



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
Brgy. 5, Calamianes Island, Coron, Palawan
Telephone No. +63 917 504 2633
E-mail: cenrocoron@denr.gov.ph Website: www.denr.gov.ph

October 26, 2021

MEMORANDUM

FOR : The Regional Executive Director
MIMAROPA Region
1515 L & S Bldg., Roxas Blvd.,
Ermita, Manila

THRU : The Provincial Environment &
Natural Resources Officer

FROM : The OIC-Community Environment &
Natural Resources Officer
Coron, Palawan

SUBJECT : **DECISION: RE CRIMINAL CASE NO. 3965 PP VS.
MOISES RODOLFO ET. ALS. FOR VIOLATION OF
SECTION 78 OF PD 705 AS AMENDED**

Respectfully forwarded is the Decision rendered by Presiding Judge Lovelle Moana R. Hitosis re: above subject.

Please be informed that the accused Moises Rodolfo, Mercedes Rodolfo Apostol alias Mercedes Ancheta, Benjamin Naoe, Monaliza Razote, Arlem Sison and Julie Lucena are sentenced to one (1) year imprisonment, to pay the fine of P10,000.00 each and to jointly pay the amount of P39,223.00 for the annual rental/and other charges from 2016-2018 for illegal occupancy and to vacate the area in question.

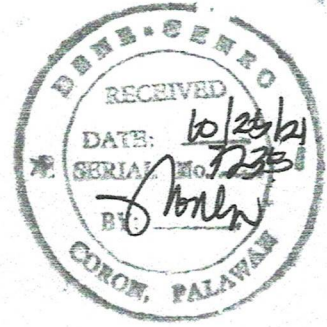
While other accused Melchor Andico, Lorma Basallo and Yolanda Borja who are still at large, the case was sent to archives with corresponding Warrant of Arrest and to be revived upon their apprehension.

For information and record.




ARNOLDO A. BLAZA, JR.

Republic of the Philippines
MUNICIPAL CIRCUIT TRIAL COURT
CORON-BUSUANGA-GAUDENCIO E. ABORDO
Province of Palawan



PEOPLE OF THE PHILIPPINES
Plaintiff,

CRIMINAL CASE NO. 3965

- versus -

for

MOISES RODOLFO, JULIE
LUCENA, ARLEM SISON,
MELCHOR ANDICO, MONA-
LIZA RAZOTE, LORMA BASALLO,
YOLANDA BORJA, MERCEDES
ANCHETA and BENJAMIN
NAOE,

VIOLATION OF SECTION 78
PRESIDENTIAL DECREE NO. 705

Accused.

X ----- X

D E C I S I O N

Submitted for Decision before this Court is an Information for VIOLATION OF SECTION 78 (Unlawful Occupation and Destruction of Forest Land) OF PRESIDENTIAL DECREE NO. 705 as amended, otherwise known as the REVISED FORESTRY CODE OF THE PHILIPPINES against the accused MOISES RODOLFO, JULIE LUCENA, ARLEM SISON, MELCHOR ANDICO, MONALIZA RAZOTE, LORMA BASALLO, YOLANDA BORJA, MERCEDES ANCHETA and BENJAMIN NAOE.

The factual antecedents of this case are as follows:

That sometime on or about the 10th of January, 2017 and immediately subsequent or prior thereto, in Barangay Decalachao, Municipality of Coron, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another did then and there willfully, unlawfully and feloniously enter, occupy and possess for their own private use, and destroy a portion of forest land area declared as Busuanga Pasture reserve by building structures, fencing and cutting the trees thereon, without authority under a license agreement, lease, license or permit issued by competent authorities under the existing forestry laws, rules and regulations, to the damage and prejudice of the Philippine government.

CONTRARY TO LAW.

Puerto Princesa City, Philippines, October 22, 2018.

SGD. GIDOR D. MANERO
Associate Provincial Prosecutor

The Court, in its Order dated November 23, 2019, finds that a probable cause exists in this case and thereby issued a warrant of arrest against the accused.

On June 17, 2019, this case was sent to the **ARCHIVES** considering that accused could no longer be reached by the processes of the Court since the issuance of the Warrant of Arrest on November 23, 2018.

On June 20, 2019, the case as against one of the accused, **MONALIZA RAZOTE** was ordered **REVIVED** considering her arrest by virtue of the Alias Warrant of Arrest issued on June 17, 2019 and subsequently posted a bail for her provisional liberty.

During the scheduled arraignment on June 21, 2019 for accused Monaliza Razote, **Atty. Albert Garraez** formally entered his appearance as counsel for the accused and manifested that they are waiving the reading of the Information and a plea of **NOT GUILTY** be entered in the records of the case.

On November 25, 2019, the Court received the **Authority to Appear as Special Prosecutor of DENR Lawyers** namely, **Atty. Maria Emma Gille A. Mercado, Atty. Marlyn Christine Ong Manuel and Atty. Donald Dwight Aragon Omega** which was accordingly approved by the Court.

On December 19, 2019, the case as against **MOISES RODOLFO, JULIE LUCENA, ARLEM SISON, MERCEDES APOSTOL and BENJAMIN NAOE** was ordered **REVIVED** considering their arrest. Accused posted their respective cash bonds for their provisional liberties.

During the scheduled Arraignment and Pre-Trial Conference on January 21, 2020, accused Moises Rodolfo, Julie Lucena, Arlem Sison, Mercedes Apostol and Benjamin Naoe appeared. However, considering the right of the accused to be represented by a counsel of their own choice, the arraignment was cancelled and reset to coincide with the setting for their co-accused, Monaliza Razote.

On July 21, 2020, during the arraignment for accused Moises Rodolfo, Julie Lucena, Arlem Sison, Mercedes Apostol and Benjamin Naoe, **Atty. Jocelyn G. Fumera** from the Public Attorneys' Office formally entered her appearance as counsel for all the accused and manifested that they are waiving the reading of the Information and a plea of **NOT GUILTY** be entered in the records thereof.

On August 20, 2020, Pre-Trial Conference had and was terminated, setting the initial presentation of the prosecution's evidence and the continuation thereto to October 19 - 21, 2020.

THE CASE OF THE PROSECUTION

JAY MARTIN LOPOS (October 19, 2020)

The Prosecution presented to the witness stand their first witness in the person of **MR. JAY MARTIN LOPOS**, who accordingly identified his Affidavit marked as **Exhibit "P"** and his signature thereto as **Exhibit "P-1"**. Considering that this case is covered by the Continuous Trial Act, the said affidavit constituted as the direct testimony of the witness on the stand.

In his Affidavit, he stated that he is the Project Development Officer I (PDO I) of the Forest Management Bureau (FMB) under the Department of Environment and Natural Resources (DENR). He categorically stated therein his duties and responsibilities as PDO I.

As part of the Investigating Team of the Busuanga Pasture Reserve – Management Office (BPRMO), they were directed to investigate and verify the reports that there is an influx of illegal settlers squatting within the premises of BPR. This includes the alleged illegal occupation of the accused in this case in an unclassified public forest land located at Long Paddock in Barangay Decalachao, Coron, Palawan. Prior to this, several monitoring and field investigation had already been conducted in the area.

During their investigation conducted on January 10, 2017 and March 19, 2017, respectively, they saw several houses and interviewed the occupants seen in the area, including those occupied by the accused **Moises Rodolfo, Julie Lucena, Arlem Sison, Melchor Andico, Monaliza Razote, Lorma Basallo Yolanda Borja, Mercedes Ancheta and Benjamin Naoe**. They asked each of them to show any proof of ownership over the area but they were not able to present any to prove their lawful occupation and settling in the said area. Thus, they advised them to vacate the area but they refused to vacate despite their demands.

After their investigation, the Team prepared the Memorandum Report dated March 20, 2017. Including therein are the Location Map, Photo Documentation, Table showing the actual forest occupants at the Long Paddock Area, and Inventory of the timber products utilized in establishing of make-shifts at the Long Paddock area.

On cross examination conducted by Atty. Garraez, the counsel for Monaliza Razote, the witness confirmed that he had no personal knowledge as to who prepared the location map which is attached to his affidavit. **What he prepared are the inventory and the photo documentation.** He stated that it was his companion who took the pictures but he was also present when it was taken. He named the eight individuals who were actually found in the area when they conducted the investigation and inspection, however, out of the pictures presented to him, he was not able to pin point Monaliza Razote for reason that he can no longer recall her face considering that he was not the one who took the pictures but confirmed having interviewed her during the investigation conducted on March 19, 2017.

During the cross examination conducted by Atty. Beronio, counsel for the other accused, the witness testified that he was only tasked to conduct investigation, interview and delineation in the area and that he does not know as to why only eight individuals were charged in this case out of the fifteen (15) persons he interviewed on March 19, 2017.

After the conclusion of the witness' testimony, he was dispensed with.

RICHARD JOHN GALAGATE (October 20, 2020)

The next witness presented by the prosecution is **MR. RICHARD JOHN GALAGATE**, who identified his Affidavit marked as **Exhibit "Q"** and his signature thereto as **Exhibit "Q-1"**. He also identified the attachments to the said affidavit, which affidavit constituted as his direct testimony on the stand.

In his Affidavit, the witness stated that he is a Community Development Officer I (CDO I)/Project Operations Control Officer (POCO) of FMB under the DENR. He categorically stated therein his duties and responsibilities relative to his job.

As part of the Investigating Team of the Busuanga Pasture Reserve (BPR), they were directed to investigate and verify the reports that there is an influx of illegal settlers squatting within the premises of BPR. This includes the alleged illegal occupation of **Moises Rodolfo, Julie Lucena, Arlem Sison, Melchor Andico, Monaliza Razote, Lorma Basallo Yolanda Borja, Mercedes Ancheta and Benjamin Naoe** in an unclassified public forest land located at Short/Long Paddock in Barangay Decalachao, Coron, Palawan within the BPR. Prior to this, several monitoring and field investigation had already been conducted in the area.

During their investigation conducted on **January 10, 2017**, they saw several houses and interviewed the occupants seen in the area, including those occupied by the accused in this case, one of which is occupied by Benjamin Naoe. They asked him to show any proof of ownership over the area but he was not able to present any to prove his lawful occupation and settling in the said area. Thus, they advised him to vacate the area but he refused to vacate despite their demands.

After their investigation on the ground, the Team prepared the Memorandum Report dated January 11, 2017 with pertinent documents as attachments thereof.

Upon further order of their CENRO Edilberto B. Saños for the filing of a case against the accused, he prepared a **Location Map of the area occupied by Rodolfo, Lucena, Sison, Andico, Razote, Basallo, Borja, Ancheta and Naoe within the BPR** which shows the respective areas occupied by the said accused. He also prepared a **Certification attesting that the respective areas were verified to be within the BPR and falls under Unclassified Public Forest Land** and a **Certification of the Geo-Tagged Photos of the structures and improvements introduced by the accused.**

RUBY ANN ECHAGUE (October 20, 2020)

The next prosecution witness called to the witness stand is **Ms. RUBY ANN ECHAGUE**, the Acting Records Officer of CENRO, Coron, Palawan who replaced the supposed intended witness in the person of Marina Abe who already retired from the service as manifested earlier by the special private prosecutor in this case. She presented a copy of the Office Order indicating therein that indeed, she is now the Acting Records Officer of CENRO, Coron, Palawan. The defense stipulated that indeed, all the documents attached to her affidavit exists in the Office of CENRO Coron. With the said stipulation, the presentation of the testimony of the said witness is hereby dispensed with.

FERDINAND GATCHALIAN (October 21, 2020)

The last witness presented by the prosecution is **Mr. FERDINAND GATCHALIAN**. He identified his **Affidavit marked as Exhibit "S"** and his signature thereto as **Exhibit "S-1"**, including the **Certification he issued dated May 31, 2018 marked as Exhibit "N"** and the **Location Map marked as Exhibit "O"**. Considering that this case is covered by the Continuous Trial Act, the said affidavit constituted as the direct testimony of the witness on the stand.

In his Affidavit, he stated that he is a Forester III and presently the Chief of Conservation and Development Section (CDS) of DENR CENRO, Coron, Palawan. He laid therein the duties and responsibilities of the position he is holding and part of it is to

verify the technical description of the sketch plans/land classification of a subject area with the use of GIS software. Some of the documents he verified and passed through him for recommendation of approval/attestation were the documents pertaining to this case. He then verified that the parcels of land entered and occupied by accused herein are within the BPR and fall under Unclassified Public Forest Land per Land Classification Map No. 839, Project 2-A for Coron, Palawan which was certified and approved on December 9, 1929.

On cross examination conducted by Atty. Albert Garraez, the witness testified and confirmed that he is not part of the investigating team that conducted investigation on January 10, 2017, February 23, 2017 and March 19, 2017. The names of the accused were only supplied to him by the investigating team, particularly, the name of Monaliza Razote among others, and also based on the sketch map prepared by the team that was submitted to him and when he verified, is indeed within the Busuanga Pasture Reserve. After the conclusion of his testimony, he was dispensed with.

The Prosecution formally offered the following Exhibits for admission:

Exhibit "A" - Certified True Copy of Complaint dated 31 May 2018.

Exhibit "B" - Certified True copy of Sinumpaang Salaysay ni Ginoong Jay Martin F. Lopes dated 31 May 2018.

Exhibit "C" - Certified True Copy of the Report on the Conducted Monitoring and Investigation of Forest Occupants at the Long Paddock in Brgy. Decalachao, Coron, Palawan, within Busuanga pasture Reserve (BPR) Area dated 20 March 2017.

Exhibit "C-1" - Certified True Copy of the Location Map showing the Area Illegally Occupied by Informal Settlers at the Long Paddock within the BPR Area.

Exhibit "C-2" - Certified True copy of the Photo Documentation.

Exhibit "C-3" - Certified True Copy of the Table showing the Inventoried Actual Forest Occupants at the Long Paddock Area.

Exhibit "C-4" - Certified True copy of the Inventory of Timber Products Utilized in the Establishment of Make-Shift at the Long Paddock Area.

Exhibit "D" - Certified True Copy of Sinumpaang Salaysay ni Richard John P. Galagate dated 31 May 2018.

Exhibit "E" - Certified True Copy of Certified True Copy of the Certification dated 31 May 2018.

Exhibit "F" - Certified True Copy of the Location Maps of Unclassified Occupied by (1) Moises Rodolfo.

Exhibit "F-1" - Certified True Copy of the Location Maps of Unclassified public Forest Land Occupied by (2) Julie Lucena.

Exhibit "F-2" - Certified True Copy of the Location Maps of Unclassified public Forest Land Occupied by (3) Arlem Sison.

Exhibit "F-3" - Certified True Copy of the Location Maps of Unclassified Public Forest Land Occupied by (4) Monaliza Razote.

Exhibit "F-4" - Certified True Copy of the Location Maps of Unclassified public Forest Land Occupied by (5) Mercedes Ancheta.

Exhibit "F-5" - Certified True Copy of the Location Maps of Unclassified public Forest Land Occupied by (6) Benjamin Naoe.

Exhibit "G" - Certified True Copy of Certification of the Geo-Tagged Photos structures and improvements introduced by (1) Moises Rodolfo.

Exhibit "G-1" - Certified True Copy of Certification of the Geo-Tagged Photos structures and improvements introduced by (2) Julie Lucena.

Exhibit "G-2" - Certified True Copy of Certification of the Geo-Tagged Photos structures and improvements introduced by (3) Arlem Sison.

Exhibit "G-3" - Certified True Copy of Certification of the Geo-Tagged Photos structures and improvements introduced by (4) Monaliza Razote.

Exhibit "G-4" - Certified True Copy of Certification of the Geo-Tagged Photos structures and improvements introduced by (5) Mercedes Ancheta.

Exhibit "G-5" - Certified True Copy of Certification of the Geo-Tagged Photos structures and improvements introduced by (6) Benjamin Naoe.

Exhibit "H" - Certified true Copy of the Report on the Conducted Investigation Regarding Illegal Occupation at the Long Paddock in Brgy. Decalachao, Coron, Palawan within Busuanga Pasture Reserve (BPR) Area dated 11 January 2017.

Exhibit "H-1" - Certified true Copy of Tally Sheet of the Inventory Round Timber in every Make-shift house at the Long Paddock.

Exhibit "H-2" - Certified true Copy of Photo Documentation on the Conducted Investigation Regarding Illegal Occupation at the Long Paddock Area and other Illegal Activities within the Busuanga Pasture Reserve.

Exhibit "H-3" - Certified True Copy of Location Map showing Newly Entered Informal Settlers at the Long Paddock Area and Other Illegal Activities in Brgy. Decalachao, Coron, Palawan.

Exhibit "H-4" - Certified True Copy of Location Map of Informal Settlers at the Long Paddock Area within BPR.

Exhibit "I" - Certified True copy of Verification and Certification of Non-Forum shopping.

Exhibit "J" - Certified True Copy of Notice to Vacate dated 31 March 2017 for Moises Rodolfo.

Exhibit "J-1" - Certified True Copy of Notice to Vacate dated 31 March 2017 for Julie Lucena.

Exhibit "J-2" - Certified True Copy of Notice to Vacate dated 31 March 2017 for Monaliza Razote.

Exhibit "J-3" - Certified True Copy of Notice to Vacate dated 31 March 2017 for Benjamin Naoe.

Exhibit "K" - Certified True Copy of Final Notice to Vacate dated 06 March 2018 for Monaliza Razote.

Exhibit "L" - Certified True Copy of Final Notice to Vacate dated 23 April 2018 for Moises Rodolfo.

Exhibit "L-1" - Certified True Copy of Final Notice to Vacate dated 23 April 2018 for Julie Lucena.

Exhibit "L-2" - Certified True Copy of Final Notice to Vacate dated 23 April 2018 for Arlem Sison.

Exhibit "L-3" - Certified True Copy of Final Notice to Vacate dated 23 April 2018 for Mercedes Ancheta.

Exhibit "L-4" - Certified True Copy of Final Notice to Vacate dated 23 April 2018 for Benjamin Naoe.

Exhibit "M" - Certified True Copy of Recapitulation of Damages amounting to Php39,223.92.

Exhibit "M-1" - Certified True Copy of Recapitulation of Damages incurred regarding the unlawful occupation rendered by Moises Rodolfo.

Exhibit "M-2" - Certified True Copy of Recapitulation of Damages incurred regarding the unlawful occupation rendered by Julie Lucena.

Exhibit "M-3" - Certified True Copy of Recapitulation of Damages incurred regarding the unlawful occupation rendered by Arlem Sison.

Exhibit "M-4" - Certified True Copy of Recapitulation of Damages incurred regarding the unlawful occupation rendered by Monaliza Razote.

Exhibit "M-5" - Certified True Copy of Recapitulation of Damages incurred regarding the unlawful occupation rendered by Mercedes Ancheta.

Exhibit "M-6" - Certified True Copy of Recapitulation of Damages incurred regarding the unlawful occupation rendered by Benjamin Naoe.

Exhibit "N" - Certified True Copy of Certification from CENR Office, Coron dated 31 May 2018.

Exhibit "O" - Certified True Copy of Land Classification Map No. 839, Project 2-A. The Land Classification Map No. 839, Project 2-A.

Exhibit "P" with sub-marking Exhibit "P-1" - Affidavit of Jay Martin F. Lopos/Name and signature of Jay Martin F. Lopos.

Exhibit "Q" with sub-marking Exhibit "Q-1" - Affidavit of Richard John P. Galagate/Name and signature of Richard John P. Galagate.

Exhibit "R" with sub-marking Exhibit "R-1" - Affidavit of Ruby Ann F. Echague/Name and signature of Ruby Ann F. Echague.

Exhibit "S" with sub-marking Exhibit "S-1" - Affidavit of Ferdinand D. Gatchalian/Name and signature of Ferdinand D. Gatchalian.

The Court, noting the Objections of the Defense, RESOLVED to admit all the Exhibits for the Prosecution considering that these were testified upon by the issuers of the same, except for Exhibits "A", "C-2", "H-2", "M".

A Motion for Leave of Court was filed by both counsels for the defense, which the Court accordingly GRANTED. A Motion to Dismiss on Demurrer to Evidence and Comment thereto was accordingly submitted for Resolution of the Court.

The Honorable Court in its Order dated January 29, 2021, resolved to DENY the said Motion to Dismiss, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, it appearing that the prosecution has established all the elements of this offense, the Motion to Dismiss on Demurrer to Evidence is hereby DENIED for lack of merit.

THE CASE OF THE DEFENSE

MERCEDES RODOLFO APOSTOL @ Mercedes Ancheta (April 21, 2021)

The first witness presented by the defense to the witness stand is one of the accused **MERCEDES RODOLFO APOSTOL** alias **MERCEDES ANCHETA**. Considering that the Statement of the witness was not marked during the pre-trial, the counsel for the prosecution objected to the presentation of the same. Thus, counsel for the accused conducted oral direct examination.

On direct examination, witness testified that she is 65 years old, single, but living with a common-law husband and residing in Pandan 2, Brgy. Decalachao, Coron, Palawan from 2013 to 2014. She testified that on the dates indicated in the complaint against her where she allegedly occupied a certain area of the Busuanga Pasture Reserve, it was the time that she visited the *kubo* of Florentino Ancheta, his common law husband then. While there, there were people who went to the place but did not identify themselves, and asked her why she was there and made her sign her name which she did while they photographed her.

The witness testified that she was not aware of an area called Waterfall Paddock. She did not also confirm that the area in the picture submitted in Court and was shown to her is the same area where she was found by the DENR as she cannot remember the place nor the owner of the house seen in the picture.

BENJAMIN NAOE (April 21, 2021)

The next witness presented is **BENJAMIN NAOE**. However, considering that said witness during the conduct of preliminary questions in the direct examination cannot recall

having executed a sworn statement in relation to his case, the counsel for the accused conducted oral direct examination.

The witness testified that on January 10, 2017, he was residing in Malvar, Coron, Palawan and that on the same day he was hired as a helper in the construction of the house of a person named Cris, located in Tubatan. While there, somebody approached him, took his picture and asked his name which he also supplied.

In the course of his testimony, he identified a photo that was shown to him to be the house he was constructing and himself therein including his wife who brought him food at that time. He also testified that at the time the DENR staff approached him, Cris was in Pandan as he was the one who is usually in the area.

MONALIZA RAZOTE (June 15, 2021)

During the continuation of trial for the defense' evidence, Atty. Albert Garraez, the counsel for the accused Monaliza Razote, manifested that they are waiving the presentation of the defense' witnesses in the person of Jesus Razote, Ruby De Leon and Lerma Militar. The accused herself, **MONALIZA RAZOTE** was presented to the witness stand. She identified her sworn statement which constituted as her direct testimony on the stand.

In her *Sinumpaang Salaysay*, the witness stated that she is one of the accused in this case and vehemently denied the accusations against her, particularly, that on January 10, 2017, she entered, occupied and erected a house inside the premises of Busuanga Pasture Reserve, because she has a house in Brgy. Turda, Coron, Palawan where she was peacefully residing. She also denied the statements of Jay Martin Lapos and Richard John Galagate that they actually saw her in the area and interviewed her, as she was not present in the place they have mentioned when they conducted an interview.

The witness contends that in the statements of the prosecution, they took photos of the persons that they found in said area during their ocular inspection and interview, however, she was never seen in those photos, and that only proved that she was not among the persons that they chanced and found in the area they mentioned when they conducted an ocular inspection and interview.

Both defense counsel were given a non-extendable period of Ten (1) days to submit their respective written offer of exhibits. The prosecution is likewise given the same period of time from receipt to submit its comment.

During the hearing on the Defense' Formal Offer of Evidence, Atty. Bethel Faith Beronio, counsel for Mercedes Rodolfo Apostol, Moises Rodolfo, Arlem Sison and Julie Lucena, offers in evidence the following:

Exhibit "1" – Sinumpaang Salaysay of Accused Mercedita Rodolfo Apostol,

Atty. Albert Garraez offers in evidence the following documentary exhibits consisting of the following:

Exhibit "1" - adopting Exhibit "C" of the Prosecution – the Certified True Copy of the Report on the Conducted Monitoring and Investigation of Forest Occupants at the Long Paddock, Barangay Decalachao, Coron, Palawan within the Busuanga Pasture Reserve (BPR) Area dated March 20, 2017.

Exhibit "2" - adopting Exhibit "D" of the Prosecution – the Sinumpaang Salaysay of Richard John Galagate.

Exhibit "3" - adopting Exhibit "G-3" of the Prosecution – the Geo-Tagged Photos of structures and improvements introduced by Monaliza Razote,

Exhibit "4" - Sinumpaang Salaysay of Monaliza Razote,

This Honorable Court resolved to DENY Exhibit "1" offered by Atty. Bethel Faith Beronio, as the said affidavit was not reserved nor submitted within the allowed period.

With regard to Exhibits offered by Atty. Albert Garraez, this Court resolved to ADMIT EXHIBITS "1", "2" and "3" considering that these prosecution exhibits were admitted already by the Court. Exhibit "4" is DENIED admission considering that it was not reserved nor filed within the prescribed period.

With the admission and denial of the above evidence, as manifested, the DEFENSE rested their case.

The prosecution manifested that they will no longer present rebuttal evidence, thus parties were given a period of 15 days to submit their respective Position Papers.

In compliance of the Court's Order, parties submitted their respective position papers, except for the counsel for accused Mercedes Rodolfo Apostol, Moises Rodolfo, Arlem Sison and Julie Lucena. Thus, this case is now deemed submitted for Court's Decision.

ISSUE

**WHETHER OR NOT ACCUSED ARE GUILTY OF THE CRIME
CHARGED AGAINST THEM**

RESOLUTION OF THE COURT

This Honorable Court in resolving the Motion to Dismiss on Demurrer to Dismiss filed by the accused in this case has already ruled that the PROSECUTION HAS ESTABLISHED ALL THE ELEMENTS OF THIS OFFENSE. Thus, the burden now lies with the accused to disprove the same.

The sole issue to be resolved is whether or not the accused were able to disprove the allegations against them.

ACCUSED MERCEDES RODOLFO APOSTOL alias MERCEDES ANCHETA. In her DEFENSE, DENIES that she has a kubo within the subject premise. At the time of the incident in question, she was merely visiting her co accused FLORENTINO ANCHETA, who happens to be his former common law husband.

ACCUSED BENJAMIN NAOE AVERS that on January 10, 2017, he is a resident of Malvar Street, Poblacion, Coron, Palawan and that on the same day he was hired as a helper in the construction of the house of a person named Cris, located in Tubatan. While

there, somebody approached him, took a picture and asked his name which he also supplied.

He identified a photo that was shown to him to be the house he was constructing and also identified himself therein including his wife who brought him food at that time. He also testified that at the time the DENR staff approached him, Cris is in Pandan and he is the one who is usually in the area.

ACCUSED MONALIZA RAZOTE DENIES the accusations against her, that on January 10, 2017, she entered, occupied and erected a house inside the premises of Busuanga Pasture Reserve, because she has a house in Brgy. Turda, Coron, Palawan where she was peacefully residing. She maintains that there was not an instance that she entered the said premise and denies the statements of Jay Martin Lapos and Richard John Galagate that they actually saw her in the area and interviewed her, as she was not present in the place they have mentioned when they conducted an interview.

Further, accused argues that since she was not seen in the pictures of the persons that the DENR personnel found in said area during their ocular inspection and interview, proved that she was not among the persons that they chanced and found in the area they mentioned when they conducted an ocular inspection and interview.

On the other hand, **ACCUSED MOISES RODOLFO, ARLEM SISON. AND JULIE LUCENA** failed to give their testimony in Court. Considering the ruling of this Court that all the elements of offense has been established by the Prosecution, their **CONVICTION IS PERFORCE.**

As between the defense of DENIAL of the accused vis a vis the POSITIVE TESTIMONY AND IDENTIFICATION of the prosecution witnesses, this Court is inclined to believe the prosecution.

To reiterate, this Court had already made a ruling in the Motion to Dismiss on Demurrer to Evidence that the prosecution has clearly established the identities of all the accused in this case as person who illegally entered the subject premises and built shanties thereon, to quote:

The AFFIDAVIT of JAY MARTIN LOPOS (EXHIBIT "B") dated May 31, 2018, clearly states that he was one of those who investigated the complaint about the illegal settlers and interviewed the 8 accused on February 23, 2017 and March 19, 2017.

During the presentation of the said witness on October 19, 2020 and particularly during the cross examination of Atty. Garraez, counsel for accused RAZOTE, the TSN pp. 22, thereof provides:

ATTY. GARRAEZ:

Can you name these eight (8) individuals who were actually found in the area when you conducted the investigation and took the picture?

MR. LOPOS:

Yes, your Honor.

ATTY. GARRAEZ:

Can you name them?

MR. LOPOS:

Mr. Moises Rodolfo, Julie Lucena, Arlem Sison, Melchor Andico, Monaliza Razote, Lorna Basallo, Yolanda Borja, and Mercedes Ancheta.

When asked how he was able to get their names, his answer in page 23 of his TSN states:

MR. LOPOS:

They were exactly the ones who supplied their names when we conducted an investigation, your honor.

COURT:

All these eight (8) accused?

MR. LOPOS:

Yes your honor.

With regard to ACCUSED RAZOTE whom the accused cannot pinpoint in the picture, his explanation is stated in page 24 of his TSN, to wit:

MR. LOPOS:

As I said earlier, your honor, I was not the one who took those picture because at that time I was interviewing the settlers, so I cannot exactly pin point where is Monalisa Razote there or other informal settlers, your honor.

COURT:

But you remembered having actually interviewed Ms. Razote at that time?

MR. LOPOS:

Yes, your honor.

On the otherhand, the AFFIDAVIT of RICHARD JOHN GALAGATE (EXHIBIT "D") dated May 31, 2018, states that he was one of those who investigated about the illegal settlers at Short/Long Paddock at Bgy. Decalachao, Coron, Palawan on January 10, 2017 and there in the area, he saw accused BENJAMIN NAOE actually building his shanty.

This was affirmed in his testimony given in open court on October 20, 2020.

Notably, these witnesses who investigated the illegal settlers in the subject area do not know the names of the accused and the same was only known to them when the accused themselves supplied these informations. During the interview conducted by JAY MARTIN LOPOS. As per testimony of JOHN GALAGATE, they only filed this case against those found in the area and admitting ownership of the shanties.

Thus, last element has been clearly established by the prosecution through their witnesses JAY MARTIN LOPOS and RICHARD JOHN GALAGATE, that is, that the accused occupied it.

Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than negative testimony especially when it comes from the mouth of credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.

Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellants. (**People Of the Philippines, vs. Hernando Bongos, G.R. No. 227698, January 31, 2018**)

Nothing is more settled in criminal law jurisprudence that denial and alibi cannot prevail over the positive and categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. (**People of the Philippines vs. Gonzalo Penaso @ "Lulu", G. R. No. 121980, February 23, 2000**)

Considering that the DEFENSE failed to overcome the prosecution's evidence with their BARE DENIAL and ALIBI, CONVICTION is performe.

WHEREFORE, foregoing premises considered, for entering, occupying or possessing, the subject forest land or grazing land without authority under a license agreement, lease, license or permit and refusing to vacate the area when ordered to do so, which is a clear violation of SECTION 78 of P.D. 705 as AMENDED, **ACCUSED MOISES RODOLFO, MERCEDES RODOLFO APOSTOL alias MERCEDES ANCHETA, BENJAMIN NAOE, MONALIZA RAZOTE, ARLEM SISON. AND JULIE LUCENA** are hereby sentenced to suffer imprisonment of ONE (1) year, to pay the **FINE of P10,000.00 EACH**, to pay the amount of **P 39, 223 .00** for the annual rental/and other charges from (2016 to 2018) jointly and severally for illegal occupancy and to **VACATE THE PREMISE IN QUESTION**.

All the improvements introduced by the accused in the said premise are hereby ordered forfeited in favor of the government.

With regard to accused **MELCHOR ANDICO, LORMA BASALLO, and YOLANDA BORJA** who are still at large, let this case be sent to the Archives with corresponding Alias Warrants of Arrest and to be revived upon their apprehension.

SO ORDERED.

This 30th day of September, 2021 at Puerto Princesa City for Coron, Palawan, Philippines.


LOVELLE MOANA R. HITOSIS
Presiding Judge

Copy furnished:

1. Atty. Maria Emma Gilla A. Mercado
2. Atty. Albert C. Garraez
3. Atty. Bethel Faith G. Beronio
4. DENR Coron, Palawan
5. Moises Rodolfo et. als.,