

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ANTONIO B. SANCHEZ,

Petitioner,

G.R. No. 187340

Present:

SERENO, *CJ*, Chairperson,

BRION,*

BERSAMIN,

VILLARAMA, JR., and

REYES, *JJ*.

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

Promulgated:

AUG 14 2013

X

X

DECISION

SERENO, *CJ*:

Before this Court is a certiorari Petition¹ filed by City Engineer Antonio B. Sanchez assailing the Sandiganbayan Decision² dated 24 September 2008 and Resolution³ dated 06 March 2009 in Crim. Case No. 25971. The Sandiganbayan found Sanchez guilty of violating Section 3 (e) of the Graft and Corrupt Practices Act.⁴

Eugenio F. Gabuya Jr. (Gabuya), the *Barangay* Captain of Cogon, Pardo, Cebu City, filed a request with the Office of the City Engineer for the improvement of an existing canal traversing Tagunol and Tabukanal in Cogon. The Maintenance and Drainage Section of the Office of the City Engineer surveyed the existing canal, found it dirty and clogged, and recommended its improvement. Engineering Assistant Thessani C. Rubi prepared a "Program of Work" and an "Estimate of Construction, Plans and

* Designated acting member of the First Division in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 1497 dated 31 July 2013.

¹ *Rollo*, pp. 3-19.

² *Id.* at 22-32, penned by Associate Justice Norberto Y. Goraldez and concurred by Associate Justices Francisco H. Villaruz, Jr. and Efren N. dela Cruz.

³ *Id.* at 57-59.

⁴ Republic Act No. (R.A.) 3019.

Specifications,” which were then checked by Engineer Gerardo C. del Rosario (Del Rosario).⁵

Petitioner approved and submitted these documents to the Cebu City Council. In the course of their preparation, however, *he never ordered Rubi, Del Rosario, or any of his subordinates to verify the ownership of the land through which the canal would pass because, according to him, it appeared to be public land.*⁶ The Council passed Resolution No. 1053 authorizing City Mayor Alvin B. Garcia (Garcia) to enter into a contract for and on behalf of the city for the construction of a “CHB-lined” canal and the installation of a box culvert at Highway Tagunol in *Barangay Cogon*. Pursuant to Resolution No. 3550, ₱496,054 was appropriated for the project.⁷ Garcia then entered into a contract with Alvarez Construction for the building of the canal. The Construction Division of the Office of the City Engineer, together with Alvarez Construction, implemented the project and completed it on 9 May 1998.⁸

Sometime in January 1998, Lucia Nadela (private complainant) discovered that a canal was being constructed on her property without her consent and approval.⁹ She also found that the *nipa* trees on her land, from which she had been harvesting and selling *nipa* leaves, had been cut. Despite the assurances of Gabuya that the canal would be removed in due time, the Office of the City Engineer never initiated efforts to do so. Nadela filed a Complaint before the Office of the Ombudsman for violation of Republic Act 3019 against Gabuya, Garcia and herein petitioner.

The Office of the Ombudsman (OMB) found probable cause against petitioner Sanchez only. It relieved Gabuya of responsibility, supposedly because the construction of the canal was entirely the undertaking of the City Government of Cebu.¹⁰ As for Garcia, he purportedly relied on the representations of petitioner, who had the duty of verifying the status of the land.¹¹ The OMB thus filed an Information¹² against petitioner with the Sandiganbayan, *viz.:*

That on or about the month of January 1998, and/or sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ANTONIO B. SANCHEZ, a public officer, being the Head, City Engineering Office of Cebu City, in the performance of his official functions, with deliberate intent and manifest partiality, evident bad faith and gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the construction of a dike/canal which traversed the lot owned by Lucia

⁵ Sandiganbayan, Records, Vol. II, pp. 29-38.

⁶ *Rollo*, p. 25.

⁷ *Id.*

⁸ *Id.*

⁹ Sandiganbayan, Records, Vol. I, p. 60.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 7.

¹² *Rollo*, pp. 20-21.

Nadela situated at Cogon, Pardo, Cebu City and covered with TCT No. 53444, without the consent of the owner thereof, thereby taking the said property of Lucia Nadela without due process, depriving Lucia Nadela of the use of her property, thereby giving unwarranted benefits to the City of Cebu, to the undue damage, injury and prejudice of Lucia Nadela.

CONTRARY TO LAW.¹³

The Sandiganbayan held that petitioner, being a public officer by virtue of his position as the City Engineer of Cebu, acted with gross inexcusable negligence in approving the construction of the canal without first ascertaining the ownership of the property where the canal would be constructed or verifying whether the property had been expropriated.¹⁴ This alleged negligence supposedly deprived private complainant of the control and use of the middle portion of her land, resulting in a loss of ₱20,000 every four or five months, which represents income from harvesting and selling *nipa* leaves. Private complainant also claimed that she suffered injury, because informal land settlers used the canal as their toilet, thereby dirtying and damaging the land.¹⁵ The Sandiganbayan found petitioner guilty of violating Section 3(e) of R.A. 3019, and sentenced him to imprisonment for 6 years and 1 month minimum, to 8 years as maximum, with perpetual disqualification from public office.¹⁶

Petitioner comes before this Court assailing the Sandiganbayan's factual finding of gross inexcusable negligence on his part and undue injury to private complainant. He avers that it was the duty of the Maintenance and Drainage Section of the Inspection Office, not his, to determine whether or not the land was privately owned. Also, he purportedly had no hand in the approval of plans for the land or in the implementation or execution of the project.¹⁷ Petitioner also cites *Arias v. Sandiganbayan*¹⁸ in arguing that he cannot be held liable for the negligent acts of his subordinates, unless there is a finding of conspiracy between them. Lastly, he argues that there existed a prejudicial question before the Regional Trial Court (RTC) in Civil Case No. CEB-21748, which delved into the validity of the acquisition of Nadela's lot. According to petitioner, the instant case was filed on the premise that the construction of the canal was unlawful, while the identical question in Civil Case No. CEB-21748 was whether or not the City legally acquired the property of private complainant when it constructed a canal thereon.¹⁹

In a Resolution²⁰ dated 8 June 2009, this Court required respondent to comment.

¹³ Id. at 20.

¹⁴ Id. at 26-28.

¹⁵ Id. at 30.

¹⁶ Id. at 31.

¹⁷ Id. at 8-10.

¹⁸ 259 Phil. 794 (1989).

¹⁹ *Rollo*, pp. 13-14.

²⁰ Id. at 65.

In its Comment,²¹ respondent avers that one of the functions and duties of petitioner is to coordinate the construction of engineering and public works projects of the local government unit. Before implementing the project, however, he did not verify with the Register of Deeds whether the lot on which the canal would be built already had a title.²² Respondent also emphasizes the undisputed facts: *first*, private complainant was the registered owner of Lot. 3520 covered by Transfer Certificate of Title No. 53444; and *second*, the canal ate up 145 square meters of the middle portion of the lot. Because of the presence of the canal, informal settlers established their residence near it and used it as their waste disposal site, resulting in the lot's depreciation. To make matters worse, private complainant was never compensated for the taking of her property in order to give way to the construction of the canal.²³ As to the argument of petitioner that there existed a prejudicial question in Civil Case No. CEB-21748, this issue was already decided by the RTC in a Resolution dated 26 September 2007, which he did not question through a motion for reconsideration and a subsequent Rule 65 petition. Hence, he cannot now come before this Court asking it to rule on an issue that has already been settled.²⁴

The sole issue before us is whether petitioner is guilty beyond reasonable doubt of violating Section 3 (e) of R.A. 3019.

We have carefully reviewed the records of this case and found nothing therein to warrant a reversal of the assailed Decision of the Sandiganbayan. We deny the Petition and affirm petitioner's conviction.

The factual findings of the Sandiganbayan are conclusive upon this Court, except under any of the following circumstances:

- (1) The conclusion is a finding grounded entirely on speculation, surmise and conjectures;
- (2) The inference made is manifestly an error or founded on a mistake;
- (3) There is grave abuse of discretion;
- (4) The judgment is based on misapprehension of facts; and
- (5) The findings of fact are premised on want of evidence and are contradicted by evidence on record.²⁵

None of the foregoing circumstances is present. The findings of fact and conclusion of the Sandiganbayan that petitioner is guilty of violating Section 3(e), R.A. 3019 are sufficiently supported by the records.

²¹ Id. at 72-95.

²² Id. at 85-86.

²³ Id. at 87-92.

²⁴ Id. at 92.

²⁵ *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 719-720 (2005).

Section 3(e) of R.A. 3019 provides:

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. x x x.

The elements of this crime are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith **or gross inexcusable negligence**; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁶ (Emphasis supplied)

*Uriarte v. People*²⁷ further elaborates thus:

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

The Sandiganbayan correctly found the concurrence of the three elements.

First, petitioner, being the city engineer of Cebu, is undisputedly a public officer.

²⁶ *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 289-290.

²⁷ 540 Phil. 477, 494-495 (2006).

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:

Q: xxx Do you recall your statement that the basis in saying that the property of the private complainant was a public domain was because it appears swampy and a catch basin (sic), am I correct?

A: Yes, sir.

Q: So on the basis of the appearance of the lot of the complainant, you presumed that the lot is a public domain, am I correct?

x x x x

A: Yes, sir.

Q: So that is why you did not know that the lot was owned by the private complainant in this case?

A: Yes, sir.

Q: Because you did not make a verification from the Register of Deeds.

A: Yes, sir.

x x x x

Q: xxx, [Y]ou did not order your survey team to verify from the Regional Trial Court if the City Government of Cebu filed an expropriation proceeding against this lot of the private complainant?

A: No, because the lot was planted with nipa and pasture land. Because of the appearance that it is a public domain and the lot was planted with nipa palm. It was a mangrove area.

Q: So you based your presumption on the appearance of the lot, is that what you mean?

x x x x

A: xxx Yes, sir. (Emphasis supplied.)²⁸

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

²⁸ *Rollo*, p. 29, as cited in the Sandiganbayan Decision, p. 8.

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; (Emphases supplied)

Petitioner cannot hide behind the *Arias* doctrine, because it is not on all fours with his case. In *Arias*, six people comprising heads of offices and their subordinates were charged with violation of Section 3 (e) of R.A. 3019. The accused therein allegedly conspired with one another in causing, allowing, and/or approving the illegal and irregular disbursement and expenditure of public funds. In acquitting the two heads of offices, the Court ruled that they could not be held liable for the acts of their dishonest or negligent subordinates because they failed to personally examine each detail of a transaction before affixing their signatures in good faith.

In the present case, petitioner is solely charged with violating Section 3(e) of R.A. 3019. He is being held liable for gross and inexcusable negligence in performing the **duties primarily vested in him by law**, resulting in undue injury to private complainant. The good faith of heads of offices in signing a document will only be appreciated if they, with trust and confidence, have relied on their subordinates in whom the duty is primarily lodged.²⁹

Moreover, the undue injury to private complainant was established. The cutting down of her palm trees and the construction of the canal were all done without her approval and consent. As a result, she lost income from the sale of the palm leaves. She also lost control and use of a part of her land. The damage to private complainant did not end with the canal's construction. Informal settlers dirtied her private property by using the canal constructed thereon as their lavatory, washroom, and waste disposal site.

Lastly, petitioner cannot raise the issue of the existence of a prejudicial question because, as correctly argued by respondent, the RTC in Civil Case No. CEB-21748 has already ruled that there is none. Petitioner failed to avail himself of the remedies available to him by law in order to question this RTC ruling. As a result, the Resolution, insofar as he is concerned, is already final and binding on him. Nevertheless, the question of valid expropriation is irrelevant to this case, in which petitioner is being held liable for gross and inexcusable negligence in complying with his duties as City Engineer, to the detriment of private complainant.

WHEREFORE, in view of the foregoing, the Petition is **DENIED**. The Sandiganbayan Decision dated 24 September 2008 and Resolution dated 06 March 2009 in Case No. 25971 are hereby **AFFIRMED**.

²⁹ *Sistoza v. Desierto*, 437 Phil. 117, 121-122 (2002).

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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

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

MARIA LOURDES P. A. SERENO
Chief Justice



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ANTONIO B. SANCHEZ,

Petitioner,

G.R. No. 187340

Present:

SERENO, *CJ*, Chairperson,
BRION,*
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

Promulgated:

X - - - - -X

DECISION

SERENO, *CJ*:

Before this Court is a certiorari Petition¹ filed by City Engineer Antonio B. Sanchez assailing the Sandiganbayan Decision² dated 24 September 2008 and Resolution³ dated 06 March 2009 in Crim. Case No. 25971. The Sandiganbayan found Sanchez guilty of violating Section 3 (e) of the Graft and Corrupt Practices Act.⁴

Eugenio F. Gabuya Jr. (Gabuya), the *Barangay* Captain of Cogon, Pardo, Cebu City, filed a request with the Office of the City Engineer for the improvement of an existing canal traversing Tagunol and Tabukanal in Cogon. The Maintenance and Drainage Section of the Office of the City Engineer surveyed the existing canal, found it dirty and clogged, and recommended its improvement. Engineering Assistant Thessani C. Rubi prepared a “Program of Work” and an “Estimate of Construction, Plans and

* Designated acting member of the First Division in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 1497 dated 31 July 2013.

¹ *Rollo*, pp. 3-19.

² *Id.* at 22-32, penned by Associate Justice Norberto Y. Geraldez and concurred by Associate Justices Francisco H. Villaruz, Jr. and Efren N. dela Cruz.

³ *Id.* at 57-59.

⁴ Republic Act No. (R.A.) 3019.

Specifications,” which were then checked by Engineer Gerardo C. del Rosario (Del Rosario).⁵

Petitioner approved and submitted these documents to the Cebu City Council. In the course of their preparation, however, *he never ordered Rubi, Del Rosario, or any of his subordinates to verify the ownership of the land through which the canal would pass because, according to him, it appeared to be public land.*⁶ The Council passed Resolution No. 1053 authorizing City Mayor Alvin B. Garcia (Garcia) to enter into a contract for and on behalf of the city for the construction of a “CHB-lined” canal and the installation of a box culvert at Highway Tagunol in *Barangay Cogon*. Pursuant to Resolution No. 3550, ₱496,054 was appropriated for the project.⁷ Garcia then entered into a contract with Alvarez Construction for the building of the canal. The Construction Division of the Office of the City Engineer, together with Alvarez Construction, implemented the project and completed it on 9 May 1998.⁸

Sometime in January 1998, Lucia Nadela (private complainant) discovered that a canal was being constructed on her property without her consent and approval.⁹ She also found that the *nipa* trees on her land, from which she had been harvesting and selling *nipa* leaves, had been cut. Despite the assurances of Gabuya that the canal would be removed in due time, the Office of the City Engineer never initiated efforts to do so. Nadela filed a Complaint before the Office of the Ombudsman for violation of Republic Act 3019 against Gabuya, Garcia and herein petitioner.

The Office of the Ombudsman (OMB) found probable cause against petitioner Sanchez only. It relieved Gabuya of responsibility, supposedly because the construction of the canal was entirely the undertaking of the City Government of Cebu.¹⁰ As for Garcia, he purportedly relied on the representations of petitioner, who had the duty of verifying the status of the land.¹¹ The OMB thus filed an Information¹² against petitioner with the Sandiganbayan, *viz.*:

That on or about the month of January 1998, and/or sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ANTONIO B. SANCHEZ, a public officer, being the Head, City Engineering Office of Cebu City, in the performance of his official functions, with deliberate intent and manifest partiality, evident bad faith and gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the construction of a dike/canal which traversed the lot owned by Lucia

⁵ Sandiganbayan, Records, Vol. II, pp. 29-38.

⁶ *Rollo*, p. 25.

⁷ *Id.*

⁸ *Id.*

⁹ Sandiganbayan, Records, Vol. I, p. 60.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 7.

¹² *Rollo*, pp. 20-21.

Nadela situated at Cogon, Pardo, Cebu City and covered with TCT No. 53444, without the consent of the owner thereof, thereby taking the said property of Lucia Nadela without due process, depriving Lucia Nadela of the use of her property, thereby giving unwarranted benefits to the City of Cebu, to the undue damage, injury and prejudice of Lucia Nadela.

CONTRARY TO LAW.¹³

The Sandiganbayan held that petitioner, being a public officer by virtue of his position as the City Engineer of Cebu, acted with gross inexcusable negligence in approving the construction of the canal without first ascertaining the ownership of the property where the canal would be constructed or verifying whether the property had been expropriated.¹⁴ This alleged negligence supposedly deprived private complainant of the control and use of the middle portion of her land, resulting in a loss of ₱20,000 every four or five months, which represents income from harvesting and selling *nipa* leaves. Private complainant also claimed that she suffered injury, because informal land settlers used the canal as their toilet, thereby dirtying and damaging the land.¹⁵ The Sandiganbayan found petitioner guilty of violating Section 3(e) of R.A. 3019, and sentenced him to imprisonment for 6 years and 1 month minimum, to 8 years as maximum, with perpetual disqualification from public office.¹⁶

Petitioner comes before this Court assailing the Sandiganbayan's factual finding of gross inexcusable negligence on his part and undue injury to private complainant. He avers that it was the duty of the Maintenance and Drainage Section of the Inspection Office, not his, to determine whether or not the land was privately owned. Also, he purportedly had no hand in the approval of plans for the land or in the implementation or execution of the project.¹⁷ Petitioner also cites *Arias v. Sandiganbayan*¹⁸ in arguing that he cannot be held liable for the negligent acts of his subordinates, unless there is a finding of conspiracy between them. Lastly, he argues that there existed a prejudicial question before the Regional Trial Court (RTC) in Civil Case No. CEB-21748, which delved into the validity of the acquisition of Nadela's lot. According to petitioner, the instant case was filed on the premise that the construction of the canal was unlawful, while the identical question in Civil Case No. CEB-21748 was whether or not the City legally acquired the property of private complainant when it constructed a canal thereon.¹⁹

In a Resolution²⁰ dated 8 June 2009, this Court required respondent to comment.

¹³ Id. at 20.

¹⁴ Id. at 26-28.

¹⁵ Id. at 30.

¹⁶ Id. at 31.

¹⁷ Id. at 8-10.

¹⁸ 259 Phil. 794 (1989).

¹⁹ *Rollo*, pp. 13-14.

²⁰ Id. at 65.

In its Comment,²¹ respondent avers that one of the functions and duties of petitioner is to coordinate the construction of engineering and public works projects of the local government unit. Before implementing the project, however, he did not verify with the Register of Deeds whether the lot on which the canal would be built already had a title.²² Respondent also emphasizes the undisputed facts: *first*, private complainant was the registered owner of Lot. 3520 covered by Transfer Certificate of Title No. 53444; and *second*, the canal ate up 145 square meters of the middle portion of the lot. Because of the presence of the canal, informal settlers established their residence near it and used it as their waste disposal site, resulting in the lot's depreciation. To make matters worse, private complainant was never compensated for the taking of her property in order to give way to the construction of the canal.²³ As to the argument of petitioner that there existed a prejudicial question in Civil Case No. CEB-21748, this issue was already decided by the RTC in a Resolution dated 26 September 2007, which he did not question through a motion for reconsideration and a subsequent Rule 65 petition. Hence, he cannot now come before this Court asking it to rule on an issue that has already been settled.²⁴

The sole issue before us is whether petitioner is guilty beyond reasonable doubt of violating Section 3 (e) of R.A. 3019.

We have carefully reviewed the records of this case and found nothing therein to warrant a reversal of the assailed Decision of the Sandiganbayan. We deny the Petition and affirm petitioner's conviction.

The factual findings of the Sandiganbayan are conclusive upon this Court, except under any of the following circumstances:

- (1) The conclusion is a finding grounded entirely on speculation, surmise and conjectures;
- (2) The inference made is manifestly an error or founded on a mistake;
- (3) There is grave abuse of discretion;
- (4) The judgment is based on misapprehension of facts; and
- (5) The findings of fact are premised on want of evidence and are contradicted by evidence on record.²⁵

None of the foregoing circumstances is present. The findings of fact and conclusion of the Sandiganbayan that petitioner is guilty of violating Section 3(e), R.A. 3019 are sufficiently supported by the records.

²¹ Id. at 72-95.

²² Id. at 85-86.

²³ Id. at 87-92.

²⁴ Id. at 92.

²⁵ *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 719-720 (2005).

Section 3(e) of R.A. 3019 provides:

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. x x x.

The elements of this crime are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith **or gross inexcusable negligence**; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁶ (Emphasis supplied)

*Uriarte v. People*²⁷ further elaborates thus:

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

The Sandiganbayan correctly found the concurrence of the three elements.

First, petitioner, being the city engineer of Cebu, is undisputedly a public officer.

²⁶ *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 289-290.

²⁷ 540 Phil. 477, 494-495 (2006).

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:

Q: xxx Do you recall your statement that the basis in saying that the property of the private complainant was a public domain was because it appears swampy and a catch basin (sic), am I correct?

A: Yes, sir.

Q: So on the basis of the appearance of the lot of the complainant, you presumed that the lot is a public domain, am I correct?

x x x x

A: Yes, sir.

Q: So that is why you did not know that the lot was owned by the private complainant in this case?

A: Yes, sir.

Q: Because you did not make a verification from the Register of Deeds.

A: Yes, sir.

x x x x

Q: xxx, [Y]ou did not order your survey team to verify from the Regional Trial Court if the City Government of Cebu filed an expropriation proceeding against this lot of the private complainant?

A: No, because the lot was planted with nipa and pasture land. Because of the appearance that it is a public domain and the lot was planted with nipa palm. It was a mangrove area.

Q: So you based your presumption on the appearance of the lot, is that what you mean?

x x x x

A: xxx Yes, sir. (Emphasis supplied.)²⁸

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**

²⁸ *Rollo*, p. 29, as cited in the Sandiganbayan Decision, p. 8.

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; (Emphases supplied)

Petitioner cannot hide behind the *Arias* doctrine, because it is not on all fours with his case. In *Arias*, six people comprising heads of offices and their subordinates were charged with violation of Section 3 (e) of R.A. 3019. The accused therein allegedly conspired with one another in causing, allowing, and/or approving the illegal and irregular disbursement and expenditure of public funds. In acquitting the two heads of offices, the Court ruled that they could not be held liable for the acts of their dishonest or negligent subordinates because they failed to personally examine each detail of a transaction before affixing their signatures in good faith.

In the present case, petitioner is solely charged with violating Section 3(e) of R.A. 3019. He is being held liable for gross and inexcusable negligence in performing the **duties primarily vested in him by law**, resulting in undue injury to private complainant. The good faith of heads of offices in signing a document will only be appreciated if they, with trust and confidence, have relied on their subordinates in whom the duty is primarily lodged.²⁹


Moreover, the undue injury to private complainant was established. The cutting down of her palm trees and the construction of the canal were all done without her approval and consent. As a result, she lost income from the sale of the palm leaves. She also lost control and use of a part of her land. The damage to private complainant did not end with the canal's construction. Informal settlers dirtied her private property by using the canal constructed thereon as their lavatory, washroom, and waste disposal site.

Lastly, petitioner cannot raise the issue of the existence of a prejudicial question because, as correctly argued by respondent, the RTC in Civil Case No. CEB-21748 has already ruled that there is none. Petitioner failed to avail himself of the remedies available to him by law in order to question this RTC ruling. As a result, the Resolution, insofar as he is concerned, is already final and binding on him. Nevertheless, the question of valid expropriation is irrelevant to this case, in which petitioner is being held liable for gross and inexcusable negligence in complying with his duties as City Engineer, to the detriment of private complainant.

WHEREFORE, in view of the foregoing, the Petition is **DENIED**. The Sandiganbayan Decision dated 24 September 2008 and Resolution dated 06 March 2009 in Case No. 25971 are hereby **AFFIRMED**.

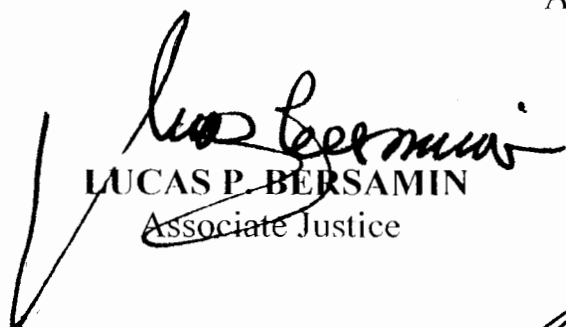
²⁹ *Sistoza v. Desierto*, 437 Phil. 117, 121-122 (2002).

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


ARTURO D. BRION
Associate Justice



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice