Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CRISTINA AMPOSTA-MORTEL, **G.R. No. 220500**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x -x

THERON VICTOR V. LACSON, **G.R. No. 220504**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- x

LEO V. PADILLA, **G.R. No. 220505**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- x

MANUEL BERIÑA, JR., JAIME R. MILLAN, BERNARDO T. VIRAY, and RAPHAEL POCHOLO A. ZORILLA **G.R. No. 220532**
Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- x

DANIEL T. DAYAN, **G.R. No. 220552**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- -x

FRISCO F. SAN JUAN, **G.R. No. 220568**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- -x

ELPIDIO G. DAMASO, **G.R. No. 220580**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- -x

JESUSITO LEGASPI, **G.R. No. 220587**
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x- -x

CARMELITA D. CHAN,
Petitioner,

— *versus* —

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 220592

Present:

LEONEN, *J.*, *Chairperson*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO JR., *JJ.*

Promulgated:

FEB 08 2023

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DECISION

LOPEZ, J., *J.*:

Assailed in these consolidated Petitions for Review[1] under Rule 45 of the Revised Rules of Court are the Decision[2] and the Joint Resolution[3] rendered by the Sandiganbayan. The dispositive portion of the assailed Decision reads:

> **WHEREFORE,** premises considered, the Court renders judgment as follows:
>
> 1. Accused Manuel Beriña, Jr., Jaime Millan, Bernardo Viray, Theron Victor Lacson, Raphael Pocholo Zorilla, Cristina Amposta-Mortel, Frisco Francisco San Juan, Carmelita De Leon-Chan, Daniel Dayan, Salvador Malbarosa, Leo Padilla, Elpidio Damaso and Jesusito Legaspi are found **GUILTY BEYOND REASONABLE DOUBT** of violating Sec. 3(e) of R.A. No. 3019. They are each sentenced to the indeterminate penalty of imprisonment of Six (6) years and One (1) month, as minimum, to Eight (8) years, as maximum, with perpetual disqualification from holding public office. They are ordered to jointly and severally reimburse the government the cost of the improper contract price adjustment and the cost for the Seaside Drive Extension totaling One Hundred Million Sixteen Thousand

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1 *Rollo* (G.R. No.220500), vol. I, p. 462; *rollo* (G.R. No. 220580), vol. I, p. 125; *rollo* (G.R. No. 220587), vol. II, p. 1121; G.R. No. 220523 was consolidated with these cases on September 27, 2021.

2 *Rollo* (G.R. No. 220500), vol. I, pp. 101–245. The February 5, 2015 Decision in Criminal Case No. 27808 was penned by Associate Justice Rafael R. Lagos, concurred in by Associate Justices Efren N. De La Cruz and Rodolfo A. Ponferrada, First Division, Sandiganbayan, Quezon City.

3 *Id.* at 328–384. The September 16, 2015 Joint Resolution in Criminal Case No. 27808 was penned by Associate Justice Efren N. De La Cruz, concurred in by Associate Justices Rodolfo A. Ponferrada and Napoleon E. Inoturan, First Division, Sandiganbayan, Quezon City.

Seven Hundred Ninety-Four Pesos and Seventy-Four Centavos (**P100,016,794.74**), with interest until fully paid, as civil liability.

2. Accused Ernest Frederick Villareal, Joemari Gerochi, Angelito Villanueva, Martin Sanciego, Jr., Rodolfo Tuazon, Manuela Dela Paz, Arturo Layug, Benilda Mendoza, Epifanio Pureza, Jose Capistrano, and Ma. Cecilia Dela Rama are found **NOT GUILTY**, the Prosecution being unable to prove beyond reasonable doubt that they acted with manifest partiality, evident bad faith, or gross inexcusable negligence and were involved in a conspiracy, as charged in the Information.

No civil liability is adjudged against accused Villareal, Gerochi, Villanueva, Sanciego, Jr., Tuazon, Dela Paz, Layug, Mendoza, Pureza, Capistrano, and Dela Rama considering that no act or omission on which any civil liability can be based exists. Their bail bonds are deemed **CANCELLED** and **ORDERED RELEASED**. The hold-departure orders issued against them are ordered **LIFTED** and **SET ASIDE**.

3. The case against accused Carlos Doble is hereby **ARCHIVED** until the Prosecution or the counsel of said accused presents a certified true copy of his Death Certificate from the Philippine Statistics Authority.

SO ORDERED.[4] (Emphasis in the original)

The dispositive portion of the assailed Joint Resolution reads as follows:

WHEREFORE, the Court resolves as follows:

1. Accused Beriña, Jr., et al.'s motion to be allowed to present evidence in support of their motion for reconsideration, is **DENIED**, for lack of merit.

2. [T]he separate motions for reconsideration of accused Beriña, Jr., Millan, Viray, Lacson, Zorilla, De Leon-Chan, Damaso, Dayan, Malbarosa, Padilla, San Juan, Legaspi, and Mortel are **DENIED**, except on the matter of accused Legaspi's civil liability over the contract price adjustment of **P42,418,493.64**, which should be deducted from the amount the latter was ordered to reimburse the government. This reduces accused Legaspi's total civil liability to **P57,598,301.10.**

3. The prosecution's Motion for Partial Reconsideration (*On the Civil Aspect*), dated February 20, 2015, is hereby **PARTIALLY GRANTED**.

In addition to the civil liability of **P100,016,794.74**, accused Beriña, Jr., Millan, Viray, Lacson, Zorilla, Amposta-Mortel, San Juan, De Leon-Chan, Dayan, Malbarosa, Padilla, and Damaso are ordered to jointly and severally reimburse the government the amount of **P73,424,079.46**, representing the overruns/underruns for Variation Order No. 1 (**P67,982,609.07**) and the Inland Channel Bridge under Variation Order No.

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4 *Id.* at 243–244.

2 (**P5,441,470.39**). Their total civil liability is hereby increased to **P173,440,874.20.**

SO ORDERED.[5] (Emphasis in the original)

Facts

The factual findings of the Sandiganbayan[6] indicate that on September 24, 1998, Public Estates Authority (*PEA*) Deputy General Manager Manuel Beriña, Jr. (*Beriña, Jr.*) and PEA General Manager Carlos Doble (*Doble*) submitted a Memorandum to the PEA Board regarding the construction of the Central Boulevard Road Project. It is a highway traversing the reclaimed area from Buendia Avenue to Pacific Avenue at Asiaworld City, spanning 5.1234 kilometers and was to have three bridges to cross over the drainage channels separating the islands. This project was pursuant to Administrative Order No. 176[7] issued by former President Fidel Ramos (*President Ramos*) that created the Presidential Task Force Boulevard 2000 and former President Joseph Ejercito Estrada's (*President Estrada*) Memorandum dated October 16, 1998, ordering the PEA to develop and construct the said highway. PEA estimated the cost of the construction of the entire stretch to be at PHP 731,443,700.00, which already included a 15% price escalation.[8]

As the project was implemented, it appeared that some stretches of the highway were already covered by undertakings of PEA's Joint Venture partners. These other portions are covered by development agreements by PEA with SM, Inc., as well as with R1 Consortium/D.M. Wenceslao, Inc.[9]

On September 28, 1998, the PEA Board of Directors (*Old Board*) approved, in principle, the Proposed Action Plan for the construction of the Central Boulevard Project (*later renamed to President Diosdado Macapagal Boulevard or PDMB*) where PEA will borrow PHP 1 billion from various financial institutions to finance the project.[10] The members of the PEA Board of Directors during this time were the following:

Frisco San Juan	- Chairman
Carlos Doble	- General Manager
Carmelita de Leon-Chan	- Member
Elpidio Damaso	- Member

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5 *Id.* at 383–384.
6 As culled from the Sandiganbayan Decision.
7 See *rollo* (G.R. No. 220587), vol. I, pp. 304–306.
8 *Rollo* (G.R. No. 220500), vol. I, p. 178.
9 *Id.* at 179.
10 *Id.*

Daniel Dayan	- Member
Salvador Malbarosa	- Member
Leo Padilla	- Member[11]

On April 22, 1999, San Juan updated the Office of then President Estrada, through Executive Secretary Ronaldo Zamora (*Executive Secretary Zamora*), of the steps taken by PEA regarding the construction of the PDMB project. Because of the importance of the project, San Juan requested for authority to bid and award contract packages relative to the PDMB through simplified public bidding. PEA was then authorized, by a Memorandum issued by then Executive Secretary Zamora dated July 2, 1999, to bid and award contracts for the PDMB project through simplified public bidding. On April 22, 1999, Doble likewise issued Office Order No. 070, series of 1999, where an *Ad Hoc* Committee was constituted to fast track the implementation of the Ombudsman Building and the Central Boulevard Road Project[12] or the PDMB Project. The members of the Committee were:

Manuel Beriña, Jr.	- Chairman
Theron Lacson	- Member
Bernardo Viray	- Member
Ernesto Enriquez	- Member[13]

On May 11, 1999, Beriña, Jr., as Chairman of the *Ad Hoc* Committee, wrote to the Project Director of the Department of Public Works and Highways (*DPWH*), Engr. Arturo M. Santos (*Engr. Santos*), requesting for a list of contractors who have inter-agency classification of large "B" and contractor's license classification of triple "AAA" with proven track records in implementing DPWH's major roads/bridges projects. On May 19, 1999, Engr. Santos replied and gave the names of 10 contractors with the foregoing qualifications. These contractors were W. Red Construction and Development Corp. (*W. Red*), JD Legaspi Construction (*JD Legaspi*), D.L. Cervantes Construction (*D.L. Cervantes*), Egapol Construction (*Egapol*), Tokwing Construction (*Tokwing*), Atlantic Erector's, Inc., Emerald Construction and Development Corp., D.M. Consunji Inc., Bandila Construction and Development Corp., and High Peak Construction and Development Corp.[14]

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11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.* at 180.

On July 8, 1999, Beriña, Jr. sent invitations for prequalification and to bid to W. Red, JD Legaspi, D.L. Cervantes, Egapol, and Tokwing. This was because the PEA *Ad Hoc* Committee decided to divide the 10 contractors equally for Package 1 and Package 2. Prequalification documents were received until July 19, 1999. After evaluation, all contractors qualified for Package 1, with satisfactory performance and compliant with the minimum equipment requirement. Beriña, Jr. then informed the five prequalified bidders who were asked to submit their respective bids on July 26, 1999, with the pre-bid conference set on September 10, 1999. The bids were opened in the presence of the bidders, *Ad Hoc* Committee members, and a Commission on Audit (*COA*) representative on September 16, 1999.[15]

The bids of the five construction companies were all considered responsive, with the following respective bids and a summary of the agency estimates set by PEA:

Bidders	Bid Amount
1. Egapol Construction	P656,373,738.03
2. JD Legaspi Construction	P584,365,885.05
3. D.L. Cervantes Construction	P631,588,119.00
4. W. Red Construction and Development Corporation	P652,999,429.18
5. Tokwing Construction	P642,404,794.129
Approved Agency Estimate (AAE)	P549,713,194.00
Higher Limit (120% of AAE)	P659,655,832.80
Lower Limit (60% of AAE)	P329,827,916.40
Allowable Government Estimate (AGE)	P591,629,793.55
Lower Limit of AGE (70% of AGE)	P414,140,855.48[16]

From the submissions of the contractors, it was determined that JD Legaspi was the lowest complying bidder. The *Ad Hoc* Committee thereafter recommended that the project be awarded to JD Legaspi. The Bid Evaluation was prepared by Project Management Officer Jose Morales, Jr., and checked by Raphael Pocholo Zorilla (*Zorilla*), while Bernardo Viray (*Viray*), Atty. Ernesto Enriquez (*Atty. Enriquez*), Theron Victor Lacson (*Lacson*) and Beriña, Jr. recommended the approval thereof. Doble approved the same Bid Evaluation Report, which was forwarded to the PEA Board of Directors. In turn, the Board of Directors approved the awarding of the contract to JD

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15 *Id.*

16 *Id.* at 180–181.

Legaspi during its Board Meeting held on November 3, 1999.[17] Resolution No. 2032, series of 1999 states:

> RESOLVED, that the award of contract for the construction of the proposed Central Boulevard Road Project (Package 1) to JD Legaspi Construction and the appropriation of the amount of Five Hundred Eighty[-]Four Million Three Hundred Sixty[-]Five Thousand Eight Hundred Eighty[-]Five and 05/100 Peso[s] (584,365,885.05), chargeable against the proceeds of the One Billion Peso loan from Land Bank of the Philippines/All Asia Capital, is hereby approved, subject to pertinent accounting and auditing rules and regulations.[18] (Emphasis supplied)

Pursuant to the above action of the Board of Directors, a Construction Agreement was drawn up and signed by Doble and Legaspi. It was later presented to the Board of Directors, which approved the same on December 15, 1999. The Board of Directors' approval was for the Construction Agreement for Package 1 of the Central Boulevard Road Project executed between the PEA and JD Legaspi.[19]

Upon review of the Office of the President, then Executive Secretary Zamora issued a Memorandum[20] dated January 29, 2000 addressed to San Juan, which provides:

> The request for approval by the PEA of its Construction Agreement with JD Legaspi Construction for the construction of the Central Boulevard Road Project in the amount of five hundred eighty[-]four million three hundred sixty[-]five thousand eight hundred eighty[-]five pesos and 05/100 (P584,365,885.05) is hereby granted subject to the following conditions:
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> a.) The PEA Accountant should sign as a witness to the Agreement
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> b.) The following provisions must be added to the Agreement:
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> (i) All the extra works and price adjustments should first be submitted to the President for approval.
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> (ii) The fifteen percent (15%) advance payment to cover the mobilization expenses of the Contractor should be given to the latter at two staggered payments of seven and a half percent (7.5%) each, in compliance with CI 4 of the Implementing Rules and Regulations

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17 *Id.* at 181.
18 *Id.*
19 *Id.*
20 *Rollo* (G.R. No. 220587), vol. I, pp. 310–311.

of P.D. 1594 and DPWH Ministry Order No. 42, Series of 1984.

c.) Additional credit line in the amount of eight million four hundred thirty[-]six thousand five hundred eighty[-]eight pesos and 50/100 (P8,436,588.50) must be opened.

d.) Final approval and actual release of the loan proceeds from the Land Bank of the Philippines/All Asia Capital must be secured.

After the compliance with the foregoing, the PEA is directed to issue the written Notice to Proceed. This must specifically require the Contractor to complete the project within three hundred sixty (360) days from receipt of said Notice.

Please submit to the Office of the President, through the PMS, a report on the results of the transaction within thirty (30) days from receipt by the Contractor of the Notice to Proceed, a statement of commitment concerning the additional credit line opened with the bank concerned, a copy of the certificate of final approval and actual release of the loan proceeds from the Land Bank of the Philippines/All Asia Capital and a copy of the signed Construction Agreement, duly notarized, with accompanying annexes.[21]

Pursuant to this Memorandum, several changes were incorporated to the agreement signed beforehand by Doble and Legaspi. [22] Another Construction Agreement (*Agreement*) was signed on April 10, 2000.[23] As per the Agreement, the project was for PHP 584,365,885.05 inclusive of value added tax, fees and taxes for obtaining the necessary licenses and clearances from various government agencies. Other notable provisions of the Agreement were the following:

Article 4

4.5 Price Escalation: Adjustment of contract price due to escalation shall be effected in accordance with P.D. 1594 and its IRR, upon written agreement of the parties and subject to availability of funds.

Article 8 Change Order and/or Additional Work

8.1 The **PEA**, may at any time, by written order, make changes in the schedule and work required under this Agreement. If any such change/s causes an increase or decrease in the work or the time required for performing the work, an equitable adjustment shall be made of the contract price and completion date upon mutual agreement of the parties reflecting

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21 *Id.*

22 *Rollo* (G.R. No. 220500), vol. I, p. 182.

23 *Rollo* (G.R. No. 220587), vol. I, pp. 312–323.

