



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

Sixth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1490

- versus -

For: Violation of **Section 3(e)**
of **Republic Act No. 3019**

ELEANDRO JESUS F. MADRONA,
JOEL ANGCAO SY,
RUBY F. FABABEIR,
GEISHLER FIEDACAN FADRI,
OSCAR PLACITO GALOS,
ANTHONY G. RUGAS, and
ELISA D. MORALES

PRESENT:

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

Promulgated:

Accused.

X-----X

February 29, 2024

DECISION

VIVERO, J.:

THE CHARGE

Accused **ELEANDRO JESUS F. MADRONA** (accused Madrona), **JOEL ANGCAO SY**¹ (accused Sy), **RUBY F. FABABEIR**² (accused Fababeir), **GEISHLER FIEDACAN FADRI** (accused Fadri), **OSCAR PLACITO GALOS** (accused Galos), **ANTHONY G. RUGAS**³ (accused Rugas), all belonging to Romblon Provincial Government, and **ELISA D. MORALES** (accused Morales), private individual, were indicted for allegedly conspiring to commit corrupt practices of public officers under the *Information*⁴ dated 09 February 2016. The delictual allegations read:

¹ Deceased per *Certificate of Death* and *Minute Resolution* attached on record, see *Rollo*, Volume V at 256 and 256-A, respectively.

² Deceased per *Certificate of Death* and *Minute Resolution*, *Rollo*, Vol. III at 289 and 296, respectively.

³ Deceased per *Certificate of Death* and *Minute Resolution*, *Rollo*, Vol. III at 290 and 296, respectively.

⁴ *Rollo*, Vol. I at 1.

That in the year 2004 or sometime prior or subsequent thereto, in the Province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, accused **ELEANDRO JESUS F. MADRONA**, a high ranking public official, then being the Governor of the Province of Romblon, with **GEISHLER FIEDACAN FABRI** (Provincial Agriculturist), **RUBY F. FABABEIR** (Provincial Treasurer), **JOEL ANGCACO SY** (Provincial Administrator), **ANTHONY G. RUGAS** (Assistant Provincial Government Head, General Services Officer), and **OSCAR PLACITO GALOS** (Senior Agriculturist), all public officers being employees of the Provincial Government of Romblon, while in the performance of their official functions, committing the crime in relation to their office, and taking advantage of their official positions, conspiring and confederating with one another and with accused **ELISA D. MORALES**, a private person representing Feshan Philippines Incorporated (Feshan), acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally, give Feshan, through **ELISA D. MORALES**, unwarranted benefits, privilege and advantage by entering into a contract with Feshan to purchase 3,333 bottles of Bio Nature liquid organic fertilizer at Php1,500.00 per bottle through the alternative method of procurement of direct contracting and causing the payment of a total amount of Php4,863,823.10 (net after tax), without complying first with the mandatory public bidding as required under Republic Act No. 9184, as amended, and its implementing rules and regulations, thereby depriving the government the opportunity to get the most advantageous offer/price.

CONTRARY TO LAW.

ANTECEDENTS

Upon the filing of the instant case, a *Hold Departure Order* dated 07 August 2017 was issued by the Court barring all accused from leaving the country.⁵ On the same day, accused Madrona posted bail.⁶

Likewise, the Court issued warrants of arrest against accused Sy, Fababeir, Fadri, Galos, Rugas, and Morales.⁷

For his provisional liberty during the pendency of his trial and to recall the warrant of arrest issued against him, accused Sy posted bail on 24 August 2017.⁸

Arraignment was scheduled for accused Madrona and Sy on 07 September 2017, during which they each entered a plea of "not guilty."⁹

⁵ Id. at 170.

⁶ Id. at 171.

⁷ Id. at 172.

⁸ Id. at 183.

⁹ Id. at 197.

On 11 September 2017¹⁰ and 13 September 2017,¹¹ accused Galos and Fadri posted bail, which the Court approved and thus recalled their arrest warrants. Arraignment for accused Galos and Fadri was set on 13 October 2017, during which they each entered a plea of “not guilty.”

Subsequently, pre-trial proceeded for accused Madrona, Sy, Galos, and Fadri where the following stipulations were entered into between the parties, thus:

- (1) Court’s jurisdiction over the persons of the accused;
- (2) Identities of accused Madrona, Sy, Galos, and Fadri;
- (3) At the time material to the allegations in the *Information*, accused Madrona and Sy were high-ranking public officers being then the governor and provincial administrator of the Provincial Government of Romblon;
- (4) Likewise, at the time material to the allegations in the *Information*, accused Fadri and Galos were public officers being then the Provincial Agriculturist and Senior Agriculturist of the Provincial Government of Romblon; and
- (5) The existence and authenticity of the *Joint Resolution* dated 09 October 2014 of the Office of the Ombudsman in OMB-C-C-11-0392-G and OMB-C-C-11-0649-J.¹²

Seeking quashal of the *Information* on the ground that the facts alleged in the *Information* do not constitute an offense, accused Madrona, Sy, Galos, and Fadri filed their *Omnibus Motion* (1. *To Quash the Information*; and 2. *To Dismiss the Case*) dated 09 January 2018,¹³ to which the prosecution filed its *Comment/Opposition [to] the Omnibus Motion* on 17 January 2018.¹⁴ A *Reply (With Leave of Court)* was filed by accused Madrona, Sy, Galos, and Fadri under date of 24 January 2018.¹⁵ Under *Resolution* dated 26 April 2018, the Court resolved the pending incidents by denying the quashal and dismissal filed by accused Madrona, Sy, Galos, and Fadri.¹⁶

Undeterred, accused filed their *Motion for Reconsideration* on 02 May 2018,¹⁷ while the prosecution filed its *Comment / Opposition (to Accused Madrona, Galos, Fadri, and Sy’s Motion for Reconsideration dated 01 May 2018)* on 09 May 2022.¹⁸

¹⁰ Id. at 203.

¹¹ Id. at 205.

¹² Id. at 253-254.

¹³ Id. at 294.

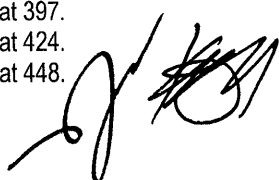
¹⁴ Id. at 312.

¹⁵ Id. at 322.

¹⁶ Id. at 397.

¹⁷ Id. at 424.

¹⁸ Id. at 448.



Accused likewise filed their *Reply (With Leave of Court)* on 14 June 2018.¹⁹ Under date of 12 July 2018, the Court issued a *Resolution*, which denied the *motion for reconsideration* of all the accused.²⁰

During trial, the prosecution presented its witnesses, namely: (1) Emmanuel C. Orlido; (2) Elsie R. Salvador; (3) Julieta B. Lansangan; (4) Josephine L. Baaco; (5) Atty. Darwin C. Sotto; (6) Atty. Catherine G. Pascua-Castro; (7) Concepcion M. Caldit; (8) Manina J. Karganilla; (9) Atty. Eden T. Rafanan; and (10) Lyndon M. Molino. Below is a summary of their respective testimonies:

PROSECUTION'S EVIDENCE-IN-CHIEF

EMMANUEL C. ORLIDO of the Commission on Audit (COA) testified that he is the *State Auditor IV, Officer-in-Charge (OIC) Supervising Auditor*, assigned at Local Government Sector-D (LGS-D), Province of Romblon, and concurrently assigned as *Audit Team Leader* of Region IV-B-01 stationed at Romblon, Romblon.²¹ His duties and responsibilities as *OIC Supervising Auditor* is to take charge of the supervision of all audit activities of the entire local government units and administrative matters. As *Audit Team Leader*, he has direct supervision over audit teams, performs all audit-related activities, and attends to administrative matters. Likewise, part of the functions of his office is to take custody and safekeep records/documents that are the subject of previous audit examinations concerning local government units assigned to his team.²²

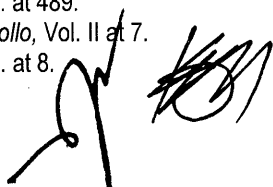
Per *subpoena* issued by the Office of the Special Prosecutor – Office of the Ombudsman, he was directed to submit certified true copies of documents in his possession by reason of his office. Accordingly, he presented and identified **Official Receipt Nos. 9584954, 9584960, and 3041 (Exhibits "O", "O-1", and "X"); Purchase Request No. 385 (Exhibit "P") dated 23 April 2004; Purchase Order No. 285-A (Exhibit "Q") dated 26 April 2004; Delivery Receipt No. 3595 (Exhibit "S") dated 27 April 2004; Inspection and Acceptance Report (Exhibit "T"); Requisition and Issue Slip No. 557 (Exhibit "U"); Disbursement Voucher No. 300-0404561 and Disbursement Voucher No. 300-0411990 (Exhibits "V" and "BB"); Annual Audit Report on the Province of Romblon for the Year Ended 31 December 2004 (Exhibit FF"); Justification dated 07 May 2004 (Exhibit "GG"); Quotation dated 04 February 2005 of Romblon Hardware; Quotation dated 04 February 2005 of Aura & Audrey Enterprise; and Quotation dated 04 February 2005 of C.E. General Merchandise (Exhibits "HH", "II", and "JJ"); Relief of Liability/Accountability (Exhibit "NN") dated 05 May 2004; Audit Observation Memorandum (AOM) No. 2004-040 dated 26 November 2004 and Audit Observation Memorandum (AOM) No. 20050004 dated 23 February 2005 (Exhibits "LL" to "LL-2", and "ZZ"); Notice of Disallowance (ND) No. 2006-064-101(04) (Exhibit "QQ") dated 13 June 2006; Invoice No. 5696 (Exhibit "RR"); Certification**

¹⁹ Id. at 466.

²⁰ Id. at 489.

²¹ *Rollo*, Vol. II at 7.

²² Id. at 8.



dated 20 April 2004 issued by Ruby F. Fababeir and **Certification** dated 21 April 2004 issued by Geishler F. Fadri (**Exhibits “TT” and “VV”**); **Quotation** dated 06 January 2004 (**Exhibit “UU”**); **Special Power of Attorney (Exhibit “R”)** attached to Disbursement Voucher No. 300-0404561; **Certification (Exhibit “KK”)** dated 04 March 2004 attached to Disbursement Voucher No. 300-0404561; **Certification (Exhibit “SS”)** dated 26 April 2004 attached to Disbursement Voucher No. 300-0404561; **PNB Check No. 37257 (Exhibit “W”)** dated 05 May 2004; and **LBP Check No. 101517 (Exhibit “CC”)** dated 21 December 2004. As to the other documents that he was not able to find, he issued a **Certification (Exhibit “XX”)** dated 21 December 2017, proving unavailability of the documents and to show that his office has no record on file.²³

As stipulated, he has no personal knowledge of the transaction subject of the present *Information* and he has no participation in the preparation of the exhibits enumerated above.²⁴

ELSIE R. SALVADOR presented in Court the original copy of **Resolution No. 03-2004-35-A (Exhibits “K” and “K-1”)** and testified that she can identify the signature of Senia G. Onas, the former secretary of the Sanggunian who signed the same. She also presented a **Certification (Exhibit “WW”)** that she issued and signed. She is the *Secretary* to the Sangguniang Panlalawigan of the Province of Romblon since 01 March 2010. Her duties are to take custody of the local archives existing at the time of her assumption and furnish certified true copies of records of public character in her custody.²⁵

JULIETA B. LANSANGAN, *Chief* of the Fertilizer Regulations Division, Fertilizer Pesticide Authority (FPA), has been with FPA for (30) years. Her division oversees fertilizer product registration, licensing of fertilizer handlers, issuance of permits, and preparation and maintenance of a list of registered fertilizers and list of licensed fertilizer handlers. Her duties include: (a) supervision of issuance of licenses and product registration of fertilizers; (b) supervision over issuance of VAT exemption certificates for imported fertilizers; (c) issues certifications and other documents based on records; and (d) maintenance and safekeeping of logbook/registry of fertilizer product registration.²⁶

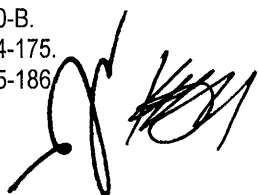
She prepared a document denominated as **Certification (Exhibits “KKK” and “KKK-1”)** certifying that ***Feshan Phils., Inc. is not the sole and exclusive distributor of foliar fertilizers in the Philippines in the year 2004 and that there are other suppliers/distributors of foliar fertilizers in the Philippines in the year 2004.*** The document was signed by her immediate superior, Wilfredo C. Roldan, who was then the *Executive Director* for FPA. The certification was made based on the **logbook (Exhibit “BBB”)** that contains all the registered fertilizers and entities dealing with fertilizers registered with FPA, both locally manufactured and imported.

²³ Id. at 9-17.

²⁴ Id. at 170-B.

²⁵ Id. at 174-175.

²⁶ Id. at 185-186.



To prove that Feshan Phils., Inc. (Feshan) is not the sole and exclusive distributor of foliar fertilizers in the Philippines in the year 2004, she produced a **List of Fully Registered Fertilizer (Exhibit “AAA”).**²⁷

She identified a **List of Licensed Fertilizer Handlers (Exhibit “CCC”)** stating that the license of Feshan to import and distribute Bio Nature liquid organic fertilizer (Bio Nature fertilizer) expired on 05 March 2003. Too, the **List of Licensed Fertilizer Handlers as of December 2004 (Exhibit “DDD”)** shows that there was no license granted to Feshan in 2004 or for any subsequent years. This was corroborated by a **Certification (Exhibits JJJ and JJJ-1)** dated 02 February 2018, a document prepared by witness Lansangan and signed by Executive Director Roldan, showing that the last renewal of Feshan as licensed fertilizer handler was on 2002 and the expiry date of its license was 05 March 2003.²⁸

JOSEPHINE A. BAACO, *Administrative Officer III*, Regional Field Office – 4 (MIMAROPA), Department of Agriculture testified on direct examination by way of her *Judicial Affidavit* dated 23 August 2018 and narrated that the custody of official documents on file with her office was her responsibility, which led to her issuance of certified true copies of **Memorandum for the Undersecretary (Exhibit “I”)** dated 17 March 2004 and **Advice of Sub-Allotment for the Calendar Year 2004 Advice No. 101-2004-128 (Exhibit “J”)** dated 18 March 2004.²⁹

ATTY. DARWIN C. SOTTO, *Securities Counsel I* at the Company Registration and Monitoring Department (CRMD) of the Securities and Exchange Commission (SEC) testified that his duty centers on checking the accuracy of some information indicated in the Articles of Incorporation during pre-processing for incorporation and amendment purposes; he also appears and testifies in court as witness on behalf of the CRMD relative to documents filed with SEC. Atty. Sotto presented the following documents: (a) **Certificate of Incorporation of Feshan Phils., Inc. (Exhibit “DD”)**; (b) **Certificate of Filing of Amended Articles of Incorporation of Feshan Phils., Inc. (Exhibit “DD-1”)**; and (c) **General Information Sheet (Exhibit “DD-2”)**. Additionally, Atty. Sotto identified the signatures on each document belonging to Atty. Daniel P. Gabuyo, Officer-in-Charge (OIC), Corporate Filing and Records Division (CFRD), SEC.³⁰

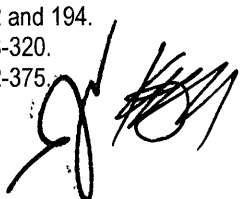
ATTY. CATHERINE G. PASCUA-CASTRO, *Graft Investigation and Prosecution Officer (GIPO) IV*, Prosecution and Monitoring Bureau, Prosecution Information, Evaluation, and Monitoring Services, Office of the Ombudsman, affirmed that she has been with the agency for (11) years and her first assignment was with the Field Investigation Office (FIO). She also held the position of *Director* where she handled complex cases and special assignments. She was tasked with the duty to review investigation reports, complaints, and pleadings emanating from their investigators. By virtue of **Office Order No. 42 (Exhibit “GGG-1”)**, she was

²⁷ Id. at 187-189.

²⁸ Id. at 192 and 194.

²⁹ Id. at 318-320.

³⁰ Id. at 372-375.



designated as member of Task Force ABONO created to investigate the Fertilizer Fund Scam pertaining to a syndicated scheme of fraud against the public fund of the Ginintuang Masaganang Ani Program (GMA Program) of the Arroyo administration geared to implement farm inputs and implement projects to alleviate the plight of poor farmers nationwide. During her investigation, she came across the case of accused Governor Madrona and the procurement transaction of the Provincial Government of Romblon of liquid fertilizers sans public bidding.

She likewise identified Leonardo Nicolas Jr., *Associate Graft Investigation Officer III* and her co-member in Task Force Abono, who investigated the fertilizer fund scam and recommended the filing of a **Complaint (Exhibits "A" to "FF")** for violation of Sections 3(e) and (g) of R.A. No. 3019 against the erring officers of the Province of Romblon, to include accused Madrona, Fadri, Fababeir, Sy, Rugas, and Galos. She administered the oath of Nicolas when the latter filed his criminal and administrative complaints before the Office of the Ombudsman.³¹ She testified that Nicolas can no longer be located and therefore cannot testify anymore.

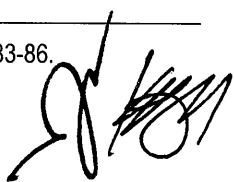
CONCEPCION M. CALDIT, *State Auditor IV*, Audit Team Leader of National Government Sector (NGS) Cluster V, Team R-4B-15 of the COA, Romblon, Romblon, testified via her *Judicial Affidavit* dated 12 October 2018. She has been with COA for 35 years with present assignment as Audit Team Leader. She recalled conducting a post audit in 2004 relative to the procurement of liquid organic fertilizer by the Province of Romblon via the alternative method of direct contracting, which transaction was entered into by accused Governor Madrona. She based her audit on the **Purchase Order No. 285-A (Exhibit "Q")** dated 26 April 2004, pursuant thereto, she then issued **Audit Observation Memorandum (AOM) No. 2004-040 (Exhibit "LL" to "LL-5")** dated 26 November 2004.

Relative to AOM No. 2004-040, she made the following observations, thus:

The Province of Romblon bought 3,333 bottles of liquid organic fertilizer, Bio-Nature Brand, 1 liter/bottle from an exclusive distributor, Feshan Philippines, Inc., at PhP1,500.00 per bottle or a total of PhP4,999,5000.00. partial payment was made under Disbursement Voucher No. 300-0404561 for PhP3,250,000.00 with corresponding PNB Check No. 37257 dated 05 May 2004 for PhP3,131,818.19 net of PhP118,181.81 withholding taxes.

- (a) Procurement of this fertilizer was made from an exclusive distributor, Feshan, instead of public bidding as required under Section 10 of IRR-A of R.A. No. 9184. A corollary certification as to the exclusive distributorship by the Requisitioning Officer, duly approved by the Provincial Governor, does not mention that same have no sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to

³¹ *Rollo*, Vol. III at 83-86.



the Government. Hence, the Province of Romblon has not obtained the most advantageous terms.

(b) Section 101 of the New Government Accounting System (NGAS) Volume I provides that disbursements from the Trust Fund shall be certified by the Accountant as to existence of funds held in trust and completeness and propriety of supporting documents. Subject Disbursement Voucher does not bear the certification of the Provincial Accountant but still payment was effected.

(c) Upon review of documentary requirements attached in the claim of Feshan, the following observations were noted:

1. There is no recommendation from the Bids and Awards Committee (BAC) to the Provincial Governor for the use of alternative methods of procurement as provided for in Rule XVI of R.A. No. 9184, pertaining to Direct Contracting;
2. The price quotation was dated January 6, 2004, several months ahead of the receipt of fund on April 10, 2004 purposely to cover the purchase of farm inputs;
3. There is no Certificate of Business Name;
4. Purchase Order does not contain the following:
 - 4.1. Telephone and fax number of supplier, if any;
 - 4.2. Provision on penalty and liability of supplier in case of late delivery or non-delivery;
 - 4.3. Terms of payment;
 - 4.4. Information whether the supplier is a manufacturer or exclusive distributor, registered with SEC, DTI or both;
 - 4.5. Country of manufacturer or origin of item, if foreign origin, specify country;
5. Invoice No. 5696 dated April 27, 2004 was not signed by the dealer or his representative;
6. There is no Testing and Evaluation of Analysis Report Certificate for compliance with specifications by the Bureau of Soils and Water Management.

Further into her testimony, she identified **Disbursement Voucher No. 300-0404561 (Exhibit "V")**; **PNB Check No. 37257 (Exhibit "W")** dated 05 May 2004 in the amount of Php3,131,818.19; **Certification (Exhibit "LLL-2")** dated 07 May 2004; **Price Quotation (Exhibit "UU")** dated 06 January 2004; **Invoice No. 5696 (Exhibit "RR")** dated 27 April 2004; **Annual Audit Report on the Province of Romblon for the Year Ended December 31, 2004 (Exhibit "FF")**; and **Three (3) Quotations (Exhibits "HH", "II", and "JJ")**.

Finally, she issued **AOM No. 2005-004 (Exhibit "ZZ")** dated 23 February 2005 to revise the total difference of Php4,289,471.01 to Php4,302,903.00 with the following observations, to wit:



The province used the alternative method of procurement thru exclusive distributorship in the purchase of liquid organic fertilizers, although not considered highly exceptional case.

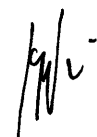
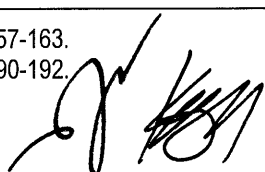
- (a) Liquid Organic Fertilizer at PhP1,500.00 per bottle or a total of PhP4,999,500.00.
- (b) This office conducted a local canvass of the same item (but not the same brand). Three suppliers quoted their price of PhP199.00, PhP192.00 and PhP190.00 per bottle. Three more suppliers quoted "no stock". The three prices were averaged and a ten percent (10%) allowable price variance was added to it resulting to PhP213.03, thus giving a difference of PhP1,286.97 per bottle or a total difference of PhP4,289,471.01.
- (c) As a general rule in accordance with Section 10 of the Implementing Rules and Regulations of R.A. No. 9184 (IRR-A), the Province, as a procuring entity, should adopt public bidding as the general mode of procurement to ensure that the most advantageous price for the government is obtained. It shall see to it further that the procurement program allows sufficient time for such public bidding. Alternative methods shall be resorted to only in highly exceptional cases. Moreover, reference to brand names shall not be allowed as provided under Section 18 of Rule VI of IRR-A.³²

MANINA J. KARGANILLA, *Administrative Consultant* of Just Call, Inc. averred that her duties include the booking of trucks for deliveries, ensuring delivery of goods entrusted to them, and after delivery, ensuring that all documents are returned to the consignor. On 23 April 2004, her office picked up from Feshan 444 boxes of Bio Nature fertilizer and delivered the same to Odiongan, Province of Romblon, on 24 April 2004. She then executed a **Certification (Exhibit "MM")** dated 12 October 2006 to prove such fact.³³

ATTY. EDEN T. RAFANAN, formerly the *Regional Cluster Director (RCD)* of Regional Legal and Adjudication Office, Regional Office No. IV and currently the *Regional Director*, Regional Office No. VII, COA, testified on direct examination through her *Judicial Affidavit* dated 13 November 2018, where she averred that as RCD her duties include the issuance of notice of suspension, notice of disallowance/charge of audit findings forwarded to her by COA's auditors in Regional Office No. IV. She issued the **Notice of Disallowance (ND) No. 2006-064-101(04) (Exhibits "QQ" and "QQ-1")** dated 13 June 2006 disallowing in audit the total amount of PhP5,000,000.00. She cited as reason for the disallowance that *the resort to direct purchase as a mode of procurement of liquid fertilizer despite the availability of suitable*

³² Id. at 157-163.

³³ Id. at 190-192.



substitutes at a more advantageous price is contrary to Section 50 of R.A. No. 9184. Likewise, the reference to brand names instead of relevant characteristics in the purchase request and purchase order and other supporting documents is in violation of Section 18 of R.A. No. 9184. In addition, the receipt of the procured items were not acknowledged by the farmer beneficiaries/end user. Thereafter, she issued the disallowance to accused Madrona and company.³⁴

LYNDON M. MOLINO testified on direct examination through his **Complaint-Affidavit (Exhibits “H” to “H-9”)** dated 14 October 2011. He testified that he is a concerned citizen and a long-time crusader for good governance; that he uncovered anomalies in the procurement by the Provincial Government of Romblon of 3,333 bottles of Bio-Nature liquid organic fertilizer at a total cost of PhP4,999,500.00 or PhP1,500.00 per 1.0-liter bottle sometime in 2004;³⁵ that there is no iota of doubt that the procurement contract with Feshan was manifestly and grossly disadvantageous to the government; and that the price difference was PhP1,281.10 per bottle or a total price difference of PhP4,269,906.30.

In its *Formal Offer of Evidence (With Motion to Mark Exhibits “DD” to “DD-2”)*³⁶ dated 10 May 2019, the prosecution offered the following exhibits in evidence:

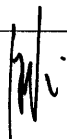
EXHIBITS	DESCRIPTION
“A” to “A-14”	Complaint of Task Force Abono, Field Investigation Office, Office of the Ombudsman dated 18 April 2011 (15 pages)
“H” to “H-9”	Complaint- Affidavit of Lyndon M. Molino dated 14 October 2011 (10 pages)
“I”	Memorandum for the Undersecretary dated 17 March 2004
“J”	Advice of Sub-allotment for the Calendar Year 2004, No. 101-2004-128 dated 19 March 2004
“K” to “K-1”	Excerpts from the Minutes of the Regular Session of the Sangguniang Panlalawigan of Romblon (Resolution No. 03-2004-35-A)
“L” to “L-3”	Memorandum of Agreement between the Department of Agriculture – Region IV-B and the Provincial Government of Romblon dated 19 April 2004
“M”	Landbank Check No. 205917 in the amount of PhP3,250,000.00
“N”	Disbursement Voucher No. 2004-4-1219 dated 4/20/04
“O” to “O-1”	Official Receipt No. 9584954-A and Official Receipt No. 9584960-A
“P”	Purchase Request No. 385 dated 4/23/04

³⁴ Id. at 207-208.

³⁵ Id. at 215 and 221-222.

³⁶ Id. at 335-373.

"Q"	Purchase Order No. 285-A dated 4/26/04
"R"	Special Power of Attorney
"S"	Delivery Receipt No. 3595 dated 27 April 2004
"T"	Inspection and Acceptance Report dated 27 April 2004
"U"	Requisition and Issue Slip dated 4/27/04
"V"	Disbursement Voucher No. 300-0404561
"W"	PNB Check No. 37257 in the amount of PhP3,131,818.19
"X"	Official Receipt No. 3041 dated 05 May 2004
"Y"	LBP Check No. 271159 in the amount of PhP1,750,000.00
"Z"	Disbursement Voucher No. 2004-9-3458 dated 02 September 2004
"AA"	Authorization Letter dated 02 September 2004
"BB"	Disbursement Voucher No. 300-0411990
"CC"	Check No. 101517 dated 21 December 2004 in the amount of PhP1,732,005.00
"DD"	Certificate of Incorporation of Feshan Phils., Inc.
"EE" to "EE-3"	Company Profile of Feshan Phils., Inc.
"FF"	Annual Audit Report
"GG"	Justification
"HH"	Quotation of Romblon Hardware dated 04 February 2005
"II"	Quotation of Aura & Audrey Enterprise dated 04 February 2005
"JJ"	Quotation of C.E. Gen. Mdse dated 04 February 2005
"LL" to "LL-2"	Audit Observation Memorandum
"MM"	Certification dated 12 October 2006
"NN"	Relief of Liability/Accountability
"QQ"	Notice of Disallowance dated 13 June 2006
"RR"	Invoice No. 5696
"SS"	Certification dated 26 April 2004
"TT"	Certification dated 20 April 2004
"UU"	Quotation dated 06 January 2004
"VV"	Certification dated 21 April 2004
"WW"	Certification dated 21 December 2017 issued by Ms. Elsie R. Salvador
"XX"	Certification dated 21 December 2017 issued by Emmanuel C. Orlido



"ZZ"	Audit Observation Memorandum No. 2005-004 dated 23 February 2005
"AAA"	List of Fully Registered Fertilizer as of December 2004
"BBB" to "BBB-23"	Logbook for Fertilizer Products Registered in CY 2004
"CCC"	List of Licensed Handlers as of June 10, 2003
"DDD"	List of Licensed Handlers as of December 31, 2004
"GGG" "GGG-1"	Memorandum dated 15 June 2009 Office Order No. 42
"III"	Index Card of Feshan Phils., Inc.
"JJJ"	Certification dated 2/02/18
"KKK"	Certification dated 2/14/18
"LLL" to "LLL-9"	Counter-Affidavit of Ranilo F. Fruelda including its attachments

In the *Minutes of the Proceedings*³⁷ dated 17 June 2019, the Court admitted Exhibits "A" to "A-14", "H" to "H-9", "I", "J", "K" to "K-1", "L" to "L-3", "M", "N", "O" to "O-1", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE" to "EE-3", "FF", "GG", "HH", "II", "JJ", "LL" to "LL-2", "MM", "NN", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "ZZ", "AAA", "BBB" to "BBB-23", "CCC", "DDD", "GGG" to "GGG-1", "III", "JJJ", "KKK", and "LLL" to "LLL-9," and declared the same as forming part of the prosecution's evidence.

On 01 July 2019, accused Madrona, Galos, and Fadri filed their *Motion for Leave to File Demurrer to Evidence*,³⁸ which the prosecution opposed in its *Opposition (Re: Motion for Leave to File Demurrer to Evidence)* dated 08 July 2019.³⁹ In its *Resolution*⁴⁰ dated 16 October 2019, the Court denied accused Madrona's, Galos', and Fadri's *motion* for lack of merit.

DEFENSE'S EVIDENCE-IN-CHIEF

In *contra*, the defense presented its witnesses, namely: (1) Victoria C. Tan; (2) Jubeth F. Cawaling; (3) Oscar P. Galos; (4) Geishler F. Fadri; and (5) Eleandro Jesus F. Madrona. Culled from the collective version of the defense witnesses are the following:

VICTORIA C. TAN, proprietor of Aura & Audrey Enterprises with business address at Barangay II, Romblon, Romblon. She identified the canvass, Exhibit "II" for the prosecution, undertaken on 04 February 2005 for 3,333 bottles of liquid organic fertilizer initiated by Mr. Juanito R. Martos Jr., from COA. She testified that she signed the canvass, her store was neither registered with FPA nor was it listed as licensed

³⁷ *Rollo*, Vol. IV at 256-257.

³⁸ *Id.* at 272.

³⁹ *Id.* at 348.

⁴⁰ *Id.* at 414.

fertilizer handler with the same agency. She affirmed that the liquid organic fertilizer identified in the canvass was a product not registered with FPA and that her store was not selling fertilizers during the canvass. She then explained the difference between liquid organic fertilizer as against “foliar fertilizer.” The Purchase Request No. 385 dated 23 April 2004 and marked as Exhibit “P” for the prosecution, pertaining to foliar fertilizer purchased by Province of Romblon does not contain the same relevant characteristics and performance requirements as that of the liquid organic fertilizer subject of canvass. COA’s Mr. Martos Jr. did not actually go to her store to canvass, instead, he sent somebody else to bring the canvass documents to her and for her to affix her signature.⁴¹

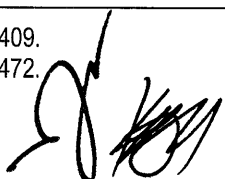
JUBETH F. CAWALING, *State Auditor III* and OIC Audit Team Leader of Audit Team No. R-4B-01, Local Government Sector, COA, Province of Romblon, tasked to audit and examine the accounts or transactions of the Provincial Government of Romblon and to take custody of records and documents submitted to her office. She identified the **Letter of Appointment (Exhibit “11”)** dated 06 January 2004; **Letter of Appointment (Exhibit “11-A”)** dated 01 May 2004; **Authority of Loong Seng Onn (Exhibit “11-B”)** dated 28 May 2004; **Notarial Certificate (Exhibit “11-C”)** dated 28 May 2004; **Certificate of Authentication (Exhibit “11-D”)** dated 31 May 2004; and **Certification (Exhibit “5”)** dated 26 April 2004 issued by Richard L. Lozada certifying that Feshan is the sole and exclusive distributor of Bio Nature fertilizer and that there are no sub-dealers offering or selling at a lower price and there is no available substitute of substantially the same quality at the locality.⁴²

OSCAR P. GALOS, *Agriculturist II*, Office of the Provincial Agriculturist, Province of Romblon. He has been working with said office for 14 years. In his *Judicial Affidavit* dated 13 March 2020, he averred that on 27 April 2004, he received 3,333 bottles of foliar fertilizer amounting to PhP4,999,500.00 purchased by the Province of Romblon as can be gleaned in Delivery Receipt No. 3595, which is Exhibit “S” for the prosecution. He then signed the **Requisition and Issue Slip (Exhibit “1”)** dated 27 April 2004 to prove that the Office of the Provincial Agriculturist received the foliar fertilizer from the General Services Office (GSO). According to him, there were no suitable substitutes for the foliar fertilizer purchased by the Province of Romblon through direct contracting from Feshan. Moreover, Romblon Hardware, Aura & Audrey Enterprise, and C.E. General Merchandise were not authorized by FPA to sell fertilizers. Too, the names of these stores are not listed in his office as authorized dealers and sellers of fertilizers in the Province of Romblon and in his 14 years of working with the Office of the Provincial Agriculturist, he was not able to purchase fertilizers from the same stores.

He also presented the following documents, to wit: (a) **Affidavit** dated 02 March 2020 of **Ferdinand M. Abello**, *Agricultural Technologist (Exhibit “12”)*; (b) **List of Farmer Beneficiaries with their signatures (Exhibits “12-A”, “12-B”, and “12-C”)**; (c) **Affidavit** dated 02 March 2020 of **Mario R. Galisanao**, *Municipal Agriculturist*, Municipality of Alhambra, Romblon (**Exhibit “12-D”**); (d) **Listing of Farmer**

⁴¹ Id. at 407-409.

⁴² Id. at 470-472.



Beneficiaries with their signatures (Exhibits “12-E”, “12-F”, and “12-G”); (e) Affidavit dated 04 March 2020 of **Noel F. Falcutila**, *Municipal Agriculturist*, Municipality of Calatrava, Romblon (**Exhibit “12-H”**); (f) **Affidavit** dated 02 March 2020 of **Emma V. Gregorio**, *Agriculturist Technologist*, Municipality Looc, Romblon (**Exhibit “12-I”**); (g) **Affidavit** dated 28 February 2020 of **Benjamin L. Tolentino**, retired *Municipal Agricultural Officer*, Municipality of Ferrol, Romblon (**Exhibit “12-J”**); (h) **Listing of Farmer Beneficiaries (Exhibits “12-J-1” and “12-J-2”)**; (i) **Affidavit** dated 28 February 2020 of **Carlito F. Fetalvero**, *Municipal Agricultural Officer*, Municipality of Odiongan, Romblon (**Exhibit “12-K”**); (j) **Affidavit** dated 04 March 2020 of **Ruth F. Castillo**, former *Agriculturist Technologist*, Municipality of Romblon (**Exhibit “12-L”**); (k) **Listing of Farmer Beneficiaries (Exhibits “12-M” and “12-N”)**; (l) **Affidavit** dated 04 March 2020 of **Ruby M. Murchante**, *Municipal Agriculturist*, Municipality of San Agustin (**Exhibit “12-O”**); (m) **Affidavit** dated 02 March 2020 of **Antonio C. Calisin**, former *Municipal Agricultural Officer*, Municipality of San Fernando, Romblon (**Exhibit “12-P”**); and (n) **Affidavit** dated 09 March 2020 of **Harry F. Fesalboni**, *Agriculturist II*, former *Section Head – Provincial Demo Farm and Nursery*, Provincial Agriculturist Office (**Exhibit “12-Q”**), all of which show the receipt of foliar fertilizer purchased by the Province of Romblon in April 2004 and were used by the rice farmers concerned.⁴³

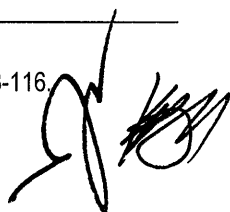
GEISHLER F. FADRI, *Supervising Agriculturist* and Officer-in-Charge, Office of the Provincial Agriculturist, Province of Romblon, tasked to supervise all the different agricultural programs of the provincial government. He testified that it is not part of the duties of his office to procure any farm inputs; rather, his office is merely tasked to distribute farm inputs if there are any to be distributed. Regarding the purchase of foliar fertilizers amounting to PhP4,999,500.00, it was the GSO of the Province of Romblon who conducted the procurement *via* direct contracting undertaken by its chief, Anthony Rugas, and Richard Lozada, *Administrative Officer V*. Mr. Lozada certified that Feshan is an exclusive distributor of Bio Nature fertilizer, that there are no sub-dealers selling at lower prices, and there are no suitable substitutes of substantially the same quality available in the province. Mr. Rugas then recommended that the purchase be undertaken through direct contracting and not public bidding.

In addition, he testified that he did not give unwarranted benefits to Feshan because there were no suitable substitutes to the foliar fertilizer purchased by the Province of Romblon. The three (3) stores presented by the prosecution were not authorized to sell fertilizers by FPA because they were not in the 2004 list of accredited fertilizer dealers in the Province of Romblon which list his office compiles.⁴⁴

ELEANDRO JESUS F. MADRONA, former *Governor*, Province of Romblon, who was the chief executive officer of the province and the head of office of the provincial government at the time material to this case. Part of his duty was to approve procurement documents including the decision to resort to the alternative method of purchasing through direct contracting as recommended by the Bids and Awards

⁴³ Id. at 486-490.

⁴⁴ *Rollo*, Vol. V at 113-116.



Committee. As he recalled, on 24 April 2004, he approved the purchase of 3,333 bottles of Bio Nature fertilizer as recommended by Rugas, who heads the GSO, as shown in Purchase Order No. 285-A dated 24 April 2004, marked as Exhibit “Q” for the prosecution. Moreover, he did not give any order to accused Rugas to choose Bio Nature fertilizer for it was the latter who recommended to resort to the alternative method of direct contracting to purchase the same from Feshan. Per Feshan’s Company Profile shown to him by accused Rugas, it appears that Feshan was the exclusive distributor of Bio Nature fertilizer. Accused Rugas even went as far as presenting to him a certification stating that Feshan was the sole and exclusive distributor of Bio Nature fertilizer in the Philippines and that there are no available substitutes of substantially the same quality available in the locality.

In his exercise of caution, he asked accused Rugas to secure a confirmation as to the **Letter of Appointment (Exhibit “11”)** designating Feshan as the sole and exclusive distributor of Bio Nature fertilizer in the Philippines. In compliance, accused Rugas submitted a **Letter** from **Associate Director Arnold K H Tan, Bio Nature Technology Pte Ltd, Singapore (Exhibit “11-A”)** dated 01 May 2004 and **supporting documents (Exhibits “1-B”, “11-C”, and “11-D”)**, confirming the continued appointment of Feshan as their exclusive distributor in the Philippines. Likewise, he identified a **Certification (Exhibit “5”)** which was the certification of accused Rugas that after undertaking a survey of suitable substitutes to the foliar fertilizers sold by Feshan that were available in Romblon—the result was in the negative. The filing of the complaint against him was politically motivated since complainant Lyndon Molino was the political ally of his political opponent, former Governor Eduardo Firmalo. He averred that in this transaction, he consulted Atty. Camilo M. Montesa IV, *Provincial Legal Officer*, and he was advised that under R.A. No. 9184 resort to the alternative method of direct contracting may be done provided the seller is an exclusive distributor, there are no sub-dealers selling at lower prices, and there are no suitable substitutes available in the locality. Finally, accused Madrona testified that there was a recommendation from the BAC to resort to direct contracting.⁴⁵

On 21 February 2022, the defense filed its *Formal Offer of Evidence of the Accused*⁴⁶ offering as evidence the following documents:

EXHIBITS	DESCRIPTION
“1”	Requisition and Issue Slip dated 27 April 2004
“2”	Justification dated 07 May 2004
“3”	Certification dated 04 March 2004
“5”	Certification dated 26 April 2004
“7”	Purchase Request dated 23 April 2004
“8”	Purchase Order dated 26 April 2004

⁴⁵ Id. at 142-149.

⁴⁶ Id. at 156.

"10"	Complaint dated 11 April 2011
"10-A"	Existence of Conspiracy, Paragraphs 42 and 43
"11" "11-A" "11-B" "11-C" "11-D"	Letter of Appointment dated 06 January 2004 Letter of Continued Appointment dated 01 May 2004 Certification of Appointment as Notary Public dated 28 May 2004 Notarial Certificate dated 28 May 2004 Certificate of Authentication dated 31 May 2004 of the Philippine Embassy in Singapore
"12" to "12-Q"	Affidavits of the Municipal Agriculturists in the Province of Romblon with the attached Names of Farmers, Addresses, No. of Bottles Received, and their Signatures
"13"	Ginintuang Masaganang Ani for Rice, Harvesting Report, as of October 2004
"14"	Ginintuang Masaganang Ani for Rice, Harvesting Report, as of December 2003

Per *Minutes of the Proceedings*⁴⁷ dated 04 March 2022, the Court admitted Exhibits "1", "2", "3", "5", "7", "8", "10", "10-a", "11", "11-b". "11-c", "11-d", "12" to "12-q", "13", and "14."

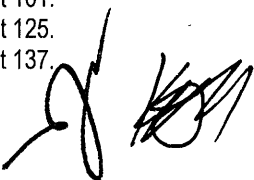
After formally offering their respective evidence, the prosecution⁴⁸ and the defense⁴⁹ both submitted their respective *Memoranda*. Thereafter, the case was declared as submitted for decision.

However, on 26 May 2022, accused Morales voluntarily surrendered and posted her cash bond. Accordingly, the warrant of arrest issued against her was recalled.⁵⁰

On 14 June 2022, the Court received a *Formal Entry of Appearance*⁵¹ and an *Urgent Motion for Reinvestigation with Leave of Court*⁵² filed by accused Morales' counsel *de parte*. In opposing the same, the prosecution filed its *Opposition (Re: Urgent Motion for Reinvestigation with Leave of Court filed by accused Elisa D. Morales)* dated 22 June 2022.⁵³ On 05 July 2022, the Court resolved to grant accused Morales' *motion for reinvestigation* with further directive upon the Office of Ombudsman to conduct the same. The Court then suspended all proceedings as to accused Morales pending outcome of the reinvestigation.⁵⁴



⁴⁷ Id. at 245-A.
⁴⁸ Id. at 383.
⁴⁹ Id. at 411.
⁵⁰ *Rollo*, Vol. VI at 91.
⁵¹ Id. at 99.
⁵² Id. at 101.
⁵³ Id. at 125.
⁵⁴ Id. at 137.



Anticipating their inability to submit the result of reinvestigation on time, the prosecution filed its *Motion for Extension of Time*⁵⁵ dated 02 September 2022, which was granted by the Court in its *Minutes of the Proceedings*⁵⁶ of equal date.

With the lapse of the 30-day period of extension to submit the result of the reinvestigation, the prosecution filed another *Motion for Extension of Time* dated 03 October 2022,⁵⁷ which was granted by the Court in its *Minutes of the Proceedings* of even date.⁵⁸ On 25 September 2022, the Office of the Ombudsman issued a *Joint Resolution* finding probable cause against accused Morales and further resolved to continue with the trial against her.⁵⁹

Accused Morales' arraignment was set on 03 November 2022, during which she entered a plea of "not guilty." Accused Morales further manifested that she will be adopting the stipulations and admissions in the *Pre-Trial Order* dated 14 March 2018.⁶⁰

Hearing as regards accused Morales followed wherein the prosecution presented the following witnesses: (1) witness Lansangan; (2) witness Orlido; (3) witness Baaco; (4) witness Atty. Sotto; (5) witness Salvador; (6) witness Caldit; (7) Atty. Rafanan; (8) witness Karganilla; (9) witness Fruelda; (10) Atty. Pascua-Castro;

During the initial presentation of its witnesses, the prosecution, through its *Manifestation* dated 18 November 2022, declared that it will adopt the testimony of prosecution witness Lansangan embodied in her *Judicial Affidavit* dated 13 August 2018, together with all the annexes attached thereto, which the prosecution earlier submitted during the hearing of the case with respect to the other accused.⁶¹

Second witness Orlido's testimony was dispensed with following the stipulation entered into between the prosecution and accused Morales.⁶² As far as witnesses Baaco, Atty. Sotto, and Salvador are concerned, in order to expedite the proceedings, the prosecution filed a *Request for Stipulation (In re: Testimonies of Ms. Josephine L. Baaco, Atty. Darwin C. Sotto and Ms. Elsie R. Salvador)*.⁶³ The Court then granted the same in its *Minutes of Proceedings* dated 01 February 2023.⁶⁴

With respect to witnesses Caldit and Atty. Rafanan, the prosecution utilized their previous *judicial affidavits* as their direct testimonies in the trial of accused Morales. Moreover, the prosecution and accused Morales entered into stipulations with respect to witness Atty. Rafanan's testimony.⁶⁵

⁵⁵ Id. at 197.

⁵⁶ Id. at 201.

⁵⁷ Id. at 216.

⁵⁸ *Rollo*, Vol. VII at 3-A.

⁵⁹ Id. at 7.

⁶⁰ Id. at 24-A.

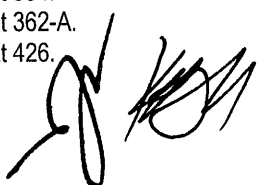
⁶¹ Id. at 57.

⁶² Id. at 349.

⁶³ Id. at 354.

⁶⁴ Id. at 362-A.

⁶⁵ Id. at 426.



On 02 March 2023, the prosecution and accused Morales entered into stipulations as regards witness Karganilla in order to abbreviate the proceedings.⁶⁶ As for witness Fruelda, the prosecution adopted his *Counter-Affidavit* dated 21 September 2011, as his direct testimony.⁶⁷ Finally, witness Atty. Pascua-Castro and witness Molino testified through their respective *judicial affidavits* submitted earlier. Thereafter, the prosecution manifested that it will adopt the *Formal Offer of Evidence* it previously submitted on 10 April 2019.⁶⁸

The Court, in its *Minutes of the Proceedings*⁶⁹ dated 31 March 2023, resolved to admit the following Exhibits “A” to “A-14”, “H” to “H-9”, “I”, “J”, “K” to “K-1”, “L” to “L-3”, “M”, “N”, “O” to “O-1”, “P”, “Q”, “R”, “S”, “T”, “U”, “V”, “W”, “X”, “Y”, “Z”, “AA”, “BB”, “CC”, “DD”, “EE” to “EE-3”, “FF”, “GG”, “HH”, “II”, “JJ”, “LL” to “LL-2”, “MM”, “NN”, “QQ”, “RR”, “SS”, “TT”, “UU”, “VV”, “WW”, “XX”, “ZZ”, “AAA”, “BBB” to “BBB-23”, “CCC”, “DDD”, “GGG” to “GGG-1”, “III”, “JJJ”, “KKK”, and “LLL” to “LLL-9” to form part of the prosecution’s evidence.

A *Motion to File Demurrer to Evidence with Leave of Court* dated 13 April 2023 was filed by accused Morales,⁷⁰ however, the same was denied by Court in its *Resolution* dated 19 April 2023.⁷¹

The prosecution having rested its case, the defense presented **ELISA D. MORALES**, who in her *Judicial Affidavit* dated 24 April 2023, testified that she used to work as liaison officer to her friend, Marites Aytona, a job to be undertaken in Romblon. That her job was limited only to securing checks as payment for the fertilizers and simply depositing it to the seller’s account. Upon her arrival in Romblon sometime late April 2004, she was issued a Special Power of Attorney (SPA) by a certain Julie M. Gregorio so that the checks will be released to her. She later learned that the company for whom she was collecting the checks was doing business under the name and style Feshan Philippines, Inc. That she was required to sign the purchase order as well as official receipt so that the checks will be released to her. It was her understanding that the sale was already consummated and that the fertilizers were already delivered.

On 05 May 2004, after giving the Feshan official receipt to the Province of Romblon, an officer, whose name she could not recall, required her to sign a disbursement voucher in the amount of Three Million One Hundred and Thirty-One Thousand Eight Hundred Eighteen Pesos and Nineteen Centavos (PhP3,131,818.19). Thereafter, the Province of Romblon issued a Philippine National Bank (PNB) check payable to Feshan in the amount of PhP3,131,818.19, which she deposited to Feshan’s account.

She added that after a few months, the Province of Romblon again issued, this time, a Land Bank of the Philippines (LBP) check in the amount of PhP1,732,005.00

⁶⁶ Id. at 437-A.

⁶⁷ Id. at 474-A.

⁶⁸ *Rollo*, Vol. VIII at 7 and 45-A.

⁶⁹ Id. at 454-A.

⁷⁰ Id. at 455.

⁷¹ Id. at 475.

payable to Feshan, which she also deposited to the latter's account. With the release of the second and final check to Feshan, her purpose was deemed finished and thus she went back to Manila. She claimed that she did not receive a single centavo during her acceptance and deposit of checks; that she knew no one from Feshan; and, she is neither its employee nor its officer or incorporator. She cut ties with Ms. Aytona because she was not paid for her services. Finally, she stressed that she is not aware how the Province of Romblon and Feshan transacted the purchase of fertilizers *via* direct contracting. Her only participation was to act as messenger to collect the checks of a 'done' sale.⁷²

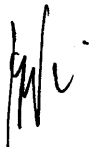
On 03 May 2023, accused Morales submitted her *Motion for Permanent Marking of Exhibits and Former Offer of Evidence*⁷³ offering the following documentary pieces of evidence, to wit:

EXHIBITS	DESCRIPTION
"1"	Judicial Affidavit of Oscar Galos dated 12 March 2020
"1-A"	Q & A Nos. 23 and 24
"2"	Judicial Affidavit of Geishler F. Fadri dated 27 October 2021
"2-A"	Q & A Nos. 20 and 21
"3"	Judicial Affidavit of Eleandro Jesus Madrona dated 02 February 2022
"3-A"	Q & A No. 28
"4"	Certificate of Incorporation of Feshan Inc.

Per *Minutes of the Proceedings* dated 05 May 2023, the Court resolved to admit Exhibit "4" to form part of accused Morales' evidence. Exhibits "1", "2", and "3" were denied since the same already form part of the records of the case.⁷⁴

The prosecution opted to no longer present rebuttal evidence.⁷⁵ On 09 June 2023, the prosecution then filed its *Supplemental Memorandum (With Manifestation to Adopt Previously Filed Memorandum)*,⁷⁶ while on 14 June 2023, accused Morales filed her *Memorandum of Arguments*.⁷⁷

Having received all the necessary pleadings from both the prosecution and the defense, the case was declared as resubmitted for decision.⁷⁸



⁷² Id. at 487-499.

⁷³ *Rollo*, Vol. IX at 9.

⁷⁴ Id. at 46-A.

⁷⁵ Id. at 53.

⁷⁶ Id. at 59.

⁷⁷ Id. at 84.

⁷⁸ Id. at 103.



ISSUE

The issue to be resolved in this case is whether or not accused **ELEANDRO JESUS F. MADRONA, GEISHLER F. FADRI, OSCAR P. GALOS, and ELISA D. MORALES** are guilty of violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

OUR RULING

After carefully examining the evidence presented by the parties, the Court finds, and so rules, that the prosecution failed to prove beyond reasonable doubt the guilt of the accused for violation of Sec. 3(e) of R.A. 3019 for its failure to establish with moral certainty all the elements of the crime charged in the *Information*.

DISCUSSION

The accused are charged with violation of Sec. 3(e) of R.A. 3019, which 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:

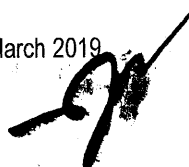
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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident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

The elements of the offense are as follows:⁷⁹

- (1) The accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with public officers;
- (2) The accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and
- (3) The accused's action caused any undue injury to any party, including the government or gave any private party unwarranted

⁷⁹ PCGG v. Office of the Ombudsman, G.R. No. 194619, 20 March 2019



benefits, advantage, or preference in the discharge of his or her functions.

THE FIRST ELEMENT

GIVEN THE ALLEGATION OF CONSPIRACY, ALL THE ACCUSED, INCLUDING ACCUSED MORALES, WERE PROPERLY INDICTED IN THESE PROCEEDINGS

All accused, except accused Morales, are public officers discharging their administrative/official functions

There is no dispute that at the time material to the allegations in the *Information*, accused Eleandro Jesus F. Madrona was the *Provincial Governor* of the province of Romblon. On the other hand, accused Geishler F. Fadri and Oscar P. Galos expressly admitted that they were both officials of the province of Romblon, being then the *Provincial Agriculturist* and *Agriculturist III*, respectively, at the time material to this case.

With respect to accused Elisa D. Morales, who is admittedly not a government employee but is a private person, such fact does not pose an issue nor a bar to her potential liability under R.A. 3019 since the punitive clause itself of said statute provides:

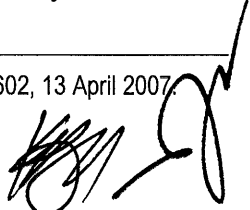
“Section 9. Penalties for Violations. – (a) any public officer, or **private person** committing any of the unlawful acts or omissions enumerated in Sections 3,4,5, and 6 of this Act shall be punished x x x” (emphasis supplied)

Jurisprudence lends flesh to the above provision when the High Tribunal affirmed in the case of **Go v. Sandiganbayan**,⁸⁰ that:

The precept that could be drawn x x x is that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019. This is in consonance with **the avowed policy of the Anti-Graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.**” (emphasis supplied)

Based on the foregoing, it is clear that the crux in determining culpability of a private person is whether there is collusion with a public officer in committing an unlawful act or omission proscribed by R.A. 3019, as amended. Apparently by reason thereof, the *Information* subject of this case aptly alleged that the accused, including private person

⁸⁰ G.R. No. 172602, 13 April 2007.



Morales, committed the acts complained of “**by conspiring and confederating with one another while in the performance of their official duties.**”

All the foregoing shows the presence of the first element of the alleged violation of Sec. 3(e) of R.A. 3019.

THE SECOND ELEMENT

THE PROSECUTION FAILED TO PROVE THAT THE ACCUSED ACTED WITH MANIFEST PARTIALITY, EVIDENT BAD FAITH, and/or GROSS INEXCUSABLE NEGLIGENCE

The requirement of competitive bidding as set forth in R.A. No. 9184 and its IRR admits of certain exceptions such as direct contracting or single source procurement

Anent the second element of the offense charged, this Court is called upon to address the issue of whether or not accused Madrona, Fadri, and Galos, in conspiracy with accused Morales, acted with manifest partiality, evident bad faith, or gross inexcusable negligence—and therefore liable under Sec. 3(e) of R.A. 3019—in connection with the purchase of 3,333 bottles of Bio-Nature liquid organic fertilizer from Feshan Philippines, Inc., without subjecting the said procurement to competitive public bidding, but through the alternative method of **direct contracting**.

In order to determine whether the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of their functions, a definition of these terms is proper. The Supreme Court, in ***Uriarte v. People***,⁸¹ defined these terms, as contemplated under Sec. 3(e) of R.A. 3019, in this manner:

“Section 3(e) of R.A. 3019 may be committed either by ***dolo***, as when the accused acted with evident bad faith, or manifest partiality, or by ***culpa*** as when the accused committed gross inexcusable negligence. There is ***manifest partiality*** when there is clear, notorious or plain inclination or predilection to favor one side or person rather than another. ***Evident bad faith*** connotes not only bad judgement but also palpably or patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. ***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

⁸¹ G.R. No. 169251, 20 December 2006.

inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.” (emphasis supplied)

The Supreme Court in ***Sistoza v. Disierto***,⁸² stressed that for culpability to attach, it is not enough to show mere bad faith, partiality, or negligence because the law requires the bad faith or partiality to be evident, or manifest, respectively, and the negligent deed to be gross and inexcusable, and that the acts indicating these modalities of committing the violation must be determined with certainty. Thus held the Supreme Court:

“Simply alleging each or all of these methods is not enough to establish probable cause, for it is well settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of the petitioner as with any other person is presumed. The facts themselves must demonstrate evident bad faith which connotes not only bad judgement but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.”

Accused Madrona, Fadri, and Galos, in their respective capacities as officials of the local government of Romblon, and at different stages of the entire procurement process being assailed in these proceedings, are charged with approving, certifying, and causing the procurement of 3,333 bottles of Bio-Nature liquid organic fertilizer from Feshan Philippines, Inc., without the conduct of the required public bidding in violation of R.A. No. 9184,⁸³ which explicitly provides that all procurements shall be done through competitive bidding, subject to certain exceptions set forth under **Section 48, Article XVI** thereof, to wit:

“Section 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 pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

⁸² G.R. No. 144784, 03 September 2002.

⁸³ AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES, otherwise known as GOVERNMENT PROCUREMENT REFORM ACT.



- (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 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 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 may 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.”

It is clear, based on the records of this case, that the procurement of the subject farm inputs was done through one of the aforequoted alternative modes of procurement defined as ‘**Direct Contracting,**’ otherwise known as **Single Source Procurement**. The prosecution has emphasized that being a mere exception to the general rule that all procurements must be done through competitive bidding, resort to direct contracting may be justified only under certain conditions.

Rule XVI, Section 50 of the Implementing Rules and Regulations (IRR)⁸⁴ of R.A. No. 9184 provides that:

“Direct Contracting or single source procurement is a method of procurement of goods that does not require elaborate Bidding Documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned Procuring Entities under any of the following conditions:

⁸⁴ THE UPDATED 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184.

- a) Procurement of Goods of proprietary nature which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the procurement of critical plant 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 its 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."

Based on the foregoing, procurement by direct contracting is proper only under the following conditions: (a) that based on the technical specifications of the goods subject of the procurement, only one supplier, distributor, or manufacturer can supply and deliver the said goods; (b) the necessity for the said goods that may only be procured through Direct Contracting; and (c) that there is no suitable substitute in the market that can be obtained at more advantageous terms.

By the pieces of evidence adduced during trial, the prosecution endeavored to demonstrate that none of the aforementioned justifications for direct contracting is present. More specifically, the prosecution insists that resort to the alternative mode of direct contracting was unjustified, and therefore violative of the provisions of R.A. No. 9184, because based on the canvass conducted by COA,⁸⁵ through the office of prosecution witness Caldit, it was discovered that ***there are suitable substitutes in the market that can be obtained at more advantageous terms.***

A propos, the prosecution claims that "there are other foliar fertilizers with the same specifications (macronutrients, micronutrients, and pest protection) available and can be procured from other suppliers or distributors in the Philippines in the year 2004 as testified to by prosecution witnesses Julieta B. Lansangan and Concepcion M. Caldit.⁸⁶ The latter further testified that their office conducted a local canvass of the same item (liquid fertilizer with macronutrients, micronutrients, and pest protection) and three suppliers responded and submitted their quotations.⁸⁷ On the basis of the response of ***Romblon Hardware, Aura and Audrey Enterprises, and C.E. General Merchandise*** to the aforementioned canvass conducted by COA, the prosecution argues that, indeed, there are suitable substitutes to the Bio Nature fertilizer purchased by the Province of Romblon; thus, the prosecution insists that the province of

⁸⁵ Exhibits "HH", "II", and "JJ" for the prosecution.

⁸⁶ Prosecution's Memorandum dated 17 May 2022.

⁸⁷ Judicial Affidavit of Concepcion M. Caldit (Q & A No. 36). See also Transcript of Stenographic Notes (TSN) dated 24 October 2018 at 5, 8, and 21-22.

Romblon's resort to the alternative mode of Direct Contracting was unjustified, and therefore, violative of the provisions of R.A. No. 9184.

This Court does not agree. An examination of the quotations submitted by Romblon Hardware, Aura and Audrey Enterprises, and C.E. General Merchandise, in connection with the local canvass undertaken by the office of witness Caldit, reveal that while the same tend to prove that indeed, there are other **"liquid fertilizers with macronutrients, micronutrients, and pest control"** available in the market, they are nonetheless insufficient to establish the more important, if not critical issue at hand, that is, **whether or not, the aforementioned suppliers who responded to the canvass conducted by the COA, and the liquid fertilizer that they are selling in the market constitute as "suitable substitutes that can be obtained at a more advantageous terms to the Government"** as set forth under the aforementioned Rule XVI, Section 50(c) of the Implementing Rules and Regulations (IRR) of R.A. No. 9184.

The results of the aforesaid canvass conducted by the office of prosecution witness Caldit reveal as follows:

EXHIBIT" HH DATE: 2/10/16 BY: <i>pn</i>				
February 4, 2016				
ROMBLON HARDWARE ROMBLON BEACHES				
Please quote your lowest procurement price for item with description below needed by the Commission on Audit, Local Government Sector, Romblon, Romblon				
Item	Qty	Unit	Unit Price	Total
Liquid Organic fertilizer (with macronutrients, micronutrients and pest protection) 1 liter/bottle.	3,333	Btls	P 120	P 399,960
Supplier: <i>ROMBLON HARDWARE</i> (Signature over Printed Name)		Canvasser: <i>Mr. [Signature]</i> (Signature over Printed Name) 2/10/16		
Business Name		Position		
Address		CERTIFIED MACHINE COPY. EMMANUEL O. UNLIDO STATE AUDITOR IV DISTRICT SUPERVISING AUDITOR		

EXHIBIT II

DATE: 2/7/18 BY: *pr*

February 4, 2005

Aura Audrey Enterprise
Barry II
Romblon, Romblon

Please quote your lowest procurement price for item with description below needed by the Commission on Audit, Local Government Sector, Romblon, Romblon.

Item	Qty.	Unit	Unit Price	Total
Liquid Organic fertilizer (with macronutrients, micronutrients and pest protection) 1 liter/bottle.	3,333	Btls.	P 192 -	P 639,936

Supplier: *TO ANN*
VICTORIA G. TON
(Signature over Printed Name)

Canvasser: *[Signature]*
MR. JEROME S. MARTOS, JR.
(Signature over Printed Name) *2/9*

AURA S. AUDREY ENTERPRISE
Business Name

Barry II, Romblon, Romblon
Address

DEMO III
Position

[Signature]
JEROME S. MARTOS, JR.
STATE AUDITOR IV
SUPERVISING AUDITOR

EXHIBIT III

DATE: 2/7/18 BY: *pr*

February 4, 2005

C.E. GEN MOSE
Barry I Romblon
Romblon

Please quote your lowest procurement price for item with description below needed by the Commission on Audit, Local Government Sector, Romblon, Romblon.

Item	Qty.	Unit	Unit Price	Total
Liquid Organic fertilizer (with macronutrients, micronutrients and pest protection) 1 liter/bottle.	3,333	bols.	P 177.00	P 663,267

Supplier: *[Signature]*
LIDIA ESTERNA
(Signature over Printed Name)

Canvasser: *[Signature]*
MR. JEROME S. MARTOS, JR.
(Signature over Printed Name) *2/9*

C.E. GEN MOSE
Business Name

Barry I, Romblon, Romblon
Address

DEMO III
Position

[Signature]
JEROME S. MARTOS, JR.
STATE AUDITOR IV
SUPERVISING AUDITOR

[Handwritten signature]

[Handwritten signature]

Even just a perfunctory perusal of the foregoing exhibits would readily show that, at best, they merely proved that: **(1)** there are other similar liquid fertilizers available in the market, and **(2)** the same are priced substantially lower than that which was procured by the province of Romblon. But other than those facts, nothing more may be drawn from the aforementioned evidence for the prosecution. It does not prove, let alone guarantee, that those purportedly similar liquid fertilizers canvassed by COA **would serve substantially the same purpose or produce substantially the same results** as the Bio Nature fertilizer procured by the province of Romblon. Perforce, the canvass conducted by COA failed to prove that the fertilizers canvassed may validly be considered as a **“suitable substitute that can be obtained at more advantageous terms to the Government.”**

COA Circular No. 92-386,⁸⁸ Section 4, defines **“suitable substitute”** as follows:

“[a]n article which **would serve substantially the same purpose or produce substantially the same results** as the brand, type, or make of article originally desired or requisitioned”

As earlier observed, Exhibits “HH”, “II”, and “JJ” merely stated that the subject of the canvass was liquid fertilizer with macronutrients, micronutrients, and pest control. The said exhibits do not indicate, for instance, detailed specifications of the fertilizers subject of the canvass that would show that, indeed, they match the specifications of Bio Nature liquid organic fertilizer, which the province of Romblon procured.

As it turned out, the evidence in this case show that Bio Nature fertilizer purchased by the Province of Romblon is a **foliar fertilizer**,⁸⁹ which prosecution witness Julieta Lansangan described⁹⁰ as a type of fertilizer that may come in liquid or powder form (to be diluted in water), and applied through the leaves of the plant. Such a specification does not appear on the quotations submitted by the aforementioned three (3) suppliers who responded to the canvass conducted by the COA. If only for this reason, there are serious doubts as to whether the fertilizers canvassed by COA could be validly considered as a **“suitable substitute”** for the Bio Nature liquid organic fertilizer procured by the Province of Romblon, which would militate against its decision to resort to Direct Contracting as a mode of procurement in this case.

Besides, on cross-examination, Julieta Lansangan⁹¹ testified and declared that the three (3) suppliers who responded to the survey conducted by COA by submitting quotations for their respective liquid organic fertilizers, namely: (a) Romblon Hardware, (b) Aura and Audrey Enterprises, and (c) C.E. General Merchandise, were not registered with the Fertilizer and Pesticide Authority as licensed Fertilizer Handlers as of 10 June 2003. This puts into serious question whether the province of Romblon could

⁸⁸ PRESCRIBING RULES AND REGULATIONS ON SUPPLY AND PROPERTY MANAGEMENT IN THE LOCAL GOVERNMENTS.

⁸⁹ Exhibit “KKK”, Certification dated 14 February 2018, issued by witness Julieta B. Lansangan.

⁹⁰ TSN 23 August 2018 at 33-34.

⁹¹ Id. at 8-9.



have also validly transacted with any of the three above-named suppliers and, thus, effectively cancelling out the alleged possible “**suitable substitute**” for Bio Nature Liquid organic fertilizer.

The prosecution failed to prove that the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence

All the foregoing discussion notwithstanding, even if one were to concede that herein accused officials of the local government of Romblon, in approving, certifying, and causing the procurement of the subject fertilizers without the required public bidding, did in fact violate the provisions of R.A. No. 9184, it is still incumbent upon the prosecution to prove that they acted with manifest partiality, evident bad faith, or gross inexcusable negligence. This Court cannot overemphasize that violation of R.A. No. 9184 **ALONE** does not automatically render the accused liable under Sec. 3(e) of R.A. No. 3019. The prosecution must, in addition, prove by evidence beyond reasonable doubt, that they acted with manifest partiality, evident bad faith or are guilty of gross inexcusable negligence. Thus, in the case of ***Martel v. People of the Philippines***,⁹² the Supreme Court said:

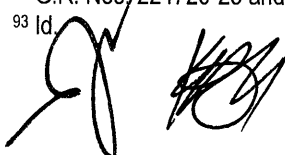
“Thus, in order to successfully prosecute the accused under Section 3(e) of R.A. 3019 based on a violation of procurement laws, the prosecution cannot *solely* rely on the fact that a violation of procurement laws has been committed. The prosecution must prove beyond reasonable doubt that: (1) the violation of procurement laws, caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence .”

Regrettably, the prosecution failed to satisfactorily discharge such onus. The prosecution failed to prove beyond reasonable doubt, that the accused acted with bad faith, manifest partiality, or gross inexcusable negligence, apart from, and in addition to the alleged violation of R.A. No. 9184.

The prosecution evidence is clearly inadequate to prove that any of the accused was guilty of having acted with ***manifest partiality***, and/or ***evident bad faith*** in opting to procure the fertilizer in question through the alternative mode of direct contracting. As earlier mentioned, existing jurisprudence tell us that there is ***manifest partiality*** “when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another.”⁹³ Evident bad faith, on the other hand is understood to mean as something that “does not simply connote bad judgement or

⁹² G.R. Nos. 224720-23 and 224765-68, 02 February 2021.

⁹³ *Id.*



negligence but of having a palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. Simply put, it partakes of the nature of **fraud**.”

Based on the evidence, the decision of the accused officials of the province of Romblon to procure the fertilizers in question through direct contracting, including the choice to procure the same from Feshan Philippines, Inc., is not without any basis. The *Certifications* dated 04 March 2004⁹⁴ and 26 April 2004⁹⁵ issued by Julie Gregorio and Supply Officer Richard Lozada, respectively, declared that Feshan is the exclusive distributor of Bio Nature liquid organic fertilizer. Likewise, there is on record the *Letter of Continued Appointment* dated 01 May 2004, which confirmed the continued appointment of Feshan Philippines, Inc., as the sole importer and exclusive distributor of foliar fertilizers in the Philippines. Having said that, this Court must hasten to stress that contrary to the foregoing pieces of evidence, the prosecution, for itself, adduced proof showing that Feshan Philippines, Inc., is not the sole and exclusive distributor of liquid organic fertilizer in the country⁹⁶.

Given the aforementioned conflicting evidence presented by both the prosecution and the defense, what appears to be clear is that even while it may be said that accused Fadri, and Galos were mistaken in recommending the direct procurement of the fertilizers in question from Feshan Philippines, Inc., and accused Madrona was similarly in error when he relied and approved the recommendation of his aforementioned subordinates, it is settled that mistakes committed by public officers are not actionable absent any clear showing that they were motivated by malice or bad faith. In this case, there is no showing that the accused were motivated by malice or bad faith in failing, if at all, to carefully verify the status of Feshan Philippines, Inc., as the alleged sole importer, and exclusive distributor of the aforementioned fertilizer subject of the procurement. As government officials, accused Madrona, Fadri, and Galos are presumed to have acted in good faith—a presumption that was not rebutted by the prosecution.

Too, the prosecution charges herein accused with having acted with manifest partiality when they adopted and approved the different procurement documents which specifically named Bio Nature liquid organic fertilizer, and Feshan Philippines, Inc., as the supplier from whom they intend to procure the fertilizer. While it is true that R.A. No. 9184, and its various implementing rules, prohibit specification of the brand names of the goods and services to be procured, such proscription of the law is not an absolute rule. It must be stressed that Sec. 54 of COA Circular 92-386 allows indicating the brand name of the items to be procured if it is intended to be **“merely descriptive and not restrictive”**. While it is true that Sec. 54 of COA Circular 92-386

⁹⁴ Exhibit “3”.

⁹⁵ Exhibit “5”.

⁹⁶ Supra note 90.

refers and applies only to calls for bid, it nonetheless shows that, depending upon the peculiar circumstances of each case, a more lenient application of the rule proscribing brand names of items for procurement, may be justified.

In this case, an examination of the evidence would show that specifying or naming Bio Nature Liquid Organic Fertilizer, and its supplier Feshan Philippines, Inc., cannot be helped as it seems inevitable. It appears to be an essential part of the recommendation to resort to Direct Contracting as an alternative mode of procurement. Accused Fadri, in recommending that the subject procurement be done, not by means of the required competitive bidding, but through the alternative mode of Direct Contracting must not only offer compelling justifications therefor but must, in addition, include the brand name of the product to be procured. Otherwise, the recommendation would be deemed incomplete and thereby cause its disapproval. Simply put, it appears that specifying the brand Bio Nature Liquid Organic Fertilizer is part of the justification why Direct Contracting was recommended as the proper mode of procurement, instead of competitive bidding. Thus, in his recommendation, accused Fadri stated that:

Republic of the Philippines
PROVINCE OF ROMBLON
 Office of the Provincial Agriculturist

ANNEX 12

JUSTIFICATION

This pertains to the proposed acquisition of fertilizers for distribution to various farmers in connection with the Farm Inputs Project of Department of Agriculture and Province of Romblon, wherein our office would like to request that said item be procured direct from exclusive distributor to expedite the implementation of the program and for prompt realization of Agriculture and Fisheries Modernization Act (AFMA). AFMA was enacted to modernize the agriculture sectors of the county in order to help farmers increase their productivity thereby increasing their income and to attain food security in the Province of Romblon.

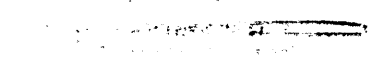
Furthermore, to be assured of good quality product, we recommend Bio-Nature Liquid Organic Fertilizer, exclusively distributed by Feshan Phils., Inc. for the following reasons:


1. The product is registered and approved for use on several crops with Fertilizer and Pesticide Authority of Department of Agriculture under EPA Reg. No. 1-111850.
2. Bio-Nature Technology Pte, Ltd. is a holder of ISO 9002 Cert. No. QS P00033 which assured of manufacturing criteria: quality, efficacy, safety and trust.
3. Products are already tested and widely accepted by farmers nationwide.
4. Bio-Nature fertilizer's formulation is consist of macronutrients, micronutrients and pest protection (3 function's agriculture input) which cannot be found with other brand.

While there are other brands being sold in the market, we still prefer the above mentioned product, for the reasons stated above which are advantages to the province.

For your information and consideration.

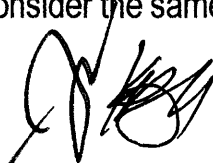
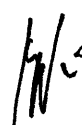
Issued this 7th day of May 2004 at Romblon, Romblon


ELEANDRO JESUS F. MADRONA
 Provincial Governor


GEISHLER E. FADRI
 OIC, Provincial Agriculturist

Approved:

Even if, indeed, the accused in this case may have given some degree of preference for Bio Nature by specifically mentioning in the recommendation that the alternative mode of Direct Contracting be used in the subject procurement, this Court cannot consider the same as rising to the level of manifest partiality that constitutes as

a punishable act under Section 3(e) of R.A. No. 3019. At the risk of being too repetitive, there is no showing that the accused was motivated by malice or bad faith.

Apart from, and in addition to all the foregoing, the matter of the refusal of Provincial Accountant Ranilo Fruelda to affix his signature on DV No. 300-0404561 in the amount PhP3,250,000.00 was likewise raised by the prosecution. According to Fruelda he ***“recorded and pre-audited the said disbursement voucher,”*** during which he discovered certain deficiencies and lacking documents to support the same. Yet, despite his refusal to sign the disbursement voucher in question, Fruelda claims that the same was signed by Provincial Treasurer Ruby H. Fababier, which was approved for payment by accused Madrona “or his duly authorized representative”. Thereafter, Check No. 37257 dated 05 May 2004, in the amount of PhP 3,250,000.00, was prepared and signed by Provincial Treasurer Fababier and approved by Provincial Administrator Joel A. Sy—***over his continued objection.***

Thus, in his *letter* dated 29 April 2004⁹⁷, addressed to Anthony Rugas, OIC, Provincial General Services of Romblon, Ranilo Fruelda made mention, among other things, the lacking documents to support DV No. 300-0404561, to wit:

Republic of the Philippines
PROVINCE OF ROMBLON
Romblon
OFFICE OF THE PROVINCIAL ACCOUNTANT

April 29, 2004

ANNEX 8

EXHIBIT "LLL-1"

DATE: 2/12/05 BY: JWS

Office in Charge
1. General Services Office
Romblon, Romblon

Please be informed that the voucher in favor of **FERTIAN PHILIPPINES, INC.**, showing claim for 3,333 bottles of liquid organic fertilizer in the amount of P3,250,000.00 has been recorded and verified in this office and found that the following items and/or supporting papers are needed for the process of the said claim as follows:

1. Approval of the Honorable Governor on the Purchase Order and accomplish the blank spaces provided for Item: the Place of Delivery, Date of Delivery, Delivery Term and Payment Term.
2. The Purchase Order, Inspection & Acceptance Report and Delivery Receipt should be received by the Commission on Audit.
3. Certified Price List.
4. Approval from the Agency Head (Honorable Governor) or his duly authorized representatives to use the alternative methods of procurement aside from public bidding and justification of the Direct Purchase (Rule XVI Sec. 38.1 IRR of RA 9180).
5. The Award or the Action of the Bids and Award Committee for the procurement of 3,333 bottles of liquid organic fertilizer from FERTIAN PHILIPPINES, INC.
6. Certification executed by the supplier, that he is the exclusive distributor or dealer of a specific supplies, duly attested by the foreign or local principal, and that there are no sub-dealers selling at lower prices and no suitable substitutes of substantially the same quality are available at lower prices.
7. Certification by the requesting officer duly approved by the Agency Head (Honorable Governor) that there are no suitable substitute of substantially the same quality are available for the supplies/materials/equipment which are exclusively manufactured or distributed.
8. Original copy of the certification issued by the OIC, Provincial Agrovoltarist and authority of the one who signed in his behalf dated April 26, 2004.

The attached, attested supporting documents should be duly authenticated/certified xerox copy.

SARO in bearing the name of the project.

Approval of the Provincial Accountant on the ALOBS.

I am herewith submitting the necessary explanation, correction and/or supporting documents for the said voucher for the same to be processed for payment.

Very truly yours,

⁹⁷ Exhibit "LLL-1".

⁹⁸ Exhibit "NN".

RELIEF OF LIABILITY / ACCOUNTABILITY

5/5/04
(date)

ANNEX 10

Having the knowledge that this voucher lacks the documentary requirements as stipulated in the herein attached suspension letter dated 4/29/04 and that I am still directing the immediate processing and payment of this claim, I am therefore assuming full responsibility for any suspension / liability that may arise in post audit.

ANTHONY G. RUGAS
FGR - PISO

300-0404561 -- PESHAW PHILS. INC. -- P 3,131,818.19

ANNEX 9

7257
May 2, 2004
3,131,818.19
THIRTEEN THOUSAND EIGHT HUNDRED EIGHTEEN

JOEL A. SY
Prov'l. Adm.

6121

A reading of the foregoing exchange of communication between Ranilo Fruelda and Anthony Rugas would show that they refer to matters posterior to the procurement process, which do not have anything to do with the issue of the propriety of choosing the alternative mode of direct contracting over the usual competitive bidding.

Proceeding now to the element of gross inexcusable negligence as an element of a violation of Sec. 3(e) of R.A. No. 3019, this Court reiterates the requirement that the prosecution must prove that the accused did not only act in a manner that may be characterized as a simple failure to use reasonable diligence or that which results from carelessness or indifference but rather a total lack of even the slightest care.

In *Uriarte* earlier cited here, gross inexcusable negligence was defined as **"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."**

The accused cannot be held liable for alleged gross inexcusable negligence, as defined in the aforequoted decision in *Uriarte*, simply because they were part of a long line of officials and employees who acted upon and participated in the questioned

[Handwritten signature]

[Handwritten signature]

transaction which is being assailed as flawed. The accused may be faulted for having relied heavily on the *Certifications* dated 04 March 2004⁹⁹ and 26 April 2004¹⁰⁰ issued by Julie Gregorio and Supply Officer Richard Lozada, respectively, declaring that Feshan is the exclusive distributor of Bio Nature liquid organic fertilizer. It may also be said with reason that they were mistaken when they gave full credence to the *Letter of Continued Appointment* dated 01 May 2004, which supposedly confirmed the continued appointment of Feshan Philippines, Inc., as the sole importer and exclusive distributor of Bio Nature Organic foliar fertilizer in the Philippines.

True, it may be argued that a more thorough investigation or a ***“more complete staff work”*** would have yielded the desired result of verifying the true status of Feshan Philippines, Inc., and its product Bio Nature as to avoid the erroneous use of the alternative mode of direct contracting—but their actions ***“cannot be characterized as without even slight care and conscious indifference as to the compliance with their duties so as to make them liable for violation of Section 3 (e) of R.A. No. 3019.”***¹⁰¹

THE THIRD ELEMENT

There is no evidence to show that the accused gave unwarranted benefits, advantage, or preference to Feshan Philippines, Inc.

In light of the foregoing disquisition, which shows that there is no adequate and weighty evidence to establish that the accused are guilty of manifest partiality, evident bad faith, or gross inexcusable negligence, it seems pointless and unnecessary to determine whether or not the third element of Sec. 3(e) of R.A. No. 3019 is present in this case. However, if only to comply strictly with the requirement that judgments of the courts must clearly and distinctly state the facts and the law on which it is based, which necessarily include a thorough discussion of its ***ratio***, We have decided to discuss, nonetheless, its finding that the prosecution was likewise unsuccessful in proving that the accused gave unwarranted benefits, advantage, or preference to Feshan Philippines, Inc.

There is no denying that the 3,333 bottles of Bio Nature fertilizers, which the province of Romblon procured from Feshan Philippines, Inc., were completely delivered, and for which the amount of PhP4,863,823.10 was paid by the former, in favor of the latter. It is also equally undeniable that there is no allegation of overpricing in the *Information*. To the mind of this Court, these two (2) crucial facts signify the absence of unwarranted benefit. Indeed, the benefit derived by Feshan Philippines, Inc., from the subject transaction is the result of its delivery of the fertilizers procured by the province of Romblon in compliance with its commitment. Hence, it cannot be said that the revenue they received were unwarranted—meaning, lacking in adequate

⁹⁹ Exhibit “3”.

¹⁰⁰ Exhibit “5”.

¹⁰¹ Supra note 92.

or official support; unjustified; unauthorized; or without justification or adequate reason.

CONCLUSION

At the risk of being too repetitive, this Court cannot overemphasize the rule - established as early as 2002, in the case of **Sistoza** - that teaches us that even if the procurement laws, i.e., R.A. No. 9184, and its various implementing rules have been proven to have been violated, the same will not automatically result in the conviction of the accused for violation of R.A. No. 3019. The prosecution must, in addition, prove beyond reasonable doubt that in failing to observe the mandatory requirements imposed by R.A. No. 9184, the accused acted with, and were guilty of, manifest partiality, evident bad faith, or gross inexcusable negligence. The Court carefully weighed the evidence presented by the prosecution but regrettably found the same to be sorely wanting in this regard.

From the records, it appears that the prosecution placed total reliance on COA's findings of "**wholesale**" violation of the procurement laws by the province of Romblon, committed through the herein accused, as contained in its Audit Observation Memorandum, and the eventual Notice of Disallowance. Again, as held in *Martel*, and as early as *Sistoza*, violation of R.A. No. 9184 and R.A. No. 3019 are two different matters and are **non sequitur**.

The prosecution having failed to discharge its burden of proving beyond reasonable doubt the guilt of the accused, the latter are entitled to a judgment of acquittal.

WHEREFORE, premises considered, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused **ELEANDRO JESUS F. MADRONA, GEISHLER F. FADRI, OSCAR P. GALOS, and ELISA D. MORALES** are hereby **ACQUITTED** of the crime of violation of Section 3(e) of Republic Act No. 3019, otherwise known as *Anti-Graft and Corrupt Practices Act*, as amended.

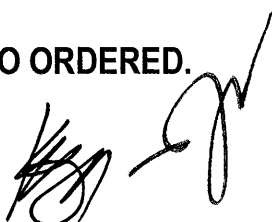
No civil liability is herein adjudged.

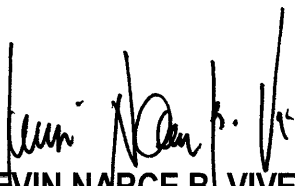
The bonds posted by the accused for their provisional liberty are cancelled and released subject to the usual accounting and auditing procedures.

The *Hold Departure Orders* issued against the accused are hereby lifted.

The Court reiterates its earlier *resolutions* of **DISMISSAL** insofar as accused **JOEL A. SY, RUBY F. FABABEIR, and ANTHONY G. RUGAS** are concerned in view of their recorded deaths, conformably with the provision of Article 89 of the Revised Penal Code.

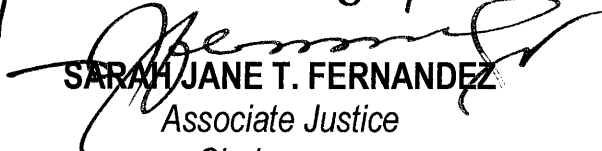
SO ORDERED.





KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:

pls see concurring opinion


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice

ATTESTATION

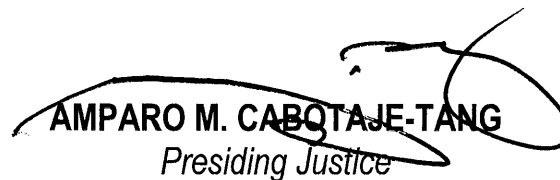
I attest that the conclusions in the above *Decision* had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



SARAH JANE T. FERNANDEZ
Chairperson, 6th Division

CERTIFICATION

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



AMPARO M. CABOTAJE-TANG
Presiding Justice

Concurring Opinion

FERNANDEZ, SJ, J.

I **concur** with the *Decision*. I agree with the ponencia that the prosecution failed to establish with moral certainty all the elements of violation of Section 3(e), R.A. No. 3019, as amended, and thus fell short of proving beyond reasonable doubt the guilt of the accused. Specifically, the prosecution failed to show that the accused acted with evident bad faith and/or with gross inexcusable negligence when they did not conduct any public bidding and instead resorted to direct contracting in the procurement of the subject fertilizer.

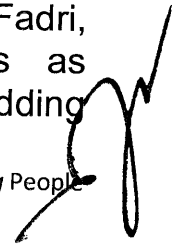
However, I do not agree with the ratiocination that the prosecution had the burden of proving that the accused failed to comply with the requirements of R.A. No. 9184 on direct contracting. As a general rule, if the criminal charge is predicated on a negative allegation, or if a negative averment is an essential element of the crime, the burden to prove the charge, indeed, rests on the prosecution. An exception to this is where the negative of an issue does not permit of direct proof, or where the facts stated are within the knowledge of the accused; in such instances, the *onus probandi* rests upon the accused.¹ I respectfully submit that in this case, the facts necessary to disprove the negative allegation are within the knowledge of the accused.

I will explain.

Accused failed to discharge their burden of proving that the requirements under Section 50(c), R.A. No. 9184 are extant to justify the Province of Romblon's resort to direct contracting as an alternative mode of procurement

In this case, the *Information* necessarily included a negative allegation when it charged accused Madrona, Sy, Fababeir, Fadri, Galos and Rugas, in conspiracy with accused Morales as representative of Feshan, of non-compliance with competitive bidding

¹ People of the Philippines vs. Ferdinand Cercado y Mozada, G.R. No. 144494, July 26, 2002, citing People vs. Manalo, G.R. No. 107623, February 23, 1994.



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as required under Section 10, R.A. No. 9184, as amended. Essentially, the charge in the *Information* that the accused resorted to an alternative mode of procurement via direct contracting presupposes that any of the situations listed in Section 50 of R.A. No. 9184,² is attendant in this case, more particularly subparagraph (c) thereof, *i.e.*, a) Feshan is the exclusive importer/distributor of "Liquid Organic Fertilizer (with macronutrients, micronutrients & pest protection)" with specifications as appearing in *Purchase Request No. 315* dated April 23, 2004,³ b) it does not have any sub-dealers selling at lower prices and, c) no suitable substitute can be obtained at more advantageous terms for the Government.

Considering that accused Madrona, Sy, Fababeir, Fadri, Galos and Rugas were public officers tasked with the procurement of the said fertilizer, the determination of whether Feshan is the only exclusive dealer of "Liquid Organic Fertilizer (with macronutrients, micronutrients & pest protection)" with specifications as appearing in *Purchase Request No. 315* dated April 23, 2004,⁴ with no sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government, should have been within their knowledge.

Thus, in this situation, it was not incumbent upon the prosecution to prove beyond reasonable doubt that the procurement of Bio-Nature Liquid Organic Fertilizer, which was later on discovered to be foliar fertilizer,⁵ via direct contracting was **not** in accordance with Section 50(c) of R.A. No. 9184. Rather, the burden of proof shifts upon the accused to show, beyond reasonable doubt, that public bidding was not conducted as the same may be dispensed with because one of the allowable situations under Section 50 of R.A. No. 9184, as amended, is present in their procurement of the said foliar fertilizer.

² Section 50 of R.A. No. 9184, as amended provides:

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

- (a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- (b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,
- (c) Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

³ Exhibit "P".

⁴ *Id.*

⁵ Transcript of Stenographic Records dated August 28, 2018, p. 5.

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On that note, accused Madrona, Fadri and Galos offered in evidence the *Letter of Appointment* dated January 6, 2004 issued by Bio Nature Technology Pte Ltd. Managing Director Derek G. Glass stating that Feshan Phils. Inc. is the “[s]ole [i]mporter and [e]xclusive [d]istributor of Bio Nature Organic Fertilizer in [the] Philippines.”⁶ In the *Letter of Appointment* dated May 1, 2004 signed by Bio Nature Technology Pte Ltd’s Associate Director Arnold K H Tan, Feshan’s appointment as the exclusive importer/distributor in the Philippines of the said company shall take effect on May 01, 2004 and will be valid for a period of three (3) years.⁷

Such *Letters of Appointment* are insufficient. Distinctively, the Province of Romblon deviated from the specifications in *Purchase Request No. 315* dated April 23, 2004 when it purchased Bio-Nature Liquid Organic Fertilizer since the said request did not specifically indicate foliar fertilizer as the item to be procured. Nonetheless, we look into whether there are other foliar fertilizers available in the market, and if there are other enterprises which sell the same.

Accused Madrona, Fadri and Galos **failed** to show that the alternative mode of procurement, in this case, direct contracting, was warranted considering that based on the *List of Fully Registered Fertilizer (Finished/Raw Materials) [a]s of December 2004* issued by the Fertilizer and Pesticide Authority (“FPA”),⁸ there are enterprises which offer registered foliar fertilizers, *albeit* silent as to the specifications, and these enterprises are also licensed handlers per the FPA’s *Licensed Fertilizer Handlers as of June 10, 2003*⁹ and *Licensed Fertilizer Handlers as of December 31, 2004*.¹⁰

Therefore, based on the evidence submitted by the prosecution and the accused, it appears that while Feshan may be considered an exclusive distributor of Bio-Nature Liquid Organic Fertilizer in the Philippines during the time material to this case, the accused failed to prove that Feshan is the only enterprise which offers foliar fertilizer, or “Liquid Organic Fertilizer (with macronutrients, micronutrients & pest protection)” with specifications as appearing in *Purchase Request No. 315* dated April 23, 2004.

Also, the accused failed to prove that Feshan had no sub-dealers selling the same Bio-Nature Liquid Organic Fertilizer at a lower price,

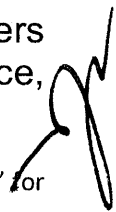
⁶ Exhibit “11” for accused Madrona, Fadri and Galos.

⁷ Exhibit “11-A” for accused Madrona, Fadri and Galos. See also Exhibits “11-B”, “11-C” and “11-D” for accused Madrona, Fadri and Galos.

⁸ Exhibit “AAA”.

⁹ Exhibit “CCC”.

¹⁰ Exhibit “DDD”.



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and since there are other foliar fertilizers available in the market, it is also incumbent upon the accused to show that those are not considered a suitable substitute¹¹ and that they cannot be procured at more advantageous terms in favor of the Province of Romblon.

Violation of R.A. No. 9184, as amended does not automatically amount to a violation of Section 3(e), R.A. 3019, as amended.

We agree with *the Decision* that following the pronouncement of the Supreme Court in *Martel, et al. vs. People of the Philippines* and *Bautista vs. People of the Philippines*,¹² a violation of procurement laws does **not** automatically amount to a violation of Section 3(e) of R.A. No. 3019, as amended. All the essential elements of Section 3(e), R.A. No. 3019, as amended, must be established beyond reasonable doubt before any conviction may be meted by the Court.

The existence of the first element of violation of Section 3(e), R.A. No. 3019, as amended, as discussed in the *Decision*, is undisputed.

The accused did not act with manifest partiality

Resort to direct contracting as an alternative mode of procurement would have been warranted if the accused were able to satisfactorily show that aside from Bio-Nature Liquid Organic Fertilizer sold by Feshan, there were no other Liquid Organic Fertilizer with the needed specifications available in the market.

Accused Madrona, Sy, Fababeir and Rugas relied on the *Justification* dated May 7, 2004¹³ prepared by accused Fadri, but the document itself states that "there are other brands being sold in the market," and despite this, Bio-Nature Liquid Organic Fertilizer is still preferred since it would be advantageous to the Province of Romblon.

¹¹ See Section 4, Title I, Rule 1 of Commission on Audit Circular No. 92-386, October 20, 1992. According to this provision, [']**"suitable substitute"** refers to that kind of article which would serve substantially the same purpose or produce substantially the same results as the brand, type, or make of article originally desired or requisitioned.'

¹² These are consolidated cases. *Martel, et al. vs. People of the Philippines*, G.R. Nos. 224720-23, and *Benjamin P. Bautista, Jr. vs. People of the Philippines*, G.R. No. 224765-68, February 2, 2021.

¹³ Exhibit "2" for accused Madrona, Fadri and Galos.

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for the reasons stated therein.¹⁴ Notably, "BIO-NATURE, 1 liter/bot." was stated in *Purchase Request No. 315* dated April 23, 2004.¹⁵

Following the pronouncement of the Supreme Court in *Martel*, the mere act of specifying the brand of the fertilizer in the *Purchase Request* by and of itself, is insufficient to prove beyond reasonable doubt that there was manifest partiality, absent any other evidence showing a clear or notorious predilection to favor Feshan over other enterprises. Also, as a badge of qualification, Feshan had *Letters of Appointment* in its favor stating that it is the sole importer and exclusive distributor of Bio-Nature Liquid Organic Fertilizer in the Philippines.

Also, the local canvass conducted by COA where Romblon Hardware,¹⁶ Aura and Audrey Enterprises¹⁷ and C.E. General Merchandise¹⁸ each submitted a quotation for three thousand three hundred and thirty three (3,333) pieces of one (1) liter bottles of "Liquid Organic [F]ertilizer (with macronutrients, micronutrients and pest protection)" cannot be used in determining the existence of a suitable substitute at terms or price more advantageous to the Government on the basis of the following:

First, while the quotations submitted by the three (3) enterprises pegged the lowest procurement price of the said fertilizer at less than Php200.00 per one (1) liter bottle,¹⁹ similar to the volume per bottle in Feshan's quote of Bio-Nature Liquid Organic Fertilizer priced at Php1,500.00 per bottle,²⁰ the COA-canvassed fertilizers do not indicate if the said fertilizer quoted is foliar fertilizer.

Second, the COA-canvassed fertilizers do not indicate if these have the same specifications as that listed in *Purchase Request No. 385* dated April 23, 2004.

Third, none of the three (3) enterprises who submitted their respective quotes appear in the FPA's *Licensed Fertilizer Handlers as of December 31, 2004*,²¹ and the *List of Fertilizer Handlers [a]s of*

¹⁴ Exhibit "GG".

¹⁵ Exhibit "P".

¹⁶ Exhibit "HH".

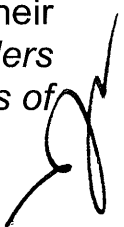
¹⁷ Exhibit "II".

¹⁸ Exhibit "JJ".

¹⁹ At Php190.00 per one (1) liter bottle for Romblon Hardware, Exhibit "HH". At Php192.00 per one (1) liter bottle for Aura and Audrey Enterprise, Exhibit "II". At Php199.00 per one (1) liter bottle for C.E. General Merchandise, Exhibit "JJ".

²⁰ Exhibit "UU". In the *Quotation* dated January 6, 2004, Feshan Philippines, Inc. President Julie M. Gregorio indicated that the price of one (1) liter bottle of Bio-Nature Liquid Organic Fertilizer is at Php1,500.00 per piece.

²¹ Exhibit "DDD".



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June 10, 2003.²² Further, Romblon Hardware, Aura and Audrey Enterprises and C.E. General Merchandise's products do not appear in the *List of Fully Registered Fertilizer (Finished/Raw Materials) [a]s of December 2004*.²³

Thus, since Feshan, Romblon Hardware, Aura and Audrey Enterprises, and C.E. General Merchandise's respective fertilizer products are not comparable to each other, and their qualifications as distributors or dealers also differ, they cannot be compared with each other in determining whether there was manifest partiality as they do not stand on equal footing.

Ultimately, it cannot be said that accused Madrona, Sy, Fababeir, Fadri, Galos, Rugas had a clear, notorious or plain inclination or predeliction to favor²⁴ Feshan over another enterprise.

*There is no showing of
evident bad faith on the
part of all the accused*

As held by the Supreme Court in ***Martel***, since evident bad faith entails manifest intent on the part of the accused to do wrong or cause damage, it must be shown that the accused was driven to commit the act by any corrupt motive. In this case, apart from violation of R.A. No. 9184, as amended, the records are bereft of specific acts on the part of the accused that would show that their decision to resort to direct contracting was prompted by any corrupt motive.

On the part of accused Madrona, pursuant to ***Arias vs. Sandiganbayan***,²⁵ as then Governor of the Province of Romblon and the Head of the Procuring Entity by reason of his position,²⁶ he can rely on the *Justification* dated May 7, 2004 issued by accused Fadri, the OIC Provincial Agriculturist of the Province of Romblon.

In ***Arias***, the Supreme Court ruled that all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase, supplies or enter into negotiations. Additionally, in ***SPO1 Ramon Lihaylihay and C/Insp. Virgilio V. Vinluan vs. People of the Philippines***,²⁷ the Supreme Court held that the *Arias* doctrine cannot be applied if there are

²² Exhibit "CCC".

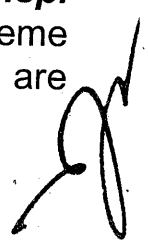
²³ Exhibit "AAA".

²⁴ These are consolidated cases. G.R. Nos. 224720-23 and 224765-68, February 2, 2021.

²⁵ G.R. No. 81563, December 19, 1989.

²⁶ Section 5(j), R.A. No. 9184, as amended.

²⁷ G.R. No. 191219, July 31, 2013.



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exceptional or peculiar circumstances present which should have prompted the head of office to pursue a higher degree of circumspection and go beyond what the said public official's subordinates prepared.

As discussed above, following the *Justification* and *Letters of Appointment*, it can be said that accused Madrona acted in good faith in relying on the same as sufficient basis for his approval of the Province of Romblon's resort to direct contracting as the mode of procurement of Bio-Nature Liquid Organic Fertilizer, pursuant to Section 50(c) of R.A. No. 9184, as amended.

Moreover, while Feshan appears in the *List of Licensed Handlers as of June 10, 2003*²⁸ of the FPA, its license already expired on March 5, 2003, and it has not renewed the same as it does not appear in the list of *Licensed Fertilizer Handlers as of December 31, 2004* of the FPA.²⁹ Thus, at the time of its transaction with the Province of Romblon on April 26, 2004,³⁰ it cannot even be considered a *bona fide* licensed dealer of fertilizers. To add to that, per the *Certification* dated February 14, 2018, there are other suppliers/distributors of foliar fertilizers in the Philippines for the year 2004.³¹

Despite these, Feshan's prior registrations for the years 1999, 2001, 2002 and 2003 with the FPA as importer/distributor can be considered as *indicia* of good faith on the part of Feshan and also of accused Madrona, Sy, Fababeir, Fadri, Galos and Rugas. Also, Feshan's "Bionature Liquid Fertilizer" appeared in the *List of Fully Registered Fertilizer (Finished/Raw Materials) [a]s of December 2004*, and its registration expired on March 5, 2005.³² Thus, Feshan's failure to renew its registration in 2004, at the time of its transaction with the Province of Romblon, while may be considered an oversight on its part, cannot be tantamount to evident bad faith in light of its prior registrations.

Additionally, accused Morales testified that the *Special Power of Attorney* dated April 23, 2004 she signed on April 24, 2004 granted her authority to act as the representative of one Julie M. Gregorio, and that it does not indicate that she would be acting for and in behalf of Feshan. She only belatedly found out that she was collecting for Feshan. Accused Morales further testified that she was informed by

²⁸ Exhibit "CCC". See also Exhibit "JJJ" where it is certified that Feshan was likewise licensed as importer/distributor by the FPA during the years 1999, 2001 and 2002.

²⁹ Exhibit "DDD".

³⁰ Per *Purchase Order No. 285-A* dated April 26, 2004; Exhibit "Q".

³¹ Exhibit "KKK".

³² Exhibit "AAA", p. 7.

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her friend and fellow liaison officer, Ms. Marites Aytona, that the transaction was already consummated and the goods have been delivered, and that accused Morales will just collect payment for the same. Accused Morales likewise testified that she learned that she was collecting for Feshan when she was made to sign *Purchase Order No. 285-A* dated April 26, 2004, and when she received a blank Official Receipt of Feshan, which she filled out and gave to the Province of Romblon. Lastly, accused Morales testified that she deposited to Feshan's account the checks given to her by the Province of Romblon representing payment for the procured foliar fertilizer.³³

From the foregoing, no evident bad faith can likewise be attributed to accused Morales considering the nature and extent of her involvement in the transaction of Feshan with the Provincial Government of Romblon.

As regards accused Fadri, his participation in the questioned transaction can be found in the following: a) his signed *Justification* dated May 7, 2004, where Bio-Nature Liquid Organic Fertilizer exclusively distributed by Feshan was recommended to be procured;³⁴ and, b) his signature in *Purchase Request No. 385* dated April 23, 2004 as requesting party.³⁵ Although accused Fadri may be considered negligent or having exercised bad judgment for his failure to do further research and ultimately in not resorting to conduct the procurement via competitive bidding pursuant to Section 10, R.A. No. 9184, as amended, the circumstances of the case are bereft of any showing that he did so with a palpable and patently fraudulent and dishonest purpose,³⁶ especially considering that the records do not show the existence of any suitable substitute at an advantageous price.

The same can be said as regards the participation of deceased accused Fababeir, as Provincial Treasurer, who affixed his signature in *Purchase Request No. 385* dated April 23, 2004 certifying cash availability for such purchase, and the approval of the same by deceased Provincial Administrator Joel A. Sy.



³³ *Judicial Affidavit (of Accused Elisa Dagsa Morales)* dated April 21, 2023, pp. 4-9. Rollo, Vol. VIII, pp. 487-501. See also Transcript of Stenographic Notes dated April 27, 2023, pp. 27.

³⁴ Exhibit "GG".

³⁵ Exhibit "P".

³⁶ These are consolidated cases. *Martel, et. al. vs. People of the Philippines*, G.R. Nos. 224720-23, and *Benjamin P. Bautista, Jr. vs. People of the Philippines*, G.R. No. 224765-68, February 2, 2021.

The acts of the accused constitute simple negligence, and cannot be considered gross and inexcusable

At this juncture, we note that nowhere in *Purchase Order No. 385* dated April 23, 2004³⁸ does it state that the Provincial Government of Romblon *intended* to purchase foliar fertilizer specifically. The Item Description states:

Therefore, in purchasing Feshan's Bio-Nature Liquid Organic Fertilizer, which is a foliar fertilizer, the Provincial Government of Romblon deviated from the specifications provided in its *Purchase Request*.

37 *Id.*

38 Exhibit "P"

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Such deviation *per se* cannot be tantamount to willful indifference on the part of the accused, considering that Bio-Nature Liquid Organic Fertilizer is still usable for the purpose for which it was procured, *i.e.*, use of fertilizer, an agriculture input,³⁹ to help farmers increase their productivity and income and to attain food security in the Province of Romblon, in pursuance of the prompt realization of the Agriculture and Fisheries Modernization Act.⁴⁰ Notably, *Memorandum of Agreement* dated April 19, 2004 states in mere general terms that the funds provided by the Department of Agriculture in favor of the Province of Romblon shall be utilized “for the purchase of needed farm inputs.”⁴¹ Thus, considering that Feshan’s Bio-Nature Liquid Organic Fertilizer is suitable for *bush sitaw*, rice, okra, *pechay* and eggplant,⁴² it can be said that such foliar fertilizer is still usable for the purpose of the procurement, especially considering that nowhere in *Purchase Request No. 315* dated April 23, 2004 nor in the *Memorandum of Agreement* did it state the specific types of crops for which the fertilizer are to be used.

Moreover, the 3,333 pieces of one (1) liter Bio-Nature Liquid Organic Fertilizer bottles were actually purchased by the Province of Romblon and delivered by Feshan to it, as shown in the *Inspection and Acceptance Report* dated April 27, 2004.⁴³

Considering all the foregoing, it cannot be said that any of the acts of the accused in the transaction were coupled with willful want of even the slightest care, but at most, simple negligence.



³⁹ *Rules and Regulations Implementing Title 5 (Trade and Fiscal Incentives) of R.A. No. 8435* (otherwise known as the Agriculture and Fisheries Modernization Act of 1997), *Joint Department Administrative Order No. 01-98, [December 7, 1998]*. Rule 1, Section 4(b) defines agriculture inputs, machinery and equipment as follows:

SECTION 4. *Definition of Terms.* — The terms used in this set of IRRs are defined as follows:

xxx

(b) *Agriculture Inputs, Machinery and Equipment* refer to goods that are used or employed in cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, or poultry, the harvesting and marketing of such farm products, and in the conduct of farm activities and practices.

⁴⁰ See *Justification* dated May 7, 2004; Exhibit “GG”.

⁴¹ Exhibit “L”, at Section 2(a). See also Section 1.

⁴² Exhibit “AAA”, at p. 7.

⁴³ Exhibit “T”.

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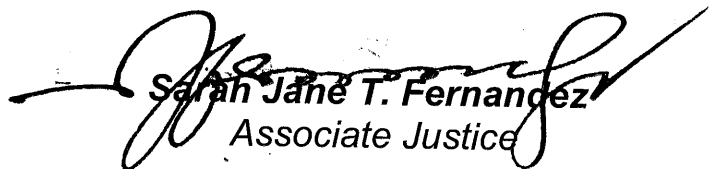
The prosecution failed to prove undue injury to any party, or that the accused gave unwarranted benefits, advantage or preference

In *Cresente Y. Llorente, Jr. vs. Sandiganbayan and Leticia G. Fuertes*,⁴⁴ the Supreme Court held that in a prosecution for violation of Section 3(e), R.A. No. 3019, as amended, actual injury to the offended party must be proved in order for undue injury to be present. Speculative or incidental injury is insufficient.

In this case, there was neither any allegation in the *Information* nor any proof that there was injury caused to the Province of Romblon or to Feshan. There was also no allegation of over-pricing. There is no proven undue injury caused by the accused to any party.

Also, for reasons stated in the discussion above, it cannot be said that accused public officers Madrona, Sy, Fababeir, Fadri, Galos and Rugas gave unwarranted benefits, advantage or preference to Feshan.

In fine, while the accused failed to prove that resort to direct contracting under Section 50(e) of R.A. No. 9184, as amended, was justified in the Provincial Government of Romblon's procurement of foliar fertilizers, I agree with the *Decision* that the prosecution nonetheless has fallen short of proving, beyond reasonable doubt, that all the elements of Section 3(e) of R.A. No.3019, as amended, are present in this case.


Sarah Jane T. Fernandez
Associate Justice

⁴⁴ G.R. No. 122166, March 11, 1998.