



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-10-CRM-0094

For: Usurpation of Official Functions under Article 177 of the Revised Penal Code (R.P.C.)

-versus-

NATIVIDAD ISABEL REVIL-MAGBALON,

Accused,

PRESENT:

FERNANDEZ, SJ, *J. Chairperson*
MIRANDA, &
MUSNGI, JJ.¹

Promulgated:

September 17, 2017

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DECISION

MIRANDA, J.:

May a Municipal Mayor fill a permanent vacancy in the Sangguniang Bayan? Is good faith a valid defense in the crime of Usurpation of Official Functions? These are the issues surrounding the appointment of Gregorio C. De Jesus (G. De Jesus) as Sangguniang Bayan Member of Milagros, Masbate made by accused Municipal Mayor **NATIVIDAD ISABEL REVIL-MAGBALON** (Magbalon).

J. Ponferrada was the Chairperson of the 6th Division when this case was submitted for decision. He retired on September 13, 2017. J. Fernandez, SJ will participate in the promulgation of the case in view of her assumption as Chairperson of the 6th Division on the same date. [As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3].

¹ At the time the present case was submitted for decision, J. Musngi, was designated as a temporary member of the Sixth Division, in view of the vacancy therein (as per A.O. No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

In an Information dated March 19, 2010, accused Magbalon was charged with Usurpation of Official Functions under Article 177 of the Revised Penal Code (R.P.C.) as follows:

That on or about 19 July 2007, or sometime prior or subsequent thereto, in the municipality of Milagros, Province of Masbate, and within the jurisdiction of this Honorable Court, NATIVIDAD ISABEL REVIL-MAGBALON, a public officer, being then the Mayor of Milagros, did then and there willfully, unlawfully and feloniously, under the pretense that the power to fill-up vacancies in the Sangguniang Bayan of Milagros rests in the Mayor of Milagros, usurp the official function of the Governor of Masbate by appointing Gregorio C. de Jesus as Sangguniang Bayan Member of Milagros, Masbate despite her knowledge she was not lawfully entitled to such power, the power to appoint a Sangguniang Member in case of permanent vacancy belongs to the Provincial Governor under Sec. 45 (a) of R.A. No. 7169, otherwise known as the Local Government Code.

CONTRARY TO LAW

On May 31, 2010, the Court found probable cause and issued a warrant for the arrest of Magbalon.² The Court likewise issued a Hold Departure Order against her on June 8, 2010.³

On June 18, 2010, the Court approved the cash bond that she posted for her provisional liberty.⁴

On October 15, 2010, Magbalon was arraigned with the assistance of counsel *de parte*.⁵ She refused to enter any plea. For this reason, the Court entered a plea of "Not Guilty" into the records.⁶

On August 2, 2017, the Court issued its pre-trial order.⁷

In the joint stipulation of facts of the parties as contained in the Pre-trial Order dated January 14, 2011, Magbalon, through counsel, admitted the following: 1) she was the Municipal Mayor of Milagros, Masbate at the time material to the case; 2) Eulogio C. De Jesus (E. De Jesus) was elected Sangguniang Bayan Member of Milagros, Masbate in the May 14, 2007 local elections; 3) E. De Jesus died thereafter. This resulted in a vacancy in the membership of Sangguniang Bayan of Milagros, Masbate; and 4) the genuineness and due execution of the Appointment dated July 19, 2007 of

² Records, Vol. 1, p. 108.

³ Records, Vol. 1, p. 114.

⁴ Records, Vol. 1, pp. 121-122.

⁵ Records, Vol. 1, p. 162.

⁶ *Id.*

⁷ Pre-Trial Order dated January 14, 2011, Records, Vol. 1, pp. 183-187.

Gregorio C. De Jesus (G. De Jesus) as Sangguniang Bayan Member signed by Magbalon as Municipal Mayor.⁸

The Prosecution, on the other hand, admitted that: 1) E. De Jesus was elected as the 7th member of the Sangguniang Bayan of Milagros, Masbate in the May 14, 2007 elections; and 2) complainant Ernie E. Sia (Sia) was not one of the proclaimed winners in the said elections.⁹

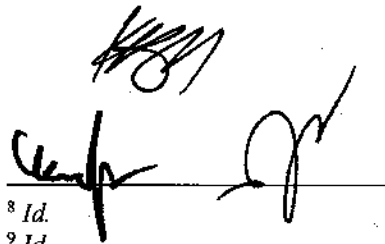
In a Resolution dated September 21, 2012, the Court ordered the suspension *pendente lite* of Magbalon for a period of 90 days from receipt of the resolution.¹⁰

EVIDENCE OF THE PROSECUTION

The Prosecution presented two witnesses. Their testimonies are summarized as follows:

Melito G. Nuñez (Nuñez)¹¹

Nuñez testified: 1) he has been the Sangguniang Bayan Secretary of Milagros, Masbate since 2006;¹² 2) he is the custodian of all the records of the proceedings of the Sangguniang Bayan¹³, including the entries in the Legislative Tracking System for the years 2006 and 2007¹⁴; 3) based on records, the elected Sangguniang Bayan Members in the 2007 elections were Vicente M. Bacolod, Gavino T. Regodon, Florence P. De Jesus, Eduardo C. Arcenas, Antonio M. Dalanon, Ronaldo C. Encamina, Oscar G. Alba, and E. De Jesus;¹⁵ 4) in 2007, he only attended one Sangguniang Bayan session and was later re-assigned to the position of Municipal Secretary;¹⁶ 5) It was Jocelyn G. Ibañez (Ibañez) who was designated by Magbalon as Acting Sangguniang Bayan Secretary from year 2007 to 2009;¹⁷ 6) he was reinstated to the said position in 2009 by Acting Vice-Mayor Vicente M. Bacolod;¹⁸ and 7) he attests to the veracity and truthfulness of the resolutions and minutes contained in the Legislative Tracking System for the year 2006 only.¹⁹



⁸ *Id.*

⁹ *Id.*

¹⁰ Records, Vol. 1, pp. 389-395.

¹¹ TSN dated July 11, 2012.

¹² *Id.*, p. 4.

¹³ *Id.*, pp. 4-6.

¹⁴ The Legislative Tracking System contains the copies of resolutions and minutes of proceedings of the Sangguniang Bayan in a given year.

¹⁵ *Id.*, p. 7.

¹⁶ *Id.*, p. 8.

¹⁷ *Id.*, p. 12.

¹⁸ *Id.*, p. 11.

¹⁹ *Id.*, p. 13.

On cross-examination, Nuñez admitted having no personal knowledge of the death of E. De Jesus and appointment of G. De Jesus as Sangguniang Bayan Member.²⁰

In response to questions propounded by the Court, Nuñez admitted that he knew about the appointment of G. De Jesus as Sangguniang Bayan Member by Municipal Mayor Magbalon but that he never saw the appointment papers.²¹

Oscar R. Amador, Jr. (Amador)

Amador testified through his Judicial Affidavit dated February 25, 2014²² stating that: 1) he is a Local Government Operations Officer from the Department of the Interior and Local Government (DILG);²³ 2) In July 2007, he was designated in a concurrent capacity as Municipal Local Government Operations Officer of Milagros, Masbate;²⁴ 3) as such, he was tasked to monitor compliance of Milagros, Masbate with the laws, national directives and policies;²⁵ 4) during the said designation, he was acquainted with Milagros Municipal Mayor Magbalon and Sangguniang Bayan Members including G. De Jesus;²⁶ 5) at that time, he honestly believed that G. De Jesus was validly appointed to the position vacated by his brother, E. De Jesus;²⁷ and 6) he only learned about the alleged invalidity of the said appointment after criminal cases were filed with the Office of the Ombudsman against Municipal Mayor Magbalon.²⁸

On cross-examination, Amador admitted having no personal knowledge about the appointment of G. De Jesus by Municipal Mayor Magbalon.

The Prosecution offered the following documentary exhibits²⁹ which were admitted by the Court:³⁰

Exhibit	Description
A ³¹	photocopy of the Appointment dated July 19, 2007 of Gregorio Cañete De Jesus as successor of Sangguniang

²⁰ TSN dated August 29, 2012, pp. 8-10.

²¹ *Id.*, pp. 16-18.

²² Records, Vol. 2, pp. 120-122.

²³ Judicial Affidavit of Oscar R. Amador, Jr. dated February 25, 2014, pp. 120-121.

²⁴ *Id.*, p. 121.

²⁵ *Id.*

²⁶ *Id.*

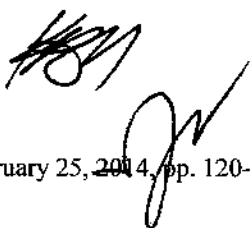
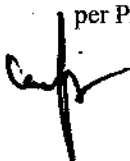
²⁷ *Id.*

²⁸ *Id.*, p. 122.

²⁹ Records, Vol. 2, pp. 223-356.

³⁰ Minutes of the Proceedings dated February 19, 2018, Records, Vol. 2, p. 386.

³¹ The genuineness and due execution of the Appointment dated July 19, 2007 were admitted by the Defense per Pre-trial Order dated January 14, 2011.



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	Bayan Member Eulogio Cañete De Jesus issued by accused Magbalon
F and series	Legislative Tracking System of the Milagros, Masbate for the years 2006 and 2007

On April 19, 2015, Magbalon sought leave of court to file demurrer to evidence.³² On May 15, 2015, the Court granted her motion for leave to file demurrer to evidence.³³

On July 24, 2015, Magbalon filed his demurrer to evidence.³⁴ It was, however, denied by the Court on August 18, 2015.³⁵

EVIDENCE OF THE DEFENSE

The Defense presented two witnesses. Their testimonies are summarized as follows:

Magbalon

Magbalon testified through her Judicial Affidavit dated November 18, 2016.³⁶ She stated: 1) she is also a medical doctor by profession;³⁷ 2) prior to her election as Municipal Mayor of Milagros, Masbate, she took a short course in public administration to assist her in addressing the needs of her constituents and the economic plight of the impoverished members of the municipality;³⁸ 3) she does not remember studying about the legal aspects of local government pertinent to the powers and authority of a Municipal Mayor;³⁹ 4) she was likewise not familiar with the laws on public governance and provisions of the Local Government Code;⁴⁰ 5) she honestly believed in good faith that she had the authority to appoint G. De Jesus as Sangguniang Bayan Member after a vacancy was created by the death of one of its members;⁴¹ 6) in appointing G. De Jesus, she was not aware that she acted beyond her powers and authority as Municipal Mayor;⁴² 7) had she known of her lack of power and authority to appoint a Sangguniang Bayan Member, she would not have signed the appointment paper of G. De Jesus;⁴³ 8) the appointment papers of G. De Jesus was prepared by then Acting

³² Records, Vol 2, pp. 395 - 396.

³³ Records, Vol. 2, p. 404.

³⁴ Records, Vol. 2, pp. 426 - 432.

³⁵ Records, Vol. 2, pp. 453 - 477.

³⁶ Records, Vol. 3, pp. 74 - 80.

³⁷ Judicial Affidavit of Natividad Isabel R. Magbalon dated November 23, 2016, p. 75.

³⁸ *Id.*, p. 76.

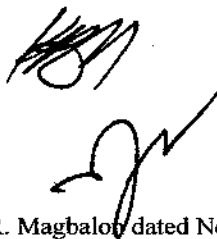
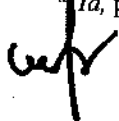
³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*, p. 77.

⁴² *Id.*

⁴³ *Id.*, p. 78.



Sangguniang Bayan Secretary Ibañez;⁴⁴ and 9) Ernie E. Sia, the complainant in the cases filed with the Office of the Ombudsman, has executed on Affidavit of Desistance dated November 25, 2010.⁴⁵

On cross-examination, Magbalon stated: 1) she was the Municipal Mayor of Milagros, Masbate from 2007 to 2016;⁴⁶ 2) she decided to appoint the successor of E. De Jesus after the latter's death in July 2007;⁴⁷ 3) the appointment of G. De Jesus was recommended by the majority members of the Sangguniang Bayan of Milagros, Masbate;⁴⁸ 4) she was not able to confer with the Provincial Legal Officer before making the said appointment;⁴⁹ and 5) she acknowledges her mistake in the said appointment as the authority to appoint the successor of E. De Jesus belonged to the Governor.⁵⁰

On re-direct examination, Magbalon said that she did not commit the mistake single-handedly because the appointment of G. De Jesus was recommended by the majority member of Sangguniang Bayan of Milagros, Masbate.⁵¹

Antonio Mato Dalanon (Dalanon)

His testimony was dispensed with after the parties stipulated that: 1) Dalanon was present during the Regular Session of the Sangguniang Bayan of Milagros, Masbate on July 17, 2007; and 2) he can identify Resolution No. 10 dated July strongly recommending the appointment of G. De Jesus as successor of E. De Jesus.⁵²

The Defense offered the following documentary exhibits which were admitted by the Court.⁵³

Exhibit	Description
1 and series	original copy of the Judicial Affidavit of Natividad Isabel Revil-Magbalon dated November 23, 2016.
2	original copy of the Affidavit of Desistance of Ernie E. Sia dated November 25, 2010
3 and series	certified photocopy of Resolution No. 10, series of 2007

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ TSN dated November 28, 2016, p. 15.

⁴⁷ *Id.* p. 16.

⁴⁸ *Id.* pp. 16-17.

⁴⁹ *Id.* p. 17.

⁵⁰ *Id.* pp. 20-23.

⁵¹ *Id.* p. 24.

⁵² Order dated January 30, 2017, Records, Vol. 3, p. 92.

⁵³ Minutes of the Proceedings dated July 25, 2018, Records, Vol. 2, p. 251.

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FINDINGS OF FACTS

As found by the Court, the facts of the case are as follows:

Magbalon was elected Municipal Mayor of Milagros, Masbate during the May 17, 2007 local elections.⁵⁴ E. De Jesus was likewise elected Sangguniang Bayan Member.⁵⁵ Shortly after his assumption of office, however, E. De Jesus died on July 4, 2007.⁵⁶

On July 9, 2007, the Sangguniang Bayan of Milagros, Masbate passed Resolution No. 10 July 17, 2007 recommending the appointment of G. De Jesus as successor of his brother, E. De Jesus.⁵⁷ Sangguniang Bayan Members Vicente M. Bacolod, Gavino T. Regodon, Florence P. De Jesus, Eduardo C. Arcenas, and Antonio M. Dalanon, and Sangguniang Kabataan Federation President Catherine L. Irene voted to pass Resolution No. 10 dated July 17, 2007.⁵⁸ It was signed by Acting Sangguniang Bayan Secretary Ibañez, attested by Vice-Mayor Antonino M. De Jesus, and approved by Magbalon as Municipal Mayor.⁵⁹

On July 19, 2007, Magbalon appointed G. De Jesus Sangguniang Bayan Member in lieu of E. De Jesus.⁶⁰ G. De Jesus thereafter performed the functions of a Sangguniang Bayan Member by attending and participating in sessions of the Sanggunian Bayan as evidenced by the compilation of resolutions and minutes in the Legislative Tracking System of the Municipality of Milagros, Masbate for the years 2006 and 2007.⁶¹

DISCUSSION AND RULING

After a thorough review of the documentary and testimonial evidence including the admissions and stipulations of the Prosecution and the Defense, the Court finds accused Magbalon **guilty** of Usurpation of Official Functions as defined and punished under Article 177 of the R.P.C.

The Prosecution asserts that Magbalon appointed G. De Jesus as member of the Sangguniang Bayan of Milagros, Masbate despite knowledge that the authority to do so belonged to the Governor of Masbate. In her defense, Magbalon claims that she appointed G. De Jesus in good faith and only upon the recommendation of majority of the Sangguniang Bayan

⁵⁴ Pre-Trial Order dated January 14, 2011.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Exhibit "3".

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Exhibit "A".

⁶¹ Exhibit "B".

members of Milagros, Masbate, who passed Resolution No. 10 dated July 17, 2017.

Every criminal conviction requires the prosecution to prove two things: 1) the fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged; and 2) the fact that the accused is the perpetrator of the crime.⁶²

The burden of proof is on the prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence.⁶³ The court, in ascertaining the guilt of the accused, must, after having marshalled the facts and circumstances, reach a moral certainty as to the guilt of the accused.⁶⁴ Moral certainty is that degree of proof which produces conviction in an unprejudiced mind.⁶⁵ Otherwise, where there is reasonable doubt, the accused must be acquitted.⁶⁶

The crime of Usurpation of Official Functions is defined and penalized by Article 177 of the R.P.C., which reads:

Art. 177. Usurpation of authority or official functions—
Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, 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, shall suffer the penalty of prison correccional in its minimum and medium periods.

There are two ways of committing this crime: 1) by knowingly and falsely representing one self as an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government; and 2) under pretense of official position, by performing 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.⁶⁷ The former constitutes the crime of Usurpation of

⁶² *People v. Urzais, et al.*, G.R. No. 207662, April 13, 2018.

⁶³ Section 1, Rule 131, in relation to Section 2, Rule 133 of the Rules of Court; Section 2 (a), Rule 115 of the Rules of Court; Section 14 (2), Article III of the 1987 Philippine Constitution.

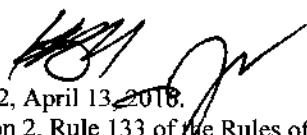
⁶⁴ *Caunan v. Sandiganbayan*, G.R. Nos. 182001-01, *Marquez v. Sandiganbayan*, G.R. Nos. 182020-04, September 2, 2009.

⁶⁵ *Magsuci v. Sandiganbayan*, G.R. No. 101545, January 3, 1995.

⁶⁶ *Supra*, *Caunan v. Sandiganbayan & Marquez v. Sandiganbayan*.

⁶⁷ *Gigantoni v. People*, G.R. No. 74727, June 16, 1988.

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Authority, while the latter constitutes the crime of Usurpation of Official Functions,⁶⁸ as in this case.

The elements of Usurpation of Official Functions are:

- 1) accused is a private person or public officer;
- 2) accused performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof;
- 3) accused acts under pretense of official position; and
- 4) accused acts without being lawfully entitled to do so.⁶⁹

***1st element:* Magbalon was a public officer at the time of the commission of the offense.**

As borne by the case records, and as specifically stipulated by the parties per the Pre-Trial Order dated January 14, 2011, Magbalon was the Mayor of the Municipality of Milagros, Masbate at the time of G. De Jesus' appointment as member of Sangguniang Bayan.

***2nd element:* Magbalon performed an act that rightfully belonged to the Governor of Masbate.**

A permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, **dies**, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.⁷⁰

Section 45 of the Local Government Code⁷¹, the rule on succession in cases of permanent vacancies in the Sanggunian provides:

⁶⁸ *Id.*

⁶⁹ *Degamo v. Office of the Ombudsman*, G.R. No. 212416, December 5, 2018.

⁷⁰ Section 44, R.A. No. 7160.

⁷¹ R.A. No. 7160.

Section 45. Permanent Vacancies in the Sanggunian

(a) Permanent vacancies in the Sanggunian where automatic succession provided above do not apply shall be filled by appointment in the following manner:

- 1) The President, through the Executive Secretary, in the case of the Sangguniang Panlalawigan and the Sangguniang Panlungsod of highly urbanized cities and independent component cities;
- 2) **The governor, in the case of the Sangguniang Panlungsod of component cities and the Sangguniang Bayan;**
- 3) The city or municipal mayor, in the case of Sangguniang Barangay, upon recommendation of the Sangguniang Barangay concerned.

(b) Except for the Sangguniang Barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefore.

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(c) In case the **permanent vacancy is caused by a sanggunian member who does not belong to any political party**, the local chief executive shall, upon recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.⁷²

In *Fariñas, et al. v. Barba, et al.*,⁷³ the Supreme Court held that it is the Governor who is authorized to appoint a qualified person to fill permanent vacancy caused by a Sanggunian Bayan member who does not belong to a political party. Section 45 of the Local Government Code was interpreted by the Supreme Court in this manner:

- I. Where the permanent vacancy is caused by a Sanggunian Member belonging to a political party
 - A. Sangguniang Panlalawigan and Sangguniang Panlungsod of highly urbanized cities and independent component cities—The President, through the Executive Secretary, upon nomination and certification of the political party to which the member who caused the vacancy belonged, as provided in Section 45 (b);
 - B. Sangguniang Panlungsod of component cities and Sangguniang Bayan—The Governor upon nomination and certification of the political party to which the member who caused the vacancy belonged, as provided in Section 45 (c).
- II. Where the permanent vacancy is caused by a Sanggunian Member *not* belonging to a political party
 - A. Sangguniang Panlalawigan and Sangguniang Panlungsod of highly urbanized cities and independent component cities—The President, through the Executive Secretary, upon recommendation of the Sangguniang

⁷² Emphasis supplied.

⁷³ G.R. No. 116763, April 19, 1996.

Panlalawigan or Sangguniang Panlungsod, as the case may be;

B. Sangguniang Panlungsod of component cities and Sangguniang Bayan—The Governor upon recommendation of the Sangguniang Panlalawigan or Sangguniang Panlungsod, as the case may be.⁷⁴

Records show that E. De Jesus was not a member of a political party during his election and assumption to office as Sangguniang Bayan member of Milagros.⁷⁵ It is then the Governor of Masbate who is authorized by law to appoint the person qualified to fill the permanent vacancy created by the death of E. De Jesus upon recommendation of the Sangguniang Bayan of Milagros.

3rd element: Magbalon appointed G. De Jesus under pretense that she had authority to do so.

“Pretense” is defined as the act of holding out or offering to others something false and feigned.⁷⁶ This may be done either by words or actions, which amount to false representations.⁷⁷ False representations are representations which are untrue, willfully made to deceive another to his injury.⁷⁸

Majority of the members of Sangguniang Bayan of Milagros, Masbate recommended the appointment of G. De Jesus to the position permanently vacated by E. De Jesus in the Resolution No. 10 dated July 17, 2007.⁷⁹ The said resolution was issued on the basis of Section 45 (c) of R.A. No. 7160 which pertains to a permanent vacancy caused by a sanggunian member who does not belong to any political party.⁸⁰ As earlier discussed, the person authorized to fill said vacancy is the Governor being the “local chief executive” referred to by law.⁸¹ Resolution No. 10 dated July 17, 2007 did not state that the authority to appoint G. De Jesus rests upon Magbalon as the Municipal Mayor of

⁷⁴ Emphasis supplied.

⁷⁵ Exhibit “3”; TSN dated November 28, 2016, p. 20.

⁷⁶ Black’s Law Dictionary, Revised 4th Edition citing *State v. Joaquin*, 43 Iowa, 132.

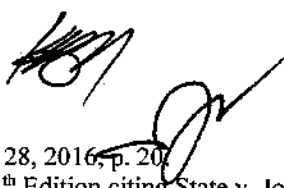
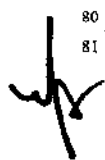
⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Exhibit “3”.

⁸⁰ *Id.*

⁸¹ *Supra*, *Fariñas v. Barba*.



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Milagros. Notably, Resolution No. 10 dated July 17, 2007 was approved and signed by Magbalon.⁸²

Surprisingly, thereafter, Magbalon appointed G. De Jesus as Sangguniang Bayan member of Milagros, Masbate in the Appointment dated July 19, 2007 with Section 45 (2) of R.A. No. 7160 as basis.⁸³ The said proviso grants the power to fill a permanent vacancy in the sanggunian bayan to the Governor and not to the Municipal Mayor. Magbalon, therefore, knew and understood that she had no authority to appoint G. De Jesus as Milagros Sangguniang Bayan member. Yet, it was she, as Municipal Mayor of Milagros, Masbate, who issued the said appointment. And while the appointment erroneously cited Section 45 (2) of R.A. No. 7160 as the legal basis for Magbalon's appointment of G. De Jesus since the *Fariñas*⁸⁴ case made it already clear that a vacancy caused by a Sanggunian Bayan Member *not* belonging to a political party is to be filled up by the Governor, the fact remains that it was Magbalon, as Municipal Mayor, who appointed G. De Jesus to the position.

The foregoing evidence, as discussed, sufficiently satisfies the essential element of "pretense" in the crime of Usurpation of Official Functions as defined and punished by Article 177 of the R.P.C.

In her defense, Magbalon claims that she acted in good faith in appointing G. De Jesus. She explains that: 1) she decided to fill the permanent vacancy in the Sangguniang Bayan because said body had repeatedly failed to pass important ordinances because of quorum lack; 2) she appointed G. De Jesus upon the recommendation of majority members of Sangguniang Bayan; 3) she was a neophyte in politics and was unfamiliar with the provisions of the Local Government Code before she assumed as Municipal Mayor; 4) she signed the appointment papers of G. De Jesus believing that they were drafted in accordance with law; and 5) private complainant Sia has in fact executed an Affidavit of Desistance acknowledging the mistake in filing the case against her. Magbalon therefore admits her mistake in appointing G. De Jesus but posits that her appointment of E. De Jesus is due to her misunderstanding of the scope of her authority as Municipal Mayor.

In *Ruzol v. Sandiganbayan*,⁸⁵ the Supreme Court recognized good faith as a defense in prosecutions for usurpation of official functions. The Supreme Court, however, ruled that:





⁸² Exhibit "3-1".

⁸³ Exhibit "A"; Emphasis supplied.

⁸⁴ *Supra, Fariñas v. Barba*.

⁸⁵ G.R. No. 186739-960, April 17, 2013.



It bears stressing at this point that in *People v. Hilvano*, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. The term “**good faith**” is ordinarily used to describe the state of mind denoting “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any conscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious”.⁸⁶ Good faith is a question of intention and although internal, it can be ascertained by relying not on one’s self-serving protestations of good faith but on the **evidence of his conduct and outward acts**.⁸⁷

In this case, good faith could have existed upon proof that: 1) Magbalon showed an honest intention in the appointment of G. De Jesus and 2) Magbalon was free from knowledge of circumstances which ought to put her upon inquiry on the validity of the said appointment.

Both conditions, sadly for her, are not present in this case.

Magbalon was not honestly motivated in appointing G. De Jesus as Sangguniang Bayan Member because she knew that she had no authority to make such appointment. She was likewise not free from knowledge of circumstances which ought to put her upon inquiry on the validity of the said appointment as she was previously advised by the Local Government Officer in their municipality that the proper authority to fill up the permanent vacancy in the sanggunian is the Governor of Masbate.

Consequently, Magbalon’s reliance on the recommendation of the majority members of Sangguniang Bayan of Milagros in the appointment of G. De Jesus to the position vacated by E. De Jesus is misplaced. Following the Supreme Court ruling in *Fariñas*⁸⁸, there was nothing in Resolution No. 10 dated July 17, 2007, which cited as basis Sec. 45 (c) of R.A. No. 7160, that states and confirms the authority of Magbalon as Municipal Mayor to appoint G. De Jesus to the position vacated by E. De Jesus.⁸⁹

⁸⁶ Civil Service Commission v. Maala, G.R. No. 163253, August 18, 2005.

⁸⁷ *Id.*, citing Gabriel v. Mabanta, G.R. No. 142403, March 26, 2003; Emphasis supplied.

⁸⁸ *Supra*, *Fariñas v. Barba*.

⁸⁹ Exhibit “3”.

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Assuming that Magbalon misunderstood the law because of her alleged unfamiliarity with the provisions of the Local Government Code, she was, however, expected to exercise due diligence in the performance of her duties as Municipal Mayor by simply inquiring into the correctness and legality of the documents submitted for her approval and recommendations made by her subordinates. This, Magbalon, failed to do so. She admitted not conferring with the Provincial Legal Officer on her authority to appoint G. De Jesus, viz:

Q: But, you have a Provincial Legal Officer?

A: We have also.

Q: And you have courts in your locality.

A: Not within the locality but the main province, the capitol.

Q: **Did you confer with the provincial legal officer before making this appointment? No. The answer is no. The witness is shaking her head, Your Honor.**


Chairperson

Q: What is the answer? No, you did not?

A: **No, sir.**⁹⁰

For these reasons, Magbalon cannot be said to have acted in good faith in appointing G. De Jesus. She showed no honest intention and was likewise not free from knowledge of any circumstance that could have put her under inquiry because she knew beforehand that she was not legally authorized to make that appointment.

The testimony of private complainant Ernie E. Sia is not indispensable in this case. Magbalon's bad faith was clearly proven by her prior knowledge that she was not the person lawfully authorized to fill a permanent vacancy in the Sanggunian. The Court cannot consider Sia's purported Affidavit of Desistance dated November 25, 2010 and the allegations therein being hearsay evidence. The Affidavit of Desistance dated November 25, 2010 was not authenticated by Sia, its alleged affiant. Affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.⁹¹


⁹⁰ TSN dated November 28, 2016; Emphasis supplied.

⁹¹ *People's Bank and Trust Company v. Leonidas*, G.R. No. 47815, March 11, 1992.

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4th element: Magbalon was not legally entitled to appoint a member of Sangguniang Bayan in case of permanent vacancy therein.

As discussed, the law expressly states that it is the Governor of Masbate who is authorized to fill a permanent vacancy in the Sangguniang Bayan of Milagros, Masbate. Municipal Mayor Magbalon could not have legally appointed G. De Jesus as successor to the position permanent vacated by the death of E. De Jesus.

CONCLUSION

In criminal cases, the burden of proof rests upon the Prosecution, which must rely on the strength of its case rather than on the weakness of the case for the Defense.⁹² Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.⁹³

In this case, the Prosecution has successfully proven beyond the point of moral certainty the guilt of Magbalon to the crime of Usurpation of Official Functions under Article 177 of the Revised Penal Code.

WHEREFORE, accused **NATIVIDAD ISABEL REVIL-MAGBALON** is found **GUILTY** of Usurpation of Official Functions as defined and penalized by Article 177 of the Revised Penal Code.

Considering the Indeterminate Sentence Law, and where no aggravating nor mitigating circumstance was proven, accused is hereby sentenced to suffer an indeterminate penalty of Six (6) Months of *arresto mayor* in its maximum period as minimum to Two (2) Years, Eleven (11) Months, and Ten (10) days of *prision correccional* in its medium period as maximum, with accessory penalty of suspension from public office.

SO ORDERED.

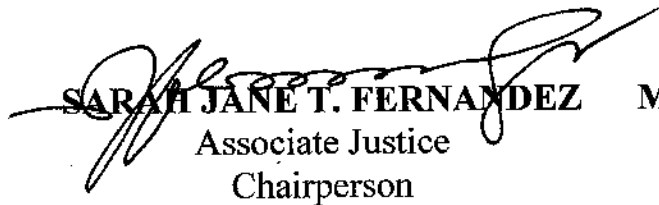

KARL B. MIRANDA
Associate Justice

⁹² *Amado Cruz v. People & Sandiganbayan*, G.R. Nos.212656-57, November 23, 2016.

⁹³ *Id.*



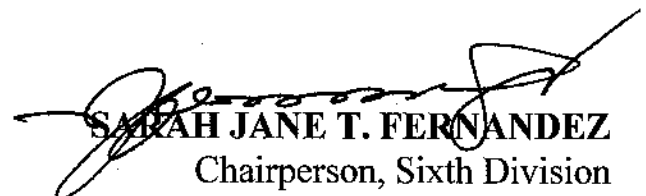
WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's division.


SARAH JANE T. FERNANDEZ
Chairperson, Sixth Division

CERTIFICATION

Pursuant to Article VII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