> such adjustments by way of written order subject to the provisions of the IRR of P.D. 1594, as last amended and the approval of the President.
>
> 8.2 Should the **PEA** find it necessary to have any additional work carried out for the purposes of the Project in addition to the contracted work, such additional work will be carried out immediately by the **CONTRACTOR** upon receiving written approval from the President, provided that the amount of the change order is within the limitations and in accordance with conditions set forth in P.D. 1594 and its IRR.[24] (Emphasis in the original)

The Agreement also explicitly states that the Contractor "shall commence prosecution of the Project within 10 calendar days from receipt of the Written Notice to Proceed from the PEA, and shall finish and complete the construction of the entire Project to PEA's satisfaction within 360 calendar days."[25] The 15% advance payment provision, as stated in the Memorandum of the Executive Secretary, was likewise included. The Agreement also has a notation on Page 11 thereof, which states "Funds Available in the amount of PHP 300 million for Phase I only."[26]

Thereafter, PEA issued the Notice to Proceed dated April 10, 2000, giving JD Legaspi 360 calendar days for the entire project, that was to commence seven calendar days from receipt thereof. Said Notice to Proceed was stamped "Received" on April 11, 2000.[27] At this point, PEA had only received PHP 300 Million from Land Bank of the Philippines (*LandBank*) as loan proceeds, as evidenced by the Comptroller's note on the signed Construction Agreement. The PEA Board of Directors also approved a loan from the Government Service Insurance System (*GSIS*) for PHP 600 million.[28]

Several Variation Orders followed the signing of the Agreement. The first of these Variation Orders (*later renamed as Variation Order No. 2*) was for the construction of the Seaside Drive Extension and Inland Channel to facilitate the flow of traffic at the Seaside Drive Extension, submitted by Beriña, Jr. for consideration of the Board of Directors on June 27, 2000. The total amount of the Variation Order as presented to the Board was PHP 117,454,756.71. Beriña, Jr. explained that the bridge must be constructed to avoid the gap between Central Business Park II and Central Business Park I B & C. The Memorandum likewise stated that the bridge was originally included in the proposed bidding of Package 2, which did not materialize because R1 Consortium merely indicated its willingness to construct the Central Boulevard at Central Business Park 1 B & C under their Joint

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24 *Id.* at 315, 317; See also *rollo* (G.R. No. 220500), vol. I, p. 183.
25 *Rollo* (G.R. No. 220587), vol. I, p. 315.
26 *Id.* at 322. See also *rollo* (G.R. No. 220500), vol. I, p. 183.
27 *Rollo* (G.R. No. 220500), vol. I, p. 183.
28 *Id.*

Venture Agreement, but not the bridge. He thus recommended that the additional works be awarded to the contractor of Package 1, subject to fulfillment of certain conditions.[29] This Variation Order was approved by the Board of Directors on July 5, 2000, subject to the conditions set forth by Beriña, Jr.[30]

Another Variation Order (*Variation Order No. 1*) was approved by the Board on January 29, 2001. It involved the realignment of certain items of work with no additional cost and additional time. Variation Order No. 1 was deemed necessary because of the changes in the original plans and in order to suit the actual field conditions. The changes were mainly on the thickness of pavement structures, number of layers of geotextile/geogrid materials, and the type of drainage system (from reinforced concrete pipe culvert to reinforced concrete box culvert). The effect of the Variation Order was considered reasonable by the COA after review, as shown by the Review Report later that same year.[31]

Then on March 21, 2001, Beriña, Jr. requested for approval of the revised cost of Variation Order No. 2 based on the detailed plans in the total amount of PHP 126,440,810.20 which includes the following works:[32]

> 1. Design and Construction of Bridge across the 42 m. inland channel between Central Business Park 1, B & C (CBP-1 B&C) and Central Business Park 2 (CBP-II) including the design and construction of containment walls at the approaches of the proposed bridge and the design and construction of the bridge approaches. The construction of the bridge is necessary to connect the Central Boulevard of CBP-1 B&C and CBP-II so that the Central Boulevard can be fully utilized from Buendia Extension to Asiaworld Property before the end of 2001.
>
> 2. Design and construction of the Seaside Drive extension that will serve as an access to Roxas Boulevard and Seaside Drive going to the National Airport (NAIA).[33]

The additional quantities for earthwork excavation, embankment, disposal of unsuitable materials and geotextile/geogrid materials, which resulted to the increase in the amount for Variation Order No. 2, was approved by the Board of Directors on June 29, 2001. Nevertheless, it was already on July 19, 2002 when PEA issued the Notice to Proceed for Variation Order No. 2.[34]

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29 *Id.* at 184. See also *rollo* (G.R. No. 220587), vol. I, p. 330.
30 *Rollo* (G.R. No. 220500), vol. I, p. 184.
31 *Id.*
32 *Id.* at 184.
33 *Id.* at 185. See also *rollo* (G.R. No. 220587), vol. I, pp. 333, 448.
34 *Rollo* (G.R. No. 220500), vol. I, p. 185.

It would appear that on April 3, 2001, Jaime R. Millan (*Millan*) recommended the grant of time extension to JD Legaspi until the balance of the PHP 1 billion loan was secured. This was on account of JD Legaspi's letter to PEA on January 16, 2001, which was received on March 12, 2001, requesting for a time suspension effective January 15, 2001 due to unavailability of funds. The same time suspension was lifted effective June 14, 2002.[35]

In the meantime, there were substantial changes in the composition of the Board of Directors of PEA. Between March and July 2001, new members of the board came in, giving rise to a different set of directors. From thereon, the Board of Directors consisted of the following:

Ernest F.O. Villareal	-Chairman
Benjamin Cariño	-General Manager
Joemari Gerochi	-Member
Sulficio Tagud, Jr.	-Member
Angelito Villanueva	-Member
Rodolfo Tuazon	-Member
Martin Sarciego, Jr.	-Member[36]

Then, on July 24, 2001, JD Legaspi requested for a price adjustment based on Section Instruction to Bidders (*IB*) 10.10 of the Implementing Rules and Regulation[37] (*IRR*) of Presidential Decree (*P.D.*) No. 1594[38], amounting to PHP 45,811,510.32. The request sent by JD Legaspi was forwarded by Millan to Cariño for the latter's consideration on August 24, 2001. The Internal Memo was noted by Cariño "Ask for COA approval of the adjusted unit prices prior to payment." The said request was endorsed to the Board of Directors by Beriña, Jr. through a Memorandum dated October 24, 2001.[39]

During the meeting of the Board of Directors held on November 6, 2001, they approved the request of JD Legaspi but lowered the contract price adjustment to PHP 42,418,493.64, which was 7.26% of the contract amount. Then, during the December 5, 2001 meeting of the Board of Directors, Tagud questioned the authority of PEA Management to approve the price adjustment. The PEA Management was then directed to verify if the subject

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35 *Id.* at 186.
36 *Id.* at 185.
37 As amended on May 24 and July 5, 2000
38 Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts, July 11, 1978.
39 *Rollo* (G.R. No. 220500), vol. I, pp. 185-186.

contract price adjustment was within the approval limits of management. In the following Board Meeting on December 14, 2001, Beriña, Jr. explained the process of dealing with price adjustments and escalations, with the former taking effect if the Notice to Proceed was issued after 120 calendar days from the bidding date. The Board eventually decided to defer discussion on the matter until justification was forwarded to them.[40]

The matter was not brought up until Beriña, Jr. sent a Memorandum dated April 16, 2002 to the Board, requesting for confirmation of the contract price adjustment. In its Price Adjustment Review Report, the COA deemed the price adjustment reasonable. The COA Report was eventually relayed to PEA by De la Paz and the price adjustment was finally approved on April 19, 2002, through Resolution No. 3203, series of 2002, which also provides that the same is chargeable to the proceeds of the PHP 1 billion loan with the GSIS, and will only be due and demandable when the loan proceeds are released to PEA.[41]

Near the tail end of the project, Beriña, Jr. requested the Board of Directors to confirm Variation Order Nos. 3, 4 and 5 for the President Diosdado Macapagal Boulevard, to be chargeable against the GSIS loan secured for the purpose. Variation Order No. 3 is for landscaping works of the Central Boulevard amounting to PHP 13,357,005.00, No. 4 is for additional items of work amounting to PHP 4,759,630.80, and No. 5 is for landscaping work of the Seaside Drive amounting to PHP 1,244,949.00.[42]

Finally, Beriña, Jr. requested confirmation and appropriation of funds from the Board of Directors for the Overrun/Underrun quantities or costs of Items of work of the PDMB Road Project Package 1 due to the disparity between the Bid Plans (*preconstruction plans*) and the approved construction plans, and actual works accomplished to suit actual field conditions. The Memorandum signed by Beriña, Jr. includes the following table summarizing the amounts of overruns:[43]

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40 *Id.* at 186.
41 *Id.*
42 *Id.* at 186–187.
43 *Id.* at 187.

Description	Original Amount	Overrun/ Underrun	Revised Amount	% Increase
1. Variation Order No. 1 (Original Contract)	₱584,365,885.05	₱67,982,609.07	₱652,348,494.12	11.6336
2. Variation Order No. 2				
a. Seaside Drive Extension	₱51,689,856.48	₱5,908,444.62	₱57,598,301.10	11.4306
b. Bridge at 42-m Inland Channel	₱74,750,953.72	₱5,441,470.39	₱80,192,424.11	7.2795
TOTAL	₱710,806,695.25	₱79,332,524.08	₱790,139,219.33	11.1609[44]

The same Memorandum contained a request to enter into a Supplemental Agreement with JD Legaspi on the Overrun/Underrun quantities that exceeded 25% of the original contract quantities/costs per items of work, amounting to PHP 57,031,012.96.[45]

On August 13, 2002, the Board of Directors confirmed and approved Variation Order No. 4 and the Final Bill of Quantities (Overruns/Underruns) in the amount of PHP 4,759,630.80 and the amount of PHP 79,332,524.08 through Resolution No. 3272, series of 2002. The Resolution also authorized PEA Management to enter into a Supplemental Agreement with JD Legaspi for quantities exceeding 25% of the original contract quantities or costs per items of work. On August 22, 2002, a Supplemental Agreement was then entered into by PEA, then represented by Cariño and JD Legaspi, where PEA agreed to pay JD Legaspi for the faithful and satisfactory performance of the additional works stipulated in Variation Order No. 1 and the works required to complete the Seaside Drive Extension and the bridge at the 42-meter Inland Channel. The contract was priced at PHP 57,031,012.96.[46]

These Internal Memoranda requesting approvals for Variation Orders were sent to the General Manager (Cariño in most cases, since these were made in the implementation stage of the Agreement) by Millan, with Beriña, Jr. recommending the approval thereof.[47]

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44 *Id.*
45 *Id.*
46 *Id.* at 187–188.
47 *Id.* at 188.

The PDMB was inaugurated on April 5, 2002 and was eventually opened to the public on July 15, 2002.[48]

In 2003, a Subsoil Assessment Report was commissioned by the Senate of the Philippines. It was found that the subsoil was characterized by fill materials predominantly consisting of sands with silts and clays and with traces of gravels, but the same was based on subsurface investigation data from the four boreholes and the four test pits only. The body that conducted the assessment also commented that the soil stratification on other locations along the alignment may differ from those mentioned in the report. Further tests were conducted later that year, and it was concluded that additional borehole drilling results were consistent with the initial findings, that is, materials were considered suitable fill materials and that the in-place embankment materials of the reclaimed site were suitable based on provisions of the DPWH Standard Specifications for Highways and Bridges.[49]

The issue of overpricing on the PDMB project eventually broke out and a Senate investigation was commenced. Because of this, PEA denied the request of JD Legaspi for payment on October 13, 2003 and October 11, 2004. Thereafter, JD Legaspi was compelled to file a case for Specific Performance, which was decided in its favor on January 10, 2007. On December 5, 2007, PEA, now Philippine Reclamation Authority (*PRA*) entered into a Compromise Agreement with JD Legaspi for the payment of the 13th Progress Billing for the PDMB in the amount of PHP 27,471,322.84, attorney's fees of PHP 100,000.00, and interest of PHP 4,593,117.48. The said Compromise Agreement was approved by Branch 148 of the Regional Trial Court of Makati City, where JD Legaspi filed the case demanding payment for the unpaid portion of the Progress Billings submitted to PEA.[50]

All in all, the total amount received by JD Legaspi was PHP 839,312,471.47. The total amount of the variation orders amounted to PHP 145,802,395.00 or 24.95% of the total contract amount. The amounts received by JD Legaspi are broken down as follows:[51]

Original contract	₱584,365,885.05
Contract Price Adjustment	₱42,418,493.64
Overrun/Underrun	₱79,332,524.08
Variation Order No. 2	₱126,440,810.20

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48 *Id.* at 189.
49 *Id.* at 188.
50 *Id.* at 189.
51 *Id.* at 189-190.

Variation Order No. 4	₱4,759,630.80
Total	₱837,317,343.77
Interest and Attorney's Fees	₱1,995,127.70
Overall Total	₱839,312,471.47[52]

On June 6, 2003, an Information[53] was filed with the Sandiganbayan charging *inter alia,* the members of the Old PEA Board, the members of the new PEA Board, the PEA Management, JD Legaspi, and auditors of the COA for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019,[54] allegedly committed as follows:

> That in or about the period from April 1999 to August 2002, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officials of the Public Estates Authority (PEA), namely: CARLOS P. DOBLE, former General Manager (with Salary Grade 30) and *ex-oficio* member of the PEA Board, BENJAMIN V. CARIÑO, PEA General Manager (with Salary Grade 30) and *ex-oficio* member of the Board, and other responsible public officials of PEA, namely: FRISCO FRANSICO SAN JUAN, former Chairman of the Board, CARMELITA DE LEON-CHAN, DANIEL T. DAYAN, SALVADOR P. MALBAROSA, LEO V. PADILLA and ELPIDIO G. DAMASO, all former members of the Board, ERNEST FREDERICK O. VILLAREAL, Chairman of the Board, and JOEMARI D. GEROCHI, ANGELITO M. VILLANUEVA, MARTIN S. SANCIEGO, JR., and RODOLFO T. TUAZON, all Board members, JAIME R. MILLAN, Assistant General Manager, MANUEL R. BERIÑA, JR., Deputy General Manager for Operations & Technical Services and Chairman of the *Ad Hoc Committee* responsible for the bidding and award of the construction contract for the President Diosdado Macapagal Boulevard Project, THERON VICTOR V. LACSON, Deputy General Manager for Finance, Legal and Administration and member of the *Ad Hoc Committee,* BERNARDO T. VIRAY, Manager for Technical Services Department and member of the *Ad Hoc Committee,* RAPHAEL POCHOLO A. ZORILLA, Project Management Officer, ERNESTO L. ENRIQUEZ, Senior Corporate Attorney and member of the *Ad Hoc Committee,* and CRISTINA AMPOSTA-MORTEL, Department Manager, Legal Department, and other responsible public officials of the Commission on Audit (COA), namely: MANUELA E. DELA PAZ, State Auditor V, ARTURO S. LAYUG, State Auditor V and Chief of Technical Services Audit Division A, Technical Services Offices, BENILDA E. MENDOZA, Supervising Technical Audit, EPIFANIO L. PUREZA, Assistant Chief of the Technical Services Audit Division A, JOSE G. CAPISTRANO, Technical Audit Specialist II, and MA. CECILIA A. DELA RAMA, Technical Audit Specialist I, all of whom were public officials during the times material to the subject offense, while said public officials were occupying their respective positions as just stated, acting in such capacity and committing the subject offense in relation to

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52 *Id.*

53 *Rollo* (G.R. No. 220587), vol. II, pp. 724–732.

54 Anti-Graft and Corrupt Practices Act, August 17, 1960.

> office and while in the performance of their functions and duties, with manifest partiality and evident bad faith (or at the very least, gross inexcusable negligence), conspiring and confederating with accused JESUSITO D. LEGASPI, a private contractor doing business under the name of JD Legaspi Construction, did then and there, willfully, unlawfully and criminally give unwarranted benefits, advantage and preference to accused JESUSITO D. LEGASPI, through the commission of numerous illegal related acts all pertaining to the President Diosdado Macapagal Boulevard Project, such as (but not limited to) the bidding out of the said project and illegally awarding the same to accused JESUSITO D. LEGASPI's JD Legaspi Construction and approving the award of the project to, as well as the *Construction Agreement* with, JD Legaspi Construction despite the lack of compliance with the mandatory requirements and procedure for bidding, even if no funds are yet available to finance the project, without the requisite certificate of availability of funds and without complying with the mandatory conditions imposed by the Office of the President for the approval thereof, per Memorandum dated 29 January 2000 from the Office of the Executive Secretary, Malacañang, and approving/allowing several improper variation/change orders and overruns to be implemented without the requisite presidential approval and the appropriate funds, recognizing, affirming and causing the implementation of the just-mentioned void contract, allowing and paying or causing the allowance and payment of several claims of accused JESUSITO D. LEGASPI for initial contract price, contract price adjustment, variation orders, overruns and other claims even when the same were clearly improper, illegal and without the requisite presidential approval, thereby paving the way for accused JESUSITO D. LEGASPI to claim and receive undue payments from the Government totalling millions of pesos in improper overprice, thereby causing undue injury and grave damage to the government in the aggregate amount of at least **FIVE HUNDRED THIRTY TWO MILLION NINE HUNDRED TWENTY-SIX THOUSAND FOUR HUNDRED TWENTY AND 39/100 PESOS (P532,926,420.39)**, more or less, constituting the total illegal overprice paid to accused JESUSITO D. LEGASPI for the subject Project.
>
> CONTRARY TO LAW.[55] (Emphasis in the original)

Consequently, warrants of arrest were issued against the accused on June 27, 2003. Villareal, San Juan, and Doble filed their cash bonds with the Sandiganbayan while Zorilla, Lacson, Viray, Beriña Jr., and Millan posted their surety bonds. After their respective Motion for Reduction of Bail was granted, Pureza, Capistrano, De la Rama, Mendoza, and De la Paz likewise posted their cash bonds with the Sandiganbayan.[56]

The accused were arraigned on various dates and entered their respective pleas. On July 24, 2003, Villanueva was arraigned and he entered a plea of not guilty. Then, on January 21, 2005, Malbarosa, San Juan, Tuazon, Chan, Damaso, Legaspi, Dayan, Beriña, Jr., Millan, Zorilla, Viray,

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55 *Id.* at 728–731.

