 197, 198, 199 and 200 finding them guilty of 6 and 3 counts, respectively, of estafa thru falsification of official and commercial documents.

In a Resolution dated July 4, 1991, the instant petition was consolidated with another group of cases which were all petitions for review on *certiorari* from the joint decision of the Sandiganbayan dated October 24, 1990 in Criminal Case Nos. 1143-1341 and 5585-5782 finding accused-petitioners therein guilty on different counts of violation of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

However, the records of Criminal Case Nos. 195-200 were not included in the voluminous records of the consolidated cases. We learned from our Judicial Records Office that the original records of Criminal Case Nos. 195-200 were with the First Division of the Sandiganbayan. Thus, in a Resolution dated May 6, 2003,^[2] we directed the Clerk of Court of the First Division of the Sandiganbayan to elevate the records of the instant petition. In the same Resolution, we also effected the separation of the herein petition of Preagido and Bolotaulo from the other consolidated cases so as not to delay the disposition of the latter and considering that the instant petition involves the alleged anomalous transactions in the Tagbilaran City Engineering Office (CEO) committed in 1978 which are entirely different from the other consolidated cases which involved anomalous transactions in the Cebu Second Highway Engineering District in 1977 wherein neither of herein petitioners were accused.

Later, the Executive Clerk of Court III of the Sandiganbayan, Atty. Estela Teresita C. Rosete, submitted the original records and the transcripts of stenographic notes. She also filed a Manifestation wherein she informed us that despite her earnest efforts to locate some documentary exhibits, the same could no longer be found. Thus, in a Resolution dated March 23, 2004,^[3] we asked the Solicitor General to furnish us copies of the other unlocated exhibits listed in said Resolution as well as the counsel of herein petitioners to furnish us copies of their exhibits offered and marked for petitioners. We also directed them to manifest whether they are willing to dispense with the other unlocated exhibits and to submit the case for resolution on the basis of the evidence already with us.

The Office of the Solicitor General (OSG) filed a Manifestation dated July 13, 2004 submitting the case for decision. Atty. Epifanio Bolando, petitioner Bolotaulo's new counsel, entered his appearance on December 19, 2004. Atty. Bolando filed his Compliance dated April 15, 2005 dispensing with the other exhibits and for submission of the case for resolution. He also informed us that petitioner Preagido had died on December 16, 2003.

On June 21, 2005, the Solicitor General, pursuant to our Resolution dated March 8, 2005 requiring him to verify and report the alleged death of petitioner Preagido, submitted a certified true copy of petitioner Preagido's death certificate issued by the Office of the City Civil Registrar, Cebu City. Petitioner Preagido's death during the pendency of her appeal extinguishes her criminal and civil liabilities. Thus, we will only resolve the appeal of petitioner Senior Civil Engineer Bolotaulo.

It is noteworthy to mention that when the instant petition was filed in 1980, the other co-accused of petitioner Bolotaulo in Criminal Case Nos. 195, 198 and 199 had separately filed their respective appeals which had been decided by us, to wit:

(1) Valentino G. Castillo vs. Sandiganbayan and the People of the Philippines, G.R.Nos. L-52352-57,^[4]

(2) Jose C. Bagasao vs. Sandiganbayan and the People of the Philippines, G.R. Nos. L-53813-53818,^[5]

(3) Isidoro Recamadas vs. Sandiganbayan and the People of the Philippines, G.R. Nos. L-53694-99,^[6]

(4) Rolando R. Mangubat vs. Sandiganbayan and the People of the Philippines, G.R.Nos. L-53724-29^[7]

where we affirmed the decision of the Sandiganbayan.

We adopt our factual findings in those cases which we now incorporate as an integral part of herein decision, to wit:

In the regional level, the requisition of funds for public works purposes, especially in the matter of road and bridge repairs, involves a graduated series of steps. As found by the respondent Sandiganbayan, it begins with the Sub-Allotment Advices (SAAs), as well as the Advices of Cash Disbursement Ceilings (ACDCs), issued by the Ministry of Public Highways in favor of its Highways Regional Offices. These serve as the Regional Offices' authority to obligate and disburse funds. In turn, these become the sources of funds of the various Engineering Districts apportioned throughout each region.

The Engineering District then requests for the release of these funds from the Regional Director through a Program of Work. The Regional Finance Officer issues a Letter of Advice of Allotment (LAA), certified as to availability of funds by the Regional Accountant countersigned by the Regional Director, and addressed to the District (or City, as the case may be) Engineer. At the same time, he (the Regional Finance Officer) prepares a Sub-Advice of Cash Disbursement Ceiling (SACDC) for the Regional Director.

The LAA and SACDC are subsequently entered in a logbook. The funds requested are then released.

On the strength of such LAA and SACDC, the District then prepares a Requisition for Supplies or Equipment (RSE) as well as a Request for Obligation of Allotment (ROA), pursuant to the Program of Work. Both are likewise certified as to availability of funds by the Regional Accountant and approved by the Regional Director.

Thereafter, the Property Custodian or the Purchasing Officer, as the case may be, addresses Requests for Sealed Quotations to various suppliers, usually through newspaper advertisements or notices posted in conspicuous places in the District concerned. After ten days, the Sealed Quotations are submitted to the Price Verification Committee which determines the lowest bid in the presence of representatives of the District Engineer and the Auditor. An Abstract of Sealed Quotations is

then signed by the members of the Committee as well as the said local representatives. Thereafter, and subject to the approval of the District Engineer, the proper award is made in favor of the lowest bidder. On the basis thereof, the Property Custodian issues a Purchase Order (PO) in favor of the winning bidder, again subject to the approval of the District Engineer and certified as to availability of funds by the Regional Accountant.

The supplies thus to be delivered are thereafter inspected (through Request for Inspection) by the Property Custodian. The deliveries themselves are recorded in a Tally Sheet after which a Record of Inspection, certified by the Property Custodian, is prepared by the representative of the Auditor and the Property Custodian.

Payment to the supplier is evidenced by a General Voucher (GV). Among others, the GV contains five parts; (1) a certification of receipt of supplies to be accomplished by the Property Custodian; (2) a certification of correctness, that is, that the expenses are necessary and lawful, and that the prices are not in excess of the current rates in the locality, to be accomplished by the Project Engineer; (3) approval by the District Engineer; (4) a certification, to be accomplished by the Auditor, that the GV has been properly approved, its account codes proper, and that it is supported by the proper documents; and (5) a certification that the GV has undergone pre-audit, to be accomplished by the Auditor.

The GV itself must carry with it the following: the RSE, ROA, Program of Work, Detailed Estimates, Request for Sealed Quotations, Abstract of Sealed Quotations, PO, Delivery Receipts, Request for Inspection, Record of Inspection, Test Reports, and Tax Clearance of the supplier.

The process winds up with the issuance of the check by the Cashier in the name of the supplier. Like the GV, the check is pre-audited and then released.

The District Accountant thereafter prepares a Report of Obligation Incurred (ROI) and a Report of Checks Issued (RCI) to be submitted to the Regional Office and entered in the journals and the General Ledger thereof. On the basis thereof, the Regional Accountant prepares a trial balance to be recommended

by the Finance Officer and approved by the Regional Director. The same is then submitted to the Ministry of Public Highways.

...

It appears that from May through June, 1978, the Tagbilaran City Engineering Office (CEO) embarked on certain projects involving the restoration of various roads and bridges in Tagbilaran City. Pursuant to five LAAs addressed to the Ministry of Public Highways purportedly issued by the Seventh Regional Highways Office on behalf of the Tagbilaran CEO, more specifically described as follows:

LAA No.	Date	Amount
107-780-05-78	April 29, 1978	₱ 150,000.00
107-0780-07-78	No date	26,000.00
107-780-012-78	April 24, 1978	48,100.00
107-780-014-78	April 24, 1978	150,000.00
107-780-011-78	No date	100,000.00
TOTAL		<u>₱ 474,100.00</u>

as well as six SACDCs, as follows:

SACDC No.	Amount
022-78	₱ 26,000.00
167-78	48,100.00
180-78	48,100.00
193-78	150,000.00
222-78	150,000.00
086-78	225,830.00
TOTAL	<u>₱ 699,930.00</u>

the Tagbilaran CEO prepared RSEs and ROAs for the procurement of materials and supplies, specifically, anapog binder, for the projects aforementioned. All five LAAs were certified as to availability of funds by Rolando Mangubat, allegedly on behalf of Angelina Escaño, Finance Officer of the Seventh Regional Highways Office (Mangubat signed over her typewritten name) and countersigned by Jose Bagasao. The six SACDs were likewise signed by Mangubat for the Regional Director. The materials requisitioned were supplied by JV Sand & Gravel & Construction Supply, a private contractorship owned by James Tiu. Six GVs were prepared therefor, as follows:

GV No.	Program of Work	Amount
01-780601	Restoration of Shoulders, Tagbilaran North Road (TNR), Junction TNR-Airport Road, Junction TNR-Wharf Road and TCSR	₱ 49,980.00
01-780606	Restoration of Shoulders, Tagbilaran North Road (TNR), Junction TNR-Wharf Road	49,980.00
01-780641	Restoration of Shourders, Tagbilaran Corella-Sikatuna Road	49,980.00
01-780682	Restoration, Totulan-Ubos-Dauis Bridge Approaches	49,980.00
01-780684	Restoration, Totulan, Ubos-Dauis Bridge Approaches	49,980.00
01-780694	Restoration, Junction, Tagbilaran East Road-Dauis Paulao Central Road Shoulders and Bridge Approaches	49,980.00
	TOTAL	₱ 299,880.00 =====

representing partial payments in favor of JV Sand & Gravel & Construction Supply, which has been named as a creditor therein. The GVs themselves were accompanied by various supporting papers, among them, the RSEs and ROAs earlier referred to.^[8]

...

