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SECOND DIVISION

REPUBLIC OF THE PHILIPPINES  
Sandiganbayan  
Quezon City

SECOND DIVISION

The People of the Philippines,  
*Plaintiff,*

SB-10-CRM-0237

For: Violation of Article 213,  
paragraph (2), sub-paragraph (a) of  
the Revised Penal Code (*Illegal  
Exaction*)

-versus-

Present:  
Herrera, Jr., J. *Chairperson*  
Musngi, J. &  
Pahimna, J.

Manuel del Rosario Molina and  
Fulgencio Viñas Paña,  
*Accused.*

Promulgated:

*May 31, 2019*

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DECISION

**HERRERA, JR., J.:**

Accused MANUEL DEL ROSARIO MOLINA and FULGENCIO VIÑAS PAÑA (Molina and Paña, respectively, for brevity) stand charged before this Court with *Illegal Exaction*, as defined and penalized under *Article 213, paragraph 2(a) of the Revised Penal Code (RPC)*, under an *Information*<sup>1</sup> dated November 22, 2010, the accusatory portion of which reads:

"That in or about the period from the month of January 2009 to the month of February 2009, and for sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, above-named accused Manuel R. Molina and Fulgencio

<sup>1</sup> Records of SB-10-CRM 0237, Vol. I, pp. 1-4.

DECISION

SB-10-CRM-0237

People vs. Manuel R. Molina et al

Page 2 of 22

V. Paña, all public officers, being the Municipal Mayor and Municipal Treasurer, respectively, of Carmen, Bohol, and as such were entrusted with the collection of taxes, licenses, fees and other imposts, in such capacity and committing the offense in relation to office, taking advantage of their public positions, conspiring, conniving and confederating with each other, with deliberate intent and with intent to defraud, did then and there willfully, unlawfully and feloniously demand, exact and receive the payment of the amount of THREE HUNDRED (P300.00) PESOS, Philippines Currency, from every applicant of a municipal business permit (business plate fee), or in the aggregate amount of more or less ONE HUNDRED TEN THOUSAND SEVEN HUNDRED (P110,700.00) PESOS, which sum is different from those authorized by law as there is no approved municipal ordinance authorizing the collection thereof, to the damage and prejudice of the public service.

CONTRARY TO LAW."

On August 3, 2011, accused Molina voluntarily surrendered and deposited the amount of Sixteen Thousand Pesos (P16,000.00), under Official Receipt Number 2313760, as bail for his provisional liberty.<sup>2</sup> On August 17, 2011, accused Paña deposited cash of a similar amount at Branch 50, Regional Trial Court of Bohol, as bail for his provisional liberty.<sup>3</sup>

Accused Molina having earlier filed, albeit in vain<sup>4</sup>, an ***Urgent Omnibus Motion***<sup>5</sup> seeking, among others, the dismissal of the case against him, he attempted to seek solace with the Supreme Court via a ***Petition***<sup>6</sup> dated September 26, 2011. The same was dismissed by the High Court, however, in a ***Resolution***<sup>7</sup> dated October 3, 2011 and re-affirmed<sup>8</sup> by the Tribunal on February 15, 2012.

Accused Molina was conditionally arraigned on March 2, 2012, where, duly assisted by counsel, he pleaded not guilty to the charge.<sup>9</sup> The regular arraignment of Molina transpired on June 5, 2013, where he

<sup>2</sup> Id., pp. 145 and 149.

<sup>3</sup> Id., p. 155.

<sup>4</sup> Id., Resolution dated April 13, 2011, pp. 105-108; Resolution (of the Motion for Reconsideration) dated July 20, 2011, pp. 139-143.

<sup>5</sup> Id., pp. 49-66.

<sup>6</sup> Id., pp. 197-223, with attachments.

<sup>7</sup> Id., p. 321.

<sup>8</sup> Id., p. 425.

<sup>9</sup> Id., p. 399



entered the same plea of not guilty.<sup>10</sup> The arraignment of accused Paña, on the other hand, was conducted on July 16, 2013, with him similarly pleading not guilty to the charge.<sup>11</sup>

The pre-trial thus followed and culminated with the issuance by the Court of a ***Pre-Trial Order***<sup>12</sup> on September 26, 2013. Trial commenced thereafter.

The presentation of evidence by the prosecution concluded with the submission of its ***Formal Offer of Evidence***<sup>13</sup> dated March 30, 2016.

On June 3, 2016, the Court resolved<sup>14</sup>:

"xxx to admit all the prosecution's Exhibits except Exhibit 'N' the original of which was not submitted and was not identified by the proper person, and subject to the eventual appreciation by the Court of their probative value and merit of the purposes for which they were offered."

Upon a ***Motion for Reconsideration***<sup>15</sup> filed by the prosecution, the Court admitted in evidence the subject Exhibit "N", as pronounced in an ***Order***<sup>16</sup> dated November 7, 2016.

In the interim, accused Molina, through counsel, had filed a ***Motion for Leave of Court to File Demurrer to Prosecution's Evidence***<sup>17</sup>. Leave was granted by the Court and on November 15, 2016, Molina's ***Demurrer to Evidence***<sup>18</sup> was accordingly filed.

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<sup>10</sup> Id., p. 502.

<sup>11</sup> Id., p. 511.

<sup>12</sup> Record, Vol. 2, pp. 599-603.

<sup>13</sup> Id., pp. 701-710, with attachments.

<sup>14</sup> Id., p. 740.

<sup>15</sup> Id., pp. 768-771.

<sup>16</sup> Id., p. 827.

<sup>17</sup> Id., pp. 748-751.

<sup>18</sup> Id., pp. 832-853.



Leave<sup>19</sup> was likewise sought by accused Paña and granted<sup>20</sup> forthwith by the Court. His ***Demurrer to Evidence***<sup>21</sup> was received by the Court on December 9, 2016.

Both were jointly disposed by the Court in a ***Resolution***<sup>22</sup> dated July 3, 2017, denying the ***Demurrers*** for lack of merit. A ***Motion for Reconsideration***<sup>23</sup> filed by accused Molina met the same fate of denial<sup>24</sup> by the Court.

Accused Molina and Paña then took turns presenting their defense evidence: Molina making an oral offer of Exhibits "1" to "5" on January 15, 2018, which were all duly admitted by the Court, and Paña offering his solitary Exhibit "1-Paña" in open Court on January 11, 2018, which was accordingly admitted by the Court.

To prove the charge, the prosecution presented the following as witnesses: 1) ***Raquel Oñas Rejas***; 2) ***Apolinar Verdon Malig-on***; 3) ***Socorro Painagan Torre Franca***; 4) ***Susan Painagan Racoma***; 5) ***Pablita Cabalit Abellana***; 6) ***Lucita Palado Bodiongan***; 7) ***Agustina Dispo Montajes*** and 8) ***Analisa Cario Folinar***. The testimonies of prosecution witnesses Bonifacio Magbago Quirog, Jr., Carol Painagan Madaje and Dexter Sumatra Chan were dispensed with, following stipulations with the defense as to the subject matter of their intended testimonies which, respectively, covered the non-submission by the *Sangguniang Bayan* of Carmen to the Provincial Government of an ordinance pertaining to the imposition of a business plate fee; the absence among the records of the *Sangguniang Bayan* of Carmen of any such ordinance authorizing the collection of said fee; and the existence and authenticity of the prosecution Exhibits "R" (Disbursement Voucher) and "S" (duplicate original of the

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<sup>19</sup> Id., pp. 828-831.

<sup>20</sup> Id., p. 861.

<sup>21</sup> Id., pp. 890-900.

<sup>22</sup> Id., pp. 927-931.

<sup>23</sup> Id., pp. 946-958.

<sup>24</sup> Id., pp. 986-988.



check voucher in the amount of P110,700.00). Submitted likewise as part of the prosecution evidence are the documents marked Exhibits "A" to "S", inclusive of submarkings.

On the part of the defense, accused Molina proffered Exhibits "1" to "5" and the testimony of witness *Felipe Lazo Ramo, Sr.*, while accused Paña presented himself as witness, submitting in evidence his counter-affidavit marked Exhibit "1-Paña".

### SUMMARY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES

**RAQUEL OÑAS REJAS** testified that she was the incumbent Revenue Collection Clerk III at the Municipal Treasurer's Office of Carmen, Bohol, and has held that position since 1992. Her duties, as such, include the issuance of receipts for payments covering business licenses, clearances and permits. She recalled being approached by her cousin in July, 2009, asking about the nature of the "B-Plate" fee of P300 (Three Hundred Pesos) that she had to pay for the renewal of her business license. Said cousin, Agustina Montajes, was engaged in the business of grain-buying in the town of Carmen, Bohol. Having heard of that fee for the first time, the witness promised to seek clarification from the Municipal Treasurer. She thus inquired the following day with Treasurer Fulgencio Paña about the additional charge, which the latter explained was the Business Plate fee. Pressing further, the witness asked if there was an ordinance authorizing the collection of the amount, to which the Treasurer responded that the fee's collection was upon the verbal order of Municipal Mayor Manuel Molina. When the witness persisted in asking about the existence of a corresponding ordinance, Paña supposedly retorted, "*Mag-Mayor ka muna.*" The following week, witness Rejas proceeded to the *Sangguniang Bayan* (SB) office to verify from the SB Secretary if an ordinance supporting the collection of the business plate fee had been in fact enacted. She was answered in the negative, prompting her to then



inquire with the *Sangguniang Panlalawigan*, which body reviews the ordinances being enacted by the local legislative assembly. As certified by the *Panlalawigan* Secretary, no ordinance on that matter had been submitted to them by the local *Sanggunian*. The witness recounted going back to the office of the Municipal Treasurer to ask about the circumstances surrounding the purchase of the business plates. She failed to get any document, however, because the Mayor had instructed by then that no document were to be released without his prior approval. The witness' further probe into the matter eventually led to the securing of affidavits from Salome Cario and Apolinar Malig-on who were both engaged in business and who were both payors of the business plate fee. The witness was likewise able to obtain Official Receipts that reflected payment by other individuals of the business plate fee. On one occasion, the witness chanced upon an actual business plate bearing the face and signature of Mayor Manuel Molina being carried by a tricycle for hire. She averred that she later on learned about the refund of the business plate fee from a Notice of Refund that was posted in the public market. The Notice had been issued by Municipal Treasurer Fulgencio Paña and noted by Mayor Molina. Ensuing complaints were filed by the witness before the Office of the Ombudsman-Visayas against both public officials. She insisted that the Mayor had a hand in the collection process because the application form for the business permit first requires the indorsement by the Mayor before the other officials - such as the Chief of Police, the Bureau of Internal Revenue, the Health Officer and Municipal Engineer, among others, would affix their signature thereon. Once all the requirements are complied with, the Business Permit will be issued. She asserted that if the Mayor withheld his signature at the onset, the other signatories would likewise refrain from signing and the issuance of the permit would not proceed. In the same manner, if the business plate fee were not paid, then the permit will not be forthcoming and the business would not be able to lawfully operate.<sup>25</sup>

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<sup>25</sup> TSN of November 18, 2013, pp. 6-33; TSN of December 2, 2013, pp. 5-19; TSN of March 19, 2014, pp. 3-24.



**APOLINAR VERDON MALIG-ON** was a *habal-habal* (motorized vehicle) operator plying routes within the Municipality of Carmen, Bohol. He started being an operator/driver of his solitary vehicle since 2007, annually securing a Mayor's permit in order to lawfully engage in his trade. He recalled that for the years 2007 and 2008, he separately paid P600.00 (Six Hundred Pesos) in order to secure/renew his business permit from the Local Government Unit (LGU). In 2009, however, he was surprised to learn that he was being assessed with an additional P300.00 (Three Hundred Pesos) before he could secure a business permit. He brought with him the Official Receipt - bearing the signature of Municipal Treasurer F.V. Paña - proving that he paid a total of P900.00 (Nine Hundred Pesos) that year, with the additional charge going towards the cost of a business plate (B-Plate) that was subsequently issued to him together with the business permit. He claimed that it was upon the directive of Mayor Molina that the additional fee be charged, as can be gleaned from the fact that the plate carried the picture and signature of the Mayor. The witness recounted that, a few days thereafter, Raquel Rejas happened to ride on his *habal-habal*. Knowing her to be a government employee, he asked her if she knew why an additional P300.00 had been imposed before one could secure a business permit. Rejas said she did not know but offered to ask the Municipal Treasurer and consequently borrowed the witness' Official Receipt. Rejas eventually returned to him with the receipt, intimating that she will be filing a complaint. In support of the complaint, the witness accordingly executed an affidavit and lent to Rejas his Official Receipt and business plate. Some days after, the witness learned of an announcement that the Mayor and the Treasurer were giving a refund of the P300.00 business plate fee. He failed to obtain a refund, however, because priority was given to the establishments operating within the market and since he was apparently engaged by a passenger at the time the refund was being given out at the *habal-habal* terminal. When he went to the Municipal Treasurer's office in June 2009 to claim his portion, the witness was told that no money was anymore available for the refund and that, besides, the



period for claiming had already lapsed. In the ensuing years starting in 2010 up to the time of his testimony, the witness stated that the cost of the business permit had reverted to P600.00 a year. Correcting the statement he made in his affidavit, the witness affirmed that he had not been able to get his refund of the P300.00 up to the present. He confirmed that, during those years he applied for a business permit, at no time did he render payment directly to the Treasurer; neither did the latter nor the Mayor personally demand from him payment of the subject P300.00.<sup>26</sup>

