



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**EDWIN S. VILLANUEVA AND  
 NIDA V. VILLANUEVA,**  
*Petitioners,*

**G.R. No. 237864**

Present:

- versus -

PERLAS-BERNABE, *J.*,  
 Chairperson,  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 GAERLAN,\* *JJ.*

**PEOPLE OF THE  
 PHILIPPINES,**  
*Respondent.*

Promulgated:

08 JUL 2020

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**DECISION**

**DELOS SANTOS, *J.*:**

**The Case**

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court are the Decision<sup>2</sup> promulgated on January 12, 2018 and the Resolution<sup>3</sup> dated March 7, 2018 of the Sandiganbayan (First Division), in Criminal Case No. SB-14-CRM-0346, which found petitioners Edwin S. Villanueva and Nida V. Villanueva guilty beyond reasonable doubt of violation of Section 3 (d) of Republic Act No. (RA) 3019,<sup>4</sup> or the Anti-Graft and Corrupt Practices Act.

\* Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

<sup>1</sup> *Rollo*, Vol. I, pp. 12-40.

<sup>2</sup> Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Efren N. De La Cruz and Edgardo M. Caldon, concurring; *id.* at 46-61.

<sup>3</sup> Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Efren N. De La Cruz and Edgardo M. Caldon, concurring; *id.* at 63-67.

<sup>4</sup> August 17, 1960.

### Facts and Procedural Antecedents

The instant case stemmed from an Information<sup>5</sup> charging petitioners Edwin S. Villanueva (Edwin) and Nida V. Villanueva (Nida; collectively, petitioners) with violation of Section 3 (d) of RA 3019, the accusatory portion of which states as follows:

In September 2010, or thereabouts, in Kalibo, Aklan, Philippines, and within this Honorable Court's jurisdiction, above-named accused EDWIN S. VILLANUEVA (Edwin), a public officer, being then the Provincial Director of Technical Education and Skills Development Authority (TESDA), Aklan Provincial Office, committing the offense in relation to his office, conspiring and confederating with his wife, NIDA Y. VILLANUEVA (Nida), did then and there willfully, unlawfully, and criminally have Nida accept employment as In-house Competency Assessor of Rayborn-Agzam Center for Education, Inc., (RACE), a private competency assessment center which has a pending official business with Edwin. Edwin, among other things, approved RACE's TESDA accreditation, and exercised jurisdiction over appeals regarding RACE's assessments.

CONTRARY TO LAW.<sup>6</sup>

Rayborn-Agzam Center for Education, Inc. (RACE), is a private competency assessment center accredited by the Technical Education and Skills Development Authority (TESDA) on November 12, 2010. RACE conducts competency assessment in Food and Beverage Services National Certification (NC) II, Housekeeping NC II, and Household Services NC II, which are needed by candidates or applicants for work in hotels and restaurants domestic or abroad.<sup>7</sup>

The prosecution averred that sometime in February 2010, complainant Emily M. Raymundo (Raymundo), the Manager of RACE, sought the help of Nida in establishing RACE. Petitioner Nida then became one of the incorporators of RACE. To commence the incorporation of RACE, an indorsement from TESDA was obtained as a requirement in its application for registration with the Securities and Exchange Commission (SEC). An Indorsement Letter<sup>8</sup> dated March 31, 2010 was issued and signed by Edwin, then Provincial Director of TESDA-Aklan.

After the incorporation of RACE, on September 10, 2010, Nida was employed by RACE as an In-House Assessor for Food and Beverages Services NC II, Household Services NC II, and Housekeeping NC II within the period June 1, 2010 until June 1, 2012.<sup>9</sup>

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<sup>5</sup> *Rollo*, Vol. I, pp. 68-69.

<sup>6</sup> *Id.* at 68.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> *Id.* at 343.

<sup>9</sup> *Id.* at 458-459.

On November 10, 2010, RACE's accreditation as a Competency Assessment Center was approved and signed by petitioner Edwin and was confirmed by TESDA Director Buen S. Mondejar.<sup>10</sup>

On the part of the defense, Nida counter-argued that she was enticed to join RACE with the noble purpose of putting up a TESDA accredited training center which was aimed to help the poor people of Aklan as well as the scholars of TESDA in Aklan. She became an incorporator without any financial obligation and her signature was mainly needed to constitute an odd-numbered Board of Directors.<sup>11</sup> Nida claimed that her husband Edwin was not aware that she entered into a Contract of Employment<sup>12</sup> with RACE.<sup>13</sup>

Edwin denied having knowledge that his wife was one of the incorporators of RACE when he signed the Indorsement Letter to SEC. He also reasoned that it was TESDA's focal person, Ely Arinson, who is tasked to scrutinize all submitted documents and that the act of signing the Indorsement Letter is merely ministerial on his part.<sup>14</sup>

### **The Ruling of the Sandiganbayan**

The Sandiganbayan held that all the elements of the crime charged are present in this case and were duly proven by the prosecution, to wit: (a) that petitioner Edwin is a public officer at the time of commission of the crime; (b) that Nida, Edwin's wife, entered into a Contract of Employment with RACE, a private enterprise; *and* (c) that RACE had a pending business with Edwin during the pendency of the official business when Edwin signed the Indorsement Letter of RACE to SEC and when he signed and approved RACE's TESDA accreditation.<sup>15</sup>

On January 12, 2018, the Sandiganbayan rendered a Decision, finding the petitioners guilty beyond reasonable doubt of violation of Section 3 (d) of RA 3019. The dispositive portion of the Sandiganbayan reads as follows:

WHEREFORE, in view of the foregoing, this Court finds accused Edwin S. Villanueva and Nida Y. Villanueva GUILTY beyond reasonable doubt of violation of Section 3 (d) of R.A. No. 3019 and each is sentenced to suffer the indeterminate penalty of imprisonment for six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with the accessory penalty of perpetual disqualification from holding public office.

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<sup>10</sup> Id. at 455-457.

<sup>11</sup> Id. at 492.

<sup>12</sup> Id. at 458.

<sup>13</sup> TSN dated October 18, 2017, p. 22.

<sup>14</sup> *Rollo*, Vol. I, p. 53.

<sup>15</sup> Id. at 57-58.

SO ORDERED.<sup>16</sup>

On January 29, 2018, the petitioners moved for the reconsideration<sup>17</sup> of the Sandiganbayan Decision, to which, the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), filed its Comment/Opposition thereto.<sup>18</sup>

On March 7, 2018, the Sandiganbayan denied the said motion through the now-assailed Resolution.<sup>19</sup>

Hence, the instant petition.

### Issue

The primordial issue for the Court's resolution is whether or not the Sandiganbayan correctly convicted spouses Edwin and Nida Villanueva for violation of Section 3 (d) of RA 3019.

### Our Ruling

The present petition is denied for lack of merit.

At the outset, the Court clarifies that only questions of law may be raised in a petition for review on *certiorari*.<sup>20</sup>

Herein respondent claimed that the present petition is procedurally infirm as the petitioners raised pure questions of facts. We disagree.

A question of law is raised when the petitioner is merely asking the court to determine whether the law was properly applied on the given facts and evidence without probing into or reviewing the evidence on record.<sup>21</sup>

In the case at bench, petitioners are questioning whether the provisions of Section 3 (d) of RA 3019 are applicable in this case, considering that the entity into which Nida was employed is not considered a private entity in contemplation of the law. Moreover, petitioners question whether the lone testimony of Raymundo is sufficient to support the Sandiganbayan's findings. There is no doubt that these are questions of law,

<sup>16</sup> Id. at 60.

<sup>17</sup> *Rollo*, Vol. II, pp. 874-885.

<sup>18</sup> Id. at 886-892.

<sup>19</sup> *Rollo*, Vol. I, pp. 63-67.

<sup>20</sup> *Carinan v. Spouses Cueto*, 745 Phil. 186, 192 (2014).

<sup>21</sup> *Mandaue Realty & Resources Corporation v. Court of Appeals*, 801 Phil. 27 (2016).

which calls for a resolution of what is the correct and applicable law to a given set of facts.

***All the elements of Section 3 (d) of RA 3019 are present and duly proven***

Section 3 (d) of RA 3019 provides that:

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

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

x x x x

For one to be found guilty under the foregoing provisions, the following elements must be present and proven beyond reasonable doubt:

- (a) the accused is a public officer;
- (b) he or she accepted or has a member of his or her family who accepted employment in a private enterprise; and,
- (c) such private enterprise has a pending official business with the public officer during the pendency of official business or within one year from its termination.

After a judicious examination of the evidence on record, all the elements of violation of Section 3 (d) of RA 3019 are present and duly proven and established by the prosecution in the case at bench.

*Firstly*, Edwin was the Provincial Director of TESDA – Aklan Province at the time of the commission of the crime, which occurred in 2010. He was appointed on October 26, 2006 until his dismissal from the service after 2012.

His wife Nida, though a private citizen, can be validly charged in conspiracy with her husband in the commission of the crime. It has long been settled that private individuals may be sued and indicted together with the co-conspiring public officer in abidance with the policy of RA 3019,<sup>22</sup> which states that:

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<sup>22</sup> *Go v. Sandiganbayan*, 549 Phil. 782 (2007).

SEC. 1. Statement of policy. - It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

Additionally, Section 9 of RA 3019 concretizes the conclusion that the anti-graft practices law applies to both public and private individuals.

SEC. 9. (a) Any public officer **or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6** of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

x x x x (Emphasis ours)

*Secondly*, it is undisputed that Nida accepted employment in RACE, which is a private enterprise, as an In-House Competency Assessor for the period June 1, 2010 until June 1, 2012.<sup>23</sup> She is not only an employee but also an incorporator or part owner of the said entity.<sup>24</sup>

In the present petition, herein petitioners asseverate that RACE, being a non-stock and non-profit TESDA accredited educational association, may not be within the purview of the “private enterprise” indicated in Section 3 (b) of RA 3019. According to petitioners, the “enterprise” referred to in the law connotes an entity primarily organized for profit.

Petitioners went on to argue that, despite being a relative of a public officer, Nida’s profession falls under the exempted professions under Section 59, Book V of the Revised Administrative Code of 1987 (RAC).<sup>25</sup> They claimed that Nida’s roles as a competency assessor is considered in the

<sup>23</sup> *Rollo*, Vol. I, pp. 458-459.

<sup>24</sup> *Id.* at 346 and 357.

<sup>25</sup> SECTION 59. Nepotism.—(1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word “relative” and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

category of that of a teacher under the RAC.

It has not escaped the Court's attention that these are novel arguments raised for the first time on appeal. The Court has consistently ruled that, in order to uphold the basic principles of fair play, justice and due process, issues and arguments not ventilated before the lower court do not merit the attention of the Court.<sup>26</sup>

Nonetheless, the law is very clear and straightforward. A public officer or any member of his family cannot accept employment in a private enterprise with whom such public officer has a pending official business with during the pendency thereof or within one year from its termination as it is considered a corrupt practice.<sup>27</sup> Regardless if the enterprise is for profit or not, stock or non-stock, the law does not distinguish. It is an elementary rule in statutory construction that: where the law does not distinguish, the courts should not distinguish.<sup>28</sup> *Ubi lex non distinguit, nec nos distinguere debemus.*

Thus, mere acceptance by Nida, a family member, of employment with RACE, which is a private non-stock and non-profit enterprise, renders petitioners liable under the law.

It also worthy to mention that by its nature, violation of Section 3 (d) of RA 3019 is considered *malum prohibitum*. As such, the commission of the act as defined by law determines whether the legal provision was violated or not. The Court will adopt its ruling in *Go v. Sandiganbayan*,<sup>29</sup> citing *Luciano v. Estrella*,<sup>30</sup> wherein a private individual, who conspired with a public officer, was found guilty of violation of Section 3 (g) of RA 3019. In the said case, the Court ratiocinated in this manner:

[T]he act treated thereunder [referring to Section 3(g) of RA 3019] partakes the nature of *malum prohibitum*; it is the commission of that act as defined by law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which Republic Act 3019 was enacted, which is the repression of certain acts of public officers and private persons constituting graft or corrupt practices act or which may lead thereto.<sup>31</sup>

*Thirdly*, it was duly established that during the time that Nida accepted employment with RACE, the latter had a pending official business with TESDA over which Edwin had control and supervision as Provincial

<sup>26</sup> *Office of the President v. Cataquiz*, 673 Phil. 318, 343-344 (2011).

<sup>27</sup> *Atty. Valera v. Office of the Ombudsman*, 570 Phil. 368, 382 (2008).

<sup>28</sup> *Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018.

<sup>29</sup> *Supra* note 22.

<sup>30</sup> 145 Phil. 448 (1970).

<sup>31</sup> *Go v. Sandiganbayan*, *supra* note 22, at 799.

Director thereof.

Upon the commencement of the incorporation of RACE with SEC, RACE's official business with TESDA likewise started when petitioner Edwin issued an indorsement dated March 31, 2010 to SEC (with regard to RACE's application for registration and incorporation with SEC). During the pendency of RACE's accreditation proceedings before TESDA, Nida entered into a Contract of Employment with RACE on September 20, 2020. RACE's accreditation with TESDA was approved on November 10, 2020.

To reiterate, there is no doubt that Nida's act of accepting employment occurred when RACE, a private enterprise, had a pending official business with TESDA-Aklan, which is under Edwin's control and supervision.

Edwin's claim that he merely performed a ministerial function when he signed the Indorsement Letter of RACE and when he approved its TESDA accreditation cannot be given credence.

A ministerial act leaves no room for the exercise of discretion in its performance, whereas, a discretionary act by its nature require the exercise of judgment. In *Cariño v. Capulong*,<sup>32</sup> this Court differentiated a ministerial act from a discretionary act:

A purely ministerial act or duty, in contra-distinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.<sup>33</sup>

In the present case, the issuance of the subject Indorsement Letter to SEC and even the signing of the RACE's TESDA accreditation cannot be deemed a merely ministerial act on the part of Edwin. It is a discretionary act or function of a TESDA Provincial Director to sign the foregoing Indorsement Letter in accordance with certain laws.

As a Provincial Director, reasonable diligence and utmost prudence is expected from him in the handling of his official duties. The act of indorsement is more than a mechanical act of affixing one's signature on a piece of paper. A public officer is putting a seal of approval and is vouching for the identity and veracity of the person or entity whom he or she is indorsing. The Court agrees with the Sandiganbayan when it held that:

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<sup>32</sup> 294 Phil. 594 (1993).

<sup>33</sup> Id. at 605.



Edwin claims that when he issued the letter endorsing RACE to SEC, no document was presented to him by RACE, making him unaware that his wife was among its proposed incorporators. This Court finds this implausible, and granting that it is true, quite imprudent and reckless on the part of a Provincial Director. At the very least, TESDA should have asked for a letter request, with a draft of RACE's Articles of Incorporation attached thereto, for the Provincial Director to inform himself of the primary purpose of the corporation he is about to endorse. A draft of RACE's By-Laws should also be attached so that the Provincial Director could assure himself, subject to the final verification of SEC, that 60% of the capitalization of the assessment center, its administration and control, is vested on Filipino citizens. To our mind, these are the minimum requirements that a judicious and diligent Provincial Director should look for before it endorses the incorporation of a competency assessment center. Inasmuch as we presume regularity in the performance of the duties of the Provincial Director, the only conclusion that can be drawn is that Edwin is familiar with the incorporation documents of RACE and was therefore already aware of his wife's involvement with RACE, when he gave his endorsement to it.<sup>34</sup>

Likewise, petitioners cannot extricate themselves from the claws of law by denying Edwin's knowledge of Nida's employment with RACE. Unsubstantiated denial is a weak defense and cannot be given credence as it is self-serving. From the findings of the Sandiganbayan, there is sufficient evidence to support the conclusion that Edwin was aware of the involvement of Nida with RACE.

All told, the Court upholds the ruling of the Sandiganbayan that petitioners are guilty beyond reasonable doubt of violation of Section 3 (d) of RA 3019.

### ***The Penalty***

The penalty for violation of Section 3 (d) of RA 3019 is found in Section 9 of the same law:

Section 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

In its assailed Decision, the Sandiganbayan sentenced both petitioners to suffer the indeterminate penalty of imprisonment for six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with the accessory

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<sup>34</sup> *Rollo*, Vol. I, pp. 58-59.

penalty of perpetual disqualification from holding office. As such, the penalty imposed is upheld for being in consonance with RA 3019.

It bears to emphasize that public office is a public trust. Thus, public officers are exhorted to, at all times, serve the public with integrity, loyalty, and transparent accountability.

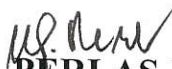
**WHEREFORE**, premises considered, this Court resolves to **DENY** the petition. The Decision of the Sandiganbayan in Criminal Case No. SB-14-CRM-0346 promulgated on January 12, 2018 and the Resolution dated March 7, 2018 are hereby **AFFIRMED**.


**SO ORDERED.**



**EDGARDO L. DELOS SANTOS**  
Associate Justice

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
 Senior Associate Justice  
 Chairperson


  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

  
**SAMUEL H. GAERLAN**  
 Associate Justice

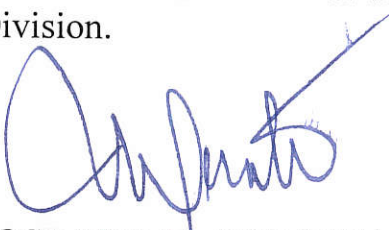
**ATTESTATION**

I attest 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.

  
**ESTELA M. PERLAS-BERNABE**  
 Senior Associate Justice  
 Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

  
**DIOSDADO M. PERALTA**  
 Chief Justice