Eventually, the matter reached the Commission on Audit which constituted two teams to mount an inquiry.

The investigation disclosed that the above mentioned LAAs as well as SACDCs were spurious documents, and that the six GVs were in fact based on only two LAAs, Nos. 107-780-05-78 and 107-780-014-78. It was further established that the total sum requested under the said LAAs — ₱474,100.00 — supposedly to cover the Tagbilaran CEO's unliquidated obligations were not in fact supported by its statement of accounts, under which its total obligations totalled but ₱160,639.55. Moreover, the payee, JV Sand & Gravel & Construction

Supply, was not listed in the City's books as a creditor, for which it could have been entitled to the sums released.

The Audit Commission likewise observed certain discrepancies in the GVs in question, notably, that the Programs of Work had been "split"; that they were dated after the dates of the RSEs; that while the POs called for 9,369 to 9,375 cubic meters of anapog binder, the GVs specified but 3,123 to 3,125 cubic meters thereof apiece; that the Delivery Receipts had been issued "in lump quantities," did not bear acknowledgment signatures or were not initialled by the auditor or dated after the dates of the pre-audit; that the biddings were irregular; and that anapog had been short-delivered.

The Commission on Audit moreover found that the Highways Regional Office, as of this period, had in fact released "doubtful" allotments to ten districts, the Tagbilaran CEO among them, in the total sum of ₱24,052,750.00 supposedly to cover unliquidated obligations, although the statements of account thereof showed a total of only ₱2,735,181.98 as and for unliquidated obligations.

The very books of the Regional Office appeared furthermore to have been doctored. For while the total unliquidated obligations totalled only ₱2,586,306.78, the entry in the Regional Office's general ledger was ₱35,509,002.99. And in payment of such doubtful obligations, the checks issued exceeded the cash disbursement ceiling by ₱6,837,971.35. Apparently, it was Rolando Mangubat who recorded these entries by way of seven Journal Vouchers (JVs).

It likewise turned out that James Tiu subsequently opened certain savings accounts at the Allied Bank in favor of Niño Pilayre, Praxedes Lopena, and Miguel Bulac, although Lopena insists that as far as she was concerned, she knew nothing about it.^[9]

The Tanodbayan filed six Informations for estafa through falsification of public and commercial documents against nine public officials^[10] and two private individuals^[11] on the basis of conspiracy. Later, additional public officials^[12] were included in some of these Informations. It is only in Criminal Case Nos. 195, 198 and 199 that petitioner Bolotaulo is a co-accused. Except for the amounts involved, the quantities of anapog binder allegedly requisitioned and delivered, the six Informations were uniformly worded as follows:

That, in or about and during the period from the months of April to June, 1978, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the public officials, who by reason of the duties of their office, are accountable officers, and conspiring and conniving among themselves, as well as with their private party co-accused, after having falsified or caused to have falsified Letters of Advice of Allotment No. 107-780-05-78 and No. 107-780-014-78, both dated April 24, 1978 and Sub-Advices of Cash Disbursement Ceiling No. 193-78 dated April 28, 1978 and No. 222-78 dated May 2, 1978, which are all public documents, whereby said accused made it appear that an amount of Three Hundred Thousand (₱300,000.00) had been lawfully allocated for the City of Tagbilaran from the MPH Regional Highway Office No. VII, Cebu City, and made available "For the maintenance of existing and unabandoned roads and bridges" in the City of Tagbilaran, which falsifications had been committed in connection with the functions of their respective offices, then taking advantage of their official positions and committing in relation to the functions of their respective offices, did then and there willfully, unlawfully and feloniously falsify or cause to have falsified General Voucher,^[13] covering the sum of Forty-Nine Thousand Nine Hundred Eighty Pesos (₱49,980.00) for the payment of road shouldering materials (anapog binder), with the use of the aforesaid falsified Letters of Advice of Allotment and Sub-advices of Cash Disbursement Ceiling to support thereof and other documents, such as the Program of Work/Budget Cost for Roads and Bridges dated May 8, 1978, Request for Obligation of Allotment dated May 16, 1978, Abstract of Sealed Quotations, Purchase Orders dated June 9, 1978, Record of Inspection dated June 9, 1978, and other papers in support thereof, by making it appear that the request for obligation of allotment was regularly prepared and approved, that the bidding of materials was properly conducted, that the corresponding purchase order was prepared in favor of the lowest bidder, and that the materials purchased were duly and fully delivered in accordance with specifications and duly inspected, when in truth and in fact, as the accused fully knew well, the foregoing transactions were false and simulated, except that, with the amount of 3,123 cubic meters of anapog binder having been purchased for the sum of ₱49,980.00 at the rate of ₱16.00 per cubic meter, accused Jimmy Tiu and his representative accused Engracio Quiroz, by previous understanding with the accused officials, had caused the delivery only of (quantity) cubic meters of anapog binders, hence causing the Government to lose (quantity) cubic meters and worth (amount) at the rate of ₱16.00 per cubic meter; thus, the said accused having in said manner in a narration of facts; and that, by means of the aforesaid falsifications, the said accused were able to demand, collect and receive from the government thru the Tagbilaran City Engineer's Office, MPH Regional office No. VII, the value of the vouchers in question although the amount due should have been only the value of the actual

quantities delivered, and that, after the accused after having demanded, collected and received, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to their own personal use and benefit, and/or consent or, through negligence, permit other persons to take, misapply, misappropriate, and convert to their own personal use and benefit, to the damage and prejudice of the Government.

All the accused pleaded not guilty to the charges against them. Joint trial thereafter ensued. In a decision dated December 28, 1979, the Sandiganbayan acquitted accused Sayson, Budget Examiner II and Quiroz, the employee of accused contractor Tiu; and convicted the rest of the accused, including Bolotaulo, of estafa thru falsification of official and commercial documents to six years of *prision correccional* to ten years, eight months and one day of *prision mayor* each case with the accessories provided by law, pay the fine of ₱3,500.00 for each count and ordered them to pay certain amounts.^[14]

The Sandiganbayan convicted petitioners and the other accused on the basis of conspiracy. It found that they were guilty of conspiring in the falsification of the following documents, to wit: (1) Letters of Advice of Allotment (LAAs); (2) Sub-Advice of Cash Disbursement Ceiling (SACDCs); (3) Programs of Work (PWs); (4) General Vouchers (GVs); (5) Requests for Obligation of Allotment (ROAs); (6) Abstract of Sealed Quotations; (7) Purchase Orders (POs); (8) Delivery Receipts and (9) Records of Inspections (ROIs); that such falsification facilitated the unauthorized release of funds; and, the supplies allegedly requisitioned under them were short delivered or not delivered at all.

As we have stated earlier, the separate appeals of petitioner Bolotaulo's co-accused Castillo (City Engineer), Bagasao (Assistant Regional Director), Recamadas (Property Custodian), and Mangubat (Regional Chief Accountant), were denied and the decision of the Sandiganbayan was affirmed in *Castillo vs. Sandiganbayan*,^[15] *Bagasao vs. Sandiganbayan*,^[16] *Recamadas vs. Sandiganbayan*,^[17] and *Mangubat vs. Sandiganbayan*.^[18] We found in those cases that the projects turned out to be "ghost" projects since they did not carry the *imprimatur* of the then Public Highways Ministry, the various requisition papers having been

falsified to enable the accused to acquire the necessary funding. Furthermore, the supplies ordered were either short delivered or not delivered at all. As a result, the government suffered losses in the total sum of ₱240,058.00^[19]

We now resolve the appeal of petitioner Ulrico Bolotaulo, Senior Civil Engineer, Tagbilaran CEO, Ministry of Public Highways, who was convicted in Criminal Case Nos. 195, 198 and 199.

Petitioner comes to us raising both questions of law and of fact. The OSG filed its Answer praying for the denial of the instant petition for review.^[20]

The questions of law are as follows: (1) whether Presidential Decree No. 1486 as amended by P.D. No. 1606 creating the Sandiganbayan is an *ex post facto* law and violates the rights of the accused to due process and equal protection of law; (2) whether the Sandiganbayan was validly created and constituted.

The first legal issue had already been settled in *Nuñez vs. Sandiganbayan*,^[21] the very first case which upheld the constitutionality of the P.D. No. 1486 as amended, creating the Sandiganbayan. We declared that P.D. No. 1486 as amended was not an *ex post facto* law and does not violate the due process and equal protection clauses of the Constitution. Such ruling was reiterated in many subsequent cases.^[22]

As to the second legal issue, petitioner claims that the Sandiganbayan was not validly constituted since at the time it rendered the judgment, it was only composed of one Presiding Justice and two Associate Justices, thus how could it possibly act in division when it was never constituted as a whole?

This issue had already been put to rest in *De Guzman vs. People*,^[23] where we held:

... Although the Sandiganbayan is composed of a Presiding Justice and eight Associate Justices, it does not mean that it cannot validly function without all of the Divisions constituted. Section 3 of PD 1606 provides that “the Sandiganbayan shall sit in three divisions of three justices each.” While Section 5 thereof provides that the unanimous vote of the three justices in a division shall be necessary for the pronouncement of a judgment.

Thus, the Sandiganbayan functions in Divisions of three Justices each and each Division functions independently of the other. As long as a Division has been duly constituted it is a judicial body whose pronouncements are binding as judgments of the Sandiganbayan.

The judgment convicting petitioner was a unanimous Decision of the First Division duly constituted. It thus met the requirement for the pronouncement of a judgment as required by Section 5 PD 1606 *supra*.^[24]

Petitioner next raises the issue of the sufficiency of evidence upon which his conviction was predicated. He argues that estafa cannot be committed in the absence of any statement from the government of fund loss; that the checks covering the questioned transactions in the Tagbilaran CEO were not dishonored by the drawee bank; and that there was no concrete evidence shown by the prosecution to establish underdeliveries.

We are not impressed.

The prosecution had clearly established that because of the fake LAAs, SACDCs and the general vouchers with all its supporting documents, the government through the Tagbilaran CEO had disbursed funds for projects which were short delivered. Since there were short deliveries of *anapog* binder to the alleged projects sites, it resulted to the government suffering losses. We quote with approval the findings of the Sandiganbayan on this matter, thus:

... It is only logical that, if funds are disbursed without any appropriation, there is actually a payment of money out of the Treasury without any sanction in law. In such case, the

Government suffers a loss of so much as is disbursed. Of course, in the cases at bar, the People adopted a more realistic approach to the situation. It opted to hold the perpetrators of the fraudulent transactions liable only up to the amount of the actual loss sustained, evidently because it concedes that there had been some deliveries, albeit minimal. And, there can be no question that, if a contract is entered into with the Government for a given quantity of materials and the entire contract price is paid but only a quantity less than that contracted for is actually delivered, the Government would naturally be prejudiced to the extent of the value of the materials not delivered. This is precisely what happened here. Therefore, it is altogether off-tangent for the accused to contend that, because no statement of loss consequent to the transactions here involved had been presented from the National Treasury or from the Philippine National Bank, no justifiable finding of damage to the Government can be made. This would be closing one's eyes to reality. For, the stark reality is that certain amounts have in fact been paid by the Government for materials that were short-delivered. Accordingly, we hold that damage to the extent of the value of said short-delivery was sustained. Considering that it is undeniable that the damage came about thru the deceitful medium of the multiple falsifications here found to have been perpetrated, it is ineluctably clear that said falsifications were the means to the perpetration of a crime of estafa. As correctly formulated in the Informations herein, the crime committed in each of the cases at bar is estafa thru falsification of public documents.

This ushers the Court to the determination of the extent of the damage caused to the Government. On this score, the evidence bears looking into. Restituto Castro, testifying for the People, detailed the volume of deliveries made to various sections of the roads and bridge approaches covered by the projects here involved based on his counting of truckloads of anapog extracted from the Belderol Co and Picmao quarries and brought to the restoration sites. On the other hand, Assistant Provincial Engineer Sarmiento also made documented estimates of the volume of anapog delivered and significantly, enough, even after reckoning with pertinent factors bearing on the matter-including the time lapse between the date of spreading and the date of inspection, the effect of erosion, and a shrinkage factor of 20% and 30% as the case may be- came up with figures higher than those arrived at by Castro. So much so that, giving the defense the benefit of the doubt, the Court elects to go by the figures furnished by

Engineer Sarmiento as bases for reckoning the damage caused. For this purpose, the amount to be considered as starting point should be the face value of the respective checks actually paid to accused Tiu, that is to say, deducting the amount paid to the City Treasurer for Mining Fees. And, the value of anapog delivered should be taken at the price it was supposed to have been sold to the Government, that is ₱16.00 per cubic meter. On this (sic) bases, the damage may be computed as follows -

Case No.	Amount Paid	Delivery Volume	Value of Delivery	DAMAGE
195-	₱ 47,637.75	566-	₱9,056.00-	₱ 38,581.75
196-	47,636.25	12-	192.00-	47,444.25
197-	47,636.25	624-	9,984.00-	37,652.25
198-	47,637.75	none-	none-	47,637.75
199-	47,637.75	1,496-	23,936.00-	23,701.75
200-	47,636.25	106-	1,696.00-	<u>45,940.25</u>
				₱ 240,958.00 ^[25]

It bears stressing that the fraudulent issuances of the LAAs, SACDCs, GVs and its supporting documents and the journal vouchers and short deliveries are now settled issues. As we have earlier stated, we upheld the findings of the Sandiganbayan in four petitions brought to us by the four co-accused of herein petitioners which involved the same decision of the Sandiganbayan in Criminal Case Nos. 195 to 200 covering the same transactions.^[26]

Thus, the only issue now is whether the Sandiganbayan is correct in finding petitioner Bolotaulo guilty of conspiracy in committing the crime charged.

Petitioner Bolotaulo was convicted for his signature in the RSEs, in the abstract of sealed quotations and for signing the general voucher certifying that the expenses are necessary, lawful and incurred under his direct supervision, and that the price is just and reasonable and not in excess of the current rates in the locality. He, however, contends that he merely performed his duties and responsibilities in affixing his signatures on those documents.

We are not persuaded.

Petitioner, as the Senior Civil Engineer of the Tagbilaran CEO, was the one who prepared the three Request for Supplies or Equipment (RSEs)^[27] which were all dated April 11, 1978 allegedly on the basis of three programs of work he recommended for approval which were all dated May 8, 1978. Notably, however, the RSEs antedated the programs of work which is an anomalous circumstance since the RSEs needed for the prosecution of the projects are only based on the programs of work. In fact, petitioner, in his cross-examination, admitted that he cannot prepare a RSE without an approved program of work^[28] and that it is the normal and regular procedure;^[29] that if the program of work is prepared later than the RSE, there must be something irregular about it.^[30]

No satisfactory explanation was advanced by petitioner on why the RSEs antedated the programs of work as all he could say was that it was not his concern which of these two came ahead as long as that at the time he was signing the general voucher, the program of work was there.^[31] As the Sandiganbayan found, it unmasks the RSEs and/or Programs of Work as falsifications since the former cannot be said to be "O.K. as to program of work," as therein stated since at the time of their preparation, no program of work was yet in existence and that the latter can only be said to have been subsequently prepared to plug a veritable loophole.^[32]

In fact, the RSEs are not even in accord with the program of work. While petitioner recommended the approval of the three programs of work each calling for the use of 3,123 cubic meters of selected borrow (Item 108) as well as the detailed estimates which also called for the use of selected borrow, the three RSEs which petitioner prepared called for the use of anapog binder. No explanation was offered as to why there was such a discrepancy.

Notably, petitioner Bolotaulo recommended for approval three programs of work which all cost not more than ₱50,000.00 each. As established by the testimony of prosecution witness, Miguel V. Bulac, this was so since petitioner Bolotaulo's co-accused City Engineer Castillo could not approve program of work exceeding ₱50,000.00 because in excess of that amount, the

program of work has to be approved by the Regional Director.^[33] In fact, Engr. Castillo admitted that program of work in excess of ₱50,000.00 needs the approval of the region.^[34] As we earlier stated, we affirmed the conviction of City Engineer Castillo.^[35]

Petitioner Bolotaulo signed three GVs certifying that the expenses are necessary, lawful and incurred under his direct supervision, and that the price is just and reasonable and not in excess of the current rates in the locality. Attached to these GVs as supporting documents are the programs of work, the RSEs, the requests for sealed quotations and the purchase orders among others. He signed the GVs despite the fact that the RSEs antedated the programs of work. He could not have failed to notice that there was only one set of request for sealed quotation for the total of 9,369 cubic meters of anapog binders and one purchase order which supported the three GVs all for amounts less than ₱50,000.00 each to the same contractor/supplier James Tiu. The issuance of three GVs for amounts less than ₱50,000.00 each was resorted to since a higher amount would have required the vouchers to be forwarded to the Regional Auditor for action and review. The RSEs and the GVs had been split into uniform amounts of not more than ₱50,000.00 each which is a clear case of splitting of requisitions and general vouchers prohibited by the Commission on Audit Circular No. 76- 41 dated July 30, 1976.

As defined by the Circular, “splitting” in its literal sense means dividing or breaking up into separate parts or portions, or an act resulting in a fissure, rupture, breach. Within the sphere of government procurement, splitting is associated with requisitions, purchase orders, deliveries and payments.

Splitting may be in the form of (1) Splitting of Requisitions which consists in the non-consolidation of requisitions for one or more items needed at about the same time by the requisitioner; (2) Splitting of Purchase orders which consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by the different requisitioners; and (3) Splitting of payments which consists in making two or more payments for one or more items involving one purchase order. These forms of splitting are

resorted to in order to avoid (a) inspection of deliveries, (b) action, review or approval by higher authorities; or (c) public bidding.

There is also no truth to petitioner Bolotaulo's certification in the general voucher that the price of the materials requisitioned is just and reasonable and not in excess of the current rates in the locality considering that it was established that there was irregularity in the bidding held on May 24, 1978.^[36] As the Sandiganbayan found:

...

In the same vein, the record is clear that, prior to the pre-audit of all GVs here involved, defects and irregularities respecting the bidding conducted in connection with the procurement of the materials purchased were brought home to the knowledge of all concerned, particularly the District Auditor. A letter was actually written by accused Lopeña to accused Castillo officially bringing to his attention the defects and irregularities aforesaid (Exhibit G-22). Another letter was also written by accused Lopeña to accused Castillo returning the GVs (Exhibits D, E and H) because of defects like splitting, lack of ROA, and others. And yet, without anything being done to correct the defects and/or supply the deficiencies except the mere explanation of accused Castillo that the defects are mere clerical errors or that the objections are tardy, the GVs involved herein were nevertheless eventually passed on pre-audit. Since the bidding is defective, necessarily, the certification as to the justness and reasonableness of the price and that it is not in excess of the current price in the locality becomes a falsehood.

We likewise find no merit in petitioner's claim that the Sandiganbayan erred in finding the existence of conspiracy in the alleged commission of the crime. We are indeed convinced that conspiracy has been clearly established by the evidence presented by the prosecution. The whole scheme started with the issuances of fake LAAs, which give the authority to obligate, and the SACDCs, the authority to disburse funds, to the Tagbilaran CEO for the alleged purpose of prosecuting certain projects. The Tagbilaran Office which was fully aware of the fake LAAs and SACDCs, made it appear that there were valid requisitions, public bidding and purchase order which all turned out to be also falsified. General vouchers were prepared and checks pursuant

thereto were issued in payment to the supplier/contractor for materials which turned out to be short delivered or not delivered at all. As correctly held by the Sandiganbayan:

... It will readily be discerned from the facts in the case at bar that the defraudation perpetrated upon the Government was launched with the issuance of the fake LAAs in the Regional office, gained momentum as it wound its way thru the intricate paces of the procurement and payment processes in the District Office, and was put to rest with the execution of the fake JVs also in the Regional office. A veritable umbilical cord that ties the accused in the Regional office with those in the District Office is thus unmistakable. Such that even if the acts imputed to each accused may, at first blush, appear disconnected and separate from those of the others, there is nevertheless that common thread of sentiment, intent and purpose to attain the same end that runs thru the entire gamut of acts separately perpetrated by them. After all, conspiracy implies concert of design more than participation in every act of execution. Like links in a chain, the role played by each accused is so indispensable to the success of the fraud that, without any of them, the scheme would have failed. In this posture, a conspiracy is made out that as a result, the act of one is the act of all.^[37]

Finally, petitioner argues that assuming that there were admissions from the other co-accused, the alleged conspiracy must first be proven by evidence other than the declaration of a co-conspirator citing Section 27 of Rule 130, Rules of Court, to wit:

Sec. 27. Admission by conspirator- The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

The argument is devoid of merit.

Section 27 of Rule 130 of the Rules of Court applies only to extrajudicial acts or declarations but not to testimony given on the witness stand at the trial where the defendant has the opportunity to cross-examine the declarant.^[38]

All told, we are convinced that the prosecution has successfully established beyond doubt that petitioner Bolotaulo is guilty of the crimes charged.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision of the Sandiganbayan dated December 28, 1979 insofar as petitioner Ulrico Bolotaulo is concerned is **AFFIRMED**. The cases against petitioner Delia Preagido are **DISMISSED** in view of her demise on December 16, 2003.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

WE CONCUR:

HILARIO G. DAVIDE, JR.
Chief Justice

REYNATO S. PUNO
Associate Justice

ARTEMIO V. PANGANIBAN
Associate Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO-MORALES
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

(On Leave)
MINITA V. CHICO-NAZARIO
Associate Justice

CANCIO C. GARCIA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

HILARIO G. DAVIDE, JR.
Chief Justice

- ^[1] Penned by Associate Justice Bernardo P. Fernandez and concurred in by then Presiding Justice Manuel R. Pamaran and Associate Justice Romeo M. Escareal; Rollo, pp. 24-122.
- ^[2] Rollo, pp. 449-451.
- ^[3] *Id.*, pp. 589-594.
- ^[4] Decided on June 30, 1987, 151 SCRA 425.
- ^[5] Decided on October 28, 1987, 155 SCRA 154.
- ^[6] Decided on November 5, 1987, 155 SCRA 371.
- ^[7] Decided on June 29, 1988, 163 SCRA 52.
- ^[8] Castillo vs. Sandiganbayan, G.R. Nos. L-52352-57, June 30, 1987, 151 SCRA 425, 434-438.
- ^[9] *Id.*, pp. 445-447.
- ^[10] Jose Bagasao, Assistant Regional Director; Rolando Mangubat, Chief Accountant I; Delia Preagido, Accountant III; Jose Sayson, Budget Examiner II - all of the Seventh Regional Highway Office, MPH; Valentino Castillo, City Engineer; Luis Rasonabe, Civil Engineer; Isidoro Recamadas, Property Custodian; Filipinas Evardo, Bookkeeper II all of the Tagbilaran CEO; Praxedes Lopena, Auditor II, COA in Tagbilaran CEO.
- ^[11] James Tiu, the private contractor and his employee, Engracio Quiroz.
- ^[12] Ulrico Bolotaulo, Senior Civil Engineer, Tagbilaran CEO, Criminal Cases Nos. 195, 198 and 199; Niño Pelayre, Checker, Tagbilaran CEO, Criminal Cases Nos. 196, 197 and 200; Charita de Villa, COA Auditing Examiner III and Eliseo Cornell, COA Auditing Examiner II, both COA, assigned to the Tagbilaran, CEO, both charged in Criminal Cases Nos. 198 and 199.
- ^[13] Criminal Case No. 195- GV No. 77 for ₱49,980.00 in payment of 3,123 cubic meters of anapog of which only 566 cubic meters were supposedly delivered, thereby causing the Government to lose 2,557 cubic meters, valued at ₱40,912.00; Criminal Case No. 198-GV No. 72 for ₱49,980.00 in payment of 3,123 cubic meters of anapog binder, of which none was supposedly delivered, thereby causing the Government to lose ₱49,980.00; Criminal Case No. 199- GV No. 73 for ₱49,980.00 in payment of 3,123 cubic meters of anapog binder, of which only 1,625.98 cubic meters were supposedly delivered, thereby causing the Government to lose 1,497.02 cubic meters, valued at ₱23,952.32.
- ^[14] In Criminal Case Nos. 195- ₱38,581.75
196- 47,444.25
197- 37,652.25
198- 47,637.75
199- 23,701.75
200- 45,940.25
- ^[15] G.R. Nos. L-52352-57, June 30, 1987, 151 SCRA 425.
- ^[16] G.R. Nos. L-53813-18, October 28, 1987, 155 SCRA 154.
- ^[17] G.R. Nos. L-53694-99, November 5, 1987, 155 SCRA 371.
- ^[18] G.R. No. L-53724-29, June 29, 1988, 163 SCRA 52.
- ^[19] *Id.*, p. 57.
- ^[20] Signed by then Assistant Solicitor General Vicente V. Mendoza, (retired member of this Court), Assistant Solicitor General Reynato S. Puno, (Senior member of this Court), and Trial Attorney Patria M. de Leon.

^[21] G.R. Nos. L-50581, 50617, January 30, 1982, 111 SCRA 433.

^[22] Calubaquib vs. Sandiganbayan, G.R. Nos. L-54272-73, September 30, 1982, 117 SCRA 493; De Guzman vs. People, G.R. No. L-54288, December 15, 1982, 119 SCRA 337; Rodriguez vs. Sandiganbayan, G.R. No. L-61355, February 18, 1983, 120 SCRA 659; Alvia vs. Sandiganbayan, G.R. Nos. L-51923-25, June 19, 1985, 137 SCRA 63; Mangubat vs. Sandiganbayan, G.R. Nos. L-52872-52997, January 30, 1987, 147 SCRA 478; Gabison vs. Sandiganbayan, G.R. Nos. L-53001-56, June 18, 1987, 151 SCRA 61, and Escano vs. Sandiganbayan, G.R. No. L-53208-53333, April 15, 1988, 160 SCRA 429.

^[23] G.R. No. L-54288, December 15, 1982, 119 SCRA 337, 342.

^[24] *Id.*, p. 342.

^[25] Rollo, pp.100-102.

^[26] See notes 14-17, *supra*.

^[27] Exhibits "C-7", "F-4", and "G-5".

^[28] TSN, November 19, 1979, p. 147.

^[29] *Id.*, p.150.

^[30] *Id.*, pp. 150-151.

^[31] *Id.*, p. 156.

^[32] Rollo, p. 91.

^[33] TSN, October 23, 1979, pp. 24-25.

^[34] TSN, November 12, 1979, pp. 61-62.

^[35] See note 14.

^[36] TSN, November 12, 1979, pp. 251-253.

^[37] Rollo, pp. 113-114.

^[38] People vs. Nierra, 96 SCRA 1 (1980) citing People vs. Serrano, 105 Phil. 531, 541.