



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN**

QUEZON CITY

THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,
Plaintiff,**

- versus -

**REQUILLO SAMUYA y
SUAYBAGUIO and
EDILBERTO L. APOSTOL,
Accused.**

X-----X


Case No. SB-17-CRM-1729

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

Present:

**CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B., J. and
MORENO, R, J.**

Promulgated on:

SEPTEMBER 6, 2019 

X-----X

DECISION

CABOTAJE-TANG, P.J.:

Accused Requillo Samuya y Suaybaguio and Edilberto L. Apostol are charged with violation of Section 3 (e) of Republic Act (R.A.) No. 3019, as amended, in an *Information* which reads:

That between March to June 2004, or sometime prior or subsequent thereto, in the Municipality of San Isidro, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, accused REQUILLO SAMUYA Y SUAYBAGUIO, a high ranking public officer, being the Municipal Mayor of San Isidro, Bohol, while in the performance of his official functions, committing the crime in relation to his office, and taking advantage of his



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-2-

x-----x

official position, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, and in conspiracy with EDILBERO L. APOSTOL (Apostol), a private individual, did then and there willfully, unlawfully, and criminally, give AKAME MARKETING INTERNATIONAL (Akame), as represented by Apostol, unwarranted benefits, privilege and advantage by entering into a contract with Akame for the purchase of 812.5 kilos of NBEM-21 Microaid Activator for PhP975,000.00 through direct contracting, without complying first with the mandatory public bidding as required under Republic Act No. 9184, as amended, and its implementing rules and regulations, and without conducting the necessary steps for the conduct of direct contracting, as provided by the Manual of Procedures for the Procurement of Goods and Services (Volume 2), thereby causing undue injury to the Municipality of San Isidro, Bohol, in the total amount of PhP975,000.00.

CONTRARY TO LAW.¹

After a review of the records of the case, the Court promulgated its *Resolution* on October 5, 2017 finding probable cause against accused Samuya and Apostol. Accordingly, it issued a *hold departure order* and *warrant of arrest* against the said accused.²

The Crime Investigation and Detection Group of the Philippine National Police (CIDG-PNP), Bureau of Immigration (BID) and the National Bureau of Investigation (NBI)³ received accused Apostol's *warrant of arrest*. However, the *warrant of arrest* against accused Apostol remains unserved. Thus, he remains at-large to this date.

On October 12, 2017, accused Samuya posted his cash bail bond for his provisional liberty.⁴

¹ pp. 1-3, Record

² pp. 126-127, Record

³ pp. 133-137, Record

⁴ pp. 130-132, Record




Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-3-

x-----x

Upon arraignment on November 24, 2017, accused Samuya entered a plea of not guilty.⁵ The Court directed the parties to appear before the Division Clerk of Court on January 19, 24 and 25, 2018, all at 9 o'clock in the morning, for the purpose of marking their exhibits and possible stipulations of fact. The pre-trial was set on January 26, 2018 at 1:30 in the afternoon.⁶

In an *Order* dated January 26, 2018, the Court granted the prosecution and counsel of accused Samuya additional settings on February 27 and 28, 2018, within which to conclude the pre-marking of their documentary exhibits and explore the possibility of having a joint stipulations of fact. The pre-trial was set anew to March 2, 2018.⁷

On March 22, 2018, the prosecution and accused Samuya, through counsel, submitted their *Joint Stipulations of Fact, List of Exhibits and Witnesses*. The Court admitted the same in its *Resolution* adopted on April 2, 2018.⁸ Consequently, the Court issued a "*Pre-Trial Order*" dated April 15, 2018, consistent with the said *Joint Stipulations of Fact*.⁹

During the pre-trial, the prosecution and accused Samuya stipulated on the following matters:

1. Accused Samuya was the Municipal Mayor of the Municipality of San Isidro, Bohol from June 1998 to June 30, 2007; and
2. He is the same accused named in the Information in SB-17-CRM-1729.¹⁰



⁵ pp. 176-178, Record

⁶ *ibid.*

⁷ p. 189, Record

⁸ p. 217, Record

⁹ pp. 219-229, Record

¹⁰ pp. 219-210, Record

x-----x

The prosecution presented the following witnesses:
(1) Ronald Allan D. Ramos;¹¹ (2) Rosenda B. Cabang;¹²
(3) Trinidad A. Loquinte;¹³ and (4) Leonila Cano Quiwag.¹⁴

On September 7, 2018, the prosecution filed its "*Formal Offer of Evidence*" consisting of Exhibits "A" to "V" and "X" and "Y," together with its sub-markings.¹⁵ The said exhibits were admitted by the Court in its Resolution adopted on September 24, 2018.¹⁶

At the scheduled initial presentation of the defense's evidence, counsel for accused Samuya manifested his intention to file a *Motion for Leave to File Demurrer to Evidence*. Upon agreement of the parties, the Court no longer heard the said motion. Instead, the prosecution was given a period of five (5) days from receipt of a copy of the said motion to file its comment/opposition after which the same will be deemed submitted for resolution.¹⁷

On October 19, 2018, accused Samuya, through counsel, filed a "*Motion for Leave of Court to File Demurrer to Evidence*."¹⁸ On November 13, 2018, the prosecution filed its opposition thereto.¹⁹ In its *Resolution* adopted on November 14, 2018, the Court denied the said motion without prejudice to accused Samuya's right to file a *demurrer to evidence without leave of court*.²⁰

During the re-scheduled initial presentation of the defense's evidence, the counsel for accused Samuya manifested that he will present evidence instead of pursuing a demurrer to evidence.²¹ He presented the following witnesses:

¹¹ p. 319, Record
¹² p. 432, Record
¹³ p. 434, Record
¹⁴ p. 463, Record
¹⁵ pp. 468-538, Record
¹⁶ p. 557, Record
¹⁷ p. 563, Record
¹⁸ pp. 568-580, Record
¹⁹ pp. 585-596, Record
²⁰ pp. 602-603, Record
²¹ p. 7, Record, Vol. II



x-----x

(1) accused Requillo Samuya y Suaybaguio;²² and (2) Peñaflor Torralba.²³

On January 25, 2019, accused Samuya filed his "*Formal Offer of Evidence*" consisting of Exhibits "1" to "11" with sub-markings.²⁴ After the prosecution filed its comment thereon, the Court, in a Resolution adopted on February 18, 2019, admitted the above-mentioned exhibits, together with its sub-markings.²⁵

THE PROSECUTION'S EVIDENCE

The prosecution presented Ronald Allan D. Ramos as its first witness.

Ramos testified that he is a Graft Investigation and Prosecution Officer I (GIPO) assigned at the Field Information Office of the Office of the Ombudsman since October 2011. As a GIPO, his primary duties and responsibilities are: to conduct fact-finding investigation and file the necessary complaints, if warranted. He executed a Sworn Complaint (Exhibit A) relative to this case and identified his signature (Exhibit A-1) thereon. Ramos likewise identified the certified true copy of the Memorandum of Agreement dated March 29, 2004 (Exhibit B) and the Project Proposal (Exhibit C) which were attached to his Sworn Complaint.²⁶

The parties stipulated during Ramos' testimony that "Exhibits D to Y" and their respective sub-markings are the same documents attached to his Sworn Complaint.²⁷

On cross-examination, Ramos testified that on the face of the documents marked as "Exhibits "M, M-1" and "M-2," which are certifications from the (i) Department of Trade and

²² p. 12, Record, Vol. II

²³ p. 26, Record, Vol. II

²⁴ pp. 29-84, Record, Vol. II

²⁵ p. 106, Record, Vol. II

²⁶ pp. 6-11, TSN, July 10, 2018

²⁷ p. 11, TSN, July 10, 2018

Decision

Case No. SB-17-CRM-1729

People vs. Samuya and Apostol

-6-

x-----x

Industry (DTI) stating that Akame is an exclusive distributor of BYM enzyme products; (ii) Business Permit issued by the City Government of Cagayan De Oro to Akame; and (iii) a certification from J.P. BYM Food Mix Manufacturing and Export certifying that Akame is the sole distributor of BYM enzyme products, Akame is the sole distributor of the said fertilizer.²⁸

On further cross-examination, Ramos testified that the procurement of the subject fertilizer happened during the first quarter of 2004. Around that time, no Bids and Awards Committee (BAC) was created because the BAC was supposed to be constituted at the last quarter of 2004.²⁹

When confronted with "Exhibit P," which is the Inspection and Acceptance Report, Ramos testified that the said document shows that the purported goods procured were the 812.50 kilos of *N-BEM Soil Activator, Inoculant Soil Activator*³⁰ and the same were delivered to San Isidro, Bohol. The same goods were verified and found "OK" and complete by the municipal government of San Isidro, Bohol.³¹ The subject fertilizer was paid in the amount of Nine Hundred Seventy-Five Thousand pesos (Php975,000.00).³²

Ramos clarified that their investigation on the subject procurement was based on the official records submitted to their office. The documents were officially gathered by the Office of the Ombudsman through the issuance of various subpoenas.³³

On redirect-examination, Ramos testified that "Exhibit M-2," which is the certification of Tetsuo Kamekawa, President of J.P. BYM Food Mix Manufacturing and Export, is a falsity because during the fact-finding investigation, the previous investigators were able to secure another sworn statement from Tetsuo Kamekawa that the "*person stated herein,*

²⁸ pp. 16-17, TSN, July 10, 2018

²⁹ Pp. 18-21, TSN, July 10, 2018

³⁰ pp. 7-8, TSN, July 24, 2018

³¹ pp. 21-22, TSN, July 10, 2018

³² p. 9, TSN, July 24, 2018

³³ pp. 9-10, TSN, July 24, 2018

Handwritten signature and initials in the bottom right corner of the page.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-7-

x-----x

*Edilberto Apostol, is not an exclusive distributor of J.P. BYM NBM Food Mix Manufacturing*³⁴ or Edilberto Ramos is not an exclusive distributor.³⁴

The prosecution next presented Rosenda B. Cabang.

Cabang testified that she is a State Auditor IV of the Commission on Audit (COA) with assignment in seven (7) municipalities including the Local Government Unit (LGU) of San Isidro, Bohol. She is the team leader of the LGU of San Isidro, Bohol. Her duties and responsibilities are to: conduct audit, do auditing activities, prepare several reports and acts as custodian of documents of all their audit activities including the LGU of San Isidro, Bohol.³⁵

She declared that she received a Subpoena dated July 18, 2018 to produce the documents stated therein. However, the required documents cannot be produced because they were among the missing or destroyed documents during the 7.2 magnitude earthquake that hit Bohol on October 15, 2013.³⁶ She knew of the said earthquake because she was in Bohol at that time.³⁷

During Cabang's cross-examination, the parties stipulated that Cabang has no personal knowledge as to the contents and execution of the documents stated in the Subpoena dated July 18, 2018.³⁸

The prosecution then presented Trinidad A. Loquinte.

Loquinte testified that she is a retired employee of the COA. She identified her Judicial Affidavit dated August 7, 2018, with attachment, consisting of nine (9) pages and her signature thereon.³⁹

³⁴ p. 2, TSN, July 24, 2018

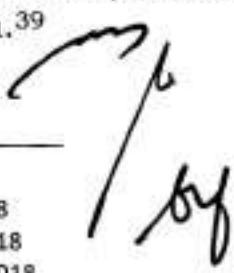
³⁵ pp. 8-9, TSN, August 7, 2018

³⁶ pp. 9-12, TSN, August 7, 2018

³⁷ pp. 12-13, TSN, August 7, 2018

³⁸ pp. 17-18, TSN, August 7, 2018

³⁹ pp. 6-7, TSN, August 8, 2018



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-8-

x-----x

In her Judicial Affidavit, Loquinte declared that she was a State Auditor III of the COA from October 16, 1979 to December 31, 2012; she was assigned as a team leader in the LGU of San Isidro, Bohol from 2003 to 2005; as such, her duties consisted of the conduct of an audit on the transactions of San Isidro, Bohol, conduct of cash examination on the accountability of accountable officers and perform other duties assigned by her superior from time to time; she conducted an audit on the disbursement of funds in the amount of Nine Hundred Seventy-Five Thousand (Php975,000.00) for the procurement of *NBEM 21 Inoculant Soil Activator* purportedly received by San Isidro, Bohol from the Department of Agriculture (DA) under the Farm/Inputs/Farm Implements, Program and Priority Development Fund (PPDF); and that the said audit was under the regular audit conducted by her as the team leader.⁴⁰

She first gathered and evaluated the documents relevant to the said disbursement of fund for the *NBEM 21 Inoculant Soil Activator* and then interviewed concerned people. Thereafter, she prepared an Audit Observation Memorandum (AOM) and then furnished the same to accused Samuya.⁴¹

In the course of her said audit, she gathered the following documents:

Exhibit	Description
"B"	Memorandum of Agreement dated March 29, 2004 executed among the DA Regional Field Unit VII, Office of the Congressman Roberto Cajés and the LGU of San Isidro, Bohol
"C"	Project Proposal with the title "Sustainable Organic Agriculture Program in Rice Farming"

⁴⁰ pp. 881-384, Record

⁴¹ p. 384, Record



Decision

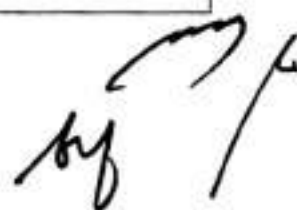
Case No. SB-17-CRM-1729

People vs. Samuya and Apostol

-9-

x-----x

"D" to "D-14"	List of beneficiary farmers
"E"	Resolution No. 40-A, series of 2004 of the Sanggunian Bayan of San Isidro
"F"	Addendum to the Memorandum
"G"	Purchase Request No. 10 dated march 4, 2004 on soil conditioner
"H"	Allotment and Obligation Slip No. 04-04-1363 dated April 6, 2004 amounting to Php1,500,000.00
"I"	Disbursement Voucher No. 101-2004-4-1060 dated April 14, 2004 for Php975,000.00
"J"	Check No. 15965 dated April 15, 2004 for Php975,000.00
"J-1"	Official Receipt No. 0714312 dated April 14, 2004 for Php975,000.00
"K"	Journal Entry Voucher No.04-4-1509 dated April 30, 2004
"L"	Purchase Order No. 46 dated April 19, 2004 for the purchase of NBEM 21 Inoculant Soil Activator amounting to Php975,000.00
"M"	DTI Certificate of Business Name Registration of AKAME Marketing International - CDO Branch
"N"	Akame Marketing International Sales Invoice No. 285 dated May 8, 2004 amounting to Php975,000.00
"O"	Akame Marketing International Delivery Receipt No. 797 dated May 8, 2004 amounting to Php975,000.00



Decision

Case No. SB-17-CRM-1729

People vs. Samuya and Apostol

-10-

x-----x

"P"	Inspection and Acceptance Report dated June 15,2004
"Q"	Check No. 5283735 dated June 15, 2004 amounting to Php936,000.00 issued to Akame Marketing International
"R"	Disbursement Voucher No. 300-0-06-03 dated June 1, 2004 amounting to Php975,000.00
"S"	Akame Marketing International Official Receipt No. 1001 dated June 15, 2004 amounting Php975,000.00. ⁴²

Loquinte identified the aforesaid documents as the same documents she gathered and evaluated during the audit for the disbursement of funds for the procurement of *NBEM 21 Inoculant Soil Activator*.⁴³ The results of her aforesaid audit are contained in AOM No. 2004-01 (Exhibit T) dated September 20, 2004, which she identified as the same AOM she prepared.⁴⁴

On cross-examination, Loquinte testified that she is familiar with Republic Act (R.A.) No. 9184 and its Implementing Rules and Regulations (IRRs) by attending several seminars on the subject; that it could have been more than five (5) times that she attended seminars on R.A. No. 9184 including its IRRs;⁴⁵ that the employees of the municipality of San Isidro, Bohol are required to attend seminars on R.A. No. 9184 and its IRRs;⁴⁶ that in her AOM on the subject matter, she made a finding that *NBEM 21 Inoculant Soil Activator* was procured without the benefit of a public bidding contrary to Section 12 of R.A. No. 9185;⁴⁷ that when she prepared the AOM, the product subject of procurement

⁴² pp. 385-387, Record

⁴³ p. 387, Record

⁴⁴ *ibid.*

⁴⁵ pp. 9-11, TSN, August 8, 2018

⁴⁶ pp. 12-13, TSN, August 8, 2018

⁴⁷ pp. 14-15, TSN, August 8, 2018



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-11-

x-----x

was not completely delivered to San Isidro, Bohol; that she made a request for documents pertaining to the said procurement for verification but most of the papers forwarded to her were only photocopies; that the LGU of San Isidro, Bohol did not comply with her request for original documents; that she likewise made findings on the AOM that the purchase request showed reference to brand name such as *NYM-BYM-2*, a violation of Section 18 of R.A. No. 9184; that procurement through alternative method cannot be used without having competitive bidding first; and, that competitive bidding must first be conducted before the use of alternative method or negotiated procurement.⁴⁸

Leonila Cano Quiwag testified last for the prosecution.

She testified on direct-examination through her Judicial Affidavit dated August 18, 2018.⁴⁹

In her judicial affidavit, she declared that she is connected with the LGU of San Isidro, Bohol, as a bookkeeper since 1992 up to the present; that she is assigned at the Municipal Accounting Office of San Isidro, Bohol; that she was designated as the municipal accountant of San Isidro from 2001 to 2005; that her duties and responsibilities consist of reviewing of documents supporting the vouchers as to their completeness and propriety, exercising general supervision and control over the personnel assigned at the Municipal Accounting Office and performing other duties that may be assigned by her superior from time to time; that in the course of her being the municipal accountant, she encountered the transaction on the purchase of *NBEM 21 Inoculant Soil Activator* by San Isidro from Akame Marketing International; that she reviewed Disbursement Voucher No. 300-04-06-03 dated June 1, 2004 and its supporting documents pertaining to the purchase of the said fertilizer; that she was able to review the following documents:



⁴⁸ pp. 16-22, TSN, August 8, 2018

⁴⁹ pp. 9-10, TSN, August 28, 2018

DecisionCase No. SB-17-CRM-1729
People vs. Samuya and Apostol

-12-

x-----x

Exhibit	Description
"G"	Purchase Request No. 10 dated March 4, 2004 on soil conditioner
"L"	Purchase Order No. 46 dated April 19, 2004 for the purchase of NBEM 21 Inoculant Soil Activator amounting to Php975,000.00
"M"	DTI Certificate of Business Name Registration of AKAME Marketing International - CDO Branch
"M-1"	Business Permit No. 2004-800 issued to Akame Marketing Internal - CDO Branch
"M-2"	Certification of Mr. Tetsuo Kamekawa, President/Manufacturer of J.P. BYM Food Mix Manufacturing and Export
"N"	Akame Marketing International Sales Invoice No. 285 dated May 8, 2004 amounting to Php975,000.00
"O"	Akame Marketing International Delivery Receipt No. 797 dated May 8, 2004 amounting to Php975,000.00
"P"	Inspection and Acceptance Report dated June 15, 2004
"R"	Disbursement Voucher No. 300-0-06-03 dated June 1, 2004 amounting to Php975,000.00. ⁵⁰

Quiwag identified Exhibits G, L, M to M-2, N, O, P and R as the same documents she reviewed; she also identified the signature of accused Samuya in Exhibits G, L and R; she testified that she is familiar with the signature of the said accused being her superior at that time; that in her review of

⁵⁰ pp. 443-444, Record

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-13-

x-----x

Disbursement Voucher No. 300-04-06-03 dated June 1, 2004, and its supporting documents, she noticed that the supporting documents were incomplete; that she made this observation because the Abstract of Bid or Canvass and Award were not attached to the said disbursement voucher; that she did not affix her signature on the said disbursement voucher to certify as to the completeness and propriety of the supporting documents; that she returned the subject disbursement voucher with supporting documents to Romeo P. Torralba, Municipal Agrarian Officer (MAO), with the advice to complete the supporting documents; and, that Torralba did not respond to her advice.⁵¹

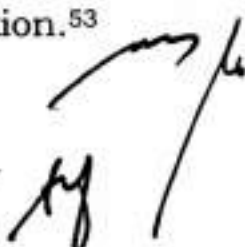
On cross-examination, Quiwag testified that her official position is bookkeeper but she was designated as municipal accountant temporarily since the position was vacant then; that her designation as such was official; that as a bookkeeper, she attended a seminar on R.A. No. 9184 only once; that she is aware that the BAC of San Isidro, Bohol, was formed only on March 22, 2004; that she knows a certain Filoteo Asoy because he is a member of the BAC; that she is not aware that Filoteo Asoy was designated by accused Samuya as the procurement officer of San Isidro, Bohol; that she made known of her concern about the lacking requirement of the Abstract of Bids and/or Canvass as attachment to the subject disbursement voucher to Torralba who did not comply with her request; and, that she did not inform accused Samuya of the said lacking requirement.⁵²

During the hearing on August 28, 2018, the prosecution informed the Court that it was through with the presentation of its evidence. The prosecution was thus given a period of ten (10) days from the said date within which to file its formal offer of evidence. The defense was likewise given the same period to comment thereon after which, the same would be deemed submitted for resolution.⁵³

⁵¹ pp. 441-447, Record

⁵² pp. 11-15, TSN, August 28, 2018

⁵³ p. 463, Record



x-----x

Thereafter, the prosecution offered the following documentary evidence, to wit:

Exhibit	Description
"A" "A-1"	Complaint dated November 15, 2012 of Ronald Allan D. Ramos, Graft Investigation and Prosecution Officer I, Office of the Ombudsman-FIO, consisting of eleven (11) pages Signature of Ronald Allan D. Ramos
Purpose:	<ol style="list-style-type: none">1. To prove that the Field Investigation Office of the Office of the Ombudsman conducted fact-finding investigation, among others on the procurement of 812.5 kilos of soil conditioner (NBM-21 Micro Aid activator worth P975,000.00);2. To prove that as a result of the fact-finding investigation, the FIO found out that: (a) no competitive public bidding was conducted in the procurement of 812.5 kilos of soil conditioner (NBM-21-Micro Aid activator worth P975,000.00, in violation of Republic Act No. 9184; and (b) Supplier Akame Marketing International is not the sole Philippine exclusive distributor of the said soil conditioner;3. To prove that the accused Requilillo S. Samuya and Romeo P. Torralba gave unwarranted benefits or advantage to supplier Akame Marketing International for purchasing from the latter for LGU-San Isidro the said soil conditioner without undergoing competitive public bidding.
"B"	Memorandum of Agreement dated March 29, 2004 executed among the DA Regional Field Unit VII, Office of the 2 nd District Representative, and the LGU of San Isidro, consisting of two (2) pages
"C"	Project Proposal prepared by Romeo P. Torralba,

Decision

-15-

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

x-----x

	Municipal Agriculture Officer of San Isidro, Bohol re: Sustainable Organic Agriculture Program in Rice Farming, consisting of fifteen (15) pages
"D" to "D-14"	List of Farmers in Barangay Poblacion, San Isidro, Bohol who will avail the Organic Farming Program, consisting of fifteen (15) pages
"E"	Resolution No. 40-A, series of 2004 authorizing Municipal Mayor Requillo Samuya to enter into Memorandum of Agreement with the Department of Agriculture, Regional Field Unit VII approved by the Sanggunian Bayan of San Isidro, Bohol, consisting of two (2) pages
"F"	Addendum to the Memorandum of Agreement marked as Exhibit B, consisting of two (2) pages
"G"	Purchase Request No. 10 dated march 4, 2004 on soil conditioner
"H"	Allotment and Obligation Slip No. 04-04-1363 dated April 6, 2004 amounting to Php1,500,000.00
"I"	Disbursement Voucher No. 101-2004-4-1060 dated April 14, 2004 for Php975,000.00
"J"	Check No. 15965 dated April 15, 2004 for Php975,000.00
"J-1"	Official Receipt No. 0714312 dated April 14, 2004 for Php975,000.00
"K"	Journal Entry Voucher No.04-4-1509 dated April 30, 2004
"U"	LBP Check No. 0000255523 dated December 29, 2004 amounting to Php450,000.00 issued to Municipality of San Isidro, Bohol
"V"	Financial and Physical Accomplishment Report – Farm Inputs/Farm Implements Program as of September 30, 2005
"X"	Certification date October 11, 2006 issued by OIC Regional Accountant Evelyn Romarate nd Budget and Finance Division OIC-Chief Angel C. Enriquez, both of DAR Region VII
Purpose of Exh. B to F, H to K	1. To prove the transfer of funds in the net amount of Php975, out of Php1,500,000 from the Department of Agriculture Regional Field

Decision

Case No. SB-17-CRM-1729
 People vs. Samuya and Apostol

-16-

x-----x

and U to V, and X and respective sub-markings:	Unit VII to LGU San Isidro in connection with the project entitled "Sustainable Organic Agriculture Program in Rice Farming" to be implemented by LGU San Isidro; 2. To prove that the remaining amount of Php525,000.00 was reverted back to the National Treasury as certified by the DA Regional Field Unit No. VII ⁵⁴
"M"	DTI Certificate of Business Name Registration of AKAME Marketing International – CDO Branch
"M-1"	Business Permit No. 2004-800 issued to Akame Marketing Internal – CDO Branch
"M-2"	Certificate of Product Registration dated April 6, 2006 issued by Fertilizer and Pesticide Authority issued to J.P. BYM Food Mix Manufacturing & Export
"Y to Y-3"	Sworn Statement of Tetsuo Kamekawa dated October 3, 2006, consisting of four (4) pages
Purpose of Exh. M to M-3 and Y-to Y-3	1. To prove that while Akame Marketing International appears to be registered with the Department of Trade and Industry, it is not not exclusive distributor of BYM NBM 21 Micro Aid Activator. Tetsuo Shitazu Kamekawa, President of J.P. BYM Food Mix Manufacturing and Export ("BYM Company"), in his Sworn Statement dated October 3, 2006, ⁵⁵ recanted from his Certification ⁵⁶ and claimed that Akame Marketing International is not an exclusive distributor of BYM Company;
"G"	Purchase Request No. 10 dated March 4, 2004 on soil conditioner
"L"	Purchase Order No. 46 dated April 19, 2004 amounting to Php975,000.00
"N"	Akame Marketing International Sales Invoice No. 285 dated May 8, 2004 amounting to Php975,000.00
"O"	Akame Marketing International Delivery Receipt

⁵⁴ Exhibit X⁵⁵ Exhibit Y to Y-3⁵⁶ Exhibit M-2

Decision

Case No. SB-17-CRM-1729
 People vs. Samuya and Apostol

-17-

x-----x

	No. 797 dated May 8, 2004 amounting to Php975,000.00
"P"	Inspection and Acceptance Report dated June 15,2004
"Q"	Check No. 5283735 dated June 15, 2004 amounting Php936,000.00 issued to Akame Marketing International
"R"	Disbursement Voucher No. 300-0-06-03 dated June 1, 2004 amounting to Php975,000.00
"S"	Akame Marketing International Official Receipt No. 1001 dated June 15, 2004 amounting P975,000.00
Purpose of Exh. G, L, and N to S	<p>1. To prove the purchase of NBM-21 Micro Aid Activator worth Php975,000.00 by the LGU San Isidro from Akame Marketing International without competitive public bidding;</p> <p>2. To prove that prosecution witness Leonila C. Quiwag, the designated Municipal Accountant of LGU San Isidro, did not affix her signature in the (a) disbursement ; and (b) purchase order to certify on the availability of funds;</p> <p>3. To prove the release of public funds in the amount of Php975,000.00 in favor of Akame marketing International to the damage and injury of the government;</p> <p>4. To prove that accused Requillo S. Samuya approved the purchase of NBM-21 Micro Aid activator despite (a) the absence of competitive bidding; and (b) the lack of signature of designated Municipal Accountant Leonila C. Quiwag in the (a) Purchase Order; and (b) Disbursement Voucher;</p>
"T"	Audit Observation Memorandum No. 2004-001 dated September 20, 2004 prepared by Trinidad A. Loquinte, State Auditor III, COA Cluster IV-Visayas Local Government Sector, Tagbilaran, Bohol
Purpose:	1. To prove that an audit was conducted by COA

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-18-

x-----x

	<p>State Auditor Trinidad A. Loquinte on the purchase of NBN-21 Micro Aid activator worth Php975,000.00 by the LGU San Isidro from Akame Marketing International;</p> <p>2. To prove that as a result of the audit, State Auditor Loquinte found the following, among others:</p> <ul style="list-style-type: none">a. Purchase Request showed reference to brand names in violation of Section 18 of RA 9184b. No award was made by the BAC in violation of RA 9184;c. No BAC Certification issued that no suitable substitute can be obtained at more advantageous terms to the government; andd. No signature of Municipal Accountant in the disbursement voucher and purchase order.⁵⁷
--	--

In its Resolution adopted on September 24, 2018, the Court admitted the above-enumerated exhibits of the prosecution.⁵⁸

THE DEFENSE EVIDENCE

The defense presented accused Requillo S. Samuya as its first witness.

He testified on direct examination through his Judicial Affidavit dated October 5, 2018.⁵⁹

In his judicial affidavit, accused Samuya declared that he was the mayor of the municipality of San Isidro, Bohol for three (3) consecutive terms, from 1998 to 2007. As the mayor of the said municipality, his duties were to advance and protect the general welfare of his constituents. Thus, he, and

⁵⁷ pp. 468-473, Record

⁵⁸ p. 557, Record

⁵⁹ pp. 5-6, TSN, January 9, 2019

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-19-

x-----x

the Sangguniang Bayan (SB), implemented programs that would improve the living condition of their constituents. One of the programs they implemented was the *Farm Inputs and Farm Implements Program (Program)*. The *Program* aimed to aid the farmers in the different parts of the country by providing them with fertilizers or soil conditioners. Before the implementation of the said *Program*, the Office of the Representative of the Second District of Bohol informed him sometime in February 2004 that San Isidro was one of the beneficiaries of the said *Program* of the DA considering that it has a considerable number of farmers. Thus, on March 03, 2004, the SB of San Isidro passed a Resolution⁶⁰ authorizing him to enter into a Memorandum of Agreement⁶¹ (MOA) with the DA – Regional Field Unit VII (DA-RFU VII) and the Office of the Representative of the Second District of Bohol. The DA, the Office of the Representative of the Second District of Bohol and accused Samuya subsequently executed an Addendum⁶² to the MOA in order to conform to the existing auditing and accounting rules and regulations of the DA.⁶³

Accused Samuya further declared that at the time of the implementation of the Program, the BAC of San Isidro had just been organized. Considering that San Isidro is a fifth-class municipality located in a remote area, it took longer than usual for the representatives of the Department of Budget and Management (DBM) to conduct the orientation of the BAC members on R.A. No. 9184 and its IRRs. It was only sometime in March 2004 when the DBM introduced to them the said law and its IRRs. Thus, their BAC was not yet functioning then as evidenced by Executive Order No. 01-2004 dated March 22, 2004⁶⁴ issued by him.⁶⁵

Accused Samuya explained that since the BAC of San Isidro was not yet functioning then, in the exigency of service, he officially designated Filoteo Asoy as procurement officer of the *Program*, through Office Order No. 03-2004 dated March

⁶⁰ Exhibit 1 at p. 622, Record

⁶¹ Exhibit 2 at pp. 623-624, Record

⁶² Exhibit 2-A at pp. 625-626, Record

⁶³ pp. 610-613, Record

⁶⁴ Exhibit 3 at p. 627-628, Record

⁶⁵ p. 613, Record



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-20-

x-----x

30, 2004,⁶⁶ being then the Municipal Planning and Development Officer (MPDO) of San Isidro and a member of the newly formed BAC. Asoy then prepared and facilitated the procurement process of the *Program*.⁶⁷

After he designated Asoy as procurement officer, he was informed by Asoy that he received from Akame Marketing International, through its sole proprietor, his co-accused Edilberto L. Apostol, certified true copies of the following documents:

- a. DTI registration showing that Akame is registered under Apostol's name;⁶⁸
- b. Application with DTI as Exclusive Distributor of BYM Enzyme Products;⁶⁹
- c. Business Permit issued by the City Government of Cagayan De Oro, showing that it is the exclusive distributor or trader of *BYM Enzyme Products*;⁷⁰
- d. Certification issued by J.P. BYM Food Mix Manufacturing and Expert, signed by its President/Manufacturer Tetsuo Kamekawa, stating that Akame is the sole Philippines exclusive distributor of *BYM NBM 21 Enzyme Products* (soil conditioner) to all the provinces of Luzon, Visayas and Mindanao;⁷¹ and
- e. Authentication Certificate issued by Notary Public Atty. Mario T. Juni,⁷² showing that the said documents were faithful reproductions of their originals.⁷³

⁶⁶ Exhibit 4 at p. 629, Record

⁶⁷ p. 613, Record

⁶⁸ Exhibit 5 at p. 630, Record

⁶⁹ Exhibit 5-A at p. 631, Record

⁷⁰ Exhibit 5-B at p. 632, Record

⁷¹ Exhibit 5-C at p. 633, Record

⁷² Exhibit 5-D at p. 634, Record

⁷³ pp. 614-615, Record

A handwritten signature, possibly 'MJ', is written in black ink. A curved arrow points from the signature towards the text of the list item 'e' above it.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-21-

x-----x

Accused Samuya further declared that he relied on Asoy's certification regarding the authenticity of the documents submitted by Akame. He assumed in good faith that Asoy properly reviewed the said documents and gathered background information on the said supplier. In fact, he learned that Akame was also the supplier of soil conditioner in other towns which were recipients of the funding of the said *Program*. The DA-RFU VII and the Office of the Representative of the Second District of Bohol recommended Akame as the qualified supplier for the Municipality of San Isidro.⁷⁴

He likewise averred in his judicial affidavit that after Asoy found Akame as qualified supplier and the sole and exclusive distributor of the subject soil, he recommended direct contracting as the method of procurement, as shown by the Certification dated April 5, 2004,⁷⁵ issued by Asoy which he approved. He relied in good faith based on the recommendation made by Asoy and by the DA-RFU VII and the Office of the Representative Cajes.⁷⁶

Accused Samuya further declared that while Akame submitted only certified true copies of the documents required, it was still chosen as the supplier of the subject products because the documents were certified as true copies of the originals by a notary public who is allowed by law to issue the said certification.⁷⁷

Upon approval of the recommendation made by Asoy for the procurement of the said products from Akame through direct contracting, Akame delivered the 812.50 kilos of *NBEM-21 Microaid Activator* or soil conditioner to San Isidro as shown by paragraph 3 of page 3 of the Resolution dated December 06, 2016⁷⁸ of the Office of the Ombudsman. The said soil conditioner was received and accepted by Regina Astronomo, who inspected the products and found them "ok" as to the quantity and specification made by Torralba. This can be seen

⁷⁴ p. 615, Record

⁷⁵ Exhibit 6 at p. 635, Record

⁷⁶ p. 616, Record

⁷⁷ pp. 616-617, Record

⁷⁸ Exhibit 8-8-A at p. 649, Record

A handwritten signature in black ink, appearing to be 'Asoy', is located in the bottom right corner of the page. The signature is written in a cursive style with a long, sweeping stroke extending upwards and to the right.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-22-

x-----x

from the Inspection and Acceptance Report dated June 15, 2004.⁷⁹ After the delivery of the said products, he approved the payment to Akame and then distributed the soil conditioner to the intended beneficiaries in the different barangays of San Isidro, namely: Balyong, Daan, Cabanugan, Causawagan, Baunos, Cansague, Poblacion, Gambansag, Caimbang, Candungao, Abelian and Masonoy.⁸⁰

Years after the said *Program* was implemented, accused Samuya was surprised to find out that he was charged with a violation of the Anti-Graft and Corrupt Practices Act before the Office of the Ombudsman. Thus, he executed a Counter-Affidavit dated June 4, 2013, denying any participation in the commission of the subject offense.⁸¹

Accused Samuya also declared that some of the documents attached to his judicial affidavit are photocopies because the originals of the said documents were destroyed due to the earthquake that hit Bohol in October 2013.⁸²

On cross-examination, accused Samuya testified that the subject transaction happened during his second term of office as the mayor of San Isidro, Bohol in 2004. He confirmed that the procurement of *NBEM-21 Microaid Activator* was done without public bidding because the BAC was not yet functioning at that time. In lieu of the BAC, he designated Asoy as procurement officer who did the procurement activity for the implementation of the MOA and the Addendum. Since there was no BAC, there was no certification from the BAC to show that a suitable substitute can be obtained at a more advantageous turn to the government. The accused admitted that he applied the method of direct contracting in purchasing the subject soil conditioner. The proper procurement procedure such as publication of invitation to bid was no longer observed because he relied on the recommendation of

⁷⁹ Exhibit 9 at p. 665, Record

⁸⁰ Exhibits 7 to 7-J at pp. 637-646, Record; p. 618, Record

⁸¹ Exhibits 10-10-A at pp. 666-668, Record

⁸² p. 619, Record; p. 4, TSN, January 10, 2019



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-23-

x-----x

Asoy to directly purchase the soil from Akame International Marketing.⁸³

Accused Samuya further testified that the purchased item has a brand name, "*BYM NBM 21 Microaid Activator.*" When they purchased the said soil conditioner, he did not obtain any opinion from the auditor assigned in their municipality whether the same can be procured without passing through the BAC. He signed the disbursement voucher for the procurement of the said product notwithstanding that the municipal accountant did not affix her signature thereon because he did not examine the said document.⁸⁴

On re-direct examination, accused Samuya admitted that he relied on Asoy, the MPDO of San Isidro, when he approved the procurement of the subject soil activators since Asoy was a member of the newly-organized BAC. Moreover, Asoy was the longtime MPDO having worked as such even before the accused's term as the mayor. He was designated as procurement officer because of his ability and experience.⁸⁵

The defense then presented Peñaflor Torralba.

Torralba also testified on direct examination through her Judicial Affidavit dated January 8, 2019.⁸⁶

She declared that she was assigned as the General Services Officer (GSO) of San Isidro, Bohol for six (6) years. She started to work as such in April 2004 as shown by her appointment paper.⁸⁷ As GSO, she provided assistance to the daily work and dealings of the local government of San Isidro, Bohol. She was also assigned as inspection officer of San Isidro. As inspection officer, she was tasked to inspect goods and products that were delivered to said municipality. In one of her inspection activities, she remembered having inspected

⁸³ pp. 58, TSN, January 10, 2019

⁸⁴ pp. 9-10, TSN, January 10, 2019

⁸⁵ p. 13, TSN, January 10, 2019

⁸⁶ Exhibit 11 at pp. 15-19, Record; Vol. II; pp. 16-17, TSN, January 10, 2019

⁸⁷ Exhibit 11 at p. 82, Record, Vol. II

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'ty' with a long, sweeping line extending upwards and to the right.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

x-----x

bags of soil activators delivered to San Isidro in 2004. These were the fertilizers called *NBEM-21 Microaid Activator* delivered by Akame Marketing International. It was the DA which requested for the inspection of the said fertilizers. After she inspected the products, she found them to be acceptable as to the quantities and specifications and issued an *Inspection and Acceptance Report* dated June 15, 2004.⁸⁸ After the inspection, the fertilizers were distributed to the farmer-beneficiaries in each of the twelve (12) barangays of San Isidro which used them. It yielded good harvest for the farmers.⁸⁹

Torralba declared that her appointment paper and the *Inspection and Acceptance Report* were only photocopies because the originals of the said documents could no longer be located despite diligent efforts since these documents were stored in the municipal building which was destroyed by the strong magnitude earthquake that hit Bohol in 2013.⁹⁰

Accused Samuya, through counsel, offered the following documentary evidence in his *Formal Offer of Evidence* dated January 25, 2019, to wit:

Exhibit	Description	Purpose
"1"	Resolution No. 40-A of the Sangguniang Bayan of the Municipality of San Isidro passed on 03 march 2004	To prove that Requillo S. Samuya, as Municipal Mayor, was authorized to enter into a Memorandum of Agreement with the Department of Agriculture - Regional Field Unit VII ("DA-RFU VII")
"2"	Memorandum of Agreement ("MOA") dated 29 March 2004, signed by the Municipality of	

⁸⁸ Exhibit 9 at p. 78, Record, Vol. II

⁸⁹ pp. 17-18, Record; Vol. II

⁹⁰ p. 18, Record; Vol. II



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

x-----x

	San Isidro, as represented by Requillo S. Samuya, DA-RFU VII, as represented by Regional Executive Director Eduardo B. Leciones, Jr. and the Office of the Representative of the Second District of Bohol, as represented by representative Roberto C. Cajés	
"2-A"	Addendum to the Memorandum of Agreement dated 29 March 2004, signed by the Municipality of San Isidro as represented by Requillo S. Samuya, DA-RFU VII, as represented by Regional Executive Director Eduardo B. Leciones, Jr. and the Office of the Representative of the Second District of Bohol, as represented by representative Roberto C. Cajés	
"3"	Executive Order No. 01-2004 dated 22 March 2004	To prove the following: 1. The Bids and Awards Committee (BAC) of the Municipality of San Isidro had just been organized at the time of the implementation of the Farm Inputs and Farm Implements Program ("program");

Decision

Case No. SB-17-CRM-1729

People vs. Samuya and Apostol

-26-

x-----x

		<p>2. Considering that the members of BAC were still being oriented on the Implementing Rules and Regulations of Republic Act No. 9184, the BAC was not yet functional during the implementation of the program.</p>
"4"	<p>Office Order No. 03-2004 dated 30 March 2004</p>	<p>To prove the following:</p> <ol style="list-style-type: none">1. Filoteo P. Asoy ("Asoy") was designated as Procurement Officer of program;2. As the Procurement Officer, Asoy prepared all the necessary documents and facilitated the procurement process of the program.
"5"	<p>Akame's application with the DTI as exclusive distributor of BYM Enzyme Products</p>	<p>To prove the following:</p> <ol style="list-style-type: none">1. Akame is the exclusive distributor of BYM Enzyme Products;2. Akame complied with the documentary requirements of the program.
"5-B"	<p>Business Permit issued to Akame by the City Government of Cagayan De Oro</p>	<p>To prove the following:</p> <ol style="list-style-type: none">1. Akame is the exclusive distributor and/or trader of BYM Enzyme Products;

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

x-----x

		2. Akame complied with the documentary requirements of the program.
"5-C"	Certification issued by J.P. BYM Food Mix Manufacturing and Export signed by its President/Manufacturer, Tetsuo Kamekawa	To prove the following: 1. Akame, as represented by Edilberto L. Apostol, is the sole Philippines exclusive distributor of BYM NBM 21 Enzyme Products, namely, BYM NBM 21 Microaid Activator; 2. Akame complied with the documentary requirements of the program.
"5-D"	Authentication Certificate issued by the Notary Public	To prove the following: 1. The foregoing documents submitted by Akame were faithful reproductions of the original; 2. Akame complied with the documentary requirements of the program.
"6"	Certification dated April 5, 2004 issued by the Procurement Officer, Filoteo Asoy	To prove the following: 1. Asoy received and verified the documents submitted by Akame; 2. Asoy confirmed that Akame is a qualified supplier and is the sole

Decision

Case No. SB-17-CRM-1729

People vs. Samuya and Apostol

-28-

x-----x

		and exclusive distributor of NBM-21 soil activator; 3. Asoy recommended direct contracting as the appropriate method of procurement; and 4. Direct contracting was permitted and authorized under the circumstances.
"7"	List of recipients of NBM-21 soil activator at Balyong Daan, San Isidro, Bohol	To prove that the NBM-21 soil activators were delivered and distributed to their intended beneficiaries in the various barangays of the Municipality of San Isidro
"7-A"	List of recipients of NBM-21 soil activator at Cabanugan, San Isidro, Bohol	same
"7-B"	List of recipients of NBM-21 soil activator at Causwagan Sur, San Isidro, Bohol	same
"7-C"	List of recipients of NBM-21 soil activator at Baunos, San Isidro, Bohol	same
"7-D"	List of recipients of NBM-21 soil activator at Cansague Sur, San Isidro, Bohol	same
"7-E"	List of recipients of NBM-21 soil activator at Poblacion, San Isidro, Bohol	same
"7-F"	List of recipients of	same

Decision

Case No. SB-17-CRM-1729

People vs. Samuya and Apostol

-29-

x-----x

	NBM-21 soil activator at Gambansag, San Isidro, Bohol	
"7-G"	List of recipients of NBM-21 soil activator at Caimbang, San Isidro, Bohol	same
"7-H"	List of recipients of NBM-21 soil activator at Candungao, San Isidro, Bohol	same
"7-I"	List of recipients of NBM-21 soil activator at Abelian, San Isidro, Bohol	same
"7-J"	List of recipients of NBM-21 soil activator at Masanoy, San Isidro, Bohol	same
"8"	Resolution issued by the Office of the Ombudsman dated 06 December 2016	To prove that the NBM-21 soil activators were actually delivered and distributed to the Municipality of San Isidro, Bohol on 08 May 2004
"8-A"	Third paragraph on page three (3) of the Resolution issued by the Office of the Ombudsman dated 06 December 2016	same
"9"	Inspection and Acceptance Report dated 15 June 2004	To prove that, after receipt of the NBM-21 soil activators by the Property Officer, the same were found to be acceptable as to quantity and specification by Peñaflor Torralba
"10"	Counter-Affidavit of	To prove the existence

x-----x

	Requillo Samuya dated 04 June 2013, which was submitted to the Office of Ombudsman for the case docketed as OMB-C-C-13-0036	and due execution of said Counter-Affidavit
"11"	Memorandum No. 17-2004 dated 01 April 2004	To prove that, effective 01 April 2004, Peñaflor Torralba was designated as General Services Officer of the Municipality of San Isidro, Bohol

In its Resolution adopted on February 18, 2019, the Court admitted Exhibits "1" to "11," together with their sub-markings.⁹¹

THE RULING OF THE COURT

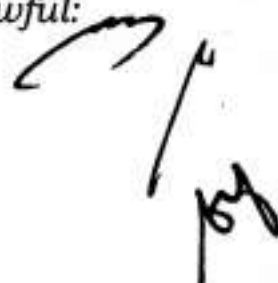
I. The offense charged against the accused and its elements.

=====

Accused Samuya, together with accused Apostol, is charged with a violation of Section 3 (e) of R.A. No. 3019, as amended, which reads:

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

⁹¹ p. 106, Record, Vol. II



x-----x

... ..

e. Causing 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 permit or other concessions.

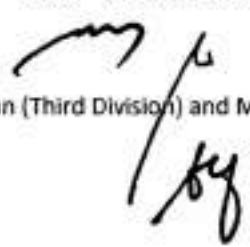
To sustain a conviction for violation of Section 3 (e) of R.A. No. 3019, the prosecution must prove the existence of all the following elements:

- 1. The accused must be a public officer discharging administrative, judicial or official functions;*
- 2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and,*
- 3. That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁹²*

II. The prosecution evidence establish the presence of all the elements of the crime charged.
=====

The Court finds that the prosecution sufficiently proved the presence of all the aforesaid elements of the offense charged in this case.

⁹² Consigna v. People, Sandiganbayan (Third Division) and Moleta, 720 SCRA 350 (2014)



Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-32-

x-----x

First. The parties stipulated during the pre-trial that accused Samuya was the Municipal Mayor of the Municipality of San Isidro, Bohol from 1998 to 2007. He again admitted this fact in his Judicial Affidavit dated October 5, 2018⁹³ and during his cross-examination.⁹⁴

Second. The second element provides the different modes by which a crime may be committed; that is, through manifest partiality, evident bad faith or gross inexcusable negligence.

In order to determine whether any of these circumstances attends a case, the following parameters should be considered:

*There is "manifest partiality" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. 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 want of even slightest care, acting or omitting to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.*⁹⁵

Here, the Information alleges that accused Samuya acted with evident bad faith and manifest partiality when he approved the procurement of 812.5 kilos NBEM-21 Microaid Activator amounting to Php975,000.00 from Akame Marketing International (Akame), represented by his co-accused Apostol, through directing contracting, without (1) first conducting the requisite public bidding as required by R.A. No. 9184 and its

⁹³ at p. 611, Record, Vol. I

⁹⁴ p. 6, TSN, January 10, 2019

⁹⁵ People v. Atienza, 673 SCRA 470 (2012); People v. Uriarte, 511 SCRA 471 (2006)

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-33-

x-----x

IRRs and (2) observing the necessary steps for the conduct of direct contracting, as provided by the Manual of Procedures for the Procurement of Goods and Services (Volume 2). In doing so, he gave unwarranted benefit, privilege and advantage by entering into a contract with Akame for the procurement of the said goods which caused undue injury to the Municipality of San Isidro, Bohol.⁹⁶

In the award of government contracts, the law requires a competitive bidding. A competitive public bidding aims to protect public interest by giving it the best possible advantages through open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.⁹⁷ Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.⁹⁸

To be sure, the requirement of public bidding is not an idle ceremony. It has been aptly said that in our jurisdiction, "pubic bidding is the policy and medium adhered to in Government procurement and construction contracts under existing laws and regulations. It is the accepted method for arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized. Any government contract entered into without the required bidding is null and void and cannot adversely affect the rights of third parties."⁹⁹

In this case, the testimonial and documentary evidence of the prosecution prove that there was no public bidding before accused Samuya approved the procurement for the subject soil activator from Akame through direct contracting.

⁹⁶ Information at pp. 1-2, Record

⁹⁷ Office of the Ombudsman-Mindanao v. Martel, 819 SCRA 131 [2017], citing Alvarez v. People, 653 SCRA 52 (2011)

⁹⁸ Office of the Ombudsman-Mindanao v. Martel, *supra*

⁹⁹ Tatad v. Garcia, Jr., 243 SCRA 436 (1995), citing Bartolome C. Fernandez, Jr., A Treatise on Government Contracts under Philippine Law [rev. ed. 1991], citing Caltex v. Delgado bros., 96 Phil. 368 (1954)

x-----x

To begin with, prosecution witness Ramos testified that the procurement of the subject fertilizer happened during the first quarter of 2004. Around that time, no BAC was created because the BAC was supposed to be constituted only at the last quarter of 2004.¹⁰⁰

Another prosecution witness, retired State Auditor III of the COA, Loquinte, testified that her findings on the procurement of the *NBEM 21 Inoculant Soil Activator* was that the same was procured without the benefit of a public bidding contrary to Section 12 of R.A. No. 9184. Her AOM¹⁰¹ on the matter reflects the absence of public bidding for the procurement of the subject fertilizer.¹⁰²

Lastly, prosecution witness Quiwag likewise testified that being then the assigned municipal accountant of San Isidro, Bohol, she discovered that there was no public bidding conducted on the purchase of *NBEM 21 Inoculant Soil Activator* by San Isidro from Akame. She made the discovery when she reviewed Disbursement Voucher No. 300-04-06-03 dated June 1, 2004¹⁰³ and its supporting documents pertaining to the purchase of the said fertilizer.¹⁰⁴ She noticed that the supporting documents of the said procurement were incomplete because the Abstract of Bid or Canvass and Award were not attached to the said disbursement voucher. Thus, she did not affix her signature thereon to certify as to the completeness and propriety of the supporting documents. She returned the subject disbursement voucher to Romeo P. Torralba, Municipal Agrarian Officer (MAO), with the advice to complete the supporting documents. However, Torralba did not respond to her advice.¹⁰⁵

Indeed, accused Samuya himself admitted that no public bidding was conducted for the procurement of the subject fertilizer because the BAC was not yet constituted at that

¹⁰⁰ pp. 18-21, TSN, July 10, 2018

¹⁰¹ Exhibit T at p. 536, Record

¹⁰² pp. 14-15, TSN, August 8, 2018

¹⁰³ Exhibit R at p. 371, Record

¹⁰⁴ pp. 442-445, Record

¹⁰⁵ pp. 441-447, Record

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'MS' with a large flourish above it, and the initials 'MS' are written below it.

x-----x

time;¹⁰⁶ and that he merely relied on the recommendation of Asoy to evade criminal responsibility.

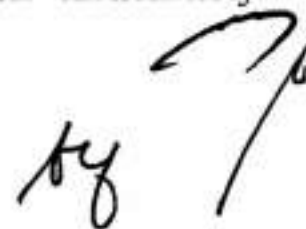
It must be stressed however, that even prior to the effectivity of R.A. No. 9184 and its IRRs, the local government units were already mandated by R.A. No. 7160 (The Local Government Code of 1991), which took effect on October 10, 1991 to conduct public bidding in their procurement of goods and services. Section 369 thereof provided that negotiated purchase may be resorted to where public bidding has failed for two (2) consecutive times. To be sure, accused Samuya was serving his second term as mayor when the subject procurement was made. Thus, he knew, or ought to have known, the strictures regarding government procurement.

The evidence for the prosecution also duly establish that accused Samuya signed the disbursement voucher for the payment of the subject fertilizer despite the fact that the designated municipal accountant at that time did not sign it.

Prosecution witness Quiwag, the designated municipal accountant at the time material to this case, testified that she did not sign the subject disbursement voucher because the Abstract of Bids or Canvass and Award were not attached thereto and even gave advice to complete the supporting documents. However, this advice was not heeded. His claim that he did not review the said disbursement voucher anymore because he completely relied on the recommendation of Asoy and the DA-RFU VII and the Office of Representative Cajes and the BAC was not yet constituted at that time is patently feeble.

It bears underscoring that the recommendation of Asoy only pertained to the mode of procurement of the subject fertilizer. It did not refer to the unsigned disbursement voucher. Even if it did, then mayor, accused Samuya was duty-bound to ascertain that all requirements must have been complied with before he signed the disbursement voucher. Obviously, he did not. He blindly signed the disbursement voucher without the signature of Quiwag which undeniably

¹⁰⁶ pp. 6-7, TSN, January 10, 2019

A handwritten signature in black ink, appearing to be the initials 'by' followed by a stylized flourish or mark.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-36-

x-----x

demonstrates "a state of mind affirmatively operating with furtive design or for ulterior purposes."

The above established facts unmistakably demonstrate that accused Samuya acted with manifest partiality in favor of Akame.

Third. The act of accused Samuya in approving the procurement of the subject soil activator and the payment therefor gave unwarranted benefits, preference and advantage to Akame.

It should be noted that there are two (2) ways by which Section 3 (e) of RA 3019 may be violated — the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense,¹⁰⁷ an accused may be charged under either mode or both.¹⁰⁸ The use of the disjunctive "or" connotes that the two (2) modes need not be present at the same time. In other words, the presence of one would suffice for conviction.¹⁰⁹

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized¹¹⁰ or without justification or adequate reason.¹¹¹ "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.¹¹² "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.¹¹³

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit

¹⁰⁷ Sison v. People, *supra*, citing Santiago v. Garchitorena, 228 SCRA 214 (1993)

¹⁰⁸ Sison v. People, *supra*, citing Cabrera v. Sandiganbayan, 441 SCRA 377(2004)

¹⁰⁹ Sison v. People, *supra*, citing Quibal v. Sandiganbayan, 244 SCRA 224 (1995)

¹¹⁰ Sison v. People, *supra*, citing Webster, Third International Dictionary (Unabridged), p. 2514

¹¹¹ Sison v. People, *supra*, citing Words and Phrases (Permanent Edition), Vol. 43-A 1978, Cumulative Annual Pocket Part, p. 19.

¹¹² Sison v. People, *supra*, citing Webster, Third International Dictionary (Unabridged), p. 30.

¹¹³ Sison v. People, *supra*, citing Webster, Third International Dictionary (Unabridged)p. 1787



x-----x

to another, in the exercise of his official, administrative or judicial functions.¹¹⁴

Here, accused Samuya gave unwarranted benefit to Akame for the supply of the soil activators because the procurement thereof was done without a public bidding. Assuming that direct contracting may be resorted to, accused Samuya failed to observe the legally prescribed procedure for the direct contracting method.

Section 48.1 of IRR-A of R.A. No. 9184, the governing rules and regulations at the time material to this case, allows direct contracting as an alternative mode of procurement. Thus:

Section 48.1. Subject to the prior approval of the head of the procuring entity or his duly authorized representative, however, and whenever justified by the conditions provided in RA 9184, the procuring entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided under its IRR-A such as direct contracting.

However, there are mandatory steps to be observed before resort to this method may be made. The procedure for the use of alternative method of direct contracting is found in Section 50 of the IRR-A of R.A. No. 9184 which reads:

Section 50. Direct contracting, as an alternative method of procurement, does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or pro-forma invoice together with the condition of sale, which may be accepted immediately or after some negotiation.

¹¹⁴ Sison v. People *supra*



x-----x

Moreover, the Manual of Procedure for the Procurement of Goods and Services (Volume 2) provides for the steps to be taken in the conduct of direct contracting, to wit:

1. *The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.*
2. *For information purposes, the BAC, through the BAC Secretariat, shall post the notice direct contracting in the following:*
 1. *The PhilGEPS;*
 2. *The website of the Procuring Entity and its electronic procurement service provider, if any; and*
 3. *Any conspicuous place in the premises of the Procuring Entity.*
3. *The BAC, through the TWG and the BAC Secretariat, prepares the Request for Quotation, technical specifications and draft contract in accordance with the procedures laid down in this Manual, in the IRR-A and in the PBDs.*
4. *The BAC, through the Secretariat, identifies the supplier from whom the goods will be procured.*
5. *If a pre-procurement conference is required or deemed necessary, as previously discussed in this Manual, the BAC holds such a conference. If a pre-procurement conference is held, the participants should confirm the*

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'MB' with a large flourish above it, and there are additional scribbles to the right.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-39-

x-----x

existence of the conditions required by law for procurement through Direct Contracting.

6. *The BAC, through the Secretariat, posts for information purposes the Request for Quotation for a period of seven (7) calendar days prior to sending the Request for Quotation, in:*

1. *The PhilGEPS;*

2. *The website of the Procuring Entity and its electronic procurement service provider, if any; and*

3. *Any conspicuous place in the premises of the Procuring Entity.*

7. *The BAC sends the Request for Quotation to the selected supplier. If necessary, negotiations are conducted to ensure that the Government is able to procure the goods at the most advantageous terms.*

8. *The BAC proceeds with contract signing and approval.*

In this case, accused Samuya miserably failed to follow the above steps. His defense that the BAC was not yet constituted at that time, is certainly puerile. All he had to do was to constitute the BAC and let the BAC perform its duties defined in the law. Notably, the accused offered nary an explanation on why there was an immediate need for the purchase of the said fertilizers.

Moreover, the prosecution evidence shows that accused Apostol is not an exclusive distributor of J.P. BYM NBM Food Mix Manufacturing. Tetsuo Kamekawa, President of J.P. BYM Food Mix Manufacturing and Export, issued a sworn statement to this effect. This shows that the earlier certification submitted by Asoy that accused Apostol is the sole distributor of the fertilizer in issue is false. For his

A handwritten signature in black ink, appearing to be 'Asoy', with a large, sweeping flourish extending upwards and to the right.

Decision

Case No. SB-17-CRM-1729
People vs. Samuya and Apostol

-40-

x-----x

non-compliance with the above steps, accused Samuya gave Akame unwarranted benefit, preference and advantage. He hastily purchased the soil activator from Akame without obtaining different quotations from other suppliers to secure more favorable terms for the municipality of San Isidro. This shows his manifest bias or preference for Akame over the other suppliers.

WHEREFORE, the Court finds accused Requillo Suaybaguio Samuya **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 3 (e) of R.A. No. 3019, as amended. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.

Since the Court has not acquired jurisdiction over the person of accused EDILBERTO L. APOSTOL because he remains at-large, the case against him is hereby ordered archived, the same to be revived upon his arrest. Let an *alias* warrant of arrest be issued against the said accused.

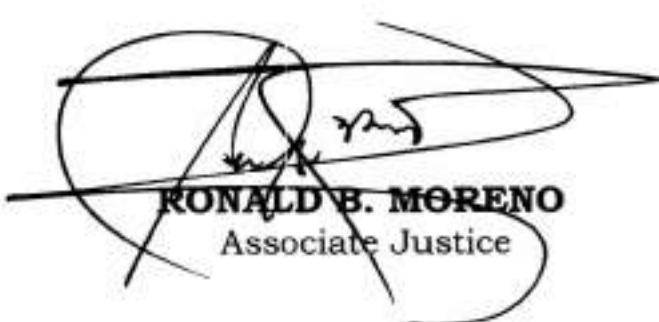
SO ORDERED.

Quezon City, Metro Manila.


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

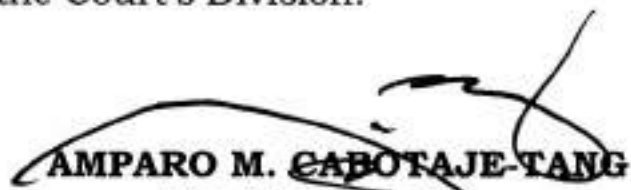

BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice

x-----x

A T T E S T A T I O N

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


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson, Third Division

C E R T I F I C A T I O N

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

by