



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

*Seventh Division*

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PEOPLE OF THE PHILIPPINES,  
Plaintiff,

Crim. Case No. SB-16-CRM-  
0049

- versus -

AVELINO JUDILLA GUNGOB, SR.,  
GLICERIO BURONG GALO,  
LEONARDO GABATO CAPAO, JR.,  
JOEBOY CANETE DAYON,  
JUANITO TUBIN GERUNDIO, JR.,  
BEDA INOC COMISO, NICARTER  
JEMINO YRAY, DIONITO CAVAN  
MANGILAYA,<sup>1</sup>

Accused.

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*Present:*

Gomez-Estoesta, J.  
*Chairperson*  
Trespeses, J.  
Hidalgo, J.

Promulgated: August 16, 2019

**DECISION**

**TRESPESSES, J.:**

This resolves the charge against accused Avelino Judilla Gungob, Sr., (Gungob) then Municipal Mayor of Consolacion, Cebu, along with six (6) job order employees – Leonardo Gabato Capao, Jr. (Capao), Juanito Tubin Gerundio, Jr. (Gerundio), Beda Inoc Comiso (Comiso), Nicarter Jemino Yray (Yray), Dionito Cavan Mangilaya (Mangilaya) and Joeboy Canete Dayon (Dayon) and their supervisor, Glicerio Burong Galo (Galo), for theft of minerals, as defined and penalized under Section 103 of Republic Act (R.A.) No. 7942 (Philippine Mining Act of 1995), in relation to Section 49 of the same Act.

**THE ANTECEDENT FACTS**

A complaint<sup>2</sup> was filed by the National Bureau of Investigation (NBI) Regional Office No. VII before the Office of the Ombudsman, which acted thereon by issuing a Joint Resolution<sup>3</sup> finding probable cause to indict the

<sup>1</sup> The names of the accused have been amended upon motion by the defense (Records, vol. I, pp. 317, 351 and 391).

<sup>2</sup> Records, vol. I, pp. 22-24; dated December 1, 2009.

<sup>3</sup> Id. at 21-36; dated February 9, 2015; it likewise pronounced Gungob guilty of Simple Misconduct, and imposed upon him a three-month suspension without pay, as follows:

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accused and directing the filing of the appropriate Information against them. Separate Motions for Reconsideration were filed by accused Gungob, Galo and Mangilaya, but these were denied by the Ombudsman.<sup>4</sup>

An Information<sup>5</sup> was thereafter filed before this Court, to wit:

That on 26 November 2009 or sometime prior or subsequent thereto, in the Municipality of Consolacion, Cebu, and within the jurisdiction of this Honorable Court, the abovenamed accused AVELINO J. GUNGOB, SR., then Municipal Mayor (Salary Grade 27) of the Municipality of Consolacion, Cebu, committing the offense in relation to his office and taking advantage of his position, conspiring and confederating with GLICERIO GALO, LEONARDO G. CAPAO, JR., JOEBOY C. DAYON, JUANITO T. GERUNDIO, JR., BEDA I. COMISO, NICARTER J. YRAY and DIONITO C. MANGILAYA, mutually helping one another and using the municipality's dump trucks, backhoe, bulldozer and other resources, did then and there willfully, unlawfully and criminally extract, take, gather and remove minerals consisting of three (3) truckloads or approximately thirty (30) cubic meters of limestones and/or diorite from Barangay Garing, Consolacion, Cebu, which minerals belong to the Government, without a valid permit required under Republic Act No. 7942, to the damage and prejudice of the Government.

CONTRARY TO LAW.<sup>6</sup>

Upon the filing of the above Information, a Hold Departure Order<sup>7</sup> was released by this Court against all the accused. Meanwhile, accused Gungob filed an Appearance with Motion for Judicial Determination of Probable Cause<sup>8</sup> to which the prosecution filed a Comment/Opposition.<sup>9</sup> The Court found that there was probable cause for the issuance of warrants of arrest and consequently ordered the issuance of the same.<sup>10</sup> Accused Gungob posted bail and was granted provisional release.<sup>11</sup> The rest of the accused, with the exception of accused Dayon who still remains at-large,<sup>12</sup> were arrested but were soon released upon their posting of bail.<sup>13</sup>

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Respecting the *administrative* aspect of the complaint, respondent Gungob, Sr. is found GUILTY of Simple Misconduct, and impose[d] upon him the penalty of Suspension without pay for three (3) months, together with the concomitant accessory penalties.

In the event that the penalty of suspension can no longer be enforced due to respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for three (3) months, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivables from his office.

<sup>4</sup> Id. at 16-20 (Joint Order dated April 23, 2015).

<sup>5</sup> Id. at 1-3; dated November 16, 2015.

<sup>6</sup> Id. at 1-2.

<sup>7</sup> Id. at 81; dated January 29, 2016.

<sup>8</sup> Id. at 105-121.

<sup>9</sup> Id. at 134-139.

<sup>10</sup> Id. at 196-198 (Resolution dated April 21, 2016).

<sup>11</sup> Id. at 160.

<sup>12</sup> Id. at 283.

<sup>13</sup> Id. at 265 and 317.

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Accused Gungob, Capao, Yray, Mangilaya, Galo, Comiso and Gerundio pleaded not guilty upon arraignment.<sup>14</sup> Pre-trial was scheduled and terminated upon the approval of the Joint Stipulation of Facts and Issues<sup>15</sup> and the issuance of the Pre-trial Order.<sup>16</sup> Trial thereafter ensued.

**EVIDENCE FOR THE PROSECUTION**

The prosecution presented the following witnesses: (1) Atty. Roy G. Salubre, Provincial Treasurer of the Province of Cebu;<sup>17</sup> (2) Atty. Jose Ernie A. Monsanto, an agent of the NBI, Regional Office No. VII, Cebu City;<sup>18</sup> (3) Gregorio Y. Algoson, Jr., an agent of the NBI;<sup>19</sup> (4) Al Emil G. Berador, Chief of the Geosciences Division, Mines and Geosciences Bureau (MGB), Regional Office No. VII, Department of Environment and Natural Resources;<sup>20</sup> (5) Nerces Bispo, Planning Officer of the Provincial Government of Cebu and Officer-in-Charge of Provincial Environment and Natural Resources Office (PENRO), Cebu City;<sup>21</sup> (6) Philip Lampong, Human Resource Officer and records custodian of the Municipal Government of Consolacion, Cebu;<sup>22</sup> (7) Nestor D. Seacor, member of the PENRO Monitoring Team;<sup>23</sup> and (8) Atty. Nestor Avila, the lawyer who assisted the accused job order employees in executing their Joint Affidavit.<sup>24</sup>

Their testimonies reveal that on November 26, 2009, a team composed of representatives from the PENRO Monitoring Team of the Province of Cebu, the NBI, the 78<sup>th</sup> Infantry Battalion of the Philippine Army and the Provincial Treasurer's Office, conducted a monitoring and checkpoint on the illegal extraction or hauling of mineral products in *Barangays* Danglag and *Sitio* Dagundong in the Municipality of Consolacion, Cebu. During the operation, three dump trucks<sup>25</sup> loaded with a total of 30 cubic meters of limestone and/or diorite were flagged down.

The drivers of the trucks – accused Gerundio, Comiso and Mangilaya – were asked if they had a permit to haul or extract but they could not provide any. Accused Capao and Dayon were then operating a backhoe and

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<sup>14</sup> Id. at 351-352 (Order dated August 8, 2016) and 391-392 (Order dated November 22, 2016).

<sup>15</sup> Records, vol. II, pp. 128-140 and 142.

<sup>16</sup> Id. at 175-183.

<sup>17</sup> TSN, August 7, 2017, pp. 5-10.

<sup>18</sup> Id. at 10-22.

<sup>19</sup> Id. at 22-27.

<sup>20</sup> Id. at 27-35.

<sup>21</sup> TSN, August 8, 2017, pp. 1-9.

<sup>22</sup> Id. at 10-23.

<sup>23</sup> Id. at 24-42.

<sup>24</sup> TSN, February 15, 2018, pp. 1-40.

<sup>25</sup> More particularly described as follows: (a) one (1) unit FUCO ten-wheeler dump truck bearing the plate number SHY 980, (b) one (1) unit ISUZU ten-wheeler dump truck bearing the plate number SHX 144, and (c) one (1) ISUZU ten-wheeler dump truck bearing the plate number SHX 112, all owned by the Municipal Government of Consolacion, Cebu.

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a bulldozer,<sup>26</sup> respectively. Meanwhile, accused Yray was directing the unloading of the dump truck driven by accused Gerundio. The accused job order employees were all apprehended and brought to the NBI for further questioning.

At the NBI, they executed a Joint Affidavit<sup>27</sup> with the assistance of counsel. They stated therein that they had been instructed by accused Gungob, through their supervisor accused Galo, to go to *Sitio* Dagundong, *Barangay* Garin, Municipality of Cebu to quarry and load limestone and/or diorite to be dumped at *Sitio* Mapolo, Garing, Cebu and at the Consolacion Government Center, *Barangay* Cansaga, Consolacion, Cebu.

The prosecution also presented certificates<sup>28</sup> from the MGB and PENRO, Province of Cebu stating that there is no pending mining right application or permit issued to accused Gungob or the Municipality of Consolacion, Cebu for the quarrying or extraction of limestone and/or diorite in *Barangay* Garing or the neighboring *barangays* thereof. A certificate from the Provincial Treasurer's Office was likewise presented that the total volume of the limestone mineral loaded in the three trucks is 30 cubic meters and the total extraction fee thereof is ₱600.<sup>29</sup>

After the Formal Offer of Evidence<sup>30</sup> by the prosecution, the accused sought leave to file a demurrer to evidence,<sup>31</sup> which the Court denied for lack of merit.<sup>32</sup>

**EVIDENCE FOR THE ACCUSED**

Upon the denial of their motion to file a demurrer to evidence, the accused presented the testimonies of the following witnesses: (1) accused Gungob,<sup>33</sup> (2) accused Comiso,<sup>34</sup> (3) accused Mangilaya,<sup>35</sup> (4) accused Yray,<sup>36</sup> (5) accused Capao,<sup>37</sup> and (6) accused Galo.<sup>38</sup>

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<sup>26</sup> Also owned by the Municipal Government of Consolacion, Cebu.

<sup>27</sup> Exhibit "D" for the prosecution was the Joint Affidavit of accused Capao, Dayon, Gerundio, Comiso, Yray and Mangilaya dated November 26, 2009.

<sup>28</sup> Exhibit "G" for the prosecution was a certificate dated November 27, 2009 issued by the Al Emil G. Berador, Officer-in-Charge and Chief Geologist of the Department of Environment and Natural Resources Mines and Geosciences Bureau; Exhibit "H" for the prosecution was a certificate dated November 23, 2009 issued by Nerces D. Bispo, Officer-in-Charge of PENRO, Province of Cebu.

<sup>29</sup> Exhibit "I" for the prosecution was a certificate dated December 1, 2009 issued by Atty. Roy G. Salubre, Provincial Treasurer, Province of Cebu.

<sup>30</sup> Records, vol. II, pp. 352-376.

<sup>31</sup> Id. at 438-453.

<sup>32</sup> Id. at 477-480 (Resolution dated June 14, 2018).

<sup>33</sup> TSN, July 18, 2018 (morning), pp. 1-58.

<sup>34</sup> Id. at 59-95.

<sup>35</sup> TSN, July 18, 2018 (afternoon), pp. 3-26.

<sup>36</sup> Id. at 27-28.

<sup>37</sup> Id. at 29-32.

<sup>38</sup> Id. at 32-42.

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According to the accused, in 2004, the *Sangguniang Bayan* of Consolacion, Cebu authorized accused Gungob, then the municipal mayor, to undertake the "Mountain Highway Project," also known as the "Road Opening Project" which aimed to create a road network interconnecting the different barangays of the municipality.<sup>39</sup> Environmental Compliance Certificate (ECC) No. 07 06 09 25 201 208<sup>40</sup> was secured in connection with the project.

As a consequence of the Mountain Highway Project, excavation and hauling of earth materials were made. The accused claimed that the Office of the Governor, Province of Cebu allowed these activities through a Gratuitous Permit – issued after a favorable endorsement by the Cebu Provincial Legal Office but soon revoked upon the completion of the passenger transport terminal project.<sup>41</sup>

The accused further claimed that the earth materials from the Mountain Highway Project were delivered as filling materials to two other projects: the passenger transport terminal project and the government center project.

Due to the revocation of the Gratuitous Permit issued for the Mountain Highway Project, accused Gungob sent letters<sup>42</sup> addressed to the Office of the Governor, Province of Cebu through Nerces Bispo, OIC-PENRO, asking that a permit be issued to continue the project. However, these letters were not acted upon and no permit to excavate and haul was issued.

Accused Gungob further stated that the ECC issued for the Mountain Highway Project required the expeditious removal of excavated materials to avoid any untoward incident. Invoking good faith that his act was not violative of any law and complying with the requirement stated in the ECC, accused Gungob instructed the accused job order employees to proceed with the construction of the road and to use the earth materials from the Mountain Highway Project as filling materials in other projects.

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<sup>39</sup> Exhibit "1" for the accused was Resolution No. 195, series 2004, entitled "RESOLUTION AUTHORIZING THE HONORABLE MAYOR OF CONSOLACION, CEBU HON. AVELINO J. GUNGOB, SR. TO UNDERTAKE THE OPENING OF THE ROAD TO THE DIFFERENT MOUNTAIN BARANGAYS IN THE MUNICIPALITY AND TO NEGOTIATE WITH THE LANDOWNERS OF THE AFFECTED PROPERTIES OF THESE ROAD NETWORKS, MORE PARTICULARLY IN BARANGAYS CANSAGA, TILHAONG, DANGLAG, GARING, PANAS, AND LANIPGA AND SUCH OTHER BARANGAYS AS MAY BE AFFECTED THEREBY."

<sup>40</sup> Exhibit "4" for the accused was the Environmental Compliance Certificate (07 06 09-25 201 208) dated April 29, 2008 approved by Alan C. Arranguez, Officer-in-Charge Regional Director.

<sup>41</sup> Exhibit "5" for the accused was the 4<sup>th</sup> Indorsement dated April 29, 2008 issued by Marino E. Martinquilla, Officer-in-Charge.

<sup>42</sup> Exhibits "9" and "10" for the accused were letters dated January 13, 2009 and April 3, 2009 signed by accused Gungob addressed to Hon. Gwendolyn F. Garcia, Governor of the Province of Cebu, through Mrs. Nerces Bispo, OIC-PENRO.

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Thus, on November 26, 2009, accused Capao, Dayon, Gerondio, Comiso, Yray, and Mangilaya were working on the Mountain Highway Project when they were accosted by the composite team. The accused job order employees further claimed that they were taken to the NBI and were made to sign an affidavit even if they did not fully understand the contents thereof.

The accused subsequently made a Formal Offer of Evidence.<sup>43</sup> The parties thereafter submitted their respective Memoranda.<sup>44</sup>

**THE ISSUE**

The issue is whether the accused, in conspiracy with one another, are guilty of theft of minerals in violation of Section 103 in relation to Section 49 of R.A. No. 7942.

The prosecution claims that it has sufficiently established the guilt of the accused for theft of minerals through the testimonial and documentary evidence proving that the accused extracted, removed and/or disposed of minerals which belong to the government without the requisite permit.<sup>45</sup>

The accused, on the other hand, interpose that the prosecution failed to establish all the elements of the crime.<sup>46</sup> They claim that there is no evidence to prove that the soil in the alleged quarry site and the earth materials loaded on the confiscated trucks were limestone or diorite.<sup>47</sup> The accused also argue that the prosecution failed to prove that the quarry site belonged to the government or under a mining claim of a third party.<sup>48</sup> Ultimately, they seek their acquittal and the dismissal of the instant charge which they regard as a mere harassment case against accused Gungob.<sup>49</sup>

**OUR RULING**

This Court resolves the issue in favor of the prosecution.

The Information charges all the accused with violation of Section 103 in relation to Section 49 of R.A. No. 7942. The provisions are quoted successively hereunder:

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<sup>43</sup> Records, vol. III, pp. 28-34.

<sup>44</sup> Id. at 127-163 (Memorandum for the Prosecution dated April 16, 2019); pp. 164-185 (Memorandum for the Accused dated April 22, 2019).

<sup>45</sup> Id. at 132 (Memorandum for the Prosecution, p. 6).

<sup>46</sup> Id. at 168 (Memorandum for the Accused, p. 5).

<sup>47</sup> Id. at 169 (Memorandum for the Accused, p. 6).

<sup>48</sup> Id. at 176 (Memorandum for the Accused, p. 13).

<sup>49</sup> Id. at 180 (Memorandum for the Accused, p. 19).

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**Section 103  
Theft of Minerals**

Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from Ten thousand pesos (₱10,000.00) to Twenty thousand pesos (₱ 20,000.00) or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

**Section 49  
Government Gratuitous Permit**

Any government entity or instrumentality may be granted a gratuitous permit by the provincial governor to extract sand and gravel, quarry or loose unconsolidated materials needed in the construction of building and/or infrastructure for public use or other purposes over an area of not more than two hectares (2 has.) for a period coterminous with said construction.

*People v. Abad*<sup>50</sup> states the elements of the offense as follows: (1) the accused extracted, removed and/or disposed of minerals; (2) these minerals belong to the Government or have been taken from a mining claim or claims leased, held or owned by other persons; and (3) the accused did not possess a mining lease or a temporary permit or any other permit to mine granted by the Secretary or the Director under existing mining decrees, laws and regulations.<sup>51</sup>

The pieces of evidence adduced by the prosecution satisfy all the enumerated elements.

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<sup>50</sup> G.R. No. L-55132, August 30, 1988; while Theft of Minerals in the cited case was a violation of Section 78 of Presidential Decree No. (P.D.) 463, as amended by P.D. 1385, the said provision was substantially reiterated in Section 103 of R.A. No. 7942, to wit:

Section 78. Theft of Minerals. Any person who, without a mining lease or a temporary permit or, any other permit granted by the Secretary or the Director under existing mining decrees, laws and regulations to mine, shall extract, remove and/or dispose of minerals belonging to the Government or from a mining claim or claims leased, held or owned by other persons, shall be deemed to have stolen the ores or the products thereof from the mines or mills. He shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from one hundred pesos (P100.00) to ten thousand pesos (P10,000.00) or both, in the discretion of the court, besides paying compensation for the minerals removed, extracted and disposed of, the royalty and the damage caused thereby.

<sup>51</sup> Id.



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**I. *The accused extracted, removed  
and/or disposed of minerals***

The composite team found the accused job order employees in the acts of extracting and hauling minerals upon the instruction of accused Gungob through their supervisor, accused Galo.

Accused Gungob stated in his Judicial Affidavit, which was made part of his testimony that he gave his instructions to all the accused job order employees, to wit:

55. Q: As mayor of the municipality, what were your instructions to your personnel assigned at the "Mountain Highway Project," if any?

A: Believing in good faith that we were not violating any law since we were equipped with all legal documents, I told the workers to proceed with the construction of the road and the removed earth materials shall be used as filling materials to other government projects.

56. Q: Would you know if your instructions were followed?

A: Yes, sir. I conduct routine inspections on the ground.<sup>52</sup>

At the witness stand, accused Gungob confirmed that he hired all of his co-accused who were under his supervision and control as then municipal mayor of Consolacion, Cebu.

Q And also, Mr. Witness, in order to realize the project – the Mountain Highway Project, you hired Glicerio Galo, Beda Comiso, Nicarter Yray, Dionito Mangilaya, Leonardo Capao, Joeboy Dayon and Juanito Gerundio for the project?

A Yes, Ma'am.

Q So, and as such, Mr. Witness, they are under your control and direct supervision?

A Yes, Ma'am.<sup>53</sup>

Accused Galo also confirmed at the witness stand that he was the supervisor of the accused job order employees, to wit:

Q When you say "leadman," you are also referring to as being the team leader or the supervisor, is that correct, Mr. Witness?

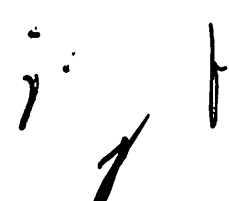
A Yes, Ma'am.

Q Thank you, Mr. Witness. In Question No. 4, you stated there that on November 26, 2009, you were working on [the] alleged road

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<sup>52</sup> Records, vol. II, p. 504 (Judicial Affidavit of Accused Gungob, p. 10).

<sup>53</sup> TSN, July 18, 2018 (morning), p. 55.





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widening project in Barangay Dagundong. My question is, in order to realize this alleged project, Mr. Witness, do you have men to work in the road widening project?

A Yes, Ma'am.

Q And you will agree with me that these men refer to Leonardo Capao, Joey Biboy Dayon, Juanito Gerundio, Jr., Beda Comiso, Nicarter Yray and Dionito Mangilaya?

A Yes, ma'am.

Q So, Mr. Witness, being then the supervisor of your men, you gave orders and directions to them?

A Yes, ma'am.<sup>54</sup>

The Joint Affidavit of the accused job order employees specifically recounted that their supervisor, accused Galo, who was acting on the instruction of accused Gungob, ordered them all to do the hauling.<sup>55</sup> Accused Capao was instructed "to operate the back hoe" and "to load the 'diorite' to government dump trucks driven by other job order employees;" accused Dayon, "to operate the bulldozer" and "to stockpile" diorite to be loaded to the dump trucks; accused Gerundio, Comiso, and Mangilaya, "to haul" diorite.<sup>56</sup>

Even if the Joint Affidavit were to be excluded as evidence, the accused job order employees nonetheless admitted in their respective Judicial Affidavits, which were made part of their respective testimonies in open court, that they were working on the road project at the time of their apprehension by the composite team. Accused Comiso was then "driving [his] truck from the road widening project site in Dagundong to the Government Center project site."<sup>57</sup> Accused Yray was "spotting" for accused Capao and "assisting [him] in loading a dump truck with soil fillings from the road project."<sup>58</sup> Accused Capao was "loading filling materials to a dump truck" using a backhoe.<sup>59</sup> Accused Mangilaya was "driving [his] dump truck, hauling filling materials from the road-widening project in Dagundong, and dumping [the materials] in another government project: the Government Center project."<sup>60</sup> Accused Galo was the "leadman" or "team leader working for the Municipal Government of Consolacion."<sup>61</sup>

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<sup>54</sup> TSN, July 18, 2018 (afternoon), pp. 36-37.

<sup>55</sup> See note 27.

<sup>56</sup> Id.

<sup>57</sup> Records, vol. II, p. 538 (Judicial Affidavit of Accused Comiso, p. 3);

<sup>58</sup> Id. at 552 (Judicial Affidavit of Accused Yray, p. 3).

<sup>59</sup> Id. at 565 (Judicial Affidavit of Accused Capao, p. 3).

<sup>60</sup> Id. at 579 (Judicial Affidavit of Accused Mangilaya, p. 3).

<sup>61</sup> Id. at 590 (Judicial Affidavit of Accused Galo, p. 1).

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The accused, however, denied that they were excavating and hauling minerals. Instead, they insisted that they were excavating and hauling earth materials or topsoil.

The earth materials they were excavating and hauling were, however, proven to be minerals. The certificate dated December 1, 2009 issued by Atty. Roy G. Salubre, Provincial Treasurer, Province of Cebu confirms this fact. Pertinent parts of said certification are quoted verbatim as follows:

This is to CERTIFY that the total estimated volume of **limestone minerals** loaded in the three (3) ten-wheeler dump trucks apprehended on November 26, 2009 and owned by the Municipal Government of Consolacion under the administration of Mayor Avelino Gungob, Sr. is 30 cubic meters.

This is to CERTIFY further that the total tax (extraction fee) equivalent to the total loaded volume is Six Hundred Pesos (Php600). This is based on the 10% tax of the local fair market value of **limestone** which is Two Hundred Pesos (Php200) per cubic meter, pursuant to Provincial Ordinance No. 2008-010, otherwise known as the "Revenue Code of Cebu."<sup>62</sup> (Emphasis supplied)

More importantly, this Court notes that despite the contrary testimonies of accused, especially accused Gungob, that the loads of the dump trucks were earth materials and not minerals, the documentary evidence offered by accused identified the earth materials from the area as limestones.

The request letters sent by no other than accused Gungob to Governor Gwendolyn Garcia repeatedly qualify the extracted earth materials from the Mountain Highway Project as limestones. The January 13, 2009 letter is reproduced verbatim as follows:

I would like to respectfully request from your good office for the issuance of a Gratuitous Permit in the hauling and dumping of the **excavated earth materials (limestones)** from our Road Opening Project in Danglag, Consolacion, Cebu, to be dumped at our various projects at Barangays Nangka and Polog, Consolacion, Cebu.<sup>63</sup> (Emphasis supplied)

The second letter dated April 3, 2009 reads as follows:

I would like to respectfully request from your good office, the issuance of a Gratuitous Permit in the hauling and dumping of the **excavated earth materials (limestones)** which are being sourced from [the] Road Opening Project in Barangays Danglag, Garing, Panas & Lanipga, Consolacion, Cebu, to be dumped at our Government Center Project, which has just

<sup>62</sup> See note 29.

<sup>63</sup> See note 28.

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been issued with an ECC by the DENR/EMB-7, per ECC Ref. Code: ECC R07 0901 0037 210.

It is also understood that some of the excavated waste materials shall also be used as filling materials to the various dilapidated barangay road networks of the entire municipality of Consolacion, Cebu. (Emphasis supplied)<sup>64</sup>

Aside from those letters, the 4<sup>th</sup> Indorsement dated April 29, 2008 issued by the Office of the Provincial Legal Office likewise offered in evidence by accused – the basis for accused's claim that a Gratuitous Permit was granted although later revoked – also contained an unmistakable reference to the area as a limestone source, to wit:

Nonetheless, this office finds no reason to disturb its observation, as contained in its 2<sup>nd</sup> indorsement dated April 10, 2008, to wit:

There is also no question that the grant of said Gratuitous Permit in favor of the Municipality of Consolacion, Cebu would be beneficial to the interests of the government because the municipality, aside from implementing its road opening project, would also be able to source **limestones** therein for its other government projects.

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In view thereof, provided all the required documents and/or requirements have already been submitted and/or complied, this office is of the opinion that there is no legal obstacle for the grant of the subject application of the Municipality of Consolacion, Cebu for a Gratuitous Permit to extract and haul **limestones** from its road opening/improvement project in Danglag, Consolacion, Cebu, except for the area/s owned/claimed by the client of Atty. Piasidad and until such time that the issues relative thereto shall have been properly addressed, hereby recommends for its approval, unless there are other grounds that warrant otherwise.

It is again further recommended, however, that strict monitoring of the extraction and other activities relative thereto be made so that only activities related to the said road opening/improvement are made and only those **limestones** resulting thereto are extracted and hauled.<sup>65</sup> (Emphasis supplied)

During his cross-examination, accused Gungob also confirmed at the witness stand that the Gratuitous Permit – initially granted but soon revoked and subsequently requested for but denied – would be for the extraction and hauling of limestones, as follows:

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<sup>64</sup> Id.

<sup>65</sup> See note 41.

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Prosec. Tadeo

Q: Mr. Witness, you stated in your Judicial Affidavit that you have applied for a Gratuitous Permit and you were issued one, correct?

A: Yes, Ma'am.

Q: That was initially granted, correct?

A: Yes, Ma'am.

Q: And which was later on revoked pursuant to the 4<sup>th</sup> Indorsement dated April 29, 2008 of Mr. Marino E. Martinquilla, Officer-in-Charge of the Cebu Provincial Legal Office.

May I invite your attention, Mr. Witness, on this Exhibit "5". Can you read to us page 3 of Exhibit 5, particularly on the portion, "This office."

A: (Witness reading said portion)

"This office is of the opinion that there is no legal obstacle for the grant of the subject application of the Municipality of Consolacion, Cebu for a Gratuitous Permit to extract and haul **limestones** from its road opening/improvement project in Danglag, Consolacion, Cebu."

Q: Thank you, Mr. Witness.

After reading that, Mr. Witness, do you agree with me that indeed, the purpose of the application for Gratuitous Permit is to extract and haul **limestones** from its road opening improvement project in Barangay Danglag, Consolacion, Cebu?

A: Yes, Ma'am. (Emphasis supplied)<sup>66</sup>

The accused, especially accused Gungob, insisted that the excavated materials were just topsoil.

57. Q: If you know what types of earth materials were allegedly taken?

A: I am not sure of the type, Sir, but I know it was just topsoil.<sup>67</sup>

If indeed the materials were topsoil, the ECC issued in connection with the project requires that it be stockpiled in a safe place and used as final layer or riprap in the area. Paragraph 2, item 7.5 states as follows:

<sup>66</sup> TSN, July 18, 2018 (morning), pp. 52-53.

<sup>67</sup> See note 46.

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**PRE-CONSTRUCTION /CONSTRUCTION PHASE**

XXXX

7.5 stockpile the topsoil in a safe place and use as final grading material or final layer and riprap and re-vegetate the area;

XXXX<sup>68</sup>

But this requirement in the ECC was not complied with by the accused. Instead, the extracted materials were loaded into the dump trucks and were being brought to another area at the time of apprehension.

***II. These minerals belong to the Government***

Accused further argue that the prosecution failed to identify the owner of the land from which the minerals were taken. Specifically, they claim that the prosecution failed “to prove that the alleged quarry site is under a mining claim by a third person” or to “offer proof that the alleged quarry site belonged to the government.”

The claim is rather uninformed.

R.A. No. 7942 or the Philippine Mining Act of 1995 specifically states that minerals are owned by the State. Sections 2 and 4 of the said Act are crystal clear.

**Section 2  
Declaration of Policy**

**All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State.** It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

**Section 4  
Ownership of Mineral Resources**

**Mineral resources are owned by the State** and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.

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<sup>68</sup> See note 40.

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The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution. (Emphasis supplied)

The fact that accused Gungob himself sent request letters for a permit to be issued in connection with the project further recognizes the ownership of the government of the minerals despite his subsequent contrary claims.

**III. *The accused did not possess a permit***

The evidence is replete that accused did not possess a permit. The prosecution offered Exhibit "G" which was a certificate dated November 27, 2009 issued by the Al Emil G. Berador, Officer-in-Charge and Chief Geologist of the Department of Environment and Natural Resources Mines and Geosciences Bureau. The certificate states as follows:

This is to certify that based on available records on file with this Office, there is no pending mining right application nor permit issued to Mayor Avelino Gungob or the Municipality of Consolacion, Cebu intended for [the] quarrying/extraction of diorite or limestone materials at Barangay Garing or its neighboring barangays in the Municipality of Consolacion, Cebu.

This is to certify further that no Area Clearance was issued by this Office in relation to an application for Small Scale Quarry/Quarry Permit filed with the Provincial Governor's Office or PENRO-Capitol of the Province of Cebu under the same name/s.<sup>69</sup>

The prosecution likewise offered Exhibit "H", which was a certificate dated November 23, 2009 issued by Nerces D. Bispo, Officer-in-Charge of PENRO, Province of Cebu. The certificate is quoted as follows:

This is to certify that as per records on file in this office, no permit has been issued to the Municipal Government of Consolacion, Cebu to extract and haul limestone materials from Barangay Garing, Consolacion, Cebu.<sup>70</sup>

Even if these documents were not offered, accused Gungob himself admitted in his Judicial Affidavit that he had applied for a permit after the revocation of the initial permit.

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<sup>69</sup> See note 28.

<sup>70</sup> Id.

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37. Q: Earlier, you stated that the initial gratuitous permit for the hauling of earth materials on the "Mountain Highway Project" has expired or was revoked. What did you do next, if any?

A: Despite my confusion and frustration, I just decided to reapply for a new permit.

XXXX

40. Q: You earlier said you reapplied for a gratuitous permit. What was the action of the Office of the Governor, if any?

A: The Office of the Governor sat on our request. Meanwhile, [a] huge amount of earth materials [has] been piling up at the "Mountain Highway Project" site.

41. Q: What did you do next, if any?

A: I wrote two (2) letters to the Office of the Governor for [the] issuance of gratuitous permits. xxx

42. Q: What was the action of the Office of the Governor on these letters, if any?

A: None, Sir.<sup>71</sup>

He later confirmed at the witness stand that no permit was issued despite his written requests.<sup>72</sup>

Accused Gungob's letters to Governor Garcia erstwhile quoted were sent for the purpose of obtaining the necessary permit to undertake the activities of extracting and hauling limestones. He had repeatedly requested for a permit to extract and haul to be issued to him to no avail.

***IV. Conspiracy among the accused was not established by the prosecution***

Notwithstanding the presence of the elements of the offense, no conspiracy was established among the accused.

While the accused job order employees – acting on the order of accused Gungob through their supervisor, accused Galo – extracted, removed and/or disposed of limestones which belong to the government, no evidence was shown that they were also aware that the initial Gratuitous Permit had been revoked and no subsequent Gratuitous Permit was ever issued. Given the nature of their jobs, the accused job order employees were not knowledgeable of the absence or presence of the required permit.

<sup>71</sup> Records, vol. 2, pp. 501-502 (Judicial Affidavit of Accused Gungob, pp. 7-8).

<sup>72</sup> See note 66.

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The accused job order employees were not privy to the revocation of the initial Gratuitous Permit. They were likewise not privy to the non-issuance of a subsequent Gratuitous Permit, despite letter requests sent by accused Gungob to the Provincial Governor. Therefore, the third element of the offense – that the accused did not possess a mining lease or a temporary permit or any other permit to mine – is only applicable as far as accused Gungob is concerned. Even if accused Gungob was fully aware that no permit was at hand, he gave a specific instruction to supervisor accused Galo for the accused job order employees to “continue with the project” – to go on with the activities of extracting and hauling limestones. On the other hand, the accused job order employees, along with their supervisor, were not cognizant that they did not possess, or more accurately, no longer possessed, a permit to mine – the third element of the offense herein.

It is settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>73</sup> An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part of and another performing another so as to complete it with a view to the attainment of the same object, and their acts although apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.<sup>74</sup>

Given the circumstances of the accused job order employees and their supervisor, this Court resolves that they are not in agreement with accused Gungob to perpetrate the offense. They are not personally associated with the municipal mayor, or privy to his official affairs of obtaining or requesting for a permit, to be regarded as in conspiracy with him to perpetrate the offense. No evidence was shown of their “concerted and cooperative” acts nor of their “personal association, concerted action and concurrence of sentiments.” This Court thus resolves to exonerate the accused job order employees and their supervisor from the charge in the absence of any evidence that they were in conspiracy with accused Gungob to commit the offense.

In light of the presence of all the elements of the offense albeit the absence of conspiracy among all the accused, this Court thus has no other recourse but to declare only accused Gungob guilty and to acquit the accused job order employees and their supervisor.

Anent the penalty, Section 103 of R.A. No. 7942 provides the penalty of imprisonment from six (6) months to six (6) years or a fine from ten thousand pesos (P10,000.00) to twenty thousand pesos (P20,000.00) or both, at the discretion of the appropriate court. In view of the fair market value of

<sup>73</sup> *People v. Sabado*, G.R. No. 218910, July 5, 2017, citing *People v. Romero*, 459 Phil. 484-505 (2003).

<sup>74</sup> *Ambil v. Sandiganbayan*, 669 Phil. 32-59 (2011), citing *People v. Serrano*, 634 Phil. 406-426 (2010).



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limestones in 2009, which was pegged at ₱200 per cubic meter or a total of ₱6,000 for all 30 cubic meters of limestones seized, the Court deems that a fine of the maximum amount of ₱20,000 upon accused Gungob is proper.

**WHEREFORE**, the Court finds accused **AVELINO JUDILLA GUNGOB, SR., GUILTY** beyond reasonable doubt of Theft of Minerals in violation of Section 103 of Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995, in relation to Section 49 of the same Act. Consequently, accused Gungob is hereby **FINED** the maximum amount of **Twenty Thousand Pesos (₱20,000)**.

On reasonable doubt, this Court resolves to **ACQUIT** accused **GLICERIO BURONG GALO, LEONARDO GABATO CAPAO, JR., JUANITO TUBIN GERUNDIO, JR., BEDA INOC COMISO, NICARTER JEMINO YRAY, and DIONITO CAVAN MANGILAYA**. Accordingly, the bail bond they posted for their provisional liberty is hereby ordered **CANCELLED** and **RETURNED** to them after the usual auditing and accounting procedures. The Hold Departure Order issued against them is also **LIFTED** and **SET ASIDE**. Accordingly, let a copy of this Decision be furnished to the Bureau of Immigration and Deportation for its information and guidance.

Insofar as accused **JOEBOY CANETE DAYON**, who is at-large, this case is ordered **ARCHIVED** subject to automatic reinstatement when this Court finally acquires jurisdiction over the person of said accused. Let an alias Warrant of Arrest be issued against him to be returned only upon his arrest.

**SO ORDERED.**

  
**ZALBY V. TRESPESES**  
Associate Justice

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**WE CONCUR:**

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
Associate Justice, Chairperson

  
**GEORGINA D. HIDALGO**  
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.

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Chairperson, Seventh 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*