

**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY**

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**THE  
Plaintiff,**

**Criminal Cases Nos. SB-  
16-CRM-0187**

For: Violation of Article 177 of  
the Revised Penal Code (RPC)

**- versus -**

**NESTOR MALASIG UY,  
Accused.**

*Present:*  
**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**MARTIRES,<sup>1</sup> J. and**  
**FERNANDEZ, J.**

*Promulgated:*

October 12, 2016

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

For resolution is the Motion to Quash Information dated June 3, 2016 filed by accused Nestor Malasig Uy.<sup>2</sup>

The accused moves for the quashal of the Information against him on the ground that the facts charged allegedly do not constitute an offense. He argues that the Information charges him with a negative act, *i.e.*, "withhold and/or disapprove the appointment papers of the legislative staff of the Sangguniang Bayan of Gamu, Isabela." Even if hypothetically admitted, the said negative averments would

<sup>1</sup> This incident was submitted for resolution when J. Martires, now Chairperson of the Second Division, was still a senior member of the Third Division.

<sup>2</sup> pp. 73-79, Record

**Resolution**

Criminal Cass No. SB-16-CRM-0187  
People vs. Uy

-2-

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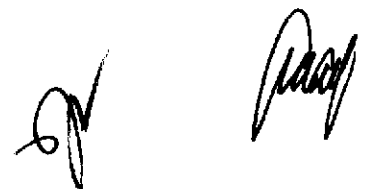
not purportedly meet the essential elements of the offense as defined by law considering that jurisprudence requires a positive act to sustain a charge of usurpation of authority or official function. In support of his argument, he cites the following commentary of Justice Luis B. Reyes in the Revised Penal Code 2 (18<sup>th</sup> Edition) in reference to **People vs. Calinisan**, 8 C.A. Rep 20:

The law demands positive, express and explicit representation on the part of the offender before he can be convicted of usurpation of authority. The crime is not committed if the accused merely did not deny that he was an agent of the government when introduces as such by public officials who responded to the intrigues of one Jose B. Lazaro.

The accused further argues that the records show that it was complainant who appointed Dante Martinez, Jasmin Rose Martinez, Silverio Balagan and Michael Balagan as members of the legislative staff of the *Sangguniang Bayan* (SB) of the Municipality of Gamu. Thus, the accused cannot allegedly be charged with usurpation because there was no positive act amounting to a felony that can be attributed to him. The accused contends that withholding, which is a negative act, is not tantamount to "disapproving" which is a positive one. Thus, the charge that he "withheld and/or disapproved" has no basis. Assuming that "withholding" is tantamount to "disapproving," he cannot allegedly be charged with usurpation because there is no evidence that that the appointment papers were forwarded to him and he disapproved them.<sup>3</sup>

In its Comment and/or Opposition dated June 23, 2016, the prosecution argues that Article 177 of the Revised Penal Code contemplates two (2) ways of committing the crime, namely: (1) usurpation of authority; and (2) usurpation of official functions. According to the prosecution, the accused is charged with usurpation of official function while the

<sup>3</sup> pp. 1-5, Motion to Quash Information; pp. 73-77, Record

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**Resolution**

Criminal Cass No. SB-16-CRM-0187  
People vs. Uy

-3-

x-----x

commentary of Justice Reyes cited by the accused refers to usurpation of authority. Thus, the accused's reliance on the quoted authority is misplaced. The prosecution likewise claims that the elements of usurpation of official functions are sufficiently averred in the Information. Finally, the prosecution argues that the accused's claim that there is no evidence that the appointment papers were forwarded to his office are evidentiary matters which need not be alleged in the Information.<sup>4</sup>

The accused filed a reply reiterating his arguments that a person charged with usurpation of official functions must have performed a positive act and that he did not withhold or disapproved anything.<sup>5</sup>

The Court finds the motion to quash devoid of merit.

A motion to quash an Information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters *aliunde*.<sup>6</sup>

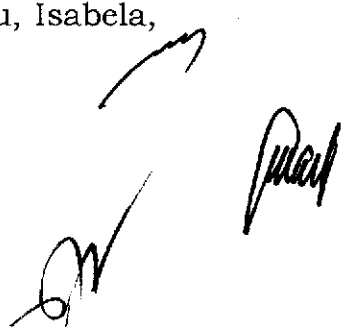
In this case, the accused is charged with usurpation of official functions under Article 177 of the RPC in an Information which reads:

That on or about July 2013, or sometime prior or subsequent thereto, in Gamu, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **NESTOR UY y MALASIG**, a public officer, being the Mayor of Gamu, Isabela, by taking advantage of his official functions and committing the crime in relation to office, did then and there willfully, unlawfully and feloniously withhold and/or disapprove the appointment papers of the legislative staff of the *Sangguniang Bayan* of Gamu, Isabela,

<sup>4</sup> pp. 1-3, Comment/Opposition; pp. 90-92, Record

<sup>5</sup> pp. 97-100, Record

<sup>6</sup> *People vs. Sandiganbayan (Fourth Division)*, G.R. No. 160619, September 9, 2015



**Resolution**

Criminal Cass No. SB-16-CRM-0187  
People vs. Uy

-4-

x-----x

namely: Dante D. Martinez, *Legislative Aide*; Jasmin Rose Martinez, *Clerk*; Silverio Balagan, *Driver*; and Michael Balagan, *Driver* without being lawfully entitled to do so under the pretense of official functions and/or with the use of false pretenses and knowing that the power and authority to appoint the legislative staff of the *Sangguniang Bayan* of Gamu, Isabela, pursuant to Section 445 paragraphs (a) (2) of Government Code belongs to the Vice Mayor and Presiding Officer of the *Sangguniang Bayan* of Gamu, Isabela, thereby usurping the latter's power to appoint all officers and employees of the *Sangguniang Bayan* of Gamu, Isabela to the damage and prejudice of the government and public interest.

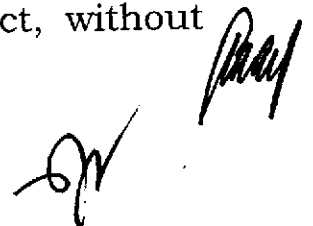
CONTRARY TO LAW.

The elements of usurpation of official functions are as follows:

1. The offender performs any act;
2. Pertaining to any person in authority or public officer of the Philippine Government or any foreign government or any agency thereof;
3. Under pretense of official position; and
4. Without being lawfully entitled to do so.

Tested against the aforesaid elements of usurpation of official functions, the Court finds that the Information contains the requisite factual averments of the elements of said offense, *i.e.*, that on or about July 2013, the accused, a mayor, withheld and/or disapproved the appointment papers of the legislative staff of the *Sangguniang Bayan* of Gamu, Isabela without being entitled to do so and under the pretense of official functions, and knowing that the power and authority to appoint the legislative staff of the *Sangguniang Bayan* of Gamu, Isabela belongs to the Vice Mayor and Presiding Officer of the *Sangguniang Bayan* of Gamu pursuant to Section 445 paragraphs (a) (2) of R. A. No. 7160.

As the prosecution correctly argues, "Article 177 merely requires, among others, the performance of an act, without



**Resolution**

Criminal Cass No. SB-16-CRM-0187  
People vs. Uy

-5-

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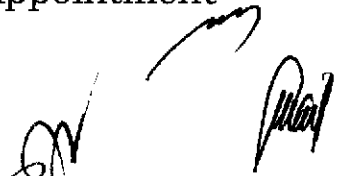
distinguishing between positive and negative acts.” In this case, the accused is charged with withholding and/or disapproving the appointment papers. Thus, the accused’s claim that the negative averment does not meet the essential element of usurpation of official functions is baseless.

Further, there are two (2) ways of committing the crime under Article 177 of the RPC: first, by knowingly and falsely representing himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government; or second, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so. The former constitutes the crime of usurpation of authority, while the latter act constitutes the crime of usurpation of official functions.

In this case, the accused is charged with usurpation of official functions. As the prosecution correctly observes, the commentary of Justice Reyes which the accused cited clearly refers to usurpation of authority:

5. Reliance on the above-quoted authority is misplaced. What the law demands to be “positive, express and explicit” is the representation on the part of, and not the act performed by, the offender. It pertains to a crime (Usurpation of Authority) different from that with which the accused is being charged (Usurpation of Official Functions). He has yet to cite any provision of law or rule of jurisprudence in support of his theory that the act performed by the offender must be a positive act. On the contrary, Article 177 of the RPC merely requires, among others, the performance of an act, without distinguishing between positive and negative acts.

Finally, the accused’s claim that he did not withhold or disapprove the appointment papers of the said legislative staff or that he had no participation in the process of appointment



**Resolution**

Criminal Cass No. SB-16-CRM-0187  
People vs. Uy

-6-

x-----x

is a matter of defense which should be threshed out during trial.

It is jurisprudentially settled that facts which constitute the defense of the accused against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.<sup>7</sup>

**WHEREFORE**, the Motion to Quash Information dated June 3, 2016 filed by accused Nestor Malasig Uy is DENIED for lack of merit.

SO ORDERED.

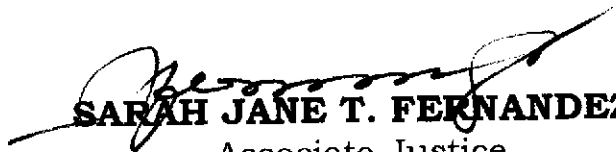
Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

**WE CONCUR:**

  
**SAMUEL R. MARTIRES**  
Associate Justice

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice

<sup>7</sup> Valencia, et. al. vs. Sandiganbayan, 433 SCRA 88 (2004)