56 *Rollo* (G.R. No. 220587), vol I, p. 75.

Gerochi, Cariño, and Amposta-Mortel refused to enter a plea. On February 15, 2005, Villareal, Padilla, and Lacson refused to enter a plea. On February 24, 2005, Doble did not enter a plea. Lastly, on March 10, 2005, Layug, Pureza and Capistrano refused to enter a plea. Consequently, this Court entered a plea of not guilty for those who refused to enter a plea.[57]

After due proceedings, the Sandiganbayan rendered the assailed Decision dated February 5, 2015.

Sandiganbayan Decision

In convicting petitioners for violation of Section 3(e) of R.A. No. 3019, the Sandiganbayan found that the procedures for simplified bidding of a flagship project were not followed. Under IB 10.4.2.5, IRR of P.D. No. 1594, as amended, the participants for such project must be limited to *bona fide* contractors duly accredited and classified for the project category and size, and who are included in a separate masterlist to be prepared by the Philippine Contractors Accreditation Board (*PCAB*).[58] However, instead of complying with this requirement, PEA elected to limit its shortlisted bidders to only 10 contractors who were listed in the roster prepared by the DPWH. PEA did this in spite of the fact that the "Invitation to Contractors" clearly stated that PEA invited bids from contractors who were included in the PCAB masterlist.[59] JD Legaspi, it appears, had a PCAB license as a Large "B" contractor. The records and evidence however, do not show that the other nine contractors in the DPWH list had valid PCAB licenses at the time of the bidding.[60]

Likewise, PEA divided the PDMB project into Package 1 and Package 2, for purposes of the simplified bidding without rational basis, as it merely chose the first five contractors in the DPWH list for the Package 1 bidding and the other half for Package 2. Package 1 covered the PDMB project consisting of that portion awarded to JD Legaspi. Package 2 consisted of the portion of the Central Boulevard in which PEA had a prior joint venture agreement with SM and R1 Consortium wherein the latter two developers had the option to construct, in exchange for land or bonds, their respective portions. Thus, those contractors for the Package 2 bidding were, from the start, disadvantaged on account of the great possibility that Package 2 could not be bid out because of the option given to SM and R1 Consortium. In turn, those contractors that were assigned for Package 1 were favored by PEA's arbitrary decision. This is because by just being listed ahead in the DPWH

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57 *Id.*
58 *Rollo* (G.R. No. 220500), vol. I, p. 192.
59 *Id.* at 192-193
60 *Id.* at 193.

list, they were certain to be able to bid and, in the case of JD Legaspi, win the award for Package 1. This alone gave undue advantage to the first set of contractors and prejudiced the second set.[61] JD Legaspi, which was second on the DPWH list, therefore gained an advantage or benefit, as it was able to bid and win Package 1, to the disadvantage of those contractors in the second set of the DPWH list and also those PCAB-accredited contractors in the latter's masterlist, who were not included in the DPWH list.[62]

The Sandiganbayan likewise found the lack of detailed engineering requirements, which must be submitted before any bidding. While Beriña, Jr. and Millan claimed that the project awarded to JD Legaspi was a design and build contract, the approved agency estimate did not include the design cost, which was pegged by PEA at PHP 13.5 million. Thus, the design plans should have been done before any bidding in order to arrive at an approved agency estimate. As part of the detailed engineering requirement, there should have been definitive soil foundation and investigation results for purposes of bidding. Furthermore, design was not mentioned in the scope of works in the Construction Agreement and Invitation to Bid in the award of the project to JD Legaspi. This was what PEA did with respect to its contract with R1 Consortium in connection with the Roxas Canal West Bridge, which is part of the Central Boulevard project. This was not however present in the contract with JD Legaspi.[63]

The Sandiganbayan also cited the Government Auditing Code that proscribes the making of any contract involving the expenditure of public funds unless there is an appropriation therefor.[64] In this case, PEA, at the time when the PDMB project was bid out, only provided a Board Resolution identifying the source of the fund. PEA hoped to secure loans in the amount of PHP 1 billion to finance the project. When the PEA Board approved the award of the contract to JD Legaspi on November 3, 1999, it identified the source of the PHP 584,365,885.05 cost of the project to be the PHP 1 billion loan facility from the Landbank/All Asia Capital group. However, the said loan was yet inexistent as it was still under negotiation at the time.[65] Further, at the time the JD Legaspi contract was signed, dated and notarized on April 10, 2000, only the amount of PHP 300 million was actually released and available from the proceeds of the Landbank loan. This was found to be in open defiance of one of the conditions imposed by the Office of the President that approval of the JD Legaspi contract should be preceded by "final approval and release of the loan proceeds from the Landbank and All Asia Capital."[66] The PEA Management even divided the contract into two

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61 *Id.*
62 *Id.* at 194.
63 *Id.* at 194-197.
64 *Id.* at 197-198.
65 *Id.* at 199.
66 *Id.*

phases: Phase I for works corresponding to the PHP 300 million available funds and Phase II covering the remaining works of the entire project. In the executed contract, however, it was clear that Phase II could be undertaken only if and when funds are made available again. This explicitly recognized and admitted that PEA did not have enough funds to finance the JD Legaspi contract at the time of its execution.[67]

The result was that PEA ran out of funds and could not pursue, as scheduled, the remaining works left to be funded. The PHP 300 million initial funds were depleted by October 15, 2000. Naturally, JD Legaspi filed a notice of suspension of work as his claims for payment could not be funded. PEA, thus, issued a Suspension of Work Order effective January 15, 2001, which was only lifted on June 14, 2002.[68]

Moreover, despite only having PHP 300 million initial funds for Phase I of the project, Beriña, Jr. recommended as early as July 5, 2000, or barely three months after the notice to proceed was issued to JD Legaspi, that the PEA Board approve Variation Order No. 2 consisting of the construction of the Inland Channel Bridge and the Seaside Drive Extension with a final cost of around PHP 126 million. These additional works were not part of JD Legaspi's original contract.[69]

PEA also violated the requirement that all extra works and price adjustments should be first submitted to the President for approval.[70] While PEA contended that this requirement only applied to extra work and not works for variation orders, the Sandiganbayan found that the requirement covered any kind of price adjustment, and not only those related to variation orders. This is because a variation order for additional work necessarily carries with it a price adjustment, and presidential approval of the Variation Order will implicitly carry approval of the price adjustment.[71] JD Legaspi was thereafter paid the amount of PHP 42,418,493.64 because of a contract price adjustment due to the late issuance of the Notice to Proceed, after the date of bidding. The Sandiganbayan found that no presidential approval was secured for this price adjustment, with PEA contending that only price adjustments arising from change orders had to be priorly approved.[72] By the terms of the Construction Agreement, however, PEA had to secure the OP's approval for any Variation/Change Order. As the Sandiganbayan declared, the contract was the law between the parties, binding on both of them.[73]

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67 *Id.*
68 *Id.* at 200.
69 *Id.*
70 *Id.* at 201.
71 *Id.* at 202.
72 *Id.* at 202--203.
73 *Id.* at 203.

Further, the Seaside Drive Extension under Variation Order No. 2 cannot legally qualify to be covered by a variation order because it was a road outside of the PDMB project and nowhere along the original PDMB roadway plan. It was, in fact, a roadway connecting PDMB and Roxas Boulevard.[74] As it was not part of the PDMB project, it could not legally be a variation order or a change order. PEA should have taken steps to include this road in the bidding for the PDMB project. As such, the Seaside Drive Extension that entailed a total cost of PHP 57,598,301.10 should have been bid out.[75]

Overall, the Sandiganbayan found the JD Legaspi contract to be overpriced. It held that overpricing should not be hinged on whether the cost of materials and labor, on a unit price basis, greatly exceeded the total contract price of PHP 584 million. Overpricing may also come into play when payments to a contractor are made beyond the total contract price arising out of irregular or unauthorized contract price adjustments and variation/change orders. [76] The overpriced amount, which comprised the adjustments in the amount of PHP 42,418,493.64 and the cost of the Seaside Drive Extension in the adjusted amount of PHP 57,598,301.10, total to PHP 100,016,794.74 that were paid to JD Legaspi.[77]

The liability of the petitioners was then described as follows:

> Liability of Beriña, Jr., Lacson, Millan, Viray and Zorilla (Members of PEA Management)
>
> Through their various positions, Millan and Beriña[, Jr.] and the other members of the *Ad Hoc* Committee, Lacson and Viray, clearly had the duty to be involved in the planning and execution of all PEA Projects, including the PDMB project and to ensure that the same complied with the law . . . their actions [however caused] damage to the government by awarding the PDMB project to Legaspi and paving the way for the approval of the price adjustment, variation orders and final bill of quantities despite the legal infirmities of the same.[78] Accused Zorilla, despite not being [a member of the *Ad Hoc* Committee, cannot be said to be without fault.] He prepared the Approved Agency Estimate for the PDMB project despite the lack of a detailed engineering . . . As per the law and common sense, a detailed engineering is a crucial part of formulating an Approved Agency Estimate.[79] (Emphasis in the original)

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74 *Id.* at 204.
75 *Id.* at 205.
76 *Id.* at 223.
77 *Id.* See also p. 242.
78 *Id.* at 225.
79 *Id.* at 226.

Liability of Amposta-Mortel

> Amposta-Mortel . . . was the Department Manager of the Legal Department of PEA[80] . . . and was to act as the legal adviser and therefore render advisory or legal opinion. It is incumbent upon her to recommend, draft and approve legal instruments involving PEA.[81] . . . [S]he herself was aware that there were not enough funds to cover the transaction. [T]hough she allegedly went over the initial Construction Agreement, as shown by her signature, her findings on the legality of its provisions or the compliance of PEA with the conditions imposed by the Office of the President were conspicuously absent, which only goes to show that either she purposely failed to do her job to review the contract, or she was negligent in her duties. Her argument that she only reviews matters which are brought to her attention showed her lackadaisical attitude towards her duties as Manager of the Legal Department.[82]

Liability of San Juan, Chan, Dayan, Malbarosa, Padilla, and Damaso (Members of the Old Board of Directors)

All the members of the Old Board are liable for the following:

1. Resolution No. 2032 dated November 3, 1999, approving the award of the contract to [JD] Legaspi, despite the absence of any appropriation or actual loan proceeds from Landbank/All Asia Capital.

2. Resolution No. 2057 dated December 15, 1999, covering the approval of the construction agreement despite insufficient funding. This resulted in PEA's inability to issue a notice to proceed within 120 days from bidding date, thus, enabling [JD] Legaspi to claim the contract price adjustment of over [PHP] 42 million.

3. Resolution No. 3017 dated July 5, 2000, approval of Variation Order No. 1 (later renumbered as Variation Order No. 2 under Resolution No. 3102), for lack of bidding on the Seaside Drive Extension which cannot be considered germane to the JD Legaspi agreement, the same not being part and parcel of the original Package 1 project.

4. Resolution No. 3102 dated April 26, 2001, in relation to Resolution No. 3017, allowing an increase on the cost of Variation Order No. 2, which included the Seaside Drive Extension.[83]

As to Villareal, Gerochi, Villanueva, Sanciego, Jr., and Tuazon (members of the new Board of Directors), they assumed their duties between March and July 2001 when the PDMB project was already under construction.[84] Unlike the Old Board, the new Board no longer had the

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80 *Id.* at 227.
81 *Id.* at 228.
82 *Id.*
83 *Id.* at 230.
84 *Id.* at 231.

opportunity to question the award and approval of the Construction Agreement with JD Legaspi.[85] While the contract price adjustment of more than PHP 42 million was irregular, the new Board's confirmation of the same cannot be taken as a conspiratorial act on their part. The claim of Legaspi was an offshoot of the belated issuance of the Notice to Proceed which was partly caused by PEA's inability to secure total funding for the PDMB project. Thus, the new Board had nothing to do with these deficiencies.[86]

With respect to Dela Paz, Layug, Mendoza, Pureza, Capistrano, and De la Rama (officers of the COA), their roles were limited to post-audit.[87] Moreover, the findings of COA officials that the total project cost, including the price adjustments, was reasonable and not overpriced were affirmed by subsequent COA Special Audit Report.[88] De la Paz failed to consider that even as an observer, she should have noted and included in her report that the contract for the project was awarded to JD Legaspi even before the funds for the project was available. Nevertheless, such negligence, by itself, does not prove conspiracy with JD Legaspi. Given that she referred the contract and variation orders to the Technical Services Office and gathered positive findings from the same, it can be said that she fulfilled her duties albeit to a less than ideal degree.[89]

As to JD Legaspi, the Sandiganbayan found no conspiracy in the award of the PDMB Project.[90] However, as to the contract for the Seaside Drive Extension, it found that Legaspi pushed for the variation order, which was not part of the original contract and claimed for overruns that resulted into the final bill for the project that is 43% higher than the original contract price. PEA Management would not have presented the same to the Old Board had JD Legaspi not submitted documents pertaining to the possibility of constructing the same as a change order to the original Construction Agreement, thereby violating all the public bidding rules already in place.[91]

Further, the Construction Agreement obligated JD Legaspi to carry out additional work only upon receiving written approval from the President. However, despite the lack of this written approval, JD Legaspi started and finished Variation Order No. 2. The Notice to Proceed for Variation Order No. 2 was issued only on July 19, 2002 but the project was allegedly

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85 *Id.*
86 *Id.* at 233.
87 *Id.* at 237.
88 *Id.* at 238.
89 *Id.*
90 *Id.* at 238–239
91 *Id.* at 239.

finished sometime in July 2002 and was opened to the public on July 15, 2002.[92]

Those found liable for violation of R.A. No. 3019 were also found civilly liable for the amount of PHP 100,016,794.74.[93]

Several motions for reconsideration were filed, which were resolved by the Sandiganbayan in its Joint Resolution[94] dated September 16, 2015. In this Resolution, the Sandiganbayan maintained its findings of criminal liability but increased the civil liability of the members of the Old Board and PEA Management to include the overruns of Variation Order No. 1 amounting to PHP 67,982,609.07,[95] involving changes mainly on the thickness of pavement structures, number of layers of geotextile/geogrid materials, and the type of drainage system (from reinforced concrete pipe culvert to reinforced concrete box culvert).[96] The Sandiganbayan also included the overruns for the Inland Channel Bridge under Variation Order No. 2 in the amount of PHP 5,441,470.39.[97] There was thus an additional civil liability in the amount of PHP 73,424,079.46[98] and the total civil liability was increased to PHP 173,440,874.20.[99]

These were included because the extra quantities claimed by JD Legaspi as overruns were actually foreseeable and determinable had there been a detailed engineering before the PDMB project was bid out. Part of the detailed engineering activities is soil and foundation investigation.[100] They are not in the nature of conditions that are not known or cannot be predicted at the time the quantities are prepared.[101] The additional amount cannot however be charged against JD Legaspi since detailed engineering is a requirement prior to bidding. The guilt of JD Legaspi was limited only to the Seaside Drive Extension where this Court found an implied conspiracy.[102]

On the other hand, the Inland Channel Bridge is differently situated from the Seaside Drive Extension, although both were claimed by JD Legaspi and approved by the Board under Variation Order No. 2. The Inland Channel Bridge was necessary because without it, the PDMB Project would be useless as there would be a gap between the segment built by JD Legaspi

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92 *Id.*
93 *Id.* at 242.
94 *Id.* at 328–384.
95 *Id.* at 377.
96 *Id.*
97 *Id.*
98 *Id.*
99 *Id.* at 384.
100 *Id.* at 377–378.
101 *Id.* at 377.
102 *Id.* at 378–379.

and R1 Consortium unlike the Seaside Drive Extension that was outside the PDMB project.[103] The civil liability of JD Legaspi was then limited to the Seaside Drive Extension in the amount of PHP 57,598,301.10.[104]

Hence, the instant Petition.

Issues

The common issues brought forth by petitioners are as follows:

> I.
> Whether the Sandiganbayan erred in finding petitioners guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019
>
> II.
> Whether Amposta-Mortel and the members of the Old Board of PEA and the PEA management should be held civilly liable in the amount of PHP 173,440,874.20 for the irregularities that accompanied the construction of the PDMB Project
>
> III.
> Whether JD Legaspi should be held civilly liable to pay the amount of PHP 57,598,301.10 for the construction of the Seaside Drive Extension under Variation Order No. 2

Pertinent arguments raised by petitioners are as follows:

G.R. No. 220500

Amposta-Mortel argues that while one of her functions is to direct the preparation and review of all contracts and other legal instruments to which PEA is a party, there are some unwritten rules and policies that her office has been practicing even before her assumption to office as Head of Legal Department. She explained that the General Manager of PEA is clothed with power and prerogatives to decide and appoint individuals to whom he would

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103 *Id.* at 379.
104 *Id.* at 384.

like to assist him with the projects. Thus, he created an *Ad Hoc* Committee for this particular project.[105]

In turn, the actions of the *Ad Hoc* Committee were submitted to the PEA General Manager and approved by the Governing Board and the Office of the President. Amposta-Mortel claimed that there was no directive on the part of the lawyer assigned in the *Ad Hoc* Committee, Atty. Enriquez, to submit the contract to the Legal Department, which she heads, for her review before it was made part of the bid documents and before it was approved by the Board.[106]

Moreover, at the time when Amposta-Mortel was called upon to review the written contract, the PDMB project was already a done deal. The contract has been previously signed by Doble, in his capacity as the General Manager of PEA, and Jesusito Legaspi, as owner of JD Legaspi, the winning contractor, albeit it was submitted for review to the Office of the President and the Office Government Corporate Counsel (*OGCC*).[107]

With respect to the availability of funds, Amposta-Mortel argued that she relied on Board Resolution No. 2032, series of 1999, which stated that the contract amount needed for the project is chargeable against the proceeds of the PHP 1 billion loan from LandBank/All Asia Capital. However, she was not aware how much was the actual available funds for the project at the time she affixed her initials in the contract. [108]

As to the variation orders and other requests for payments that were submitted and approved after the execution of the contract and during the implementation of the project, it was only Variation Order No. 1, which entailed additional works to the Central Boulevard at no additional costs, that was referred to her for review. Even then, she gave her legal opinion that Variation Order No. 1, even if it does not entail additional costs, would have to be submitted for approval to the Office of the President pursuant to the conditions imposed by the said Office.[109]

Amposta-Mortel insists that she is not a member of the *Ad Hoc* Committee tasked to implement the project and did not have a hand in its creation. All actions of the *Ad Hoc* Committee were submitted to the General Manager without having been referred to her for legal opinion. Moreover, she reviewed the Construction Agreement after the same had

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105 *Id.* at 84.
106 *Id.* at 85.
107 *Id.*
108 *Id.* at 86.
109 *Id.*

undergone separate reviews by the OGCC and the Office of the President, and only after the General Manager asked her to do so before the parties signed the same anew.[110] She also cited the Decision dated May 30, 2008 rendered by the Office of the Ombudsman, where she was absolved from administrative liability based on the same allegations in the criminal complaint subject of the instant petition.[111]

G.R. No. 220504

On the part of Lacson, he argues that in rendering its Decision, the Sandiganbayan relied heavily on the pieces of evidence presented by the prosecution and thereafter found him guilty because he was a member of the *Ad Hoc* Committee, which recommended the award of the project to JD Legaspi after a series of due diligence all in pursuance to law.[112]

Lacson claims that he did not participate in the preparation of the minutes or the deliberation on the approval of various resolutions. Further, the prosecution's witness, Atty. Karen Villamil,[113] stressed on re-cross examination that Lacson, who is part of management, has not signed any memoranda directing the Board to act on anything or to issue a resolution.[114]

Lacson argues that he simply performed his duties as a member of the *Ad Hoc* Committee. He signed the Abstract of Bids attesting to the results of the bidding, which was likewise signed by the COA representative. Also, he signed the Bid Evaluation Report that described the bidding process; the request to the DPWH for a list of qualified contractors for roads and bridges with large "B" and triple "AAA" license category; the pre- and post-qualification evaluation report of bidders; and the recommendation to award the PDMB Project to JD Legaspi as the lowest complying bid pursuant to P.D. No. 1594 and its IRR. The recommendation was approved by the General Manager, and attached it to a memorandum to the Board, which likewise approved the same. After all of the foregoing and at that point in time, the functions and responsibilities of Lacson in the *Ad Hoc* Committee have ceased to exist.[115]

Lacson further explained that in compliance with the requirement to source participants in a "simplified public bidding" from the separate masterlist to be prepared by the PCAB, Atty. Enriquez, a member of the *Ad*

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110 *Id.* at 94–95.
111 *Id.* at 92, 94–95.
112 *Rollo* (G.R. No. 220504), vol. I, p. 26.
113 Former PEA Chief Corporate Counsel and current PEA Corporate Secretary.
114 *Id.* at 27.
115 *Id.* at 28–29.

Hoc Committee, reported that this "separate masterlist" was not yet available then. Instead, he was furnished with a copy of a general masterlist of PCAB in the NCR containing hundreds of listed contractors with their respective PCAB category/license.[116] The problem then was how to narrow down the list of pre-qualified bidders to achieve the objective of conducting a "simplified public bidding" as approved by the Office of the President. To use the general masterlist obtained by Atty. Enriquez could be unwieldy and militate against the presidential instructions to immediately have the PDMB Project available to the public. Hence, the Chairman of the *Ad Hoc* Committee decided to seek the help of the DPWH for a list of PCAB contractors with large "B," triple "AAA" category/license for roads and bridges since this is the nature of the PDMB Project.[117]

Moreover, the COA gave its clearance to the PDMB original contract price of PHP 584 million, and considered it reasonable. This means that the approved agency estimate, which was derived from the bid plans, including the detailed engineering component, was quite reasonable and accurate. One cannot have an acceptable approved agency estimate without a sufficiently detailed engineering. Furthermore, the clustering of the five responsive bids within the allowable thresholds or range of values prescribed in the implementing rules of P.D. No. 1594 shows that the requirement of detailed engineering was substantially complied with.[118]

With respect to the issue of funding, Lacson argues that the provisions of P.D. No. 1594 and its IRR state that in the process of bidding and recommending award for the project, it is merely required to pinpoint the source of funding. This was complied with under Board Resolution No. 1895, series of September 28, 1998 approving the PDMB project and pinpointing its source of funding, i.e., PHP 1 billion loan from financial institutions, which the General Manager was authorized to negotiate. This was followed by Board Resolution No. 1959, series of 1999 when the Board approved the terms and conditions of the above loan/security from LandBank/All Asia Capital as Financial Advisor and Arranger on April 5, 1999. The above documents were already in existence before the creation of the *Ad Hoc* Committee in April 1999.[119]

Lacson further claims that he has nothing to do with Variation Order No. 2. There is no evidence, either testimonial or documentary presented, wherein he participated, discussed, endorsed or even initialed or signed any notes or memorandum recommending the approval of Variation Order No. 2 to the Board. All the prosecution witnesses, as well as the defense witnesses,

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116 *Id.* at 30.
117 *Id.*
118 *Id.* at 34.
119 *Id.* at 35.

including their respective documents have never even hinted of Lacson's involvement in such matters as price adjustment, Variation Order Nos. 1 to 5, price escalation, extra works, charge orders, bill of quantities, overruns/underruns, etc. After all, Lacson is a non-technical or non-engineering person who does not possess the expertise or training in infrastructure contract implementation. Most important, the *Ad Hoc* Committee ceased to exist after the recommendation was made. Variation Order No. 2 was agreed when Lacson's participation in the PDMB Project became nil.[120]

G.R. Nos. 220505, 220552, 220568, 220580 & 220592

As to the liability of the members of the Old PEA Board, the Sandiganbayan found them criminally liable for violation of Section 3(e) of R.A. No. 3019, holding that their acts constitute gross negligence, characterized by the want of even slight care, in reference to passing the following Board Resolutions:

> a. Resolution No. 2032 dated 3 November 1999, approving the award of the contract to [JD] Legaspi Construction;
>
> b. Resolution No. 2057 dated 15 December 1999, covering the approval of the construction agreement;
>
> c. Resolution No. 3017 dated 5 July 2000, approving Variation Order No. 1 (later renumbered as Variation Order No. 2 under Resolution No. 3102); and
>
> d. Resolution No. 3102 dated 26 April 2001, approving the increase in the cost of Variation Order No. 2.[121]

The members of the Old PEA Board argue that preceding the approval of Resolution No. 2032 dated November 3, 1999 is no less than two Administrative Orders (Nos. 176 and 224) and a Presidential Memorandum dated October 16, 1998 on prioritizing Boulevard 2000 as a flagship project. They claim that as far back as September 28, 1998, they simply directed the PEA Management to seek financing for the road construction project; and on April 22, 1999, to request the Office of the President for authority to conduct simplified public bidding, which request was found meritorious and thus granted by the said Office.[122]

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120 *Id.* at 37.
121 *Rollo* (G.R. No. 220580), vol. I, pp. 53-54.
122 *Id.* at 55.

Even before the questioned award of the contract to JD Legaspi under Board Resolution No. 2032 was passed, the members of the Old PEA Board, under Resolution No. 2017 series of 1999, already approved a PHP 1 billion loan facility from LandBank/All Asia Capital. This was no more and no less than an actual credit facility from LandBank set in place by the members of the Old PEA Board for the funding of the PDMB Project, among others, pursuant to the previous PEA Board's own directive to PEA Management to seek such financing as of one year before.[123]

Thus, they argue that when the PEA Management subsequently recommended in its Memorandum dated October 21, 1999 containing the approval of the award of the construction contract to JD Legaspi as the lowest complying bidder under the simplified bidding process, there was no legal obstacle to the transaction, especially considering that PEA had already appropriated the contract amount against the LandBank loan of PHP 1 billion for the purpose of seeing the project through. Hence, the members of the Old PEA Board believed in all good faith that the necessary measures and requirements were in place and complied with, and nothing criminal whatsoever attended their acts.[124]

With respect to Resolution No. 2057 dated December 15, 1999, the approval of the construction agreement between PEA and JD Legaspi, as the records would bear out, was based on the PEA Management Memorandum dated December 14, 1999 recommending Board Approval of the contract. Relying on good faith on this recommendation, the Old PEA Board approved the proposed corporate measure. Subsequently, it likewise approved the bridge financing of PHP 300 million under Board Resolution No. 2060, series of 2000 as part of the PHP 1 billion loan package from LandBank. As before, these were straightforward business decisions made by the Old PEA Board as a policy-making body based on the facts laid out before it by the PEA Management.[125]

As to Resolution No. 3017 dated July 5, 2000 approving Variation Order No. 1 (later renumbered to Variantion Order No. 2), the decision of the Old PEA Board to pass the same was based on information provided by PEA Management. As stated in the PEA Management's Memorandum dated June 27, 2000, the Seaside Drive Extension and proposed bridge connecting Central Business Park (*CBP*) II and CBP I B and C were necessary components to complete the road construction project. The approval, as contained in the Board Resolution, was also made expressly "subject to

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123 *Id.* at 56.
124 *Id.*
125 *Id.*

existing accounting auditing rules and regulations and to the following conditions, to wit:

> a. Payment will be made only on actual quantities completed based on the approved detailed plans and applicable unit bid prices and agreement prices (on new items of work)
>
> b. No time extensions will be associated on these additional works
>
> c. Final approval of the Office of the President
>
> d. Actual release of the loan proceeds from Land Bank."[126]

As to Resolution No. 3102 dated April 26, 2001 on the updated costs of the works covered by the original Variation No. 1 (renumbered as Variation Order No. 2) based on the detailed plans in the total amount of PHP 124,440,810.20, the same was also the subject of PEA Management Memorandum dated March 21, 2001, recommending approval of the updated costs. In approving the said Variation Order, the Old PEA Board, in addition to the previous conditions it imposed under Board Resolution No. 3017, further required that the implementation of Variation Order No. 2 be made subject to the provisions of P.D. No. 1594, while the appropriation of the difference resulting from the updated cost thereof must be made subject to existing accounting and auditing rules and regulations.[127]

The members of the Old PEA Board further maintain that Section 86 of P.D. No. 1445[128] merely requires that the certification as to availability of funds must state that "the amount necessary to cover the proposed contract for the current year is available for expenditure." It does not require the certification to state that funds are available for the entire project when the same will encompass more than one fiscal year. They cite Department of Justice Opinion No. 174, series of 1989, which states:

> However, in cases where the term of the contract extends beyond the year of its execution, such certification shall cover only the portion pertaining to the current year. Stated differently, the law lose (sic) not require in a multi-year contract that the certification of available funds should likewise cover the period exceeding the year the contract was executed.[129]

In the case at bar, the subject Construction Agreement, although fixed for a period of 360 days, straddles two fiscal years, the contract having been

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126 *Id.* at 56–57.
127 *Id.* at 57.
128 Government Auditing Code, June 11, 1978.
129 *Rollo* (G.R. No. 220580), vol. I, p. 77.

executed on April 10, 2000. The Certificate of Availability of Funds in the amount of PHP 300 million was thus compliant with the law and rules as the expected expenditures for the current fiscal year at the time the contract was executed was not expected to exceed said amount.[130]

Further, while the introduction of works for the Seaside Drive Extension was not included in the original contract, its addition was within the general scope of the PDMB Project as bid and awarded. Said provision merely requires that the scope of works in the proposed variation order must be related to the same general scope of works in the original project as bid and awarded. The scope of works in the construction of the Seaside Drive Extension is similar to the works undertaken in the original contract.[131]

Furthermore, they argue that payments were made after the approval of National Economic and Development Authority, which was approved during the term of the New PEA Board, and not of the Old PEA Board. Yet, the Old PEA Board was held liable for the payment on costs which its members had no knowledge of, had not reviewed and approved, and had absolutely no control over.[132]

G.R. No. 220532

In their Petition, Beriña, Jr., Millan, Viray, and Zorilla averred that the list of contractors submitted by the DPWH are contractors with Inter-Agency classification of large "B" and license classification of triple "AAA." As such, they are necessarily accredited by the PCAB because it is the body that accredits and classifies the licenses of contractors.[133] By securing the list of contractors from the DPWH for purposes of simplified public bidding, PEA was assured that the contractors participating in the simplified public bidding would be qualified and competent to undertake the PDMB Project.[134] Moreover, the splitting of the ten contractors for Package 1 and Package 2 of the PDMB Project is no proof that they were ill-motivated as they did so precisely to avoid a single contractor winning both packages.[135]

Further, they explained that all the requirements for the detailed engineering were done first hand, except for soils and foundation investigation which were based on existing data from comparative areas,

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130 *Id.* at 77.
131 *Id.* at 83.
132 *Id.* at 85.
133 *Rollo* (G.R. No. 220532), vol. I, p. 282.
134 *Id.* at 284.
135 *Id.*

particularly the SM segment, R1 Consortium segment, and actual test conducted along Uniwide Coastal Mall.[136] They also claimed that the bid document furnished to all prospective bidders contained preliminary designs and studies based on comparative data available for bidding purposes, hence, the need for the winning bidder to validate said data.[137]

They add that PEA is a government-owned and controlled corporation that generates its own funds from its operations, and is not dependent upon Congress for funds. In the case of the PDMB Project, its funding was made available through loans obtained by PEA for that purpose, which incidentally have already been fully paid years ago. Thus, there was no risk that PDMB Project would not be completed as a consequence of the phasing of the project because PEA had its own assets, revenues, and other sources of funding to pay, as it did, for the construction of the project.[138]

Further, P.D. No. 1594 does not limit the subject of a variation order only to items that are included in the original contract as awarded. It allows a contractor to be awarded a variation order in the form of an extra work order for introducing work items that are not included in the original contract, so long as the works are merely for the completion of the project and the aggregate amount thereof does not exceed 25% of the escalated original price.[139] P.D. No. 1594 also allows a negotiated contract where a variation order is adjacent or contiguous to an ongoing project and could be economically prosecuted by the same contractor. From the ground and aerial sketches, the Integrated Framework Plan and the present Google image of the President Diosdado Macapagal Boulevard, the Seaside Drive Extension as well as the Inland Channel Bridge are adjacent and/or contiguous to JD Legaspi's PDMB Project.[140]

They also argue that the acts found by the Sandiganbayan were merely recommendatory in nature and subject to the approval of the PEA General Manager and the Board of Directors. Thus, all the functions of the *Ad Hoc* Committee, of which Beriña, Jr. and Viray were members; of the Planning Task Force, of which Viray was Chairman with Zorilla and two other engineers as members; and of the Construction Task Force of which Millan was Project Director, Viray as Project Manager, Zorilla as Resident Engineer and two other engineers as members — all involved in submitting proposals and recommendations for the approval of the PEA General Manager and Board of Directors.[141]

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136 *Id.* at 292.
137 *Id.* at 295.
138 *Id.* at 304.
139 *Id.* at 338.
140 *Id.* at 339–340.
141 *Id.* at 344–345.

G.R. No. 220587

In his Petition, Legaspi argues that the Sandiganbayan arrived at a conclusion of his overt act in the implied conspiracy for violation of Section 3(e) of R.A. No. 3019 for suggesting, proposing, pushing for, and submitting documents pertaining to the construction of the Seaside Drive Extension as a Change Order based on the Sworn Affidavit dated September 23, 2002 attached to Tuazon's counter-affidavit, which the Sandiganbayan took judicial notice of.[142]

Legaspi however claims that the Sandiganbayan contravened law and jurisprudence in concluding that the aforesaid Sworn Affidavit was admissible and may be taken judicial notice of considering that (i) it was not formally offered by the prosecution or the defense; (ii) there was no prior motion and hearing for its admission or judicial notice; (iii) the affiant was never presented in court; and (iv) the Sworn Affidavit is immaterial to the charges against him as it actually pertained to the Bay Boulevard, a project unrelated, and different from, the Seaside Drive Extension.[143] Paragraph 4 of the Sworn Affidavit expressly states that it refers to the "Bay Boulevard Project" and not to the Seaside Drive Extension project, to wit:[144]

> 4. On 3 May 2001, JDLC submitted to PEA a proposal to do the Bay Boulevard Project which is adjacent/contiguous to the Central Boulevard Project and which is intended to connect Central Boulevard with Roxas Boulevard. The PEA Management recommended to the PEA Board the approval of this proposal sometime at the end of May 2001.[145]

The differences between these projects were further outlined by Legaspi as follows:[146]

Disparities	Subject of Conviction	Subject of Sworn Affidavit
Names	Seaside Drive Extension	Bay Boulevard
Locations	Connects to NAIA Road	Connects to Buendia Avenue (now Gil Puyat Ave.), 3,820 meters from the Seaside Drive Extension
Contract costs	₱57.598,301.10	₱281,703,812.93

142 *Rollo* (G.R. No. 220587), vol. I, p. 30.
143 *Id.* at 31–32.
144 *Id.* at 32.
145 *Id.*
146 *Id.* at 32–33.

Date of Proposal	PEA Management Memorandum to the Board, recommended approval of Seaside Drive Extension on June 27, 2000; PEA Board approved the Seaside Drive Extension on July 5, 2000, via Board Resolution No. 3017.	According to paragraph 4 of the Sworn Affidavit: Alleged proposal was submitted on May 3, 2001, about a year after the Seaside Drive Extension was already approved.[147]

Legaspi likewise argues that the proposal, which he allegedly made, was neither charged in the Information nor put in issue during trial. Otherwise, Legaspi or the other accused would have been given the opportunity to present evidence to the contrary. He cited that Beriña, Jr. admitted in his Memorandum dated June 27, 2000 that he was the one who requested for the approval of the Seaside Drive Extension, as it would "facilitate the flow of traffic at the Seaside Drive Extension," and that "it is deemed necessary to complete the construction of the proposed Seaside Drive Extension (connecting Roxas [Boulevard] and Central [Boulevard])..." This was never rebutted by the prosecution.[148] Furthermore, Millan himself admitted that while JD Legaspi's firm was in the process of designing the PDMB Project, there was also an instruction from the PEA Management to include the Seaside Drive Extension and the bridge.[149]

Legaspi added that it was then President Estrada himself who directed that the "road project including appurtenances be completed on or before April 2001."[150] This was stated in the letter dated May 3, 2000 of Carlos P. Doble, as former PEA General Manager, to Legaspi. Pursuant to then President Estrada's directive, PEA requested the submission of quotations for, *inter alia*, the construction of the Seaside Drive Extension and the Bay Boulevard. Clearly, it was PEA Management, through Doble, which initiated and pushed for the construction of the Seaside Drive Extension.[151]

Legaspi further claimed that in the subject criminal information, he and the other accused were charged with "approving/allowing several improper variation/change orders and overruns to be implemented without the requisite presidential approval and the appropriate funds" and "allowing and paying or causing the allowance and payment of several claims of Legaspi for variation orders, overruns, and other claims even when the same were clearly improper, illegal and without the requisite presidential approval,

147 *Id.* at 32–33.
148 *Id.* at 39–40.
149 *Id.* at 40.
150 *Id.*
151 *Id.* at 40.

thereby paving the way for Legaspi to claim and receive undue payments from the Government totaling millions of pesos in overprice."[152] However, he was convicted for pushing, suggesting, and proposing the award and implementation of the Seaside Drive Extension, which was void for not being part of the original project as bid and awarded to him, and not for implementing the Seaside Drive Extension despite the lack of a Notice to Proceed and Office of the President's approval, and for submitting the Variation Order for the Seaside Drive Extension to the Board a mere 78 days after the Construction Agreement was signed.[153] He then cited the case of *Burgos v. Sandiganbayan*, where there was a stark variance between the allegation in the information and proof adduced during trial with respect to the means of committing violation of Section 3(e) of R.A. No. 3019, as in this case, that Legaspi spearheaded the implementation of the Seaside Drive Extension, and that said road cannot be awarded through a variation order. However, Legaspi was charged in the Information with implementing the variation orders and overruns despite lack of approval from the Office of the President.[154]

Legaspi adds that it was pursuant to Memorandum Circular No. 25 issued on February 10, 1999, which served as a basis for the requirement of presidential approval, and prompted then Executive Secretary Zamora to require all extra works and price adjustments to be submitted to the president. It requires that the project must have been awarded and approved by the head of the agency. Thus, the approval of the president will only be sought after the Head of the Procuring Entity, which is the PEA Board, has signed its approval for the project. Beriña, Jr. and Millan were thus not required by law or by the terms of the contract to await prior presidential approval before recommending the award of the Seaside Drive Extension to Legaspi.[155]

He adds that no presidential approval was required for the implementation of the works under Variation Order No. 2 because Executive Order No. 109, issued on May 27, 2002, removed the requirement of presidential approval when it expressly repealed Memorandum Circular No. 25. Due to the express repeal of Memorandum Circular No. 25, the approval of the Variation Orders shall be governed by the provisions of P.D. No. 1594. Section 1, CI-3, Chapter III thereof provides that "Under no circumstances shall a contractor proceed to commence work under any Change Order, Extra Work Order or Supplemental Agreement unless it has been approved by the Secretary or his duly authorized representative." Thus, he argues that upon the effectivity of Executive Order No. 109 on May 27, 2002, the

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152 *Id.* at 42.
153 *Id.* at 42–43.
154 *Id.*
155 *Id.* at 48–49.

approval of the President was no longer necessary for the implementation of Variation Order No. 2.[156]

Consolidated Comment

In its Consolidated Comment[157] dated June 15, 2017, the Office of the Special Prosecutor argued that the petitions filed by Lacson and the members of the Old PEA Board failed to indicate the material dates of their receipt of the notice of the assailed February 5, 2015 Decision in violation of Sections 4(b) and 5 of Rule 45 of the Revised Rules of Court.[158] They also argue that the petitioners' call for the re-examination of the factual findings of the court *a quo* are thus improper in an appeal by *certiorari* under Rule 45 of the Rules of Court.[159]

They add that the pre-requisite presidential approval was expressly mentioned in the Memorandum dated January 29, 2000 issued by then Executive Secretary Zamora and was expressly carried over to the Construction Agreement signed on April 10, 2000 which contained provisions embodying the conditions that "adjustment of contract price due to escalation shall be effected in accordance with P.D. No. 1594 and its IRR, upon written agreement of the parties and subject to availability of funds" and "changes in the schedule and work required shall be made...upon the written consent of the parties... and approval of the President." In this case, the variations and changes have all reached the implementation stage albeit the absence of such presidential approval.[160]

While Executive Order No. 109 expressly repealed Memorandum Circular No. 25, the required presidential approval, did not do away with the necessary clearance from the president for the following reasons: (a) Executive Order No. 109 speaks of government contracts, not contract price adjustments; (b) Variation Order No. 2 was processed for approval even before Executive Order No. 109 came into effect. The PDMB was inaugurated on April 5, 2002 whereas Executive Order No. 109 was issued only on May 27, 2002; (c) The Office of the President's Memorandum dated January 29, 2000, which approved the Construction Agreement, subject to certain conditions, expressly states that all extra works and price adjustments should first be submitted to the president for approval; and (d) Article 8 of the Construction Agreement, which is the law between the parties, expressly

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156 *Id.* at 50.
157 *Rollo* (G.R. No. 220568), vol. I, pp. 272-326.
158 *Id.* at 294.
159 *Id.* at 296.
160 *Id.* at 302.

requires presidential approval for any change order and/or additional work.[161]

They also argue that simplified public bidding dispenses only with the requirements of publication/advertisement and posting. It does not include an authority for the Bids and Awards Committee or any *Ad Hoc* Committee for that matter to secure the list of qualified contractor-bidders from other organizations, or any other government agency. Thus, when PEA's *Ad Hoc* Committee, of which petitioners are members, obtained the list from DPWH Special Buildings Project Management Office, whose area of responsibility was vertical construction buildings, it blatantly violated the law.[162]

Further, the members of the *Ad Hoc* Committee doubly violated the rules of procurement when they arbitrarily divided the list of accredited contractor-bidders into two groups, one group to bid in Package 1, and another to bid in Package 2. This situation resulted in the award of the project to JD Legaspi, to the disadvantage of contractors in the second set of the DPWH list and those contractors who are PCAB-accredited but were not included in the DPWH list.[163]

There was also no actual soil boring test conducted on the site to be developed. As a result, the estimates in the detailed engineering was not based on the actual conditions of the site to be developed but was drawn from an assumption of available data from the adjacent areas.[164]

The Bid Plans and even the approved agency estimate, by themselves, do not prove that a detailed engineering and survey had been conducted. The prosecution has shown that no other documentation of the alleged engineering plan exists so much so that the said bid plans and agency estimates become questionable for having no basis at all.[165]

Further, there were no sufficient funds when the project was bid out and awarded to JD Legaspi.[166] The best evidence of the sufficiency of funds for the project would have been a document or testimony from the Landbank/All Asia Capital, confirming the approval of the PHP 1 billion loan facility. However, the best that they could muster was a Certification

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161 *Id.*
162 *Id.* at 308.
163 *Id.* at 308-309.
164 *Id.* at 310.
165 *Id.* at 311.
166 *Id.*

dated May 3, 2000 issued by LandBank's' Assistant Vice President, confirming that the PEA had a PHP 300 million short term loan line facility.[167]

The Office of the Special Prosecutor maintains that the construction of the Seaside Drive Extension was illegal. Geographically, the Seaside Drive Extension is located outside the roadway plan for the PDMB project. On the other hand, the Inland Channel Bridge is located along the stretch of the project and necessary to connect two segments of the road separated by a creek. These additional works are both the subject of Variation Order No. 2[168] which was approved despite the illegality of the construction of the Seaside Drive Extension.

Petitioners thereafter filed their corresponding Reply,[169] reiterating their positions.

This Court's Ruling

We shall first address the procedural issues raised by the Office of the Special Prosecutor.

Contrary to its claim that the members of the Old PEA Board failed to indicate the date of receipt of the assailed Decision, a reading of the Joint Petition would show that they made an allegation that the Sandiganbayan read the dispositive portion of the assailed Decision in open court.[170] Necessarily, the date when the Sandiganbayan read the dispositive portion of its Decision that was promulgated on February 5, 2015, is also the date when they received the aforesaid decision. They thereafter filed a motion for reconsideration within the 15-day period, and stated in their Joint Petition the date when they respectively received the Joint Resolution denying their motion for reconsideration. As alleged:

> 11.1 On 28 September 2015, Petitioners Padilla and Dayan were separately served copies of the Joint Resolution through their respective counsels.
>
> 11.2 On 30 September 2015, Petitioners Chan, Damaso and San Juan were separately served copies of the *Joint Resolution* through their respective counsels.[171] (Emphasis in the original)

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167 *Id.* at 312.
168 *Id.* at 313.
169 *Id.* at 328–340.
170 See *rollo* (G.R. No. 220505), vol. I, p. 10.
171 *Rollo* (G.R. No. 220568), vol. I, p. 21.

Lacson, also made the following narration:

> From the date of receipt by petitioner of the Joint Resolution on September 28, 2015 denying his motion for reconsideration, he filed a Motion for Extension of Time to file a Petition for Review on [*Certiorari*] seeking for a Thirty (30) days on October 9, 2015, or up to and until November 12, 2015.[172] (Emphasis supplied)

It must be remembered that the purpose of requiring the date of receipt of the assailed decision and resolution in a petition is to determine its timeliness. In this case, the dates described by petitioners were sufficient for this Court to determine that the petition was indeed filed on time.

The Office of the Special Prosecutor also assails the allegations of petitioners claiming that they failed to comply with the requirement under Rule 45 of the Rules of Court for which only questions of law may be raised.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[173] In this case, the actions taken by petitioners and how the PDMB Project was awarded to JD Legaspi was no longer disputed. Rather, it is the applicability of the provisions of the law that were cited by the Sandiganbayan, ultimately concluding a violation of Section 3(e) of R.A. No. 3019, upon which the issues raised by petitioners revolved.

Further, as a rule, findings of fact of the Sandiganbayan, as a trial court, are accorded great weight and respect. However, in cases where there is a misappreciation of facts, this Court will not hesitate to reverse the conclusions reached by the trial court. At all times, this Court must be satisfied that in convicting the accused, the factual findings and conclusions of the trial court meet the exacting standard of proof beyond reasonable doubt. Otherwise, the presumption of innocence must be favored, and exoneration must be granted as a matter of right.[174] As such, the instant case must be carefully scrutinized to ensure that indeed, the exacting standard of proof beyond reasonable doubt has been met.

Now on the merits.

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172 *Rollo* (G.R. No. 220504), vol. I, p. 11

173 *Tongohan Holdings and Dev't. Corp. v. Atty. Escano, Jr.*, 672 Phil. 747, 756 (2011) [Per J. Mendoza, Third Division], citing *Rep. of the Phils v. Malabanan*, 646 Phil. 631, 637 (2010) [Per J. Villarama, Jr., Third Division].

174 *Macairan v. People*, G.R. Nos. 215104, 215120, 215147, 215212, 215354-55, 215377, 215923 & 215541, March 18, 2021 [Per J. Caguioa, First Division] at 20. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

The Sandiganbayan summarized its basis for convicting petitioners for violation of R.A. No. 3019 as follows:

> a. Violating the simplified bidding rules because they shortlisted bidders not based on the PCAB master list;
>
> b. Conducting the bidding and recommending the award to accused Legaspi without detailed engineering in violation of P.D. 1594 and without the required appropriation and actual availability of funds for the total contract price;
>
> c. Creating and confirming the artificial phases in the Construction Agreement and dividing the contract into Phase I and Phase II just to enable PEA to circumvent the requirement under P.D. No. 1445 about funding requirements. In the case of Mortel. . .
>
> d. In the case of accused Beriña[, Jr.] and Millan, recommending the approval of Variation Order No. 2 and the contract price adjustment, and the payment thereof, without the required presidential approval and in violation of P.D. No. 1594;
>
> e. In the case of San Juan, Chan, Dayan, Malbarosa, Padilla and Damaso, for approving and confirming the Legaspi contract without sufficient funding and the Seaside Drive Extension without public bidding;
>
> f. In the case of Legaspi, for conspiring with Beriña[, Jr.] and Millan in having the Seaside Drive Extension contract awarded to him under a negotiated contract.[175]

At the outset, it must be clarified that a violation of the law and rules of procurement does not automatically equate to a violation of R.A. No. 3019. As explained in *Sabaldan v. Office of the Ombudsman*:[176]

> [E]ven granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.[177]

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175 *Rollo* (G.R. No. 220587), vol. I, pp. 212–213.

176 G.R. No. 238014, June 15, 2020 [Per J. Reyes, J. Jr., First Division].

177 *Id.* at 7–8. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

Thus, despite findings for violation of the procurement law, it is the elements comprising R.A. No. 3019 that must be materially proven, especially that an information charges a criminal offense, as defined by R.A. No. 3019, and not by P.D. No. 1594 or R.A. No. 9184.[178] These elements were further elaborated in *Chung v. Ombudsman*[179] as follows:

> By the very language of Section 3, paragraph (e) of RA 3019, which defines "corrupt practices of public officers," the elements of manifest partiality, evident bad faith, and gross inexcusable negligence and of giving unwarranted benefit, advantage or preference to another must go hand in hand with a showing of fraudulent intent and corrupt motives.
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> Evident bad faith "does not simply connote bad judgment or negligence" but of having a "palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes."
>
> Manifest partiality, on the other hand, is defined as a clear, notorious, or plain inclination or predilection to favor one side or person rather than another, while gross inexcusable negligence is defined as negligence characterized by the want of even the slightest care. It presupposes acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. [180] (Citations omitted)

Guided by the foregoing, the acts found by the Sandiganbayan that led to the conviction of petitioners must be re-examined.

DPWH list versus PCAB Masterlist

In holding that petitioners violated the rules on simplified public bidding, the Sandiganbayan relied on the IRR of P.D. No.1594 as amended,[181] stating that there is an obligation on the part of the PEA to consult the separate list of the PCAB before the negotiated bidding of the PDMB Project could proceed. The provision reads:

> a. Participation in simplified public bidding for a project shall be limited to *bona fide* contractors duly accredited and classified for the project category and size and who are included in a separate master list to be prepared by the Philippine Contractors Accreditation Board (**PCAB**) pursuant to the uniform

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178 Government Procurement Reform Act, July 22, 2002.

179 G.R. No. 239871, March 18, 2021 [Per J. Caguioa, First Division].

180 *Id.* at 10. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

181 Implementing Rules and Regulation of Presidential Decree No. 1594, as amended on May 24 and July 5, 2000, IB 10.4.2.

> guidelines promulgated by the PCAB. The guidelines shall put emphasis on strict requirements of good track record performance and/or capability requirements, among others.

On his part, Lacson, a member of the *Ad Hoc* Committee, explained that Atty. Enriquez had reported that the "separate masterlist" that was supposed to be prepared by the PCAB was not yet available then. Instead, he was furnished by the PCAB with a copy of a general masterlist in the NCR containing hundreds of listed contractors with their respective PCAB category/license.[182] The problem then became how to narrow down the list of pre-qualified bidders to achieve the objective of conducting a "simplified bidding" as approved by the Office of the President. To use the general masterlist obtained by Atty. Enriquez could be unwieldy and militate against the presidential instructions to immediately have the PDMB Project available to the public. Hence, the Chairman of the Ad *Hoc* Committee decided to seek the help of the DPWH for a list of PCAB contractors with large "B," triple "AAA" category/license for roads and bridges since this is the nature of the PDMB Project.[183]

On this issue, we rule in favor of petitioners.

Notably, the prosecution did not present evidence showing that a separate masterlist, from which contractors of projects for simplified public bidding must be chosen from, is available. To continuously require PEA to rely on a separate masterlist that is not yet in existence would be to punish petitioners for an inherently impossible task, which cannot even be attributed as their fault. It was not the obligation of PEA to produce the masterlist; rather, the responsibility fell upon the PCAB to do so. Before PEA may be accused of its failure to comply with an obligation imposed by law, it must first be shown that such an obligation is capable of being performed. This is especially true in this case where the obligation of PEA is conditioned upon the fulfillment of the obligation of PCAB. As such, it is not simply the obligation imposed by law that must be examined; the corresponding obligation upon which its performance is made dependent, should also be taken into consideration. It is thus necessary to first establish that a separate masterlist of *bona fide* contractors duly accredited and classified for the project category, indeed exists. This is in line with the rule on burden of proof, which imposes upon the prosecution the burden of proving its allegations. A negative fact, such as the absence of the masterlist, cannot serve as a basis for a wrongdoing, when the prosecution itself has not first

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182 *Rollo* (G.R. No. 220504), vol. I, p. 30.
183 *Id.*

presented proof of its existence. This flows from the maxim "*semper necessitas probandi incumbit illi qui agit,*" or the necessity of proof always lies with the person who lays the charges.

In the absence of a separate masterlist, PEA was left with an alternative to consult the list of DPWH with large "B" and triple "AAA" category/license for roads and bridges. For sure, these are the largest in the categorization of the DPWH and among the top tier in the classification of contractors. These are the lists of contractors with experience to build roads and bridges.

As of November 22, 2017, in the Board Resolution No. 201 Series of 2017 issued by PCAB, Category AAA was defined as those contractors with minimum financial capacity of PHP 180 million, while Category AAAA are those with minimum financial capacity of PHP 1 billion. Those with a size range of Large B with License Category AAA and AAAA are those with single largest project of above PHP 225 million and allowable range of contract costs of less than or above PHP 450 million. Notably, the amount allotted for the PDMB Project, which is PHP 584,365,885.00, falls within the range of Category AAA and Large B contractor. The actions taken by the PEA must thus be treated as substantial compliance with the requirement of the law considering the absence of the separate masterlist and taking into consideration Section 3(b) of P.D. No. 1594, which reads:

> (b) Technical Requirements. The prospective contractor must meet the following technical requirements to be established in accordance with the rules and regulations to be promulgated pursuant to Section 12 of this Decree, to enable him to satisfactorily prosecute the subject project:
>
> 1) Competence and experience of the contractor in managing projects similar to the subject project.
>
> 2) Competence and experience of the contractor's key personnel to be assigned to the subject project.
>
> 3) Availability and commitment of the contractor's equipment to be used for the subject project.

Nowhere from the evidence presented by the prosecution was it shown that JD Legaspi or any of the bidders was unqualified or had no competence to undertake the PDMB Project because the PEA relied on the DPWH list. On the contrary, the winning bidder, JD Legaspi, was able to perform his part of the contract. As PEA was merely performing its mandate, it cannot take the blame for the shortcoming committed by another agency. The circumstances that led to PEA's action in utilizing the DPWH therefore negates the presence of manifest partiality, evident bad faith or gross inexcusable negligence under Section 3(e) of R.A. No. 3019.

In the same manner, as there was no list prepared by PCAB, there were also no guidelines as to how the project could be bid out. While the Sandiganbayan found that when PEA divided the PDMB Project into Phase I and Phase II, and respectively divided the ten contractors under these two phases, those under Phase II were disadvantaged because of the option given to the SM group and R1 Consortium to build on the land they were awarded, which was covered by the Phase II, there was no sufficient proof to show that the PEA made this to accommodate any of the contractors listed for Phase I. It was not even shown by the prosecution that the bid of the contractors under Phase II could match the lowest complying bid of JD Legaspi under Phase I. A bidding was still conducted by the PEA for the Phase I Project, which included different participants. Thus, it could not be said that JD Legaspi was given an unwarranted preference in the award of the project.

Detailed engineering

The Sandiganbayan also found that the absence of a detailed engineering affected the cost estimate of the project. With this, the cost adjustments that had to be done in order to pursue the project became bloated.

A reading of the pleadings made available before this Court would show that petitioners did not deny the absence of a detailed engineering for the PDMB Project. Rather, what was taken into consideration was the condition of the adjacent land, which was awarded to the other contractors as part of the PDMB Project.

This contravenes Section 2 of P.D. No. 1594, which reads:

> **Section 2.** *Detailed Engineering.* No bidding and/or award of contract for a construction project shall be made unless the detailed engineering investigations, surveys, and designs for the project have been sufficiently carried out in accordance with the standards and specifications to be established under the rules and regulations to be promulgated pursuant to Section 12 of this Decree so as to minimize quantity and cost overruns and underruns, change orders and extra work orders, and unless the detailed engineering documents have been approved by the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be. (Emphasis in the original)

Section 2 of P.D. No. 1594 requires that a detailed engineering be carried out before any bidding or contract is awarded for a construction project. Obviously, this requirement is addressed to the agency concerned,

not to a bidder. It is from this detailed engineering that the concerned agency can get an estimate of the project, which it will then use as basis in the evaluation of the bids.[184]

As mentioned, the PEA, in coming up with its Agency Budget Estimate, merely relied on the conditions of the adjacent land, which should not be the case. The responsibility on the preparation of the bid documents falls upon the members of the *Ad Hoc* Committee, who was tasked to evaluate the condition of the road before the same could be bid out.

Nevertheless, violation of this provision alone, without clear showing of bad faith, malice, or gross negligence should not be automatically equated to a violation of Section 3(e) of R.A. No. 3019. There must be proof amounting to a corrupt motive in doing so, for as explained in *Martel v. People*:[185]

> At this juncture, the Court emphasizes the spirit that animates R.A. 3019. As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under R.A. 3019 is *corruption.* As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "while we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in *dishonest* ways.[186] (Emphasis in the original; citations omitted)

At the most, the absence of a detailed engineering could affect the budget or cost for which government must spend for the completion of the project. Overpricing should however be proven to have been committed with deliberate corrupt ways before one can be indicted for violation of R.A. No. 3019. As held in *Macairan v. People*:[187]

> Jurisprudence teaches that in assessing whether there was overpricing, a specific comparison with the same brand, features and specifications as those purchased in the questioned transaction should be made. Further, the report upon which the proof of overpricing is based should include a canvass of the different suppliers of the identical product with their corresponding prices. Absent this evidence, the Court cannot reasonably conclude that the price of the goods subject of the questioned transaction was actually exorbitant.[188] (Citations omitted)

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184 *Albay Accredited Constructors Association, Inc. v. Desierto*, 516 Phil. 308, 320 (2006) [Per J. Garcia, Second Division].

185 G.R. No. 224720-23, February 2, 2021 [Per J. Caguioa, *En Banc*].

186 *Id.* at 29. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

187 G.R. No. 215104, March 18, 2021 [Per J. Caguioa, First Division].

188 *Id.* at 29. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court

In this case, the Special Audit Report of the COA found that there was no overpricing in the portion of the contract awarded to Legaspi. Its findings stated the following:

> Source of Fund
>
> The contract with J.D. Legaspi Construction amounting to ₱584,365,885.00 was further increased to ₱837,317,343.77 due to contract price adjustments, variation orders, overrun/underrun and supplemental agreement. The funding source was the ₱300 Million loan with Land Bank of the Philippines, which was released on April 7, 2000, and the ₱1 Billion loan from the Government Service Insurance System of which the initial drawdown amounting to ₱600 Million was released on August 15, 2002.
>
> . . . .
>
> Summary of Audit Findings
>
> Finding No. 1
>
> The technical evaluation of the project shows that the total project cost, including the price adjustment was found to be reasonable and, therefore, not overpriced. The project was constructed in accordance with the approved design, scope of work and as-built plans and specifications.
>
> The allegation of overpricing raised in the complaint of Mr. Sulpicio Tagud, Director, Public Estates Authority (PEA), based on the cost comparison per linear meter of road and bridge constructed by three (3) developers/contractors, appears to be untenable. The road networks undertaken by the three (3) developers/contractors are not comparable considering that Central Business Park (CBP) I-A, CBP I-B & C (reclaimed by SM/R-1 Consortium) were reclaimed by pre-loading/surcharging method to attain the required soil consolidation and stability. On the other hand, Financial Center Area (FCA), CBP-2 and Asiaworld area are existing reclaimed areas prior to the 1988 Manila Cavite Coastal Road and Reclamation Project (MCCRRP) Master Development which have poor subgrade materials as confirmed by the Bureau of Research and Standards (BRS) and the R.R. Ignacio Construction as shown in the results of the Borehole tests conducted in November of 1999. Logically, the actual cost per linear meter incurred by the SM Group and R1 Construction as against the cost incurred by J.D. Legaspi Construction cannot be compared because the areas assigned for each of these contractors are with different soil conditions requiring different design for each project.
>
> The technical evaluation conducted has clearly established the reasonableness of the project cost. The audit team, therefore, finds no sufficient basis to support the allegation of overpricing.[189]

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website.

[189] *Rollo* (G.R. No. 220587), vol. I, pp. 542–545.

Considering that the COA, the constitutionally bound auditor of government funds, declared that no overpricing occurred, such findings should be given considerable weight. This further shows that no injury was proven to have been caused to the government; neither any manifest partiality in favor of a party was given. As part of the elements of violation of R.A. No. 3019, failure to prove these would be tantamount to a failure to prove violation of the law, beyond reasonable doubt.

The requirement of availability of funds

With respect to the availability of funds, Section 86 of P.D. No. 1445 provides:

> SECTION 86. *Certificate Showing Appropriation to Meet Contract.* — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary **to cover the proposed contract for the current fiscal year is available for expenditure on account thereof**, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Emphasis supplied)

The foregoing provision requires that the appropriation necessary in order to consider a contract as sufficiently funded must cover that portion of the needed expenditures for the particular current year. Necessarily, when a contract transcends beyond a period of one year, and must be completed within a multi-year period, the availability of appropriations must be examined for each of the current fiscal year that arrives. This does not however mean that the implementing agency should look for funds only when the current fiscal year arrives. Rather, the source from which the funding for the entire project must already be determined, for while the actual release of funds may be made on a yearly basis, continuous payment to a contractor on a multi-year project could only be made if the source of funds has already been determined. This is supported by R.A. No. 9184 which requires that the invitation to bid identify the source of fund of the project, thus:

> **SEC. 21. Advertising and Contents of the Invitation to Bid.** – In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act.
>
> The Invitation to Bid shall contain, among others:
>
> (a) A brief description of the subject matter of the Procurement;
> (b) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the short listing of prospective bidders, in the case of the Procurement of Consulting Services, the examination and evaluation of Bids, and post-qualification;
> (c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
> (d) The Approved Budget for the Contract to be bid;
> (e) **The source of funds**;
> (f) The period of availability of the Bidding Documents, and the place where these may be secured;
> (g) The contract duration; and,
> (h) Such other necessary information deemed relevant by the Procuring Entity. (Emphasis supplied)

In the case of projects funded by the national budget, it is even required for the agency to secure a multi-year obligational authority to secure its commitment of paying the multi-year project and ultimately complete the project. This was explained in *Jacomille v. Abaya*[190] as follows:

> MYOA or Multi-Year Obligational Authority is an authorization document issued by the DBM to government agencies that undertake MYP with funding requirements spread over two (2) years or more. Such projects are evidenced by MYC entered into by the parties. In GAA 2013, the requirement of MYOA is stated as follows:
>
> > *Sec. 21. Contracting Multi-Year Projects.* In the implementation of multi-year projects where the total cost is not provided in this Act, department, bureaus and offices shall request the DBM for the issuance of a Multi-Year Obligational Authority following the guidelines under DBM Circular Letter No. 2004-12 dated October 27, 2004. Notwithstanding the issuance of a Multi-Year Obligation Authority, the obligation to be incurred in any given year, shall in no case exceed the allotment released for the purpose during the year.

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190 759 Phil. 248 (2015) [Per J. Mendoza, Second Division].

> As early as October 27, 2004, the DBM issued the DBM Circular No. 2004-12 to prescribe the guidelines and procedure to implement the MYOA requirement. The circular defines the different terms affecting MYOA, such as:
>
> > *3.1 Multi-Year Obligational Authority (MYOA)* - refers to an authority issued by the Department of Budget and Management (DBM) to enable an agency to enter into a multi-year contract whether for locally funded projects (LFPs) or foreign assisted projects (FAPs).
> >
> > . . . .
>
> The DBM explained the nature of MYOA. When the government entered into MYC, it was committed to annually pay a given amount to the contractor/supplier of the project, even without the government planning for its payment. Thus, the imperative for MYOA arose, which gave an assurance that the financial commitments included in MYC are considered in the succeeding proposed budget submitted to Congress. With the issuance of MYOA, the DBM commits to recommend to Congress the funding of the MYP until its completion. Evidently, without MYOA, the government runs the risk of breach of contractual obligations if its financial commitments are not met for lack of funding. [191] (Emphasis in the original)

The absence of a multi-year obligational authority would ultimately result in a void contract, as applied in *COMELEC v. Quijano-Padilla*,[192] as follows:

> Extant on the record is the fact that the VRIS Project was awarded to PHOTOKINA on account of its bid in the amount of P6.588 Billion Pesos. However, under Republic Act No. 8760, the only fund appropriated for the project was P1 Billion Pesos and under the Certification of Available Funds (CAF) only P1.2 Billion Pesos was available. Clearly, the amount appropriated is insufficient to cover the cost of the entire VRIS Project. There is no way that the COMELEC could enter into a contract with PHOTOKINA whose accepted bid was way beyond the amount appropriated by law for the project. This being the case, the BAC should have rejected the bid for being excessive or should have withdrawn the Notice of Award on the ground that in the eyes of the law, the same is null and void.
>
> The objections of then Chairman Demetriou to the implementation of the VRIS Project, ardently carried on by her successor Chairman Benipayo, are therefore in order.
>
> Even the draft contract submitted by Commissioner Sadain, that provides for a contract price in the amount of P1.2 Billion Pesos is unacceptable. Indeed, we share the observation of former Chairman Demetriou that it circumvents the statutory requirements on government

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191 *Id.* at 279, 281.

192 438 Phil. 72 (2002) [Per J. Sandoval-Gutierrez, *En Banc*].

contracts. While the contract price under the draft contract is only P1.2 Billion and, thus, within the certified available funds, the same covers only Phase I of the VRIS Project, i.e., the issuance of identification cards for only 1,000,000 voters in specified areas. In effect, the implementation of the VRIS Project will be "segmented" or "chopped" into several phases. Not only is such arrangement disallowed by our budgetary laws and practices, it is also disadvantageous to the COMELEC because of the uncertainty that will loom over its modernization project for an indefinite period of time. Should Congress fail to appropriate the amount necessary for the completion of the entire project, what good will the accomplished Phase I serve? As expected, the project failed "to sell" with the Department of Budget and Management. Thus, Secretary Benjamin Diokno, per his letter of December 1, 2000, declined the COMELEC's request for the issuance of the Notice of Cash Availability (NCA) and a multi-year obligational authority to assume payment of the total VRIS Project for lack of legal basis. Corollarily, under Section 33 of R.A. No. 8760, no agency shall enter into a multi-year contract without a multi-year obligational authority, thus:

> "SECTION 33. *Contracting Multi-Year Projects.* - In the implementation of multi-year projects, no agency shall enter into a multi-year contract without a multi-year Obligational Authority issued by the Department of Budget and Management for the purpose. Notwithstanding the issuance of the multi-year Obligational Authority, the obligation to be incurred in any given calendar year, shall in no case exceed the amount programmed for implementation during said calendar year."

Petitioners are justified in refusing to formalize the contract with PHOTOKINA. Prudence dictated them not to enter into a contract not backed up by sufficient appropriation and available funds. Definitely, to act otherwise would be a futile exercise for the contract would inevitably suffer the vice of nullity. In [*Osmeña vs. Commission on Audit*,] this Court held:

> "The Auditing Code of the Philippines (P.D. 1445) further provides that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor and the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that *funds have been duly appropriated for the purpose and the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof.* Any contract entered into contrary to the foregoing requirements shall be VOID.
>
> "Clearly then, the contract entered into by the former Mayor Duterte was void from the very beginning since the agreed cost for the project (P8,368,920.00) was way beyond the appropriated amount (P5,419,180.00) as certified by the City Treasurer. Hence, the contract was properly declared void and unenforceable in COA's 2nd Indorsement, dated September 4, 1986. The COA declared and we agree, that:

> 'The prohibition contained in Sec. 85 of PD 1445 (Government Auditing Code) is explicit and mandatory. Fund availability is, as it has always been, an indispensable prerequisite to the execution of any government contract involving the expenditure of public funds by all government agencies at all levels. Such contracts are not to be considered as final or binding unless such a certification as to funds availability is issued (Letter of Instruction No. 767, s. 1978). Antecedent of advance appropriation is thus essential to government liability on contracts ([*Zobel vs. City of Manila*,] 47 Phil. 169). This contract being violative of the legal requirements aforequoted, the same contravenes Sec. 85 of PD 1445 and is null and void by virtue of Sec.87.'"[193] (Emphasis in the original, citations omitted)

It is thus important to have an assurance that the funding of the project will continue. This assumes more significance when the budget is part of the national budget every year.

In this case however, the PDMB Project was not funded by the national budget. Rather, it was funded by a loan to be obtained, which was authorized by the PEA Board as early as October 4, 1999, when Resolution No. 2017 was issued approving the One Billion Loan Facility in the Form of Convertible Notes to Finance the Construction and Development of portions of the Central Boulevard,[194] pertinent portion of which reads as follows:

> RESOLVED FURTHER, that the following items are likewise approved, to wit:
>
> 1. The Term Sheet covering One Billion Pesos Loan Facility which will be in the form of Convertible Notes herein attached as Annex "A"
> 2. The appointment of Land Bank of the Philippines (LBP) as Trustee of the Mortgage Trust Indenture under the terms and conditions as contained in their proposal herein attached as Annex "B"
> 3. The appointment of the law firm Picazo Buyco Tan Fider and Santos as legal counsel for this undertaking under the terms of their proposal herein attached as Annex "C"
> 4. The extension of the mandate of Land Bank and All Asia Capital with regards to this undertaking for a period of six months; and

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193 *Id.* at 94–97.

194 *Rollo* (G.R. No. 220505), vol. I, p. 20; *rollo* (G.R. No. 220552), vol. I, p. 79; *rollo* (G.R. No. 220568), vol. I, p. 29; *rollo* (G.R. No. 220580), vol. I, pp. 67–68; *rollo* (G.R. No. 220592), vol. I, p. 234.

5. The interim loan of Three Hundred Million Pesos to be sourced from Land Bank against the One Billion Facility under such terms and conditions as may be agreed upon.[195]

The authority to contract loan is authorized under the charter of PEA, being a government instrumentality. In *Republic v. City of Parañaque*,[196] the nature of PEA, later renamed as PRA, was described as follows:

> In the case at bench, PRA is not a GOCC because it is neither a stock nor a non-stock corporation. It cannot be considered as a stock corporation because although it has a capital stock divided into no par value shares as provided in Section 7 of P.D. No. 1084, it is not authorized to distribute dividends, surplus allotments or profits to stockholders. There is no provision whatsoever in P.D. No. 1084 or in any of the subsequent executive issuances pertaining to PRA, particularly, E.O. No. 525, E.O. No. 654 and EO No. 798 that authorizes PRA to distribute dividends, surplus allotments or profits to its stockholders.
>
> PRA cannot be considered a non-stock corporation either because it does not have members. A non-stock corporation must have members. Moreover, it was not organized for any of the purposes mentioned in Section 88 of the Corporation Code. Specifically, it was created to manage all government reclamation projects.
>
> Furthermore, there is another reason why the PRA cannot be classified as a GOCC. Section 16, Article XII of the 1987 Constitution provides as follows:
>
> > **Section 16.** The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.
>
> The fundamental provision above authorizes Congress to create GOCCs through special charters on two conditions: 1) the GOCC must be established for the common good; and 2) the GOCC must meet the test of economic viability. In this case, PRA may have passed the first condition of common good but failed the second one — economic viability. Undoubtedly, the purpose behind the creation of PRA was not for economic or commercial activities. Neither was it created to compete in the market place considering that there were no other competing reclamation companies being operated by the private sector. As mentioned earlier, PRA was created essentially to perform a public service considering that it was Primarily responsible for a coordinated, economical and efficient reclamation, administration and operation of lands belonging to the government with the object of maximizing their utilization and hastening

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195 *Id.*

196 691 Phil. 476 (2012) [Per J. Mendoza, Third Division].

> their development consistent with the public interest.[197] (Emphasis in the original, citations omitted)

Being a government instrumentality, PEA is authorized by its charter to contract loans to be able to carry into effect the mandate it was given under P.D. No. 1084. Section 5 thereof reads:

> **Section 5.** *Powers and functions of the Authority.* The Authority shall, in carrying out the purposes for which it is created, have the following powers and functions:
>
> . . . .
>
> (m) To enter into, make, perform and carry out contracts of every class and description, including loan agreements, mortgages and other types of security arrangements, necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with any foreign government or entity. (Emphasis in the original)

Section 12 of P.D. No. 1084 likewise provides:

> **Section 12.** *Loans.* The Authority, as well as any affiliate corporation in which it holds, owns and/or controls by itself or jointly with one or more government-owned or controlled corporations at least seventy-five per cent (75%) of the issued and outstanding shares of stock entitled to vote, when specifically authorized by the President of the Philippines, is hereby authorized to contract loans, credits, in any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources, or any entities, on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions. (Emphasis in the original)

The PDMB Project, as funded by loan obtained by the PEA, was thus authorized by its charter, and whatever fund it may obtain therefrom could be utilized for the current fiscal year. While the Sandiganbayan found that dividing the project to Package 1 and Package 2 was a subterfuge to do away with the requirement of funding, pertinent laws only require that the funding of a project be viewed on a yearly basis. The requirement of the law is funding for the current fiscal year. Be it divided into several phases, as long as the project could be implemented within the end of the year with the corresponding amount for such project, the same could not be said to have violated the law.

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[197] *Id.* at 484–486.

The need to secure funding for the project covering the current fiscal year is understandable. Under Section 47 of the Administrative Code, the contract for the expenditure of public funds shall be for that amount necessary to cover the proposed contract for the current calendar year, thus:

> SECTION 47. *Certificate Showing Appropriation to Meet Contract.* — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Emphasis supplied)

Considering that the amount of PHP 300 million was identified as the budget to cover the expenses for the current year when the PDMB Project was to be implemented, the same should already suffice as compliance with the requirement of the law.

Presidential approval

Another ground relied upon by the Sandiganbayan in convicting petitioners is the failure to secure presidential approval.

A reading of the Memorandum dated January 29, 2000 from the Executive Secretary [198] would show that it was an approval of the Construction Agreement with PEA for the construction of the Central Boulevard Road Project in the amount of PHP 584,365,885.05 subject to certain conditions, foremost of which are the inclusion of a provision in the Agreement that all extra works and price adjustments should first be submitted to the President for approval and that the final approval and actual release of the loan proceeds from the LandBank/All Asia Capital must be secured.

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[198] *Rollo* (G.R. No. 220587), vol. I, p. 310.

It must nonetheless be clarified that the additional condition for presidential approval concerning extra works and price adjustments were imposed by the Office of the President. In the same manner, the various executive orders issued by the President are directives of the executive, which does not necessarily amount to a violation of R.A. No. 3019.

Insofar as the contract itself was concerned, the approval of the President was already given, subject to certain conditions, which are in the nature of resolutory conditions. In an obligation with a resolutory condition, the obligation is already effective, subject to the happening of the condition. Thus, the approval of the president should already be considered as given, subject to the happening of the conditions it imposed, non-fulfillment of which could be a ground for appropriate action between entities that imposed the same and those required to fulfill the condition.

With respect to the determination as to whether a violation of R.A. No. 3019 occurred, such an infraction should first be proven to have been committed with manifest partiality, evident bad faith, or gross inexcusable negligence that resulted into undue injury to the government or any party, or any unwarranted benefit to a private party. In the absence of proof of the elements constituting violation of R.A. No. 3019, mere failure to comply with a directive of the president cannot be considered a violation of said criminal law.

Award of the Seaside Drive Extension

As found by the Sandiganbayan, Variation Order No. 2 comprised of the Inland Bridge Channel and the Seaside Drive Extension. Considering that it found the construction of the inland bridge channel under this variation order as legal and necessary for the construction of the PDMB Project, the same would no longer be disturbed on appeal. Rather, it is the award of the Seaside Drive Extension under Variation Order No. 2 that will have to be examined.

Variation Orders are classified under the IRR of P.D. No. 1594 as follows:

> CI 1 - VARIATION ORDERS – CHANGE ORDER/EXTRA WORK ORDER/SUPPLEMENTAL AGREEMENT
>
> 1. Variation orders may be issued by the concerned agency/office/corporation to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting

> in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the government after award of the contract. The addition/deletion of works should be within the general scope of the project as bid and awarded. **A variation order may either be in the form of a change order, extra work order or a supplemental agreement.** (Emphasis supplied)

No substantial change was introduced by the IRR of R.A. No. 9184[199], which defined variation order as follows:

> **1. Variation Orders – Change Order/Extra Work Order**
>
> 1.1 Variation Orders may be issued by the procuring entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the Government after award of the contract, provided that the cumulative amount of the positive or additive Variation Order does not exceed ten percent (10%) of the original contract price. The addition/deletion of works under Variation Orders should be within the general scope of the project as bid and awarded. The scope of works shall not be reduced so as to accommodate a positive Variation Order. **A Variation Order may either be in the form of either a change order or extra work order.**[200] (Emphasis supplied)

Clearly, a change order or extra work order is considered as a form of variation order. Petitioners' claim that the award of the Seaside Drive Extension does not need the approval of the president is therefore erroneous. When the Memorandum and the Contract with JD Legaspi specified as a condition, the approval of the President before any extra works may be performed on the project, this includes variation orders, for an extra work is in reality, a form of a variation order. Suffice it to state, the approval of the President should have been secured before additional expenses on additional works, irrespective of their nomenclature, may be awarded to the contractor. This is a condition imposed by then Executive Secretary Zamora as early as the award of the contract itself and made a condition in the various PEA Board Resolutions, and the contract itself.

While Executive Order No. 109 expressly repealed Memorandum Circular No. 25, the same was issued only on May 27, 2002 after the presidential approval was already given. The Office of the President's Memorandum dated January 29, 2000, which approved the Construction

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[199] The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, March 31, 2021.
[200] *Id.* Annex E, 1.1.

Agreement, carried a condition that all extra works and price adjustments should first be submitted to the president for approval. Failure to secure presidential approval on the award of the Seaside Drive Extension thus raises a circumstance that should be considered in assessing whether a violation of R.A. No. 3019 occurred. Nevertheless, this circumstance must be examined *vis a vis* the elements of the law alleged to have been violated.

Further, a variation order must still fall within the general scope of the project as bid and awarded. In this case, the Seaside Drive Extension was characterized by the Sandiganbayan as follows:

> With respect, however, to the Seaside Drive Extension under Variation Order No. 2, it appears that the same cannot legally qualify to be covered by a Variation Order. This is because it is a road outside of the PDMB project and nowhere along the original PDMB roadway plan. It is, in fact, a roadway connecting PDMB and Roxas Boulevard. As recommended by accused Beriña[, Jr.], the Seaside Extension Drive had to be constructed to ease up traffic flow to and from Roxas Boulevard. However, this road was never within the general scope of the PDMB Project as bid and awarded. Accused Millan admitted this when he testified that it was part of another project that was supposed to be implemented but fell through. The Construction Agreement only defines the Project as the Central Boulevard Road Project, without any mention of any arterial roads or any additional roadway such as the Seaside Drive Extension. No documents, whether it be the original action plan of the Boulevard Project, the Construction Agreement signed between PEA and accused Legaspi or the Bid Documents, show that the Seaside Drive Extension was envisioned to be part of the general scope of the PDMB Project.[201]

Indeed, nowhere was the Seaside Drive Extension found in any of the documents bid out for the PDMB Project. It was not even located along the stretch of President Diosdado Macapagal Boulevard, but a road to connect the PDMB to the Roxas Boulevard, going to NAIA. A separate bidding for the award of the Seaside Drive Extension should thus have been undertaken.

Liability for the award of the Seaside Drive Extension

As discussed, the irregularity involved in this case pertains to the award of the Seaside Drive Extension and not on the main contract for the PDMB Project. Thus, it is the surrounding circumstances of the award of this part of the project that should be examined to determine whether there is a violation of R.A. No. 3019. In the process of analysis, it bears pointing out that mere violation of the procurement law does not automatically make one

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201 *Rollo* (G.R. No. 220505), vol. I, p. 215.

liable for violation of R.A. No. 3019. As explained in *Sabaldan v. Office of the Ombudsman*:[202]

> More importantly, it must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.[203]

A perusal of the arguments presented by the parties shows that the participation of some of the petitioners revolved around the award of the main contract and not in the introduction of Variation Order No. 2. Thus, they cannot be held criminally liable therefor.

As regards the liability of Amposta-Mortel, considering that there was no showing that the variation order in question was submitted to her for review, she cannot be held liable. A legal officer cannot be considered to have facilitated the award of an erroneous contract when the same was not even forwarded to her office for review. This must be so when the main contract itself has already undergone the appropriate review and has been given presidential approval.

On the part of the Old PEA Board, being the governing body of the PEA tasked to formulate policy decisions, they had every right to rely on the report and recommendation of the *Ad Hoc* Committee as it is the members of the *Ad Hoc* Committee who has the first-hand knowledge of the ongoing construction and the actual location of the roads. In the absence of a clear showing of bad faith, manifest partiality or gross inexcusable negligence in the issuance of the Resolutions leading to the award of the Seaside Drive Extension, they could not have violated R.A. No. 3019.

As represented by Beriña, Jr., to facilitate the flow of traffic at the Seaside Drive Extension, it is deemed necessary to complete the construction of the proposed Seaside Drive Extension (connecting Roxas Boulevard and

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202 G.R. No. 238014, June 15, 2020 [Per J. Reyes, J. Jr., First Division].

203 *Id.* at 7–8. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

Central Boulevard) and that since time is of the essence, it was recommended that the additional works be awarded to JD Legaspi.[204] The representation of Beriña, Jr. of the need to complete the construction of the Seaside Drive Extension to facilitate the flow of traffic and its necessity, especially when time is of the essence, made the Board believe of the need to approve the award of the Seaside Drive Extension, moreso, when the road has to connect the PDMB with other roads.

As it even appears, Resolution Nos. 3017 and 3102 carried conditions imposed by the PEA Board, which was supposed to safeguard the award of the Seaside Drive Extension. The conditions imposed under Resolution No. 3017 are as follows:

> a. Payment will be made only on actual quantities completed based on the approved detailed plans and applicable unit bid prices and agreed prices (on new items of works)
> b. No time extensions will be associated on these additional works
> c. Final approval of the Office of the President as per Memo dated 29 June 2000.
> d. Actual release of the loan proceeds from Land Bank of the Philippines.[205]

As to Resolution No. 3102, the Old PEA Board, in addition to the previous conditions it imposed under Board Resolution No. 3017, further required that the implementation of Variation Order No. 2 be made subject to the provisions of P.D. No. 1594 while the appropriation of the difference resulting from the updated cost thereof must be made subject to existing accounting and auditing rules and regulations.[206] These safeguards negate bad faith or gross inexcusable negligence on the part of the members of the Old Board of PEA.

It must be added that the subsequent approval of the new Board of Directors of the cost of the project signify their acquiescence not only to the project but also a recognition of the safeguards that were already put in place by the Old Board.

On the part of Beriña, Jr. and Millan, who issued the request for Variation Order No. 1 (later renumbered as Variation Order No. 2),[207] the actions they took negate manifest partiality, evident bad faith, or gross inexcusable negligence. In proposing the construction of the Seaside Drive Extension, they have honestly believed that P.D. No. 1594 allows a negotiated contract where a variation order is adjacent or contiguous to an

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204 *Rollo* (G.R. No. 220505), vol. II, p. 735.
205 *Rollo* (G.R. No. 220580), vol. I, pp. 57–58.
206 *Id.* at 57.
207 *Rollo* (G.R. No. 220587), vol. I, p. 328.

ongoing project and could be economically prosecuted by the same contractor. Further, from the ground and aerial sketches, the Integrated Framework Plan and the present Google image of the President Diosdado Macapagal Boulevard, the Seaside Drive Extension appears to be connected to JD Legaspi's PDMB Project.

Indeed, a negotiated contract is allowed where the variation order to be introduced is adjacent or contiguous to an ongoing project. Thus, even if the main contract as bid out did not include the Seaside Drive Extension, the same may still be introduced as a variation order as part of a negotiated contract. The law however requires certain requirements, to wit:

> IB 10.6.2 – By negotiated Contract
>
> . . . .
>
> c. Where the subject project is adjacent or contiguous to an ongoing project and it could be economically prosecuted by the same contractor provided that subject project has similar or related scope of works and is within the contracting capacity of the contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices adjusted to price levels prevailing at the time of negotiation using the parametric formulae herein prescribed without the 5% deduction and contract conditions, less mobilization cost, provided that he has no negative slippage and has demonstrated a satisfactory performance.[208]

Hence, the introduction of the Seaside Drive Extension is not without legal basis. While it would appear that said road does not fall along the stretch of the PDMB Project, this fact alone cannot serve as a basis to hold petitioners liable for violation of R.A. No. 3019. To stress, the focal point in determining whether there is a violation of R.A. No. 3019 is the elements comprising it, one of which is the existence of manifest partiality, evident bad faith or gross inexcusable negligence. These were defined as follows:

> Under the third element, the crime may be committed through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." As already held by this Court, Section 3(e) of RA 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will

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[208] Implementing Rules and Regulation of Presidential Decree No. 1594, as amended on May 24 and July 5, 2000.

> or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[209] (Citations omitted)

Here, the Seaside Drive Extension was constructed at a portion of the PDMB in order to have a road that will connect it to the Roxas Boulevard. It is not a road construction that is totally alien to the PDMB Project, for it is still a road that is connected to the main project, and serves as a link to the other roads going to and from the President Diosdado Macapagal Boulevard. With a legal basis for which the actions taken by petitioners were anchored, it cannot be said that their actions were coupled with a clear inclination to favor another or that a conscious wrongdoing, ill-will or dishonest purpose was being committed.

The same must also be said as to the absence of presidential approval for the introduction of Variation Order No. 2. Such a finding does not automatically equate to a violation of R.A. No. 3019, considering the failure of the prosecution to show that it was accompanied by manifest partiality, evident bad faith or gross inexcusable negligence. To stress, the main contract has already been approved by the president. Likewise, taking into consideration the nature of a negotiated contract by which the award of the additional works must necessarily be given to the contractor of the main project provided the requisites are present, reliance on the provision of negotiated contracts by Beriña, Jr. and Millan negates the element of evident bad faith, manifest partiality or gross inexcusable negligence. Necessarily, if the PDMB Project was awarded to JD Legaspi, any negotiated contracts related thereto should also be awarded to him by operation of law. As such, with the passage of P.D. No. 1594, the requirement of presidential approval for the award of a subsequent project believed to be qualified as a negotiated contract, would be rendered unnecessary. Considering however that such an approval for subsequent works has been required by the Office of the President when it approved the main project, any infraction thereon would only be subject to the exercise of discretion of the said Office. With respect to violation of R.A. No. 3019, the good faith reliance of Beriña, Jr. and Millan as to the necessity of the Seaside Drive Extension and their appreciation of the application of P.D. No. 1594 as to negotiated contracts, would not make them liable for violation thereof on account merely of the absence of presidential approval of the award of the Seaside Drive Extension.

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[209] *Villarosa v. People*, G.R. No. 233155-63, June 23, 2020 [Per C.J. Peralta, *En Banc*] at 8–9. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

The need to prove all the elements of the crime of R.A. No. 3019, as in all other cases of violation of criminal laws, springs from the constitutional presumption of innocence. As elaborated in *Villarosa v. People*:[210]

> The settled rule is that conviction in criminal actions demands proof beyond reasonable doubt. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Indeed, the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution. (Citations omitted)[211]

With respect to Legaspi, the Sandiganbayan also convicted him for violation of Section 3(e) of R.A. No. 3019 because of its finding of implied conspiracy, holding that the PEA Management would not have presented the same to the Board had Legaspi not submitted documents pertaining to the possibility of constructing the same as a change order to the original Construction Agreement, thereby violating all the public bidding rules in place.[212]

In *Tan v. People*,[213] this Court explained the liability of private individuals charged with violation of R.A. No. 3019, to wit:

> Private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, including (e) thereof. This is in consonance with the avowed policy of the anti-graft law to repress certain acts of **public officers and private persons alike** constituting graft or corrupt practices act or which may lead thereto.
>
> Thus, for a private person to be charged with and convicted of Violation of certain offenses under Section 3 of R.A. 3019, which in this case (e), it must be satisfactorily proven that he/she has acted in conspiracy with the public officers in committing the offense; otherwise, he/she cannot be so charged and convicted thereof.
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> In conspiracy, the act of one is the act of all; thus, it is never presumed. Like the physical acts constituting the crime itself, the

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210 *Id.*

211 *Id.* at 7. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

212 *Rollo* (G.R. No. 220580), vol. I, p. 209.

213 797 Phil. 411 (2016) [Per J. Perez, Third Division].

> elements of conspiracy must be proven beyond reasonable doubt. 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 frequently made by evidence of a chain of circumstances. **While direct proof is not essential to establish conspiracy, it must be established by positive and conclusive evidence. And conviction must be founded on facts, not on mere inferences and presumptions.**[214] (Emphasis in the original, citations omitted)

A reading of the assailed Decision and Resolution would however show that the only basis relied upon by the Sandiganbayan in concluding that Legaspi had a part in the award of the Seaside Drive Extension was the Sworn Statement as attached to the Counter-Affidavit of Tagud, which was taken judicial notice of, stating that it was Legaspi who proposed to PEA the construction of the Seaside Drive Extension.[215]

It must be noted however that neither the Sworn Statement nor the Counter Affidavit of Tagud was shown to have been offered as evidence by the prosecution. The Rules of Court specifically provides that evidence must be formally offered to be considered by the court. Evidence not offered is excluded in the determination of the case. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it.[216]

The same cannot also be taken judicial notice of because it does not fulfill the condition of notoriety. In *State Prosecutors v. Judge Muro*,[217] judicial notice was explained as follows:

> The doctrine of judicial notice rests on the wisdom and discretion of the courts. The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.
>
> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The provincial guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.

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214 *Id.* at 428–429.

215 See *rollo* (G.R. No. 220587), vol. I, p. 210.

216 *Republic v. Gimenez*, 776 Phil. 233, 255 (2016) [Per J. Leonen, Second Division].

217 306 Phil. 519 (1994) [Per Curiam, *En Banc*].

> To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action. Judicial cognizance is taken only of those matters which are "commonly" known.
>
> Things of "common knowledge," of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.[218] (Citations omitted)

The affidavit of Tagud cannot be taken judicial notice of because it is not a product of common experience in the ordinary course of things. No practice has been established for a contractor to ask for additional works in a project. Rather, the contents of Tagud's affidavit requires the presentation of evidence to prove the actions allegedly taken by Legaspi to ensure that the Seaside Drive Extension would be awarded to him. In the absence of such evidence, this Court cannot take at face value, the allegations in the affidavit of Tagud.

Further, the Sandiganbayan found that Legaspi proceeded to construct the Seaside Drive Extension without receiving an approval from the Office of the President as stated in their Construction Agreement. Suffice it to state however, that such an obligation does not fall on Legaspi, being the contractor.

Legaspi cannot therefore be held liable for the award of the Seaside Drive Extension.

With respect to the payments made to JD Legaspi, the same is justified on the basis of *quantum meruit* as expounded in *Melchor v. Commision On Audit*,[219] to wit:

> Moreover, a variation order (which may take the form of a change order, extra work or supplemental agreement) is a contract by itself

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218 *Id.* at 537–538.

219 277 Phil. 801 (1991) [Per J. Gutierrez, Jr., *En Banc*].

and involves the expenditure of public funds to cover the cost of the work called for thereunder. (Fernandez, A Treatise on Government Contracts under Philippine Law, 115-116 [1985]) As such, it is subject to the restrictions imposed by Sections 85 and 86 of PD 1445 and LOI 968. COA Circular No. 80-122, dated January 15, 1980, likewise ensures that an extra work order is approved only when supported by available funds. Again, the petitioner has not presented proof of an appropriation to cover the extra work order.

For a failure to show the approval by the proper authority and to submit the corresponding appropriation, we declare the contract for extra works null and void.

Section 87 of PD 1445 states:

> "Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the *officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.*" (Italics supplied)

This does not mean, however, that the petitioner should be held personally liable and automatically ordered to return to the government the full amount of P172,003.26.

As previously discussed, it would be unjust to order the petitioner to shoulder the expenditure when the government had already received and accepted benefits from the utilization of the building.

In *Royal Trust Construction v. Commission on Audit, supra*, cited by the petitioner, the Court, in the interest of substantial justice and equity, allowed payment to the contractor on a quantum meruit basis despite the absence of a written contract and a covering appropriation.

In a more recent case, *Dr. Rufino O. Eslao v. Commission on Audit, G.R. No. 89745, April 8, 1991*, the Court directed payment to the contractor on a quantum meruit basis despite the petitioner's failure to undertake a public bidding. In that case, the Court held that "to deny payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another."

Where payment is based on quantum meruit, the amount of recovery would only be the reasonable value of the thing or services rendered regardless of any agreement as to value. (Tantuico, State Audit Code of the Philippines Annotated, 471 [1982])

Although the two cases mentioned above contemplated a situation where it is the contractor who is seeking recovery, we find that the principle of payment by quantum meruit likewise applies to this case where the contractor had already been paid and the government is seeking reimbursement from the public official who heads the school. If, after COA

> determines the value of the extra works computed on the basis of quantum meruit, it finds that the petitioner made an excess or improper payment for these extra works, then petitioner Melchor shall be liable only for such excess payment.[220]

While the variation orders performed by Legaspi may have been done in advance, this does not deprive him, moreso, make him liable for payment of the cost of the project, especially that the public is now reaping the benefits of the said road construction. The principle of *quantum meruit* thus applies, and as the COA found no irregularity in the amount paid to him by the government, such amount should no longer be returned. Moreover, the contract price adjustment in the amount of PHP 42,418,493.64 was considered reasonable by the COA.[221]

As to the civil liability of petitioners, *Cabrera v. People*[222] discussed the basis of civil liability for violation of R.A. No. 3019 as follows:

> The *first* punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." Aside from this, the loss or damage must be substantial. It must be "more than necessary, excessive, improper or illegal."
>
> The *second* punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or *quantum* of damage is not thus essential. It is sufficient that the accused has given "unjustified favor or benefit to another."[223] (Citations omitted)

Here, there was no undue injury to the government or any party, or any unwarranted benefit that was proven by the prosecution. The government cannot be said to have suffered an actual loss since there was no showing that it had to perform acts prejudicial to its interest that would pertain to the loan obtained by PEA, or to the construction of the President Diosdado Macapagal Boulevard. To the contrary, the timely completion of the project resulted into a benefit in favor of the government with the increase in value of the land surrounding the area, as well as the public who continue to reap the benefits of having alternate routes that would let them avoid traffic congestion.

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220 *Id.* at 814-815.

221 *Rollo* (G.R. No. 220505), vol. II, p. 939.

222 G.R. No. 191611-14, July 29, 2019 [Per J. Reyes, J. Jr., Second Division].

223 *Id.* at 6. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

Likewise, no circumstance was shown to favor JD Legaspi in the award of the main contract and the variation orders that would amount to an unwarranted benefit in his favor. It is undeniable that the contract for the main project underwent the necessary procurement procedure. As to the award of the Seaside Drive Extension, the same was brought about by the honest belief of petitioners that it fell within the parameters of a negotiated contract. Under the rules on negotiated contract, a project may be awarded to the same contractor who was awarded with the ongoing project. Considering that JD Legaspi was awarded with the main contract, there is nothing irregular for the petitioners, believing in good faith as to the applicability of the rules on negotiated contracts, to award the Seaside Drive Extension to JD Legaspi. Thus, there was no unwarranted benefit that favored JD Legaspi in the award of the Seaside Drive Extension.

With the foregoing, the civil liability imposed by the Sandiganbayan upon the petitioners should be deleted.

ACCORDINGLY, the consolidated Petitions are **GRANTED**. The Decision dated February 5, 2015 and the Joint Resolution dated September 16, 2015 rendered by the Sandiganbayan are **REVERSED** and **SET ASIDE**. Petitioners Cristina Amposta-Mortel, Theron Victor Lacson, Leo Padilla, Manuel Beriña, Jr., Jaime Millan, Bernardo Viray, Raphael Pocholo Zorilla, Daniel Dayan, Frisco Francisco San Juan, Elpidio Damaso, Carmelita D. Chan, and Jesusito Legaspi are **ACQUITTED** of violation of Republic Act No. 3019 on the ground of reasonable doubt. The civil liability imposed by the Sandiganbayan is hereby **DELETED**.

Let an entry of judgment be issued immediately.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

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

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice