



Republic of the Philippines
PROVINCE OF SORSOGON
MUNICIPALITY OF GUBAT

Office of the Sangguniang Bayan

EXCERPTS FROM THE MINUTES OF THE 4th REGULAR SESSION OF THE SANGGUNIANG BAYAN OF GUBAT, SORSOGON HELD ON MONDAY, JANUARY 27, 2020 AT THE SANGGUNIANG BAYAN SESSION HALL.

PRESENT:

- | | |
|-------------------------------|-------------------------------|
| Honorable Sixto F. Estareja | - Municipal Vice Mayor, P. O. |
| Honorable Alvin E. Rosales | - Member, Sanggunian Bayan |
| Honorable Danilo J. Pura | - Member, Sanggunian Bayan |
| Honorable Danilo E. Enaje | - Member, Sanggunian Bayan |
| Honorable Kenneth D. Escandor | - Member, Sanggunian Bayan |
| Honorable Noe L. Endaya | - Member, Sanggunian Bayan |
| Honorable Anthony C. Callos | - Member, Sanggunian Bayan |
| Honorable Valentin A. Pura IV | - Member, Sanggunian Bayan |
| Honorable Ramilo S. Fajardo | - LNB Acting President |
| Honorable Norven E. Ariola | - SKMF Acting President |

ON LEAVE:

- | | |
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| Honorable Aiza E. Encinares | - Member, Sanggunian Bayan |
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RESOLUTION NO. 23 S-2020

A RESOLUTION TO CONCUR THE DECISION PRESENTED BY THE COMMITTEE OF THE WHOLE ON ADMINISTRATIVE CASE NO. 2019-01, BARANGAY CAPTAIN NELLY GISALAN VS. BARANGAY KAGAWAD DENISE EVAN BOTH OF BARANGAY SAN IGNACIO, GUBAT, SORSOGON FOR GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.

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

NOW THEREFORE, on motion of Honorable Alvin E. Rosales and unanimously seconded, it was;

RESOLVED, to concur the hereunder decision as follows, to wit:

BRGY. CAPTAIN NELLY GISALAN,
Complainant

-versus-

Adm. Case No. 2019-01
For: Grave Misconduct and
Conduct Prejudicial to the
Best Interest of the Service

BRGY. KAGAWAD. DENISE E. EVAN
Respondent.

DECISION

THE CASE

Before this office is an Administrative Case docketed No. 2019-01 filed on October 8, 2019 by Barangay Captain Nelly Gisalan of Barangay San Ignacio, Gubat, Sorsogon against Barangay Kagawad Denise Evan of the same barangay, for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

The Sangguniang Bayan in the exercise of its quasi-judicial function, as mandated by the law, is empowered to hear and decide administrative cases defined and enumerated by the Local Government Code of 1991 and other pertinent laws and jurisprudence involving disciplinary action on elective local officials.

Public officer is any person who, by direct provisions of the law, popular election or appointment of competent authority, takes part in the performance of public functions in the government, duties as an employee, agent or subordinate official, or any rank or class. (Art. 203, Revised Penal Code). Thus, the law requires from public officials their accountability to the people, and must adhere to the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall discharge their duties with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, lead modest lives and uphold public interest over personal interest. (Sec. 2, RA 6713)

Misconduct is a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct maybe serious, important, weighty, momentous and not trifling. It must also have a great relation to, and be connected with,

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the performance of official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office.”(Almario vs. Resus, A.M. No. P-94-1076, Nov. 02, 1999)

Conduct Prejudicial to the Best Interest of the Service though not specifically stated by law, is one of the grounds for disciplinary actions against elective local official pursuant to Section 60 of Republic act 7160 otherwise known as the Local Government Code of 1991. It is also a violation of Republic Act 6713 or the so called Code of Conduct and Ethical Standards for Public Officials and Employees.

THE FACTS OF THE CASE

The complainant is an elected Barangay Captain and a resident of Barangay San Ignacio, Gubat, Sorsogon while the respondent is an elected Barangay Kagawad of the same barangay.

The antecedent facts of the case are as follows:

Sometime, on August 17, 2019, during regular session of Barangay San Ignacio, Gubat, Sorsogon, complainant directed Barangay Kagawad Cecilia Escurel to collect all payable amounts from the proceeds of their fund raising activity during barangay fiesta. Kagawad Escurel then read the list of the persons who have outstanding advances and suddenly a discussion ensued as respondent Kagawad Denise Evan insisted on not paying the P1,000.00 due from him as he claimed that it was given to him by one Louie Espeño. Complainant did not insist but instead requested to the respondent to refrain from badmouthing to her to the public that she has done nothing as barangay official.

Respondent further requested to show him the receipts where the money from the fund-raising activity were spent. Kagawad Escurel showed the receipts to the respondent but instead responded by slamming the receipts on the table and insulting them all by stating “puro niyo yun kabuangan” (it’s all your foolishness). Complainant on her annoyance, told the respondent that she remember the words repeatedly told to them by respondent’s father that they should extend our patience to his son as he is a bit crazy. Respondent blurted out to the complainant that even though he is crazy, he is not a person who engages in sex with other persons like her and suddenly respondent motioned his hand a crude sign indicating a sex act towards the complainant repeatedly.

Complainant claimed that the respondent’s actuation and malicious insinuations that she is a person of low moral character who engages in sex with many persons gave her great embarrassment and angered, and a clear manifestation on the part of the respondent that he is not bestowing due respect to the complainant as their barangay captain.

Complainant further averred that these acts were not the first time respondent disrespected her as there were instances that respondent threatened to punch her after the budget for seminar was belatedly processed by the barangay treasurer.

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2. A signature that appears to read "Complainant".
3. A signature that appears to read "Respondent".

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2. A signature in the middle right.
3. A signature at the bottom right.

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2. A signature in the middle-left.
3. A signature in the middle-right.
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The actuations of the respondent were witnessed by Eden J. Jarabejo, Barangay Secretary, and Barangay Kagawad Cecilia E. Escurel, who were present during the session, copy of their sworn statements are attached to this complaint-affidavit as Exhibit "B", "C - 1" and "C - 2", respectively.

No other documentary evidences were presented by the complainant except on his complaint-affidavit marked as Exhibit "A" and "A - 1" and her personal and witnesses' testimonies during hearing/investigation of the case.

Acting on the complaint, the Sangguniang Bayan constituting as the Committee of the Whole set its initial hearing on October 18, 2019 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 ordered the issuance of summons to the respondent.

On October 21, 2019, 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 answer within fifteen (15) days from receipt thereof.

On November 06, 2019, respondent filed his answer, copy attached and marked as Exhibit "1", "1 - A" and "1 - B".

On his answer, respondent vehemently and categorically denied the allegations against him by the complainant, as explained and discussed on his affirmative defense, to wit:

The herein administrative complaint was filed to put respondent in silence as the complainant has an ill-feeling against him as she resented respondent's act of raising questions and interpolating them during session of the sanggunian on matters concerning the barangay.

Complainant's allegation that respondent owe the barangay One Thousand Pesos (P1,000.00) from the proceeds of fund-raising activity is false and misleading, the truth is that said amount was given to the respondent by Kagawad Louie Espeño as he solicited from him certain sum of money.

As to the fund-raising activity mentioned by the complainant, respondent did not remember that the sanggunian barangay approved an activity for the purpose. What respondent recall is that the barangay hosted a cockfight (tupada) and sponsored beer plaza, and neither did respondent has knowledge whether the beer plaza gained profit or sustained loss because it was not being discussed anymore. This is the reason why according to the respondent, the complainant insisted on collecting the One Thousand Pesos (P1,000.00) from him, and further told respondent that said amount will be

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deducted to his honorarium. However, respondent reacted by saying "Sige ibawas mo at irereport kita sa DILG".

Respondent denied the allegation that he demanded receipt, the truth is that he demanded for the other money collected during the alleged fund-raising activity. What was shown to the respondent was the receipt of indebtedness covering materials for the construction of artesian well amounting to Five Thousand Pesos (P5,000.00) already charged to the IRA.

Respondent likewise denied that he told complainant that she engages in sex with other persons, what he said to the complainant is that "Matanus ako diri ako nagsusugad sa iba" that makes complainant became very angry and even shouted in a very high tone and pursued respondent with an intent of slapping him.

Respondent further denied the allegation of the complainant that he is peddling stories that she did not accomplish anything as barangay official, neither did he badmouthed her in public. Moreover, he claimed that this case was filed by the complainant to harass him for reason that he is questioning their irregular practice in the discharge of their duties in the barangay.

To prove the allegations of the respondent on his answer, copy of the Sinumpaang Salaysay of Emiliana Estayane, Joseph Bontigao and Barangay Tanod Anthony A. Ergina are hereto attached and marked as Exhibit "2", "3", "4" and "4 - A", respectively.

On November 20, 2019, a hearing was conducted by the Committee of the Whole with the appearances of complainant Barangay Captain Nelly E. Gisalan, respondent Brgy. Kagawad Denise Evan, and Brgy. Kagawad Cecilia E. Escurel and Barangay Secretary Eden J. Jarabejo for complainant's witnesses.

On the hearing, complainant reiterated that she was gravely offended and embarrassed by the act of the respondent of showing his hand against her with a crude sign indicating a sexual act and respondent's utterances that "he is not a person who engages in sex with other persons like me (complainant)". Complainant claimed that said act of the respondent is a clear indication of misconduct on his part which is not a regular behaviour expected for a public official especially during the performance of his duty such as in the instant case that the incident happened during barangay regular session.

The testimonies of the witnesses for the complainant proved that the respondent indeed committed the act and has collaborated all the statement of the complainant stated on the complaint-affidavit.

The incident according to the complainant constituted misconduct in office and conduct prejudicial to the best interest of the service committed by the herein respondent and appropriate disciplinary action should be meted against him.

Respondent during the hearing admitted that he does the hand crude sign of sexual act but it does not mean to offend the complainant, it is the complainant malicious interpretation that make it bad.

The Sinumpaang Salaysay of the witnesses for the respondent did not support the allegation of the claim of the respondent that he did not do the offensive hand sign as cited on his affirmative defense, neither did they disprove the malicious insinuation of the respondent against the complainant. The witnesses statement in the Sinumpaang Salaysay purely speaks on the good deeds and character of the respondent as barangay kagawad.

Respondent's witnesses were not present during the hearing of the administrative case despite notice sent to them.

RULING

On the appreciation of the facts presented, both alleged on the complaint and on the respondent's answer, and on their respective oral testimonies and that of their witnesses, this Sanggunian Bayan setting as a special body concluded: that complainant Barangay Captain Nelly Gisalan had established the fact that the intense argument between her and respondent Barangay Kagawad Denise E. Evan indeed took place on August 17, 2019 at the barangay hall of San Ignacio, Gubat, Sorsogon. The argument started when the complainant ordered the collection of proceeds from the fund raising activity they recently held.

The allegation of the complainant with respect to the act of the respondent of showing his hand against her with a crude sign indicating a sexual act and respondent's utterances that "he is not a person who engages in sex with other persons like me (complainant)" were proved during the hearing through the testimonies of the witnesses. The witnesses clearly manifested that the respondent indeed committed the act complained of.

On the other hand, the defense of the respondent that he does not mean to offend the complainant, although, admitted that he does the hand crude sign of sexual act. And his contention that the filing of the case is tainted with malice with the intent to harass him for reason that he is questioning their irregular practice in the discharge of their duties in the barangay were not supported by clear and convincing evidence sufficient enough to support a conclusion in his favor.

Based on the above circumstances, it can be clearly pointed out that heated argument was, at first, between Barangay Kagawad Cecilia Escurel when the latter, collected the proceeds from their fund raising activity to which the respondent retorted and eventually made to worsen the situation. Complainant did not insist but instead requested to the respondent to refrain from badmouthing to her to the public that she has done nothing as barangay official.

Respondent further requested to show him the receipts where the money from the fund-raising activity were spent. Kagawad Escurel showed the receipts to the respondent but the latter slammed the receipts on the table and insulting them all by stating "puro niyo yun kabuangan" (it's all your foolishness).

Respondent failed to consider that as a barangay kagawad he is duty bound to observe the norms and conduct required by law to a public official. Respondent as such

is expected to exercise high degree of tolerance to pacify the situation regardless if the incident took place for reason of the discharge of his official function or not.

It is to be noted, that public official and employees shall remain true to the people at all times and that they shall at all times respect the rights of others and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest, thus;

“Republic Act No. 6713 otherwise known as the “Code of Conduct and Ethical Standards for Public Officials and employees prescribes norms of conduct of Public Officials and employees, to wit: Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. X x x x x x x x x . (Sec. 4, par. (c)).

Section 2 of Republic Act No. 6713 further provides that it is the “policy of the State to promote a high standard of ethics in public service.

“Public officers and employees must at all times be accountable to the people, serve them with the utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead a modest lives and uphold public interest over personal interest.” (Section 1, Article XI of the 1987 Constitution of the Philippines and Sec. 32, Book I, EO 292).

Convincingly, on the basis of the testimonies of the complainant and witnesses, respondent clearly deviated from the norms and ethical standards required by law, thus, conduct prejudicial to the best interest of the service was committed by the herein respondent.

Accordingly, conduct prejudicial to the Best Interest of the Service although not specifically stated by law, is one of the grounds for disciplinary actions against an elective local official pursuant to Sec. 60 of R.A. 7160 otherwise known as the Local Government Code of 1991. Although it is broad in scope, it may mean abuse of authority, oppression, dereliction of duty, misconduct in office or any other improper or unjust conduct of a public official. (DILG-CAR OPINION NO. 03-52). Thus, grave misconduct alleged to have been committed by the respondent as prayed for by the complainant already qualifies and/or included to the offense conduct prejudicial to the best interest of the service, however, the same is adjudged to only simple misconduct for the misdeed committed is not so grave to warrant the same.

In *Manuel v. Judge Calimag, Jr.*, the Supreme Court explained that:

x x x Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance

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of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x."

The respondent's actions, to the mind of the Honorable Body, constitute conduct prejudicial to the best interest of the service, an administrative offense which need not be related to the respondent's official functions. In *Pia v. Gervacio*, the Supreme Court explained that acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office. Additionally, conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.

Conduct prejudicial to the best interest of the service is classified as a grave offense with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. However, taking into consideration that the utterance was made by the respondent for reason of sudden and an uncontrollable emotion and humiliation which a person under concrete human situation cannot be avoided and since this is the first time that the respondent had committed these acts, it can be gleaned as mitigating circumstances that justifies this Honorable Body to lower the penalty as prescribed.

WHEREFORE, on the merit of the above laws and evidences attending to this case, respondent is found guilty of Conduct Prejudicial to the Best Interest of the Service and hereby ordered to be suspended for Two (2) Months without pay of Honorarium and other benefits, and further warned from committing similar offense in the future and during his tenure.

Respondent is further ordered to undergo lecture and seminars to keep abreast on the ethical standard of a public officer according to the provision of the Local Government Code and human relation in the community.

SO ORDERED.

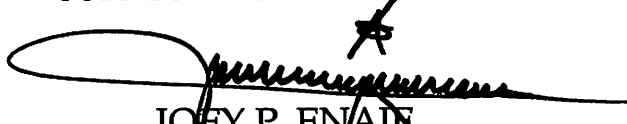
RESOLVED FURTHER, that copy of this decision be endorsed to Honorable Sharon Rose G. Escoto, Municipal Mayor, for proper and immediate implementation informing this body of the action taken thereon within ten (10) days upon receipt hereof.

RESOLVED FURTHERMORE, that copies of this resolution be furnished Honorable Sharon Rose G. Escoto, Municipal Mayor; Ms. Ma. Luisa J. Dometita, Municipal Local Government Operations Officer (MLGOO), Gubat, Sorsogon; Ms. Ava Obrique, Municipal Accountant; Brgy. Captain Nelly Gisalan, complainant, San Ignacio, Gubat, Sorsogon; Brgy. Kagawad Denise Evan, respondent, San Ignacio, Gubat, Sorsogon and others concerned for information and guidance.

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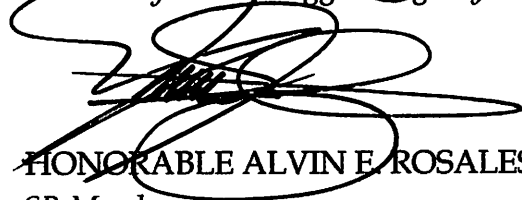
UNANIMOUSLY APPROVED.

I HEREBY CERTIFY TO THE
CORRECTNESS OF THE FOREGOING:



JOEY P. ENAJE

Secretary to the Sangguniang Bayan



HONORABLE ALVIN E. ROSALES

SB Member

Attested by:



HONORABLE AIZA E. ENCINARES

SB Member - On Leave



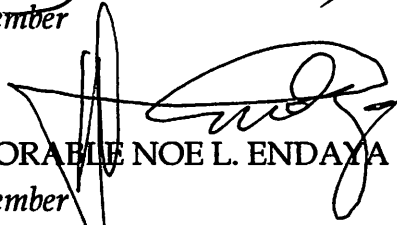
HONORABLE DANILO J. PURA

SB Member



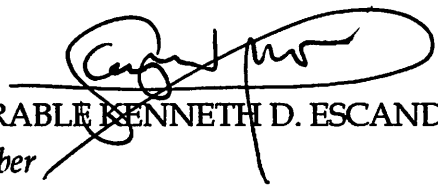
HONORABLE DANILO E. ENAJE

SB Member



HONORABLE NOEL L. ENDAYA

SB Member



HONORABLE KENNETH D. ESCANDOR

SB Member



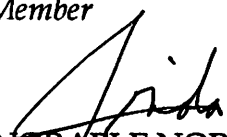
HONORABLE ANTHONY C. CALLOS

SB Member



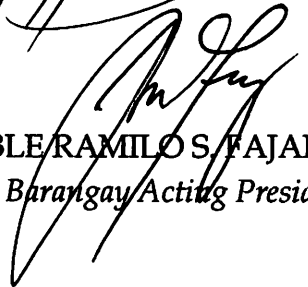
HONORABLE VALENTIN A. PURA IV

SB Member



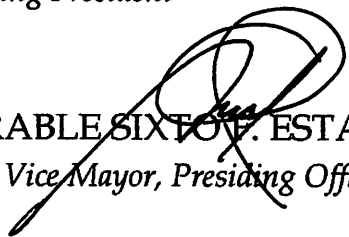
HONORABLE NORVEN E. ARIOLA

SKMF Acting President



HONORABLE RAMILO S. FAJARDO

Liga ng mga Barangay Acting President



HONORABLE SIXTO V. ESTAREJA

Municipal Vice Mayor, Presiding Officer