G.R. No. 233155-63 – JOSE TAPALES VILLAROSA, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES**, *Respondent*.

Promulgated:

June 23, 2020

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DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent.

A municipal mayor who effectively usurps the functions of a provincial governor based on the flimsy and convenient excuse that he mistakenly understood the applicable provisions of the Local Government Code (LGC)[1] despite their clear and straightforward nature commits "**gross inexcusable negligence**" and hence, should be held criminally liable for violation of Section 3 (e) of Republic Act No. (RA) 3019.[2]

To be sure, "gross inexcusable negligence" is one of the three (3) recognized modes of committing a violation of Section 3 (e) of RA 3019. The other two (2) modes are "manifest partiality" and "evident bad faith." In *Sison v. People*,[3] the Court stated that:

> The third element of Section 3 (e) of RA 3019 may be committed in three 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.[4]

Explaining what these terms mean, the Court has held:

> "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

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1 Republic Act No. 7160, entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (January 1, 1992).

2 Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT" (August 17, 1960).

3 628 Phil. 573 (2010).

4 Id. at 583.

> even inattentive and thoughtless men never fail to take on their own property."[5]

Based on the foregoing, it is clear that "gross inexcusable negligence," unlike "manifest partiality" or "evident bad faith," does not require proof of some fraudulent motive, self-interest, or ill will. However, it must be shown that the negligence committed by the public official is 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."[6]

At this juncture, it is apt to mention that the fact that the Information contains the words "with evident bad faith"[7] does not preclude a conviction for violation of Section 3 (e) through the modality of gross inexcusable negligence. In *Sistoza v. Desierto*,[8] the Court held:

> 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**. (Emphasis and underscoring supplied)

In the same vein, the Court, in *Albert v. Sandiganbayan*,[9] explained that "a conviction for a criminal negligent act can be had under an information

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5 Id. at 583-584.

6 Id.

7 The Information reads (see *ponencia*, p. 4):

> 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 (Gem CHB 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 and take advantage of the privilege to extract quarry resources without legal authority and official support. (Emphasis and underscoring supplied)

8 437 Phil. 117, 130-131 (2002).

9 599 Phil. 439 (2009).

exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense,"[10] *viz.*:

> In *Sistoza v. Desierto* [see supra note 8], the Information charged the accused with violation of Section 3(e) of RA 3019, but specified only "manifest partiality" and "evident bad faith" as the modalities in the commission of the offense charged. "Gross inexcusable negligence" was not mentioned in the Information. Nonetheless, this Court held that the said section is committed by *dolo* or *culpa*, and although the Information may have alleged only one of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof. In so ruling, this Court applied by analogy the pronouncement in *Cabello v. Sandiganbayan* [274 Phil. 369 (1991)] where an accused charged with willful malversation was validly convicted of the same felony of malversation through negligence when the evidence merely sustained the latter mode of perpetrating the offense. **The Court held that a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense**. x x x.[11] (Emphasis and underscoring supplied)

When a person assumes a particular public office, he has the responsibility to equip himself with the basic knowledge of his fundamental duties, as well as the clear limits of his authority under the law. To fail in this regard is, to my mind, tantamount to gross inexcusable negligence, for which he or she may be rendered culpable. Case law exhorts that "[u]pon appointment to a public office, an officer or employee is required to take his oath of office whereby **he solemnly swears to** support and defend the Constitution, bear true faith and allegiance to the same; **obey the laws**, legal orders and decrees promulgated by the duly constituted authorities; and **faithfully discharge to the best of his ability the duties of the position he will hold**."[12] Thus, unless a mistake is founded upon a doubtful or difficult question of law, or upon an honest mistake of fact, or there exists compelling circumstances that would justify otherwise, a public official's ignorance of the **essential aspects of his office** should not be countenanced. Otherwise, the constitutional provision, which states that "[p]ublic office is a public trust" and that all government officials and employees "must at all times be accountable to the people x x x,"[13] would easily lose its fortitude and fervor.

RA 7160 or the LGC, is the primary statute that delineates the essential functions of local officials, such as a municipal mayor and a provincial governor. Under the LGC, the power to issue extraction permits is not given to the municipal mayor but is **exclusively vested upon the provincial governor**. Section 138 of the LGC unequivocally reads:

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10 Id. at 452.
11 Id.
12 *City Mayor of Zamboanga v. Court of Appeals*, 261 Phil. 936, 938 (1990); emphases supplied.
13 1987 CONSTITUTION, Article XI, Section 1.

> 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, 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.
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> 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.*
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> x x x x (Emphasis and underscoring supplied)

In conjunction, RA 7942,[14] otherwise known as the "Philippine Mining Act of 1995," provides the procedure by which any qualified person may be granted a permit to extract quarry resources, *i.e.*, building and construction materials, from the ground. Under Section 43 thereof, the application is made before the "provincial/city mining regulatory board" and that the "**provincial governor**" grants the permit after the applicant has complied with all the prescribed requirements:

> 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**. (Emphases supplied)

Undoubtedly, the wordings of the LGC, as well as the correlative provision of RA 7942, are clear and straightforward. Hence, one would be grossly negligent if he or she still misreads their import to come up with the conclusion that a municipal mayor, and not a provincial governor, has the power to issue permits for the extraction of sand, gravel and other quarry resources. Indeed, as the legal adage goes, *absolute sentencia expositore non indiget* – when the language of the law is clear, no explanation of it is required.[15]

In this case, petitioner Jose Tapales Villarosa (petitioner) ought to have known that the power to issue extraction permits exclusively belongs to the provincial governor because of the explicit and unequivocal provisions of the LGC and RA 7942. By remaining unaware or by failing to comprehend this basic limitation on his power, notwithstanding the clarity and explicitness of the above legal provisions, petitioner committed acts of indiscretion that

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[14] Entitled "AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION," approved on March 3, 1995.

[15] *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011).

smack of gross inexcusable negligence, ultimately resulting in unwarranted benefits in favor of the grantees-operators concerned.

Notably, the municipal mayor's general authority to issue licenses and permits under Section 444 (3) (iv) of RA 7160[16] cannot prevail over the express and specific authority conferred upon the provincial governor to issue extraction permits. Equally basic is the rule that special provisions of law prevail over its general provisions. Neither should petitioner's gross inexcusable negligence be condoned by the Municipal Environment and Natural Resources Office's recommendation that he could approve the questioned permits nor the fact that the shares in the fees for these permits were received by the provincial government.[17] To me, these proffered excuses do not sufficiently justify why petitioner failed to instead consult the clear and unequivocal provisions of the law which point to one singular reasonable conclusion — that is, that a municipal mayor has no power to issue extraction permits as that power exclusively belongs to the provincial governor plain and simple. In this regard, it is of no coincidence that the last sentence of Section 3 (e) of RA 3019 reads:

> Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x
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> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. **This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.** (Emphasis supplied)

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16 CHAPTER III
Officials and Offices Common to All Municipalities

ARTICLE I
The Municipal Mayor

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* – x x x.

x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance[.]

17 See *ponencia*, p. 10.

The government would garner greater confidence from the people if, correlatively, greater vigilance in public service is not the exception but the norm. This is especially so when it comes to those charged with the duty of granting privileges and licenses to private persons, as these bureaucratic processes have been infamously known to be breeding grounds of graft and corruption. In this regard, the Court ought to be circumspect in discerning legitimate defenses from convenient excuses, and mulling over the consequences of flagrant ineptitude to the faith of our people.

Accordingly, I submit that petitioner's conviction under Section 3 (e) of RA 3019, as ruled by the *Sandiganbayan*, should be upheld on the basis of his gross inexcusable negligence for the reasons herein explained.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice