



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

**PEOPLE
OF
PHILIPPINES,**

OF

THE

Plaintiff,

**Criminal Case No. SB-16-
CRM-0187**

*For: Violation of Article 177 of
the Revised Penal Code*

- versus -

Present:

NESTOR MALASIG UY

Accused.

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, B., J. and
FERNANDEZ, S.J., J.¹

Promulgated on:

MA 17, 2019

x-----x

DECISION

CABOTAJE-TANG, P.J.:

Accused Nestor Malasig Uy (Uy) is charged with the crime of *usurpation of official functions* under Article 177 of the Revised Penal Code in an *Information* which reads:

That on or about July 2013, or sometime prior or subsequent thereto, in Gamu, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **NESTOR UY y MALASIG** a public officer, being the Mayor of Gamu, Isabela, by taking advantage of his official functions and committing the crime in relation to office, did then and there willfully, unlawfully and feloniously withhold and/or disapprove the appointment papers of the legislative staff of the

¹ Sitting as a special member of the Third Division per Administrative Order No. 262-2018 dated April 30, 2018

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

2

X-----X

Sangguniang Bayan of Gamu, Isabela, namely: Dante D. Martinez, *Legislative Aide*; Jasmin Rose Martinez, *Clerk*; Silverio Balagan, *Driver*; and Michael Balagan, *Driver* without being lawfully entitled to do so and under the pretense of official functions and/or use of false pretenses and knowing that the power and authority to appoint the legislative staff of the Sangguniang Bayan of Gamu, Isabela, pursuant to Section 445 paragraphs (a) (2) of Republic Act No. 7160, otherwise known as the Local Government Code belongs to the Vice Mayor and Presiding Officer of the Sangguniang Bayan of Gamu, Isabela, thereby usurping the latter's power to appoint all officers and employees of the Sangguniang Bayan of Gamu, Isabela to the damage and prejudice of the government and of public interest.

CONTRARY TO LAW.²

THE PROCEEDINGS

In its *Resolution* promulgated on April 18, 2016, the Court found probable cause against accused Uy after a review of the records of the case. Accordingly, it issued a *hold departure order* and a *warrant of arrest* against the said accused.³

On April 29, 2016, the accused posted his cash bail bond for his provisional liberty.⁴

On June 6, 2016, the accused filed a "*Motion to Quash Information*."⁵ The prosecution filed its *comment/opposition* thereto on June 27, 2016.⁶ Thereafter, the accused filed a "*Reply*" on July 11, 2016.⁷ In its *Resolution* promulgated on October 12, 2016,⁸ the Court denied the aforesaid *motion to quash* and ruled that the assertions of the accused do not constitute a proper

² pp. 1-2, Record;

³ p. 40, *Id*

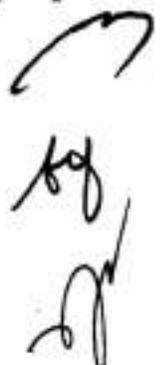
⁴ p. 48, *Id*

⁵ p. 73, *Id*

⁶ p. 90, *Id*

⁷ p. 97, *Id*

⁸ pp. 126-128, *Id*



DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

3

ground for a *motion to quash*; and, that the defenses raised by him therein are best threshed out during trial.⁹

Upon his arraignment on November 21, 2016, the accused entered a plea of "*not guilty*." The Court set the preliminary conference on January 9 and 10, 2017, and the pre-trial on February 8, 2017.¹⁰ During the scheduled pre-trial, the parties, through counsel, informed the Court that they were through with the preliminary conference; hence, they requested, and were granted, a period of ten (10) days from the date of the pre-trial to file their *Joint Stipulations of Fact*.¹¹

On February 16, 2017, the parties submitted their "*Joint Stipulations of Fact, List of Exhibits and Witnesses*."¹² The Court admitted the same in its *Resolution* promulgated on February 20, 2017.¹³ Consequently, the Court issued a "*Pre Trial Order*" dated February 28, 2017, consistent with the said *Joint Stipulations of Fact*.¹⁴

During the pre-trial, the parties stipulated on the following matters:

1. Nestor Malasig Uy is the same Nestor Malasig Uy who is named as the accused in the Information in SB-16-CRM-0187;
2. Nestor Malasig Uy was a public officer, being then the Mayor of the Municipality of Gamu, Isabela, from 2013 to 2016, and within the time material to this case;
3. Fernando O. Cumigad was the Vice Mayor of the Municipality of Gamu, Isabela from 2013 to 2016, and within the time material to this case; and,

⁹ p. 6, *Resolution*; p. 128, *Record*

¹⁰ p. 134, *Record*

¹¹ p. 141, *Id*

¹² pp. 146-152, *Id*

¹³ p. 153, *Id*

¹⁴ pp. 156-162, *Id*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

4

x-----x

4. The Sandiganbayan has jurisdiction over the case.¹⁵

The prosecution presented the following witnesses: [1] Fernando Ocampo Cumigad;¹⁶ [2] Jasmin Rose R. Martinez;¹⁷ [3] Michael G. Balagan;¹⁸ and, [4] Silverio C. Balagan.¹⁹

On August 25, 2017, the prosecution filed its "*Formal Offer of Evidence*" consisting of Exhibits "A" to "J," together with its sub-markings.²⁰ The said exhibits were admitted by the Court in its *Resolution* promulgated on September 4, 2017.²¹

On September 15, 2017, the accused filed a "*Motion for Leave of Court to File Demurrer to Evidence.*"²² On September 19, 2017, the prosecution filed its *opposition* thereto.²³ In its *Resolution* promulgated on September 20, 2017, the Court denied the said *motion* without prejudice to the accused's right to file a *demurrer to evidence without leave of court.*²⁴ On October 11, 2017, the accused manifested that he is not pursuing a *demurrer to evidence without leave of court.*²⁵

On the part of the defense, it presented the following witnesses: [1] accused Nestor Malasig Uy;²⁶ [2] Eduard C. Ferrer;²⁷ and, [3] Gloriza C. Preza.²⁸

On May 31, 2018, the accused filed his "*Formal Offer of Evidence/Exhibits*" consisting of Exhibits "1" to "21" with sub-markings.²⁹ In its *Resolution* promulgated on June 11, 2018, the

¹⁵ pp. 1-2, *Joint Order*; pp. 156-157, *Record*

¹⁶ p. 169, *Record*

¹⁷ p. 176, *Id*

¹⁸ p. 177, *Id*

¹⁹ p. 183, *Id*

²⁰ pp. 199-216, *Id*

²¹ p. 227, *Id*

²² p. 236, *Id*

²³ p. 245, *Id*

²⁴ p. 251, *Id*

²⁵ pp. 255-256, *Id*

²⁶ p. 260, *Id*

²⁷ p. 290, *Id*

²⁸ p. 294, *Id*

²⁹ pp. 322-353, *Id*

Court admitted the above-mentioned exhibits, together with its sub-markings.³⁰

THE PROSECUTION EVIDENCE

The prosecution presented Fernando Ocampo Cumigad (Cumigad) as its first witness.³¹

Cumigad testified that he was the vice-mayor and presiding officer of the *Sangguniang Bayan* of the Municipality of Gamu, Isabela from July 1, 2013, to June 30, 2016. He also mentioned that he served as mayor of the same municipality.³²

Cumigad recounted that when he assumed as vice-mayor, he found out that he only had three (3) regular employees in the Office of the Vice-Mayor.³³ Thus, he appointed one (1) legislative staff, one (1) driver and two (2) aides to the Office of the *Sangguniang Bayan*. He identified the persons who were appointed to the said positions respectively as Dante Martinez, Michael Balagan, Jasmin Martinez and Silverio Balagan.³⁴

According to Cumigad, the salaries of the above-mentioned individuals were funded by the *Internal Revenue Allotment* of the municipality as well as from the taxes that were generated from the businesses within the said municipality; that the Office of the Vice-Mayor has a separate fund from the Office of the Mayor;³⁵ and, that the funds that will be used for the payment of the services of the said employees are derived from the funds allocated to the Office of the Vice-Mayor and the *Sangguniang Bayan*.³⁶

Cumigad also recalled that he initially hired the said individuals on a contractual job order basis; hence, the job order

³⁰ p. 363, *Id*

³¹ p. 4, TSN, April 5, 2017

³² p. 5, *Id*

³³ p. 6, *Id*

³⁴ p. 6, *Id*

³⁵ p. 6, *Id*

³⁶ pp. 8-9, *Id*

Handwritten signature and initials in the bottom right corner of the page.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

6

X-----X

contracts had to be processed by the municipality's Human Resources and Management Office (HRMO). Thereafter, they were forwarded to the municipality's accounting office for purposes of including the names of the job order employees in the payroll of the municipality.³⁷

Cumigad further recounted that Dante Martinez, Michael Balagan, Jasmin Martinez and Silverio Balagan were also part of his staff, who served in a co-terminous capacity, when he was the mayor of the municipality.³⁸ According to him, these persons immediately reported for work on the same day that he assumed as vice-mayor on July 1, 2013; and, they timely submitted their *Daily Time Records* (DTRs) and their *Accomplishment Reports*. However, they were not included in the payroll of the municipality for the month of July 2013.³⁹

After learning of the non-inclusion of his appointees to the payroll of the municipality, Cumigad declared that he called the attention of HRMO Officer Gloriza Preza (Preza) and asked for a clarification on the matter. Cumigad recalled that Preza told him that per the instructions of the mayor, *"the vice-mayor does not have the authority to appoint persons in his staff because it is purely the mayor's office."*⁴⁰

Cumigad further testified that he wrote two (2) separate letters addressed to Preza and Municipal Accountant Eduard Ferrer (Ferrer) wherein he formally informed them that he had the authority to appoint, hire and grant the salaries of his staff pursuant to the provisions of the Local Government Code.⁴¹

Cumigad also testified that on August 1, 2013, Preza and Ferrer replied to his letters wherein he was informed that his inquiry was endorsed to the Office of the Mayor for the mayor's *"appropriate action."*⁴² According to Cumigad, this prompted him to personally visit Preza and Ferrer in their respective houses in

³⁷ pp. 6-7, *Id*

³⁸ p. 8, *Id*

³⁹ p. 9, *Id*

⁴⁰ p. 10, *Id*

⁴¹ p. 12, *Id*

⁴² p. 14, *Id*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

7

x-----x

order to explain to them his predicament.⁴³ Moreover, he recounted that he invited Preza and Ferrer to his office to discuss the said matter.⁴⁴ However, on both occasions, he was informed that the matter will be referred to their superior.⁴⁵

On questions from the Court, Cumigad explained that he did not directly write an inquiry to the Office of the Mayor because it would be "*tantamount to a submission to the authority of the Mayor*" if he would seek the latter's opinion regarding the matter.⁴⁶

Cumigad also averred that on August 5, 2013, he wrote a follow-up letter to Preza and Ferrer, wherein he manifested that he will be constrained to take legal action should they not favorably act on his request.⁴⁷ Thereafter, Ferrer and Preza submitted their separate replies to the said letter on August 20, 2013.⁴⁸

Convinced that nothing will happen to the appointments of his staff, Cumigad wrote another letter to Preza and Ferrer on September 9, 2013, informing them that he will be filing a case against the accused with the Office of the Ombudsman. Thus, on September 13, 2013, he personally filed a complaint with the Office of the Ombudsman against the accused for violation of Republic Act (R.A.) No. 3019 and abuse of authority.⁴⁹

Finally, Cumigad averred that sometime in 2015, the accused was suspended as mayor of the municipality; hence, he assumed the role of acting mayor. Cumigad noted that during the suspension of the accused, the subject appointments were finally allowed and/or processed by Preza and Ferrer, and the names of his appointees were then included in the payroll of the municipality.⁵⁰

On cross-examination, Cumigad revealed that his daughter, Mitchie Cumigad, ran against the accused for the position of

⁴³ p. 14, *Id*

⁴⁴ p. 16, *Id*

⁴⁵ p. 17, *Id*

⁴⁶ p. 15, *Id*

⁴⁷ p. 17, *Id*

⁴⁸ p. 24, *Id*

⁴⁹ p. 28, *Id*

⁵⁰ p. 29, *Id*

Handwritten signature and initials in the bottom right corner of the page.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

8

x-----x

mayor in the Municipality of *Gamu, Isabela*. However, her daughter lost to the accused,⁵¹ and an election protest was filed by Mitchie Cumigad four (4) months after the election.⁵²

Cumigad further reiterated that he appointed four (4) individuals as members of his staff because when he assumed as vice-mayor, there were only three (3) employees assigned to his office. He also disputed the defense counsel's statement that the Office of the Mayor assigned two (2) additional staff members to his office on July 25, 2013.⁵³

Cumigad stressed that he signed the appointment papers of the above-mentioned appointees and forwarded the same to the municipality's HRMO. However, the said appointments were not processed. Neither were they forwarded to the municipality's accounting office.⁵⁴ Nevertheless, he allowed the said individuals to render work for the municipality and paid their salaries from his personal accounts.⁵⁵

According to Cumigad, Preza informed him that the accused instructed them, the HRMO, not to act on the appointments papers of the subject appointees. However, Cumigad admitted that he does not have any document or memorandum to prove the alleged instruction of the accused;⁵⁶ he was not directly informed by the accused of the supposed disapproval of the appointments in issue;⁵⁷ he was merely informed by someone regarding the said disapproval;⁵⁸ there is nothing in the municipal accountant's *Letter* dated September 6, 2013, which states that the accused disapproved the appointments he made;⁵⁹ and, the reason cited by Ferrer regarding the delay in the payment of the salaries of the subject appointees was the alleged issue on the source of funding.⁶⁰

⁵¹ p. 32, *Id*

⁵² p. 33, *Id*

⁵³ p. 34, *Id*

⁵⁴ p. 36, *Id*

⁵⁵ p. 36, *Id*

⁵⁶ pp. 37-38, *Id*

⁵⁷ p. 38, *Id*

⁵⁸ p. 39, *Id*

⁵⁹ p. 40, *Id*

⁶⁰ p. 41, *Id*

Handwritten signatures and scribbles, including a large flourish above the footnotes and two distinct signatures below it.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

9

x-----x

On re-direct examination, Cumigad stated that due to the inaction of the concerned officials in their municipality regarding the processing of the subject appointments, he decided to elevate the matter to the proper authorities.⁶¹

On questions from the Court, Cumigad reiterated that he was the one who paid for the salaries of the subject appointees for the period of July 2013 to May 2015;⁶² he stopped paying them from his personal funds when he assumed the role of acting mayor, at the time the accused was suspended by the Office of the Ombudsman as mayor of the Municipality of *Gamu*;⁶³ he served as acting mayor for one (1) month;⁶⁴ during his time as acting mayor, the HRMO and the accounting department of the municipality processed the appointment papers of the subject appointees;⁶⁵ and, upon resumption of the accused as mayor, the said individuals continued to receive their salaries from the municipality.⁶⁶

The prosecution next presented Jasmin Rose Martinez (Jasmin Martinez) as its witness.⁶⁷

Jasmin Martinez testified that she served as a *legislative staff* in the Office of the Vice-Mayor of the Municipality of *Gamu, Isabela* from July 2013 to July 2016.⁶⁸ As a *legislative staff*, she is tasked to encode documents, receive incoming communications, and collect the DTRs of her co-employees in the Office of the Vice-Mayor and submit the same to the municipality's budget office.⁶⁹ She recalled that she was hired under a contract of service which she signed sometime in July 2013.⁷⁰ After signing the said contract, she immediately reported for work at the vice-mayor's

⁶¹ p. 42, *id*

⁶² p. 46, *id*

⁶³ p. 47, *id*

⁶⁴ p. 47, *id*

⁶⁵ p. 48, *id*

⁶⁶ p. 49, *id*

⁶⁷ p. 7, TSN, June 14, 2017

⁶⁸ p. 8, *id*

⁶⁹ p. 9, *id*

⁷⁰ p. 9, *id*

Handwritten signature and mark, possibly initials, located in the bottom right corner of the page.

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

X-----X

office, or immediately upon the assumption of Cumigad as vice-mayor.⁷¹

Jasmin Martinez likewise confirmed that her salary as *legislative staff* was paid for by Cumigad from July 2013 to March 2015. She recalled that she was informed by the latter that this was due to the fact that the accused disapproved the payment of her salary.⁷²

On cross-examination, Jasmin Martinez clarified that she had no copy of her *contract of service* because there was only one (1) copy of the said document and the same was forwarded to the municipality's HRMO.⁷³

She reiterated that she was hired as a *legislative staff* for the Office of the Vice-Mayor from July 2013 to May 2015;⁷⁴ she immediately assumed her position after her *contract of service* was signed by Cumigad;⁷⁵ and, she was informed by the municipality's HRMO that her appointment was disapproved by the accused.⁷⁶ However, she made clear that she was not asked by anyone from the municipality to discontinue rendering work for the Office of the Vice-Mayor;⁷⁷ she never received any memorandum or communication from any official of the municipality that her appointment had been disapproved;⁷⁸ and, the accused never issued any memorandum or notice signifying that her appointment had been disapproved.⁷⁹

Jasmin Martinez further testified that the accused sent a letter informing Preza regarding the disapproval of her appointment. However, Jasmin Martinez failed to produce a copy of the purported letter.⁸⁰

⁷¹ p. 10, *Id*

⁷² p. 11, *Id*

⁷³ p. 13, *Id*

⁷⁴ p. 16, *Id*

⁷⁵ p. 16, *Id*

⁷⁶ p. 17, *Id*

⁷⁷ p. 17, *Id*

⁷⁸ p. 17, *Id*

⁷⁹ pp. 17-18, *Id*

⁸⁰ p. 18, *Id*

Handwritten signature and scribbles, possibly initials or a name, located in the lower right quadrant of the page.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

11

X-----X

Moreover, Jasmin Martinez revealed that she started to receive her salary from the municipality sometime in March 2015, or when the accused was suspended as mayor and Cumigad assumed the role of acting mayor of the municipality.⁸¹

On re-direct examination, Jasmin stated that she continued to work for the Office of the Vice-Mayor despite not having received any compensation from it because Cumigad trusted her with errands.⁸²

On re-cross examination, Jasmin Martinez clarified that she continued to receive her salary from the municipality even after the accused resumed his post as mayor of the municipality and that the suspension of the accused had nothing to do with the payment of her salary.⁸³

On questions from the Court, Jasmin Martinez restated that she started to receive her salaries from the municipality sometime in March 2015, and it was Cumigad who authorized the payment thereof.⁸⁴

The prosecution then presented Michael Balagan.⁸⁵

Michael Balagan testified that he worked as a *driver* for Cumigad during the latter's term as mayor from 2004 to 2013. He recounted that he was hired again in the same capacity for the Office of the Vice-Mayor from 2013 to 2016.⁸⁶ In relation thereto, he signed a *contract of service* sometime in 2013 which was then forwarded to the municipality's HRMO;⁸⁷ and, that he immediately rendered services to the Office of the Vice-Mayor after he signed the said contract.⁸⁸

According to Michael Balagan, his salaries as a *driver* were personally paid by Cumigad from 2013 to 2015 because the

⁸¹ p. 20, *Id*

⁸² p. 19, *Id*

⁸³ p. 21, *Id*

⁸⁴ p. 22, *Id*

⁸⁵ p. 5, TSN, June 15, 2017

⁸⁶ p. 7, *Id*

⁸⁷ p. 8, *Id*

⁸⁸ p. 9, *Id*

Handwritten signature and initials in the bottom right corner of the page.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

12

X-----X

accused "*did not want to sign his voucher or payroll.*"⁸⁹ He clarified that from 2015 to 2016, his salaries were finally drawn from the funds of the municipality after Cumigad assumed the role of acting mayor.⁹⁰

On cross-examination, Michael Balagan reiterated that the non-payment of the municipality of his salaries occurred from July 2013 to 2015,⁹¹ and that he complained to the accused regarding his situation. However, he could not recall the exact date thereof.⁹²

Michael Balagan nevertheless declared that he never received any written memorandum from the accused regarding the alleged disapproval of his salaries. Neither was there any instance wherein he personally talked with the accused regarding the alleged disapproval.⁹³

On re-direct examination, Michael Balagan revealed that he was asked by Cumigad to become a prosecution witness in this case.⁹⁴

The prosecution presented Silverio C. Balagan (Silverio Balagan) as its last witness.⁹⁵

Silverio Balagan testified that he worked as a *driver* for the Office of the Vice-Mayor of the Municipality of *Gamu, Isabela* from 2013 up to 2015;⁹⁶ he was recommended by Jasmin Martinez to be a *driver* for Cumigad;⁹⁷ sometime in July 2013, he signed a *contract of service* covering a period of two (2) years, or from 2013 to 2015;⁹⁸ and, that for the period of 2013 to 2015, his salaries were personally paid for by Cumigad.⁹⁹ He mentioned that he

⁸⁹ p. 9, *Id*

⁹⁰ p. 11, *Id*

⁹¹ p. 15, *Id*

⁹² p. 15, *Id*

⁹³ p. 18, *Id*

⁹⁴ p. 19, *Id*

⁹⁵ p. 7, TSN, July 11, 2017

⁹⁶ p. 8, *Id*

⁹⁷ p. 8, *Id*

⁹⁸ p. 8, *Id*

⁹⁹ p. 10, *Id*

Handwritten signature and mark, possibly initials 'by' and a flourish.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

stopped working for Cumigad because he did not receive his salaries from the municipality for two (2) years.¹⁰⁰

On cross-examination, Silverio Balagan revealed that he was the first cousin of Michael Balagan and he was aware that the latter was also working as a *driver* for Cumigad at the time material to this case. However, he clarified that it was Jasmin Martinez who recommended and introduced him to Cumigad.¹⁰¹

According to Silverio Balagan, he continued to work for Cumigad although he did not receive his salaries from the municipality because Cumigad gave him an "*allowance*;" and, that Cumigad told him that the accused refused to sign his voucher for the payment of his salary.¹⁰² However, he clarified that he did not bother to ask any of the officials of the municipality on the reason why his salaries were withheld.¹⁰³ Silverio Balagan also admitted that he has no knowledge as to the truth of the reasons given to him by Cumigad.¹⁰⁴

During the hearing on August 17, 2017, the prosecution informed the Court that it was through with the presentation of its evidence.¹⁰⁵ Thereafter, it offered the following documentary evidence,¹⁰⁶ to wit:

Exhibit	Description	Purpose	Remarks
A, A-1 to A-3	Sworn Complaint filed by Fernando O. Cumigad before the Office of the Ombudsman dated September 13, 2013 (consisting of 4 pages)	To prove that Former Vice Mayor Fernando O. Cumigad (Cumigad) filed a complaint against accused Nestor Malasig Uy.	Original
A-2-a	Signature of Fernando O. Cumigad	To prove the authenticity and due	

¹⁰⁰ p. 10, *Id*
¹⁰¹ p. 12, *Id*
¹⁰² p. 16, *Id*
¹⁰³ p. 15, *Id*
¹⁰⁴ p. 16, *Id*
¹⁰⁵ p. 195, *Record*
¹⁰⁶ pp. 199-215, *Id*

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

14

		execution of the document.	
B	Letter dated July 31, 2013 signed by Fernando O. Cumigad addressed to Ms. Gloriza C. Preza (Preza)	To prove that Cumigad wrote a letter to Human Resources and Management Officer (HRMO) Gloriza Preza (Preza) to follow-up on the status of the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff at the Office of the Vice Mayor, as their salaries were withheld by the Local Government of Gamu, Isabela.	Original
B-1	Signature of Fernando O. Cumigad	To prove the authenticity and due execution of the document.	Same
C	Letter dated July 31, 2013 signed by Fernando O. Cumigad addressed to Mr. Eduard C. Ferrer (Ferrer)	1. To prove that Cumigad wrote a letter to Municipal Accountant Eduard C. Ferrer (Ferrer) to follow-up on the status of the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff at the Office of the Vice Mayor, as their salaries were withheld by the Local Government of Gamu, Isabela.	Original



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

		<p>2. To prove that, contrary to the claim of Ferrer in his subsequent letter (Exhibit J) that the issue of funding has not been settled, the source of funds for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez was sufficiently explained, since the receipt of Ferrer of this first follow-up letter of Cumigad.</p> <p>3. To prove that there was really no issue on the source of funds for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez.</p>	
C-1	Signature of Fernando O. Cumigad	To prove the authenticity and due execution of the document.	Same
D	Letter dated August 1, 2013 signed by Eduard C. Ferrer and Gloriza C. Preza addressed to Hon. Fernando O. Cumigad	<p>1. To prove that Ferrer and HRMO Preza received the letters that Cumigad sent to them dated July 31, 2013. (Exhibits B and C)</p> <p>2. To prove that Ferrer and Preza have formally endorsed the letter dated July 31, 2013 to accused Nestor Malasig Uy for the follow-up of Cumigad on the status of the salaries of Jasmin Rose Martinez, Michael</p>	Original, also Exhibit 2 of the defense

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

X-----X

	<p>Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff at the Office of the Vice Mayor.</p> <p>3. To prove that Ferrer and Preza had communicated to accused Mayor Nestor Uy the matters contained in the follow-up letter of Cumigad.</p> <p>4. To prove that Ferrer and Preza had to consult accused Uy before taking further action on the follow-up of Cumigad for the salaries that were withheld.</p> <p>5. To prove that despite their receipt of the follow-up letter of Cumigad dated July 31, 2013, Ferrer and Preza could not act on their own on the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, without waiting for the orders of Mayor Nestor Uy on the said matter.</p> <p>6. To prove that Ferrer and Preza needed the approval of accused Nestor Malasig Uy before acting on/before processing the salaries of salaries [sic] of</p>	
--	---	--



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

		Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff at the Office of the Vice Mayor.	
D-1	Signature of Eduard C. Ferrer	To prove the authenticity and due execution of the document	Exhibit 2-A of the defense
D-2	Signature of Gloriza C. Preza	To prove the authenticity and due execution of the document.	Exhibit 2-B of the defense
E	Letter dated August 5, 2013 addressed to Ms. Gloriza C. Preza signed by Fernando O. Cumigad	<p>1. To prove that Cumigad received the letter of Preza dated August 1, 2013.</p> <p>2. To prove that Cumigad again wrote to follow-up with Ferrer and Preza the preparation of the payroll for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013, after Ferrer and Preza have referred for appropriate action to Mayor Nestor Uy the action on their salaries.</p> <p>3. To prove that Cumigad has fully explained to Ferrer and</p>	Original, Exhibit 3 of the defense

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

		<p>Preza the source of funds for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013.</p> <p>4. To prove that contrary to the claim of Ferrer in his subsequent letter (Exhibit J) that the issue of funding has not yet been settled, this letter sufficiently addressed where the funds for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez will be sourced.</p> <p>5. To prove that despite the continuous follow-ups of Cumigad since July 1, 2013, Ferrer, Preza and accused Nestor Malasig Uy continued to withhold action on the salaries of the [sic] Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, despite the fact that they have rendered services to the Municipality of Gamu, Isabela since July 1, 2013, thereby rendering</p>	
--	--	---	--



DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

		the appointments of the said person ineffective. 6. To prove all other contents thereof.	
E-1	Signature of Fernando O. Cumigad	To prove the authenticity and due execution of the document.	Same
F	Letter dated August 5, 2013 addressed to Eduard C. Ferrer signed by Fernando O. Cumigad	1. To prove that Cumigad received the letter of Ferrer dated August 1, 2013. 2. To prove that Cumigad again wrote to follow-up with Ferrer and Preza the preparation of the payroll for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013, after Ferrer and Preza have referred for appropriate action to Mayor Nestor Uy the action on their salaries. 3. To prove that Cumigad has fully explained to Ferrer and Preza the source of funds for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed	Original



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

		<p>personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013.</p> <p>4. To prove that contrary to the claim of Ferrer in his subsequent letter (Exhibit J) that the issue of funding has not yet been settled, this letter sufficiently addressed where the funds for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez will be sourced.</p> <p>5. To prove that despite the continuous follow-ups of Cumigad since July 1, 2013, Ferrer, Preza and accused Nestor Malasig Uy continued to withhold action on the salaries of the of [sic] Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, despite the fact that they have rendered services to the Municipality of Gamu, Isabela since July 1, 2013, thereby rendering appointments of the said persons ineffective.</p> <p>6. To prove all other contents thereof.</p>	
F-1	Signature of Fernando O. Cumigad	To prove the authenticity and due	Same

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

21

x-----x

		execution of the document	
G to G-2	Letter dated August 20, 2013 addressed to Eduard C. Ferrer and Gloriza C. Preza signed by Fernando O. Cumigad (consisting of 3 pages) copy received by Gloriza Preza	<p>1. To prove that Cumigad again wrote to follow-up with Ferrer and Preza the preparation of the payroll for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013, after Ferrer and Preza have referred for appropriate action to Mayor Nestor Uy the action on their salaries.</p> <p>2. To prove that Cumigad fully explained to Ferrer and Preza that he (Cumigad), as the Vice Mayor[,] has the authority to appoint employees and officials of the Sangguniang Bayan and the Office of the Vice Mayor.</p> <p>3. To prove that Cumigad fully explained to Ferrer and Preza that the source of funds of the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative</p>	Original



DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

		staff at the Office of the Vice Mayor, will come from the funds appropriated to the Sangguniang Bayan.	
G-2-a	Signature of Fernando O. Cumigad	To prove the authenticity and due execution of the document.	Same
G-2-b	Signature of Gloriza C. Preza	To prove that HRMO Preza received the letter of Cumigad.	Same
G-3	Letter dated August 20, 2013 addressed to Eduard C. Ferrer and Gloriza C. Preza signed by Fernando O. Cumigad (consisting of 3 pages), copy received by Eduard C. Ferrer	<p>1. To prove that Cumigad again wrote to follow-up with Ferrer and Preza the preparation of the payroll for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013, after Ferrer and Preza have referred for appropriate action to Mayor Nestor Uy the action on their salaries.</p> <p>2. To prove that Cumigad fully explained to Ferrer and Preza that he (Cumigad), as the Vice Mayor, has the authority to appoint employees and officials of the Sangguniang Bayan and the Office of the Vice Mayor.</p>	Faithful reproduction of Exhibit G to G-2, signatures of Cumigad and Ferrer identified by witness Fernando O. Cumigad in open court.



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

		3. To prove that Cumigad fully explained to Ferrer and Preza that the source of funds of salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor, will come from the funds appropriated to the Sangguniang Bayan.	
G-3-a	Signature of Eduard C. Ferrer	To prove that Eduard C. Ferrer received the letter of Cumigad	Same
H	Letter dated September 9, 2013 addressed to Eduard C. Ferrer and Gloriza C. Preza signed by Fernando O. Cumigad	1. To prove that Cumigad received separate reply-letters dated September 5, and 6, 2013 from Preza and Ferrer (Exhibits I and J) respectively. 2. To prove that Cumigad again wrote to follow-up with Ferrer and Preza the preparation of the payroll for the salaries of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff who have rendered services at the Office of the Vice Mayor since July 1, 2013, after Ferrer and Preza have referred for appropriate	Original

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

		<p>action to Mayor Nestor Uy the action on their salaries.</p> <p>3. To prove that despite the continuous follow-ups of Cumigad since July 1, 2013, Ferrer, Preza and accused Nestor Malasig Uy continued to withhold action on the salaries of the of [sic] Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, despite the fact that they have rendered services to the Municipality of Gamu, Isabela since July 1, 2013, thereby negating the appointments of said persons.</p> <p>To prove all the other contents thereof.</p>	
H-1	Signature of Fernando O. Cumigad	To prove the authenticity and due execution of the document	Same
I	Letter dated September 5, 2013 signed by Gloriza C. Preza addressed to Fernando O. Cumigad	<p>1. To prove that HRMO Preza wrote Cumigad after the receipt of the letter dated August 20, 2013 (Exhibit G to G-2)</p> <p>2. To prove that Preza prepared and completed the documents for the appointments of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative</p>	

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

		staff at the Office of the Vice Mayor. 3. To prove that Preza has forwarded the needed documents for the appointments of Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff at the Office of the Vice Mayor since July 1, 2013, for further action.	
I-1	Signature of Gloriza C. Preza	To prove the authenticity and due execution of the document	Same
J	Letter dated September 6, 2013 signed by Eduard C. Ferrer addressed to Fernando O. Cumigad	1. To prove that Ferrer received the letter dated August 20, 2013 sent by Cumigad. 2. To prove that Ferrer did not yet act on the request of Cumigad for the release of salaries withheld from Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, newly appointed personnel/legislative staff at the Office of the Vice Mayor since July 1, 2013. 3. To prove that the reason Ferrer gave for not acting on the said request and the succeeding follow-ups of Cumigad was because	

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

		he needed to bring up the matter with the Municipal Mayor, accused Nestor Malasig Uy and because there was an issue on the source of funds. 4. To prove that despite the continuous follow-ups of Cumigad, since July 31, 2013, accused Nestor Malasig Uy continued to withhold any action on the salaries of the of [sic] Jasmin Rose Martinez, Michael Balagan, Silverio Balagan and Dante Martinez, thereby rendering the appointments of the said person ineffective.	
J-1	Signature of Eduard C. Ferrer	To prove the authenticity and due execution of the document	same

In its *Resolution* promulgated on September 4, 2017, the Court admitted the above-enumerated exhibits submitted by the prosecution.¹⁰⁷

THE DEFENSE EVIDENCE

The defense presented accused Nestor Malasig Uy (Uy) as its first witness.¹⁰⁸

¹⁰⁷ p. 227, *Record*

¹⁰⁸ p. 4, TSN, October 18, 2017

Handwritten signatures and initials, including a large flourish at the top, a signature that appears to be 'Uy', and another signature below it.

The accused testified that he was elected mayor of the Municipality of *Gamu, Isabela* in 2013 and he was re-elected to a second term in 2016.¹⁰⁹

He recalled that during the May 2013 elections, he defeated the daughter of complainant Fernando Cumigad;¹¹⁰ the *complaint* which is the subject of this case was filed with the Office of the Ombudsman by Cumigad sometime in September 2013;¹¹¹ and, in response to the said *complaint*, he submitted a *counter-affidavit*.¹¹²

The accused identified Dante Martinez, Jasmin Rose Martinez, Silverio Balagan and Michael Balagan to be the same persons appointed by Cumigad as contractual employees in the Office of the Vice-Mayor.¹¹³ However, he made clear that he only knew the names of the said individuals because they were named by Cumigad in the complaint against him.¹¹⁴

The accused further declared that he never received any communications and/or documents pertaining to the appointments of the above-mentioned persons. However, he admitted that he received the "*written communications*" between Cumigad, Eduard Ferrer and Gloriza Preza.¹¹⁵ The accused also mentioned that the said documents were forwarded to him only "*as a matter of an administrative work of the respective offices*"¹¹⁶ because the processing of the appointments of the above-mentioned employees were only between the Office of the Vice-Mayor, the Accounting Department and the HRMO.¹¹⁷

The accused recounted that upon receipt of the above-mentioned communications, "*he simply read the same and sent them back to the concerned department heads.*" He clarified that he did not take any action on the appointments made by Cumigad

¹⁰⁹ p. 7, *Id*

¹¹⁰ p. 7, *Id*

¹¹¹ p. 7, *Id*

¹¹² p. 8, *Id*

¹¹³ p. 10 *Id*

¹¹⁴ p. 10, *Id*

¹¹⁵ p. 10, *Id*

¹¹⁶ p. 11, *Id*

¹¹⁷ p. 11, *Id*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

28

X-----X

because he was not the appointing authority;¹¹⁸ he did not communicate with Cumigad, Ferrer and Preza regarding the said appointments;¹¹⁹ the Municipal Accounting Office, the HRMO and the Municipal Budget Office are the offices responsible for the processing of the salary vouchers of contractual employees;¹²⁰ and, the Office of the Vice-Mayor should have decided on the salary vouchers of the said employees.¹²¹

On cross-examination, the accused insisted that he did not take action on the appointments made by Cumigad because he was not the appointing authority to the said appointments.¹²² He was then directed to paragraph 8 of his *counter-affidavit* which reads:

Since the salaries of personnel appointed by the complainant are wholly or mainly to be paid out of the municipal funds and their appointments are not otherwise provided for in the Local Government Code, or the authority to appoint is vested in some specific local official, it is therefore the mayor who is the proper appointing official of the staff appointed by the complainant.

The accused clarified that the afore-quoted statement was just the "legal opinion" of his lawyer. He maintained that his office does not have any participation with respect to the processing of the appointments made by the Office of the Vice-Mayor.¹²³

The accused further explained that the appointment of a contractual employee in their municipality undergoes certain procedures before a contract of service is perfected. According to him, there should be [1] a certificate from the Municipal Budget Office that there is an available appropriation for the contractual job;¹²⁴ [2] the appointment must be posted in at least three (3)

¹¹⁸ p. 15, *Id*

¹¹⁹ p. 15, *Id*

¹²⁰ p. 16, *Id*

¹²¹ p. 16, *Id*

¹²² p. 17, *Id*

¹²³ p. 18, *Id*

¹²⁴ p. 19, *Id*

Handwritten signatures and initials in the bottom right corner of the page. There are three distinct marks: a large, sweeping signature at the top, a smaller signature below it, and a set of initials at the bottom.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

29

x-----x

conspicuous places within the municipality;¹²⁵ and, [3] the same must pass through the municipality's *Personnel Selection Board*.¹²⁶

The accused pointed out that the appointments made by the vice-mayor did not comply with the above-mentioned requirements; hence, the subject appointments were disapproved.¹²⁷ He stated that it has been the practice of their municipality that the appointment of contractual employees go through the *Personnel Selection Board*.¹²⁸

Moreover, the accused declared that the said appointees were hired under the Office of the *Sangguniang Bayan* but they were assigned to the Office of the Vice-Mayor;¹²⁹ the *Sangguniang Bayan* has its own budget;¹³⁰ and, the funds for the salaries of the said employees are sourced from the funds of the *Sangguniang Bayan*.¹³¹

On re-direct examination, the accused clarified that the statements he made under paragraph 8 of his counter-affidavit was based on his authority as the local chief executive and his duty to "overlook the full totality" of the municipality. He adds that upon his assumption as mayor, the municipality was using the budget of the previous administration, wherein half of the appropriated budget was already consumed. Thus, he looked for available appropriation to accommodate the subject contractual employees.¹³²

On re-cross examination, the accused confirmed that the use of the budget of their municipality included the payment of salaries of local government employees.¹³³

The defense presented Gloriza C. Preza (Preza) as it next witness. She testified through her Judicial Affidavit dated November 8, 2017.¹³⁴

¹²⁵ p. 24, *Id*

¹²⁶ p. 24, *Id*

¹²⁷ p. 24, *Id*

¹²⁸ p. 24, *Id*

¹²⁹ p. 20, *Id*

¹³⁰ p. 20, *Id*

¹³¹ p. 20, *Id*

¹³² p. 27-28, *Id*

¹³³ p. 27, *Id*

¹³⁴ p. 10, TSN, November 27, 2017

Handwritten signature and scribble in black ink, located to the right of the footnotes.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

30

X-----X

In her judicial affidavit, Preza declared that she is the Human Resources and Management Officer of the Municipality of *Gamu, Isabela* having been appointed on July 1, 2010.¹³⁵ As such, she is tasked to plan and recommend the promotion of ranking employees which is subject to the approval of the local chief executive; update the qualifications of all officers and employees, prepare *plantilla* appointments, process the appointment papers of job order appointments, contract of service appointments; process leave applications; supervise the personnel staff and programs of the municipality; and, issue service records and perform other functions as provided by law or ordinance.¹³⁶

Preza acknowledged that Dante Martinez, Jasmin Martinez, Silverio Balagan and Michael Balagan were former contractual employees of their municipality and their appointment papers were processed by her office.¹³⁷ She narrated that after she reviewed the appointment papers of the above-mentioned persons, she transmitted the same to the Office of the Municipal Accountant within the month of July 2013;¹³⁸ According to Preza, the approval of the salary vouchers of the said individuals was the responsibility of the Office of the Vice-Mayor because it was the same office which appointed and hired the said employees.¹³⁹

Preza further explained that since her office is under the executive branch of the municipality, she was under the immediate supervision of the office of the accused.¹⁴⁰ However, she clarified that the accused did not give her any specific instructions nor was there any written communications between them regarding the said appointments because the office of the mayor is not involved in the processing of the same.¹⁴¹ In fact, the accused did not act on the appointments of the above persons because there was no necessity for any further approval or conformity from the accused.¹⁴²

¹³⁵ p. 2, Judicial Affidavit of Gloriza C. Preza

¹³⁶ pp. 2-3, *Id*

¹³⁷ p. 3, *Id*

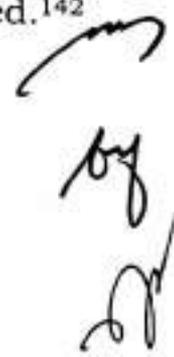
¹³⁸ p. 4, *Id*

¹³⁹ p. 4, *Id*

¹⁴⁰ p. 5, *Id*

¹⁴¹ p. 5, *Id*

¹⁴² p. 5, *Id*

The image shows three handwritten signatures or initials in black ink, arranged vertically on the right side of the page. The top signature is a cursive flourish. The middle one consists of the letters 'by' in a stylized script. The bottom one is another cursive signature.

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

x-----x

On cross-examination, Preza confirmed that the subject appointments were made by Cumigad in his capacity as vice-mayor¹⁴³ and the latter made repeated follow-ups regarding the said appointments.¹⁴⁴

When she was directed to the statement she made in her letter dated August 1, 2013, addressed to Cumigad, wherein she indicated that his inquiries were endorsed to the Office of the Municipal Mayor for his "*appropriate action*,"¹⁴⁵ Preza reiterated that there was no necessity for the accused to take any action on the appointments made by Cumigad because these appointments were already done and approved by the appointing officer;¹⁴⁶ and, that her referral of the subject appointments to the Office of the Mayor may have been related only to the "*financial aspect*" of the said appointments.¹⁴⁷

To clarify the matter, the Court asked Preza once again on the reason why there was a need for her to refer the subject appointments to the Office of the Mayor for the latter's "*appropriate action*." Her response was:

As I have said a while ago on my part, the appointment papers were done smoothly. So the Mayor has nothing to do with the approval of the appointment, Your Honor.¹⁴⁸

Preza further insisted that there was no action necessary from the accused regarding the approval of the appointment papers of the above-mentioned individuals.¹⁴⁹

On another point, Preza testified that her official duties do not include the processing of payment of salaries and processing of payroll and appropriation for salaries.¹⁵⁰ She confirmed that she

¹⁴³ p. 13, TSN, November 27, 2017

¹⁴⁴ p. 13, *id*

¹⁴⁵ pp. 15-16, *id*

¹⁴⁶ p. 17, *id*

¹⁴⁷ p. 20, *id*

¹⁴⁸ p. 21, *id*

¹⁴⁹ p. 24, *id*

¹⁵⁰ p. 24, *id*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

32

x-----x

received a letter from Cumigad wherein the latter followed-up on the salaries of his employees.¹⁵¹

On re-direct examination, Preza clarified that a copy of the letter of Cumigad was furnished to the Office of the Mayor only as a matter of procedure.¹⁵²

Finally, she declared that the accused did not give her any specific instructions regarding the preparation of the subject appointment papers because the same were under the legislative branch and the vice-mayor is the approving authority.¹⁵³

On re-cross examination, Preza testified that the above-mentioned standard operating procedure is merely a verbal order of the accused; the referral of the letters of Cumigad to the Office of the Mayor could have been related only to the payment of the salaries; and, she is not aware if the appointees of Cumigad received their salaries from the municipality.¹⁵⁴

The defense presented Eduard Ferrer (Ferrer) as its last witness. He also testified through his Judicial Affidavit dated November 22, 2017.¹⁵⁵

In his judicial affidavit, Ferrer declared that he was the municipal accountant of the Municipality of *Gamu, Isabela* at the time material to this case. As municipal accountant, his functions are: [1] he is in charge of the municipality's accounting and pre-audit system, [2] he certifies to the propriety of every disbursement, which included the disbursements for salaries of the employees of the municipality, and [3] he ensures that all disbursements are supported by complete documents, including the certificate of availability of appropriations issued by the Municipal Budget Office.¹⁵⁶



¹⁵¹ p. 27, *Id*

¹⁵² p. 30, *Id*

¹⁵³ p. 31, *Id*

¹⁵⁴ p. 35, *Id*

¹⁵⁵ p. 4, TSN, March 1, 2018

¹⁵⁶ p. 3, Judicial Affidavit of Eduard Ferrer

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

33

X-----X

Ferrer recounted that the subject appointments were made by Cumigad on July 1, 2013, in his capacity as vice-mayor and the presiding officer of the *Sangguniang Bayan*;¹⁵⁷ that after his receipt of the appointment papers, the same were timely acted upon by his office with “*due diligence*” and they were “*processed in accordance with the Commission on Audit (COA) rules;*” and, that in the course of the processing of the said appointments, his office found that there was no certificate of availability of appropriations issued by municipal budget officer.¹⁵⁸ According to Ferrer, since there was an issue with the source of funding of the said appointments, there was a need to determine the particular item from which the funds for the subject appointments will be charged.¹⁵⁹

Ferrer likewise mentioned that the Office of the *Sangguniang Bayan* was responsible for the inclusion of the four (4) individuals in the payroll and it was Cumigad, in his capacity as the presiding officer of the *sanggunian* who had the sole responsibility to approve the salaries of the said appointees.¹⁶⁰

Lastly, Ferrer declared that the accused did not take any action relative to the subject appointments; there were no specific instructions given to him by the accused regarding the processing of the appointment papers of the above appointees, nor was there any written communication, memoranda or letters that were issued to him by the accused relating to the subject appointments¹⁶¹ because the processing of the same was not a concern of the office of the accused.¹⁶²

On cross-examination, Ferrer disclosed that the appointment papers of Dante Martinez, Jasmine Martinez, Silverio Balagan and Michael Balagan were submitted to his office by the municipality’s HRMO.¹⁶³

¹⁵⁷ p. 4, *Id*

¹⁵⁸ p. 4, *Id*

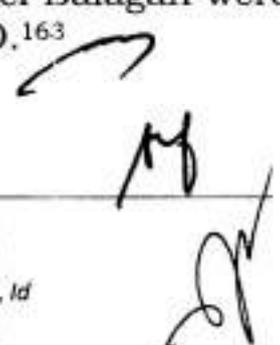
¹⁵⁹ pp. 4-5, *Id*

¹⁶⁰ p. 5, *Id*

¹⁶¹ p. 6, *Id*

¹⁶² p. 6, *Id*

¹⁶³ p. 7, TSN, March 1, 2018

Handwritten signature and initials in black ink, appearing to be 'M' and 'J' or similar characters, located below the main text.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

34

x-----x

According to him, the Office of the Mayor did not take action on the said appointments because the approval thereof was under the authority of a different department in their municipality. Thus, the accused was merely furnished a copy of the appointments as a matter of protocol and/or policy in their municipality.¹⁶⁴

Ferrer further added that he learned of the issue on the funding source of the subject appointments when he was informed by the municipality's budget officer.¹⁶⁵ He recounted that he personally informed Cumigad about this issue on September 6, 2013, but admittedly, he never mentioned the same in his letter to Cumigad.¹⁶⁶ Ferrer explained that the appointing officer should have first consulted with the municipal budget officer prior to the hiring of the contractual employees in order to determine whether or not funds are available for the salaries of his contractual employees.¹⁶⁷

Ferrer also recalled that he referred the contracts of service of the subject appointees to the municipal budget officer¹⁶⁸ and Dante Martinez was able to receive his salaries from the municipality.¹⁶⁹ He added that he has no personal knowledge of the further actions taken by the municipal budget office regarding the subject appointments.¹⁷⁰

On re-direct examination, Ferrer insisted that the appointments of Jasmin Martinez, Michael Balagan and Silverio Balagan lacked the necessary certification of availability of appropriation from the municipal budget office;¹⁷¹ he is not allowed to process the payment of salaries if there is no corresponding certificate of available appropriation;¹⁷² and, Dante Martinez received his salaries from July 1, 2013, until the time that he was appointed as a regular member of the Sangguniang Bayan.¹⁷³

¹⁶⁴ p. 9, *id*
¹⁶⁵ p. 10, *id*
¹⁶⁶ p. 11, *id*
¹⁶⁷ p. 11, *id*
¹⁶⁸ p. 13, *id*
¹⁶⁹ p. 13, *id*
¹⁷⁰ p. 11, *id*
¹⁷¹ p. 14, *id*
¹⁷² p. 14, *id*
¹⁷³ p. 14, *id*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

Ferrer was shown copies of Disbursement Vouchers Nos. 268 and 1131. He explained that he was not able to approve the said disbursement vouchers because he was on leave at the time they were issued on July 2014. However, the same were approved by the designated municipal accountant, Rosendo Cumigad.¹⁷⁴

Ferrer further clarified that the certificate of availability of appropriation concerning the appointments of Jasmin Martinez, Silverio Balagan and Michael Balagan were issued sometime only in April 2015 because there were no available appropriations for the said appointments for the years 2013 to 2014.¹⁷⁵ He also mentioned that Municipal Budget Officer Rosendo Cumigad should have issued the certificate of availability of appropriation.¹⁷⁶

On re-cross examination, Ferrer reiterated that the subject appointees were not able to receive their salaries from the municipality because their appointments lacked the prior issuance of a certificate of availability of appropriations.¹⁷⁷

The accused offered the following documentary evidence in his "Formal Offer of Evidence/Exhibits" dated May 31, 2018, thus:

EXHIBITS	OFFER/PURPOSES
"1" to "1-E" - Counter-Affidavit of Nestor Uy y Malasig dated November 18, 2013 filed with the Office of the Ombudsman	To prove that accused Nestor M. Uy submitted his Counter-Affidavit in the complaint filed with the Office of the Ombudsman by Fernando O. Cumigad refuting the complainant's allegations against him.
"1-D-1" - signature of Nestor M. Uy on page 5 of Exhibit "1"	To prove that Exhibit "1" to "1-E" is the same Counter-Affidavit executed by Nestor M. Uy and submitted to the Office of the Ombudsman; and to attest to the due execution and authenticity thereof.
"2" - Letter dated August 1, 2013 signed	1. To prove that the Municipal Accountant, Eduard C. Ferrer, and the Human Resource Management

¹⁷⁴ pp. 15-16, *Id*

¹⁷⁵ p. 17, *Id*

¹⁷⁶ p. 17, *Id*

¹⁷⁷ p. 18, *Id*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

by Eduard C. Ferrer and Gloriza C. Preza and addressed to Fernando O. Cumigad	Officer, Gloriza C. Preza, of Gamu, Isabela duly replied to the letter of Fernando O. Cumigad dated July 31, 2013.
"2-A" - Signature of Eduard C. Ferrer on Exhibit "2"	2. To prove that Eduard C. Ferrer and Gloriza C. Preza informed Fernando O. Cumigad they had accorded utmost consideration, due care, and prudence to his request regarding the appointments of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan and Michael Balagan as legislative staff.
"2-B" - Signature of Gloriza C. Preza on Exhibit "2"	To prove that Exhibit "2" is the same letter signed by Eduard C. Ferrer and sent to Fernando O. Cumigad; and to attest to the due execution and authenticity thereof.
"3" - Letter of Fernando O. Cumigad dated August 5, 2013 to Eduard C. Ferrer	To prove that Fernando O. Cumigad acknowledged that he received the letter of Eduard C. Ferrer dated August 1, 2013 and was aware that the Municipal Accountant was taking proper action on the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan and Michael Balagan.
"3-A" - Signature of Fernando O. Cumigad on Exhibit "3"	To prove that Exhibit "3" is the same letter signed by Fernando O. Cumigad and sent to Eduard C. Ferrer; and to attest to the due execution and authenticity thereof.
"4" - Letter of Gloriza C. Preza dated September 5, 2013 to Fernando O. Cumigad	1. To prove that the Human Resource Officer of Gamu, Isabela, Gloriza C. Preza replied to the letter dated August 20, 2013 of Fernando O. Cumigad. 2. To prove that Gloriza C. Preza informed Fernando O. Cumigad that the appointments of legislative staff and other personnel under his office had been religiously prepared and completed by her office.
"4-A" - Signature of Gloriza C. Preza on Exhibit "4."	To prove that Exhibit "4" is the same letter signed by Gloriza C. Preza and sent to Fernando O. Cumigad; and to attest to the due execution and authenticity thereof.
"5" - Letter of Eduard C. Ferrer dated	1. To prove that Eduard C. Ferrer replied to the letter of Fernando O. Cumigad dated August 20, 2013.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

<p>September 6, 2013 to Fernando O. Cumigad</p> <p>"5-A" - Signature of Eduard C. Ferrer on Exhibit "5"</p>	<p>2. To prove that Eduard C. Ferrer duly communicated to Fernando O. Cumigad that:</p> <ul style="list-style-type: none">a. The wages of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan had been acted upon with due diligence;b. Efforts had been exerted to inquire on the legal aspect of the appointments and to determine from what particular item the wages will be charged in the appropriation of the legislative body; andc. There was an issue on the funding source of the wages of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan which should be settled by the office concerned. <p>To prove that Exhibit "5" is the same letter signed by Eduard C. Ferrer and sent to Fernando O. Cumigad; and to attest to the due execution and authenticity thereof.</p>
<p>"6" - Letter of Eduard C. Ferrer and Gloriza C. Preza dated June 16, 2016 addressed to Asst. Special Prosecutor Marchelle G. Corpuz</p> <p>"6-A" - Signature of Eduard C. Ferrer on Exhibit "6"</p>	<p>1. To prove that Eduard C. Ferrer and Gloriza C. Preza received subpoenas from the Office of the Special Prosecutor directing them to attend a conference at its office in Quezon City in connection with the instant case.</p> <p>2. To prove that Eduard C. Ferrer and Gloriza C. Preza informed the Office of the Special Prosecutor that they will not be able to attend the conference due to work responsibilities and distance between Gamu, Isabela and Quezon City.</p> <p>3. To prove that Eduard C. Ferrer and Gloriza C. Preza expressed their willingness to cooperate with the Office of the Special Prosecutor by undertaking to submit their sworn statements.</p> <p>To prove that Exhibit "6" is the same letter signed by Eduard C. Ferrer and sent to the Office of the Special Prosecutor; and to attest to the due execution and authenticity thereof.</p>

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

<p>"6-B" - Signature of Gloriza C. Preza on Exhibit "6"</p>	<p>To prove that Exhibit "6" is the same letter signed by Gloriza C. Ferrer and sent to the Office of the Special Prosecutor; and to attest to the due execution and authenticity thereof.</p>
<p>"7" to "7-A" - Affidavit of Eduard Ferrer y Carbajosa dated September 7, 2016</p>	<ol style="list-style-type: none">1. To prove that pursuant to his undertaking in his letter dated June 16, 2016 to the Office of the Special Prosecutor, Eduard C. Ferrer, submitted a sworn statement dated September 7, 2016.2. To prove that Eduard C. Ferrer did what was incumbent upon him as the Municipal Accountant of Gamu, Isabela when the appointment papers of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan were forwarded to the Office of the Municipal Accountant.3. To prove that in accordance with the rules of the Commission on Audit, there must be funds appropriated and available for the salaries and wages of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.4. To prove that the processing of the appointment papers of the said legislative staff were eventually completed and the appointees received their salaries.5. To prove that Eduard C. Ferrer was not persuaded, induced, or in any way influenced by accused Nestor M. Uy to delay any action on the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.6. To prove that Eduard C. Ferrer did not receive any communication or instruction from accused Nestor M. Uy that his consent or conformity was necessary for the processing and approval of the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.7. To prove that there was no action or inaction on the part of accused Nestor M. Uy tending to show that he had authority to approve, disapprove, or act on the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan. <p>To prove that Exhibit "7" to "7-A" is the same affidavit executed by Eduard C. Ferrer and submitted to the</p>

DECISION

People vs. Uy

Criminal Case No. SB-16-CRM-0187

39

x-----x

<p>"7-A-1" - Signature of Eduard C. Ferrer on Exhibit "7" to "7-A"</p>	<p>Office of the Special Prosecutor; and to attest to the due execution and authenticity thereof.</p>
<p>"8" to "8-A" - Affidavit of Gloriza Preza y Carbajosa dated September 7, 2016</p>	<p>1. To prove that Gloriza C. Preza complied with her undertaking to submit to the Office of the Special Prosecutor her sworn statement on the facts she has personal knowledge of in connection with the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.</p> <p>2. To prove that the only participation of Gloriza C. Preza as Municipal Human Resource Office of Gamu, Isabela was the preparation of the appointment papers of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.</p> <p>3. To prove that Gloriza C. Preza was not persuaded, induced, or in any way influenced by accused Nestor M. Uy to delay any action on the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.</p> <p>4. To prove that Gloriza C. Preza did not receive any communication or instruction from accused Nestor M. Uy that his consent or conformity was needed before the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan could be processed and approved.</p> <p>5. To prove that there was no action or inaction on the part of accused Nestor M. Uy that would show that he had authority to approve, disapprove, or in any way affect the appointment of Dante D. Martinez, Jasmin Rose Martinez, Silverio Balagan, and Michael Balagan.</p>
<p>"8-A-1" - Signature of Gloriza C. Preza on Exhibit "8"</p>	<p>To prove that Exhibit "8" to "8-A" is the same affidavit executed by Gloriza C. Preza and submitted to the Office of the Special Prosecutor; and to attest to the due execution and authenticity thereof.</p>
<p>Exhibits "9" to "21" Disbursement Voucher Nos. 1131, 268, 1245, 1307, 1418, 1548, 9, 195, 1395, 46, 65, 163, and 110 issued and</p>	<p>To prove that contrary to the false allegation of Fernando O. Cumigad, Dante D. Martinez actually received all his salaries as legislative staff from the time he was appointed to his position until he ceased to be appointed as such.</p>

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

approved by the local government of Gamu, Isabela for the payment of salaries of Dante D. Martinez	
--	--

In its *Resolution* promulgated on June 11, 2018, the Court admitted Exhibits "1" to "21," together with their sub-markings.¹⁷⁸

THE RULING OF THE COURT

The charge against the accused and its elements.

=====

Accused Nestor Malasig Uy is charged with the crime of *usurpation of official functions* punishable under Article 177 of the Revised Penal Code which reads:

Art. 177. Usurpation of Authority or official functions. – Any person who shall knowingly and falsely represent himself to an officer, agent, or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prison correccional* in its minimum and medium periods.

Jurisprudence teaches that there are two (2) offenses contemplated under Article 177: [1] by knowingly and falsely

¹⁷⁸ p. 363, Record

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

representing oneself to be an officer, agent or representative of any department or agency of the Philippine Government or any foreign government (usurpation of authority), and [2] by performing any act pertaining to any person in authority or public officer of the Philippine Government or of a foreign government or any agency thereof, under pretense of official position, and without being lawfully entitled to do so (usurpation of official functions).¹⁷⁹

The *Information* in this case charges the accused with *usurpation of official functions*, or under the second mode of committing the felony punished under Article 177. To warrant a conviction of the said crime, the following elements must be proven beyond reasonable doubt:

1. That the accused *performed an act pertaining to a person in authority or a public officer*;
2. That the accused *performed such act under pretense of official position*; and,
3. That the *accused was not lawfully entitled to perform such act*.¹⁸⁰

The established facts.

=====

In this case, the prosecution evidence duly established the following facts:

1. Fernando O. Cumigad served as vice-mayor of the Municipality of *Gamu, Isabela* from 2013 to 2016;¹⁸¹
2. On July 1, 2013, Cumigad appointed Dante Martinez, Jasmin Rose Martinez, Michael Balagan and Silverio Balagan as

¹⁷⁹ *Ruzol v. Sandiganbayan*, 696 SCRA 742 (2013); *Gigantoni v. People*, 162 SCRA 158 (1988)

¹⁸⁰ Italics supplied

¹⁸¹ p. 2, Pre-Trial Order; p. 5, TSN, April 5, 2017



contractual job order employees of the Office of the *Sangguniang Bayan*;¹⁸²

3. Jasmin Rose Martinez, Dante Martinez, Silverio Balagan and Michael Balagan signed individual contracts of service as contractual employees of the Office of the *Sangguniang Bayan* of the Municipality of Gamu, Isabela sometime in July 2013;¹⁸³

4. The said individuals reported for work on the same day that they were appointed;¹⁸⁴

5. On July 31, 2013, Cumigad wrote separate letters to defense witnesses Preza and Ferrer, Human Resources and Management Officer (HRMO), and municipal accountant, respectively, regarding the status of the wages of the above-mentioned individuals. Therein, Cumigad mentioned that the appointments of Jasmin Martinez, *et al.*, were approved by him on July 1, 2013, pursuant to the powers vested upon him by Section 445, paragraph 2 of the Local Government Code of 1991;¹⁸⁵

6. In a Letter dated August 1, 2013, Preza and Ferrer informed Cumigad that his *Letter* dated July 31, 2013, had been "*formally endorsed*" to the Office of the Municipal Mayor "*for their appropriate action on the matter indicated therein,*" and that since "*they are under the auspices of the executive branch, there is a necessity to consult with their immediate supervisor before taking further action;*"¹⁸⁶

7. On August 5, 2013, Cumigad wrote separate follow-up letters to Preza and Ferrer wherein he indicated that [1] "*the present issues required to be resolved does not need executive approval;*" [2] "*the wages and/or remunerations of the legislative assistant shall be chargeable against the un-expended balance of the appropriation of the position of Administrative Aide vacated by Donabelle S. Campos, and others shall be taken from the MOOE*

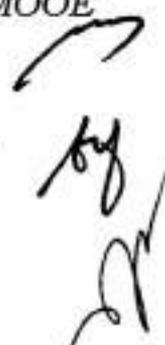
¹⁸² Exhibit A; p. 16, TSN, June 14, 2017

¹⁸³ p. 9, TSN, June 14, 2017; p. 8, TSN, June 15, 2017; p. 8, TSN, July 11, 2017

¹⁸⁴ p. 9, TSN, April 5, 2017; p. 10, TSN, June 14, 2017; p. 8, TSN, June 15, 2017; p. 8, TSN, July 11, 2017

¹⁸⁵ Exhibit B; Exhibit C

¹⁸⁶ Exhibit D; Exhibit 2

Handwritten signature and initials in the bottom right corner of the page.

under the legislative body;" and, [3] *"the action of the Vice-Mayor to appoint employees under his office is duly authorized pursuant to the provisions of the Local Government Code of 1991;*¹⁸⁷

8. On August 20, 2013, Cumigad sent another letter to Preza and Ferrer inquiring on the status of the wages of the above-mentioned contractual employees. Therein, Cumigad insisted that as the presiding officer of the *Sangguniang Bayan*, he has the power to appoint employees of the *sanggunian* pursuant to Section 445 (a) (2) of the Local Government Code; that the Office of the Mayor has no authority to appoint officials and employees of the *sanggunian* because the authority to appoint casual and job order employees of the said office belongs to the vice-mayor due to the fact that the salaries of its employees are derived from the appropriation specifically for the local legislative body. In the same letter, Cumigad mentioned that should his concerns be not acted upon immediately, he will be constrained to take legal actions in order *"to protect the integrity of the Office of the Vice-Mayor and the Office of the Sangguniang Bayan;"*¹⁸⁸

9. In a *Letter* dated September 5, 2013, Preza replied that her office *"religiously prepared and completed"* the appointments made by Cumigad, and the same *"was already forwarded to the proper authorities for future and further action;"* a copy of the said letter was furnished to the Office of the Mayor;¹⁸⁹

10. On September 6, 2013, Ferrer informed Cumigad that *"there was an issue on the funding source on the subject appointments which remains to be settled and is yet to be answered by the office concerned; hence, the matter was brought to the Office of the Municipal Mayor so that the said office will be informed of the status of the said issue;"*¹⁹⁰

11. On September 13, 2013, Cumigad filed a Sworn Complaint with the Office of the Ombudsman against the accused

¹⁸⁷ Exhibit E; Exhibit 3; Exhibit F

¹⁸⁸ Exhibit G

¹⁸⁹ Exhibit I; Exhibit 4

¹⁹⁰ Exhibit J; Exhibit 5

for violation of Section 3 (a) of R.A. No. 3019 and abuse of authority;¹⁹¹

12. The accused was suspended as mayor of the Municipality of *Gamu, Isabela* sometime in 2015. During this time, Cumigad assumed as acting mayor;¹⁹² and,

13. During the suspension of the accused as mayor, Jasmin Martinez and Michael Balagan started to receive their salaries from the municipality.¹⁹³

The liability of the accused under Article 177.

=====

The Court notes that the acts punished under Article 177 may be committed by a public officer or a private individual. Also, this article contemplates the performance of an act pertaining to a person in authority or a public officer without distinguishing between a positive or a negative act.

It is undisputed that the authority to appoint all officials and employees of the *Sangguniang Bayan*, subject to civil service law, rules and regulations, is lodged with the vice-mayor, in his capacity as the presiding officer of the *sanggunian*, pursuant to Section 445 (a) (2) of Republic Act (R.A.) No. 7610, or the Local Government Code of 1991, to wit:

SECTION 445. *Powers, Duties and Compensation.* -

(a) The vice-mayor shall:

...

¹⁹¹ Exhibit A

¹⁹² p. 47, TSN, April 5, 2017;

¹⁹³ p. 29, TSN, April 5, 2017; p. 47, TSN, April 5, 2017; p. 20, TSN, June 14, 2017

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

45

x-----x

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the *sangguniang bayan*, except those whose manner of appointment is specifically provided in this Code;

Additionally, Section 164 (c) of Administrative Order No. 270, or the Implementing Rules and Regulations of the Local Government Code of 1991, provides that the presiding officer of the *sanggunian*, where applicable, shall be responsible for human resource management and shall take all personnel actions in accordance with civil service law, rules and regulations.

Also, the accused, together with his witnesses, acknowledged the fact that Cumigad, as vice-mayor and presiding officer of the *sanggunian*, had the sole prerogative and authority to appoint officials and/or employees of the *Sangguniang Bayan*.¹⁹⁴

However, without any legal authority, the accused disapproved the appointments made by Cumigad which is abundantly clear from the evidence presented in this case.

The prosecution evidence show that after Cumigad made the subject appointments, the same were forwarded to the HRMO, Preza, and the municipal accountant, Ferrer, for appropriate action. In turn, Preza and Ferrer referred these appointments to the office of the accused for the latter's "appropriate action" allegedly on the ground that "[they] are under the auspices of the executive branch; hence, there is a necessity on [their] part to consult with [their] immediate supervisor before taking further action."¹⁹⁵

In his *letters* dated August 5, 2013, and August 20, 2013, Cumigad reminded Preza and Ferrer, respectively, that the Office of the Vice-Mayor had the sole authority to appoint casual and job order employees of the *sanggunian*, and the appointments in issue did not need the approval of the mayor because the wages of the said appointees shall be chargeable to the funds of the

¹⁹⁴ p. 19, TSN, October 18, 2017

¹⁹⁵ p. 18, *Id*



sanggunian. Notably, Preza and Ferrer did not directly answer the queries of Cumigad in their *reply-letter* dated September 5, 2013. Instead, they merely reiterated that the subject appointments “[were] *already forwarded to the proper authorities for further action,*” without mentioning the identities of these supposed “*proper authorities*” but who, undeniably, was the accused.¹⁹⁶

The fact that Preza and Ferrer referred the subject appointments to the office of the accused for the latter’s “*appropriate action*” only shows that the said appointments were submitted for the accused’s review and approval. In fact, the accused himself testified that as the local chief executive, he had the authority to “*overlook*” the budget to be used for the payment of the contractual appointees.¹⁹⁷

To be sure, the accused judicially admitted **that the appointments in issue were disapproved**¹⁹⁸ because they purportedly failed to comply with certain requirements set by the municipality before a contract of service may be perfected, *i.e.*, [1] *a prior certification of available appropriation from the municipal budget office; [2] the posting of the said appointments in at least three (3) conspicuous places within the municipality; and, [3] that the appointments must pass through the personnel selection board of the municipality.*¹⁹⁹

It must be noted that the local chief executive of the municipality sits as the chairperson of its *personnel selection board* pursuant to Section 80²⁰⁰ of the Local Government Code of 1991 and Article 166²⁰¹ of Administrative Order No. 270, or the

¹⁹⁶ Exhibit G

¹⁹⁷ p. 27-28, *Id*

¹⁹⁸ p. 24, TSN, October 18, 2017; Emphasis supplied

¹⁹⁹ p. 24, TSN, October 18, 2017

²⁰⁰ Section 80. *Public Notice of Vacancy; Personnel Selection Board*

- (b) There shall be established in every province, city or municipality a personnel selection board to assist the local chief executive in the judicious and objective selection o[f] personnel for employment as well as for promotion, and in the formulation of such policies as would contribute to employee welfare.
- (c) The *personnel selection board shall be headed by the local chief executive*, and its members shall be determined by resolution of the *sanggunian* concerned. A representative of the Civil Service Commission, if any, and the personnel officer of the local government unit concerned shall be *ex officio* members of the board.

²⁰¹ ARTICLE 166. Personnel Selection Board. — (a) There shall be established in every province, city or municipality a personnel selection board to assist the local chief executive or, where applicable, the presiding

Implementing Rules and Regulations of the Local Government Code of 1991.

The above admissions of the accused evidently show that the subject appointments were reviewed by him in his capacity as chairman of the *personnel selection board* and, effectively, he disapproved the same by failing to act thereon for almost two (2) years.

Indeed, the accused admitted that he did not take any action on the letter referred to him by Preza and Ferrer.²⁰² His reason for such inaction is revealed in his following testimony, to wit:

PROS. TANYAG:

Q: Okay. But you confirm that he [Ferrer] showed you this document, this letter?

A: Yes. Yes, Ma'am.

Q: Okay. Now, in this document, it states that the letter of Mr. Cumigad was indorsed to the Mayor for his appropriate action. ***Now, the question is, after you were shown these letters, you did not take action, is that correct?***

A: Ma'am, may I --- (Interrupted)

Q: The is answerable by "yes" or "no." So, is that correct?

officer of the sanggunian, in the judicious and objective selection of personnel for employment as well as for promotion.

- (a) *The personnel selection board shall be composed of the local chief executive or his duly authorized representative as chairman*, and members to be determined by resolution of the sanggunian concerned in accordance with pertinent civil service law, rules and regulations. A representative of CSC, if any, and the local human resource management officer or his equivalent in the LGU concerned, shall be ex officio members of the board.
- (b) The personnel selection board shall formulate screening procedures and shall adopt criteria for evaluating candidates for employment or promotion in the first and second levels of the local government career service.
- (c) The personnel selection board shall formulate screening policies on employee welfare in accordance with civil service law, rules and regulations.

²⁰² p. 22, TSN, October 18, 2017

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

48

X-----X

A: Okay. **Yes, Ma'am.**²⁰³

. . .

PJ CABOTAJE-TANG:

Q: **Mr. Uy, why did you not take any action on that letter? Who wrote that letter, prosecutor?**

PROS. TANYAG:

The letters signed both by Eduard Ferrer, the Municipal Accountant and the HR Officer, Ms. Preza.

PJ CABOTAJE-TANG

Q: Alright, Mr. Ferrer and Ms. Preza

WITNESS [Accused Uy]

A: Yes, if we may go over the letter again, **if the word they used "legal consultant," I have consulted then a lawyer.** They are not the municipal [counsel], **if we have already a municipal counsel, it is enough that our municipal counsel could be also be their legal consultant.**²⁰⁴ and I think if you go over that letter, they used "legal consultant" wherein it is the same as municipal counsel. It is not legislative staff, Your Honor.²⁰⁵

As above shown, the accused purportedly believed that the contractual employees appointed by Cumigad were *legal consultants*; hence, there was no need for their services because the municipal counsel could serve as the *legal consultants* of Cumigad as well. However, a plain reading of the *letter* referred to him clearly shows that the appointments made by Cumigad were

²⁰³ Emphasis supplied

²⁰⁴ Emphasis supplied

²⁰⁵ pp.22-23, TSN, October 18, 2017

Handwritten signature and mark, possibly initials, located at the bottom right of the page.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

X-----X

for *legislative consultants* and not *legal consultants*.²⁰⁶ This obvious desperate attempt of the accused to find justification for his disapproval of the appointments made by Cumigad is pathetic.

Furthermore, the statements of the accused in his *Counter-Affidavit* dated November 13, 2013, indicate that he arrogated upon himself the authority to approve or disapprove the subject contractual appointments. Therein, the accused categorically declared that the Office of the Mayor **is the proper appointing official to the personnel appointed by Cumigad because "the salaries of the said individuals will be paid out wholly or mainly by the municipal funds and their appointments are not otherwise provided for in the Local Government Code."**²⁰⁷

At any rate, assuming *arguendo* that there were irregularities in the subject appointments made by Cumigad, the accused should have returned those papers unacted and stated the reasons therefor. However, he admitted that he never advised Preza and Ferrer to check if the subject appointments complied with the supposed requirements of the municipality, thus:

PROS. TANYAG:

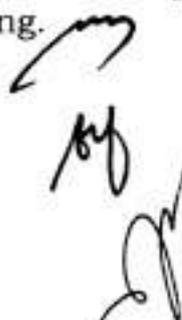
...

Q: Mr. Witness, earlier you confirmed that you were shown the communication to Eduard Ferrer and Gloriza Preza. After being shown those letters and after reading the statements therein that it has been indorsed to you for appropriate action, the Office of the Municipal Mayor, ***did you not at least advise them, Ms. Preza and Mr. Ferrer to check the requirements if they complied with the proper and complete requirements?***

A: I believe in their profession. They should know what they should be doing.

²⁰⁶ Exhibit 2; Exhibit D

²⁰⁷ p. 36, Record; Emphasis supplied

Handwritten signature and initials in black ink, appearing to be 'JF' and 'SP'.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

50

x-----x

Q: So, you did not?

A: I believe in their professionalism.

Q: Sir, the question is whether you did or you did not, so yes or no?

A: On?

Q: Whether you advised them to check the requirements of the appointments?

A: ***I did not because it is not under my office ---***
(Interrupted)

Q: Thank you, Mr. Witness.

A: The appointments are not under my office.²⁰⁸

The accused's failure to do so only reinforces the conclusion that he tacitly disapproved the subject appointments which he had no power to do.

To repeat, the Local Government Code and its implementing rules and regulations provide that it is the vice-mayor, in his capacity as the presiding officer of the *sanggunian*, who shall [1] appoint all officials and employees of the *sanggunian*, except those whose appointment is expressly provided by the Local Government Code, and [2] has the responsibility for human resource management and shall take all personnel actions in accordance with civil service law, rules and regulations. Thus, in disapproving the subject appointments made by Cumigad, the accused usurped the power properly pertaining to the office of the vice-mayor.

The Court notes the efforts exerted by defense witnesses Preza and Ferrer to save the day for the accused. However, these efforts proved futile.

²⁰⁸ pp. 24-25, TSN, October 18, 2017

Handwritten signature and scribble, possibly indicating a correction or emphasis on the text above.

DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

51

x-----x

Preza and Ferrer testified that they encountered issues and/obstacles in the funding source of the said appointments. Assuming this to be true, then they should have referred the matter back to Cumigad, who was the appointing authority, or to the Municipal Budget Office, so that these matters could have been properly addressed. Instead, Preza and Ferrer endorsed the matter to the office of the accused which negates their claim that there was no necessity on the part of the accused to take further action on the appointments in issue.

Also, the supposed insufficient "*funding source*" remains unspecified and appears to be an afterthought because Preza and Ferrer never raised the said issue in their initial reply to the inquiry of Cumigad on July 31, 2013. In fact, it took Ferrer more than a month, counted from the date of the first letter of Cumigad, and more than two (2) months, counted from the date of the signing of the contracts of service of the subject appointees, before he knew of the purported issue.²⁰⁹

Indeed, the alleged existence of the said issue is further negated by the fact that the appointment papers of Dante D. Martinez,²¹⁰ one of the appointees of Cumigad, was processed and completed despite the supposed lack of certificate of available appropriation issued by the Municipal Budget Office and/or its purported failure to comply with the requirements set by the municipality as mentioned by the accused. In fact, the evidence submitted by the defense show that Dante Martinez received his salary as a contractual employee of the *Sangguniang Bayan* for his services rendered for the following periods: September 2014,²¹¹ July 2014,²¹² July to August 2013,²¹³ September 2013,²¹⁴ October

²⁰⁹ Exhibit J; Exhibit 5

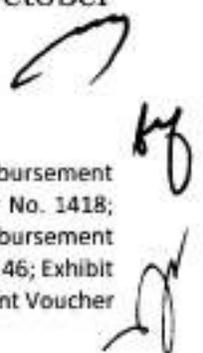
²¹⁰ Disbursement Voucher No. 1131; Exhibit 9; Disbursement Voucher No. 268; Exhibit 10; Disbursement Voucher No. 1245; Exhibit 11; Disbursement Voucher No. 1307; Exhibit 12; Disbursement Voucher No. 1418; Exhibit 13; Disbursement Voucher No. 1548; Exhibit 14; Disbursement Voucher No. 9; Exhibit 15; Disbursement Voucher No. 195; Exhibit 16; Disbursement Voucher No. 1395; Exhibit 17; Disbursement Voucher No. 46; Exhibit 18; Disbursement Voucher No. 65; Exhibit 19; Disbursement Voucher No. 163; Exhibit 20; Disbursement Voucher No. 110; Exhibit 21

²¹¹ Disbursement Voucher No. 1131; Exhibit 9

²¹² Disbursement Voucher No. 268; Exhibit 10

²¹³ Disbursement Voucher No. 1245; Exhibit 11

²¹⁴ Disbursement Voucher No. 1307; Exhibit 12



DECISION

52

People vs. Uy
Criminal Case No. SB-16-CRM-0187

x-----x

2013,²¹⁵ November 2013,²¹⁶ December 2013,²¹⁷ January 2014,²¹⁸
December 2014,²¹⁹ January 2015,²²⁰ February 2015,²²¹ March
2015,²²² and March 26 to April 26, 2015.²²³

Taken altogether, the facts established in this case indubitably show that the appointments in issue were subjected to the review and approval of the accused. Despite the fact that he had no power to do so, he effectively disapproved the same by his utter inaction on the said appointment papers. He disapproved the same under the pretense that he possessed such authority when, in fact, he was devoid of any such legal authority.

WHEREFORE, the Court finds accused Nestor Malasig Uy **GUILTY BEYOND REASONABLE DOUBT** of the crime of usurpation of official functions under Article 177 of the Revised Penal Code. Taking into consideration the mitigating circumstance of voluntary surrender in view of the accused's posting of the required cash bond for his provisional liberty on April 29, 2016,²²⁴ he is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor*, as minimum, to six (6) months and one (1) day of *prision correccional*, as maximum.

SO ORDERED.

Quezon City, Philippines.


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

²¹⁵ Disbursement Voucher No. 1418; Exhibit 13

²¹⁶ Disbursement Voucher No. 1548; Exhibit 14

²¹⁷ Disbursement Voucher No. 9; Exhibit 15

²¹⁸ Disbursement Voucher No. 195; Exhibit 16

²¹⁹ Disbursement Voucher No. 1395; Exhibit 17

²²⁰ Disbursement Voucher No. 46; Exhibit 18

²²¹ Disbursement Voucher No. 65; Exhibit 19

²²² Disbursement Voucher No. 163; Exhibit 20

²²³ Disbursement Voucher No. 110; Exhibit 21

²²⁴ p. 48, *Record*



DECISION

People vs. Uy
Criminal Case No. SB-16-CRM-0187

53

x-----x

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice

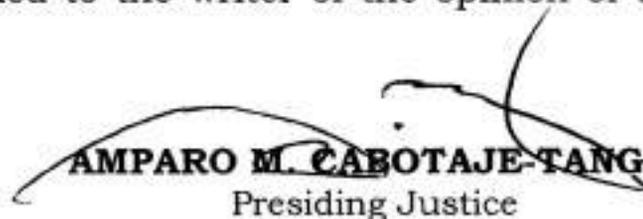
ATTESTATION

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.


AMPARO M. CABOTAJE-TANG
Chairperson, Third Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice