

**RANULFO C. FELICIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. Nos. 219681-82. March 18, 2021*

Ponente: GAERLAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-219681-82/>**GAERLAN, J.:**

Before this Court are two consolidated Petitions for Review on Certiorari[1] filed by petitioners Dr. Cesar A. Aquitania (Dr. Aquitania) and Ranulfo C. Feliciano (Feliciano) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[2] dated January 27, 2015 and the Resolution[3] dated August 4, 2015 of the Sandiganbayan in Criminal Case Nos. 28179 and 28180. The assailed rulings adjudged the petitioners guilty beyond reasonable doubt of violating Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. It also found petitioner Feliciano guilty of the crime of malversation under Article 217 of the Revised Penal Code (RPC).

On the basis of an Information[4] dated October 25, 2004, the Office of the Ombudsman charged the petitioners, along with four others, for violation of Section 3(e) of R.A. No. 3019, allegedly committed as follows:

That on or about the 6[th] day of November 1998, or for sometime prior or subsequent thereto, at the City of Tacloban, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, accused HONORIO F. GEREZ, CESAR A. AQUITANIA, CONCEPCION G. MEDALLA, VIRGINA P. FLORES, and FRANKLIN A. SICOY, public officers being the Chairman, Vice-Chairman, and Members, respectively, of the Board of Directors of the Leyte Metropolitan Water District (LMWD), Tacloban City, and as such officers had the authority to fix the compensation of the officers and employees of LMWD pursuant to the provisions of Presidential Decree No. 198, otherwise known as the Provincial Water Utilities Act of 1973, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, and with accused RANULFO C. FELICIANO, likewise a public officer being the General Manager of LMWD, with deliberate intent, with grave abuse of authority with intent of giving respondent RANULFO C. FELICIANO excessive monetary benefits in office, did then and there willfully, unlawfully and feloniously enact and approve Resolution No. 98-33 entitled "A RESOLUTION ADJUSTING THE SALARY OF THE GENERAL MANAGER OF THE LEYTE METROPOLITAN WATER DISTRICT (LMWD)," by means of which the salary of accused RANULFO C. FELICIANO, as General Manager of LMWD with salary grade twenty-five (25), was increased to Fifty-Seven Thousand One Hundred Forty Six Pesos (P57,146.00), Philippine Currency, per month, in total disregard of the Plantilla of Personnel verified by the Department of Budget and Management, which specifies that the position of General Manager occupied by accused RANULFO C. FELICIANO, carries the salary grade of Twenty-Five (25) at the rate of only Eighteen Thousand Seven Hundred Forty-Nine Pesos (P18,749.00), Philippine Currency, per month, thereby giving accused RANULFO C. FELICIANO unwarranted benefit and advantage in the discharge of their administrative functions through manifest partiality.

CONTRARY TO LAW.[5]

In another Information[6] of even date, petitioner Feliciano and two others, were charged with the crime of

malversation of public funds, the accusatory portion of which reads:

That on or about the 1[st] day of January 1999, or for sometime prior or subsequent thereto, at the City of Tacloban, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, accused RANULFO C. FELICIANO, ERLINDA S. CALO, and VIRGINIA JOP ABAYATA, public officers being then the General Manager, Department Manager C, and Accounting Section Head, respectively, of the Leyte Metropolitan Water District (LMWD), Tacloban City, and as such officers had in their custody LMWD funds in the amount of FIVE HUNDRED SIX THOUSAND TWO HUNDRED FORTY-SIX PESOS AND 26 CENTAVOS (P506,246.26), Philippine Currency, for which they were accountable by reason of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to gain, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate, embezzle and convert to their own personal use the said amount of FIVE HUNDRED SIX THOUSAND TWO HUNDRED FORTY-SIX PESOS AND 26 CENTAVOS (P506,246.26), Philippine Currency, by: signing, favorably endorsing, and approving LMWD Disbursement Voucher No. 01-019-99 dated 01 January 1999, by means of which herein accused RANULFO C. FELICIANO was paid the said amount of FIVE HUNDRED SIX THOUSAND TWO HUNDRED FORTY-SIX PESOS AND 26 CENTAVOS (P506,246.26), Philippine Currency, representing salaries and various allowances purportedly payable to accused RANULFO C. FELICIANO as General Manager for the period from January 1998 to 26 September 1998, despite the utter lack of basis for such payment considering that accused RANULFO C. FELICIANO assumed his position as General Manager only on 27 September 1998 and not any earlier, to the damage and prejudice of the government particularly LMWD.

CONTRARY TO LAW.[7]

The first Information was docketed as Criminal Case No. 28179, whereas the second, Criminal Case No. 28180.[8] While the case was pending, accused Honorio F. Gerez, Concepcion G. Medalla, Virginia P. Flores, Franklin A. Sicoy, and Virginia Jop Abayata died; accused Erlinda S. Calo was dropped from the charge in Criminal Case No. 28180. As a result, the petitioners were the only remaining accused in the said cases.[9]

The petitioners were granted provisional liberty after the filing of cash bonds. On October 26, 2005, the petitioners were arraigned and, assisted by counsel, both entered a plea of "not guilty." After pre-trial, the cases were tried jointly.[10]

The undisputed facts, as determined by the Sandiganbayan and established by the records, follow:

The Local Waters Utilities Administration (LWUA), created by virtue of Presidential Decree (P.D.) No. 198 or the "Provincial Waters Utilities Act of 1973" is an agency attached to the National Economic Development Authority. The LWUA is tasked to promote and oversee the development of water supply systems in areas outside Metro Manila, through the creation of standards and the grant of assistance through loans. Among those under its supervision is the Leyte Metropolitan Water District (LMWD). [11]

At the time pertinent to this controversy, petitioner Feliciano served as the General Manager of LMWD having been appointed in 1975, while petitioner Aquitania is the Vice-Chairperson of the Board of Directors from his appointment as a Member in August 1998.[12]

On March 5, 1990, LWUA took over LMWD on account of the latter's failure to pay its debt to the former amounting to P24,467,000.00 as of February 1990.[13] The takeover has been the subject of legal proceedings, but the validity of this action by the LWUA was eventually affirmed by the Court in G.R. No. 96900 through a Resolution[14] dated April 22, 1991.

From 1990 to 1996, under the direction of LWUA, LMWD was placed under the leadership of an Interim General Manager in the person of Engineer Cayo Emnas, and an interim set of Board of Directors (BOD).[15]

Sometime during the takeover, an administrative case was filed against petitioner Feliciano before the Office of the Government Corporate Counsel (OGCC) for his "unlawful approval of the disbursement of his backwages for the period of March 6, 1990 to October 23, 1990 during which he has not rendered service to LMWD." After investigation, the OGCC recommended the dismissal of petitioner Feliciano, which the LWUA approved on November 11, 1991, in its Resolution No. 18, Series of 1991.[16]

On July 20, 1998, the takeover of LMWD's affairs was lifted by the LWUA by virtue of its Resolution No. 138, Series of 1998.[17] Thereafter, a new set of BOD was appointed, which includes herein petitioner Aquitania.[18]

On September 25, 1998, the new BOD of LMWD approved Resolution No. 98-002. In the Resolution, the BOD maintained that it has the sole authority to appoint or dismiss the regular General Manager of LMWD. Thus, on motion of its members, petitioner Feliciano was appointed as LMWD's General Manager. The Resolution was received by petitioner Feliciano on September 27, 1998.[19]

On November 6, 1998, the LMWD BOD passed Resolution No. 98-33, which adjusted the monthly salary of petitioner Feliciano from P18,749.00 to P57,146.00, effective January 1998,[20] viz.:

#### RESOLUTION No. 98-33

A RESOLUTION ADJUSTING THE SALARY OF THE GENERAL MANAGER OF THE LEYTE METROPOLITAN WATER DISTRICT (LMWD)

x x x x

WHEREAS, the basic salary/pay of the General Manager of the LMWD as provided for in the budget year of 1998 is ONLY salary grade 25, step 1 which is equivalent to P18,749.00 an amount very much smaller than the salaries of Mrs. Erlina Calo and Mrs. Lilia Riel which are both P21,430.00 per month;

WHEREAS, to avoid salary/pay distortions and preclude demoralization and demotivating effects upon the General Manager resulting in inefficiency and ineffectiveness which may bring about adverse or devastating effects upon the LMWD organization, besides Engr. Ranulfo C. Feliciano is an old LMWD Officer and as such should be covered by the PAWD Compensation or pay structure/or scheme; and in the interest of justice, equity and fair play, there is a dire/indubitable need to adjust the salary of the General Manager using a ratio (divisor) from a minimum of 0.349 to a maximum 0.40, but preferably using the median/average ratio (divisor) of  $(0.349 + 0.40)/2 = 0.3745$  say 0.375;

WHEREAS, using the said average/median ratio (divisor) of 0.375, effective January 1, 1998 when the salaries of Mrs. Calo and Mrs. Riel are both P21,430.00 per month each, as provided for in the 1998 budget, the salary of the General Manager will be equal  $P21,430.00/0.375 = 57,146.66$  or say 57,146.00 per month;

NOW, THEREFORE, on motion of Director Franklin A. Sicoy and duly seconded by Director Concepcion G. Medalla be it RESOLVED, as it is hereby RESOLVED, to adjust the salary of the General Manager, Engr. Ranulfo C. Feliciano to P57,146.00 per month effective January 1998;

RESOLVED FURTHER, to appropriate the corresponding amount therefor;

x x x x

Approved this 6[th] day of November 1998.[21]

On January 7, 1999, petitioner Feliciano claimed and received from LMWD the amount of P506,246.26, representing the increase in his salary as approved by the BOD.[22] The payment is evidenced by Disbursement Voucher No. 01-019-99[23] dated January 7, 1998, stating following the particulars of payment:

Salary, PERA, and ACA, and rice allowance, differential of GM Feliciano for the period January 1998 to September 26, 1998 per attached approved payroll.[24]

On post-audit, the Commission on Audit (COA) disallowed, among others, the payment of increased salary in favor of petitioner Feliciano.[25] On this basis, the aforementioned Informations were filed against the petitioners.

After the parties rested, the Sandiganbayan rendered the herein assailed Decision[26] dated January 27, 2015, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

a) In Criminal Case Nos. 28179, the Court finds RANULFO C. FELICIANO and DR. CESAR A. AQUITANIA guilty beyond reasonable doubt of Violation of Section 3(e) of Republic Act No. (R.A.) No. 3019, as amended, as charged in the Information dated October 25, 2004. Pursuant to the provisions of the Indeterminate Sentence Law, they are hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month as minimum, to ten (10) years as maximum. They shall also suffer perpetual disqualification from public office.

-and-

b) In Criminal Case Nos. 28180, the Court finds RANULFO C. FELICIANO guilty beyond reasonable doubt of Malversation of Public Funds under Article 217 of the Revised Penal Code, as charged in the Information dated October 25, 2004. Pursuant to the provisions of the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment often (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum. He is also ordered to pay a fine of Five Hundred Six Thousand Two Hundred Forty-Six Pesos and Twenty-Six Centavos (P506,246.26) equivalent to the public funds misappropriated, and to suffer perpetual special disqualification.

Accused Feliciano is also ordered to indemnify the Leyte Metropolitan Water District the aforementioned amount of P506,246.26.

SO ORDERED.[27] (Emphasis in the original)

In convicting the petitioners, the Sandiganbayan found all the elements of the crimes charged present. It opined that the LMWD, a local water district, is a government-owned and controlled corporation (GOCC) under the jurisdiction of the Civil Service Commission. As such, the compensation of LMWD's officers and personnel must conform to the salary schedule under R.A. No. 6758, otherwise known as the Compensation and Position Classification Act of 1989. Per approved Plantilla of Personnel of the Department of Budget and Management (DBM), the authorized salary of the General Manager of LMWD effective November 1, 1997 is only P18,318.00. Thus, the increase in the salary of petitioner Feliciano as General Manager is unlawful. In issuing the judgment of conviction under Section 3(e), R.A. No. 3019, the Sandiganbayan found the existence of conspiracy among the petitioners and the rest of their deceased co-accused in the perpetration of the offense.[28]

For the charge of malversation, the Sandiganbayan held that by virtue of his position, petitioner Feliciano claimed, approved, and received the amount of P506,246.26 which he knew he was not entitled to receive.[29]

Petitioner Feliciano filed a Motion for Reconsideration and For New Trial (Re Decision, Jan. 27, 2015). Petitioner Aquitania on the other hand, filed a Motion for Reconsideration.[30] On August 4, 2015, the Sandiganbayan issued its Resolution[31] denying both motions.

The petitioners separately interposed their appeal before the Court via petition for review under Rule 45 of the Rules of Court. In a Resolution[32] dated March 2, 2016, the Court resolved to consolidate these cases.

The petitioners substantially raise the same errors in support of their positions.

Succinctly, the petitioners argue that the allegation of conspiracy in the commission of the offense under Section 3(e) of R.A. No. 3019 has not been proven. Petitioner Feliciano argues that he cannot be held liable as he has no participation in the passage of Resolution No. 98-33.[33]

The petitioners also put forth the defense of good faith in that the subject resolution was passed in the honest belief that the LMWD BOD had the authority to increase the salary of petitioner Feliciano pursuant to P.D. No. 198; particularly as the act was prior to the Court's pronouncement that water districts are GOCCs.[34]

The petitions are meritorious.

Appeals from the Sandiganbayan are limited to questions of law. The questions raised by the petitioners "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" and as such are generally not proper subjects of this appeal.[35] However, the rule is not absolute and admits of certain exceptions.[36] In this case, finding that the assailed decision is based on a misapprehension of facts, the Court admits the questions raised by the petitioners and resolves the case accordingly.

The petitioners were charged for violation of Section 3(e) of R.A. No. 3019,[37] the elements of which are the following:

- a) The accused must be a public officer discharging administrative, judicial or official functions;
- b) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- c) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[38]

Of these, the Court finds the second element wanting in the case at bar.

The basis of the criminal charges against the petitioners is the authorization and release of increase of salary in favor of petitioner Feliciano as General Manager of LMWD. Nonetheless, the prosecution was not able to prove beyond reasonable doubt, and on the strength of its own evidence, that the approval of the Resolution authorizing such increase and the processing of documents which facilitated the payment was tinged with manifest partiality; evident bad faith, or inexcusable negligence.

As defined, Section 3(e) of R.A. No. 3019 may be committed by means of *dolo*, that is through bad faith or manifest partiality, or by means of *culpa*, that is through gross inexcusable negligence.

Manifest partiality is defined as "a clear, notorious or plain inclination or predilection to favor one side rather than another." [39] Evident bad faith connotes a palpable and patently 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. Evident bad faith is more than bad judgment or negligence.[40] Gross inexcusable negligence is characterized by the want of slightest care; by the willful and intentional act or omitting to act in a situation where there is a duty to act, attended by conscious indifference to consequences as to affected persons.[41]

In the passage of the resolution, the Court finds that the BOD acted on the "honest belief" that the BOD of LMWD has the authority to increase the salary of petitioner Feliciano as General Manager pursuant to Section 23 of P.D. No. 198 or the Provincial Water Utilities Act of 1973, viz.:

Section 23. Additional Officers. - At the first meeting of the board, or as soon thereafter as practicable, the

board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. Said officers shall service at the pleasure of the board. (Emphasis and underscoring supplied)

Notably, at the time of passage of Resolution No. 98-33 on November 6, 1998, there was no categorical pronouncement as to whether the salary of the General Manager of a water district is covered by the Salary Standardization Law (SSL). It was only in 2013, in the case of *Engr. Mendoza v. Commission on Audit*[42] that the Court was able to examine and reconcile the grant of authority in favor of water districts to fix the compensation of its General Manager under P.D. No. 198 vis-a-vis the coverage of the SSL.

In *Mendoza*, the Court had the occasion to evaluate and trace, on the basis of government entities covered by the SSL and those exempted from its application under certain laws, the applicability of the SSL to local water districts. The Court noted that exemption under the SSL by GOCCs must be specifically provided for under the charter of the GOCC. In the case of water districts, the Court held that P.D. No. 198 contains no such exemption clause. Thus, while the BODs of water districts have the power to fix the salary of their General Manager, the same must be in accordance with the position classification under the SSL.[43]

From the Court's elaborate disquisition in *Mendoza*, it can be inferred that there is a real question as to the limitation in the power of the BOD of water districts in fixing the salary of its General Manager. Accordingly, it cannot be said evident bad faith, manifest partiality, or gross negligence attended the issuance of Resolution No. 98-33 in 1998, as at that time, there was only the express grant of authority by P.D. No. 198 and no other prohibition for the BOD of LMWD to authorize such increase in the salary of its General Manager.

On the part of petitioner Feliciano, it is significant to note that he took no part in the passing of the Resolution which ordered the increase of his salary. In approving the release of funds, he merely acted on the basis of the authority given by Resolution No. 98-33, which as discussed, was passed by the BOD of LMWD on the honest belief, based on Section 23 of P.D. No. 198, that it had absolute authority to fix the salary of its General Manager. Clearly, petitioners cannot be held liable under R.A. No. 3019.

In the same vein, petitioner Feliciano must also be acquitted of the criminal charge for malversation. Considering that there is basis upon which the BOD of LMWD passed the Resolution in increasing its salary, there is no reason for petitioner Feliciano not to approve the release of payment pursuant to the authority of the board. After all, the powers of General Manager emanates and is secondary to that of the BOD.[44] To a certain extent, therefore, the processing of the release of payment pursuant to Resolution No. 98-33 is ministerial on the part of petitioner Feliciano.

Article 217 of the RPC sets forth the following elements for the crime:

1. that the offender is a public officer;
2. that he had the custody or control of funds or property by reason of the duties of his office;
3. that those funds or property were public funds or property for which he was accountable; and
4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[45]

In fine, in malversation there must be improper appropriation or use, whether directly or indirectly, of public funds; the same is lacking in the case at bar. The disbursement voucher had been completely accomplished and all the necessary supporting documents attached, all in accordance with Resolution No. 98-33 of the BOD of LMWD. While the period covers January 1, 1998 to September 26, 1998, during the period of the LWUA

takeover, there is basis in good faith to believe that he is entitled to such salary considering that the terms of takeover relates only to the satisfaction of LMWD's financial obligation to LWUA. The documents related to such loan obligation does not empower the LWUA to exercise managerial prerogatives relating to personnel management. Even assuming arguendo that LWUA has such powers, it is understood that its "takeover" of the operations of LMWD is merely temporary or only until full satisfaction of the latter's obligation. Thus, the General Manager appointed by LMWD retains its position and is entitled to remuneration, this "practice" has in fact been recognized by LWUA.[46] In view of these, at that time, there is no reason for petitioner Feliciano to refuse to process and sign the release and accept payment.

WHEREFORE, in view of the foregoing, the instant petitions for review on certiorari are hereby GRANTED. The assailed Decision dated January 27, 2015 and the Resolution dated August 4, 2015 of the Sandiganbayan in Criminal Case Nos. 28179 and 28180 are REVERSED and SET ASIDE. Consequently, petitioners Dr. Cesar A. Aquitania and Ranulfo C. Feliciano are acquitted of the crimes charged.

**SO ORDERED.**

Carandang and Zalameda, JJ., concur.

Caguioa, J., see concurring opinion.

Peralta, C.J., join in the concurring opinion of J. Caguioa.

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[1] Rollo of G.R. No. 219747, pp. 8-29; rollo of G.R. Nos. 219681-2, pp. 8-32.

[2] Id. at 37-69; penned by Associate Justice Oscar C. Herrera, Jr., with Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan, concurring.

[3] Id. at 70-82.

[4] Rollo of G.R. Nos. 219681-82, pp. 191-195.

[5] Id. at 192-194.

[6] Id. at 196-200.

[7] Id. at 196-198.

[8] Id. at 191, 196.

[9] Rollo of G.R. No. 219747, p. 40.

[10] Id.

[11] Id. at 48-49.

[12] Id. at 44, rollo of G.R. Nos. 219681-82, p. 273.

[13] Id. at 49.

[14] Id.

[15] Id. at 50-51.

[16] Id.

[17] Id. at 53.

[18] Id. at 53-54.

[19] Id. at 54-55.

[20] Id. at 55, rollo of G.R. Nos. 219681-82, pp. 272-273.

[21] Rollo of G.R. Nos. 219681-82, pp. 272- 273.

[22] Rollo of G.R. No. 219747, p. 56.

[23] Id.

[24] Id.

[25] Id. at 56.

[26] Id. at 37-69.

[27] Id. at 67-68.

[28] Id. at 59-60.

[29] Id. at 64.

[30] Id. at 70-71.

[31] Id. at 70-82.

[32] Id. at 93.

[33] Rollo of G.R. Nos. 219681-82, pp. 17-21.

[34] Rollo of G.R. No. 219747, pp. 17-29, rollo of G.R. Nos. 219681-82, pp. 21-29.

[35] SPO1 Lihaylihay, et al. v. People, 715 Phil. 722,728 (2013).

[36] Id., citing Balderama v. People, et al., 566 Phil. 412, 420 (2008), whereby the Court enumerated the following instances when it may resolve questions of fact: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record.

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

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.

[38] Consigna v. People, et al., 731 Phil. 108, 123-124 (2014).

[39] People v. Atienza, 688 Phil. 122, 132 (2012).

[40] Coloma, Jr. v. Sandiganbayan, et al., 744 Phil. 214, 229 (2014), citing Fonacier v. Sandiganbayan, 308 Phil. 660, 693-694 (1994); People v. Atienza, supra.

[41] People v. Atienza, supra.

[42] 717 Phil. 491 (2013).

[43] Id. at 501.

[44] PRESIDENTIAL DECREE NO. 198, Section 24.

Section 24. Duties. - The duties of the officer shall be those customary to the office held and as determined and specified from time to time by the board. The general manager, who shall not be a director, shall, subject to approval of the board, have full supervision and control of the maintenance, operation and construction of water supply and wastewater disposal and administrative facilities of the district, with full power and authority to exercise management prerogatives as set forth in the district's personnel rules and regulations.

[45] Major Cantos v. People, 713 Phil. 344, 353-354 (2013).

[46] See LWUA's Letter dated July 23, 2014 to the OGCC seeking clarification of the "LWUA's practice during take-over of the management function of a local water district that the General Manager is merely allowed to step-aside and not officially dismissed from service." (Rollo of G.R. Nos. 219681-82, p. 92. Annex B-20, to Petition for Review)

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## CONCURRING OPINION

### CAGUIOA, J.:

I concur with the ponencia that petitioners Ranulfo C. Feliciano (petitioner Feliciano) and Cesar A. Aquitania (petitioner Aquitania) (collectively, petitioners) should be acquitted. I submit this separate concurring opinion if only to stress anew that a violation of a law that is not penal in nature does not, as it cannot, automatically translate into a violation of Section 3(e) of Republic Act (R.A.) No. 3019.

#### Brief review of the facts

Sometime during the takeover by Local Waters Utilities Administration (LWUA) of Leyte Metropolitan Water District (LMWD), an administrative case was filed against petitioner Feliciano for "unlawful approval of the disbursement of his backwages for the period of March 6, 1990 to October 23, 1990 during which he has not rendered service to LMWD." After investigation, the Office of the Government Corporate Counsel recommended the dismissal of petitioner Feliciano which the LWUA approved on November 11, 1991.[1]

After the takeover by the LWUA of LMWD's affairs was lifted in 1998, a new set of board of directors (BOD) of LMWD was appointed, including petitioner Aquitania who was designated as Vice Chairperson of the BOD.

On September 25, 1998, the new BOD approved Resolution No. 98-002 where the BOD declared that it has the sole authority to appoint or dismiss the regular General Manager of LMWD. Upon motion of its members, petitioner Feliciano was appointed as General Manager of LMWD.

On November 6, 1998, the BOD approved Resolution No. 98-33 which adjusted the monthly salary of petitioner Feliciano from P18,749.00 to P57,146.00 effective January 1998.

On January 7, 1999, petitioner Feliciano received the amount of P506,246.26, representing the increase in his

salary pursuant to Resolution No. 98-33.

The Commission on Audit (COA) disallowed the payment of increased salary to petitioner Feliciano on post-audit. Thereafter, an Information for Violation of Section 3 (e) of R.A. No. 3019 was filed before the Sandiganbayan against petitioners and other members of the BOD of LMWD. Another Information for the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) was filed against petitioner Feliciano and other officers of the LMWD. The accusatory portion of the Information for Violation of Section 3 (e) of R.A. No. 3019 reads:

That on or about the 6th day of November 1998, or for sometime prior or subsequent thereto, at the City of Tacloban, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, accused HONORIO F. GEREZ, CESAR A. AQUITANIA, CONCEPCION G. MEDALLA, VIRGINA P. FLORES, and FRANKLIN A. SICOY, public officers being the Chairman, Vice-Chairman, and Members, respectively, of the Board of Directors of the Leyte Metropolitan Water District (LMWD), Tacloban City, and as such officers had the authority to fix the compensation of the officers and employees of LMWD pursuant to the provisions of Presidential Decree No. 198, otherwise known as the Provincial Water Utilities Act of 1973, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, and with accused RANULFO C. FELICIANO, likewise a public officer being the General Manager of LMWD, with deliberate intent, with grave abuse of authority with intent of giving respondent RANULFO C. FELICIANO excessive monetary benefits in office, did then and there willfully, unlawfully and feloniously enact and approve Resolution No. 98-33 entitled "A RESOLUTION ADJUSTING THE SALARY OF THE GENERAL MANAGER OF THE LEYTE METROPOLITAN WATER DISTRICT (LMWD)," by means of which the salary of accused RANULFO C. FELICIANO, as General Manager of LMWD with salary grade twenty-five (25), was increased to Fifty-Seven Thousand One Hundred Forty Six Pesos (P57,146.00), Philippine Currency, per month, in total disregard of the Plantilla of Personnel verified by the Department of Budget and Management, which specifies that the position of General Manager occupied by accused RANULFO C. FELICIANO, carries the salary grade of Twenty-Five (25) at the rate of only Eighteen Thousand Seven Hundred Forty-Nine Pesos (P18,749.00), Philippine Currency, per month, thereby giving accused RANULFO C. FELICIANO unwarranted benefit and advantage in the discharge of their administrative functions through manifest partiality.

CONTRARY TO LAW.[2]

The Sandiganbayan convicted petitioners for violation of Section 3 (e) of R.A. No. 3019 and Malversation of Public Funds under Article 217 of the RPC. In finding petitioners guilty of violation of Section 3(e) of R.A. No. 3019, the Sandiganbayan held that as a local water district LMWD is a government-owned and controlled corporation under the jurisdiction of the Civil Service Commission. As such, the compensation of its officers and personnel must conform to the salary schedule laid down in R.A. No. 6758.[3]

Petitioners separately filed their appeal which this Court resolved to consolidate.

The element of manifest partiality was not present

At the outset, it must be pointed out that the Information for Violation of Section 3 (e) of R.A. No. 3019 charged petitioners of committing the offense through manifest partiality only. Thus, my discussion will be limited to the same.

There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "'Partiality' is synonymous with 'bias' which 'excites a disposition to see and report matters as they are wished for rather than as they are.'"[4] Mere partiality is not sufficient — the same must be manifest.

The ponente correctly found that when the BOD of LMWD approved Resolution No. 98-33 in 1998, it had basis to believe that it had the authority to increase the salary of petitioner Feliciano pursuant to Section 23[5] of Presidential Decree (P.D.) No. 198.[6] It was when the Court promulgated *Mendoza v. Commission on Audit*[7] (*Mendoza*) in 2013 that the limits of Section 23 were clarified. In *Mendoza*, the Court ruled that the salary of a water district's general manager is covered by the Salary Standardization Law despite Section 23 of P.D. No. 198. While the law grants water districts the power to fix the compensation of their general managers, the same should be consistent with the Salary Standardization Law. Thus, when Resolution No. 98-33 was approved in 1998, the BOD of LMWD's interpretation of Section 23 of P.D. No. 198, no matter how erroneous, had basis.

Since no manifest partiality can be attributed to petitioner Aquitania on the basis of the misinterpretation of Section 23 of P.D. No. 198, there is all the more reason to absolve petitioner Feliciano of any wrongdoing considering that he took no part in approving Resolution No. 98-33. When petitioner Feliciano approved the release of funds, he was merely acting on the basis of the authority given to him by the BOD of LMWD under Resolution No. 98-33.

I reiterate my position in *Villarosa v. People*[8] that not all violations of a law or regulation are equivalent to evident bad faith, manifest partiality, or gross inexcusable negligence even if it causes undue injury or gives unwarranted benefits, advantage or preference to any party. I cannot, in good conscience, agree to punishing with imprisonment any and all violations of non-penal laws. It is true that public servants have a duty to know the limits of the authority granted to them. Yet, I cannot subscribe to the thinking that to do an act outside of those limits already constitutes manifest partiality, evident bad faith, or gross inexcusable negligence that is criminally punishable. If that is the case, then we might as well dispense with administrative proceedings — whether in the Civil Service Commission or in the Ombudsman — against public officials, for what is the sense of having a distinction between administrative and criminal cases when every single misstep merits a criminal sanction.

R.A. No. 3019 was crafted as an anti-graft and corruption measure. The crux of the acts punishable under R.A. No. 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." [9] Graft entails the acquisition of gain in dishonest ways. [10] For an act to fall under Section 3(e) of R.A. No. 3019, the same must be done with fraudulent and corrupt intent. Such is the purpose of R.A. No. 3019 which this Court is mandated to uphold.

Based on the foregoing, I vote to ACQUIT petitioners Ranulfo C. Feliciano and Cesar A. Aquitania of the crime of violation of Section 3(e) of R.A. No. 3019.

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[1] Rollo (G.R. No. 219747), pp. 50-51.

[2] Rollo (G.R. No. 219681-82), pp. 192-194.

[3] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES, or the Compensation and Position Classification Act of 1989, approved August 21, 1989.

[4] *Villarosa v. Ombudsman*, G.R. No. 221418, January 23, 2019, 891 SCRA 244, 263.

[5] Section 23. Additional Officers. — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. Said officers shall service at the pleasure of the board.

[6] DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES, or the Provincial Water Utilities Act of 1973, issued May 25, 1973.

[7] 717 Phil. 491, 497 (2013).

[8] G.R. Nos. No. 233155-63, June 23, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66280>>.

[9] Senate Deliberations of R.A. No. 3019 dated July 1960.

[10] BLACK'S LAW DICTIONARY (9th ed. 2009), p. 794.

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