



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

FOURTH DIVISION

PEOPLE OF THE  
PHILIPPINES,

Plaintiff,

- versus -

LAURO L. BAJA, JR.,  
Accused.

**CRIM. CASE NO. SB-11-CRM-0030**  
For: Violation of Section 3(e) of R.A.  
No. 3019

Present:

**QUIROZ, J.**, *Chairperson*  
**CRUZ, J.**  
**JACINTO, J.**

Promulgated:

September 28, 2018 uab

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DECISION

**CRUZ, J.**

Accused Lauro L. Baja, Jr. (hereinafter, "Baja") is charged with violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The accusatory portions of the Information read as follows:

That on July 3, 2003, or sometime prior or subsequent thereto, in the Philippine Mission to the United Nations, New York City, United States of America, which is an extension of the Philippine territory and within the jurisdiction of this Honorable Court, herein accused **LAURO L. BAJA, JR.**, a high ranking public officer with Salary Grade 29, holding then the position of Philippine Permanent Representative to the United Nations and Chief of

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Mission I, Department of Foreign Affairs, who by reason of his office and while in the exercise and discharge of his functions, acting with manifest partiality, evident and [sic] faith, or gross inexcusable negligence, and committing the offense in relation to office, did then and there, willfully, unlawfully, and criminally give unwarranted benefits, advantage or preference to Amazing Construction Corporation, by entering into and approving a contract in favor of Amazing Construction Corporation, for the repair of the Philippine owned townhouse in New York City, United States of America, in the total amount of **FIFTEEN THOUSAND US Dollars (US\$15,000.00)** by advancing payment to Amazing Construction Corporation in the amount of **ELEVEN THOUSAND DOLLARS (US\$11,000.00)**, United States Currency, representing **70%** of the contract price, in violation to [sic] the provision of R.A. 9184 (Government Procurement Reform Act), which only allows the government advance payment of **15%** of the contract price, to the damage and prejudice of the public interest.

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

When arraigned, Baja pleaded "not guilty" to the charge. The parties did not enter into any stipulation or admission of facts during the pre-trial conference.

### ISSUES


The parties proposed the following statement of issues:


- a. Whether or not accused, with manifest partiality, evident bad faith and gross inexcusable negligence, gave unwarranted benefits, advantage or preference to Amazing Construction Corp. by entering into and approving a contract in favor of the said corporation for the repair of the Philippine-owned townhouse in New York City in the total amount of \$15,000.00 by advancing payment to Amazing Construction Corp. in the amount of \$11,000.00 representing 70% of the contract price, in violation of the provision of R.A. 9184, which allows only government advance payment of 15% of the contract price;
- b. Whether or not Amazing Construction Corp. offers the same service offered by other contractors at a lower cost; and
- c. Whether or not there was an urgent need to repair the Official Residence.<sup>2</sup>

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<sup>1</sup> Records, Vol. 1, pp. 1-3.

<sup>2</sup> Amended Pre-Trial Order. *Id.*, pp. 224-238.



EVIDENCE FOR THE PROSECUTION

The prosecution presented Jesus Salvador (Salvador), Atty. Clarence Joson (Joson), Crescente R. Relacion (Relacion), Edna V. De Leon (De Leon), Atty. Manolo C. Sy (Sy) and Marilou D. Reyes (Reyes). Their respective testimonies are summarized as follows:

1. Salvador's<sup>3</sup> testimony was dispensed with after the prosecution and the defense stipulated that the Department of Foreign Affairs (DFA) through the Presidential Anti-Graft Commission (PAGC) filed a complaint marked Exhibit "D" against Baja on 12 March 2008 before the Office of the Ombudsman.<sup>4</sup>

2. Joson's<sup>5</sup> testimony was also dispensed with after the parties stipulated that she would only testify on the subpoena dated 27 August 2008 marked Exhibits "NN" and "NN-1" issued by the Office of the Ombudsman to Mario L. De Leon and Relacion, as well as the compliance of the DFA through Undersecretary Franklin M. Ebdalin dated 2 September 2008, marked Exhibit "OO" together with its attachments collectively marked as Exhibits "E", "F" and "H".<sup>6</sup>

3. Relacion,<sup>7</sup> Acting Assistant Secretary of the Office of Fiscal Management Services of the DFA, identified and confirmed the truth and veracity of the contents of his Judicial Affidavit<sup>8</sup> dated 14 May 2014. Pursuant to the travel authority issued by then DFA Secretary Alberto G. Romulo, he and Mario L. De Leon, Jr. were assigned sometime in May 2007 to conduct the fact-finding investigation and examination of the books and records of the Philippine Mission to the United Nations (PMUN) in New York, U.S.A., then headed by Baja, the Philippine Permanent Representative to the United Nations.

On cross-examination, Relacion stated that the controlling law in the case of the contract for repairs of the subject townhouse used as official residence of the Philippine Permanent Representative should be R.A. No. 9184 and not Executive Order (E.O.) No. 40, which was already repealed by the former. He believed that the procurement for such repair works should undergo public bidding

<sup>3</sup> TSN, 5 August 2015, pp. 7-9.

<sup>4</sup> Order dated 5 August 2015. Records, Vol. 1, p. 301. *γ*

<sup>5</sup> TSN, 5 August 2015, pp. 12-17.

<sup>6</sup> *Supra*, note 4.

<sup>7</sup> TSN, 28 September 2015, pp. 5-54.

<sup>8</sup> Records, Vol. 1, pp. 105-131.

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based on R.A. No. 9184, but it is not an absolute requirement since there are alternative modes of procurement. He explained that there were no documents available in the DFA that would point out that the resort to alternative modes of procurement was called for at that time.

Upon question from the Court, Relacion stated that he relied on R.A. No. 9184 in the modes of procurement, including the alternative modes. There are certain circumstances that must be present before resorting to alternative modes of procurement. Relacion explained that, in applying the alternative mode of procurement, Baja perhaps neglected or failed to comply with the requirements.

As to the advance payment of Eleven Thousand U.S. Dollars (\$11,000.00) made by Baja to ACC, Relacion stated that the same violated existing regulations on R.A. No. 9184 and those issued by the Commission on Audit (COA). Besides, there was no mention of advance payment in the contract between ACC and the PMUN. He admitted that it is the procuring entity that is prohibited under Section 4.1 of Annex "E" of the Implementing Rules and Regulations Part A (IRR-A<sup>9</sup>) of R.A. No. 9184 from making the advance payment in excess of fifteen percent (15%) of the contract price which, in this case, is the PMUN. He admitted that it was Baja's wife, Mrs. Norma Baja (Mrs. Baja), who advanced the payment to ACC from her personal funds. He also admitted that the reimbursement to Mrs. Baja was made after the completion of the project. There was no advance payment made by the government.

Upon query from the Court, Relacion explained that the government reimbursed Mrs. Baja after two (2) years, when there was a threat to sue the Philippine Government, so the DFA made an arrangement for such payment. There was also no written request made by the contractor (ACC), contrary to Section 4.1 of Annex "E" of the IRR-A of R.A. No. 9184.

Relacion stated that there was no acknowledgment receipt issued by ACC for the \$11,000.00 advance payment. Since Mrs. Baja did not have a private transaction with the contractor, her payment was made for and in behalf of the government, that was why it was considered as an advance payment.

He also clarified that there were two (2) checks issued: for \$11,000 in favor of Mrs. Baja and for \$4,000 in favor of ACC. But the correct arrangement should be that the \$15,000 should be paid to

<sup>9</sup> IRR-A of R.A. No. 9184 covers fully domestically-funded procurement activities while IRR-B refers to foreign-funded procurement activities. See Section 1 of IRR-A.

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ACC. If there are advance payments made by a private party, Relacion explained, it is the ACC that should pay to that private party. He concluded that the Philippine government should not have anything to do with the advance payment made by a third party.

4. The testimony of De Leon<sup>10</sup>, State Auditor IV of the DFA, was dispensed with after the prosecution and the defense stipulated that she is the custodian of the two (2) cash vouchers (Exhibits "Q" and "Q-5") and the two (2) checks (Exhibits "Q-2" and "Q-4"), and that these documents are authentic and genuine.<sup>11</sup>

5. Sy,<sup>12</sup> State Auditor V assigned to COA DFA on the dates material to the case, identified and confirmed the truth and veracity of the contents of his Judicial Affidavit<sup>13</sup> dated 18 June 2014. He was part of the team that conducted a special audit of the books and records of the PMUN in New York, U.S.A. to ascertain the soundness of its operations and fiscal management, pursuant to a COA office order issued by then COA Chairperson Guillermo N. Carague.

On cross-examination, Sy admitted that even under E.O. No. 40, public bidding is not an absolute requirement since there are alternative methods of procurement. Under the law, the one who is supposed to decide whether or not an alternative method of procurement should be resorted to is the head of procuring entity which in this case is Baja, the head of PMUN. In other words, Baja had the authority and the discretion to decide whether or not an alternative method of procurement should be resorted to for reasons of economy and efficiency.

Sy confirmed that whether under E.O. No. 40 or under R.A. No. 9184, negotiated procurement can be resorted to if there is an urgent need to restore vital public services. He insisted that his team relied on E.O. No. 40 and not R.A. No. 9184.


6. Reyes,<sup>14</sup> COA State Auditor assigned as a member of the team that conducted an audit on foreign-based government agencies which included, among others, the PMUN in New York, United States of America (USA), identified and confirmed the truth and veracity of the contents of her Judicial Affidavit dated 4 February 2016.

  
<sup>10</sup> TSN, 28 September 2015, pp. 55-57.

<sup>11</sup> Order dated 28 September 2015. Records, Vol. 1, p. 322.

<sup>12</sup> TSN, 6 January 2016, pp. 9-65.

<sup>13</sup> Records, Vol. 1, pp. 196-207.

<sup>14</sup> TSN, 26 July 2016, pp. 7-70. 



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On cross-examination, she explained that she was the one who evaluated the procurement of the repairs to the ambassador's residence as to its compliance with E.O. No. 40. She stated that the applicable law was E.O. No. 40 and not R.A. No. 9184 because of the transitory clause in the IRR-A of the latter law. She explained that the advance payment made by Baja to ACC was in violation of E.O. No. 40 which requires or allows advance payment of not more than fifteen percent (15%) of the contract price. However, she admitted that not a single centavo of government money was spent for said advance payment.

The prosecution formally offered in evidence<sup>15</sup> the following documentary exhibits:

Exhibit	Description
"D"	Complaint-Affidavit dated March 10, 2008 executed by Jaime D. Jacob, duly authorized representative of the Presidential Anti-Graft Commission (PAGC) with all its attachments
"G"	Report on the Findings on the Flawed Procurement Process Relating to the Repair of the E66th Street Townhouse in 2003, inclusive of Annexes (N.B. Annexes 9 and 12)
"G-1" & "G-2"	Signatures of Mario L. De Leon, Jr. and Crescente R. Relacion, respectively
"J"	Department of Foreign Affairs Travel Authority No. 351-07 dated April 26, 2007 issued by DFA Secretary Alberto G. Romulo
"I"	Management Letter on the Audit of Philippine Mission to United Nations New York, USA for the period April 25, 2003 to July 17, 2006, with all its Annexes
"I-1"	Signature of Director IV Roberto T. Marquez, Director-in-Charge
"I-2"	Commission on Audit (COA) Office Order No. 2006-13 dated May 25, 2006.
"I-4"	Audit Observation Memorandum – AOM No. 04-2006 dated November 17, 2006 with Subject: Audit of Building Fund Allocated for the Renovation of the Official Residence of the Philippine Permanent Representative, Mission to the UN, New York USA
"I-5"	Audit Observation Memorandum – AOM Mission No. 05-2006 dated November 17, 2006 with Subject: Audit of Building Fund Allocated for the Renovation of the Official Residence of the Philippine Representative, Mission to the UN, New York USA
"I-6"	Audit Observation Memorandum – AOM Mission No. 06-2006 dated November 17, 2006 with Subject: Audit of Building Fund Allocated for the Renovation of the Official

<sup>15</sup> Prosecution's Formal Offer of Exhibits dated 18 August 2016.

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	Residence of the Philippine Representative, Mission to the UN, New York, USA
"Q"	Cash Voucher No. NY-308/05 dated July 11, 2005 in the amount of US\$11,000.00 with its attachments
"Q-1"	Signature of Norma Baja in Box Received Payment Portion
"Q-2"	PNB Check No, 8038 dated July 11, 2005 in the amount of US\$11,000.00
"Q-3"	Cash Voucher No. CV#NY-145/05 dated March 22, 2005 in the amount of US\$4,000.00 with its attachments
"Q-4"	PNB Check No. 8037 dated July 11, 2005 in the amount of US\$4,000.00
"Q-5"	Cash Voucher CV# NY-307/05 dated July 11, 2005 in the amount of US\$4,000.00
"Q-6"	Letter Proposal of Amazing Construction Corporation dated July 7, 2003 addressed to the Philippine Mission to the United Nations
"Q-6-a"	Signature of Accused Baja, Jr.
"Q-6-b"	Notation which reads: "This serves as a contract and confirmation to proceed with the work as described in the foregoing. To confirm acceptance, please sign below."
"NN"	Subpoena Duces Tecum dated August 27, 2008 signed by Mary Susan S. Guillermo, Director PIAB-B, Office of the Ombudsman, addressed to Mario De Leon and Crescente R. Relacion, both of the Department of Foreign Affairs in the case titled Presidential Anti-Graft Commission represented by Comm. Jaime D. Jacob v. Lauro L. Baja, Jr., docketed as OMB-C-C-08-0101-D
"NN-1"	Return copy of Subpoena Duces Tecum dated August 27, 2008 signed by Mary Susan S. Guillermo, Director PIAB-B, Office of the Ombudsman, addressed to Mario De Leon and Crescente R. Relacion, both of the Department of Foreign Affairs in the case titled Presidential Anti-Graft Commission represented by Comm. Jaime D. Jacob v. Lauro L. Baja, Jr., docketed as OMB-C-C-08-0101-D
"OO"	Cover Letter dated September 2, 2008 signed by Franklin M. Ebdalin, Undersecretary for Administration of the Department of Foreign Affairs with attached Reports marked as Exhibits E, F, G & H, received by the Office of the Ombudsman on September 3, 2008

The Court admitted in evidence the foregoing exhibits, without prejudice to the proper appreciation of their respective probative values in relation to the facts for which they were offered in evidence.<sup>16</sup>

<sup>16</sup> Minute Resolution dated 26 September 2016. Records, Vol. 3, p. 23.

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Baja filed a Motion for Leave to File Accused's Demurrer to Evidence<sup>17</sup> which the Court denied in its Resolution<sup>18</sup> dated 28 October 2016. However, in its Resolution<sup>19</sup> dated 2 March 2017, the Court granted Baja's Motion for Reconsideration<sup>20</sup> and set aside its *Resolution* dated 28 October 2016.

On 17 March 2017, Baja filed his Demurrer to Evidence.<sup>21</sup> On 20 July 2017, the Court denied Baja's demurrer.<sup>22</sup> Baja moved for reconsideration<sup>23</sup> of the Resolution but the Court denied the same in its Resolution dated 4 October 2017.<sup>24</sup>

EVIDENCE FOR THE DEFENSE

The defense presented Baja<sup>25</sup> as its only witness. He identified and affirmed his Judicial Affidavit<sup>26</sup> as his direct testimony and confirmed the truth and accuracy of their contents and those of the documents annexed therewith.

On cross-examination, Baja confirmed that he requested for funds for the repair of the Townhouse in June 2003. Such request was approved by the DFA on or about 21 July 2003. He also confirmed that ACC sent him a letter (Exh. "8") dated 16 September 2003 informing him that it had already completed its work as of such date.

Upon query from the Court, he recalled that the advance payment made by his wife to ACC for the bank was around ten (10) days after work started. He claimed that his wife insisted to have the repairs made, for which his wife partially paid \$11,000.00 out of the contract price of \$15,000.00 around one (1) week after the initial construction. He explained that he received the budget from the DFA in installments, in which \$4,000.00 was paid directly to ACC and \$11,000.00 were paid to his wife almost two (2) years after.

<sup>17</sup> *Id.*, pp. 27-30.

<sup>18</sup> *Id.*, p. 47.

<sup>19</sup> *Id.*, pp. 182-191.

<sup>20</sup> *Id.*, pp. 84-103.

<sup>21</sup> *Id.*, pp. 196-211.

<sup>22</sup> *Resolution* dated 20 July 2017. *Id.*, pp. 265-285.

<sup>23</sup> *Motion for Reconsideration (Of the Resolution dated 20 July 2017)*. *Id.*, pp. 306-317.

<sup>24</sup> *Id.*, pp. 342-346.

<sup>25</sup> TSN, 12 October 2017, pp. 4-19.

<sup>26</sup> Records, Vol. 1, pp. 24-47.



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Baja formally offered the following exhibits:<sup>27</sup>

Exhibit	Description
"1"	Request for Funds dated 3 June 2003 addressed to the Secretary of Foreign Affairs
"2"	Memorandum dated 31 July 2003 from the Office of Fiscal Management of the DFA ("DFA-OFM") addressed to Philippine Consulate General in New York ("PCG-New York")
"3"	Memorandum dated 10 February 2003 from the Office of the Undersecretary for Administration addressed to the Philippine Mission to the United Nations in New York ("PMNY")
"4"	Memorandum dated 22 March 2005 issued by the DFA-OFM and addressed to the PCG-New York, which authorized the release of Four Thousand US Dollars (US\$4,000.00) to Amazing Construction Corporation and Eleven Thousand US Dollars (US\$11,000.00) to Mrs. Baja
"5"	Memorandum dated 11 December 2003 addressed to the DFA-OFM requesting for a reimbursement for the advances made by Mrs. Baja
"6"	Scope of Work and Work Estimated for 13 East 66 <sup>th</sup> Street, NY 10021 from Amazing Construction Corporation
"7"	Certificate of Completion and Inspection dated 30 October 2003
"8"	Letter dated 16 September 2003 from Amazing Construction
"9"	Judicial Affidavit of Ambassador Lauro L. Baja, Jr. dated 12 September 2014
"9-A"	Signature of Ambassador Lauro L. Baja, Jr.

The Court resolved to admit into evidence the foregoing exhibits for the accused for the purposes for which they were offered but without prejudice to the Court's proper appreciation of their respective probative values.<sup>28</sup>

Only Baja filed his Memorandum.<sup>29</sup>

### THE FACTS

From the testimonial and documentary evidence of the prosecution and the defense, the following facts are established:

<sup>27</sup> Records, Vol. 3, pp. 356-363.

<sup>28</sup> Resolution dated 22 February 2018. *Id.*, p. 446.

<sup>29</sup> *Id.*, pp. 458-483.

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Baja is the former Philippine Permanent Representative to the United Nations (UN) based in New York, USA on the dates material to the case.

On 10 February 2003, the DFA authorized the PMUN in New York to renovate the official residence (Townhouse) of the Philippine Permanent Representative located at 15 East 66<sup>th</sup> Street, New York City, USA in the amount not to exceed US\$1.211 Million chargeable against the 2002 Building Fund and instructed the latter to submit detailed Work Program and Monthly Cash Program.<sup>30</sup>

On 3 June 2003, Baja, head of PMUN, requested US\$20,000 from the DFA for the upkeep and necessary repairs of the Townhouse<sup>31</sup>.

On 31 July 2003, the DFA authorized the Philippine Consulate General (PCG) in New York to disburse US\$15,000 for the repairs of the Townhouse chargeable against the US\$1.211 Million Building Fund.<sup>32</sup>

Sometime in July 2003, three (3) contractors, one (1) of which was ACC, submitted their respective price quotations for the repair of the Townhouse.<sup>33</sup> Baja accepted the offer of ACC, represented by Junaid Aloyo (Aloyo), to provide repair works/services on the Townhouse for the contract price of US\$15,000.00. ACC's letter-proposal<sup>34</sup> dated 7 July 2003, signed by Aloyo, was also signed by Baja<sup>35</sup> on behalf of PMUN, below the notation: "This serves as a contract and confirmation to proceed with the work as described in the foregoing. To confirm acceptance, please sign below."<sup>36</sup>

According to the Report on Findings on the Flawed Procurement Process Relating to the Repair of the E66th Street Townhouse in 2003<sup>37</sup> prepared and signed by Mario L. De Leon, Jr. and Crescente R. Relacion, members of the fact-finding team, Baja and/or his wife, Mrs. Baja, presented documents purportedly signed by Aloyo for cash advances made in the total amount of Ten

 <sup>30</sup> Annex 1, Exhibit "G"/Exhibit "3".

<sup>31</sup> Annex 2, *Id.*/Exhibit "1".

<sup>32</sup> Annex 3, *Id.*/Exhibit "2".


<sup>33</sup> TSN, 26 July 2016, pp. 39-42.

<sup>34</sup> Exhibit "Q-6".

<sup>35</sup> Exhibit "Q-6-a".

<sup>36</sup> Exhibit "Q-6-b".

<sup>37</sup> Exhibit "G".



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Thousand Five Hundred U.S. Dollars (\$10,500.00) broken down as follows:

15 July 2003 - Check	US\$ 4,000.00
15 July 2003 – Cash	2,000.00
22 July 2003 – Cash	1,000.00
Undated - Cash	<u>3,500.00</u>
Total	US\$10,500.00

On 16 September 2003, ACC, through Aloyo, submitted to Baja a letter<sup>38</sup> informing the latter that it had finished the job as per the Scope of Work and Work Estimates for the Townhouse for the amount of US\$15,000.00.<sup>39</sup> On the same date, PMUN forwarded to PCG the invoice for US\$15,000.00 from ACC with Baja's notation on the routing slip "Please make cheque payable to Junaid Aloyo for he advanced part of costs of repair."<sup>40</sup>

Baja issued a Certification of Completion<sup>41</sup> dated 30 October 2003 certifying that the repairs done at the Townhouse as itemized in the attached proposals had been completed. In the same document and on the same date, the members of the Building Committee certified that they had inspected the work done at the Townhouse and found the same acceptable.

On 1 December 2003, Baja wrote a memorandum<sup>42</sup> for the PCG requesting the issuance of two (2) checks, i.e., \$4,000.00 to ACC representing balance of the contract price, and \$11,000.00 payable to him representing reimbursement for advances and expenses.

In his Very Urgent/Most Immediate Memorandum<sup>43</sup> to the DFA dated 5 December 2003, Baja requested that the funds for the urgent repairs on the Townhouse be reverted from PCG to PMUN. He stated: "I entered into contract with the lowest bidder, paid 50% in advance of the amount of the contract price to facilitate the repairs and advanced money to ensure cost of materials and labor while payment is being processed. Even the contractor acknowledges that only \$4,000.00 remain due and payable to him. Authority to disburse \$15,000.00 had been given to PCG as early as July 31, 2003, more than 4 months ago."

  
<sup>38</sup> Annex 8, Exhibit "G"/Exhibit "8".

<sup>39</sup> Annex 8, *Id.*/Exhibit "6".

<sup>40</sup> Annex 8, *Id.*

<sup>41</sup> Annex 7, *Id.*/Exhibit "7".

<sup>42</sup> Annex 12, *Id.*

<sup>43</sup> Annex 9, *Id.*



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On 11 December 2003, in his memorandum<sup>44</sup> for the DFA, Baja stated that he paid \$4,000.00 to ACC representing the balance of the cost of repairs and requested that he be reimbursed in full for \$15,000.00 as stipulated in the contract.

On 6 December 2004, Baja authorized the PCG to issue a check payable to ACC for US\$15,000.00.<sup>45</sup> However, the day after, Baja sent a handwritten note<sup>46</sup> to PCG, asking that the check payable to ACC be held and informing the latter that he withdrew the authorization he made the day before.

On 16 February 2005, PCG Deputy Consul General Melita S. Sta. Maria-Thomeczek authenticated affidavits<sup>47</sup> executed before notaries public and purportedly signed by Erum Malik (Malik) and Aloyo as president and general manager of ACC, respectively, both acknowledging that only \$4,000.00 was due to the company and \$11,000.00 was due to Mrs. Baja for advances she made. However, in her undated letter<sup>48</sup> to the PCG, Malik denied having signed any affidavit and demanded payment of \$15,000.00.

On 22 March 2005, the DFA authorized the PCG to pay \$4,000.00 to ACC, specifying that the company should be represented by its president Malik and the balance of \$11,000.00 to Mrs. Baja, after the company should have signed a notarized quitclaim and a special power of attorney.<sup>49</sup>

The PCG issued Philippine National Bank (PNB) New York Branch Check No. 8038<sup>50</sup> dated 11 July 2005 to Mrs. Baja in the amount of \$11,000.00. Mrs. Baja signed<sup>51</sup> Cash Voucher No. NY-308/05<sup>52</sup> indicating her receipt of said check. The PCG also issued PNB Check No. 8037<sup>53</sup> dated 11 July 2005 to ACC in the amount of \$4,000.00, for which Malik, on behalf of ACC, signed Cash Voucher No. NY-307/05.<sup>54</sup>

<sup>44</sup> Annex 13, *Id.*/Exhibit "5".

<sup>45</sup> Annex 14, *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Annex 15, *Id.*

<sup>48</sup> Annex 16, *Id.*

<sup>49</sup> Annex 17, *Id.*/Exh. "4".

<sup>50</sup> Exhibit "Q-2".

<sup>51</sup> Exhibit "Q-1".

<sup>52</sup> Exhibit "Q".

<sup>53</sup> Exhibit "Q-4".

<sup>54</sup> Exhibit "Q-5".

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On 11 July 2005, Malik signed the Release, Waiver and Quitclaim<sup>55</sup> in favor of the PCG, the PMUN and the Philippine Government.

Pursuant to COA Office Order No. 2006-130<sup>56</sup> dated 25 May 2006, the COA organized fact-finding teams to audit the PMUN and other foreign-based government agencies. The Director-in-Charge of the team issued a Management Letter on the Audit of the PMUN, New York, USA<sup>57</sup> dated 15 January 2007. The team issued a Report on Findings on the Flawed Procurement Process Relating to the Repair of the E66th Street Townhouse in 2003<sup>58</sup> that became one of the bases of the Complaint-Affidavit<sup>59</sup> dated 10 March 2008 executed by Jaime D. Jacob, duly authorized representative of the PAGC.

### DISCUSSION

Section 3(e) of R.A. No. 3019, the violation of which Baja is charged with in the Information, provides as follows:

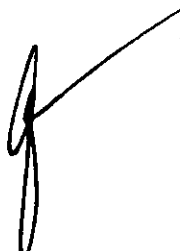
Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(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 of violation of Section 3(e) of R.A. No. 3019 are the following:

(a) that the accused must be a public officer discharging administrative, judicial or official functions (or a private individual acting in conspiracy with such public officer);


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<sup>55</sup> Annex 18, Exhibit "G".

<sup>56</sup> Exhibit "I-2".

<sup>57</sup> Exhibit "I".

<sup>58</sup> Exhibit "G".

<sup>59</sup> Exhibit "D".



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(b) that he acted with manifest partiality, evident bad faith or gross inexcusable negligence; and

(c) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>60</sup>

The first element is present in this case. Baja, at times material to the case, had been the Permanent Representative of the Philippines to the United Nations. He falls within the definition of "public officer" in Section 2 of R.A. No. 3019, to wit:

'Public officer' includes elective and **appointive officials** and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined [below]:

'Government' includes the national government, the local governments, the government-owned and government-controlled corporations, and all other **instrumentalities or agencies of the Republic of the Philippines** and their branches. (boldface supplied)

As regards the second element, the Court confronts the question: Did Baja commit manifest partiality, evident bad faith or gross inexcusable negligence when he advanced payment to ACC in the amount of US\$11,000.00 representing seventy percent (70%) of the contract price for the repair of the PMUN Townhouse in New York City, USA?

The Court rules in the negative.

It must be emphasized that Baja and/or his wife used personal money amounting to \$11,000.00 to advance payment to ACC for the repair of the Townhouse. Baja did not disburse public funds but private funds as advance payment to ACC. Private funds are not within the contemplation of P.D. No. 1594 and its IRR. The pertinent provisions of the IRR of P.D. No. 1594 quoted below relating to advance payment to the contractor show that the funds involved must be government funds:

CI 4 - ADVANCE PAYMENT

1. The **Government shall**, upon a written request of the contractor which shall be submitted as a contract document, **make an advance payment to the contractor** in an amount equal to fifteen percent (15%) of the total contract price, to be made in

<sup>60</sup> *Fuentes v. People*, 822 SCRA 509, 517 (2017).

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lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

2. The **advance payment** shall be made only upon the **submission to and acceptance by the Government** of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.
3. The advance payment shall be repaid by the contractor by deducting 20% from his periodic progress payments, with the first repayment to be made when the contract value of the work executed and materials delivered shall equal or have exceeded twenty percent (20%) of the contract price and further refunds shall be done thereafter at monthly intervals. The first work accomplishment equivalent to 20% of the contract price shall not be subject to the 20% deduction.
4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment. (Boldface supplied)

While one may argue that Section 4<sup>61</sup> of R.A. No. 9184 expressly states that this law "shall apply to the Procurement" by the government "of Infrastructure Projects, Goods and Consulting Services, **regardless of source of funds**, whether local or foreign," hence should include even private funds, this clause does not apply to the present case. R.A. No. 9184 took effect on 26 January 2003 while its IRR-A took effect only on 8 October 2003.<sup>62</sup> The contract was awarded to ACC on or about 7 July 2003, the date of Baja's conformity with the letter-proposal of ACC relating to the repair works on the Townhouse. Thus, at the time the contract was awarded to ACC, the applicable rules on advance payment to contractors of government infrastructure/construction projects, which include the repair works in the case at bar, still were the provisions of the IRR of P.D. No. 1594. This is in consonance with the Transitory Provision found in Section 77 of IRR-A of R.A. No. 9184, quoted as follows:

<sup>61</sup> Full text of Section 4, R.A. No. 9184 reads:

SEC. 4. Scope and Application. – This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services, **regardless of source of funds**, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed. (Boldface supplied)

<sup>62</sup> See *Thunder Security and Investigation Agency v. National Food Authority (Region 1)*, 654 SCRA 714, 716, 718-719 (2011).

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Section 77. Transitory Clause

In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued **after the effectivity of the Act but before the effectivity of this IRR-A**, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, **P.D. 1594 and its IRR**, R.A. 7160 and its IRR, or other applicable laws, as the case may be. (Emphasis supplied)

Unlike Section 4 of R.A. No. 9184, the provisions of P.D. No. 1594 and its IRR are silent on the source of funds, thus implying that government contracts for infrastructure and other construction projects sourced from private funds are beyond the scope of P.D. No. 1594 and its IRR.

In spite of the fact that private funds were used for the repair of the Townhouse, Baja still made it a point to substantially comply with the then rules on negotiated contract under the P.D. No. 1594 and its IRR by requiring three (3) contractors to submit their quotations. Having found that ACC was the lowest bidder, Baja entered into a contract with the said company. On closer scrutiny, it cannot be considered that Baja committed manifest partiality in advancing payment to ACC amounting to more than 70% of the contract price of \$15,000.00. "Manifest partiality" as used in Section 3(e) of R.A. No. 3019, has been defined as a situation where the accused has a clear, notorious, or plain inclination or predilection to favor one side or one person rather than another. It is synonymous with bias, which excites a disposition to see and report matters as they are wished for rather than as they are.<sup>63</sup> What Baja did was, due to urgency of the situation, that time being the campaign for a seat in the United Nations Security Council, he or his wife used his/her own money in making advance payments to ACC for the repair works on the Townhouse. At this juncture, it must be emphasized that a negotiated contract, under such circumstances, is not illegal *per se*. As clearly held in *Republic v. Reyes-Bakunawa*.<sup>64</sup>

At any rate, the Court must point out that **negotiated contracts are not per se illegal**. A negotiated contract is one that is awarded on the basis of a direct agreement between the

<sup>63</sup> *Reyes v. People*, 626 SCRA 782, 794 (2010).

<sup>64</sup> 704 SCRA 163 (2013).



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Government and the contractor, without going through the normal procurement process, like obtaining the prior approval from another authority, or a competitive bidding process. **It is generally resorted to for convenience, or 'when time is of the essence, or where there is a lack of qualified bidders or contractors, or where there is conclusive evidence that greater economy and efficiency would be achieved.'**<sup>65</sup> The Court has upheld the validity of a negotiated contract made pursuant to law, like a negotiated contract entered into by a City Mayor pursuant to the then existing Local Government Code, or a negotiated contract that eventually redounded to the benefit of the general public, even if there was no specific covering appropriation pursuant to COA rules, or a negotiated contract that was made due to an emergency in the health sector, or a negotiated contract for long overdue repair and renovation needed to provide better health services.<sup>66</sup>

In the case at bar, time was of the essence when Baja decided to cause the repairs on the Townhouse, the place having been used as the venue for the Philippine campaign for a seat at the UN Security Council. This fact was explained by Baja in his Judicial Affidavit that formed his testimony on direct examination:

19. Q: What was the extent of the repairs done to the Official Residence?

A: The Official Residence underwent general repairs. These repairs included, among others, the following:

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Essentially, the Official Residence underwent major and extensive repairs to address these above-described damages.

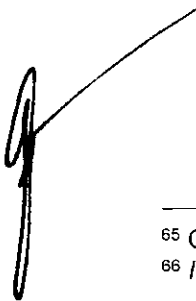
20. Q: How were the services of Amazing Construction engaged?


A: Amazing Construction was engaged through negotiated procurement under R.A. 9184.

21. Q: When you say negotiated procurement, what does that mean?

A: First of all, under R.A. 9184, it is a general rule that all procurement made by the Philippine government and its agencies, including procurement for services, shall be done through public and competitive bidding.

One of the exceptions to the conduct of such bidding is through negotiated procurement. This alternative method of procurement allows the procuring entity to directly negotiate a contract with a technically, legally and financially capable supplier, contractor or consultant for a particular service, item or

 <sup>65</sup> Citing Section 4, P.D. No. 1594.

<sup>66</sup> *Id.*, at 193-194. Emphasis supplied. 



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project, as the case may be. In this form of procuring, it already dispenses with the conduct of a competitive bidding when any of the circumstances under Section 53 of R.A. 9184 is present.

22. Q: What circumstances are you referring to?  
A: Under Section 53 of R.A. 9184, when immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities, then negotiated procurement may be resorted to.
23. Q: Among the instances under Section 53 of R.A. 9184, what specific instance justified you to enter into a negotiated procurement with Amazing Construction?  
A: **At that time, when the repairs to the Official Residence were undertaken, the place was being used as the venue for the campaign of the Philippines for a seat in the Security Council. The Philippines was in the middle of a hectic campaign for the Philippines to win a seat in the Security Council.**

**An urgent necessity for the repairs of the Official Residence was necessary not only to prevent it from further damages, but also to make it suitable for the very urgent and important public purpose of the Official Residence.**

I thus relied in good faith, on the basis of the urgent need to repair the Official Residence, in entering into a negotiated procurement with Amazing Construction.

24. Q: Other than your testimony, do you have any proof to show that the repairs to the Official Residence in July 2003 were treated as urgent?  
A: I sent a Request for Funds to the Secretary of Foreign Affairs wherein I requested for the total amount of Twenty Thousand United States Dollars (US\$20,000.00) for the needed repairs of the Official Residence.

x x x

35. Q: Before entering into a contract with Amazing Construction, what did you do?  
A: I solicited quotations from other contractors.
36. Q: Can you explain why, despite dispensing with a public and competitive bidding, the PMNY still solicited project quotations from other contractors?  
A: This was made only to ensure the best possible price for the repairs. In relation thereto, three (3) contractors submitted their quotations for the repairs of the Official

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Residence, namely: Amazing Construction, M&S Construction, and another one which is on file with the Philippine Consulate General of New York ("PCGNY").

37. Q: Why was Amazing Construction selected among the three (3) bidders you mentioned?  
A: Amazing Construction was selected precisely because it offered the same services extended to by the other contractors but for a considerably lower cost. Based on the three (3) quotations submitted, the choice of Amazing Construction was the proper one.<sup>67</sup>

The prosecution did not cross-examine Baja on the matter of the alleged urgency of the repairs to the Townhouse due to its being used as venue for the then Philippine campaign for a seat to the UN Security Council. Jurisprudence holds that where a witness testifies to a fact, which is not disputed or denied, it is at least *prima facie* evidence of the truth of that fact.<sup>68</sup> The Court thus considers that repairs were indeed urgently needed to be made on the Townhouse and that time was of the essence, which justified the need for a negotiated contract under the circumstances.

Also proper to mention is an apparent lack of qualified bidders or contractors to repair the Townhouse who could comply with the provisions of the IRR of P.D. No. 1594 that require that the contractors must be Filipino citizens or Filipino-owned entities.<sup>69</sup> Baja

<sup>67</sup> *Supra*, note 26.

<sup>68</sup> *Uy Coque v. Sioca*, 45 Phil. 430, 469 (1923).

<sup>69</sup> The IRR of P.D. No. 1594 provides:

IB 1 - WHO MAY BE ALLOWED TO BID

1. The following may become contractors for government projects:
  - a. Filipino
    - (1) Citizens (single proprietorship)
    - (2) Partnership or corporation duly organized under the laws of the Philippines, and at least seventy five percent (75%) of the capital stock of which belongs to Filipino citizens.
  - b. Contractors forming themselves into a joint venture i.e., a group of two or more contractors that intend to be jointly and severally responsible for a particular contract, shall for purposes of bidding/tendering comply with LOI 630, and, aside from being currently and properly licensed by the Philippine Contractors Accreditation Board (PCAB), shall comply with the provisions of R.A. 4566 and its Implementing Rules and Regulations, provided that joint ventures in which Filipino ownership is less than seventy five percent (75%) may be prequalified where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a Filipino entity as defined above.
  - c. Foreign contractors for internationally bid foreign-assisted projects as may be required by foreign financial institutions.


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cannot be expected to find contractors in New York, USA or in nearby areas that comply with the nationality requirement. Hence, under the circumstances, resort to negotiated contract is justified.

Not being guilty of manifest partiality, Baja is also not guilty of evident bad faith. "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. It contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes.<sup>70</sup>

Baja did not commit evident bad faith in advancing payment for the repair of the Townhouse to ACC using private funds. As already explained above, based on P.D. No. 1594 and its IRR, the advance payment refers to the use of public funds, not private funds. The Court sees no patently dishonest purpose in Baja's procuring the services of ACC to repair the Townhouse using as advance payment his or his wife's own funds. In fact, the Court even considers that Baja was in good faith in securing the proposals or quotations of three (3) contractors, including ACC, and finding that the latter submitted the lowest bid, entered into a contract with it for the repair of the Townhouse for the contract price of \$15,000.00, notwithstanding that private funds and not government funds were used to advance such payment to the contractor.

Neither could Baja be found liable for gross inexcusable negligence. "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.<sup>71</sup> As negotiated contract is allowed in instances where time is of the essence or there is lack of qualified bidders or contractors, Baja still made it a point to substantially comply with P.D. No. 1594 and its IRR by asking for proposals from the contractors. After determining the lowest bidder, he awarded the contract to ACC. These situations negate the presence of gross inexcusable negligence on his part.


In sum, the existence of the second element of violation of Section 3(e) in the present case was not proven by the prosecution beyond reasonable doubt.

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<sup>70</sup> *Uriarte v. People*, 511 SCRA 471, 487-488 (2006). 

<sup>71</sup> *Albert v. Sandiganbayan*, 580 SCRA 279, 290 (2009).



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With regard to the third element, the Court finds that there was no convincing evidence that Baja gave unwarranted benefits, advantage or preference to ACC when he advanced payment to the latter in an amount exceeding 15% of the contract price. Jurisprudence defines the terms “unwarranted,” “advantage” and “preference” as follows:

The word ‘unwarranted’ 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.<sup>72</sup>

Baja’s choice of ACC as the contractor was not without justifiable reason. ACC presented the lowest bid out of the three (3) contractors. Thus, as the lowest qualifying bidder, ACC was entitled to have the contract for the repair of the Townhouse awarded to it. Insofar as the advance payment is concerned, as discussed above, private funds were disbursed thus placing it outside the ambit of P.D. No. 1594 and its IRR.

It is hornbook doctrine that in all criminal cases, the prosecution is burdened with the duty of establishing with proof beyond reasonable doubt the guilt of an accused. The court must be satisfied with moral certainty that an accused has indeed committed the crime on the basis of facts and circumstances to warrant a judgment of conviction. Otherwise, where there is reasonable doubt, acquittal must then follow. The premise is that an accused is presumed innocent until the contrary is proved.<sup>73</sup>

To conclude, the prosecution has failed to establish the guilt of Baja beyond reasonable doubt of the crime of violation of Section 3(e) of R.A. No. 3019; thus he is entitled to an acquittal.

**WHEREFORE**, premises considered, the Court hereby finds accused LAURO L. BAJA, JR. **NOT GUILTY** of the crime of violation of Section 3(e) of R.A. No. 3019 and hereby **ACQUITS** him on the ground of reasonable doubt in Criminal Case No. SB-11-CRM-0030. The Court orders the **RELEASE** of his bail bond, subject to the usual accounting and auditing rules and procedures, and **LIFTS** and **SETS ASIDE** the hold departure order against him.

**SO ORDERED.**

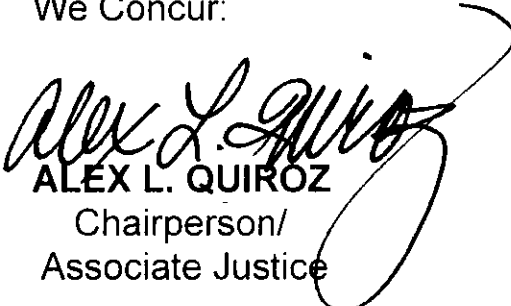
<sup>72</sup> *Sison v. People*, 614 SCRA 670, 681-682 (2010).

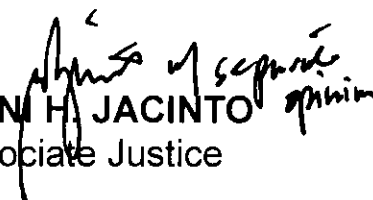
<sup>73</sup> *Valencerina v. People*, 744 SCRA 579, 598-599 (2014).

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**REYNALDO P. CRUZ**  
Associate Justice

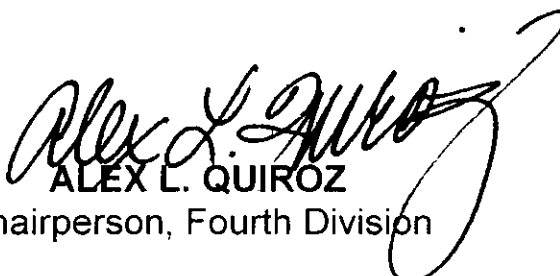
We Concur:

  
**ALEX L. QUIROZ**  
Chairperson/  
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.

  
**ALEX L. QUIROZ**  
Chairperson, Fourth Division

**CERTIFICATION**

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

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice

**SEPARATE CONCURRING OPINION:**

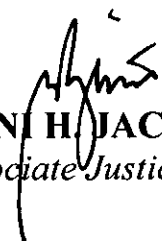
Accused Ambassador Baja is charged with Violation of Section 3(e) of Republic Act (R.A.) No. 3019 for giving “unwarranted benefits, advantage, or preference to Amazing Construction Corporation” when he advanced thereto the payment of \$11,000.00, representing 70% of the contract price, in violation of R.A. No. 9184.

The essential elements of said offense are as follows:

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 inexcusable negligence; and,
3. His actions caused any undue injury to any party, including the government, or he gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>1</sup>

One of the qualifications for the award of a contract is the bidder’s financial capacity to deliver the goods or services subject of the contract. This is part of the rationale for the prohibition against advance payment by the Government.

In this case, the prosecution failed to prove that Amazing Construction was financially incapable of performing its obligation under the contract and was able to do so only because of the advance payments made by accused, thus unduly benefiting therefrom. In other words, the advance payment alone does not prove that unwarranted benefits and preference were conferred upon Amazing Construction, nor does it prove damage to the Government. And, accused’s failure to strictly comply with the procurement law does not automatically translate to a criminal liability for Violation of Sec. 3(e) of R.A. No. 3019.

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

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<sup>1</sup> *Consigna v. People*, G.R. No. 175750-51, 2 April 2014; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, 25 October 2004, citing *Jacinto v. Sandiganbayan*, G.R. No. 84571, 2 October 1989.