

EXCERPTS FROM THE MINUTES OF THE 29<sup>th</sup> REGULAR SESSION OF THE SANGGUNIAN BAYAN OF GUBAT, SORSOGON HELD ON TUESDAY, AUGUST 28, 2018 AT THE SANGGUNIAN BAYAN SESSION HALL.

PRESENT:

Hon. Sixto F. Estareja	- Municipal Vice Mayor, P. O.
Hon. John Paul E. Erlano	- Member, Sanggunian Bayan
Hon. Cesar D. Esperida, Jr.	- Member, Sanggunian Bayan
Hon. Danilo E. Enaje	- Member, Sanggunian Bayan
Hon. Kenneth D. Escandor	- Member, Sanggunian Bayan
Hon. Anthony C. Callos	- Member, Sanggunian Bayan
Hon. Valentin A. Pura IV	- Member, Sanggunian Bayan
Hon. Aiza E. Encinares	- Member, Sanggunian Bayan
Hon. Ramon E. Entico	- Member, Sanggunian Bayan

ON OFFICIAL BUSINESS:

Hon. Norven E. Ariola	- SKMF Acting President
Hon. Ramilo S. Fajardo	- LNB Acting President

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RESOLUTION NO. 128 S-2018

A RESOLUTION TO CONCUR THE DECISION PRESENTED BY THE COMMITTEE OF THE WHOLE ON ADMINISTRATIVE CASE NO. 2018-01, BRGY. KAGAWAD CRISELDA P. ENORME VS. BRGY. RAMILO S. FAJARDO BOTH OF LUNA-CANDOL, GUBAT, SORSOGON FOR GRAVE MISCONDUCT IN OFFICE

WHEREAS, the Republic Act 7160 otherwise known as the Local Government Code of 1991 provides that, " A complaint against any elective barangay official shall be filed before the Sangguniang Panglungsod or Sanggunian Bayan concerned whose decision is final and executory";

WHEREAS, as a general rule, the sangguniang bayan as a whole shall conduct the hearing, unless the same sangguniang delegated its power to hold hearing to somebody or committee as a matter of practical administrative procedure;

WHEREAS, after a series of hearing, the Committee of the Whole came up with a report which was favorably adopted by the body, thence, this resolution;

NOW THEREFORE, on unanimous accord, it was;

RESOLVED, as it is hereby resolved to concur the hereunder decision as follows, to wit:

### **THE CASE**

Before this office is an Administrative Case No. 2018-01 filed on January 22, 2018 by one Criselda P. Enorme against Brgy. Captain Ramilo S. Fajardo, incumbent barangay chairman of Luna Candol, Gubat, Sorsogon for Grave Misconduct.

Chapter 4, sec. 60, par. (c) of the Local Government Code of 1991, provides misconduct as one of the grounds for disciplinary actions of elective local officials. Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules which must be proved by substantial evidence.

Misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present.

The Sangguniang Bayan in the exercise of quasi-judicial function is empowered to hear and decide administrative cases that are limited only to the acts and omission enumerated, defined and penalized under the Local Government Code of 1991 and any laws allowed by the same Code.

The purpose of administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust.

### **THE FACTS OF THE CASE**

The complainant is an incumbent barangay kagawad of Brgy. Luna Candol while the respondent is the barangay chairman of the same barangay, this municipality.

The antecedent facts are as follows:

On January 22, 2018, complainant filed the above-captioned case against respondent Ramilo S. Fajardo on her official capacity. She alleged that on January 04, 2018 at around 10:00 in the morning while she was inside their barangay hall, and the respondent came out of their barangay hall, she heard one of the barangay health workers greeted the respondent with a Happy New Year but respondent angrily replied in a loud voice "Happy Heriran" and rode away in his motorcycle.

After 30 minutes of the said incident while complainant was inside the barangay hall, respondent arrived and upon seeing her, respondent became furious and acted aggrieved, shouting to her several statements including the following, to wit: "Anu and problema mo Criselda? Magpatayan na lang kamo ni Vacion".

Such incident according to the complainant caused her emotional trauma as she felt she was attacked by the respondent without due reason or any provocation on her part. Complainant on her belief the sad incident was triggered by a message she sent a day before to the respondent advocating that they should talk with the Barangay Health

Workers (BHW) as there is allegedly one BHW who was causing trouble for the others. However, respondent replied that complainant is making his work more difficult and adding to his work load. It appears according to the complainant a seeming refusal on the part of the respondent to settle the matter.

On January 27, 2018, during a session in their barangay, respondent again orally attacked the complainant, stating to wit "Tarantado, in dara dara mo ako sa hibi hibi, said in a low voice. Basta diri ako tugot na halion si Diding. Next report".

Complainant further claimed that she was accused by the respondent, without any basis at all, that she was a troublemaker and backstabber, to wit: "Kun nano-nano an text mo saako. Ikaw man lang ang parebok dini sa barangay. Kaw an paralibak. Ako ngani in paralibak mo". Such accusations and attack against the reputation of the complainant is totally uncalled for and subjected her to spiteful comments in their barangay.

Complainant strongly averred that the above incidents have strained her working relationship with the respondent and the slanderous statements coupled with his repeated shouting at her had caused her undue worry and sleepless nights.

In support of the claim of the complainant, copy of the Minutes of the Session dated January 07, 2018 is appended to the complaint and marked as "Annex A".

Acting on the complaint, the Sangguniang Bayan constituting as the Committee of the Whole set its preliminary hearing on February 08, 2018 to determine compliance as to proper form and substance of the complaint, and to find probable cause if the offense being charged to the respondent has its basis under the circumstances. Finding that there is probable cause in the instant complaint, the committee hereby ordered to issue summon to the respondent.

On the same day of February 08, 2018, respondent was issued summon informing him that an administrative complaint was filed against him with an attached copy of the complaint and ordering him to file his answer within fifteen (15) days from receipt thereof.

On February 26, 2018, respondent Ramilo Fajardo's answer was received by the Office of the Sangguniang Bayan via registered mail.

On his answer, respondent categorically denied all the above accusations of the complainant for lack of basis.

The truth of the matter is that the filing of complaint by the complainant is motivated by her political ambition to run for the Punong Barangay position in the coming barangay elections and not by her official capacity as Barangay Kagawad.

Respondent, however admitted that Barangay Health Worker (BHW) Marissa Escobedo while with some other BHWs and Barangay Nutrition Scholars (BNSs) greeted him a "Happy New Year!", and respondent responded "Happy heriran", but denies that it was said in an angry and loud voice. As in fact, BHW Marissa Escobedo and the rest of the BHWs and BNS, including BNS Marissa Deyto laughed at his joke. Attached is the Judicial Affidavit of BNS Marissa Deyto, marked as Annex "1".

Respondent denied the allegation of the complainant that he furiously shouted at her at the barangay hall. On the contrary, it is the complainant who always act and react negatively towards him.

The allegations of the complainant that the incident of shouting causes her emotional trauma as she felt being attacked by the respondent without due reason or any provocation on her part, and the alleged accusation on the refusal of the respondent to settle the BHWs issue/matter are all denied by the respondent for lack of factual basis and mere assumptions of the complainant.

Respondent admitted the utterance of “Tarantado, in dara dara mo ako sa hibi hibi” but it was a murmur that was not meant to be heard by anyone. It was only heard by the Barangay Secretary who was seated close to him. What he said on January 07, 2018 barangay session, according to the respondent, is in reaction to the complainant’s baseless allegations hurled against him and the complainant uncontrollable and disrespectful behaviors during the said session.

The existence of the Minutes of January 07, 2018 barangay session is likewise admitted by the respondent in conjunction with the statements of Barangay Kagawads Salvador E. Enorme, Simon E. Sacil and Liza F. Vivo.

Respondent further denied the clamor of the complainant that the accusations and attacked made by the respondent against her reputation is totally uncalled for and came as a surprise to her who cannot understand the level of vehemence of the respondent against her. The truth is, it is always the complainant who has shown her vehemence against him and was the one who is spreading untruthful accusations against him.

Finally, respondent denied the averment of the complainant that the incidents have strained their working relationship and the slanderous statements allegedly made by the respondent has caused undue worry and sleepless nights, and that a complaint is only proper in order for the respondent to see the error of his ways and refrain from committing the same acts in the future.

The truth of the matter is that, respondent is a good Barangay Captain in Barangay Luna-Candol and he is much appreciated by his constituents. The absence of respect by the complainant to the respondent, did not diminish the good public service herein respondent extends to the barangay. Attached are the Judicial Affidavits of Barangay Kagawads Salvador E. Enorme, Simon Sacil and Liza F. Vivo, marked as Annexes “2”, “3” and “4”, respectively.

Well settled is the rule, “no investigation shall be held within ninety (90) days immediately prior to any local election, and no preventive suspension shall be imposed within the said period. If preventive suspension has been imposed prior to the 90-day period immediately preceding local election, it shall be deemed automatically lifted upon the start of the aforesaid period (Sec. 62, par. (c) of RA 7160).

Considering that the hearing and investigation of the above entitled case will coincide within the 90-day period of prohibition, the Sangguniang Bayan unanimously suspended the conduct of hearing and investigation of this administrative case through Resolution No. 33 S-2018 dated March 5, 2018, entitled, “A Resolution Suspending the Conduct of Hearing and Investigation of Administrative Case No. 2018-01 Filed by Kgd. Criselda P. Enorme, Complainant, Against Brgy. Capt. Ramilo S. Fajardo, Respondent, For Grave Misconduct”.

After the May 14, 2018 election, the Sangguniang Bayan sitting as the Committee of the Whole resumed the conduct of investigations for this administrative case.

Finding that the pleadings submitted by both the complainant and the respondent are sufficient enough to resolved the issue at hand, and the same already contain evidences to support and defend respective claims, the investigating committee hereby ordered its ruling, to wit:

### **RULING**

While the law and justice abhor all forms of abuse committed by public officials whose sworn duty is to discharge their duties with utmost responsibility, integrity, competence, accountability, and loyalty, in the same manner, the law also protect them against unsubstantiated charges that tend to adversely affect, rather than encourage, the effective performance of their duties and functions.

An act to constitute misconduct in office, one has to prove the existence of malicious intent and wilful character of transgression for some established and definite rule of action in the performance of their official duties and functions. Likewise, in grave misconduct as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.

Perusal of the instant complaint, the accusations made by the complainant that she was furiously treated and orally attacked with slanderous statements by the respondent, first at the barangay hall and second during barangay session of Luna-Candol, without due reason and provocation on her part, were not supported by factual basis to conclude that such utterances by the respondent indeed actually transpired to such degree that are wilful and malicious in character detrimental to the performance of respondent's duties and functions as barangay chairman.

The Minutes of Barangay Session dated January 27, 2018 reveals that the session was conducted on a regular manner. The refusal of the respondent on the proposal of the complainant to remove one of the member of BHW is discretionary on his part being the appointing officer of BHWs in the barangay which the complainant is bound to respect.

Moreover, the statement "Tarantado, in dara dara mo ako sa hibi" by the respondent in a low voice cannot be regarded as malicious. Respondent admission that it was murmured and not meant to be heard by anyone is a credible act of the absence of deliberate intent to disregard an established rules in the conduct of his official functions, thus, grave misconduct in office cannot be inferred.

Complainant's claim that her right was violated and had suffered emotional trauma, undue worry and sleepless nights when she was furiously treated and angrily attacked by the respondent were not collaborated by any documentary evidences. Thus, by conclusion complainant's claim are just a mere assumption and/or conjectures.

Respondent cannot be faulted if the complainant is dissatisfied with the services he has rendered for apparent reason of complainant's personal resentment against respondent. Thus, complainant failed to substantiate with certainty that misconduct in office was indeed committed by respondent Ramilo S. Fajardo under the circumstances.

WHEREFORE, in the light of the foregoing, Brgy. Captain Ramilo S. Fajardo is found not guilty of the administrative charged against him for lack of merit, without prejudice however, to the filing of appropriate civil and criminal actions against him if warranted by the attendant circumstances.

SO ORDERED.

RESOLVED FURTHER, that copies of this resolution be furnished the complainant, respondent and all other concerned for their information and guidance;

RESOLVED FINALLY, that copies of this resolution be furnished Brgy. Kagawad Criselda P. Enorme, complainant; Brgy. Capt. Ramilo S. Fajardo, respondent, Luna-Candol, Gubat, Sorsogon; Hon. Sharon Rose G. Escoto, Munciipal Mayor, LGU-Gubat, Sorsogon; Ms. Shirley Del Valle, DILG-MLGOO, Gubat, Sorsogon and Office of the Liga ng mga Barangay, ABC Hall, Gubat, Sorsogon; and other offices concerned for their information and guidance.

APPROVED.

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I HEREBY CERTIFY TO THE  
CORRECTNESS OF THE FOREGOING:

(Sgd) JOEY P. ENAJE  
*Secretary to the Sanggunian Bayan*

*Attested by:*

(Sgd) HON. SIXTO F. ESTAREJA  
*Municipal Vice Mayor, Presiding Officer*