



REPUBLIC OF THE PHILIPPINES  
Department of Justice  
**BOARD OF PARDONS AND PAROLE**  
DOJ-Agencies Bldg., NIA Rd. cor. East Ave.  
1101 Diliman, Quezon City

24 April 2023

**MARIA ANTONIO YULO LOYZAGA**

*Secretary*

Department of Environment and  
Natural Resources (DENR)  
5 Visayas Avenue, Diliman  
Quezon City

Thru: **LORMELYN E. CLAUDIO**, *CESO IV*  
*Regional Executive Director*  
DENR MIMAROPA  
3rd flr., 1515 DENR by the Bay Bldg.,  
Roxas Boulevard, Brgy. 668,  
Ermita, Manila

**SIR / MA'AM:**


As required by the Board in its meeting held on **24 April 2023**, relative to the petition for parole filed by or in behalf of Person Deprived of Liberty (PDL) **BERTOLDO OCHIMAR y LABOR**, Prison No. I219P-0077, who was convicted of *Violation of Section 94 of RA 8550*, docketed under Criminal Case No. 20065, before the Regional Trial Court, Branch 52, Puerto Princesa City, may we respectfully refer his case to your Office, for comment and recommendation.

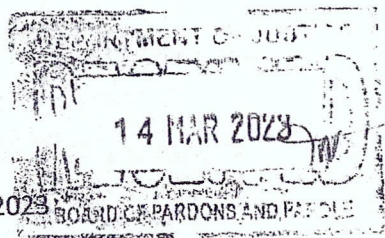
Please be informed that if no comment will be submitted to this Office within forty-five (45) days from receipt hereof, the Board will take it to mean that no objection/opposition is being interposed to the possible grant of Parole to the herein-named PDL.

Hereby attached is the prison record and "Court Decision" of the abovementioned PDL for your further reference.

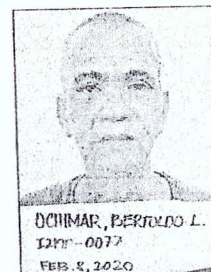
Preferential attention hereto will be highly appreciated.

Very truly yours,  
FOR THE ACTING EXECUTIVE DIRECTOR

  
**ATTY. RONALYN M. OPIÑA-GONZAGA**  
Chief Parole Officer



Department of Justice  
**BUREAU OF CORRECTIONS**  
Muntinlupa City  
**PRISON RECORD**



March 02, 2023

**I. PERSONAL INFORMATION**

Name:	BERTOLDO OCHIMAR y LABOR	Status:	ACT
Prison No.:	I219P-0077	File No.:	C42422
Alias:		Location:	IPPF
Civil Status:	Married	Sex:	Male
Birthdate/Age:	November 29, 1962 / 60	Birthplace:	Butuan City
Nationality:	Filipino	Religion:	Iglesia ni Cristo
Educ. Attain.:	Elementary undergraduate	Occupation:	Construction Worker
Address:	Brgy. San Manuel, Puerto Princesa City, Palawan		

**II. OFFENSE PROFILE**

**Crime(s)/sentence:**

1. CC#20065 VIOLATION OF SECTION 94 OF RA 8550 Min: 6-0-0 Max: 10-0-0  
RTC Br.52 Puerto Princesa City  
P80,000.00 Fine

Commencing: February 22, 2019 Date Received: April 03, 2019 Date Detention: February 22, 2019  
CPI: 0-0-0 TSAL: 0-0-0 TSOB: 0-0-0

**III. REFORMATION EVALUATION**

**Accumulated Earned/Suspended GCTA:**

RA 10592: 946 Credit from Jail: 25 0  
Time Allowance:  
Special Time Allowance for Loyalty STAL 0  
Time Allowance for Study, Teaching or Mentoring 0

**IV. COMPUTATION OF SENTENCE**

Actual Time Served: 4yr(s). 0mo(s). 8day(s). \ Time Served with Earned GCTA: 6yr(s). 7mo(s). 14day(s).  
MIN: April 03, 2025 MAX: April 03, 2029 MIN: \*\*\*Served\*\*\* MAX: August 28, 2026

**Remarks:**

Checked by:

CO2 LIALEY B. CAMPOS

Issued by:

CS04 CESAR T GRECIA  
Chief, Documents Section

Name: OCHIMAR, BERTOLDO y Pris. No.: I219P-0077

Nature of the Case: LABOR  
YIDL. OF SEC-94 OF RA 8550

Action Taken: Denied Exec. Clemency 12-12-2022 RASM  
April 03, 2025. Effect GCTA



Fourth Judicial Region  
BRANCH 52  
Puerto Princesa City

PEOPLE OF THE PHILIPPINES,  
Complainant,

CRIMINAL CASE NO. 20065

-versus-

for

BERTOLDO OCHIMAR and  
FLORIDA FAELNAR,

VIOLATION OF SECTION 94  
OF REPUBLIC ACT NO. 8550

Accused.

X-----X

**DECISION**

Accused Bertoldo Ochimar (accused Ochimar from hereon) and Florida Faelnar (accused Faelnar from hereon) stand charged with the crime of Violation of Section 94 of Republic Act No. 8550 filed by the Provincial Prosecution Office on February 17, 2005. The Information is hereby quoted as follows:


**INFORMATION**

That sometime before the 12<sup>th</sup> day of October 2004, at Sitio Limbongan Bgy. Tinintinan, Municipality of Araceli, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously convert the mangrove area into fishpond with a total area of more or less six (6) hectares, without securing the necessary permit from the Philippine Government, to its damage and prejudice.

**CONTRARY TO LAW.**

Finding probable cause, this Court issued a Warrant of Arrest on February 28, 2005. On March 16, 2005 accused Ochimar and accused Faelnar posted cash bonds for their provisional liberties. During the arraignment of the accused on May 9, 2005, they pleaded not guilty to the crime charged against them. Thereafter, the pre-trial conference ensued and terminated on November 10, 2005.

The trial immediately followed and the prosecution to prove its case presented Barangay Captain Rafael Abiog (Abiog from hereon), Lucibar

  
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Beronio III (Beronio III from hereon), Hernando Condesa (Condesa from hereon), Samuel Caligdong (Caligdong from hereon) and Engr. Mario Palay (Palay from hereon).

Abiog testified<sup>1</sup> that in 2002 he was the Barangay Chairman of Tinintinan, Araceli, Palawan. Sometime in 2003 an information was relayed to him by the barangay tanods and residents of Sitio Limbongan, Barangay Tinintinan that there were some persons who had entered an area and cut mangrove trees. So, he together with other barangay officials and tanods conducted an ocular inspection in Sitio Limbongan. When they arrived, they saw the area of between two and three hectares where mangroves had been cut. They did not, however, chance upon anybody there. Afterwards, they went to the Office of the Municipal Agriculture and talked to Beronio III, then OIC-MAO, and Remegio Rodriguez the Aqua Marine Technician. Beronio III together with other municipal personnel conducted an ocular inspection in the area and, afterwards, he showed him pictures of the area. In 2004, he together with Beronio III and other concerned officials talked about the matter. As a result, Resolution No. 5, Series of 2004<sup>2</sup> of Barangay Tinintinan was passed and adopted. After the passage and adoption of the said resolution, an immediate ocular inspection was conducted by Kilos Sagip Kalikasan, Criminal Intelligence and Detection Group and Environmental Legal Assistance Center members, together with the barangay officials. Afterwards, a Report was made regarding the conduct of ocular inspection and the same was submitted to the Palawan Council for Sustainable Development (the PCSD) in Puerto Princesa City. After some time, another ocular inspection was conducted at Sitio Limbongan, Barangay Tinintinan, Araceli, Palawan and upon arrival at the area they found out that there had been continued cutting of mangroves and the area of fresh-cut mangroves had become wider. Also, he noticed that in the cleared area they saw in the first ocular inspection, a dike was already being built and there was continued cutting of mangroves towards the sea. Upon inquiry upon the laborers, they were informed of the names of their employers as Ochimar and Faelnar. However, he was not familiar with them. In 2005, they were informed by the PCSD that a case against the accused had been filed in court. Another ocular inspection was conducted in the area. Upon arrival thereat, they witnesses laborers still cutting mangroves. When asked why they were still doing it, they replied that there was no order yet prohibiting them to do the same. In one instance, Faelnar went to him to ask a Certification about a certain parcel of land they bought from a certain Ruben Palay. It was then when he asked her about their documents in the clearing of the mangrove area. Faelnar replied that she was processing the same in Manila as she had some connections that would help her in processing the documents. He informed her that the process she was doing was not proper because all the documents needed for clearing a mangrove area should come from the barangay and municipality where the land was situated and not somewhere else.

<sup>1</sup> TSN, May 3, 2007, May 4, 2007, September 8, 2011 and March 19, 2015

<sup>2</sup> Exhibit "F"

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Witness testified that he was born at Sitio Limbuan, Barangay Tinintinan, Araceli, Palawan and one of his neighbour was Ochimar, with the latter starting to occupy the area in 2003. Ochimar cleared the area by cutting the mangrove trees, the biggest size being one foot in diameter and the smallest size being five inches in diameter, using a chainsaw and bolos. At first he saw ten (10) to fifteen (15) persons clearing the land. At this time, he approached Ochimar and asked why he was clearing the area. Ochimar replied that they would make a fishpond. He informed Ochimar that it was prohibited by law to cut mangroves to make a fishpond but the latter replied that he had documents from the Department of Environment and Natural Resources. Thereafter, he went Abiog, then the barangay captain, to inform him about the situation. He was told that a tanod would be sent to the area. He also saw Faelnar in the area watching the laborers work while Ochimar ordered the workers what to do. By 2003 Ochimar and Faelnar cleared about three (3) hectares of land and in a span of five (5) years they were able to clear six (six) to seven (7) hectares of land.

Beronio III testified<sup>4</sup> that in 2002 to 2005, he was the Officer-in-Charge Municipal Agriculture Officer of Araceli, Palawan. That on September 20, 2004, while he was at his office, Barangay Captain Abiog and the barangay officials of Sitio Limbongan, Barangay Tinintinan came and informed him that there was a massive destruction of mangroves and construction of dikes at their sitio. Right there and then, they went to the area to conduct an inspection together with his two (2) companions, the Aquaculture Technician Remegio Rodriguez and the Fish Warden Chairman Efren Dancil. Upon arrival at the area, they saw the thirty (30) laborers who were actually cutting mangroves and constructing dikes in a three-hectare land. Upon inquiry to these persons, they were informed that the owner of dikes was Ochimar who was also there supervising the construction of dikes. They talked to Ochimar and inquired if he had the documents or papers to show the legality of the construction of the fishpond. He answered that his sister Faelnar was in Manila processing the legal documents that they needed for the construction of the fishpond at the concerned department. They then asked the Ochimar if they could take photographs<sup>5</sup> of the area and Ochimar acceded to the request. On his return to the office he made a Progress Report<sup>6</sup> and furnished the proper agencies of the same. After a few days Faelnar went to his office and talked to him regarding her processing of the necessary papers in the construction of the dikes but, nonetheless, failed to show any document. He, thus, suggested that the construction stop and the latter acceded. As a result of the alleged cutting of mangroves and dike construction the barangay prepared a Resolution<sup>7</sup> addressed to PCSD requesting the said agency to look into the said activities.


<sup>3</sup> Exhibit "C" and TSN, September 9, 2011

<sup>4</sup> Exhibit "E" and TSN, October 20, 2011, March 14, 2013, December 5, 2013

<sup>5</sup> Exhibits "I" and "J" and sub-markings

<sup>6</sup> Exhibit "G"

<sup>7</sup> Exhibit "F"

  
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Canguing testified that he was an employee of the DA-BFAR holding the position of Senior Fishing Regulation Officer and Fishpond Coordinator for the Province of Palawan. Before the year 1990 the DA-BFAR previously issued fishpond permits or agreements covering any area in Palawan for a period of twenty five (25) years and renewable for another 25 years. However, when Presidential Decree No. 2152<sup>9</sup> was promulgated declaring the entire Province of Palawan and certain parcels of the Public Domain and/or Parts of the Country as Mangrove Swamp Forest Reserves, their office stopped issuing the fishpond permits in consonance with the said law. The Department of Agriculture also issued Administrative Order No. 8, Series of 1987.<sup>10</sup> Upon receipt of the subpoena in this case, he checked if the accused had previous application for fishpond permits in Sitio Limbongan, Barangay Tinintinan, Araceli, Palawan or its previous owners Loreto or Carlito Delos Angeles or Romellito Retiza. However, their records bared none. Also, Provincial Fishery Officer Paciano Gianan issued a Certification<sup>11</sup> that these persons had no fishpond applications. Lastly, that he was not familiar with the accused or the place subject of this case.

Engr. Palay testified<sup>12</sup> that he was the incumbent Municipal Planning and Development Coordinator and the Department Head of the Local Government Unit of the Municipality of Araceli, Palawan. He knew Engr. Richard Sibai, the former Municipal Planning and Development Coordinator who issued a Notice of Violation<sup>13</sup> against the accused. The Violation was noted by then Mayor Daniel R. Rodriguez. And considering that the fishpond structures of Ochimar and Faelnar did not have any location clearance for building permit, he issued a Certification<sup>14</sup> to that effect. Moreover, Ochimar and Faelnar violated Municipal Zoning Ordinance No. 80, Series of 2003<sup>15</sup> providing the regulations for use of the land within the territorial jurisdiction of the Municipality of Araceli. Moreover, the fishpond structure of Ochimar and Faelnar was built within the mangrove forest of the Environmental Critical Area Network (ECAN)<sup>16</sup> of the Municipality of Araceli, Province of Palawan, Region IV-B. Lastly, his Office did not issue any permit for the conversion of fishpond into mangrove to any person as it was prohibited by law.

Cervancia testified<sup>17</sup> that in October 2004 she was a barangay kagawad of Tinintinan, Araceli, Palawan. Her term ended in 2009. On October 4, 2004, while she was at the barangay hall attending a session together with the barangay captain and other barangay kagawads, they passed Resolution No. 5<sup>18</sup> requesting the PCSD to look into the mangrove area because when they conducted an ocular inspection in Sitio

<sup>9</sup> TSN, December 3, 2015

<sup>10</sup> Exhibit "M"

<sup>11</sup> Exhibit "L"

<sup>12</sup> Exhibit "N"

<sup>13</sup> TSN, March 21, 2018

<sup>14</sup> Exhibit "O"

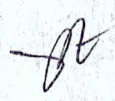
<sup>15</sup> Exhibit "P"

<sup>16</sup> Exhibit "Q"

<sup>17</sup> Exhibit "R"

<sup>18</sup> Exhibit "B" and TSN, July 11, 2018

<sup>19</sup> Exhibit "F"

  
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Limbungan, Barangay Tinintinan, they noticed freshly cut mangroves in about six (6) hectares of land. She knew that the cut mangroves were fresh as the leaves were still green. They happened to know the owner of the area as Ochimar and Faelnar. After the resolution was passed the PCSD came over and checked out the area.

On July 11, 2018, the prosecution offered as additional witnesses Lourdes Valones, Lydia Viguezuela and Geronimo Arzaga whose testimonies would be corroborative of the testimony of Cervancia and the accused admitted<sup>19</sup> the same. Thereafter the prosecution rested its case.

During the presentation of evidence for the accused, both accused took the stand, in addition to Agirico Baltar (Baltar from hereon), as their own witnesses.

Ochimar testified<sup>20</sup> that he arrived at Sitio Limbungan, Barangay Tinintinan, Araceli Palawan on May 26, 2003 from Maligaya, Aborlan, Palawan. Loreto Delos Angeles sold to them a fishpond (palaisdaan) in that place in Araceli. He had met the latter here in Puerto Princesa City as they were fellow members of Iglesia Ni Cristo. Before they bought the property, they conducted an ocular inspection and they came to know an existing dike or fishpond, a house owned by Loreto Delos Angeles with Romelito Retisa as caretaker for milk fish. He paid one hundred twenty thousand for the fishpond (palaisdahan). Then, after the sale, he and his wife transferred residence in Araceli. Romelito Retisa remained as their caretaker. On October 4, 2004, a case was filed against them. When they bought the property, there was no standing mangrove or any other kind of tree in the area. They merely continued clearing the rotten branches of the trees and fixing the damaged dike. He denied that he cut or would cut any mangrove in the area nor in the fishpond or fishery area and that they were law abiding citizens willing to follow and submit to the government agencies' mandate. He added that he and Faelnar wrote the DENR-CENRO, Roxas, Palawan and applied for a "Special Land Use Permit". The personnel conducted an ocular inspection/verification and survey of the fishpond. He denied the charge against him contending the same was filed because there were some politician who wanted to occupy his area.

Faelnar testified<sup>21</sup> that she arrived at Araceli, Palawan on September 2003 from Butuan City, Agusan del Norte to visit his brother Ochimar. His brother had just bought a certain parcel of land from their churchmate Loreto delos Angeles and Romelito Reliza through a Waiver of Rights<sup>22</sup> dated March 9, 2004. A case was filed against them on October 4, 2004 and she was included as an accused in the case as she was the one who processed the documents to make the dike legal. She also wrote the CENRO Roxas Palawan, DENR,<sup>23</sup> the BFAR,<sup>24</sup> and the Office of the President to make the fishpond legal. Thereafter, the CENRO Roxas gave

<sup>19</sup> TSN, July 11, 2018

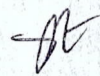
<sup>20</sup> Judicial Affidavit and TSN, October 10, 2018

<sup>21</sup> Judicial Affidavit and TSN, December 5, 2018

<sup>22</sup> Exhibit "1"

<sup>23</sup> Exhibit "2"

<sup>24</sup> Exhibit "4"

  
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dated June 17, 2004 through the Barangay Secretary of Tinintinan, Araceli, Palawan. Lastly, this case was filed against them because the residents in the area did not want them to occupy the place, even though there was already a Memorandum<sup>27</sup> issued by the CENRO Investigator, scaler and forest ranger stating that "they are not criminally liable for the reported forestry law violation."

Agerico Baltar testified<sup>28</sup> that he was a retired Forest Technician II of DENR-CENRO, Roxas, Palawan. In compliance with the Memorandum to conduct inspection issued by the PENRO, Puerto Princesa City, he investigated the fishpond case of certain Bertoldo Ochimar located at Sitio Limbungan, Barangay Tinintinan, Araceli, Palawan and based on his findings, he stated in his Investigation Report<sup>29</sup> that "Finally, the undersigned investigating Forest Officers hereby conclude that the alleged offender is probably not criminally liable for the reported forestry law violation."

### THE ISSUE

The sole issue to be resolved in this case is whether or not the accused are guilty of the crime charged against them.

### RULING OF THE COURT

The accused in this case are charged with converting a mangrove area into fishpond with a total area of more or less six (6) hectares. Section 94 (now Section 99)<sup>30</sup> of Republic Act No. 8550, the law in effect at the time of the filing of the case, provided:

**Section 94. Conversion of Mangroves.** - It shall be unlawful for any person to convert mangroves into fishponds or for any other purposes.

Violation of the provision of this section shall be punished by imprisonment of six (6) years.

<sup>25</sup> Exhibit "3"

<sup>26</sup> Exhibit "5"

<sup>27</sup> Exhibit "6"

<sup>28</sup> TSN, December 12, 2018

<sup>29</sup> supra

<sup>30</sup> SEC. 99. Conversion of Mangroves. - It shall be unlawful for any person to convert mangroves into fishponds or for any other purpose.

Upon a summary finding of administrative liability, the offender shall be penalized with a fine equivalent to the ecological value of a hectare of mangrove based on available studies or administrative fine of Ten million pesos (P10,000,000.00) per hectare, whichever is higher: Provided, That if the area requires rehabilitation or restoration as determined by the Department, the offender shall also be required to restore or pay for the restoration of the damaged area.

Upon conviction by a court of law, the offender shall pay a base fine of Eighty thousand pesos (P80,000.00), a fine equivalent to the administrative penalties, and shall suffer the penalty of imprisonment of six (6) months and one (1) day to twelve (12) years: Provided, That if the area requires rehabilitation or restoration as determined by the court, the offender shall also be required to restore or pay for the restoration of the damage. The offender shall be liable for environmental damages computed at Five hundred thousand pesos (P500,000.00) per hectare per year until the area is restored.

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...one (1) day to twelve (12) years and/or a fine of Eighty thousand pesos (P80,000.00). Provided, That if the area requires rehabilitation or restoration as determined by the court, the offender should also be required to restore or compensate for the restoration of the damage.

It has been held by the Supreme Court in one case<sup>31</sup> that for a prosecution under the said provision of law to succeed, the following elements must be established by the prosecution, to wit:

1. The site of the fishpond is a mangrove forest;
2. There was a conversion of the mangrove area into a fishpond; and
3. The appellant made the conversion.


The *first* element is well-established in this case. The area subject of this case is located in the Province of Palawan. Under the provisions of Proclamation No. 2152,<sup>32</sup> the entire Province of Palawan has been declared as a Mangrove Swamp Forest Reserves, to wit:

Upon recommendation of the Director of Forest Development, duly concurred in by the Minister of Natural Resources, and pursuant to Section 18 of Presidential Decree No. 705, I, FERDINAND E. MARCOS, President of the Philippines, do hereby withdraw from entry, sale, settlement or other forms of disposition, subject to valid private rights, if any there be, and establish as Mangrove Swamp Forest Reserves the parcels of the public domain and/or parts of the country, which are more particularly described, as follows:

**"The entire province of Palawan; xxx"**  
containing an aggregate area of 74,267 hectares, more or less, subject to future ground survey and delimitation, for conservation and protection purposes by reason of their ecological, scientific, educational and recreational values, including flora and fauna and marine life found therein and other values, under the administration and control of the Bureau of Forest

<sup>31</sup> *Leynes vs. People of the Philippines*, G.R. No. 224804, September 21, 2016

<sup>32</sup> December 29, 1981

  
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Development, Ministry of Natural Resources, in consonance with the existing laws and regulations and those that shall be promulgated hereinafter. (emphasis supplied)

It is true that the said law provides the Proclamation is subject to vested private rights. But the accused have not introduced evidence that they acquired vested rights to the area subject of this case or that the classification brought about by Proclamation No. 2152 has been delimited. All that they claim is that they were the rights to the area by the former "owner" thereof. Such rights, however, are not yet certain and still depend on the conditions set by the State to acquire title to the area. Hence, they cannot qualify as vested rights.

In the case of *Benguet Consolidated Mining Co. vs. Pineda*<sup>33</sup> it was held that vested rights are rights or interests in a property which have become fixed and established and are no longer open to doubt, to wit:

Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested.

Neither has there been declaration by the State of the area being converted into alienable and disposable public domain. Moreover, the subject area being worked on by the accused is within the mangrove forest of the Environmental Critical Area Network (ECAN)<sup>34</sup> of the Municipality of Araceli, Province of Palawan, Region IV-B. This was testified on by Engr. Mario Palay, the Municipal Planning and Development Coordinator and the Department Head of the Local Government Unit of the Municipality of Araceli, Palawan. In fact, the accused were even given a Notice of Violation<sup>35</sup> by Engr. Richard Sibala, the predecessor of the said witness for being within the ECAN.


Under these circumstances, the Court entertains no doubt that the area subject of the case is a mangrove area. The *first* element is well-established in this case.

The *second* and *third* elements are likewise well-established in this case. The prosecution witnesses have testified that they witnessed the

<sup>33</sup> 98 Phil. 711, 722

<sup>34</sup> Exhibit "R"

<sup>35</sup> Exhibit "O"

  
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converted the same into a fishpond. The pertinent portion of the testimony of prosecution witness Lucibar Beronio III is hereby quoted, thus:

Q When you arrived (at) the area that afternoon on September 20, 2004, what did you see?

A We saw first in the area the labourers doing their jobs.

Q What they are doing particularly, Mr. Witness?

A Cutting all mangroves and constructing dikes.

xxx

Q And you said you saw them cutting mangroves and constructing dikes, how big more or less is the area that they were doing actually?

A Three (3) hectares, ma'am.

Q And the mangroves that you saw were being cut, how big more or less?

A As far as I can estimate, from 3 inches to 1 foot in diameter, ma'am.

Q Upon seeing them in that place, what did you do Mr. Witness?

A We asked the labourers who are the owners of that particular site.

Q And what information did you gather from them, Mr. Witness?

A The laborers told us that is was Bertoldo Ochimar who owns the dikes.

xxx

Q When you said he was in the other side of the area, did you see what he was doing there?

A Yes, ma'am, he was there supervising the work.

xxx

Q Were they doing anything else aside from the construction of dikes?

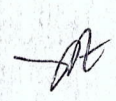
A Supervising the construction of the dikes, your Honor.

xxx

Q So when you saw him there supervising these persons in cutting the mangroves and constructing the dikes, what did you do?

A We talked to him personally and asked him the legality with regards to that project.

Q And what did he tell you?

  
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...the time that moment that his sister was processing the papers or documents to the concern department particularly in Manila.

Q Who was his sister that he mentioned?

A According to him in the person of Florida Faelnar, ma'am.

xxx

Q But did you come to meet his sister after your conversation with Mr. Ochimar?

A Yes, ma'am, a few days after.

Q Under what circumstances did you meet his sister?

A She went personally to the Office of the Municipal Agriculturist.

Q And what did she tell you?

A She told me that they are still processing the documents.

xxx

Q And when she was not able to present to you any copy of the document that she was processing, what did you do next?

A I told her to stop the construction.

Q And what was her reply?

A She told me that they will stop the construction.

Another prosecution witness, Barangay Captain Rafael Abiog, has testified, thus:

Q In the year 2003, Mr. Witness do you remember any incident that has relation to your function in implementing the laws particularly environmental laws?

A Yes, sir.

Q Can you tell us what is that?

A In 2003 there was an information related to me by a Barangay Tanod and residents of Sitio Limbongan, Barangay Tinintinan that there were persons entered the mangrove area.

xxx

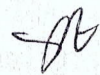
Q According to the report of the Barangay Tanod, Mr. Witness, what were these persons doing in the mangrove area?

A They were cutting the mangrove trees.

Q When you received that report, Mr. Witness, what action did you take?

A We conducted ocular inspection together with the barangay tanod and officials.

Court (to witness)



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Q What particular month, year and date you conducted inspection?

A In the month of August 2003, your Honor.

Pros. Tulali (to witness)

Q By the way, Mr. Witness, in what place did you conduct ocular inspection?

A At Sitio Limbongan, sir.

Q When you arrived in that place, what did you find out?

A Fresh cut mangrove, sir.

xxx

Q How large is the area covered by the area where the mangroves were cut?

A In 2003 about two to three hectares, sir.

Q Did you find out any person in the area when you arrived there?

A None sir, because they stopped.

xxx

Q After that inspection was conducted, was there any occasion that another inspection was conducted?

A Yes, sir.

xxx

Q The year?

A In 2004, sir.

Q Who participated in that ocular inspection, Mr. Witness?

A The Barangay Tanods.

Q Aside from your Barangay Tanods, who else?

A The Municipal Agriculture personnel and the barangay officials.

Q When that inspection was conducted where were you?

A I am present, sir.

Q That ocular inspection was conducted in what place?


A At Sitio Limbongan, Barangay Tinintinan, Araceli, Palawan.

Q When you arrived in that place to conduct an ocular inspection what did you find out?

A They continued to cut the mangroves and the area has already expanded.

Q Why do say that the area has already expanded, Mr. Witness?

A The area where the fresh cut mangroves became wider.



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Q Aside from the cleared area of mangroves, what did you observe from that place, Mr. Witness?

A In the first cleared mangrove area, a dike now was being built while they are still continuing to cut mangroves towards the sea.

Q Why do say, Mr. Witness, that dikes were being constructed?

A Because there are newly constructed dikes.

Q How high were the dikes, Mr. Witness?

A Above waistline, sir.

Q When you arrived in that place, Mr. Witness, during that particular ocular inspection who else were there, if there is any, aside from your team?

A The labourers and employees.

Q Did you happen to know the name or names of these labourers, Mr. Witness?

A I don't know them, sir.

Q How many of them?

A In 2004 the labourers is not less than 50 people.

Q Mr. Witness, did you happen to know the names of the employers?

A We asked the laborers, sir, and they told us the names of their employers but we don't know them.

Q What is the name of their employer as told to you by the labourers?

A Bartoldo Ochimar (sic) and Florida Faelnar, sir.

xxx

Q Now, Mr. Witness, you said that during the ocular inspection conducted you have never met or seen either Bertoldo Ochimar and Florida Faelnar, was there an occasion wherein you have met these persons?

A With regard to Bertoldo Ochimar there was no occasion where we talked, sir, but I always see him passed by our house and went to the area. With regards to Florida Faelnar, once she visited my house and asked for a certification regarding the land they bought.

Q When did this Florida Faelnar visit your house, Mr. Witness?

A Last June 17, 2004.

Q And what was her purpose in going to your house?

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... to get a certification regarding the land they bought.

Q That land where they were asking for a certification was bought from whom?

A From Mr. Ruben Palay, sir.

Q Aside from asking her, Mr. Witness, if there was indeed a sale transaction, what else did ask her, if any?

A I asked Florida Faelnar about the cutting of the fresh mangrove trees and I told her it was already prohibited but she told me that there is no problem about it because they were already processing their papers in Manila.

Q When she said that they were processing their papers in Manila, what did you tell her?

A I asked her why is that they were processing their papers in Manila when the land is situated here they should have processed it here in the barangay, then in the municipality before they went to Manila.

Q What municipality you are referring to, Mr. Witness?

A Araceli, sir.

Q What was the reply of Florida Faelnar, if any?

A She replied that it no longer needed, sir, because they have some well known connections in Manila in processing their papers and the processing in barangay is no longer needed.

xxx

Q Now, when you were told by Florida Faelnar that they do not need the permit from the barangay, what did you do next?

A I told her it is not proper because the processing of the papers should come first from our barangay.

During the cross examination, witness Abiog has stated that:

Q In all these four ocular inspections you did not find the two accused in this case in the area actually cutting mangrove trees, is it not?

A I saw Bartoldo Ochimar, (sic) sir, cutting.

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Q You said when I asked yesterday in the initial cross that you chance upon Ochimar, wherein you said he was



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evasive. When did this transpire? Was that in the land inspected in the year 2005?

A Yes, sir, 2005.

Q Were there still cutting of mangroves in 2005 or they were working in the dikes?

A They were working the dikes.

Q No more cutting of mangrove in 2005?

A They were making dikes but there were some mangroves being cut going to the sea.

Based on these testimonies, it is undisputed that Ochimar must be made accountable for Violation of Section 94 of Republic Act No. 8550 for while he might not have done the actual cutting of mangroves and conversion of the land into dikes or fishpond, he nonetheless facilitated the same. And where does this leave the other accused, Faelnar? Does she go scot free because she did not have any active participation in the cutting of the mangroves and conversion of the land into a fishpond?


It must be noted that the Information alleges conspiracy between Ochimar and Faelnar. The theory of the prosecution is that the act of Ochimar is also the act of Faelnar. It has been held that conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. The rule is that conviction is proper upon proof that the accused acted in concert, each of them doing his part to fulfill the common design.<sup>36</sup>

And when conspiracy is established, the responsibility of the conspirators is collective and not individual. This renders all of them equally liable regardless of the extent of their respective participations, the act of one being deemed to be the act of the other or the others, in the commission of the felony.<sup>37</sup>

The Court opines that the prosecution has sufficiently established that Faelnar conspired with her brother, Ochimar, in committing the crime. The collective testimonies of prosecution witnesses Barangay Chairman Rafael Abiog of Tinintinan, Araceli, Palawan and Engr. Lucibar Beronio III clearly shows that Faelnar came to a common understanding with Ochimar to commit the crime defined and punished under Section 94 of R.A. No. 8550, i.e., to clear a mangrove area by cutting mangroves and converting the same into fishpond or enhanced the same if there had been one in existence. Ochimar did his part of supervising the laborers to clear the

<sup>36</sup> People vs. Villalba and Villalba, G.R. No. 207629, October 22, 2014

<sup>37</sup> People vs. Montanir, et. al., G.R. No. 187534, April 4, 2011

  
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the documents from the main office of the DENR in Manila that would legalize the fishpond. On this matter, Barangay Chairman Rafael Abiog has testified that Faelnar admitted to him she was processing the documents in Manila. This fact is not denied by Faelnar who has even admitted in her testimony that she wrote the Office of the President to legalize the fishpond. Thus, it was clearly established from the evidence of the prosecution that there was conspiracy between Ochimar and Faelnar in the commission of the crime in this case.

To rebut this, the accused in their defense during trial have introduced evidence tending to prove that they were merely continuing what their predecessor-in-interest had started in an existing fishpond, i.e. merely continuing the clearing of rotten branches of the trees and fixing the damaged dikes.


But the argument does not hold water.

In the same case of *Leynes*,<sup>38</sup> the Supreme Court explained that the term "conversion" is not limited in its definition to cutting mangroves to convert the area into a fishpond but rather broad enough to encompass all kinds of changes to the mangrove area that alter its natural structure and form, to wit:

The elementary rule of statutory construction provides that in construing words and phrases used in a statute, and in the absence of legislative intent to the contrary, these words and phrases should be given their plain, ordinary, and common usage meaning. Thus, absent any intent to the contrary, we apply the aforesaid principle in the case at bar. As defined, conversion means "the act or process of changing from one form, state, etc., to another." In the case at bar, Efren's acts of cutting mangrove trees, constructing a dike, installing an outlet (*prinsa*), and excavating in the mangrove forest constitute conversion because it altered the natural structure and form of the mangrove forest. Even if we consider Efren's defense that when he inherited the mangrove forest area from his grandfather it was already fishpond, such does not absolve him from liability. His continued introduction of improvements and continued use of the mangrove forest area as a fishpond, despite knowledge of the same being a mangrove forest area, impose upon him criminal liability.

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<sup>38</sup> *supra*

  
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the conversion of the mangrove forest into fishponds, but its conversion into any other purpose. Indeed, Efren may not have caused the conversion of the mangrove forest into a fishpond, but his acts of cutting mangrove trees, constructing a dike, installing an outlet (*prinsa*), and excavating in the mangrove forest altered the natural structure and form of the mangrove forest—an act punishable by Sec. 94 of R.A. No. 8550.

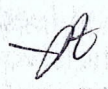
Verily, all three (3) elements of the crime defined and punished under Section 94 of R.A. No. 8550 are present in this case and the evidence presented by the accused has not made any headway into the evidence presented by the prosecution in establishing these elements. Hence, the two (2) accused must be meted the imposable penalty provided for in Section 94 of R.A. No. 8550. Under the provisions of the cited section, the imposable penalty of imprisonment runs from six (6) years and one (1) day to twelve (12) years. This is equivalent to *prision mayor* in the scale of penalties provided for in the Revised Penal Code.

The Court is not unmindful of the passage of Republic Act No. 10654 that amended R.A. No. 8550. The various amendments it provided took effect on March 15, 2015 and Section 94 of R.A. No. 8550 has been expanded and renumbered as Section 99 of the same law. It is now provided in Section 99, that:

SEC. 99. Conversion of Mangroves. – It shall be unlawful for any person to convert mangroves into fishponds or for any other purpose.

Upon a summary finding of administrative liability, the offender shall be penalized with a fine equivalent to the ecological value of a hectare of mangrove based on available studies or administrative fine of Ten million pesos (P10,000,000.00) per hectare, whichever is higher: Provided, That if the area requires rehabilitation or restoration as determined by the Department, the offender shall also be required to restore or pay for the restoration of the damaged area.

Upon conviction by a court of law, the offender shall pay a base fine of Eighty thousand pesos (P80,000.00), a fine equivalent to the administrative penalties, and shall suffer the

  
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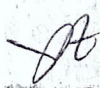


and one (1) day to twelve (12) years: Provided, That if the area requires rehabilitation or restoration as determined by the court, the offender shall also be required to restore or pay for the restoration of the damage. The offender shall be liable for environmental damages computed at Five hundred thousand pesos (P500,000.00) per hectare per year until the area is restored. (emphasis supplied)

It is to be noted that as it stands now, the impossible penalty of imprisonment is six (6) months and one (1) day to twelve (12) years. But though the amendment has lowered the minimum of the impossible penalty, making this particular amendment seem at first glance to be beneficial to the accused and, hence, must be given retroactive effect in the imposition of penalty for the accused, it actually is not.

A closer scrutiny will reveal that the amendment has taken out of the nomenclature of the scale of penalties outlined in the Revised Penal Code the impossible penalty of imprisonment for the crime which cannot now be termed as *prision mayor*. In the application of the Indeterminate Sentence Law, the offenses punishable by the penalties provided in the Revised Penal Code, which includes offenses defined and punished in special laws with the penalties provided for in the Revised Penal Code, will require indeterminate sentences that will have their minimum period within the penalty next lower in degree to the impossible penalty. Before the amendment, the minimum period of the indeterminate sentence for the offense charged against the accused in the present case should be within *prision correccional* which has a range of six (6) months and one (1) day to six (6) years. Hence, the minimum period of the indeterminate sentence would not be higher than six (6) years. With the amendment, the minimum period of the indeterminate sentence could be within the entire range of the impossible penalty as long as it is not less than the minimum of the impossible penalty. But it can be anywhere within the impossible penalty. It only means that the minimum of the impossible penalty can be more than the maximum period of *prision correccional*. Hence, the Court opines that the amendment to the impossible penalty of imprisonment is not beneficial to the accused and should not be applied in this case.

Hence, the provisions of Section 94 of Republic Act No. 8550 before the amendment on the impossible penalties should apply to the accused, i.e. imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine of Eighty Thousand Pesos (P80,000.00). Applying the Indeterminate Sentence Law to the impossible penalty of *prision mayor*, the minimum period of the indeterminate sentence shall be within *prision correccional* while the maximum period of the indeterminate sentence shall be within the impossible penalty.

  
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WHEREFORE, PREMISES CONSIDERED the Court finds accused Bertoldo Ochimar and Florida Faelnar GUILTY beyond reasonable doubt of the crime of Violation of Section 94 of Republic Act No. 8550 and hereby imposes upon the said accused the indeterminate sentence of imprisonment ranging from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, and to PAY a fine of Eighty Thousand Pesos (P80,000.00) each.

Let the corresponding *mittimuses* issue for the transmittal of accused Bertoldo Ochimar to the Iwahig Prison and Penal Farm and of accused Florida Faelnar to the National Correctional for Women in Mandaluyong, Metro Manila for the service of their sentences.

IT IS SO ORDERED.


At Puerto Princesa City, this 22<sup>nd</sup> day of February 2019.

ANGELO R. ARIZALA  
Judge

Copy furnished:

Provincial Prosecution Office  
Atty. Martin E. Ruelo  
Bertoldo Ochimar  
Florida Faelnar  
Municipality of Araceli, Palawan  
Office of the Clerk of Court  
Supreme Court of the Philippines  
National Bureau of Investigation

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