



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

**SB-16-CRM-0799**  
For: Violation of Sec. 3(e) of  
R.A. 3019

- versus -

**RICHARD M. RAMOS, ET AL.,**  
Accused.

*Present:*

**FERNANDEZ, SJ, J.**  
*Chairperson*  
**MIRANDA, J. and**  
**VIVERO, J.**

*Promulgated:*

April 30, 2019 *[Signature]*

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**DECISION**

**VIVERO, J.**

For decision is the charge for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019)<sup>1</sup> or the *Anti-Graft and Corrupt Practices Act*, as amended, against accused Richard Mejia Ramos (Ramos), then Municipal Mayor of Lupao, Nueva Ecija, for directly procuring, in behalf of the municipality, fuel, gas and other similar products from SRS Gas Filling Station, owned by accused Shiela Marie Orofino Jacalan (Jacalan), without conducting a public bidding

<sup>1</sup> 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:

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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.

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or any recommendation from the Bids and Awards Committee (BAC) to resort to alternative mode of procurement.

**Facts**

From the testimonial and documentary evidence on record, as well as the stipulations of the parties, the Court finds the relevant facts set forth below:

During the 2007 local elections, accused Ramos, the top councilor who garnered the highest number of votes, succeeded as the Mayor of the Municipality of Lupao, Nueva Ecija after the elected Mayor and Vice Mayor were both shot to death.<sup>2</sup> At that time, the Municipality of Lupao had difficulty in purchasing petroleum products as there were only three (3) gasoline stations within its vicinity, i.e., SRS Filling Station, Parista Fuel Station, and Shell Gas Station, and the latter two have banned the municipality and refused to service their petroleum requirements for the failure of the previous administration to pay its unsettled obligations.<sup>3</sup> Thus, the only remaining gasoline station was SRS Filling Station but accused Ramos is a first cousin of one of its owners, accused Jacalan.<sup>4</sup>

On 23 July 2007, the *Sangguniang Bayan* of Lupao approved *Resolution No. 12, Series of 2007* authorizing accused Ramos to buy and establish an open credit line in the purchase of gas/diesel fuels for the municipal vehicles with SRS Filling Station.<sup>5</sup> No public bidding was conducted in the purchase of these petroleum products.<sup>6</sup>

On 06 July 2012, a *Complaint*<sup>7</sup> for Falsification of Public Documents, Malversation of Public Funds, Grave Misconduct and Conduct Prejudicial to Public Interest was filed before the Office of the Deputy Ombudsman for Luzon by Joselito A. Zarate (private complainant) against Ramos, Jacalan and other officials and employees of the Municipality of Lupao. The complainant alleged that: (a) respondent BAC members invited prospective bidders for the

<sup>2</sup> See *Sinumpaang Salaysay sa Hukuman* (Judicial Affidavit) dated 28 February 2017 of former Vice Mayor Manuel F. Vendivil, *Rollo*, Vol. II, pp. 17-18.

<sup>3</sup> *Id.* at p. 18.

<sup>4</sup> See testimony of Joselito A. Zarate, Transcript Stenographic Notes (TSN) dated 21 November 2017, p. 65; See also testimony of former Vice Mayor Manuel F. Vendivil, TSN dated 23 April 2018, p. 24

<sup>5</sup> *Id.* at pp. 18-19.

<sup>6</sup> See Vendivil's Judicial Affidavit dated 28 February 2017, *Rollo*, Vol. II, pp. 19-20; Villar's Judicial Affidavit dated 28 February 2017, *Rollo*, Vol. II, p. 26; testimony on cross-examination of Villar, TSN dated 02 May 2018, pp. 18-19; and the Complaint-Affidavit of Bernardo D.V. Bascos, et al. (Exhibit "G"), Complaint-Affidavit of Jacalan (Exhibit "H"), and Complaint-Affidavit of Ramos (Exhibit "I"), all filed against private complainant Zarate.

<sup>7</sup> *Rollo*, Vol. I, pp. 22-27.

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supply of fuel, oil and other supplies for the Municipality's vehicles; (b) Jacalan, owner/proprietor of SRS Gas Refilling Station, and allegedly the first cousin of Ramos and sister of one of the respondent BAC members, was one of the bidders; and (c) despite the disqualification of Jacalan, she was allowed to participate in the bidding and was eventually declared as the winning bidder in violation of Republic Act No. 9184 (R.A. No. 9184) or the *Government Procurement Reform Act*.<sup>8</sup> In his Reply-Affidavit dated 23 November 2012, complainant changed his theory by claiming that Ramos circumvented the required competitive bidding under R.A. No. 9184 by seeking authority from the *Sangguniang Bayan* (SB) to buy and establish an open credit line with Jacalan, his relative within the fourth civil degree.<sup>9</sup>

In its Resolution dated 23 September 2014,<sup>10</sup> the Office of the Deputy Ombudsman for Luzon found probable cause to indict Ramos and Jacalan for violation of Section 3(e) of R.A. No. 3019 but dismissed the charges against the other respondents for lack of probable cause. The charges for Falsification of Public Documents and Malversation of Public Funds were likewise dismissed for lack of merit. In its Omnibus Order dated 02 November 2015,<sup>11</sup> the Deputy Ombudsman for Luzon denied, for lack of merit, the Partial Motion for Reconsideration dated 23 October 2015 filed by Ramos and Jacalan and the Motion for Reconsideration filed on 05 November 2015 by the complainant.

**Information**

The accusatory portion of the Information dated 08 June 2016<sup>12</sup> filed with this Court on 18 October 2016 reads:

"That in April 2011, or sometime prior or subsequent thereto, in the Municipality of Lupao, Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, accused Richard Mejia Ramos, a public officer, being then the municipal Mayor of Lupao, Nueva Ecija, while in the performance of his official function, committing the offense in relation to his office and taking advantage of his official position, conspiring and confederating with accused Shiela Marie Orofino Jacalan, owner / proprietress of SRS Gas Refilling Station, with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage and preference to accused Shiela Marie Orofino Jacalan, by directly procuring, in

<sup>8</sup> *Id.* at p. 7.

<sup>9</sup> *Id.* at p. 8.

<sup>10</sup> *Id.* at pp. 6-13.

<sup>11</sup> *Id.* at pp. 15-19.

<sup>12</sup> *Id.* at pp. 1-2.

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behalf of the municipality, fuel, gas and other similar products from SRS Refilling Gas Station, without conducting public bidding or any recommendation from the Bids and Awards Committee (BAC) of the municipality to resort to alternative mode of procurement, to the damage and prejudice of public interest.

**CONTRARY TO LAW.”**

**Proceedings before the Sandiganbayan**

On 24 October 2016, this Court found the existence of probable cause and consequently ordered the issuance of warrants of arrest against accused Ramos and Jacalan.<sup>13</sup> On even date, a Hold Departure Order<sup>14</sup> was also issued against them.

Both accused voluntarily surrendered and posted cash bonds for their provisional liberty.<sup>15</sup> Upon their arraignment on 23 January 2017, both accused pleaded “Not Guilty” to the charge.<sup>16</sup>

During the pre-trial, the defense admitted that, at the time material to the allegation in the Information, accused Ramos is a high-ranking public officer, being then the Municipal Mayor of Lupao, Nueva Ecija, while accused Jacalan is the owner/proprietress of SRS Gas Filling Station.<sup>17</sup>

The parties proposed several issues for resolution by the Court, which, however, may be deemed subsumed under the basic issue of whether or not the accused are guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019.

Thereafter, trial on the merits ensued.

**Evidence for the Prosecution**

The prosecution presented the following witnesses: Ma. Leilani M. Otic,<sup>18</sup> Menardo Genaro S. Almazan,<sup>19</sup> Ricardo G. Marzan,<sup>20</sup> and Joselito A. Zarate.<sup>21</sup>

<sup>13</sup> *Id.* at pp. 61 & 66.

<sup>14</sup> *Id.* at p. 59.

<sup>15</sup> *Id.* at p. 71.

<sup>16</sup> *Id.* at p. 99.

<sup>17</sup> *Ibid.*

<sup>18</sup> TSN dated 01 August 2017.

<sup>19</sup> TSN dated 05 September 2017.

<sup>20</sup> TSN dated 03 October 2017.

<sup>21</sup> TSN dated 21 November 2017.

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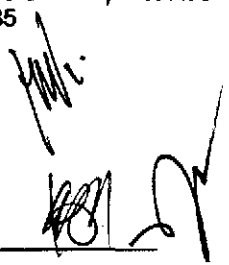
**a) Ma. Leilani M. Otic**

In her *Judicial Affidavit* dated 14 July 2017,<sup>22</sup> the witness stated that she is the Officer-In-Charge Audit Team Leader of the Commission on Audit (COA) stationed at Nueva Ecija since 04 January 2016, and, as such, she oversees the audit examinations of all transactions of the Local Government Sectors assigned to her team, particularly the Local Government of the Municipality of Lupao.<sup>23</sup> She identified several *Purchase Orders*,<sup>24</sup> *Obligation Slips*<sup>25</sup> and *Disbursement Vouchers*<sup>26</sup> of the Local Government of Lupao, Nueva Ecija for the period of April to June 2011 and January 2012.<sup>27</sup>

On cross-examination, the witness admitted that she has no personal knowledge on whether or not an Audit Observation Report or Notice of Disallowance was issued over the subject transactions.<sup>28</sup> She also stated that she did not examine the aforementioned documents as she was not the Audit Team Leader at that time.<sup>29</sup>

**b) Prosecutor Menardo Genaro S. Almazan**

In his *Judicial Affidavit* dated 10 August 2017,<sup>30</sup> the witness stated that he is an Associate City Prosecutor of the Office of the City Prosecutor (OCP) of Urdaneta, Pangasinan.<sup>31</sup> He identified the *Complaint-Affidavit*<sup>32</sup> of accused Ramos docketed as 1-11-INV-12K-00478, wherein the latter, while referring to the subject transactions, stated that "*there was no such bidding that took place*".<sup>33</sup> He also identified the records<sup>34</sup> of the case filed by accused Jacalan docketed as 1-11-INV-00477, which was assigned to him for preliminary investigation.<sup>35</sup>



<sup>22</sup> *Rollo*, Vol. I, pp. 159-163.

<sup>23</sup> *Id.* at pp. 160-161.

<sup>24</sup> Exhibits "C-7", "D-7", "E-7" and "F-7" for the prosecution.

<sup>25</sup> Exhibits "C-4", "D-4", "E-4" and "F-4" for the prosecution.

<sup>26</sup> Exhibits "C", "D", "E" and "F" for the prosecution.

<sup>27</sup> *Rollo*, Vol. I, pp. 161-163.

<sup>28</sup> TSN, dated 01 August 2017, pp. 16-17.

<sup>29</sup> *Id.* at pp. 18-19.

<sup>30</sup> *Rollo*, Vol. I, pp. 219-223.

<sup>31</sup> *Id.* at p. 220.

<sup>32</sup> Exhibits "I" to "I-3" for the prosecution.

<sup>33</sup> *Rollo*, Vol. I, p. 222.

<sup>34</sup> Exhibits "H" to "H-3" for the prosecution.

<sup>35</sup> *Rollo*, Vol. I, p. 222.

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*c) Ricardo G. Marzan*

In his *Judicial Affidavit* dated 18 September 2017,<sup>36</sup> the witness stated that he is a member of the BAC Secretariat of Lupao, and as such he issued the *Certification* dated 28 February 2017<sup>37</sup>, which states that "per records of the BAC Secretariat, there are no bid documents, notice of awards and other supporting papers awarding the contract for the procurement of fuel, gas and other similar products to SRS Gas Filling Station for the year 2010, 2011, and 2012."<sup>38</sup>

On cross-examination, the witness stated that he was not yet a member of the BAC in the years 2010 to 2012 and he has no personal knowledge on whether or not there is a recommendation from the BAC to resort to alternative mode of procurement over the subject purchases since the supporting documents were not turned-over to them.<sup>39</sup>

*d) Joselito A. Zarate*

In his *Judicial Affidavit* dated 08 November 2017,<sup>40</sup> private complainant Zarate stated that he is an employee of the local government of Lupao.<sup>41</sup> He identified his *Complaint-Affidavit* dated 04 July 2012<sup>42</sup> that he filed against Ramos, et al., before the Office of the Ombudsman.<sup>43</sup> He clarified that he initially stated in his *Complaint-Affidavit* that there was a rigged bidding on the assumption that there was one as a matter of regular procedure, but the truth is, upon his further examination and observation, he discovered that no bidding actually took place.<sup>44</sup>

He also identified the *Complaint-Affidavit*<sup>45</sup> of accused Ramos, the *Complaint-Affidavit*<sup>46</sup> of Bernardo D.V. Bascos, et al., and the *Complaint-Affidavit*<sup>47</sup> of accused Jacalan, all of which were filed against him before the OCP of Urdaneta City, Pangasinan.<sup>48</sup>

<sup>36</sup> *Id.* at pp. 238-242.

<sup>37</sup> Exhibit "J" for the prosecution.

<sup>38</sup> *Rollo*, Vol. I, p. 240.

<sup>39</sup> TSN, dated 03 October 2017, pp. 9-12

<sup>40</sup> *Rollo*, Vol. I, pp. 258-265.

<sup>41</sup> *Id.* at p. 260.

<sup>42</sup> Exhibit "K" for the prosecution.

<sup>43</sup> *Rollo*, Vol. I, p. 260.

<sup>44</sup> *Id.* at pp. 260-261; TSN dated 21 November 2017, pp. 58-59.

<sup>45</sup> Exhibit "I" for the prosecution.

<sup>46</sup> Exhibits "G" to "G-7" for the prosecution.

<sup>47</sup> Exhibit "H" for the prosecution.

<sup>48</sup> *Rollo*, Vol. I, pp. 261-263.

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He testified that he is a resident of Lupao, Nueva Ecija and there were three (3) existing gasoline stations in Lupao for the years 2011 to 2012.<sup>49</sup>

On cross-examination, the witness stated that he only learned that there was no public bidding when the accused filed a case for perjury against him on 04 December 2012.<sup>50</sup> He admitted that one of the reasons why he filed the complaint is because he was disheartened because his benefits are not being given.<sup>51</sup>

Relative to what he stated in par. 5(i) of his *Complaint-Affidavit*<sup>52</sup>, the witness admitted that he has no proof to substantiate his statements that his benefits were not given in full, that the collectibles of SRS Gas Refilling Station were given priority over his benefits, and that there was something fishy in the subject transactions.<sup>53</sup> He also admitted that he has no knowledge on the terms of the subject transactions.<sup>54</sup>

Upon questioning from the Court, the witness stated that accused Ramos and Jacalan are first cousins.<sup>55</sup> He admitted that he has no knowledge on how and why SRS Gas Refilling Station was chosen as oil and gas supplier.<sup>56</sup>

The testimony of prosecution witness Prosecutor Leo Neal Y. Lazaro was dispensed with in view of the stipulations of the parties on his testimony to the effect that: a) he is the Assistant City Prosecutor who administered the oath in the *Complaint-Affidavit*<sup>57</sup> of Bernardo D.V. Bascos, Arthur M. Villar, Danilo M. Jacang, Camilo M. Orofino, Jr., and Roger N. Nerizon against complainant Zarate; b) he has in his possession the original copy of the *Complaint-Affidavit*<sup>58</sup> of accused Jacalan; and c) he can identify the signatures of the private complainants in this case.<sup>59</sup>

The parties also dispensed with the testimony of prosecution witness Prosecutor Cecile S. Tomboc in view of the stipulations that she is the Assistant City Prosecutor who is in possession of the

<sup>49</sup> *Id.* at p. 263; TSN dated 21 November 2017, pp. 10 & 49.

<sup>50</sup> TSN dated 21 November 2017, pp. 25-27.

<sup>51</sup> *Id.* at pp. 52.

<sup>52</sup> Exhibit "K" for the prosecution.

<sup>53</sup> TSN dated 21 November 2017, pp. 57-58.

<sup>54</sup> *Id.* at pp. 59-60.

<sup>55</sup> *Id.* at p. 65.

<sup>56</sup> *Id.* at p. 67.

<sup>57</sup> Exhibits "G" to "G-7" for the prosecution.

<sup>58</sup> Exhibits "H" to "H-3" for the prosecution.

<sup>59</sup> *Rollo*, Vol. I, p. 234.

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original copy of the *Complaint-Affidavit*<sup>60</sup> filed by Bernardo D.V. Bascos, et al. docketed as 1-11-INV-12K-00476 and that she issued a certified true copy of the same marked as Exhibit "G" for the prosecution.

The testimonies of the other prosecution witnesses Danilo M. Jacang, Bernardo D.V. Bascos, Camilo Orofino, Jr., Arthur Villar and Roger M. Nerizon were also dispensed with after the parties stipulated that these witnesses filed a *Complaint*<sup>61</sup> against Zarate before the OCP of Urdaneta City, Pangasinan; that they can identify the said Complaint; and that they admit the due execution and authenticity of the same.<sup>62</sup>

After the prosecution formally offered its evidence, the Court admitted the following exhibits.<sup>63</sup>

Exhibit	Document
C to C-3	Undated Disbursement Voucher re payment of expenses incurred for the purchase of fuel and oil for the month of April 2011 in the amount of PhP262,130.42
C-4 to C-6	Obligation Slip No. 100-1108-1083 dated 08-08-11 re payment for fuel and oil for the month of April 2011 in the amount of PhP276,968.00
C-7 to C-9	Purchase Order dated 02 April 2011 in the amount of PhP276,968.00
D to D-3	Undated Disbursement Voucher re payment of expenses incurred for the purchase of fuel and oil for the month of May 2011 in the amount of PhP254,071.87
D-4 to D-6	Obligation Slip No. 100-1109-1287 dated 9-12-11 re payment for fuel and oil for the month of May 2011 in the amount of PhP268,453.30
D-7 to D-10	Purchase Order dated 02 May 2011 in the amount of PhP268,453.30
E to E-3	Undated Disbursement Voucher re payment of expenses incurred for the purchase of fuel and oil for the month of June 2011 in the amount of PhP117,754.17
E-4 to E-6	Obligation Slip No. 100-1110-1366 dated 10-14-11 re payment for fuel and oil for the month of June 2011 in the amount of PhP124,419.50
E-7 to E-9	Undated Purchase Order in the amount of PhP124,419.50
F to F-3	Undated Disbursement Voucher re payment of expenses

<sup>60</sup> Exhibits "G" to "G-7" for the prosecution.

<sup>61</sup> Exhibits "G" to "G-7" for the prosecution.

<sup>62</sup> *Rollo*, Vol. I, p. 358.

<sup>63</sup> *Id.* at pp. 477-478.



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	incurred for the purchase of gasoline and oil in the amount of PhP93,494.71
F-4 to F-6	Obligation Slip No. 100-1203-0325 dated 3-6-12 re payment of gasoline for the month of January 2012 in the amount of PhP98,786.86
F-7 to F-10	Purchase Order dated 02 January 2012 in the amount of PhP98,786.86
G to G-7	Complaint-Affidavit filed by Bernardo D.V. Bascos, et al. against private complainant Zarate
H to H-3	Complaint-Affidavit filed by accused Jacalan against private complainant Zarate
I to I-3	Complaint-Affidavit filed by accused Ramos against private complainant Zarate
K	Complaint-Affidavit of private complainant Zarate dated 04 July 2012 filed before the Office of the Deputy Ombudsman for Luzon

Accused Ramos and Jacalan filed their separate Motions for Leave to File Demurrer to Evidence dated 12 March 2018<sup>64</sup> and 09 March 2018<sup>65</sup>, respectively. In its Resolution dated 03 April 2018<sup>66</sup>, the Court denied both motions.

**Evidence for Accused Ramos**

Accused Ramos presented Manuel F. Vendivil<sup>67</sup> and Arthur M. Villar<sup>68</sup> as defense witnesses.

*(a) Manuel F. Vendivil*

In his *Sinumpaang Salaysay sa Hukuman* (Judicial Affidavit) dated 28 February 2017,<sup>69</sup> the witness stated that, in 2007, he and accused Ramos succeeded as Vice Mayor and Mayor, respectively, of the Municipality of Lupao, Nueva Ecija after the elected Vice Mayor and Mayor were shot to death.<sup>70</sup> He described the situation then as chaotic since aside from the issue of politics, several operations of the municipality was put to halt and they had difficulty in purchasing petroleum products.<sup>71</sup> He stated that at that time, there were only three (3) gasoline stations in Lupao, i.e., SRS Filling Station, Parista Fuel Station, and Shell Gas Station, and the latter two have banned

<sup>64</sup> *Id.* at pp. 491-493.

<sup>65</sup> *Id.* at pp. 516-520.

<sup>66</sup> *Rollo*, Vol. II, pp. 8-10.

<sup>67</sup> TSN, dated 23 April 2018.

<sup>68</sup> TSN, dated 02 May 2018.

<sup>69</sup> *Rollo*, Vol. II, pp. 17-20.

<sup>70</sup> *Id.* at pp. 17-18

<sup>71</sup> *Id.* at p. 18

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the municipality and refused to service their petroleum requirements due to unsettled accounts of the previous administration.<sup>72</sup>

He stated that in order to address the situation, they passed a resolution authorizing accused Ramos to order gasoline and diesel for the day-to-day use of the municipality from the only remaining gasoline station, which is the SRS Filling Station.<sup>73</sup> He identified the *Sangguniang Bayan Resolution No. 12, Series of 2007*<sup>74</sup> wherein accused Ramos was authorized to buy and establish an open credit line in the purchase of gas/diesel fuels for the municipal vehicles with Romualdo "Badong" Jacalan's SRS Filling Station.<sup>75</sup> He mentioned that they had no other option because it is impractical to purchase from nearby towns such as San Jose City and Umingan, Pangasinan.<sup>76</sup>

The witness stated that he was the one who suggested the issuance of the said resolution after he was informed that accused Ramos is related to one of the owners of SRS Filling Station, accused Jacalan, and the BAC could not find any other supplier of gasoline.<sup>77</sup> He explained that they did not go through the bidding process, same as the previous administration, because the transaction falls under "Single Source Procurement" and "Negotiated Sale", which are exempted from public bidding under the law.<sup>78</sup> He also stated that no damage or injury was caused to the municipality since the petroleum products were sold at a regular rate and the municipality were able to purchase them on credit.<sup>79</sup>

On cross-examination, the witness admitted that he has no documentary evidence to prove his claim that the two gasoline stations banned the Municipality of Lupao.<sup>80</sup> He also confirmed that no resolution giving the same authority to accused Ramos was passed for the period 2010 to 2013.<sup>81</sup>

Upon questioning from the Court, the witness testified that as of June 2016, the alleged debt with the two gasoline stations that banned the Municipality of Lupao has not yet been paid.<sup>82</sup> He testified that they had no choice but to give accused Ramos the authority

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> Exhibit "5" for Accused Ramos; Exhibit "1" for Accused Jacalan.

<sup>75</sup> *Rollo*, Vol. II, pp. 18-19.

<sup>76</sup> *Id.* at p. 19.

<sup>77</sup> *Id.* at p. 19.

<sup>78</sup> *Id.* at pp 19-20.

<sup>79</sup> *Ibid.*

<sup>80</sup> TSN, dated 23 April 2018, pp. 15-16

<sup>81</sup> *Id.* at p. 19.

<sup>82</sup> *Id.* at p. 22.

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even if he is related to one of the owners of the supplier so as not to hamper the services of the Municipality.<sup>83</sup> He also clarified that accused Ramos did not suggest the issuance of the said Resolution.<sup>84</sup>

(b) *Arthur M. Villar*

In his *Sinumpaang Salaysay sa Hukuman* (Judicial Affidavit) dated 28 February 2017,<sup>85</sup> the witness stated that he is the Municipal Treasurer and a BAC member of Lupao, Nueva Ecija since 2002.<sup>86</sup> He confirmed that, in 2007, the Municipality of Lupao had difficulty in purchasing petroleum products because two gasoline stations banned the said municipality for its failure to pay its outstanding debts under the previous administration.<sup>87</sup>

He identified the *Certification dated 16 July 2007*<sup>88</sup> that he issued certifying that the Municipality of Lupao was banned from purchasing gas and oil and other lubricant from Parista Fuel Station and Shell Gas Station due to the unsettled obligations of the municipality.<sup>89</sup>

The witness affirmed that they had no other option other than SRS Gas Filling Station because it is already impractical to purchase from nearby towns such as San Jose City and Umingan, Pangasinan.<sup>90</sup> He also confirmed that subject transaction falls under "Single Source Procurement" and "Negotiated Sale", which are exempted from public bidding under the law.<sup>91</sup> He also professed that no damage or injury was caused to the municipality.<sup>92</sup>

On direct examination, the witness testified that he personally talked to the owners of Parista Fuel Station and Shell Gas Station when he issued the Certification.<sup>93</sup>

On cross-examination, the witness admitted that he has no documents to prove his claim that the municipality has unsettled obligations and was actually banned by the two gasoline stations.<sup>94</sup>

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<sup>83</sup> *Id.* at p. 24.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Rollo*, Vol. II, pp. 24-27.

<sup>86</sup> *Id.* at pp. 24, 26.

<sup>87</sup> *Id.* at p. 25.

<sup>88</sup> Exhibit "3" for Accused Ramos; Exhibit "2" for Accused Jacalan.

<sup>89</sup> *Rollo*, Vol. II, p. 26.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Id.* at pp. 26-27.

<sup>93</sup> TSN, dated 02 May 2018, p. 11.

<sup>94</sup> *Id.* at pp. 15-16.

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He also admitted that there was neither public bidding that took place nor BAC resolution that was issued allowing the resort to alternative mode of procurement.<sup>95</sup>

On re-direct examination, the witness explained that no public bidding took place because the practice of the previous administration is to purchase gasoline on a daily basis and the gasoline stations allowed the municipality to have a credit line and only pay every month or every fifteen days.<sup>96</sup>

On re-cross, the witness admitted that he was not authorized by the two gasoline stations to speak on their behalf regarding the alleged ban imposed on the municipality.<sup>97</sup>

For her part, accused Jacalan did not present any witness but instead adopted the evidence adduced by accused Ramos.<sup>98</sup> Accused Ramos and Jacalan then filed their separate Formal Offer of Evidence dated 21 May 2018<sup>99</sup> and 25 June 2018,<sup>100</sup> respectively. On 16 August 2018, the Court admitted Exhibit "3" (Certification dated 16 July 2007 issued by Municipal Treasurer Arthur M. Villar) and Exhibit "5" (*Sangguniang Bayan* Resolution No. 12, Series of 2007) both offered by accused Ramos.<sup>101</sup>

Thereafter, the prosecution filed its Formal Offer of (Rebuttal) Evidence dated 14 August 2018.<sup>102</sup> On 05 October 2018, the Court admitted Exhibits "L" to "L-3" (Subpoena dated 22 July 2017 addressed to Arthur M. Villar) and Exhibits "M" to "M-2" (Subpoena dated 02 November 2017 addressed to Arthur M. Villar) all offered by the prosecution as rebuttal evidence.<sup>103</sup>

**Memoranda of the Parties**

*Memorandum for the Prosecution*

In its Memorandum dated 20 November 2018<sup>104</sup>, the prosecution submits that:

<sup>95</sup> *Id.* at pp. 18-19.  
<sup>96</sup> *Id.* at pp. 22-23.  
<sup>97</sup> *Id.* at p. 24.  
<sup>98</sup> *Rollo*, Vol. II, p. 116.  
<sup>99</sup> *Id.* at pp. 108-109  
<sup>100</sup> *Id.* at pp. 120-123.  
<sup>101</sup> *Id.* at pp. 155-156.  
<sup>102</sup> *Id.* at pp. 143-146.  
<sup>103</sup> *Id.* at pp. 173-174.  
<sup>104</sup> *Id.* at pp. 205-217.

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1. All the elements of violation of Section 3(e) of R.A. No. 3019 are present;<sup>105</sup>
2. Accused acted with manifest partiality, evident bad faith or gross inexcusable negligence when he unilaterally chose SRS Gas Filling Station to supply fuel and fuel products to the Municipality of Lupao without the benefit of a public bidding;<sup>106</sup>
3. Accused cannot hide from their unsupported defense that no other gasoline station wants to supply the municipality with fuel products since defense witness Vendivil admitted that it is possible for the other gasoline stations to supply the municipality with fuel if the latter will pay in cash;<sup>107</sup>
4. Defense witnesses Vendivil and Villar both admitted that they are not in the position to speak for the other gasoline stations with regard to alleged banning of the municipality;<sup>108</sup>
5. Reliance on the *Sangguniang Bayan* Resolution No. 12, Series of 2007 is misplaced as it was passed by the members of the *Sangguniang Bayan* for the term 2007 – 2010 and not by the members for the term 2010 – 2013, the period when the questioned transactions were made;<sup>109</sup> and
6. By exclusively supplying the municipality with fuel products without undergoing public bidding, accused Jacalan's SRS Gas Filling Station enjoyed unwarranted benefits, advantage or preference.<sup>110</sup>

*Memorandum for Accused Ramos*

In his Memorandum dated 22 November 2018,<sup>111</sup> accused Ramos contends that:

1. In signing the undated vouchers, accused Ramos acted in good faith under the authority of the *Sangguniang Bayan* Resolution authorizing him to purchase gasoline and diesel

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<sup>105</sup> *Id.* at p. 208.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Id.* at pp. 209-210.

<sup>108</sup> *Id.* at pp. 210-211.

<sup>109</sup> *Id.* at p. 211.

<sup>110</sup> *Id.* at p. 213.

<sup>111</sup> *Id.* at pp. 218-235.

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at SRS Gas Filling Station on "open-line credit" basis considering that the Municipality of Lupao was banned from the two other gasoline stations;<sup>112</sup>

2. The prosecution failed to adduce any proof to attribute partiality, bad faith or gross negligence on the part of accused Ramos;<sup>113</sup>
3. There is no criminal liability where the head of office, in discharging his official duties, relied in good faith on the acts of his subordinate;<sup>114</sup>
4. Lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government;<sup>115</sup>
5. The prosecution's failure to prove that there was no recommendation from the BAC to resort to alternative mode of procurement raises a presumption in favor of the accused that there might be such a certification;<sup>116</sup>
6. Undue injury cannot be presumed even after a wrong or a violation of a right has been established, thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty;<sup>117</sup>
7. There was no proof of undue injury to any party including the government, or the giving to any party unwarranted benefits, advantage or preference;<sup>118</sup>
8. No evidence was introduced as to the prevailing price of petroleum products from any other gas station as compared to the same products procured from SRS Gas Refiling Station that would lead to the inference that the municipal government was prejudiced;<sup>119</sup>
9. On the contrary, the purchases were made on credit and the payments were made only upon availability of funds, all in favor of the Municipality of Lupao;<sup>120</sup> and

<sup>112</sup> *Id.* at pp. 228-229, 233.

<sup>113</sup> *Id.* at p. 230.

<sup>114</sup> *Id.* at p. 230, citing *Arias vs. Sandiganbayan*, G.R. No. 81563, 19 December 1989.

<sup>115</sup> *Id.* at p. 231, *Marquez vs. Sandiganbayan*, G.R. Nos. 182020-24, 02 September 2009.

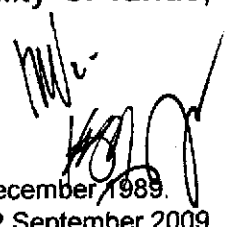
<sup>116</sup> *Id.* at p. 232.

<sup>117</sup> *Id.* at p. 233, citing *Llorente, Jr. vs. Sandiganbayan*, G.R. No. 122166, 11 March 1998.

<sup>118</sup> *Id.* at p. 233.

<sup>119</sup> *Id.* at p. 233.

<sup>120</sup> *Ibid.*



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10. The prosecution failed to prove conspiracy.<sup>121</sup>

*Memorandum for Accused Jacalan*

In her Memorandum dated 16 November 2018,<sup>122</sup> accused Jacalan argues that:

1. Conspiracy between the accused was not proven.<sup>123</sup> There is no evidence of overt act which can be legally ascribed to accused Jacalan;<sup>124</sup>
2. Undue injury, whether to the government or any private person, was not proven.<sup>125</sup> The prosecution failed to establish, much less, specify quantify and prove to the point of moral certainty the existence of undue injury to the municipality;<sup>126</sup>
3. The absence of an Observation Memorandum or a Notice of Suspension tilts the balance in favor of the regularity of the transactions;<sup>127</sup>
4. The purchases were made on credit at a fair price without any initial or security for payment, thus, actually beneficial to the municipality;<sup>128</sup>
5. No evidence proves that accused Jacalan was given any unwarranted benefits, advantage or preference. Transacting with the only remaining viable gasoline station cannot be said to be giving such advantage or preference;<sup>129</sup>
6. Accused Ramos did not act with manifest partiality, evident bad faith or gross inexcusable negligence;<sup>130</sup>
7. Acting under the authority of the *Sangguniang Bayan* Resolution and due to the exigency of public service, it cannot be said that accused Ramos had a dishonest

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<sup>121</sup> *Id.* at p. 231.

<sup>122</sup> *Id.* at pp. 181-204.

<sup>123</sup> *Id.* at p. 192.

<sup>124</sup> *Id.* at p. 193.

<sup>125</sup> *Id.* at p. 194.

<sup>126</sup> *Id.* at p. 195.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Id.* at p. 196.

<sup>129</sup> *Id.* at pp. 196-197.

<sup>130</sup> *Id.* at p. 199.

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purpose and ill will. There is no accusation at all that accused Ramos enjoyed material gain from the purchases;<sup>131</sup> and

8. The negligence displayed by accused Ramos, assuming without conceding there is, was not of such nature and degree so as to be considered brazen, flagrant and palpable.<sup>132</sup>

**ISSUE**

As earlier stated, the issue for resolution by the Court is whether or not the accused are liable for violation of Section 3(e) of R.A. No. 3019, as amended.

**OUR RULING**

The Court finds that the prosecution failed to prove beyond reasonable doubt the guilt of the accused for violation of Section 3(e) of R.A. No. 3019 otherwise known as the *Anti-Graft and Corrupt Practices Act*, as amended, as charged in the Information. The prosecution failed to establish with moral certainty all the elements of the offense.

Section 3 (e) of R.A. No. 3019 provides:

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

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

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<sup>131</sup> *Id.* at p. 201.

<sup>132</sup> *Id.* at p. 202.



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charged with the grant of licenses or permits or other concessions.”

In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused.<sup>133</sup> To be convicted under Section 3 (e) of R.A. No. 3019, **ALL** the following elements must concur:

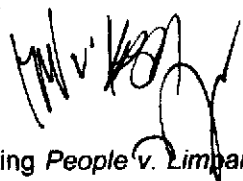
- (1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they caused undue injury to any party, whether the Government or a private party or gave unwarranted benefits, advantage or preference to such parties; and
- (4) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.<sup>134</sup>

We evaluate the case on the basis of the foregoing elements.

**(1) Accused Ramos was a public officer discharging his administrative / official functions**

The Court need not belabor on the first element as it is indisputably present. The defense admitted that, at the time material to the allegation in the Information, accused Ramos was a high-ranking public officer, being then the Municipal Mayor of Lupao, Nueva Ecija, and thus a public officer discharging his administrative or official functions. Accused Jacalan, on the other hand, is a private person charged in conspiracy with accused Ramos.

**(2) Accused Ramos, by purchasing petroleum products without competitive public bidding, committed a prohibited act during the performance of his official duties or in relation to his public position**



<sup>133</sup> *People vs. Maraorao*, G.R. No. 174369, 20 June 2012 citing *People v. Limbangog*, 444 Phil. 691, 693 (2003).

<sup>134</sup> *Dela Chica vs. Sandiganbayan*, G.R. No. 144823, 08 December 2003 in relation to *Alvarez vs. People*, G.R. No. 192591, 29 June 2011.

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*Accused Ramos violated Section 10 of the Government Procurement Reform Act and Section 356 of the Local Government Code*

Section 10 of R.A. No. 9184 or the Government Procurement Reform Act explicitly enjoins that, except under certain conditions, all procurement shall be done through competitive public bidding.<sup>135</sup> Similarly, under Section 356 of R.A. No. 7160 or the Local Government Code of 1991, the general rule is that the acquisition of supplies by local government units shall be through competitive public bidding.

In *Philippine Sports Commission vs. Dear John Services, Inc.*,<sup>136</sup> the Supreme Court stressed the importance of a public bidding in government procurements, to wit:

“Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity, and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition and in order to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. **Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding.**” (Emphasis supplied)

The Supreme Court echoed this in *Miranda vs. Sandiganbayan*,<sup>137</sup> when it ruled that:

“Consistent with the above issuances is the well-entrenched ruling of this Court that **competitive public bidding may not be dispensed with nor circumvented; and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law.** A competitive public bidding is not some token procedure in the government designed to suit the whim of a public officer. By its very nature and characteristic, a competitive public bidding aims to protect

<sup>135</sup> Section 10 of R.A. No. 9184 states that “all Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act”.

<sup>136</sup> G.R. No. 183260, 04 July 2012.

<sup>137</sup> G.R. Nos. 144760-61, 02 August 2017.

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the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts." (Emphasis supplied)

The rationale behind the requirement of public bidding, as a mode of awarding contracts, is to ensure that the people get maximum benefits and quality services from the contracts.<sup>138</sup> More significantly, the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers.<sup>139</sup> Public biddings are intended to minimize occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts.<sup>140</sup>

The fact that the subject purchases of petroleum products did not undergo the process of competitive public bidding was never disputed. Defense witnesses in the persons of former Vice Mayor Manuel F. Vendivil, in his Judicial Affidavit dated 28 February 2017,<sup>141</sup> and Municipal Treasurer Arthur M. Villar, in his Judicial Affidavit dated 28 February 2017<sup>142</sup> and in his statements on cross-examination,<sup>143</sup> both admitted that no public bidding was conducted over the subject transactions. Even accused Ramos and Jacalan, in their respective Complaint-Affidavits<sup>144</sup> filed against private complainant Zarate before the OCP of Urdaneta City, Pangasinan, both acknowledged that no public bidding took place. All of these testimonies and evidence to the effect that no public bidding was conducted were never refuted by the defense.

Given the overarching public policy of strict adherence to competitive bidding, except for specific alternative modes of government procurement, the burden of evidence to justify the non-compliance with the competitive bidding requirement of R.A. No. 9184 shifted to the defense. Stated differently, it was necessary for the defense to show that an alternative mode of procurement was

<sup>138</sup> *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, G.R. Nos. 146184-85, 161117, and 167827, 31 January 2008.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> *Sinumpaang Salaysay sa Hukuman* (Judicial Affidavit) dated 28 February 2017, *Rollo*, Vol. II, pp. 19-20.

<sup>142</sup> *Sinumpaang Salaysay sa Hukuman* (Judicial Affidavit) dated 28 February 2017, *Rollo*, Vol. II, p. 26.

<sup>143</sup> TSN dated 02 May 2018, pp. 18-19.

<sup>144</sup> See Exhibit "H" and Exhibit "I".

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validly resorted to. In this regard, the Supreme Court in *Cabrera et al. vs. Hon. Simeon V. Marcelo*<sup>145</sup> declared that:

“It is incumbent upon a party who invokes coverage under the exception to a general rule to prove the fulfilment of the requisites thereof. The rule is akin to the maxim in criminal law that whenever a person accused of the commission of a crime claims to be within the statutory exception, it is more logical and convenient that he should aver and prove the fact than that the prosecutor should anticipate such defense, and deny it.”

Indeed, the law recognizes that certain unique circumstances require the use of the alternative methods of procurement, such as, (a) *Limited Source Bidding*; (b) *Direct Contracting*; (c) *Repeat Order*; (d) *Shopping*; and (e) *Negotiated Procurement*.<sup>146</sup> However, the selection of the method of procurement is dependent on the presence or absence of specific conditions that justify the use of a particular

<sup>145</sup> G.R. Nos. 157419-20, 13 December 2004.

<sup>146</sup> Section 48 of R.A. No. 9184, which states:

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;

(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.

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method. Specifically, the 2011 Implementing Rules and Regulations (IRR) of R.A. No. 9184<sup>147</sup> mandates the use of alternative methods of procurement in some exceptional cases, provided that there is prior approval of the Head of the Procuring Entity and the same is justified by the conditions provided in the law.<sup>148</sup>

In this regard, defense witnesses Vendivil and Villar explained that they did not go through the bidding process, just like what the previous administration did, because they believed that the transactions fall under "Single Source Procurement or Direct Contracting" and "Negotiated Sale", which are exempted from public bidding under the law.<sup>149</sup> The defense, however, failed to prove that the conditions specifically required by law for the use of said alternative methods of procurement are present.

Section 50 of R.A. No. 9184 sets out the conditions when *Direct Contracting* or *Single Source Procurement*<sup>150</sup> may be resorted to, as follows:

- (a) Procurement of goods of propriety nature, which can be obtained only from the propriety source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same items;
- (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 sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

The purchase of fuel and other petroleum products subject of this case cannot be justified under any of the above conditions. On the one hand, *condition (a)* is applicable only when the goods or

<sup>147</sup> The applicable IRR at the time material to the allegation in the Information.

<sup>148</sup> Section 48.1 of the IRR of R.A. No. 9184.

<sup>149</sup> *Rollo*, Vol. II, at pp 19-20 & 26.

<sup>150</sup> Section 48 (b) of R.A. No. 9184 defines Direct Contracting otherwise known as Single Source Procurement as 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 voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.

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services being procured are covered by a patent, trade secret or copyright duly acquired under the law.<sup>151</sup> On the other hand, *condition (b)* is applicable when there is a contract for an infrastructure project consisting of the construction/repair/renovation of a plant, and critical components of such plant are prescribed by the contractor for it to guarantee its contract performance.<sup>152</sup> Lastly, *condition (c)* anticipates a situation where the goods are sold by an exclusive dealer or distributor, or directly sold by the manufacturer.<sup>153</sup> The fuel and petroleum products subject of this criminal case are not sold by an exclusive dealer or distributor within the contemplation of the law.

Under Section 53 of the 2011 IRR of R.A. No. 9184, *Negotiated Procurement*<sup>154</sup> may be resorted to in the following cases:

- (a) Two Failed Biddings;<sup>155</sup>
- (b) Emergency Cases;<sup>156</sup>
- (c) Take-Over of Contracts;<sup>157</sup>
- (d) Adjacent or Contiguous;<sup>158</sup>
- (e) Agency-to-Agency.<sup>159</sup>
- (f) Procurement Agent;<sup>160</sup>
- (g) Highly Technical Consultants;<sup>161</sup>

<sup>151</sup> See Manual of Procedures for the Procurement of Goods and Services, p. 84.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> Section 48 (e) of R.A. No. 9184 defines Negotiated Procurement as 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.

<sup>155</sup> Where there has been failure of public bidding for the second time as provided in Section 35 of the Act and this IRR.

<sup>156</sup> In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where 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. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP.

<sup>157</sup> Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where 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.

<sup>158</sup> Where the subject contract is adjacent or contiguous to an on-going Infrastructure Project or Consulting Service where the consultants have unique experience and expertise to deliver the required service.

<sup>159</sup> Procurement of infrastructure projects, consulting services, and goods from another agency of the GOP, such as the PS-DBM, which is tasked with a centralized procurement of Common-Use Supplies for the GOP in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

<sup>160</sup> In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the Head of the Procuring Entity concerned, may request other GOP agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function. The GPPB shall issue guidelines to implement this provision.

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- (h) Defense Cooperation Agreement;<sup>162</sup>
- (i) Small Value Procurement;<sup>163</sup>
- (j) Lease of Real Property;<sup>164</sup>
- (k) NGO Participation;<sup>165</sup> and
- (l) Community Participation.<sup>166</sup>

Likewise, none of the above situations find their significance in order to excuse the subject transactions from public bidding. The purchases could have been validly done through Small Value Procurement, however, the amounts of the transactions exceeded the required threshold.<sup>167</sup> The amounts of three of the four questioned purchases of fuel and other petroleum products were more than the

*[Handwritten signatures and initials on the right margin]*

<sup>161</sup> In the case of individual consultants or partnerships hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants or partnerships shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter.

<sup>162</sup> Upon prior approval by the President of the Philippines, and when the procurement for use by the AFP involves major defense equipment or materiel and/or defense-related consultancy services, when the expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations: Provided, however, That the performance by the supplier of its obligations under the procurement contract shall be covered by a performance security in accordance with Section 39 of this IRR.

<sup>163</sup> Where the procurement does not fall under Shopping in Section 52 of this IRR and the amount involved does not exceed the thresholds prescribed in Annex "H" of this IRR.

<sup>164</sup> Lease of privately owned real property and venue for official use, subject to guidelines to be issued by the GPPB.

<sup>165</sup> When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.

<sup>166</sup> Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected project components to call for participation of local communities in the delivery of services, the procuring entity shall propose the procedures, specifications, and contract packaging which are subject to the approval of the GPPB.

<sup>167</sup> Annex "H" of the 2009 IRR provides the threshold for Shopping and Small Value Procurement, as follows:

- a) For NGAs, GOCCs, GFIs, and SUCs, Five Hundred Thousand Pesos (P500,000).
- b) For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1st Class	500,000	500,000	100,000
2nd Class	500,000	500,000	100,000
3rd Class	500,000	400,000	100,000
4th Class	400,000	300,000	50,000
5th Class	300,000	200,000	50,000
6th Class	200,000	100,000	50,000

The Municipality of Lupao was reclassified as 3<sup>rd</sup> class under the classification of municipalities of the Nueva Ecija effective 29 July 2005, promulgated by the Department of Finance under Department Order No. 20-05, Prescribing the New Income Brackets for the Reclassification of Provinces, Cities and Municipalities.

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One Hundred Thousand Pesos (PhP100,000.00) limit for a valid Small Value Procurement by a third class municipality, such as the Municipality of Lupao.<sup>168</sup> Absent any exceptional conditions that would warrant resort to alternative method of procurement, the default mode is still public bidding.

In sum, it is apparent that accused Ramos, by directly procuring fuel, gas and other similar products from SRS Gas Filling Station, has circumvented the mandatory requirement of a competitive public bidding – a clear violation of the law. The defense indubitably failed to show proof that the subject purchases are allowed under any of the alternative modes of procurement under the Government Procurement Reform Act and that the procedure thereof were faithfully complied with. While the accused gave credible explanation on why the Municipality of Lupao directly procured from SRS Gas Filling Station, the same, however, cannot excuse the municipality from complying with the requirement of public bidding or the procedure on alternative modes of procurement.

Accused Ramos violated Section 4(c) of the Code of Conduct and Ethical Standards for Public Officials and Employees

The testimonies of private complainant Zarate<sup>169</sup> and defense witness Vendivil<sup>170</sup> confirm that accused Ramos is a first cousin of accused Jacalan. The defense did not repudiate this fact. Accordingly, accused Jacalan, who is the owner/proprietress of Lupao's supplier of fuel and petroleum products, is a relative within the fourth civil degree of consanguinity of accused Ramos, the Head of the Procuring Entity of the said municipality.

While Section 47<sup>171</sup> of the IRR of R.A. No. 9184 prohibits from participating in the procurement of contracts only those bidder related within the third civil degree of consanguinity or affinity to the Head of the Procuring Entity, Section 4 (c) of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and

<sup>168</sup> See Exhibit "C" (PhP262,130.42), Exhibit "D" (PhP254,071.87), and Exhibit "E" (PhP117,754.17).

<sup>169</sup> TSN dated 21 November 2017, p. 65.

<sup>170</sup> TSN dated 23 April 2018, p. 24.

<sup>171</sup> Section 47. Disclosure of Relations All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity.