



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-11-CRM-0019-0020**
Plaintiff,

For: Illegal Exaction under Article
213 paragraphs 2 (a) and (b) of
the Revised Penal Code

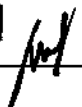
-versus-

ANICETO P. LOPEZ, JR. and
MOISES V. MAGALLONA, JR.
Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:



MAR 02 2021 

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RESOLUTION

VIVERO, J.

This resolves the (1) **Motion for Reconsideration for Accused Aniceto P. Lopez, Jr., (Re: Decision dated December 4, 2020) dated 18 December 2020,** (2) **Motion for Reconsideration (For Accused Moises Magallona, Jr.) dated 18 December 2020,** and (3) **Consolidated Comment/Opposition (Re: for Motions for Reconsideration filed by accused Aniceto Lopez, Jr. and Moises V. Magallona, Jr.) dated 15 January 2021.**

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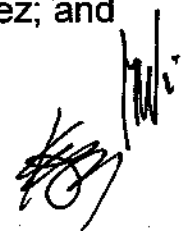
Accused Lopez and Magallona moves this Court to reconsider the Decision promulgated on 4 December 2020. The dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered as follows:

1. In **Criminal Case No. SB-11-CRM-0019**, the Court finds accused **ANICETO P. LOPEZ, JR.** and **MOISES V. MAGALLONA, JR. GUILTY** beyond reasonable doubt of the crime of Illegal Exaction penalized under paragraph 2(a) of Article 213 of the Revised Penal Code and hereby sentences each of them to suffer the indeterminate penalty of 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 8 years of *prision mayor*, as maximum, with perpetual disqualification from holding any public office, and to pay a fine of Six Thousand Pesos (Php 6,000.00); and
2. In **Criminal Case No. SB-11-CRM-0020**, the Court finds accused **ANICETO P. LOPEZ, JR.** and **MOISES V. MAGALLONA, JR. GUILTY** beyond reasonable doubt of the crime of Illegal Exaction penalized under paragraph 2(b) of Article 213 of the Revised Penal Code and hereby sentences each of them to suffer the indeterminate penalty of 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 8 years of *prision mayor*, as maximum with perpetual disqualification from holding any public office."

Accused Lopez seeks the reversal of the abovementioned decision anchored on the following grounds:

1. The Court erred in failing to consider the provisions of the Implementing Guidelines of Executive Order No. 305 issued by President Gloria Macapagal-Arroyo allowing Local Government Units to exact payments to cover Administrative Costs in registration of fishing vessels in the Municipality;
2. The evidence does not prove any crime against Lopez; and



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3. The Court erred in its finding of conspiracy between Lopez and Accused Magallona¹.

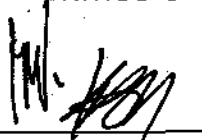
On the first ground, accused-movant Lopez insists that the basis in the issuance of the Memorandum dated 05 January 2005 is the Implementing Guidelines of Executive Order No. 305².

Further, he contended that pursuant to Section 13 of Executive Order No. 305, the Local Chief Executive has until 1 April 2005 to undertake measures necessary to execute the said executive order regardless of the effectivity of the said ordinance pending the above mentioned transition period. Thus, the issuance of the Memorandum was in accordance with the law and not a violation of Municipal Tax Ordinance No. 04-003³.

On the second ground, accused-movant asserts that his constitutional right to be informed of the nature and cause of accusation against him was violated considering that he was only made to answer for violation of Municipal Ordinance No. 04-003, per Informations in the case at bar, and not for his issuance of the Memorandum dated 05 January 2005. He further raise as a defense that nothing in the record would show that he intended to collect sticker fees and that the issuance of government official receipts is not under the duty and control of the Office of the Mayor⁴.

On the third ground, accused-movant argues that utilizing the aforesaid Memorandum as proof of conspiracy is misplaced, and insists on the defense that it was legally issued and further invoked the *Arias doctrine*⁵.

For accused-movant Magallona, he asserts in his Motion for Reconsideration that the Prosecution did not clearly and positively establish the crimes charged against him on the basis of the following grounds:



¹ Motion for Reconsideration-Lopez dated 4 December 2020, p. 3.

² *Ibid* at p. 3-4;

Section 11. Fees, Fines and Penalties

11.1 The LGU shall exact payment of registration fees in an amount it deems necessary and appropriate to cover administrative cost.

³ *Ibid* at, p. 4-5.

⁴ *Ibid* at pp. 5-7.

⁵ *Ibid* at pp. 8-12.



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1. He did not acknowledge the Memorandum of accused Lopez dated 5 January 2005 nor did he accede to the request of the latter; and
2. The witnesses for the Prosecution did not testify as to the actual participation of accused Magallona in the collection of payment for the sticker fees and thereafter the issuance of receipts. Concurrently, witnesses for the Prosecution, Rogelio Lopez and Suharto Abdul Diakil, were only directed to collect registration fees pursuant to a Memorandum dated 24 January 2005. Thus, they exceeded their authority when they collected an additional sticker fees⁶.

In its Consolidated Comment/Opposition dated 15 January 2021, the Prosecution debunks the arguments of accused Lopez and Magallona asserting the following:

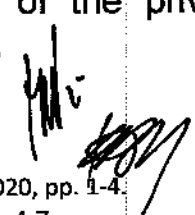
First, Executive Order No. 305 and its Implementing Guidelines cannot be the source of authority of accused Lopez in the imposition of sticker fees since it only permits the collection of the registration fees which is a payment separate and distinct from the sticker fees. The Prosecution further categorized the nature of the sticker fee which is a form of tax which can only be lawfully exercised through an ordinance and not by a mere Memorandum. Thus, absent any ordinance, Municipal Tax Ordinance No. 04-003 in this case, which allows the imposition of the sticker fee, is in violation of paragraph 2 (a) of Article 213 of the Revised Penal Code⁷.

Second, the totality of the evidence presented by the Prosecution established beyond reasonable doubt the guilt of accused Lopez, and his conspiracy with accused Magallona, in violating Illegal Exaction. To prove conspiracy, the Prosecution averred that the overt act performed by accused Lopez as conspirator, which likewise establish a direct causal relation in the collection of sticker fees, was the issuance of the Memorandum which was relied upon by accused Magallona. Thus, as conspirator, he is criminally liable for the issuance of the private receipts in correlation to the payment of sticker fees⁸.

⁶ Motion for Reconsideration- Magallona dated 18 December 2020, pp. 1-4.

⁷ Consolidated Comment/Opposition dated 15 January 2021, pp. 4-7.

⁸ *Ibid* at pp. 7-9.



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Third, the Prosecution belied the *Arias* doctrine raised by accused Lopez since he has direct participation to the crimes charged by ordering the execution of the collection of the payment of sticker fees⁹.

Fourth, the Prosecution asserts that the actual participation of accused Magallona in the collection of the sticker fees and the issuance of the private receipts are not condition *sine qua non* in convicting him for the crimes charged given that the witnesses for the Prosecution has established that it was accused Magallona who directed Rogelio Lopez and Suharto Abduljalil to collect the payment of sticker fees and issue private receipts through a Memorandum he issued dated 24 January 2005¹⁰. Parallel thereto, the element of demand is present when he ordered them to collect sticker fees¹¹.

Lastly, the illegal collection of the sticker fees, and issuance of the private receipts, was done in the course of an official function bearing in mind that accused Magallona instructed the abovementioned witnesses to issue private receipts during the registration of the fishing vessels. Therefore, it is clearly covered under paragraph 2(b) of Article 213 of the Revised Penal Code.

OUR RULING

After a careful study of the arguments laid down by the defense, the Court **DENIES** the Motion for Reconsideration separately filed by accused-movants Lopez and Magallona for lack of sufficient grounds to reverse the questioned Decision.

THE PROSECUTION HAS ESTABLISHED THAT ACCUSED-MOVANTS LOPEZ AND MAGALLONA ILLEGALLY EXACTED MONEYS FROM THE FISHERFOLKS OF THE MUNICIPALITY OF MAASIM THROUGH COLLECTION OF

⁹ *Ibid* at p. 10.

¹⁰ *Ibid* at pp 11-13.

¹¹ *Ibid* at p. 14.

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**STICKER FEES IN
CONTRAVENTION OF ARTICLE
213 OF THE REVISED PENAL
CODE**

The reliance by accused-movant Lopez on Executive Order No. 305 in issuing the Memorandum dated 5 January 2005, its Implementing Guidelines, and in ordering the collection of the sticker fees is clearly unfounded.

As correctly pointed out by the Prosecution, the sticker fees in question is in the nature of a tax imposition in the exercise of the power to tax of the Municipality of Maasim and not in the exercise of police power.

As explained by the *Supreme Court* in the case of *Progressive Development Corporation v. Quezon City*¹², The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although license fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose the fact that incidentally revenue is also obtained does not make the imposition a tax¹³.

Taking into account that the imposition of the sticker fee is merely an addition to the payment of the registration of the fishing vessels of the fisherfolks of the Municipality of Maasim, and not the regulation of the fishing vessels, such imposition partakes of the nature of a tax measure. Simply put, it is merely to generate funds. Basic is the rule in the Local Government Code that, although the power to tax is one of the inherent powers of the local government

¹² *Progressive Development Corporation vs. Quezon City*, 172 SCRA 629, G.R. No. 36081 April 24, 1989

¹³ *Ibid*

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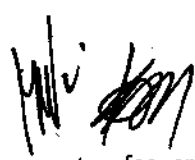
units, it can only be exercised through an appropriate ordinance pursuant Section 132 of the Local Government Code¹⁴.

Accordingly, the collection of sticker fees must be founded in a Municipal Tax Ordinance of the Municipality of Maasim. As earlier discussed by this Court, Municipal Tax Ordinance 04-003, in effect at the time of the collection of the sticker fees, did not explicitly nor remotely embody the collection of sticker fees. To recall the ruling of the *Supreme Court* in the case of *Carlos L. Reynes v. Office of the Ombudsman (Visayas), Lucrecia M. Amores, and Maribel Hontiveros*¹⁵, *[W]hen the law enables no form whatsoever of payment or collection, a public officer's demand for payment of any sum, or insistence on collecting any object, is a legal breach. It is a punishable violation of Article 213(2).*

Accused-movant Magallona's defense of lack of direct participation in the collection of sticker fees and thereby shifting and imputing the blame on Rogelio Lopez and Suharto Abdul Diakil must fail. The evidence clearly show that the authority for Rogelio Lopez and Suharto Abdul Diakil to collect sticker fees originated from the directive of accused-movant Magallona.

In addition thereto, accused-movant Lopez cannot validly claim that the collection of the sticker fees and issuance of the private receipts were done outside his official function. Looking back at the records of the case, the private receipts issued for the payment and collection of the assailed sticker fees and government issued receipts for the registration of the fishing vessels bear the same date. Further, the testimonies for the Prosecution are unequivocal that the sticker fees were an additional payment to the registration of the fishing vessels both of which appear to have been paid simultaneously. These clearly show that the collection of the sticker fees and the issuance of the private receipts were exercised in his official function.

**THE PROSECUTION HAS
ESTABLISHED CONSPIRACY
BETWEEN ACCUSED-**



¹⁴SECTION 132. Local Taxing Authority - The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance.

¹⁵ 894 SCRA 137, G.R. No. 223405 February 20, 2019.



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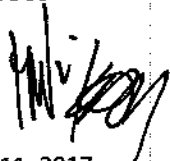
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**MOVANTS LOPEZ AND
MAGALLONA**

Proof of actual participation of movant-accused Lopez in the collection of sticker fees and issuance of private receipt are inconsequential.

In conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his own acts¹⁶. In this connection, the character of the overt act has been explained in the case of *People v. Lizada*: An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense¹⁷.



¹⁶ People vs. Escobal, 842 SCRA 432, G.R. No. 206292 October 11, 2017.

¹⁷ Ibid.



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In the instant case, the overt act of accused-movant Lopez in the commission of the crime is the issuance of Memorandum dated 5 January 2003 which prompted accused-movant Magallona to execute it. Patently, his overt act of issuing the said Memorandum is the causal relation to commit the offense charged. Taken as a whole, the acts of accused-movants Lopez and Magallona contributed in the end result of illegally exacting money from the fisherfolks of the Municipality of Maasim.

Proof of direct agreement between accused-movants Lopez and Magallona to commit the offenses charged is not required. Direct proof of previous agreement to commit an offense is not necessary to prove conspiracy—conspiracy may be proven by circumstantial evidence¹⁸.

As already examined by this Court, the series of events that transpired, from the issuance of the Memorandum to the collection of payments for the stickers and thereafter the issuance of the private receipts establish a common design of accused-movants Lopez and Magallona to commit illegal exaction as defined and penalized under the Revised Penal Code.

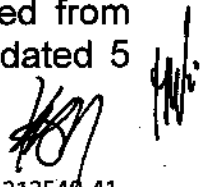
Considering that the Prosecution proved before this Court that accused-movant Lopez and Magallona conspired with each other in illegally exacting money from the fisherfolks of Municipality of Maasim, accused-movant Lopez is likewise criminally liable for issuing private receipts. It is a fundamental legal axiom that "[w]hen there is conspiracy, the act of one is the act of all."¹⁹

Moreover, we find no basis in applying the *Arias doctrine* that "[A]ll heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." The *Arias doctrine* is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability²⁰. It is important to emphasize that the directive to collect sticker fees originated from accused-movant Lopez through the assailed Memorandum dated 5

¹⁸ People vs. Malibiran, 586 SCRA 668, G.R. No. 178301 April 24, 2009

¹⁹ Reyes vs. Ombudsman, 787 SCRA 354, G.R. Nos. 212593-94., G.R. Nos. 213163-78, G.R. Nos. 213540-41, G.R. Nos. 213542-43, G.R. Nos. 215880-94, G.R. Nos. 213475-76 March 15, 2016

²⁰ Miguel D. Escobar, Eugene L. Alsate, Perla C. Maglante, Cesar M. Cagang, and Vivencia S. Telosforo v. People of the Philippines, G.R. No. 205575, 20 November 2017 *citing the case of Rivera v. People*.



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January 2005. As established, it is without legal basis since there was no ordinance which allows the same. Accordingly, his defenses of good faith and reliance on accused-movant Magallona to execute it in accordance with the law must necessarily fail.

There being no reversible error in the questioned decision, this Court denies the Motion for Reconsideration filed by accused-movants Lopez and Magallona.

The instant ruling is without prejudice to the remedy of the accused-movants to appeal their conviction to the Supreme Court by filing a Notice of Appeal with this Court and serving a copy upon the adverse party, within fifteen (15) days from notice of this Resolution pursuant to Section 1(a), Rule XI of the 2018 Revised Internal Rules of the Sandiganbayan and Section 6, Rule 122 of the Revised Rules of Criminal Procedure.

WHEREFORE, the Motion for Reconsideration separately filed by accused-movants Aniceto Lopez, Jr. and Moises Magallona, Jr. are hereby **DENIED** for lack of merit.

SO ORDERED.



KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice