

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**SB-17-CRM-0741 to 0742**

*For: Violation of Section 3 (e), R.A.  
3019, as amended*

-versus-

Present:  
HERRERA, Jr., J. *Chairperson*  
MUSNGI, J. &  
JACINTO, J.\*

**PEDRO LADIA BACANI,  
EDILBERTO L. APOSTOL,  
KEVIN APOSTOL,**  
*Accused.*

Promulgated:  
June 3, 2022 nab

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**DECISION**

**HERRERA, JR., J.:**


Accused **PEDRO LADIA BACANI** (Bacani for short), **EDILBERTO L. APOSTOL**, and **KEVIN APOSTOL** stand charged before this Court with two (2) counts of ***Violation of Section 3 (e) of Republic Act No. 3019***, also known as the ***Anti-Graft And Corrupt Practices Act***, under two (2) ***Informations***, both dated January 12, 2017, and filed by the Office of the Special Prosecutor, Office of the Ombudsman.

The accusatory portion of the *Information* in SB-17-CRM-0741 states:

"That on or about 26 April 2004, in the Province of Quirino, and within the jurisdiction of this Honorable Court, PEDRO LADIA BACANI, a high-ranking public officer, being the then Governor of the Province of Quirino, committing the offense in the discharge of his official functions, conspiring and confederating with EDILBERTO L. APOSTOL and KEVIN APOSTOL, the general manager and the representative of Akame Marketing International, respectively, with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to Akame Marketing International by purchasing from this entity Two Thousand and Seven Hundred Ten kilos (2,710 kilos) of NBEM-21

\* Sitting as Special Member per Administrative Order No. 043-2020 dated February 24, 2020

*afp*

*M* 

Microbial Inoculant Soil Activator valued at One Thousand and Two Hundred Pesos per kilo (Php1,200.00/kilo) for the aggregate amount of Php3,250,000.00 intended for the Farm Inputs and Farm Implements Program of the Province of Quirino, without competitive public bidding, thereby depriving the Province of Quirino the opportunity to get the most advantageous offer.

CONTRARY TO LAW."<sup>1</sup>

On the other hand, the accusatory portion of the *Information* in SB-17-CRM-0742 states:

"That on or about 15 June 2004, in the Province of Quirino, and within the jurisdiction of this Honorable Court, PEDRO LADIA BACANI, a high-ranking public officer, being the then Governor of the Province of Quirino, committing the offense in the discharge of his official functions, conspiring and confederating with EDILBERTO L. APOSTOL and KEVIN APOSTOL, the general manager and the representative of Akame Marketing International, respectively, with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to Akame Marketing International by purchasing from this entity One Thousand Four Hundred Fifty Eight kilos and Thirty Three grams (1,458.33 kilos) of NBEM-21 Microbial Inoculant Soil Activator valued at One Thousand and Two Hundred Pesos per kilo (Php1,200.00/kilo) for the aggregate amount of One Million Seven Hundred Forty Eight Thousand Nine Hundred Sixteen Pesos and Eighty Four Centavos (Php1,748,916.84) intended for the Farm Inputs and Farm Implements Program of the Province of Quirino, without competitive public bidding, thereby depriving the Province of Quirino the opportunity to get the most advantageous offer.

CONTRARY TO LAW."<sup>2</sup>

For his provisional liberty, accused Bacani posted bail in the amount of One Hundred Twenty Thousand Pesos (PhP120,000.00)<sup>3</sup>. Accused Edilberto Apostol and Kevin Apostol remain at large.

On September 29, 2017, accused Bacani was arraigned. Assisted by counsel, accused Bacani pleaded not guilty to the charges.<sup>4</sup> The pre-trial thereafter ensued.

<sup>1</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, pp. 1-3

<sup>2</sup> Record of Criminal Case No. SB-17-CRM-0742, pp. 1-3

<sup>3</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, p. 11

<sup>4</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, p. 208

On October 20, 2017, accused Bacani, through counsel, filed a ***Motion to Dismiss***<sup>5</sup> dated October 18, 2017, on the ground of violation of his Constitutional right to speedy trial and speedy disposition of the cases due to the alleged inordinate delay in the conduct of the preliminary investigation. The Court denied the motion in its ***Resolution***<sup>6</sup> dated March 15, 2018.

The pre-trial resumed and was terminated with the issuance of a ***Pre-Trial Order***<sup>7</sup> dated June 8, 2018. The cases then proceeded to trial.

On October 1, 2019, the prosecution, through the Office of the Special Prosecutor, Office of the Ombudsman, filed its ***Formal Offer of Evidence***<sup>8</sup> dated September 27, 2019.

On November 13, 2019, the Court promulgated a ***Resolution***<sup>9</sup> admitting Exhibits "A" to "U", "W", "Y" to "Z", "AA" to "II", "MM" to "ZZ", "AAA" to "III" and "OOO" of the prosecution, inclusive of the sub-markings therein.

On November 25, 2019, the accused, through counsel, filed a ***Motion with Leave of Court to File Demurrer to Evidence***<sup>10</sup> dated November 21, 2019, alleging that the evidence adduced by the prosecution is insufficient to prove his guilt of the crimes charged beyond reasonable doubt. The said *Motion* was denied by the Court in its ***Resolution***<sup>11</sup> dated January 2, 2020, finding the evidence presented by the prosecution *prima facie* sufficient to convict accused Bacani, unless successfully rebutted by defense evidence.

On December 1, 2021, accused Bacani, through counsel, filed his ***Offer of Evidence***<sup>12</sup> dated November 24, 2021.

On December 14, 2021, the Court, in its issued ***Resolution***<sup>13</sup>, resolved to admit Exhibits "1", "5", "8", "8-a" to "8-c", "9", "10", "11", "12" and "12-a", "13" and

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<sup>5</sup> Id, pp. 227-242

<sup>6</sup> Id, pp. 308-318

<sup>7</sup> Id, pp. 338-347

<sup>8</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol. 2, pp. 57-242

<sup>9</sup> Id, p. 260

<sup>10</sup> Id, pp. 266-269

<sup>11</sup> Id, pp. 276-278

<sup>12</sup> Id, pp. 457-520

<sup>13</sup> Id, p. 528

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"13-a", "14" and "14-a", "15", "15-a" to "15-u", "20", "21", and "22" of accused Bacani.

To prove the charges, the prosecution presented as witnesses the following:  
1) Wilhelmina G. Caddali, former State Auditor IV of the Commission on Audit (COA), Tuguegarao City, Cagayan; 2) Mary Ann T. Carag, former State Auditor IV at the Accountancy Office, Head Office, COA; 3) Atty. Catherine G. Pascua-Castro, Graft Investigation and Prosecution Officer IV, Office of the Ombudsman; 4) Julieta B. Lansangan, Chief of the Fertilizer Regulation Division of the Fertilizer and Pesticide Authority (FPA); 5) Aurora Mamauag, Head of the Secretariat, Bids and Awards Committee, Provincial Government of Quirino; and 6) Dr. Noel B. Martinez, Provincial General Services Officer from the Province of Quirino. The prosecution also submitted as evidence documents marked as Exhibits "A" to "OOO-4-a".

For the defense, only accused Bacani testified in Court and he submitted as evidence documents marked Exhibits "1" to "22".

### SUMMARY OF TESTIMONIES OF THE PROSECUTION WITNESSES

**WILHELMINA G. CADDALI** testified that she was the State Auditor assigned at COA, local government sector, handling the Province of Quirino from 2004 to 2005. Her responsibilities include inspecting, investigating, conducting post audit, verifying financial statements, preparing audit reports, and conducting examinations involving the transactions of the Province of Quirino. As part of her duties, she issued *Audit Observation Memorandum No. 2005-101-002 (2004)*<sup>14</sup> dated March 10, 2005. It was indicated in the said AOM that there were no Inspection Reports attached as proof that an inspection was indeed conducted by an assigned inspector for the alleged delivery of the purchased 4,168.33 kilos of NBEM-21 Microbial Soil Activator. It was also stated that although there was a *Delivery Receipt* dated April 20, 2004 and signed by Mr. Ernesto Inocencio, the Provincial Administrator of Quirino Province, for the purchased 2,700 kilos of NBEM-21 Microbial Soil Activator, there was no delivery receipt attached for the alleged second delivery of the purchased 1,458.33 kilos of NBEM-21 Microbial Soil Activator. She testified that she arrived at her audit observations upon checking the purchase orders, statement of account, disbursement vouchers, checks, and official receipts issued by Akame Marketing International (Akame). She also stated that when she requested Dr. Noel B. Martinez, the head of the General Service

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<sup>14</sup> See Exhibit "Z"



Office of the Province of Quirino, to conduct an inspection as regards the delivery of the fertilizers, Dr. Martinez informed her that he did not receive the subject fertilizers.<sup>15</sup>

**MARY ANN T. CARAG** testified that she was the State Auditor assigned at the Department of Agriculture, Regional Field Unit II (DA RFU II), Tuguegarao City from 1983 to 2009. As State Auditor, she was responsible for the conduct of audit of the transactions of the DA RFU II as well as the issuance of Confirmation Letters, Notice of Disallowance, Suspension, and Audit Observation Memorandum. She issued *Audit Observation Memorandum No. 2004-030*<sup>16</sup> dated October 28, 2004. In her issued AOM, she stated that "*public bidding was not conducted in the procurement of farm inputs and implements. Xxxxx The apparent high cost of the farm inputs must have been due to the absence of public bidding which may have solicited the most advantageous price for the government.*"<sup>17</sup>

**ATTY. CATHERINE G. PASCUA-CASTRO** testified that in 2006, she was designated as the Team Leader in the General Investigation Bureau-C Field Investigation Office (GIB-C FIO), and in 2009 to 2011, she was then designated as the Director of GIB-C FIO, along with her assignment as one of the members of the Task Force on Investigation of Complex Cases which include the Fertilizer Fund Scam. She testified that she came across the case of accused Pedro L. Bacani, et al., during the investigation conducted by the Task Force Abono-FIO against the Provincial Government of Quirino as one of the proponents of the Department of Agriculture (DA) involved in the Fertilizer Fund Scam. The said case is about the procurement of fertilizers by the Provincial Government of Quirino without public bidding, in violation of Republic Act (RA) No. 9184. She also stated that she used to be the immediate supervisor of Mr. Leonardo R. Nicolas, one of the members of Task Force Abono, who was assigned to investigate particular localities as proponents allegedly involved in the Fertilizer Fund Scam, such as the Provincial Government of Quirino, among others. Mr. Nicolas was also tasked to obtain and evaluate all the evidence gathered and to prepare and file a complaint, if necessary. However, Mr. Nicolas is no longer connected with the Office of the Ombudsman. She likewise testified that as a result of Mr. Nicolas' investigation as to the Provincial Government of Quirino, he recommended the filing of a *Complaint*<sup>18</sup> against the erring officials of the said province, which she, as his immediate supervisor, reviewed and subscribed.<sup>19</sup>

**JULIETA B. LANSANGAN** testified that she is the Chief of the Fertilizer Regulations Division (FRD) under the Fertilizer and Pesticide Authority (FPA). As Chief of FRD, she evaluates applications for license and product registration of fertilizer importers, manufacturers, distributors, dealers, among others, for the approval of the FPA Director. She stated that Akame is licensed to operate not as a national distributor but as an area distributor within the Mindanao areas only. Based on FPA's records, it is J.P. BYM Food Mix Manufacturing and Export which is the licensed manufacturer and licensed national distributor of NBEM-21

<sup>15</sup> See Judicial Affidavit dated January 15, 2019, Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, pp. 352-372

<sup>16</sup> See Exhibit "CC" to "CC-1"

<sup>17</sup> See Judicial Affidavit dated February 11, 2019, Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, pp. 385-411

<sup>18</sup> See Exhibit "A"

<sup>19</sup> See Judicial Affidavit dated February 15, 2019, Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, pp. 412-545

Microbial Soil Activator. She likewise testified that before she became the Chief of FRD, she was a Market Specialist assigned in the processing of the fertilizer products for registration as well as in the preparation of date of the registered fertilizer products. During her time as Market Specialist in the year 2006, she prepared the *List of Fully Registered Fertilizer (Finished Products/Raw Materials) As of 30 June 2005*<sup>20</sup> as well as the *List of Organic Fertilizer Manufacturer/Importer As of 31 December 2004*<sup>21</sup> and *2 March 2006*<sup>22</sup>. Based on the said lists, only J.P. BYM Food Mix Manufacturing and Export is registered with the FPA as the manufacturer/importer of NBEM-21 Activator and NBEM-21 Organic Fertilizer.<sup>23</sup>

**AURORA T. MAMAUAG** testified that she is currently the Head of the Secretariat, Bids and Awards Committee (BAC) of the Provincial Government of Quirino. As head of the BAC Secretariat, she is responsible for the custody of procurement documents as well as all procurement-related information of the province. She testified that despite diligent efforts, her office could not find any bidding document relative to the purchase of the subject NBEM-21 Microbial Inoculant Soil Activator fertilizers made in 2004 by the province through the accused, former Governor Pedro Bacani.<sup>24</sup>

**DR. NOEL B. MARTINEZ** testified that he is the Provincial General Services Officer (GSO) of the Province of Quirino from 1992 up to present. As GSO of the province, he is the custodian of all properties of the province. He also implements contracts of procurements with regard to the delivery of goods in relation to all procurements of the province. He likewise issues inspection and acceptance reports once the delivery of the goods is made to the GSO for purposes of payment of the goods. In relation to the instant cases, he testified that the Purchase Orders and Purchase Requests related to the purchase of the subject NBEM-21 Microbial Inoculant Soil Activator fertilizers made in 2004 by the province through the accused, former Governor Pedro Bacani, did not pass through his Office; hence, he did not inspect or accept the subject fertilizers.<sup>25</sup>

## SUMMARY OF THE TESTIMONY OF THE ACCUSED

**PEDRO L. BACANI** testified that he was the Governor of the Province of Quirino from 1991 to 1997 and again from 2001 to 2007. While he was still the Governor, his province became one of the beneficiaries of the *Ginintuang Masaganang Ani* (GMA) Program of the then President Gloria Macapagal Arroyo in 2004 which was being implemented by the Department of Agriculture, Region 2. He and the Regional Director of the Department of Agriculture, Dr. Gumersindo D. Lasam, then entered into a *Memorandum of Agreement* dated April 19, 2004 wherein it was stipulated that the said Department will transfer Five Million Pesos (PhP5,000,000.00) to Quirino Province once the farm inputs have been procured

<sup>20</sup> See Exhibit "DDD"

<sup>21</sup> See Exhibit "CCC"

<sup>22</sup> See Exhibit "EEE"

<sup>23</sup> See Judicial Affidavit dated March 1, 2019, Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, pp. 546-627

<sup>24</sup> See Judicial Affidavit dated March 19, 2019, Record of Criminal Case No. SB-17-CRM-0741, Vol. 2, pp. 18-20

<sup>25</sup> See Judicial Affidavit dated April 24, 2019, Record of Criminal Case No. SB-17-CRM-0741, Vol. 2, pp. 25-31

and upon inspection of the deliveries and submission by the Province of the Certificates of Acceptance. He testified that the Province was able to receive the amount of PhP5,000,000.00 since he, as the Governor, was able to comply with the conditions indicated in the said Memorandum, as evidenced by the Purchase Reports, Purchase Requests, Purchase Orders, Delivery Receipts, Certificates of Acceptance, as well as the Inspection and Acceptance Report. After receiving the said amount, he paid Akame Marketing International, as evidenced by the Disbursement Vouchers and Official Receipts. Upon delivery of the purchased NBEM-21 Microbial Inoculants Soil Activator to the Province, the subject fertilizers were then distributed to the beneficiaries listed by the State Auditor, as evidenced by the Certificates of Acceptance. He likewise stated that Akame was chosen as the distributor of the NBEM-21 since it was the lowest bidder and it was the Department of Agriculture which recommended the use of the Microbial Inoculants Activator and Akame. He clarified that the charges against him are incorrect as there was no undue injury sustained by the Government or private entity in the purchase of the fertilizers. The Province of Quirino spent the amount, purchased the fertilizers as recommended by the Department of Agriculture, and were distributed to the beneficiaries as listed by the State Auditor. He also claimed that there was no manifest partiality, evident bad faith or gross inexcusable negligence on his part. In fact, he had complied with the conditions embodied in the Memorandum of Agreement. He likewise explained that the originals of the documents he submitted can no longer be retrieved hence, all his submitted documents were mere photocopies.<sup>26</sup>

### BASIC UNDISPUTED FACTS

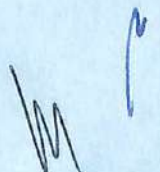
Accused Bacani was the Governor of the Province of Quirino during the time material and relevant to these cases.

DA RFU II is one of the recipients of the Seven Hundred Twenty-Eight Million Peso fund (PhP728,000,000.00) covered by SARO No. E-04-000164 dated February 03, 2004 under the Farm Input/Farm Implement Program (FIFIP).

The Provincial Government of Quirino, through accused Bacani, entered into a Memorandum of Agreement with DA RFU II, through Dr. Gumersindo D. Lasam, for the implementation of the FIFIP for Region II.

Accused Bacani requested and approved the undated Purchase Orders for the purchase of 4,168.33 kilos of NBEM-21 Microbial Inoculant Soil Activator at a unit cost of Php1,200.00 per kilo.

<sup>26</sup> see Judicial Affidavit dated July 26, 2021, Record of Criminal Case No. SB-17-CRM-0741, Vol. 2, pp. 373-429



At the time material and relevant to these cases, the NBEM-21 Microbial Inoculant Soil Activator was readily available in the market as certified by the FPA.

The Provincial Government of Quirino paid Akame Marketing International the amounts of Php3,250,00.00 and Php1,748,916.84, respectively, as payment for the purchase of Microbial Inoculant Soil Activator.

### ISSUE

The issue now is whether the evidence adduced by the prosecution is sufficient to hold the accused liable for ***Violation of Section 3(e) of Republic Act No. 3019, as amended***, as charged in the two (2) ***Informations*** both dated January 12, 2017.

### FINDINGS AND CONCLUSION

***Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended***, reads, insofar as pertinent:

“Sec. 3. Corrupt Practices of Public Officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

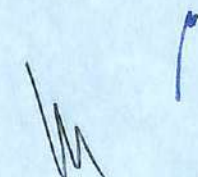
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e. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”

The elements<sup>27</sup> of ***Section 3 (e)*** are as follows:

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<sup>27</sup> Collantes v. Marcelo, 530 SCRA 142





- (1) The accused must be a public officer discharging administrative, judicial or official functions;
- (2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- (3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefit, advantage or preference in the discharge of his functions.

In criminal cases, the accused is presumed innocent and the burden is on the prosecution to establish his guilt of the crime charged by proof beyond a reasonable doubt. Every element of the crime charged must be proved with this requisite quantum of proof. Proof beyond reasonable doubt requires moral certainty, or that degree of proof which produces conviction in an unprejudiced mind. It is such certainty that satisfies the judgment and conscience of a reasonable mind that the accused is guilty of the crime charged. Conviction must rest on the strength of the prosecution evidence and not on the weakness of the defense.<sup>28</sup>

After a careful study, the Court finds accused Bacani liable for two (2) counts of **Violation of Section 3(e) of R.A. 3019**, as charged in the **Informations** dated January 12, 2017.

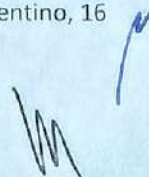
To begin with, the first element is undoubtedly present. Accused Bacani was a public official at the time material to this case, he being the former Governor of the Province of Quirino.

The Court rules that the second and third elements are likewise present.

As to the second element, the law provides three (3) modes of commission of **Violation of Section 3(e) of R.A. 3019**, namely: through "manifest partiality", "evident bad faith", and/or "gross negligence".

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<sup>28</sup> Section 14(2), Article III, 1987 Constitution; Section 2, Rule 133, Revised Rules of Court; *People v. Tolentino*, 16 SCRA 467



In *Fonacier v. Sandiganbayan*<sup>29</sup>, the Supreme Court explained the terms as follows:

“Manifest partiality is defined as “a clear, notorious, or plain inclination or predilection to favor one side rather than another.” Evident bad faith connotes a palpable and patently dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes the nature of a fraud. Evident bad faith is more than bad judgment or negligence. Gross inexcusable negligence is characterized by the want of slightest care; by the willfull and intentional act or omitting to act in a situation where there is a duty to act, attended by conscious indifference to consequences as to affected persons.”

From the evidence adduced by the prosecution as well as the defense, the Court finds accused Bacani to have acted with manifest partiality, evident bad faith and gross inexcusable negligence in the procurement of the subject fertilizers and subsequently awarding the contract to Akame Marketing International without conducting a competitive public bidding.

Under **Section 10 of the Government Procurement Reform Act (R.A. No. 9184)**, all procurement shall be done through competitive public bidding, except as provided for in Article XVI, which states that:

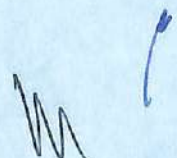
**“ARTICLE XVI  
ALTERNATIVE METHODS OF PROCUREMENT**

SEC. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

(a) Limited Source Bidding, otherwise known as Selective Bidding – a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of preselected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

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<sup>29</sup> 308 Phil. 660



(b) Direct Contracting, otherwise known as Single Source Procurement – a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

(c) Repeat Order – a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

(d) Shopping – a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

(e) Negotiated Procurement – a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.”

Accused Bacani, when asked during the cross-examination, testified, *inter alia*:

“Q: **Am I correct to say, Mr. Witness that in the purchase of the said fertilizers, competitive or public bidding was not made?**

Chairperson: Counsel, you show yourself on the video. We do not know if you are talking with each other.

Atty. Betguen: No, I'm not, Your Honors.

Chairperson: No, no, no. You have to... You should have used a separate device.

Witness: **(No answer)**

Chairperson: Okay. No answer. Next question.

*df* *M*

Q: There is no answer. Thank you, Mr. Witness.  
**Am I correct to say also that in the purchase of the said fertilizers there was no canvass nor price quotations from different suppliers, correct?**

Chairperson: Answer.

Witness: I can no longer remember.

Q: **Am I correct to say also that in the purchase of the said fertilizers, you procured it directly from Akame Marketing Incorporated, yes?**

A: **Yes, ma'am.**<sup>30</sup> (Emphasis and underscoring supplied)

Based from the above-quoted testimony, accused Bacani admitted that he approved the disbursement and utilization of the Php5M fund for the purchase of 4,168.33 kilos of NBEM-21 fertilizers without conducting public bidding and instead resorted to Direct Contracting.

Also, in her **Judicial Affidavit** dated February 11, 2019 which serves as her direct testimony, prosecution witness Mary Ann T. Carag, former State Auditor IV at the Accountancy Office, Head Office, COA, testified that:

**"19. Q: On the same page two, paragraph four of your AOM, you indicated that "As gathered from the documents submitted, it was noted that public bidding was not conducted in the procurement of the farm inputs and implements.", how did you arrive at the observation that public bidding was not conducted?**

A: Because upon confirmation with the audit team leader, Ms. Caddali, no bidding documents were submitted, ma'am."<sup>31</sup>

**Section 50 of R.A. No. 9184** explicitly provides that:

<sup>30</sup> TSN of September 16, 2021, pp. 8-9

<sup>31</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol. 1, p. 387

**“SEC. 50. Direct Contracting.** – Direct Contracting may be resorted to only in any of the following conditions:

(a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

(b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,

(c) Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.” (Emphasis and underscoring supplied)

The evidence of the defense indubitably failed to prove and justify that the conditions cited above are present in the instant cases.

In his **Judicial Affidavit** dated July 26, 2021 which serves as his direct testimony, accused Bacani stated, among others:

“u. Question: **Why was the Akame chosen as the sole distributor of the NBEM-21?**

Answer: That the Akame was the lowest bidder and it was the Department of Agriculture who recommended the use of the Microbial Inoculants Activator and the Akame.”<sup>32</sup>

However, aside from his lone testimony, no evidence was presented by the defense to prove that it was indeed the Department of Agriculture which recommended Akame and that Akame was the lowest bidder.

On the other hand, the prosecution was able to sufficiently establish that the purchased fertilizers from Akame were overpriced by as much as 100%. Per the

<sup>32</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol. 2, p. 381

**Letter**<sup>33</sup> dated March 5, 2007 of Norlito R. Gicana, CESO IV, former Executive Director of FPA, the average retail price per 50 kilos/bag of NBEM-21 Microbial Inoculant Soil Activator was **Php185/bag** (50 kilos) as of September 2004 which was way lower than that paid by accused Bacani to Akame which was **Php1,200/kilo**. The said *Letter* was authenticated by prosecution witness Julieta P. Lansangan, Chief of the Fertilizer Regulation Division of the Fertilizer and Pesticide Authority (FPA), in her **Judicial Affidavit** dated March 1, 2019 which serves as her direct testimony, to wit:

"34. Q: Who was the Executive Director of the FPA on 2007?  
A: Norlito R. Gicana was the Executive Director, ma'am.

35. Q: Is he still connected with the FPA now?  
A: Not anymore ma'am because he retired sometime on September 2016.

36. Q: If shown to you a copy of his letter, would you be able to identify it?  
A: Yes, ma'am.

37. Q: I am showing you a letter dated March 5, 2007 marked by the prosecution as Exh. AAA, kindly go over the same and tell us whose signature appears over the name Norlito R. Gicana, CESO IV, Executive Director?  
A: That is the signature of Director Gicana, ma'am.

38. Q: Why do you know that such is his signature?  
**A: I am familiar with his signature because I usually see him affix his signatures on different documents.**

39. Q: Attached as Annex J of the letter is a certified true copy of the document denominated as Average Prices of Fertilizers and Pesticides for the month of September 2004, and there appears a signature over the name Elizabeth P. Perlado, whose signature is this?  
A: Signature of Elizabeth Perlado, ma'am.

40. Q: Why do you know that such is her signature?  
**A: Because she used to be one of my staff so I am very familiar of her signature.**"<sup>34</sup>

<sup>33</sup> See Exhibit "AAA"

<sup>34</sup> Record of Criminal Case No. SB-17-CRM-0741, Vol 1, pp. 551-552



**Rule 130, Section 44** of the Revised Rules on Evidence provides:

**“Section 44.** Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.”

Here, the *Letter* of former Executive Director Gicana is an entry in official record of the Fertilizer and Pesticide Authority. Hence, it is *prima facie* evidence of the facts stated therein.

In the case of *Ammugauan v. The Secretary of Agriculture, etc., et al.*,<sup>35</sup>, the Supreme Court explained that:

“The letter of the Chief of a survey party of the NLSA, submitted by him to the Director of Lands, in the performance of his duty, is an official record or document, and, as such is prima facie evidence of the facts therein stated xxx as the said chief of survey party is considered as a public officer under Section 2 of the Revised Administrative Code. A person may be a mere employee in the Government service and his functions may be purely clerical or ministerial and do not involve the exercise of discretion. But just the same he is an officer with reference to the performance of his duty. Xxxx But whether one is an officer, a clerk or an employee, he is an officer when performing a particular official act or function pertaining to him.”

In the instant case, Gicana executed and signed the letter in his capacity as the Executive Director of FPA.

Moving on, prosecution witness Lansangan also testified that Akame Marketing International is not the exclusive dealer or manufacturer of the subject fertilizer in the Province of Quirino. She declared that as Akame applied as an area distributor in Mindanao areas only, to wit:

“Q: And I’m sure you came across with the Akame Marketing International?”

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<sup>35</sup> 3 C.A. Rep. 1184



A: Yes, sir.

Q: In fact, your office has approved the application of this Akame Marketing International as distributor of fertilizers?

A: **As an area distributor fertilizer.** –(interrupted)

Chairperson: As an?

A: Area distributor, your Honor.

Atty. Betguen: What made you say that this Akame was only an area distributor, Madam Witness?

A: Based on records, the company applied only for such and they were issued the same license as area distributor as attached in the judicial affidavit.

Xxxxx

Atty. Betguen: Xxxxx You mentioned about area distributor, what do you mean by that?

A: **The company of the license entity is limited to sell only in particular place whether it's in Luzon, Visayas or Mindanao. In this particular case, Akame is an area distributor in Mindanao.**

Xxxxx

Chairperson: What document is that?

A: Your Honor, it's an Annex, "GGG".<sup>36</sup>

In *Librado M. Cabrera and Fe M. Cabrera v. People of the Philippines*<sup>37</sup>, the Supreme Court explained:

**"The rationale behind the requirement of a public bidding, as a mode of awarding government contracts, is to ensure that the people get maximum benefits and quality services from the contracts. It promotes**

<sup>36</sup> TSN of April 1, 2019, pp. 10-16

<sup>37</sup> G.R. No. 191611-14, July 29, 2019



transparency in government transactions and accountability of public officers as it minimizes occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts. For these reasons, important public policy considerations demand the strict observance of procedural rules relating to the bidding process.

Petitioners admit that they have dispensed with the requirement of public bidding. They justify non-compliance with the bidding process by claiming that the purchases were emergency purchases as certified to by the Head of the Municipal Health Office, and that the purchases were all directly from the manufacturer or exclusive distributor of Philippine-manufactured drugs. They averred that DLI was considered as such in the case of *Casanova v Cabrera* decided by Office of the Ombudsman for Luzon.

We agree with the Sandiganbayan that these justifications are not sufficient to forego the conduct of public bidding. **Indeed, it is incumbent upon a party who invokes coverage under the exception, to a general rule to prove fulfillment of the requisites thereof.** In this case, petitioners fail to adduce evidence that their purchases of the medicines fall under the exceptions.

**Xxxxx Since petitioners are claiming exemption to the requirement of public bidding, the burden of proof lies upon them to show that there is no qualified manufacturer but DLI which could offer the best possible price for the government.**

For failure to comply with the procedure, petitioners' case does not qualify under the exceptions provided by law. Thus, petitioners should have conducted a competitive public bidding on the procurement of the medicines for the municipality in order to avoid suspicions of irregularity. Petitioners, as mayors, should have acted in a circumspect manner to observe the law in order to promote transparency in the handling of government funds. As things stand, there was no public bidding that was conducted.

Finally, anent the presence of the third element of the crimes charged, it is clear that in the absence of a competitive public bidding without any valid justification, accused Bacani gave unwarranted benefits to Akame Marketing International.

As elaborated in the case of *Cabrera*<sup>38</sup>:

**"Indeed, the choice of DLI as the grantee of the medicines, in the absence of public bidding, shows that petitioners gave unwarranted benefit, advantage or preference in favor of DLI.** The words "unwarranted," "advantage" and "preference" were defined by the court in this wise:

"[U]nwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. (Citations omitted)

**In the instant case, there is no sufficient justification or adequate reasons why DLI was favorably chosen. DLI was awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government.** And the only way to ascertain the best possible price advantageous to the government is through competitive public bidding. Indeed, public bidding is the accepted method for arriving at a fair and reasonable price and it ensures that overpricing and favoritism, and other anomalous practices are eliminated or minimized. **To circumvent this requirement outside the valid exceptions, is evidence of bad faith.** As held by this Court:

The further discovery that the procurements were made by the petitioners from DLI without them first ensuring that the local government would be acquiring the medicines at the lowest possible price is sufficient to negate any presumption of good faith, especially since such failure prima facie constitutes a contravention of the Local Government Code.

Xxxxx

**By choosing DLI without public bidding, petitioners evidently give unwarranted benefit, advantage or preference in favor of private persons, through manifest partiality.** (Emphasis and underscoring supplied)

<sup>38</sup> Ibid.

The Court therefore finds accused Bacani guilty of two (2) counts of violation of Section 3 (e) of R.A. No. 3019 due to the absence of a competitive public bidding in the procurement of the subject fertilizers, resulting to giving unwarranted benefits, advantage, and preference to Akame Marketing International, in blatant violation of R.A. No. 9184.

Also, had there been a conduct of a competitive public bidding, the Province of Quirino would not have suffered undue injury and would not have been deprived of the opportunity to obtain the lowest calculated responsive bid or the most advantageous and beneficial to the government. Accused Bacani, as a government official, is expected to exercise greater responsibility in ensuring compliance with the pertinent rules and regulations.

**WHEREFORE**, premises considered, the Court hereby renders judgment as follows:

- a) In **Criminal Case No. SB-17-CRM-0741**, the Court finds accused Pedro L. Bacani guilty beyond reasonable doubt of **Violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended**, also known as the **Anti-Graft and Corrupt Practices Act**, as charged in the **Information** dated January 12, 2017. Pursuant to the provisions of the **Indeterminate Sentence Law**, accused Bacani is sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from public office; and
- b) In **Criminal Case No. SB-17-CRM-0742**, the Court finds accused Pedro L. Bacani guilty beyond reasonable doubt of **Violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended**, also known as the **Anti-Graft and Corrupt Practices Act**, as charged in the **Information** dated January 12, 2017. Pursuant to the provisions of the **Indeterminate Sentence Law**, accused Bacani is sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from public office.

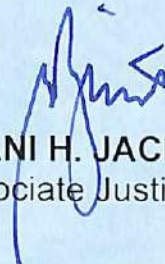
Let the cases be archived with respect to accused Edilberto L. Apostol and Kevin Apostol, to be revived upon their arrest.

SO ORDERED.

  
**OSCAR C. HERRERA, JR.**  
Chairperson  
Associate Justice

We concur:

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

  
**BAYANI H. JACINTO\***  
Associate Justice

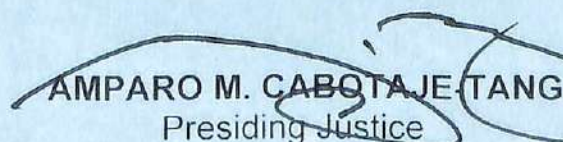
ATTESTATION

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

  
**OSCAR C. HERRERA, JR.**  
Chairperson  
Second Division

CERTIFICATION

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

  
**AMPARO M. CABOTAJE TANG**  
Presiding Justice