



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-21-CRM-0001
For: Violation of Section 3(e) of
R.A. No. 3019

- versus -

SB-21-CRM-0002
For: Unlawful Appointments under
Article 244 of the Revised
Penal Code

JOSELITO ALEGA y ROCAS,

Accused. Present

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

Promulgated:

April 20, 2023

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RESOLUTION

For Resolution is the *Motion for Partial Reconsideration*¹ of accused Joselito R. Alega, assailing this Court's *Decision* dated February 9, 2023 in SB-21-CRM-0002.

In his *Motion*, accused Alega asks the Court to reconsider its decision in Criminal Case No. SB-16-CRM-0002, and to acquit him for the crime of *Unlawful Appointments* under Article 244 of the *Revised Penal Code*. He argues:

¹ Dated February 14, 2023, filed on February 15, 2023.

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1. The Information in SB-16-CRM-0002 did not sufficiently apprise him of the nature and the cause of the accusation against him.
 - a. While the act punished under Article 244 of the Revised Penal Code is *knowingly nominating or appointing a person lacking the requisite legal qualification to a public office*,² the Information in SB-16-CRM-0002 charged him of acting with *deliberate intent, willfully, unlawfully, feloniously, and knowingly* appointing Rosaura P. Fernandez as Municipal Administrator in violation of Section 480 of the Local Government Code as found by the Civil Service Commission.³ Hence, the defense of good faith and the absence of criminal intent applies.
 - b. The allegations of facts constituting the offense charged are substantial matters and an accused' right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried, or is necessarily included therein. To convict him of a ground not alleged while he concentrated his defense against the ground alleged in the information is plainly unfair and underhanded. The variance between the allegations in the information and the proof adduced during trial is fatal to the case if it is material and prejudicial to the accused so much so that it affects his substantial right.⁴
2. The absence of any precedent classifying *Unlawful Appointments* under Article 244 of the *Revised Penal Code* as *malum prohibitum* or *malum in se*, calls for the adoption of an interpretation that is favorable to the accused.⁵
 - a. The *Revised Penal Code* belongs to the classical school of thought. The identity of *mens rea* - defined as a guilty mind, guilty or wrongful purpose or criminal intent - is the predominant consideration. In order for an intentional felony to exist, it is necessary that the act was committed by means of *dolo* or malice.⁶
 - b. Traditionally, the classification of crimes whether *mala in se* or *mala prohibita*, is based

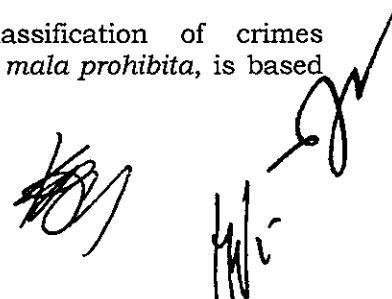
² Motion for Partial Reconsideration, p. 2.

³ Motion for Partial Reconsideration, p. 1.

⁴ Motion for Partial Reconsideration, p. 2.

⁵ Motion for Partial Reconsideration, p. 2.

⁶ Motion for Partial Reconsideration, pp. 5-6.



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on whether they are punishable under a special law or under the *Revised Penal Code*. Generally, crimes punishable under the *Revised Penal Code* are *mala in se*.⁷

- c. When in doubt, in consonance with the constitutional guarantee of presumption of innocence, the interpretation more favorable to the accused should be applied.⁸
- d. When the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule of lenity calls for the adoption of an interpretation which is more lenient to the accused.⁹
- e. Where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.¹⁰
- f. In the absence of any clear precedent proclaimed by the Supreme Court classifying *Unlawful Appointments*, penalized under the Revised Penal Code, either as *malum prohibitum* or *malum in se*, the court should adopt the interpretation favorable to the accused.¹¹

3. The prosecution failed to prove bad faith, with moral certainty.¹²

- a. As stated in the Decision of the court, there is nothing in the records to show that he acted with malice or corrupt intent in the July 1, 2013 appointment of Rosaura P. Fernandez.¹³
- b. Since the accused was charged for acting with deliberate intent, in willfully, unlawfully, feloniously, and knowingly appointing Fernandez, his defense of good faith must stand.¹⁴

⁷ Motion for Partial Reconsideration, p. 6.

⁸ Motion for Partial Reconsideration, p. 6.

⁹ Motion for Partial Reconsideration, p. 6.

¹⁰ Motion for Partial Reconsideration, p. 7.

¹¹ Motion for Partial Reconsideration, p. 7.

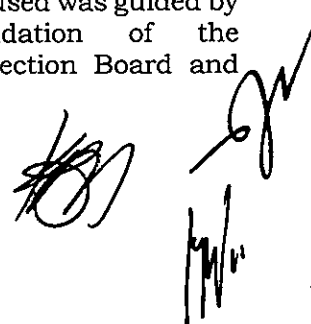
¹² Motion for Partial Reconsideration, p. 3.

¹³ Motion for Partial Reconsideration, p. 2.

¹⁴ Motion for Partial Reconsideration, p. 1.

4. The validation or invalidation of the appointment by the Civil Service Commission as the central personnel agency of the government, should be considered in determining whether Article 248 of the *Revised Penal Code* was violated.¹⁵
- a. The Civil Service Commission approved the appointment of Rosales, the administrator prior to Fernandez, despite his lack of a college degree. Said approval by the CSC sets a precedent. The Municipality relied upon such approval in processing Fernandez' appointments.¹⁶
 - b. While Fernandez was appointed three times by the accused, the July 1, 2013 was not the subject of an invalidation or disapproval by the CSC. Thus, said appointment remains valid.¹⁷
 - c. The records show that the appointment of Fernandez on July 1, 2016 was never invalidated or disapproved by the CSC.¹⁸ There was no factual nor legal basis to terminate Fernandez during the duration of his appointment as municipal administrator for the period July 1, 2013 to June 30, 2016.¹⁹
 - d. An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority, and shall remain in force and in effect until disapproved by the Civil Service Commission.²⁰
 - e. In *Posadas vs. Sandiganbayan*, the Supreme Court acquitted the accused who were administrators and professors of the University of the Philippines. The Supreme Court held that all indications are that they acted in good faith. The accused were scientists, not lawyers, and were unfamiliar with Civil Service rules and regulations. Since he is also not a lawyer, he should also be exonerated for an administrative misstep, assuming *arguendo* that it was, in relying on his subordinates who applied CSC's precedent in the appointment of Rosales who was similarly situated to Fernandez.²¹
 - f. In appointing Fernandez, accused was guided by the favorable recommendation of the Municipality's Personnel Selection Board and

¹⁵ Motion for Partial Reconsideration, p. 1.
¹⁶ Motion for Partial Reconsideration, p. 4.
¹⁷ Motion for Partial Reconsideration, p. 3.
¹⁸ Motion for Partial Reconsideration, p. 4.
¹⁹ Motion for Partial Reconsideration, p. 4.
²⁰ Motion for Partial Reconsideration, p. 4.
²¹ Motion for Partial Reconsideration, p. 5.

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the Human Resource Management Office.²² Meanwhile, the PSB and the HRMO of the Municipality relied on the approval by the CSC of the appointment of Rosales, the predecessor of Fernandez.²³

- g. It will be absurd to hold accused criminally liable under Article 244 of the Revised Penal Code when he followed the existing rules and guidance of the Civil Service Commission.²⁴

In its *Comment/Opposition*,²⁵ the prosecution counters:

1. The allegations in the Information in Criminal Case No. SB-21-CRM-0002 are clear and are enough to inform the accused of the nature and cause of the accusation against him.²⁶
2. It is too late to challenge or question the Information. Accused actively participated in the trial, without questioning the Information. He should have questioned the same by filing a *Motion for Bill of Particulars*.²⁷
3. The accused did not quote the full text of the second paragraph of Section 9 (h) of PD No. 807, which provides:

“An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, **without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: xxx**”²⁸

4. The accused cannot shift the blame to the Civil Service Commission because he was the appointing authority. That the CSC approved the appointment of Rosaura Fernandez is immaterial to this case.²⁹
5. In *Dungo vs. People*, the Supreme Court held that the better approach to distinguish *mala in se* and *mala*

²² Motion for Partial Reconsideration, p. 4.

²³ Motion for Partial Reconsideration, p. 4.

²⁴ Motion for Partial Reconsideration, p. 5.

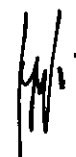
²⁵ Dated February 27, 2023, filed on March 1, 2023.

²⁶ Comment/Opposition, p. 1.

²⁷ Comment/Opposition, p. 2.

²⁸ Comment/Opposition, p. 3.

²⁹ Comment/Opposition, p. 3.



prohibita is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se*; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reason of public policy, then it is *mala prohibita*. The Court further held that, in the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all circumstances surrounding the violation of the statute.³⁰

6. Accused' act of appointing Rosauro Fernandez is not inherently immoral so as to consider the same as *mala in se*. Good faith is not a defense.³¹
7. The accused cannot claim the defense of good faith. His act of knowingly appointing someone who he knows lacks the qualification for the position of Municipal Administrator is a manifest show of bad faith and totally negates the claim of good faith.³²
8. The erroneous application and enforcement of the law by public officers does not estop the government from making subsequent correction of errors. The previous practice of the CSC-Quezon Field Office in approving Rosauro Fernandez's 2011 appointment and the similarly unqualified Arnulfo Rosales as Municipal Administrators, which approvals are erroneous and contrary to law, cannot give rise to a defense of good faith.³³

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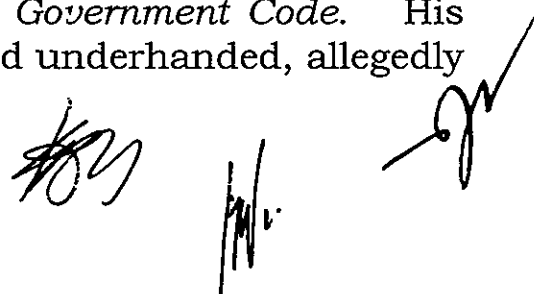
The Court cannot give any merit to accused Alega's claim that he cannot be validly convicted for violation of Article 244 of the *Revised Penal Code* which penalizes *...knowingly* nominating or appointing to any public office any person lacking the legal qualifications therefor..." allegedly because the charge against him was that he "*with deliberate intent, did and there willfully, unlawfully, feloniously and knowingly appoint one Rosauro P. Fernandez as Municipal Administrator...*" in violation of Section 480 of the *Local Government Code*. His claim that his conviction is unfair and underhanded, allegedly

³⁰ Comment/Opposition, p. 4.

³¹ Comment/Opposition, p. 4.

³² Comment/Opposition, p. 5.

³³ Comment/Opposition, p. 5.



because the Information in SB-16-CRM-0002 did not sufficiently apprise him of the nature and the cause of the accusation against him,³⁴ is patently erroneous.

The Information in SB-21-CRM-0002 clearly charged accused Alega for violation of Article 244 of the *Revised Penal Code*, by knowingly appointing Fernandez as municipal administrator even when Fernandez was not legally qualified, in violation of the qualification requirements for a municipal administrator under Article 480 of the *Local Government Code*. For expediency, the Information is hereunder quoted:

That on 1 July 2013, or sometime prior or subsequent thereto, in the Municipality of San Francisco, Province of Quezon, and within the jurisdiction of this Honorable Court, the above named accused, a public officer, being then the Municipal Mayor of the above municipality, and as such, has the power and authority to appoint officials and employees in the said municipality in such capacity, committing the offense in relation to office, **with deliberate intent, did and there willfully, unlawfully, feloniously and knowingly appoint one Rosauro P. Fernandez (Fernandez) as Municipal Administrator of the above municipality, notwithstanding the fact that Fernandez is not legally qualified for the position as he is not a degree holder or a college graduate in violation of Section 480 of the Local Government Code**, as found by the Civil Service Commission (CSC), thereby committing the offense charged, to the damage and prejudice of the government and of public interest.

CONTRARY TO LAW.”

To be sure, Section 480 of the *Local Government Code* is not a penal provision. It provides for the qualifications, among others, of an administrator. Thus:

ARTICLE X
The Administrator

SECTION 480. *Qualifications, Terms, Powers and Duties.*— (a) No person shall be appointed

³⁴ Motion for Partial Reconsideration, p. 2.

administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator.

The term of administrator is coterminous with that of his appointing authority.

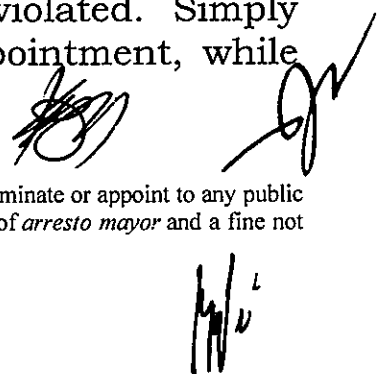
The appointment of an administrator shall be mandatory for the provincial and city governments, and optional for the municipal government.

xxx xxx xxx

The Decision found accused Alega guilty, as alleged in the Information, of *Unlawful Appointments* under Article 244 of the *Revised Penal Code*,³⁵ precisely because the evidence shows that he knowingly appointed Mr. Rosauro Fernandez as municipal administrator even when the latter did not possess all the qualifications provided for under Section 480 of the *Local Government Code*. Hence, it cannot be said that he was convicted for a crime, or for an act, not alleged in the Information. The prosecution need not prove each of the allegations in the Information since accused Alega's act of "knowingly" appointing Rosauro Fernandez as municipal administrator even when Fernandez did not have the requisite qualifications was sufficient to convict accused Alega.

Similarly, there is no merit to accused Alega's contention that the Civil Service Commission's approval or invalidation of appointments should be considered in determining whether Article 244 of the *Revised Penal Code* has been violated. Simply put, the disapproval by the CSC of the appointment, while

³⁵ Article 244. *Unlawful Appointments*. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos.



alleged in the Information, is not an element of Article 244, which reads:

Article 244. *Unlawful Appointments*. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos.

There is, thus, no basis for accused Alega's contention that it will be absurd³⁶ to hold him criminally liable under Article 244 of the *Revised Penal Code* when he followed the existing rules and guidance of the Civil Service Commission.

Besides, the evidence shows that the CSC disapproved or invalidated the subject July 1, 2013 appointment of Mr. Fernandez as municipal administrator, on the ground that Mr. Fernandez did not possess all the qualifications of a municipal administrator under the *Local Government Code*, albeit, it was not established by evidence that the LGU of San Francisco, Quezon or accused Alega was informed of the said disapproval.³⁷ The disapproval by the Civil Service Commission of the subject July 1, 2013 appointment only confirmed that Mr. Fernandez, as alleged in the Information, was not qualified for the position.

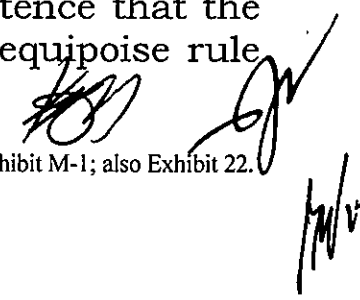
Also, the Court has fully explained its reason for rejecting accused Alega's claim of good faith as a defense for the offense of *Unlawful Appointments* under Article 244 of the *Revised Penal Code*. The Court fully explained its reasons for concluding that: a) Article 244 of the *Revised Penal Code* is *malum prohibitum*; and, b) good faith is not a valid defense for violation for Article 244 of the *Revised Penal Code*. The discussions in the decision have addressed the arguments raised by accused Alega in his *Motion for Partial Reconsideration*.³⁸ There is no useful purpose for this Court to reiterate its ratiocinations in this resolution.

There is no basis for accused Alega's insistence that the equipoise rule should apply in his favor. The equipoise rule

³⁶ Motion for Partial Reconsideration, p. 5.

³⁷ Decision dated February 9, 2023, p. 40; Report on Appointments Issued for July 2013, Exhibit M-1; also Exhibit 22.

³⁸ Decision dated February 9, 2023, pp. 53-59



applies to matters of evidence, i.e., matters of facts, and not of law. In *People v. Urzais*, G.R. No. 207662, April 13, 2016, the Supreme Court explained the equipoise doctrine, thus:

The equipoise rule states that where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfil the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.

Here, the facts are clear and undisputed. Accused Alega appointed Fernandez as administrator of the Municipality of San Fernando, Quezon in 2013 even when Fernandez did not possess all the requirements under Section 480 of the *Local Government Code*.


Finally, there is no reason for this Court to apply the rule of lenity. There is no ambiguity in the words of Article 244 of the *Revised Penal Code*, nor in its application. In *Ient v. Tullett Prebon (Philippines), Inc.*,³⁹ the Supreme Court explained the rule of lenity:

Intimately related to the *in dubio pro reo principle* is the rule of lenity. The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule calls for the adoption of an interpretation which is more lenient to the accused.

Before the Court can apply the *pro reo principle* and the rule of lenity, there must be an initial determination by the Court that there is an ambiguity in the penal statute, or there are two possible interpretations that would require the application of the tools of statutory construction. In *People v. Inyong*,⁴⁰ the Supreme Court said:

³⁹ 803 Phil 163, 186 (2017); Cited in *Buenafe v. Commission on Elections*, G.R. Nos. 260374 & 260426, June 28, 2022.

⁴⁰ G.R. No. 253570 (Notice), July 20, 2022




A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure.

Here, there is no ambiguity. There are no two possible interpretations. Further, as explained in our *Decision*,⁴¹ precedents, and the words of Article 244 of the *Revised Penal Code* support a conclusion that the offense of *unlawful appointments* is *malum prohibitum*.

To be sure, it must be reiterated that it is the Supreme Court that will finally determine whether an offense involves moral turpitude, or whether it is *malum prohibitum* or *malum in se*. This Court's initial determination that the subject offense is *malum prohibitum*, as explained in the *Decision* dated February 9, 2023, was necessary to properly appreciate accused Alega's defense of good faith.

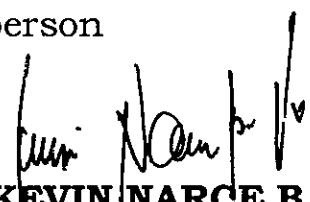
In fine, accused Alega failed to present any argument that would warrant the reversal or modification of the *Decision* dated February 9, 2023 in SB-21-CRM-0002.

WHEREFORE, accused Alega's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

⁴¹ Decision dated February 9, 2023, pp. 53-59