



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff,

-versus-

LEMUEL FESALBON CIPRIANO
Accused.

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CRIM CASE NO:
SB-17-CRM-0634

*For Violation of Article 244,
Revised Penal Code*

Present:

CABOTAJE-TANG, A. M.,
P.J./ Chairperson
FERNANDEZ, B. R., J.,
MORENO, R. B., J.

Promulgated:

February 7, 2020

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DECISION

FERNANDEZ B. R., J.

Before this Court stands charged accused Lemuel Fesalbon Cipriano for violation of Article 244 of the Revised Penal Code, as amended, in an Information, the accusatory portion of which reads, as follows - -

That on August 20, 2013, or sometime prior or subsequent thereto, in Concepcion, Romblon, Philippines and within the jurisdiction of this Honorable Court, accused public officer LEMUEL FESALBON CIPRIANO, being then the Municipal

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Mayor of Concepcion, Romblon, acting in relation to and taking advantage of ~~her~~ his office, did there and then wilfully, unlawfully and feloniously appoint Diosdado F. Atillano (Atillano) as Administrative Officer (Private Secretary) in the Municipal Government of Concepcion, Romblon despite knowing fully well that Atillano is ineligible for appointment to a public office as provided under Section 94 (b) of Republic Act 7160 for having run and lost as candidate for the position of Sangguniang Bayan Member in the Municipality of Concepcion, Romblon during the May 2013 elections, to the damage and prejudice of the government and public interest.

CONTRARY TO LAW.

When arraigned, accused Cipriano, assisted by counsel, pleaded not guilty (Order, September 15, 2017).

During the pre-trial, the parties only agreed to stipulate on the identity of accused Cipriano as the same person charged in this case and that, at the time material and relevant to the case, he was a high-ranking public officer, being then the Mayor of the Municipality of Concepcion, Romblon (Pre-Trial Order, February 20, 2018).

Trial on the merits thereafter ensued.

The first witness for the prosecution was **Beverly G. Sarmiento**. The parties agreed to stipulate on the following - (1) that witness Sarmiento is currently an Administrative Aide VI of the Civil Service Commission (CSC), Regional Office IV; (2) that she held this position since August 2, 2016; and, (3) that, in her capacity as Administrative Aide VI, she also acts as the records custodian in that Office (Order, March 1, 2018).

Witness Sarmiento further testified that, as Records Custodian of the CSC, she issued certified true copies of and identified CSC Decision No. 14-0132 dated June 11, 2014 (Exh. "J") and its covering Notice of Decision (Exh. "J-1").

The prosecution then called on **Medrito F. Fabreag, Jr.** He testified that, on May 30, 2014, he filed a Complaint of



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even date, before the Office of the Ombudsman against accused Cipriano, for violation of Article 244 of the Revised Penal Code, for appointing one Diosdado M. Atilano (Atilano). He identified his Complaint dated May 30, 2014 (Exhs. "A" to "A-2") and the Certification dated November 5, 2013 (Exh. "F").

On cross-examination, witness Fabreag, Jr. admitted that he was not present when the Certification dated November 5, 2013 (Exh. "F") was signed but claims that he was familiar with the signature of the Commission on Election (Comelec) official who signed it.

The prosecution then presented **Josephine A. Rosuelo-Altura**. Initially, the parties stipulated on the following - - (1) that witness Rosuelo-Altura is currently a Director II of the Oriental Mindoro Field Office of the Civil Service Commission (CSC), Region IV; (2) that she has been assigned at the said Field Office since July 2016; (3) that the said Field Office has jurisdiction over, among others, local government units (LGUs) in Oriental Mindoro and the Municipality of Concepcion, Romblon; and, (4) that among the duties and functions of witness Rosuelo-Altura include having administrative control and supervision over the operations of the said Field Office, including maintenance of records, and to comply with subpoenas or requests for certified true copies of documents in the personnel records in their custody (Order, April 19, 2018).

Witness Rosuelo-Altura further testified that, in compliance with a Subpoena from the Office of the Special Prosecutor, she submitted and identified the certified true copy of the Letter dated October 8, 2013 from CSC Director Cecilio A. Ambid to accused Cipriano, regarding the disapproval of the appointment of Diosdado F. Atilano (Exh. "M").

Ma. Dolores Azis was the next witness for the prosecution. Her testimony was dispensed with after the parties agreed to stipulate as follows - - (1) that witness Azis is currently the Chief Human Resource Specialist of the Office of Legal Affairs of the Civil Service Commission (CSC); (2) that part of her duties as custodian-in-charge include the safekeeping and maintenance of records of the CSC including copies of the decisions of the Commission and complying with



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subpoenas or requests for certified true copies of documents in her custody; (3) that, in compliance with a Subpoena issued by the Office of the Special Prosecutor, witness Azis submitted certified true copies of the following: (a) Notice of Decision, Re: CSC Decision No. 14-0769 promulgated on September 26, 2014 (Exh. "K"); (b) CSC Decision No. 17-0769 promulgated on September 26, 2014 (Exh. "K-1"); (c) Notice of Resolution Re: CSC Resolution No. 15-0012 promulgated on January 6, 2015 (Exh. "L-1"); and, (4) that, if shown copies of the said Exhibits, witness Azis will be able to identify them (Order, April 30, 2018).

The prosecution then presented **Melita F. Enduma**, who testified that at the time material to the case, she was an OIC Election Officer. Sometime on November 2013, she received a request from Vice Mayor Michael Fabriaga, Jr. regarding the status of the candidacy of Diosdado Atillano in the May 2013 local elections. Pursuant to the request, she issued a Certification dated November 5, 2013 (Exh "F").

Thereafter, the prosecution presented **Michael Faigmani**. The parties initially agreed to stipulate on the following - - (1) that witness Faigmani is currently an Administrative Assistant II, Human Resource Management Assistant of the Municipal government of Concepcion, Romblon; (2) that he assumed the position of Administrative Assistant II, Human Resource Management Assistant on January 28, 2016; (3) that his duties include serving as custodian of personnel records and the 201 files of the Municipal employees of Concepcion, Romblon and issues certified true copies of these documents; (4) that, in compliance with a subpoena from the Office of the Ombudsman, Office of the Special Prosecutor, he submitted photocopies of Exhs. "B" "C" "D" "E" and "H"; and, (5) that he can identify these documents in the course of his testimony (Order, May 28, 2018).

Witness Faigmani further testified that he also received a subpoena regarding the appointment of Diosdado Atillano as well as his PDS and other relevant documents. He identified the *Panunumpa sa Katungkulan* dated August 20, 2013 (Exh. "B"), the Assumption to Duty issued on August 20, 2013 (Exh "C"), the Appointment dated August 20, 2013 (Exh. "E") and the Personal Date Sheet (Exh. "H"), all of

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Atillano, as well as the Certification of Availability of Funds (Exh. "D") and the Certification dated May 28, 2018 (Exh "P").

The last prosecution witness was **Jubeth Cawaling**. Her testimony was dispensed with after the parties stipulated on the following - - (1) that witness Cawaling is the Officer-In-Charge, Audit Team Leader of the Audit Team Region IV, B-03, which has jurisdiction over, among others, the Municipality of Concepcion, Romblon; (2) that the duties of witness Cawaling include conducting audit of the transactions of the local government units (LGUs) under his jurisdiction and safekeeping original documents pertaining to transactions including disbursement vouchers and supporting documents, payrolls and other LGUs under his jurisdiction; and, (3) that, in compliance with the Subpoena of the Office of the Ombudsman, Office of the Special Prosecutor, witness Cawaling submitted certified true copies of the disbursement vouchers, payrolls and pertinent documents relative to the payment of salaries, allowances, salary differentials, refunds of all the deductions from salaries, cash gifts and bonuses of Diosdado M. Atillano, the Private Secretary of the Office of the Mayor, Concepcion, Romblon, from August 1, 2013 to June 2016, in his official custody and safekeeping (Exhs. N-2 to N-10; N-75 to N-80; N-12 to N-14; N-21 to N-22; N-23 to N-25; N-26 to N-28 to N-31; N-43 to N-47; N-50 to N-56 and N-69 to N-74; P,P-1 to P-37); (4) that witness Cawaling can identify the said marked documents; and, (5) that the said marked documents are faithful reproductions of their respective originals (Order, July 4, 2018).

The prosecution thereafter filed its Formal Offer of Evidence dated August 17, 2018. In his Comment dated August 24, 2018, accused Cipriano, through counsel, did not object to the admission of the exhibits of the prosecution. Hence, this Court ruled to admit prosecution's Exhibits "A" to "P-37", "Q" (Minutes, August 28, 2018).

Accused Cipriano, through counsel, subsequently filed a Motion seeking leave to file demurrer to evidence dated September 4, 2018. The prosecution filed its Opposition also dated September 4, 2018. For lack of merit, this Court ruled to deny the Motion (Minutes, September 7, 2018).



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After several resettings (Orders, October 10, 2018; December 11, 2018 and February 13, 2019), accused Cipriano eventually testified through his sworn Judicial Affidavit dated March 22, 2019 (Order, March 28, 2019).

Accused Lemuel F. Cipriano testified that he is the same accused charged in the Information and that on August 20, 2013, he appointed Diosdado F. Atillano (Atillano) as administrative officer and private secretary in the Office of the Municipal Mayor of Concepcion, Romblon.

He further testified that his appointment of Atillano, a relative and boyhood friend, was based on his honest belief that he as eligible to the position because the same was confidential in nature and coterminous with his term as Mayor.

Accused Cipriano likewise testified that he promptly submitted the appointment of Atillano to the Civil Service Commission (CSC) Field Office in Calapan, Mindoro as required by law. However, this was disapproved. Accused Cipriano thereafter appealed the disapproval with the CSC Regional Office. However, this appeal was denied due to a technicality.

He further testified that he appealed the ruling of the CSC Regional Office to the CSC proper. In the course of these appeal process, Atillano was faithfully performing all his duties and functions as the administrative officer and private secretary in the Office of the Mayor.

Accused Cipriano confirmed that Municipal funds were used to pay for the salaries, among others, of Atillano as this was to duly compensate for the services actually rendered by Atillano, which contributed to the efficient and effective delivery of public service by the Office of the Municipal Mayor of Concepcion, Romblon.

He, however, denied that the appointment of Atillano caused damage and prejudice to the Government and public interest because the services rendered by Atillano directly benefited his Office and the people of his Municipality.

Finally, he identified (1) his sworn Counter-Affidavit dated August 29, 2014 (Exh. "1"); (2) his Position Paper dated



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October 31, 2014 (Exh. "2"); and, (3) his sworn Judicial Affidavit dated March 22, 2019 (Exh. "4").

When cross-examined, accused Cipriano testified that he took his oath of office as Municipal Mayor of Concepcion, Romblon (third term) on July 2013 and that before hiring his staff and personnel, he would take note of their qualifications and eligibility requirements. He also re-confirms that Atillano was a close relative and friend.

Accused Cipriano also confirmed that the CSC proper dismissed his appeal on September 26, 2013. He adds that he served as Municipal Mayor until June 30, 2016 while Atillano served as his administrative officer or private secretary without interruption.

On re-direct examination, accused Cipriano reiterated that, at the time he appointed Atillano as his private secretary, he knew that the position was purely confidential in nature and that he was more concerned about the orderliness in carrying out his term.

Upon queries from the Court, accused Cipriano testified that he was fully aware that Atillano ran during the 2013 elections and that his only defense was that he was of the honest belief that the position which he appointed Atillano to was confidential in nature and coterminous. He likewise stated that he could no longer remember the reason given by the CSC in disapproving the appointment of Atillano.

The last witness for the defense was **Vicente Fadri** (Order, July 4, 2019). Testifying through his sworn Judicial Affidavit dated May 31, 2019 (Exh. "3"), witness Fadri stated that he personally knows accused Cipriano and was then present at the latter's office at the time Atillano was appointed administrative officer and personal secretary of accused Cipriano.

He added that, in the morning of August 20, 2013, he was invited by Atillano to witness the latter's oath-taking and appointment as private secretary of accused Cipriano. He also heard accused Cipriano say - - *hindi naman siguro ako lumalabag sa batas kontra sa nepotism dahil kahit si Manong Diosing (Atillano) ay malapit kong kamag-anak, ang pwesto ng*



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private secretary ay highly confidential at coterminous sa aking termino as mayor.

When cross-examined, witness Fadri admitted that he considered himself a close friend of accused Cipriano and that Atillano was his uncle and townmate.

Accused Cipriano thereafter filed, through counsel, his Formal Offer of Exhibits dated July 9, 2019. After the prosecution filed its Comment dated July 17, 2019, this Court ruled to admit defense' Exhibits "1"; "1-A"; "2"; "2-A"; "2-B"; "3"; "3-A"; "4"; and, "4-A" (Minutes, July 19, 2019).

We now rule.

Article 244 of the Revised Penal Code, as amended, provides that - -

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

As could be gleaned from the foregoing, the following are its elements - - (1) the offender is a public officer; (2) that he nominates or appoints a person to a public office; (3) that such person lacks the legal qualifications therefor; and, (4) that the offender knows that his nominee or appointee lacks the legal qualifications at the time he made the nomination or appointment (People vs. Sandiganbayan, G.R. No. 164185, [July 23, 2008], 581 Phil. 419-430).

For this case, Article 244 of the Revised Penal Code, as amended, should be read together with Section 94 (b) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

Section 94 (b) of R. A. No. 7160 provides - -

Appointment of Elective and Appointive Local Officials; Candidates Who Lost in an Election. - x
x x;



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(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

Guided by the foregoing, we now look into the presence of the elements for the crime of unlawful appointment.

There is no issue as to the first, second and fourth elements of the crime charged.

Accused Cipriano himself admitted, even at the onset, that he was the incumbent Mayor of the Municipality of Concepcion, Romblon, hence, a public officer (Pre-Trial Order, February 20, 2018).

He, likewise, did not deny that while being the incumbent Mayor, he appointed Diosdado F. Atillano to the position of Administrative Officer (Private Secretary) to the Office of the Mayor of the Municipality of Concepcion, Romblon (p. 11, TSN, April 8, 2019).

It is further clear from the facts presented that when accused Cipriano appointed Atillano to the subject position, the appointment was still within the one (1) year from the time Atillano lost his bid in the May 2013 local elections.

Hence, the only dispute issue is whether the prohibition imposed in Section 94 (b) of The Local Government Code (RA 7160) constitutes a legal disqualification so as to fall within the provisions of Article 244 of the Revised Penal Code, as amended.

For its part, the prosecution insists that Atillano did not have the legal qualifications to be appointed to the position.

Instead of denying the appointment of Atillano within the prohibited period of one (1) year from losing an election, accused Cipriano raises the defense of good faith and that he was of the honest belief that the appointment was valid, as the position to which Atillano was appointed to was confidential and coterminous to his term as Mayor.



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This can be seen from the testimony of accused Cipriano himself (pp. 15-16, TSN, April 8, 2019) to wit - -

J. MORENO: It is settled that you are fully aware that he ran during the last election when you appointed him?

WITNESS/ACCUSED: Yes, Your Honors.

JUSTICE MORENO: You are merely putting up the defense that you were in an honest belief that the position you are trying to have him appointed was confidential in nature and coterminous in nature?

WITNESS/ACCUSED: Yes, Your Honors.

JUSTICE MORENO: That is the only defense that you are putting up in this case?

WITNESS/ACCUSED: Yes, Your Honors.

We are reminded of *Anacta, Jr. vs. Sandiganbayan* (Fifth Division) (G.R. No. 219352, November 14, 2018) citing *People vs. Sandiganbayan* (Fourth Division) (G.R. No. 164185, July 23, 2008), where the Supreme Court ruled that a legal disqualification under Article 244 of the Revised Penal Code, as amended, includes temporary disqualification such as the one-year prohibition provided under Section 6, Article IX-B of the Constitution and Section 94 (b) of R.A. No. 7160, to wit -

The Sandiganbayan, Fourth Division held that the qualifications for a position are provided by law and that it may well be that one who possesses the required legal qualification for a position may be temporarily disqualified for appointment to a public position by reason of the one-year prohibition imposed on losing candidates. However, there is no violation of Article 244 of the Revised Penal Code should a person suffering from temporary disqualification be appointed so long as the appointee possesses all the qualifications stated in the law.

There is no basis in law or jurisprudence for this interpretation. On the contrary, legal disqualification in Article 244 of the Revised Penal Code simply means disqualification under the law.



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Clearly, Section 6, Article IX of the 1987 Constitution and Section 94 (b) of the Local Government Code of 1991 prohibit losing candidates within one year after such election to be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

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Villapando's contention and the Sandiganbayan, Fourth Division's interpretation of the term legal disqualification lack cogency. Article 244 of the Revised Penal Code cannot be circumscribed lexically. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under Section 6, Article IX of the 1987 Constitution and Section 94 (b) of the Local Government Code of 1991 (underscroing ours).

Furthermore, our Supreme Court pronounced in *Gambito vs. Bacena* (G.R. No. 225929, January 24, 2018), that "good faith is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious."

Guided by this jurisprudential guideline, this Court is not convinced that accused Cipriano acted in good faith in appointing Atilano. By his own admission, accused Cipriano was fully aware that Atilano ran and lost during the May 2013 elections which preceded his appointment. This apparently runs counter to his own testimony that he checks the qualifications of his staff before hiring them. This can be shown when he was cross-examined (p. 8, TSN, April 8, 2019), thus - -

PROSECUTOR NUÑEZ: Thus, sir, in hiring your staff and personnel, you would agree with me that you carefully took note of the qualification and eligibility requirements, correct sir?



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A: Yes, maam.

Q: Also sir, having served as Local Chief Executive for at least two (2) consecutive terms from 2007 up to 2013, you would also have taken careful note of the legal disqualification pertaining to each position that you intended to fill up, correct, sir? Yes or no, sir?

A: Yes, maam.

Had accused Cipriano conducted an assiduous review, as he claims, of the qualifications of Atillano, it would have been clear that he (Atillano) is prohibited from being appointed.

Additionally, the defense of good faith is negated by the persistence of accused Cipriano in pursuing and insisting on the appointment of Atillano despite the evident prohibition not only as mandated in R. A. No. 7160 but also by the successive denials by the Civil Service Commission on the appeal remedies of accused Cipriano.

Clearly, the degree of proof beyond reasonable doubt was attained.

On the imposable penalty, this Court took special note of Republic Act No. 10951 (An Act adjusting the amount or the value of the property and damage on which a penalty is based, and the fines imposed under the Revised Penal Code, amending for the purpose of Act No. 3815, otherwise known as the Revised Penal Code, as amended) promulgated on August 29, 2017, particularly Section 58 thereof.

Section 58 of R.A. No. 10951, provides - -

SEC. 58. Article 244 of the same Act is hereby amended to read as follows:

"ART. 244. *Unlawful appointments.*
- Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding Two hundred thousand pesos (P200,000.00)."



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Although the penalty of imprisonment remains as *arresto mayor*, the fine of one thousand (P1,000.00) was increased to two hundred thousand pesos (P200,000.00).

However, We are also quick to note that, aside from the fact that the crime was committed prior to the amendment, R.A. No. 10951 allows the retroactive application of its provisions, to wit - -

Section 100. Retroactive Effect. - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.


Being favorable to accused Cipriano, the provisions prior to the amendment must prevail.

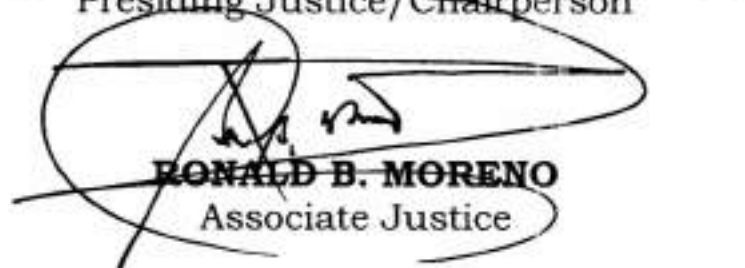
WHEREFORE, premises considered, judgment is hereby rendered finding accused **LEMUEL FESALBON CIPRIANO GUILTY** beyond reasonable doubt of the crime of unlawful appointment, as provided for in Article 244 of the Revised Penal Code, as amended, and hereby sentences him to suffer a straight penalty of imprisonment of four (4) months of *arresto mayor* and to pay a fine of one thousand pesos (P1,000.00).

SO ORDERED.


BERNELITO R. FERNANDEZ
Associate Justice

We concur:


AMPARO M. GABOTAJE-TANG
Presiding Justice/Chairperson


RONALD B. MORENO
Associate Justice

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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
Presiding Justice*

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.


AMPARO M. CABOTAJE-TANG

Presiding Justice

