EN BANC
Agenda for June 23, 2020

G.R. Nos. 233155-63 ***(Jose Tapales Villarosa v. People of the Philippines)***
Promulgated: June 23, 2020
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DISSENTING OPINION

LAZARO-JAVIER, *J.*:

On petitioner's **second** motion for reconsideration, and after the Court had denied petitioner's **first** motion for reconsideration **with finality** and directed that no further pleadings or motions shall be entertained in this case, and entry of judgment be issued immediately,[1] the *ponencia* now decides to acquit petitioner Jose Tapales Villarosa of **nine (9) counts** of violation of Section 3(e), Republic Act (RA) 3019.[2]

I respectfully dissent.

THE FACTS

The Sandiganbayan *Decision* which the *ponencia* reverses and sets aside bears the facts, *viz*:

> The following narration of facts is based on the documentary and testimonial evidence found on record, as well as on the stipulations made between the parties:
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> The controversy started when private complainant Soledad, PENRO of Occidental Mindoro, issued several CDOs to the quarry operators from the Municipality of San Jose who failed to present the necessary extraction permit issued by the Governor of the said province. These quarry operators were found to have been conducting quarrying activities within the municipality by virtue of the Extraction Permits issued by its then Mayor, herein accused.
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> When the accused learned about this, he wrote a letter dated 23 May 2011, informing private complainant Soledad that the Municipality of San

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[1] Resolution dated November 22, 2017.
[2] Resolution dated July 17, 2018. Notably, instead of simply tackling the injustice of dismissing petitions for review on certiorari from judgments of conviction from the Sandiganbayan through minute resolutions, as was done in the case at bar, to which I wholeheartedly concur, page 6 of the Resolution *de facto* discussed the merits of petitioner's second motion for reconsideration by expressing therein that "the need to dispose this case through a decision or unsigned resolution is bolstered by the **apparent persuasive merit of Villarosa's defense.**" The next pages of the Resolution should give any reasonably thinking lawyer the clear impression that, **even before the prosecution on appeal is heard, an acquittal is already forthcoming.** This very real prospect then, has come to pass now.

Jose will not obey the CDOs until the Provincial Government observes the proper legal process of conduction public hearings and complying with the publication requirements provided under the LGC for the proposed amendments of the pertinent provisions of the Provincial Tax Ordinance. Furthermore, he insists that the inherent powers vested upon the local government unit to have substantial control over its local affairs be respected.

In his letter dated 26 May 2011, private complainant Soledad tried to explain that none of the provisions of the proposed ordinance that will amend Provincial Tax Ordinance No. 2005-004 was applied. He stated that the CDOs were justified under Section 65 of the existing Provincial Tax Ordinance No. 2005-004 adopted by the Sangguniang Panlalawigan as per SP Resolution No. 11, Series of 2005 dated 07 February 2005. Section 65 thereof mandates that such permit to extract is exclusively issued by the Provincial Governor upon recommendation of the Environment and Natural Resources Office. This is consistent with Section 138 of the LGC which confirms that only the Provincial Governor has the sole and exclusive authority to grant permit to extractors of sand and gravel within the province.

The accused wrote another letter dated 23 August 2011, addressed to the members of the Sangguniang Panlalawigan of the Province of Occidental Mindoro. Here, he expressed his objection to SP Resolution No. 128, which adopted the amendments to Provincial Tax Ordinance No. 2005-004, deleting the authority of the Municipal Government to enforce its own regulatory powers provided under the LGC. Accordingly, he emphasized, the local government unit has the power to organize its own MENRO, which necessarily carries the authority to impose policies on the matter. He declared that the municipality will religiously remit the shares due to the province and the barangay, but it will only honor the original provisions of Provincial Tax Ordinance No. 2005-004, allowing the payment of the permittees to be done through its MTO.

The directive of the CDOs went unheeded. Thus, on 04 October 2011, private complainant Soledad filed a Complaint for Usurpation of Authority, Violation of Section 138 of R.A. 7160 (Local Government Code), Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of R.A. No. 6713 (Code of Conduct and Ethical Standards), against herein accused before the Office of the Ombudsman ("Ombudsman," for brevity). On 19 March 2012, the Ombudsman issued a Resolution finding probable cause for ten (10) counts of violation of Section 3 (e) of R.A. No. 3019 and directed the filing of the corresponding Informations against the accused.

THE REASONS

First. The *ponencia* rules that:

Alas, even assuming for the sake of argument that petitioner may be held accountable for the issuance of the subject extraction permits, such is not for the offense charged in the present Informations, as the acts being complained of do not constitute the elements of the crime presently charged. **In fact, in his complaints filed with the Ombudsman, complainant Soledad accused petitioner not of violation of Section 3(e) of RA 3019**

> **but of Usurpation of Authority, Violation of Section 138 of RA 7160, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of RA 6713; and Soledad presented evidence to support his accusations. However, the Ombudsman, instead chose to file the present Informations for petitioner's alleged violation of Section 3(e) of RA 3019.**[3]

I beg to disagree with the *ponencia*'s statements that the Office of the Ombudsman is hostage to complainant's designation of the offense which respondent public official should be charged with, *and* that the proper offense for the acts committed by petitioner here is Usurpation of Authority and not violation of Section 3 (e) of RA 3019.

As regards the first statement, the truth is that complainant's opinion in this regard does not bind the Office of the Ombudsman. It is the latter, not the complainant who determines what offense to charge an accused with.

The doctrine has remained unchanged through several decades now – the public prosecutor has the quasi-judicial prerogative to determine what crime should be filed in court and who should be charged therefor; he or she always assumes and retains full discretion and control of the prosecution of all criminal actions.[4] ***Arroyo v. Department of Justice***[5] reiterates this doctrine:

> The office of a prosecutor does not involve an automatic function to hold persons charged with a crime for trial. Taking the cudgels for justice on behalf of the State is not tantamount to a mechanical act of prosecuting persons and bringing them within the jurisdiction of court. Prosecutors are bound to a concomitant duty not to prosecute when after investigation they have become convinced that the evidence available is not enough to establish probable cause. This is why, in order to arrive at a conclusion, the prosecutors must be able to make an objective assessment of the conflicting versions brought before them, affording both parties to prove their respective positions. **Hence, the fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a prima facie case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of a corresponding information and having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party or any other party for that matter.** Emphatically, the right to the oft-repeated preliminary investigation has been intended to protect the accused from hasty, malicious and oppressive prosecution. In fact, the right to this proceeding, absent an express provision of law, cannot be denied. Its omission is a grave irregularity which nullifies the proceedings because it runs counter to the right to due process enshrined in the Bill of Rights.

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[3] Decision, p. 14.
[4] *Leviste v. Alameda*, 640 Phil. 620 (2010); *Insular Life Assurance v. Serrano*, 552 Phil. 469 (2007); *Potot v. People*, 432 Phil. 1028 (2002).
[5] 695 Phil. 302 (2012).

In any event, petitioner was not and could not have been prejudiced at all by the divergence of opinion between the complainant and the Office of the Ombudsman as to the nature and designation of the offense with which to charge petitioner. What matters are the facts recited in the Information because these facts determine the defense that an accused would have to raise and the offense that an accused may be convicted of. As we held in ***Consigna v. People***:[6]

> Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information. As held in People v. Dimaano:
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> > For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. **What is controlling is not the title of the complaint, nor the designation of the offense charge or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.** The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense....
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> > As early in United States v. Lim San, this Court has determined that:
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> > **From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. . . . . That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth.** If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. **The designation of the crime** by name in the caption of the information from the facts alleged in the body of that pleading **is a conclusion of law made by the fiscal**. In the designation of the crime the accused never has a real interest until the trial has ended. **For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines**

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[6] 731 Phil. 108 (2014).

> **what the name of the crime is and fixes the penalty therefor.** It is the province of the court alone to say what the name of the crime is or what it is named. . . (Emphases added)

The *ponencia*'s second statement that petitioner could be held guilty only of the lesser offense of Usurpation of Authority or Official Functions under Article 177 of *The Revised Penal Code*, is, with due respect, erroneous.

It is not out of the ordinary for one who usurped the functions of another in the context of the elements of Article 177 to be also charged with and found guilty of violation of Section 3(e) of RA 3019 if the usurpation was done with manifest partiality, evident bad faith or gross inexcusable negligence and resulted in undue injury to any private or public party or unwarranted benefit, advantage or preference to any private party.

This was the situation in ***Tiongco v. People***[7] where the accused was charged with these two (2) offenses. Tiongco signed disbursement vouchers and checks pertaining to the retirement gratuity of an employee of the Philippine Crop Insurance Corporation despite her lack of authority to do so. Like herein appellant, Tiongco argued she was of belief that she had authority to sign the documents and her actions were indicative of good faith. Despite Tiongco's defense of good faith, the Court nevertheless found her guilty as charged.

Tiongco held that there is no incompatibility between the elements of Usurpation of Authority or Official Functions and those of violation of Section 3(e) of RA 3019, and depending on the facts proved beyond reasonable doubt, an accused may be found guilty of these two (2) crimes. Thus:

> The petition has no merit and should be denied.
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> **Usurpation of Official Functions**
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> Article 177 of the Revised Penal Code defines Usurpation of Official Functions:
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> ....
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> This provision actually speaks of two ways of committing the offense under Article 177. Tiongco is charged with Usurpation of Official Functions. As established by this Court in Ruzol v. Sandiganbayan, usurpation of official functions is committed when "under pretense of official position, [a person] shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so."
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> To put simply, Usurpation of Official Functions has the following elements:

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[7] G.R. Nos. 218709-10, November 14, 2018.

- The offender may be a private person or public officer.
- The offender performs any act pertaining to any person in authority or public officer of the Philippine government, any of its agencies, or of a foreign government.

- The offender performs the act under pretense of official function.

- The offender performs the act without being legally entitled to do so.

First, it has been conclusively established that Tiongco was a public officer at the time of the commission of the crime. She herself admitted such in her Counter-Affidavit dated 10 October 2006, where she stated that she was then "currently the Acting Senior Vice President of the [PCIC] with a salary grade of 27."

Second, she performed an act that rightfully pertained to the President of PCIC as head of the agency, and not to her as Acting Senior Vice President.

Based on evidence she herself presented, Tiongco's designation as Acting Senior Vice President, Regional Management Group, carried with it the following responsibilities:

....

None of the functions pertain to approving the release of retirement gratuity.

While Tiongco's claim that Barbin "asked for help" in running the agency, which was the reason for her designation as Acting Senior Vice President, **she has not shown any specific assignment or conferment of authority related to approving release of retirement benefits. Meanwhile, OMB MC No. 10 specifically states:**

In the event the certification presented states that the prospective retiree has a pending case, the responsibility of determining whether to release his retirement benefits, as well as the imposition of necessary safeguards to ensure restitution thereof in the event retiree is found guilty, rests upon and shall be left at the sound discretion of the head of the department, office or agency concerned.

Hence, the assignment cannot be presumed or inferred from the general statement in number 8 of the above-quoted list of responsibilities. It must be specifically granted in light of the explicit mandate of OMB MC No. 10 and that conferment of authority must be clearly shown. Tiongco has not done so.

Third, that Tiongco signed Estacio's disbursement voucher "under pretense of official function" is clear. Tiongco argues that she believed she had the authority to sign and that her acts "are indicative of good faith."

The Court, in Ruzol, recognized good faith as a defense in prosecutions for usurpation of official functions. However, the Court also ruled that:

It bears stressing at this point that in People v. Hilvano, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. **The term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious."** Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts.

Tiongco cannot claim good faith because it has been established that she had "knowledge of circumstances which ought to put [her] upon inquiry." She admitted that **she saw the notation "no pending cases except OMB-0-00-0898 and 0-00-1697"** in Estacio's request for clearance.

Tiongco also admitted that **she was well aware of the provisions of OMB MC No. 10**. She said she did it because Barbin was always absent, an admission that she knew the authority was vested in the PCIC President. **She nonetheless arrogated such authority unto herself, justifying her action with urgency of the situation bringing Section 20.4 of the PCIC CASA into effect.** However, even acting under that authority was wrong, as will be discussed later.

Next, PCIC Board Resolution No. 2006-012 states:

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While OMB MC No. 10 requires only certification, the PCIC Board required a clearance from the Office of the Ombudsman. In other words, the approval of Estacio's retirement was conditional – "subject to" fulfillment of the requirements the Board of Directors set. **Since Estacio only presented a certification, which stated that he had two pending cases, he had not met the requirements of the Board of Directors.**

In cases of such non-fulfillment, OMB MC No. 10 gives the discretion to allow a prospective retiree to retire and receive benefits only to the "head of the department, office or agency." Thus, in cases where the head is absent or the agency currently has no president, the authority is granted to whoever is designated officer-in-charge or acting as head of agency, not to the one designated merely as Acting Senior Vice President.

Fourth, Tiongco was legally not entitled to act on the release of Estacio's retirement gratuity. As discussed above, the authority was vested in Barbin as head of PCIC under OMB MC No. 10.

Tiongco, however, argues that she acted pursuant to PCIC's CASA, Section 20.4, which states that in case the President is absent or an urgent matter needs his signature, "any two Class A signatories or any Class A signatory signing with any Class B signatory may approve/sign the transaction in behalf of the President."

As will be discussed later, **the absence of Barbin was not such that he could no longer exercise his discretionary powers. He continued to perform his functions**, although he admitted that he was not physically present at the PCIC premises at times. He, however, testified that he regularly went to the PCIC office during that period.

Further, the release of Estacio's retirement gratuity was not an urgent matter. At that time, he was not yet entitled to its release pending compliance with the Board's requirement of an Ombudsman clearance.

Based on the foregoing, the undeniable conclusion is that Tiongco is guilty of the crime of Usurpation of Official Functions.

Violation of Section 3(e) of R.A. 3019

In Rivera v. People, the Court discussed the two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions:

x x x (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference.

It is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.

The elements of the offense are as follows:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

The prohibited act of either causing undue injury or giving unwarranted benefits, advantage, or preference may be committed in three ways: through (1) manifest partiality, (2) evident bad faith, or (3) gross inexcusable negligence.

In People v. Atienza, the Court defined these elements:

x x x. 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. **"Evident bad faith"** contemplates a state of mind affirmatively operating

with furtive design or with some motive of 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 inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

The Court finds that Tiongco acted with manifest partiality and evident bad faith in this case.

Manifest Partiality

Tiongco's partiality is clear. Her willingness to disregard the PCIC Board's directive and OMB MC No. 10 in order to grant Estacio's request speaks of such partiality. Her actions all point to **facilitating whatever course of action would be favorable to Estacio.**

The Court also finds, in this case, an inclination by Tiongco to take advantage of Barbin's absence from the premises of PCIC to accommodate Estacio, who is, not insignificantly, her former boss. Tiongco made her own determination and characterized Estacio's request for retirement gratuity as urgent, knowing that doing so, taken with Barbin's absence, would trigger the mechanism under Section 20.4 of the PCIC CASA that would allow her and another Class "A" signatory (in this case, Mordeno, who had fled and left her to suffer the consequences) to sign on the request.

Evident Bad Faith

In Antonino v. Desierto, the Court held that "[b]ad faith per se is not enough for one to be held liable under the law; bad faith must be evident. **Bad faith does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will.**"

As discussed above, **Tiongco's bad faith was clearly exhibited in her willful disregard for OMB MC No. 10 and for the requirements of the PCIC Board.** It is **clear as well that she knowingly encroached on Barbin's authority to approve the payment of retirement gratuity** to one who has pending cases before the Ombudsman.

She herself admitted that she was faced with a difficult question of law. Yet, instead of seeking guidance from PCIC's legal counsel or from Barbin himself, she simply decided on her own and took her own course of action that did not conform to established rules.

Moreover, her failure to ensure restitution from Estacio in case he is found guilty in his pending cases is clearly a breach of her sworn duty as a government official tasked with safeguarding the interest of the service.

Undue Injury or Unwarranted Benefit, Advantage or Privilege

For violation of Section 3(e) of R.A. 3019, "what contextually is punishable is the act of causing undue injury to any party, or giving to any private party of unwarranted benefits, advantage or preference in the discharge of the public officer's functions."

The Court has clarified that "the use of the disjunctive word 'or' connotes **that either act of (a) 'causing any undue injury to any party, including the Government'; [or] (b) 'giving any private party any unwarranted benefits, advantage or preference,' qualifies as a violation of Section 3(e) of R.A. 3019**, as amended." Thus, an accused "may be charged under either mode or both, x x x. In other words, the presence of one would suffice for conviction."

The Court has treated undue injury in the context of Section 3(e) of R.A. 3019 to have "a meaning akin to" the civil law concept of "actual damage," to wit:

Undue injury in the context of Section 3(e) of R.A. No. 3019 **should be equated with the civil law concept of "actual damage."** Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. **Its existence must be proven as one of the elements of the crime.** In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. **Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.**

In this case, **undue injury to the government was caused by the unauthorized disbursement** of ₱1,522,849.48 in public funds, **in that, first, the person who approved said disbursement did not have the authority to do so, and second, because the beneficiary was not yet entitled to the release of the retirement gratuity**.

As such, **Estacio also enjoyed an unwarranted benefit because non-compliance with the requirements** under OMB MC No. 10 **disqualified him to receive his retirement gratuity at that time**. On top of that, **Estacio was given said unwarranted benefit through Tiongco's usurpation of Barbin's official functions** and the violation of OMB MC No. 10.

Estacio's former position afforded him access to the highest officials of the agency, the same ones who were in a position to know how to work through PCIC's processes. Tiongco's overreach was obviously targeted to expedite the process in favor of the former president.

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Moreover, it will not change the ruling of the Court since it has been already determined that the elements of violation of Section 3(e) of R.A. 3019 were proven in this case. (Emphases added)

Here, the identical wording of the nine (9) Informations, except as to the circumstances of the private party benefitted by petitioner's usurpation of authority, states:

That on or about (24 August 2010); in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and

committing the crime in relation to his office, did then and there willfully, criminally and with evident bad faith, give unwarranted benefits, advantage or preference to private party, by unlawfully issuing an Extraction Permit to (e.g. GemCI-IB Maker), contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from mid take advantage of the privilege to extract quarry resources without legal authority and official support.

The *ponencia* does not have to bother with the crime of Usurpation of Authority or Official Functions because petitioner was not charged with this crime or convicted thereof. The charge is for violation of Section 3(e) of RA 3019, which each of the Informations so clearly alleges and the pieces of evidence establish beyond reasonable doubt.

Second. Section 3(e) of RA 3019 states:

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

x x x x

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

Sabio v. Sandiganbayan[8] likewise penned by then Associate Justice now Chief Justice Diosdado M. Peralta, and concurred in by Justice Mario Victor "Marvic" F. Leonen, now retired Justice Andres Bernal Reyes, Jr., Justice Ramon Paul L. Hernando, and Justice Henri Jean Paul B. Inting, held:

To constitute a violation of Section 3(e) of RA 3019, the following elements should be proved:

1. The offender is a public officer;

2. The act was done in the discharge of the public officer's official, administrative, or judicial functions;

3. The act was done through manifest partiality, evidence bad faith, or gross inexcusable negligence; and

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[8] G.R. Nos. 233853-54, July 15, 2019.

> 4. The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

I took the liberty of using ***Sabio***'s sequence of analysis and importing the very words in ***Sabio*** in determining petitioner's criminal liability.

The first element – the offender is a public officer – was established, in that the prosecution and the defense stipulated that petitioner is a public officer.

The second element is also present, in that petitioner issued the assailed extraction permits as Mayor of San Jose, Occidental Mindoro.

The third element is, likewise, present. In several cases, the Court has held that this element may be committed in three (3) ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.

Explaining what "partiality," "bad faith" and "gross negligence" mean, ***Sabio*** ruled:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[9]

In ***Sabio***, the Court affirmed the conviction of then PCGG Chairperson Sabio for violation of Section 3(e) of RA 3019 for leasing eleven (11) vehicles on behalf of PCGG without undertaking the proper procurement process. As held, Section 10 of RA 9184, the *Government Procurement Reform Act,* mandated all government procurement to be done through competitive bidding, except as provided for in Article XVI of the same law. The words of the statute were clear, plain, and free from ambiguity, thus, must be given their literal meaning and applied without attempted interpretation. Applying the principle of *verba legis,* ***Sabio*** had this to say:

> **Petitioner clearly disregarded the law meant to protect public funds from irregular or unlawful utilization.** In fact, **petitioner admitted**

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[9] Supra note 8.

> **that the lease agreements were not subjected to public bidding, because it is their position that the PCGG is exempted from the procurement law** and that **they were merely following the practice of their predecessors. This is totally unacceptable**, considering that the PCGG is charged with the duty, among others, to institute corruption preventive measures. As such, they should have been the first to follow the law. Sadly, however, they failed.

Indeed, Sabio's act of violating the clear command of the law unmistakably reflected "a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will," indicative of bad faith.

Here, there was bad faith on the part of petitioner in issuing extraction permits and allowing private persons to quarry resources based on the following: (1) for not following the clear, unmistakable, and elementary rule in Section 138 of the *Local Government Code* vesting the power to issue extraction permits and allow private persons to extract quarry resources exclusively in the Provincial Governor; and (2) subjecting State resources to illegal private gain of the private persons so allowed.

The extraction permits were awarded to private persons by petitioner when he did not have the power and authority to do so. This is a clear violation of Section 138 of the *Local Government Code*. More, it was shown that his defiance of Section 138 was blatant, overt, and undisguised. He knew his act was contrary to Section 138 but he persisted in doing so.

Petitioner clearly disregarded the law meant to protect quarry resources from irregular or unlawful extraction and utilization. In fact, petitioner admitted that he issued the extraction permits thinking that he was not subjected to Section 138, because it was his position that as Municipal Mayor he was exempt from Section 138 and that he was merely following the practice of precedents. This is totally unacceptable, considering that the Municipal Mayor is charged with the duty, among others, to champion and abide by the provisions of the *Local Government Code*. As such, he should have been the first to follow the law.

In the inimitable prose of his *Concurrence*, the learned Justice Alfredo Benjamin S. Caguioa pounces on one of the sentences above-stated, *i.e.*, *[i]n fact, petitioner admitted that he issued the extraction permits thinking that he was not subjected to Section 138, because it was his position that as Municipal Mayor he was exempt from Section 138 and that he was merely following the practice of precedents*, to support the ruling that petitioner acted in good faith.

With due respect, **the language of this sentence merely followed the language in *Sabio* where the Court in fact found the accused therein guilty beyond a reasonable doubt of the same exact crime charged in the instant case**. To stress, ***Sabio*** held:

> **Petitioner clearly disregarded the law meant to protect public funds from irregular or unlawful utilization.** In fact, **petitioner admitted that the lease agreements were not subjected to public bidding, because it is their position that the PCGG is exempted from the procurement law** and that **they were merely following the practice of their predecessors. This is totally unacceptable**, considering that the PCGG is charged with the duty, among others, to institute corruption preventive measures. As such, they should have been the first to follow the law. Sadly, however, they failed.

There is **more to the present case** than what was proved in ***Sabio***. Verily, at the time of the issuance of the extraction permits, **petitioner was aware that the private persons who were the beneficiaries of his illegal permits continued quarrying resources despite the imposition of cease and desist orders.** This fact bolstered the presence of the fourth element, that there was unwarranted benefit, advantage or preference given to these private persons.

In ***Sabio***'s succinct **conclusion,** "as correctly ruled by the Sandiganbayan, **petitioner's acts unmistakably reflect 'a dishonest purpose or some moral obliquity and conscious doing of a wrong**: a breach of sworn duty through some motive or intent or ill will.'"

I respectfully stress that here, we should abide by what the Court has said and done in ***Sabio***. There should only be one and the same rule for the goose and the gander. I am one with the judiciary's motto that "let us be united and let us follow the rules."

Let me address petitioner's defense.

Petitioner argues that he acted in good faith when he issued the extraction permits. The applications for extraction permit had undergone legitimate process upon approval from the Municipal Environment and Natural Resources (MENRO).[10] Thereafter, the applications were forwarded to the Municipal Administrator who recommended its approval to him as then mayor. The taxes and fees paid by the quarrying applicants have already been remitted to the Provincial Government of Occidental Mindoro.[3] He did not know that Cease and Desist Orders were issued by the Provincial Government because he was not furnished copies of the same.[11]

The *ponencia* agrees with petitioner that he was not guilty of bad faith when he issued the questioned permits because he "mistakenly" believed that under the *Local Government Code*, he wielded authority to issue them. In any case, petitioner never gained anything from the issuance of the extraction permits nor did he unduly favor the applicants in the issuance of the same.

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[10] *Rollo*, pp. 23-25.
[11] *Id.* at 29.

Again, I beg to disagree.

Petitioner **could not have been "mistaken"** that he wielded authority to issue extraction permits. **His attention has been precisely called to his lack of power to do so.** He confessed having knowledge thereof when he wrote a letter arguing otherwise. He had been put on actual notice. These facts have been settled with finality by the Sandiganbayan, and these factual findings tally squarely with the evidence on record. None of the exceptions to deviate from the factual findings of the Sandiganbayan has been alleged and established to apply here.

Petitioner's protestations against the law **do not amend the law and do not grant him** the power and authority to issue extraction permits. He was and still is bereft of power to confer power and authority upon himself. His only duty was to enforce the law. He is not a legislator. Neither is he an arbiter of the divergence of opinions – his opinion and the opinion of the rest of the world so to speak – as he is duty-bound to respect the law, especially when doing so makes the playing field level, and not doing so, as in the present case, favored private persons, the beneficiaries of his unwarranted beneficence.

In any event, **assuming without admitting** that petitioner was not given by any other party actual notice of the breadth of his powers vis-à-vis extraction permits, I must stress that the term **"good faith"** is used to describe "honesty of intention, and ***freedom from knowledge of circumstances which ought to put the holder upon inquiry; together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious***."[12]

Petitioner here clearly failed to demonstrate that he acted in good faith in issuing subject extraction permit, because he could not *but have had knowledge of circumstances* unmistakably pointing to the fact that he utterly had no power to issue extraction permits as such was vested exclusively in the provincial governor. At the very least he was reckless; but then again, prescinding from the evidence before the Sandiganbayan, and the latter's factual findings, he **intentionally violated** Section 138 of RA 7160, the *Local Government Code*, that was his sworn-duty to abide by.

The statutes are clear and unmistakable. The statutes are to him elementary rules of conduct, *because as a local chief executive it was his duty to know and enforce them.*

Section 138 of the *Local Government Code* provides that the issuance of extraction permits is **exclusively** vested in the provincial governor pursuant to a promulgated Sangguniang Panlalawigan ordinance, thus:

> SECTION 138. Tax on Sand, Gravel and Other Quarry Resources. — The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand,

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[12] See *Ruzol v. Sandiganbayan*, 709 Phil. 708 (2013).

> gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.
>
> The permit to extract sand, gravel and other quarry resources shall be issued ***exclusively by the provincial governor***, pursuant to the ordinance of the sangguniang panlalawigan.

Section 43 of RA 7942, the *Philippine Mining Act*, embodies in substance a similar provision, thus:

> Section 43. Quarry Permit. - Any qualified person may apply to the provincial/city mining regulatory board for a quarry permit on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials that are extracted by quarrying from the ground. The provincial governor shall grant the permit after the applicant has complied with all the requirements as prescribed by the rules and regulations x x x (Emphasis supplied)

Relevantly, the Sangguniang Panlalawigan of Occidental Mindoro promulgated Provincial Ordinance No. 2005-004, stating:

> Section 65. Administrative Provisions.
>
> a. Permit to extract and dispose of materials applied. No person, partnership or corporation or government entity or private owner shall be allowed to take, extract, or dispose of any resources from public or private land or from the beds of public waters within the territorial jurisdiction of the province, unless authorized by a permit exclusively issued by the Provincial Governor, upon recommendation of the Environment and Natural Resources Office. (Emphasis and underscoring supplied)

A plain reading of these provisions clearly shows that the only way for quarrying operators to legally extract quarrying resources was upon securing an extraction permit **exclusively** from the Provincial Governor, and in this case, the Governor of Occidental Mindoro. There was and still is no room for the interpretation of these laws. The Municipality of San Jose, through petitioner as then Mayor, did not have the authority to issue extraction permits. Petitioner effectively bypassed the provincial government. He arrogated to himself the exclusive authority of the Provincial Governor to grant extraction permits, in clear contravention of the express provisions of the *Local Government Code*, the *Philippine Mining Act*, and Occidental Mindoro's Provincial Ordinance No. 2005-004.

The result of petitioner's issuance of extraction permits was not a simple case of having done something that had no impact elsewhere. For by

issuing the extraction permits, petitioner gave unwarranted benefits to the beneficiaries who conducted quarrying operations that were illegal from the start, and continued to do their business on the basis of illegally issued permits and *in defiance of cease and desist orders*.

To emphasize, petitioner cannot feign ignorance of the law as he was San Jose's chief executive. He assumed *not just* an ordinary post but one that *imposes greater responsibility in the knowledge of the law, being the person who actually executes and enforces it*. As provided under Section 4 of RA 6713,[13] a public officer shall at all times refrain from doing acts contrary to law. Petitioner as public officer is expected to uphold the law, not act against it, and to do so, he *could not have but known* the law he is to execute, most especially the *Local Government Code* which he is presumed not only to know but in fact to master as his principal rule book.

Again, petitioner's situation is **no different from** the situation we dealt with and the person whom we **adjudged guilty** in ***Ferrer v. People***, penned by now Senior Associate Justice Estela M. Perlas-Bernabe and concurred in by now retired Senior Associate Justice Antonio T. Carpio and Justice Caguioa:[14]

> Ferrer's arguments are untenable. As the SB correctly pointed out, even if a development clearance was belatedly granted to OCDC, the construction had already reached 75% completion by then. **As the IA Administrator, Ferrer is presumed aware of the requirements before any construction work may be done on the Intramuros Walls.** This is also palpably clear in the tenor of the lease agreement which provides that the Lessor will "[a]ssist the Lessee in securing all required government permits and clearances for the successful implementation of this agreement and to give its conformity to such permits and clearances or permits whenever necessary." **Despite knowing the requirements and conditions precedent mandated by law, he knowingly allowed OCDC to proceed with construction without such permits or clearances. This amounted to gross inexcusable negligence on his part.** Gross negligence has been defined as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

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[13] **Section 4.** *Norms of Conduct of Public Officials and Employees.* – (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

> xxxx
>
> (c) Justness and sincerity. – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

[14] G.R. No. 240209, June 10, 2019.

In ***Alpay v. Sandiganbayan***,[15] we affirmed the Sandiganbayan when it found Alpay to have acted with evident bad faith in distributing the one million peso-fund of the One Million, One Town, One Product Program, **in violation of a law that he ought to have known**:

> *First,* the prosecution's evidence clearly established the irregular issuance of the disbursement vouchers — it was "reversed-processed" with Alpay pre-signing and pre-approving the release of funds before the responsible officers affixed their signatures.
>
> *Second,* the series of transactions from the issuance of the disbursement vouchers up to the receipt of the equipment and machines by the beneficiaries, all transpired only in one day — the last day of Alpay's term as mayor.
>
> *Third,* Alpay cannot feign ignorance of the requirements of EO 176 considering that the funds were released and distributed on June 30, 2004, while EO 176 and its IRR were already then effective.
>
> *Fourth,* Alpay made it appear that the distribution of the proceeds of the one million peso-fund was a direct financial assistance and not a loan, despite the clear directive for repayment of the loan under EO 176.

We concluded that **Alpay's overt acts of eschewing the procedures and requirements of EO 176 in the supposed distribution of cash loans to deserving MSEs sufficiently established his evident bad faith.** Alpay could not have claimed good faith or honest mistake in the release and distribution of the one million peso-fund considering that EO 176 clearly mandated the release of the loans to MSEs and not as a direct financial assistance without strings attached to beneficiaries.

In the En Banc's Resolution in ***Locsin v. People,***[16] it was held that manifest partiality and evident bad faith were evident on the part of Mayor Locsin **when despite the disqualification of Europharma due to lack of accreditation from the Department of Health, he nonetheless proceeded with the award of the bid to Europharma and Mallix Drug upon the recommendation of a local committee.** Further, his contentions that he was without any knowledge that Europharma was disqualified and that Pharmawealth did not actually participate were held to be unacceptable. Mayor Locsin was authorized by virtue of the MOA and Resolution to lead the bidding process. Thus, it was **incumbent upon him to check and authenticate the attached documents and authority of the companies intending to bid the multi-million contract.** A mere review of the documents submitted before the actual bidding process would have easily revealed to him that no competitive bidding had been made since two out of

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[15] G.R. No. 205976, August 5, 2013.
[16] G.R. No. 218681, September 14, 2015.

the three bidders bore the same business address, hinting an idea that the two were related entities.

In ***Tiongo***, supra, the Court dismissed Tiongco's defense of good faith in view of the circumstances which ought to have put her upon inquiry. For one, Tiongco admitted being **aware of her lack of authority to sign disbursement vouchers and checks for retirement gratuities, but did it anyway**. For another, she also admitted knowing that the retiree in issue had a pending case before the Ombudsman, barring anyone, except for the head of the agency, from acting on the retiree's application for retirement benefits. Yet another, the sheer urgency and haste with which Tiongco processed the retirement application was highly suspect.

We cannot ignore our precedents and lay down a new set of rules for petitioner. There is nothing in his situation and the equities of this case that require us to call upon angels to re-write the law.

As already referred to above, records show that petitioner's attention was called pertaining to his utter lack of authority to issue the questioned extraction permits. In fact, the *ponencia* mentions as a central factual incident that **petitioner actually had knowledge about the issued Cease and Desist Orders**. Petitioner even wrote a letter dated May 23, 2011 to PENRO Ruben Soledad informing the latter of his alleged "mockery of the whole legislative process," and warning *with the bravado anathema to the rule of law* that he "**shall not recognize** the Cease and Desist Orders until legal process is adhered to by the provincial government."[10] The PENRO, on the other hand, explained in his letter to petitioner that the Cease and Desist Orders were based on Section 65 of Provincial Tax Ordinance No. 2005-004 in relation to Section 138 of the *Local Government Code*.

Indubitably, petitioner's purported good faith was belied by his knowledge of the duly issued Cease and Desist Orders, his recalcitrant response thereto, and his receipt of the PENRO's letter. At the outset, these events *should have already prompted him to automatically recall the extraction permits* he had issued. Instead, petitioner issued more extraction permits, and at the same time, blamed the Provincial Government for alleged "mockery of the legislative process," without explaining what he meant by this.

The Sandiganbayan found as a fact that after petitioner had notice of his lack of authority, he still continued to issue extraction permits[17] that allowed the quarrying operators to continue their illegal extraction activities. This fact cannot be overturned by the Court.

Ferrer[18] ordained:

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[17] *Rollo*, pp.67-68. The Sandiganbayan found that petitioner issued another extraction permit on June 7, 2011, in favor of Jessie Glass and Aluminum, despite being informed on his lack of authority by Provincial Governor Soledad on his letter addressed to petitioner dated May 26, 2011.

[18] Supra note 14.

> In view of the foregoing, **the Court finds no reason to overturn these findings, as there was no showing that the SB overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case.** "[I]t bears pointing out that **in appeals from the [SB], as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact.** Hence, absent any of the recognized exceptions to the above-mentioned rule, the [SB's] findings on the foregoing matters should be deemed as conclusive." As such, Ferrer's conviction for violation of Section 3 (e) of RA 3019 must stand.

In any event, whether the Cease and Desist Orders had reached petitioner's ears, he should have known from the start, according to our existing rules, that he was *utterly bereft* of authority to issue extraction permits.

Petitioner cannot also rely upon the recommendation of the MENRO for the grant of questioned permits. To repeat, upon recommendation of the application from MENRO, the authority to grant the extraction permits is **exclusively** within the power of the Provincial Governor and not within the power of a Municipal Mayor. As petitioner swore to protect the interest of the municipality he was serving, it was incumbent upon him to have been curious, careful, and competent in knowing the confines and restrictions of his authority.[19] Instead, petitioner was stubborn and unbending in usurping an authority he did not have. His ignorance of the law is ***feigned, at the very least grossly and inexcusably reckless***, and in reality, ***indicative of evident bad faith and manifest partiality***, and cannot therefore be used to negate his criminal liability.

For us to accept petitioner's claim as good faith is to distort grotesquely the otherwise legitimate defense of good faith.

Petitioner insists that the taxes and fees pertaining to the issued extraction permits were remitted to the provincial government. He infers from this payment that the "provincial government expressly, if not tacitly, gave him the authority to issue extraction permits."

We should not accept this argument. For one, the evidence below and referred to by the Ombudsman in its *Comment*, readily and immediately shows that **no** such remittances were ever made by petitioner. The documents referred to by the prosecution before the Sandiganbayan and reiterated by the Ombudsman in its *Comment* prove this fact beyond a reasonable doubt.

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[19] See *Cruz v. Sandiganbayan*, 504 Phil. 321 (2005).

In any event, I reiterate the law vesting in the provincial government the power to levy and collect taxes from quarrying operations held within its jurisdiction.[20] Hence, *even if there was supposedly a remittance of the proceeds of the quarrying* here, which the evidence belie beyond reasonable doubt, the Provincial Government had every right to accept the taxes and fees paid for these operations. The **alleged** remittance of these taxes and fees did not in any way legitimize petitioner's illegal act of issuing the questioned extraction permits.

The **alleged** payment and acceptance of these taxes and fees are apart and different from the authority to issue extraction permits. The latter is **exclusively** vested in the Provincial Governor, and there is **no** law authorizing expressly or impliedly the delegation of this **exclusive** duty to other public officers. The Court cannot and should not simply turn a blind eye, and tolerate petitioner's repeated *feigned* and *confused* interpretation of the laws.

Lastly, it is of no moment that there is no evidence pointing to petitioner as having gained anything from the issuance of the extraction permits. Here, as the evidence bears out, no money was remitted to the barangay, the municipality and the province. At any rate, wherever the money went, whether he himself obtained pecuniary gain does not hinder the prosecution of petitioner for violation of Section 3(e) of RA 3019 because his own benefit is not an element of this offense. It also cannot be denied that private persons **benefitted** from the illegally issued permits. It was petitioner's act of issuing the extraction permits that gave these select and privileged persons an **advantage** in the form of the resources so extracted by them. These private persons did not share this advantage with other persons in the Municipality of San Jose. The permits were a favor to each of them, a favor illegally granted by petitioner.

Being a local chief executive, petitioner is vested with the public's trust and confidence where he should have knowledgeably observed the rules and regulations not only within the scope of his jurisdiction, but the laws encompassing the parameters and conditions of his authority. He, therefore, cannot feign ignorance of the law while at the same time use this ignorance as a shield against liability. In the end, petitioner's supposed "mistake" should not be recognized by this Court as a saving tool to excuse his explicit transgressions of the law.

Given the legal and factual antecedents of petitioner's case, it cannot be said that he acted in good faith. He knew it was not within his power to issue extraction permits. **At the very least**, he was not only grossly and inexcusably negligent but grossly and inexcusably reckless in not knowing his lack of power to issue extraction permits. **In reality**, he **intentionally** flouted among others Section 138 of the *Local Government Code*.

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[20] See *Lepanto Consolidated Mining Company v. Ambanloc*, 636 Phil. 233 (2010).

We held in ***Sanchez v. People***[21] that **a public officer's failure to appreciate the extent of his or her basic powers is gross negligence amounting to gross bad faith** and manifest partiality:

> Second, the **failure of petitioner to validate** the ownership of the land on which the canal was to be built **because of his unfounded belief that it was public land constitutes gross inexcusable negligence.**
>
> In his own testimony, **petitioner impliedly admitted that it fell squarely under his duties to check the ownership of the land with the Register of Deeds. Yet he concluded that it was public land based solely on his evaluation of its appearance**, i.e., that it looked swampy:
>
> x x x x
>
> Petitioner's functions and duties as City Engineer, are stated in Section 477 (b) of R.A. 7160, to wit:
>
> The engineer shall take charge of the engineering office and shall:
>
> x x x x
>
> (2) Advise the governor or mayor, as the case may be on infrastructure, public works, and other engineering matters;
> (3) Administer, coordinate, supervise, and control the construction, maintenance, improvement, and repair of roads, bridges, and other engineering and public works projects of the local government unit concerned;
> (4) Provide engineering services to the local government unit concerned, including investigation and survey, engineering designs, feasibility studies, and project management;
>
> x x x x

The Court in ***Ambil v. Sandiganbayan***[22] was as emphatic in ruling that ***a local chief executive's disregard of the extent of his power*** *to act on a particular matter* that **resulted in a benefit or advantage to a third party "betray[s] his unmistakable bias and the evident bad faith** that attended his actions." Thus we held:

> In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. **The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system** in determining the best possible price for the government. **The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices**

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[21] 716 Phil. 397 (2013).
[22] 669 Phil. 32 (2011).

were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.

There can be no good faith where the circumstances point to the necessary mental element of the offense charged – manifest partiality, evident bad faith or inexcusable negligence. As noted, our case law has already settled the legal impact of petitioner's *feigned* ignorance of the utter lack of power to issue extraction permits. Petitioner gave out extraction permits repeatedly, albeit he had no authority to do so under the clear and unequivocal provision of Section 138 of the *Local Government Code*, Section 43 of the *Philippine Mining Act*, and Provincial Ordinance No. 2005-004. As a result, petitioner's unlawful act benefited and gave advantage to private parties that used the unduly permits to illegally extract resources. Despite petitioner's actual or at least strongly presumed knowledge of his lack of power to do so, he disputed, nay, breaded the plain and categorical language of the *Local Government Code*, the *Philippine Mining Act*, and the Provincial Ordinance No. 2005-004. His actions manifest partiality, evident bad faith or inexcusable negligence.

My esteemed senior colleague, Justice Caguioa, proposes two (2) interesting ideas that somehow charts the direction where ***Villarosa*** is headed:

One. He says:

> In this light, I reiterate that Villarosa's violation of a law that is not penal in nature does not, as it should not, automatically translate into evident bad faith or gross inexcusable negligence that makes one guilty of a violation of Section 3(e) of RA 3019. For it to amount to a violation of Section 3(e) of RA 3019 through the modality of evident bad faith, established jurisprudence demands that the ***prosecution must prove the existence of factual circumstances that point to fraudulent intent.***[23]

Two. He also opines:

> I recognize that this is not the understanding under the current state of jurisprudence. Jurisprudence has defined the term "unwarranted" as simply lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. The term "private party" may be used to refer to persons other than those holding public office, which may either a private person or a public officer acting in a private capacity to protect his personal interest.
>
> Thus, under current jurisprudence, in order to be found guilty for giving any unwarranted benefit, advantage, or preference, it is enough that the public officer has given an unauthorized or unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. By giving any private party unwarranted benefit, advantage, or preference, damage is not required. It suffices that the public officer has

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[23] Concurring Opinion of Justice Caguioa, p. 15.

> given unjustified favor or benefit to another in the exercise of his official functions. Proof of the extent or quantum of damage is not even essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible.
>
> I respectfully submit that it is high time for the Court to revisit this line of reasoning.[24]

As regards Justice Caguioa's **first** point, let me stress that just as the **infringement** of a **non-criminal** rule, regulation, protocol or directive does **not** automatically translate into a finding of *evident bad faith*, **it** also does **not** erase **per se** the existence of evident bad faith. **As we have seen in our established case law**, many of the rules, regulations, protocols or directives violated were **non-criminal but administrative** in character, yet ultimately, the violations were found to prove manifest partiality, evident bad faith or gross inexcusable negligence. Thus, the **criminal** or **non-criminal nature** of the infringed rule, regulation, protocol or directive has nothing to do *really* with whether the assailed violation translates to evidence bad faith. The **controlling** aspect would still be the **attendant circumstances** which of course must be proved beyond a reasonable doubt.

The reference to judges being merely administratively penalized is I believe beside the point. **If the factual antecedents of the complained action or inaction satisfy the elements of violation of Section 3(e) of RA 3019, then the administrative decision does not preclude a criminal prosecution.** Again, it really adds nothing to the discussion to say ***if warranted*** because **that** is the pre-condition of all legally binding events.

Justice Caguioa also uses the **bogeyman** that judges may soon be facing a deluge of criminal cases of violation of Section 3(e) of RA 3019 if the Court were to reject the *ponencia*'s ruling. With due respect, the argument **against** the *ponencia*'s ruling is based on **precedents**, meaning, the interpretation of Section 3(e) that I am espousing has been **culled from existing case law**, and **not something I have just invented**. **But even with this state of our case law**, we **have never seen** the **feared escalation** of criminal cases against judges for violation of Section 3(e) as a result of our findings of administrative liability for gross ignorance of basic statements of the law.

In any event, it is my most respectful submission that instead of frightening our judges, the Court should also start according them the benefit of the doubt and conferring upon their actions the cover of good faith even when they have violated the most basic and clearest statements of the law, and avoid equating their ignorance even if gross and patent with the ineluctable inference of bad faith. This is just to be fair with the judges.

As regards the **second** point, I do not know what the impact of this change in the doctrine would have on the fight against graft and corruption.

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[24] *Id.* at 17.

Public respondents were **not heard** on this issue. All along, the criminal cases were prosecuted on the basis of the doctrinal understanding of the elements of the offense charged. I am **amenable to change** the doctrine and go along with how Justice Caguioa has interpreted it. I **humbly posit** though that since **this change in the doctrine** benefits an accused and it **has been applied retroactively** to petitioner, it **should also be made to apply retroactively to all those who have been prosecuted and convicted** of violation of Section 3(e) of RA 3019.

With all due respect to Justice Caguioa, this is not a "misguided" apprehension but a legitimate concern. Pursuant to Article 8 of the New Civil Code, judicial decisions applying or interpreting the laws or the Constitution, including the one at bar, form part of the law of the land.[25] Corollarily, Article 22 of the Revised Penal Code calls for the retroactivity of penal statutes so long as they are beneficial to the accused, even if the accused is already serving his or her final sentence.

As the Court pronounced in ***People v. Parel***:[26]

> In most states of the American Union the rule prevails that a statute of limitations of criminal actions is on a parity with a similar statute for civil actions and has no retroactive effect unless the statute itself expressly so provides, and practically all of the authorities cited in support of the theory that such is also the rule here, are upon that point. As from our point of view the rule stated does not obtain in the Philippine Islands, these authorities have, in our opinion, no bearing whatever upon the question here at issue and we shall therefore devote neither time nor space to their further discussion.
>
> In our opinion, the determination of the present case clearly hinges upon the construction of article 22 of the Penal Code,[27] which reads as follows:
>
> > Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, **although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same.**
>
> This article is of Spanish origin, is based on Latin principles, and it seems, indeed, too obvious for arguments that we, in its interpretation, must have recourse to Spanish or Latin jurisprudence. In the case of *United States vs. Cuna*, this court held that "neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law." In that case the Spanish doctrine invoked was more unfavorable to the accused that the common law rule, but was, nevertheless, adopted by the court. In the present case, the Spanish doctrine is more favorable to the accused and considering the well-known principle that penal laws are to be construed

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[25] Article 8 of the New Civil Code.
[26] G.R. No. L-18260, January 27, 1923.
[27] Reenacted in Article 22 of Act 3815, otherwise known as the Revised Penal Code.

most liberally in favor of the accused, we have stronger reasons here than existed in the Cuna case for rejecting the American doctrine as to the irretroactivity of penal statutes. Both consistency and sound legal principles, therefore, demand that we, in this case, seek our precedents in Latin rather than in American jurisprudence.

For a long period, it has been the settled doctrine in countries whose criminal laws are based on the Latin system that such laws are retroactive in so far as they favor the accused. In Spain and in the Philippine Islands this doctrine is, as we have seen, re-inforced by statutory enactment, and is even made applicable to cases where "final sentence has been pronounced and the convict is serving same."

I also refer to ***People v. Bernal***:[28]

In Criminal Case No. 1647 for illegal possession of firearms and ammunition (violation of PD 1866), **we should apply the ruling enunciated in the recent case of People vs. Walpan M. Ladjaalam** where we declared: ". . . if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms . . . **The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that "no other crime was committed by the person arrested."** If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we." **In the above-cited case of Ladjaalam, the appellant was convicted by the trial court of (1) illegal possession of firearms, (2) direct assault with multiple attempted homicide and (3) violation of the dangerous drugs law. We acquitted him of the first crime (illegal possession) but affirmed his conviction of the latter two.** In justifying the acquittal, we said inter alia that "when the crime was committed on September 24, 1997, the original language of PD 1866 had already been expressly superseded by RA 8294 . . ." and no "conviction for illegal possession of firearms separate from any other crime" was thus possible. In the present case, the illegal possession of firearms (as a separate offense) was committed by accused-appellant before RA 8294 took effect. Since the amendment contained in RA 8294 is favorable to him in the sense that it would mean his acquittal (from the charge of illegal possession of firearms), then the law should be given retroactive effect. We cannot therefore affirm the conviction of accused-appellant for illegal possession of firearm in Criminal Case No. 1647.

People v. Delos Santos[29] also ruled:

Likewise, **although accused-appellant was convicted on September 17, 1998, before this Court enunciated the Garcia doctrine, the same must be applied retroactively** to the instant case, in consonance with our ruling in People v. Gallo where we declared that:

> The Court has had the opportunity to declare in a long line of cases that the tribunal retains control over a case until a **full satisfaction of the final judgment** conformably with established legal processes. It has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it becomes imperative in

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[28] 437 Phil. 11 (2002).
[29] 386 Phil. 121 (2000).

> the higher interest of justice or when supervening events warrant it.
>
> Moreover, **our ruling in Garcia forms part of our penal statutes, pursuant to Article 8 of the Civil Code which provides that "judicial decisions applying or interpreting the law shall form part of the legal system of the land." And since Article 22 of the Revised Penal Code provides that "penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony**, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, **although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same," the Garcia doctrine must perforce, be given retroactive effect in this case, said ruling being favorable** to accused-appellant, who is not a habitual criminal.

This series of case laws **does show** that I have **not** been *"misguided"* after all.

In this sense, and if this clarification were adopted by the *ponencia*, I would have withdrawn my dissent and concurred with the *ponencia*.

Another. A violation of Section 3(e) of RA 3019 may also be committed through gross inexcusable negligence. So it may not be accurate to dispense with any discussion on gross inexcusable negligence though the Informations only alleged evidence bad faith. This omission in the Informations' averments is **not** significant because:

> We note that the Information against petitioner Sistoza, while specifying manifest partiality and evident bad faith, does not allege gross inexcusable negligence as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the Information, it was evidently the intention of the Ombudsman to take petitioner to task for gross inexcusable negligence in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), RA 3019, is committed either by dolo or culpa and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.[30]

Further, the allegation of "bad faith **includes** an allegation of **gross negligence**." This is because, applying *mutatis mutandis*, "[m]alice or bad faith implies moral obliquity or a conscious and intentional design to do a wrongful act for a dishonest purpose. However, a conscious or intentional

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[30] *Sistoza v. Disierto*, 437 Phil. 117 (2002).

design need not always be present since negligence may occasionally be so gross as to amount to malice or bad faith. Bad faith, in the context of Art. 2220 of the Civil Code, includes gross negligence."[31]

Hence, assuming without admitting that no evidence of evident bad faith has been shown, it **cannot be denied** that petitioner had been grossly inexcusably negligent in violating Section 138 of the *Local Government Code* as his attention to this violation has been called several times. Whether we agree with this definition of **gross inexcusable negligence** is beside the point. It is either we abide by the definition, or jettison it for another perhaps more humane and practical explanation, and apply it not *pro hac vice* but retroactively to all accused and convicts similarly situated.

I am **not against** re-defining doctrines in the hope of becoming a better society. **My only call** is for the process to be clear and transparent so that at least in theory everyone will be equal before and under the law.

Despite the telltale signs of petitioner's open defiance and flagrant violation of the law and the ordinance, the *ponencia*, with due respect, has belabored its own fact-finding. But instead of giving a holistic view of the case, it presents its own conclusions without bothering to present, let alone, distill the arguments raised by the prosecutor either during the trial or on appeal, the *ponencia* seemingly adopts the arguments of petition without weighing them against the counter-arguments of the prosecution. It applies the constitutional presumption of innocence and readily concludes that this presumption was not overcome; but conveniently omits to mention the endeavors of the prosecution to overthrow this presumption.

I daresay, this manner and style of presentation translates to serious constitutional violations. Section 14, Article VIII of the Constitution requires:

> SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> ....

The failure of any court, the Court included, to adhere to this constitutional mandate would deprive party-litigants of their fundamental right to due process of law. Indeed, the Sandiganbayan here would be at a loss on why its verdict of conviction was reversed; the prosecution would have no clue at all where it went wrong in presenting its case; and respondent would be left wondering how petitioner was able to evade his criminal liability for violating the laws which he could **not** have possibly been **unaware** of.

EPILOGUE

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[31] *BPI Express Card Corporation v. Armovit*, 745 Phil. 31 (2014); *Bankard Inc. v. Feliciano*, 529 Phil. 53, (2006).

I strongly and humbly believe that there are stark contradictions between the doctrines pronounced in the *ponencia* and the long established doctrines in many other rulings of the Court.

The ***ponencia*** does not face head on these contradictions. As a result, we will likely have a situation where in the future the Court will be compelled to reckon with cases made difficult by why ***Villarosa*** was decided the way it was when others similarly situated were not.

I do not relish seeing the Court proclaiming in future cases that ***Villarosa*** is a "stray" decision and must not be followed as it was rendered "*pro hac vice*."

Penned by no less than the Honorable Chief Justice Peralta, **whom I highly and sincerely regard as today's guru of criminal law and criminal procedure**, I would not want the *ponencia* to leave the impression that its ruling is ambiguous or contrary to long-established doctrines.

As it was, the Majority fails to settle expressly the contradictions in clear terms, specifically if the Court is in fact abandoning our long-established doctrines. The Majority utterly fails to distinguish the fact situation in the instant case (how it is distinct); or otherwise carve out the case at bar as an exception to the general rule "*pro hac vice*," and why it is special or exceptional.

The truth is the Majority has added a new exempting or justifying circumstance in our criminal jurisprudence, that is, IGNORANCE OF THE LAW; and has effectively amended Article 3 of the New Civil Code from "[i]gnorance of the law excuses no one from compliance therewith" to IGNORANCE OF THE LAW IS A BLISS THAT SETS EVERY SELF-CONFESSED IGNORANT FREE OF ACCOUNTABILITY.

Finally, this question hangs in the air: Considering the beneficial effect of the *ponencia* to the accused, will it apply retroactively to those who are similarly situated with petitioner? ***Can they too demand as a matter of right the reopening of their otherwise terminated cases for another round of review to avail of the ponencia?***

ACCORDINGLY, I vote to **DISMISS** the Petition for Review on Certiorari and **AFFIRM** in full the assailed *Decision* and *Resolution* of the Sandiganbayan.

AMY C. LAZARO-JAVIER
Associate Justice