**SOCORRO PAINAGAN TORREFRANCA** testified that she was an incumbent Local Revenue Officer assigned at the Municipal Treasurer's Office in Carmen, Bohol. Her duties included, *inter alia*, the collection of taxes, fees and charges due to the Municipality, the issuance of corresponding receipts, the rendering of required reports and updating of records, particularly pertaining to real property tax. She explained that the collection of taxes, fees and other charges accruing to the LGU found legal basis in Municipal Ordinance No. 8, Series of 2005, which is otherwise known as the 2005 Revenue Code of Carmen, Bohol. She recalled that in the months of January to February 2009, the Municipality collected for the first time a business plate fee of P300.00 from each applicant, as part of the cost of securing a business permit. While the rates for the business permit are provided under the 2005 Revenue Code, the witness averred that the collection of the business plate fee was only upon the verbal instruction of the Municipal Treasurer, Fulgencio V. Paña. She said the instruction was conveyed to the collectors and that, since the Treasurer was their head of office, they complied with his directive. Since the fee was only newly-imposed, however, the witness said that some of the revenue collectors sometimes failed to include the business plate cost in their assessment of fees. On such instances, the applicant would have to go back to the Treasurer's office from the Municipal Mayor's office so that the

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<sup>26</sup> TSN of March 20, 2014, pp. 7-32.



business plate fee can be paid; otherwise, the business permit will not be released.<sup>27</sup>

**SUSAN PAINAGAN RACOMA**, at the time of her testimony, was the Officer-in-Charge at the Office of the Municipal Treasurer in Carmen, Bohol. She had been serving as Assistant Municipal Treasurer since March 2000, but was designated as In-Charge of Office (ICO) on July 2012. She testified that the LGU legally anchored its collection of taxes, fees and charges on both national law and locally-enacted legislation, with the latter specifically referring to Carmen, Bohol's Local Revenue Code of 2005, as embodied in Municipal Ordinance No. 8, dated the same year. She declared that the collection pertaining to the business permit is based on said local revenue code but that the collection for the "B-Plate" fee was not provided thereunder. She said that any new imposition of fees, taxes or charges should be based on an approved municipal ordinance by the *Sangguniang Bayan* and would have to accordingly pass the review of the *Sangguniang Panlalawigan*. She stated that payment for the "B-Plate" fee was collected from January to February, 2009 while refund of the same was effected in the months of March and April, 2009. Per the Abstract of Collection and the Official Receipts issued, the witness estimated that around 424 business operators became subject of the "B-Plate" fee collection. Gathering from records showing that the total amount of One Hundred Seven Thousand One Hundred Pesos (P107,100.00) was refunded, she figured that around sixty-eight business operators remain unpaid of the P300.00 due them for reversion. She stated that she has no knowledge of what triggered the refund nor in what manner the actual refund was made. She confirmed that the amounts collected for the business plate fee became part of the local government funds.<sup>28</sup>

**PABLITA CABALIT ABELLANA** testified that she is a State Auditor II of the Commission on Audit (COA) Provincial Auditor's Office in Bohol and has been such since 1989. Her duties include the examination and

<sup>27</sup> TSN of July 8, 2014, pp. 3-17.

<sup>28</sup> TSN of July 8, 2014, pp. 18-33.



audit of accounts to see that they are in accordance with laws and regulations pertaining to revenues and receipts and the expenditure or use of government funds and property. For the years 2007 to 2009, she said that the Municipality of Carmen, Bohol was subsumed by her audit jurisdiction. It was for that reason that she received a subpoena from the Office of the Ombudsman for the Visayas inviting her to attend a clarificatory hearing on October, 2009, relative to the alleged illegal collection by the Municipality of a business plate fee on top of the usual costs of securing/renewing business permits. In compliance with the subpoena, she attended the hearing and submitted her comments/observation on the matter. She testified that the charge for the business plate fee was a new imposition that was collected only on that year (2009). She said that this was in violation of Government Accounting Rules and Regulations because no enabling authority emanated from the *Sangguniang Bayan* of Carmen, as certified to by the Secretary of the Provincial Government of Bohol. The Provincial Government, according to the witness, had the task of reviewing the ordinances enacted by the Municipality. No corresponding ordinance had been submitted for review, however, by the Municipality of Carmen. There being no basis for the collection of the business plate fee, the witness said that the same was disallowed on audit. An eventual gathering and compilation of documents from the Municipality yielded a Notice of Refund of the assailed fee, a payroll for the refund, disbursement voucher and a copy of the check for the cash advance obtained for the purpose of repayment. The check and its supporting voucher were in the amount of P110,700.00. Effecting the refund by means of a cash advance is in violation of pertinent government regulations, however, the witness insisted, because the method employed does not lie within the purview of the guidelines for the withdrawal of a cash advance. She averred that the refund was made in an attempt to cure the unauthorized collection made by the local government.<sup>29</sup>

<sup>29</sup> TSN of October 21, 2014, pp. 3-34.



**LUCITA PALADO BODIONGAN** testified that she is a Revenue Collection Clerk at the LGU of Carmen, Bohol. Apart from holding such office, she recalled being designated as a Special Disbursing Officer (SDO) of the Municipality from October 15, 2008 to September 15, 2009. In that capacity, she was tasked with preparing, and eventually liquidating, cash advances; paying approved payrolls, vouchers and other claims; and duly recording the Municipality's disbursements. She recounted that in March, 2009, she received an approved payroll for the refund of the business plate fee paid by businessmen that year. The payroll already bore the signatures of Municipal Treasurer Fulgencio Paña and then-Mayor Manuel Molina. Having seen that the payroll was already approved, she prepared the corresponding Disbursement Voucher in order to have cash advanced for the refund. The Disbursement Voucher similarly carried the signatures of the Mayor and the Municipal Treasurer. Thereafter, a check in the amount of P110,700.00 was processed. The witness then depicted how actual pay-out of the refund was made: with the businessmen going to their office and affixing their signature beside their name in the payroll upon receipt of the refund from the witness. Not all were able to claim, however, because only a total of P107,100.00 was disbursed. Moreover, the witness asseverated that some businessmen who brought with them their Official Receipts were not able to claim a refund because their names were not included in the payroll. She said the remaining balance from the cash advance was then returned to the Treasurer's office.<sup>30</sup>

**AGUSTINA DISPO MONTAJES** testified that she is the owner of the business denominated as "Buloy Montajes Grain Buyer", which is engaged in the buying of rice and corn. She has been in the business for 24 years, or since 1989. To render the conduct of her business lawful, she annually applies for a business permit from the Municipality. She said that when she applied for such permit in 2009, she was surprised to learn that an amount of P300.00 for "B-Plate" fee had been added to the assessment. She

<sup>30</sup> TSN of October 22, 2014, pp. 4-26.



professed that it was the first time such fee was being collected. She sought clarification from the revenue collecting officer who informed that the "B-Plate" signified the charge for a business plate. Compelled to pay because she feared that the release of her business permit was on the line, the witness divulged that she paid the additional amount. The Official Receipt issued to her reflected such payment. Eventually, the witness received her business license and the business plate bearing the face of Mayor Molina and her permanent business number. Some time thereafter, she learned that some businessmen were able to get a refund of the "B-Plate" fee they paid for. She said she was not able to get hers, however, because she had been away from town when the refund transpired. She attempted to make a claim when she got back but was informed by a revenue collector that there was no more money available that time (around March or April), according to the witness.<sup>31</sup>

**ANALISA CARIO FOLINAR** sells dry goods such as clothes and various housewares at the public market of Carmen, Bohol. She began selling these merchandise in 2008. She relayed that on said year, she paid Seven Hundred Pesos (P700.00) to be able to secure a business permit and was surprised that, in the following year, she had to pay an additional amount of P300.00 as assessed by the Municipal Treasurer, Fulgencio Paña. Notwithstanding her indignation because she did not have enough money then, and her puzzlement because she had not heard of any public hearing or knew of any ordinance regarding the additional fee, she paid the full amount being charged since she feared that her business permit will not be released. Subsequently, she received both the permit and the business plate. She remained worried, however, because she utilized only a small table at the market and would not have any place to hang the tin plate from. She confirmed that the face of Mayor Manuel Molina appeared on the face of the business plate, but denied having heard the Mayor personally order the collection of the additional fee or the release of a

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<sup>31</sup> TSN of May 4, 2015, pp. 5-28.



refund. She could not recall if she was able to actually avail of the refund because of the length of time that had since passed.<sup>32</sup>

### SUMMARY OF THE TESTIMONIES FOR THE DEFENSE

**FELIPE LAZO RAMO, SR.** was retired at the time he took the witness stand. In the material years spanning 2008 to 2010, he occupied a co-terminus position as the Municipal Administrator of Carmen, Bohol. He was appointed to that post by the then-Mayor Manuel del Rosario Molina. He said he can declare with certainty that Mayor Molina did not issue any order pertaining to the collection or the refund of the assailed fee because all documents pass through the Administrator's office before they are forwarded to the Mayor for approval, and his office did not receive any such document. He stated that collection of fees is a function of the Municipal Treasurer and that the participation of the Mayor in the issuance of business permits is limited to the ministerial role of approving the document after the same - together with the required attachments - have been prepared beforehand. Part of the requirements, according to the witness, is the payment of the corresponding fees which are computed by the Municipal Treasurer's office. He declared that the collection arising from payment of the business plate fee went to the coffers of the municipal government and that neither the Treasurer nor the Mayor benefited from the said collection because everything had been covered by official receipts. He recalled that collection of the subject fee transpired mostly in January and February of that year, while the notice of refund came shortly after, sometime in the last week of February or early March. He said the notice emanated from the Office of the Municipal Treasurer and was noted by the Mayor. Some businessmen were able to claim their refund as early as March 6, 2009, as indicated by a document referenced as "Refund for the Business Plate of Business Establishments". The witness pointed out that not all concerned were able to get a refund, however, since certain

<sup>32</sup> *Id.*, pp. 28-47.



individuals allowed their receipts to be used in support of the complaint filed against the accused whereas others opted to have the refund credited against their tax due the following quarter. He testified that he came to know that something was amiss when he saw the Notice of Refund, but concluded that there was no intention of fraud because of the effort to rectify what was wrong by way of granting such refund.<sup>33</sup>

**FULGENCIO V. PAÑA** is the former Municipal Treasurer of Carmen, Bohol. He testified that part of his main function is to receive tax payments and to issue the Official Receipts therefor. He denied exacting P300.00 each from the Municipality's applicants for business permit but acknowledged that his office received such amounts. The regular business permit fees, he said, consisted of charges for police clearance, community tax, real property and other regular fees. He averred that after the taxpayers came and paid at his office, they proceeded to the Office of the Mayor for the approval of their business permit but was instructed by said Mayor to go back to the Treasurer's office for the payment of the additional P300.00 for the business plate. He said that he was not personally present when the Mayor gave the instruction but he came to know of the fact when the taxpayers trooped back to his office to pay the additional charge.<sup>34</sup>

## FINDINGS AND CONCLUSION

The essential question for resolution of the Court is whether the two accused, Molina and Paña, are guilty of *Illegal Exaction*, as defined and penalized under Article 213 (2) (a) of the *Revised Penal Code* (RPC).

**Article 213 (2) (a) of the RPC** provides:

Art. 213. *Frauds against the public treasury and similar offenses.* - The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a

<sup>33</sup> TSN of January 10, 2018, pp. 4-34.

<sup>34</sup> TSN of January 11, 2018, pp. 5-14.



fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

xxx

2. Being entrusted with the collection of taxes, licenses, fees, and other imposts, shall be guilty of any of the following acts or omissions:

(a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law;

xxx.

An accused would be guilty of the above-said offense if the following elements<sup>35</sup> concur:

- a. The offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts.
- b. He is guilty of any of the following acts or omissions:
  - (1) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law; or
  - (2) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially; or
  - (3) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

A judicious review of the evidence reveals the existence of the elements necessary in establishing the guilt of the accused herein.

The Court first turns its eyes on the requisite status of the offender: that he must be a public officer entrusted with the collection of taxes, licenses, fees and other imposts.

Accused Molina, as can be gleaned from the *Pre-Trial Order*<sup>36</sup>, duly admitted that he was the Municipal Mayor of Carmen, Bohol at all times

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<sup>35</sup> Luis B. Reyes, *The Revised Penal Code* (Philippines: Rex, 1993).



material to the instant case. For his part, accused Paña acknowledged in his testimony<sup>37</sup> that he was the Treasurer of the same municipality of Carmen and that he is being charged in the said capacity. Empowered as they both are by the **Local Government Code**<sup>38</sup> (LGC), it is with certitude that they are both public officers.

It is that same Code which also delineates the respective functions of the said officers and, in this regard, the statute provides:

Section 170. *Collection of Local Revenue by treasurer.* - All local taxes, fees and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly authorized deputies. xxx.

Affirmatively, therefore, the duty of collection rests with the LGU Treasurer. Such fact is not denied by accused Paña either, and the Court culls from his testimony<sup>39</sup>:

"Q: By the way, you were charged in your capacity as Municipal Treasurer of Carmen, Bohol?

A: Yes, sir.

Q: Can you tell us your main function as Municipal Treasurer, Mr. Witness?

A: To receive tax payments and issue official receipts."

Accused Molina, however, maintains in his Counter-Affidavit (Exhibit "1") that since he is not *directly* or *actually* tasked with the collection of taxes or fees, he is not a public officer within the purview of the first element. He instead points a finger to the Municipal Treasurer, Paña, to whom the law explicitly vests the responsibility of local revenue collection. But even as defendant Molina attempts to extricate himself from liability by quibbling on the phraseology of the initial element (that he is not an official

<sup>36</sup> Supra at Note 12.

<sup>37</sup> Supra at Note 34, p. 9.

<sup>38</sup> Republic Act No. 7160, *An Act Providing for a Local Government Code of 1991*.

<sup>39</sup> Supra at Note 37.

**entrusted** with collection), the invisible hand behind the collection of the additional charge from business permit applicants cannot be denied.

In the first place, Molina conveniently forgets that among his enumerated duties is that he should **ensure that all taxes and other revenues of the municipality are collected** [Section 444, (b), (3), (iii), LGC]. To that end, therefore, his role in such pecuniary activity of the Municipality elevates to a legal certainty. This, notwithstanding the fact that such participation does not, in any way, call for his actual physical receipt of the monies collected.

Moreover, even assuming (without conceding to) the theory of accused Molina that he is not an officer "**entrusted**" with the collection of taxes and charges, the Court remains unconvinced that his participation falls outside the ambit of criminal liability.

The situation of Molina finds close analogy to the crime of malversation where the law textually attaches liability only to a public officer who, by reason of the duties of his office, is accountable for public funds or property, but where even **private** individuals can be (and have been) charged, where such private persons are established as co-perpetrators.

Here, it is amply alleged in the *Information* that Mayor Manuel Molina and Municipal Treasurer Fulgencio Paña, "*in such capacity and committing the offense in relation to office, taking advantage of their public positions, **conspiring, conniving and confederating with each other,** xxx did then and there willfully, unlawfully and feloniously demand, exact and receive the payment of the amount of THREE HUNDRED (P300.00) PESOS, Philippine Currency, from every applicant of a municipal business permit (business plate fee) xxx*". [boldface supplied]



Justice runs the risk of being blindsided were the Court to entertain the proposition of Molina that inasmuch as the duty of actual revenue collection exclusively pertains to the Municipal Treasurer, he can never be imputed for the crime for which he is charged.

It would not be remiss to again cite the *Local Government Code* which provides:

Section 342. *Liability for Acts Done Upon Direction of Superior Officer, Or Upon Participation of Other Department Heads or Officers of Equivalent Rank.* - xxx. The **superior officer directing**, or the department head participating in **such illegal or improper use or application or deposit of government funds or property**, shall be **jointly and severally liable** with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. [boldface supplied]

More to the point, the Code highlights the tight relationship between the Mayor, as Chief Executive of the LGU, and of the Treasurer in the devolved power of taxation when it declares:

Section 470. *Appointment, Qualifications, Powers and Duties.* -

xxx

(b) The treasurer shall be under the **administrative supervision** of the governor or mayor, as the case may be, **to whom he shall report regularly on the tax collection efforts in the local government unit**, [boldface supplied]

xxx

The significant role of the Mayor in such undertaking cannot therefore be simply brushed aside.

The Court now turns to the discussion of the second element.

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The relevant penal provision enumerates the three ways by which illegal exaction may be committed. The act imputed to public officers Molina and Paña is that they demanded, and indeed received, an amount which is different from that authorized by law. Mere demand, made directly or indirectly, of a sum that is different from or larger than what is lawfully authorized consummates the crime. It would seem apparent from the proscription that actual receipt of the amount demanded from the taxpayer is not even necessary (Reyes, L.B., 1993, p. 355) or that the officer should misappropriate the money (Padilla, A., 1976, p. 568).

That demand was made under a mantle of authority is unmistakably shown by the certified true copy of the more than four hundred twenty Official Receipts<sup>40</sup> compiled and proffered by the prosecution, reflecting the amount of P300.00 for the business plate which was made part of the collection. Revenue Officer Torre Franca's testimony that there were even occasions, in fact, of inadvertent omission of the additional charge is readily substantiated by the existence of certain receipts indicating solely the "B-plate" fee as an assessment.

Veritably, accused Paña himself in his Counter-Affidavit<sup>41</sup>, declared that:

"5. xxx. So in connection with my function as a Municipal Treasurer, I included in the Official Receipts of the Municipality the amount of P300.00 as required by the Office of the Mayor to be collected for the Business Permit Plate."

Interestingly, accused Molina adopted the same Counter-Affidavit of Paña as his Exhibit "2"<sup>42</sup>, lending credence to the statements made therein.

<sup>40</sup> Exhibits "J" to "J-422".

<sup>41</sup> Exhibit "I-Paña".

<sup>42</sup> TSN of January 15, 2018, pp. 5-6.



But even if the Court were to gloss over such adoption of said Exhibit in common, Molina in his own Counter-Affidavit<sup>43</sup>, acknowledges that the excess fee had been collected, hence the need for the same to be refunded. His statement is reproduced herein:

"17. That the NOTICE OF REFUND (Annex "I" of the complaint-affidavit) was prepared and signed by the Municipal Treasurer Fulgencio V. Paña and the contents of the same is self-explanatory. My participation was just only of affixing my signature above my printed name to signify that I noted the NOTICE OF REFUND, **as an exercise of power of general supervision and control of all programs, services and activities of the municipal government;**

18. That indeed, I even approved the DISBURSEMENT VOUCHER for the refund of Business Plate as early as March 2, 2009, **because I believed the same has no basis and no ordinance that support the collection of the amount, xxx.**" [boldface and underscoring supplied]

Molina's dismissive denial that he had a hand in the collection of the additional fee flies in the face of his admission that he has general supervision and control of all programs and activities of the municipal government and his averment that the collection for the business plate fee has no legal basis to stand on. First, it is precisely on the basis of such power of general supervision and control that it would be bordering on the unlikely that the business plates patently bearing his image and signature could be procured and distributed without his consent or knowledge, and the resultant costs thereof made to be borne by taxpayers. Secondly, that same power of administrative supervision allowed him to espouse the belief that the additional fee is not supported by law - a fact that is decidedly confirmed by 1) the *Sangguniang Panlalawigan* Secretary's certification that no such ordinance was submitted to them, and 2) the testimony of witness Carol Madaje (that became the subject of stipulation between the parties) of the absence from the *Sangguniang Bayan* records of an ordinance authorizing the collection of the business plate fee.

<sup>43</sup> Exhibit "I".



Molina's defensive declaration that "based on the records at the Treasurer's Office, all the amount collected are properly recorded, audited and all directly deposited to the coffers of the Local Government of Carmen, Bohol. No single centavo was lost and/or illegally used for the personal interest of the respondent or any public officers"<sup>44</sup> does not help him or Paña either because any non-accounting or misappropriation of the sum demanded would only add, but not detract from, their present offense. In that light, therefore, it would be of no moment whether the initiative to refund the collected amount was made earlier or later than the complaint lodged by Raquel Rejas since the act of demanding the unauthorized amount is already consummated.

**WHEREFORE**, premises considered, the Court finds accused MANUEL DEL ROSARIO MOLINA and FULGENCIO VIÑAS PAÑA guilty beyond reasonable doubt of the crime of *Illegal Exaction*, as alleged in the *Information* dated November 22, 2010, and as defined and penalized under **Article 213** of the *Revised Penal Code*.

Inasmuch as the offense was committed prior to the adjustment of punitive values under Republic Act No. 10951<sup>45</sup>, and where such lower values from the RPC are more favorable to the two accused, and further taking into consideration the mitigating circumstance of restitution when the fee was refunded to the payors thereof, accused Manuel Molina and Fulgencio Paña are hereby sentenced to each pay the maximum prescribed fine of Ten Thousand Pesos (P10,000.00).

SO ORDERED.

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<sup>44</sup> Ibid., p. 6.

<sup>45</sup> *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, And the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", As Amended.*

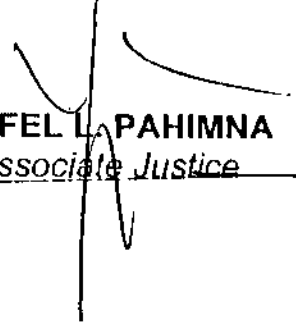


  
OSCAR S. HERRERA, JR.  
Chairperson  
Associate Justice

We concur:

*in the result.*

  
MICHAEL FREDERICK L. MUSNGI  
Associate Justice

  
LORIFEL L. PAHIMNA  
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.

  
OSCAR S. HERRERA, JR.  
Chairman  
Second Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairman'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