Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

ORLANDO CONSTANTINO, ANTONIO ALEGADO, ROMEO CABILES, LUZVIMINDA CABILES, LENETO BONOCAN, ARTURO L. NUEVA, NORMA C. LUPAS, MERCY B. GALABIN, LUZVIMINDA DIAPOLET, CLARA RAMIREZ, and ELVIE ARCEBAR,
Accused-Appellants.

G.R. No. 251636

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:

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DECISION

HERNANDO, *J.*:

Challenged in this appeal[1] are the November 21, 2018 Decision[2] and June 17, 2019 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 01622-MIN, which affirmed the September 5, 2017 Decision[4] of the Regional Trial Court (RTC), Branch 4, Panabo City, affirming the conviction of accused-appellants Orlando Constantino, Antonio Alegado, Romeo Cabiles, Luzviminda Cabiles, Leneto Bonocan, Arturo L. Nueva, Norma C. Lupas, Mercy B. Galabin, Luzviminda Diapolet, Clara Ramirez, and Elvie Arcebar (collectively, accused-appellants) by the Municipal Trial Court in Cities (MTCC), Panabo City in its

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1 CA *rollo*, p. 190.
2 *Rollo*, pp. 4-18. Penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo A. Camello and Evalyn M. Arellano-Morales.
3 CA *rollo*, pp. 186-189.
4 Id. at 28-35. Penned by Presiding Judge Dorothy P. Montejo-Gonzaga.

March 7, 2016 Decision,[5] for violation of Article 91(B)(3) of Presidential Decree No. (PD) 1067,[6] otherwise known as the Water Code of the Philippines.

The Antecedents:

Accused-appellants were charged before the MTCC with violation of Article 91(B)(3) of PD 1067 in Criminal Case No. 7621 in an Information that reads:

> That on or about July 13, 2009, in the City of Panabo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being members of the White Sand Bentol Fishermen Cooperative, conspiring, confederating and mutually helping each other, without securing the necessary permit required by law, willfully, unlawfully and knowingly occupied, built and constructed building structures in the foreshore area located at Brgy. San Pedro, Panabo City.
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> CONTRARY TO LAW.[7]

Upon arraignment, accused-appellants pleaded not guilty to the crime charged.[8] During the pre-trial, the parties stipulated on the following:

> 1. The prosecution admitted that not one of the complainant[s] is officially employed with the National Water Resources Council;
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> 2. The defense, on the other hand, admitted the following:
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> a. That all the accused have their residence[s] outside the coastal area where their (illegal) structures are found;
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> b. That all the accused claim that they are members of what they call Whitesand Bentol Cooperative;
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> c. That Whitesand Bentol Cooperative is represented by a certain Zosimo Lasco;
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> d. That the Whitesand Bentol Cooperative represented by Zosimo Lasco has filed a Foreshore Lease Application (FLA) received by the CENRO on June 10, 2005;
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> e. That the FLA was signed by Zosimo Lasco in representation of the aforesaid cooperative of which all the accused herein are members; and

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5 Id. at 56-65. Penned by Presiding Judge Andrea Asistido-De la Cruz.

6 Entitled "A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES." Approved: December 31, 1976.

7 CA *rollo*, p. 56.

8 Id. at 57.

f. That a Certification issued by the CENRO states that there is no approval of the FLA in favor of the cooperative.[9]

Thereafter, trial on the merits ensued.

Version of the Prosecution:

The evidence for the prosecution presented the following version of events:

Accused-appellants are members of the White Sand Bentol Fishermen Cooperative (WSBFC).[10] Sometime in January 2009, accused-appellants entered and occupied the foreshore area of Barangay San Pedro, Panabo City, Davao del Norte. They constructed sheds, cottages, and other structures, and operated sari-sari stores without WSBFC's foreshore lease application having been approved by the Department of Environment and Natural Resources (DENR), or the necessary business permit issued by the Licensing Section of Panabo City, Davao del Norte.[11]

On July 13, 2009, prosecution witnesses Oliver Q. Oriol and Mario R. Paña discovered accused-appellants' illegal occupation of the subject foreshore area, construction of various structures, and operation of sari-sari stores.[12]

The Panabo City Government interposed an objection to WSBFC's foreshore lease application and subsequently sent individual notices to accused-appellants to vacate the subject foreshore area which they ignored.[13] Accused-appellants likewise disregarded the notices posted by the Community Environment and Natural Resources Office – DENR (CENRO-DENR) informing the public that no foreshore lease application was approved in favor of any person or group in the subject area, and that a pending lease application filed by any person or group does not authorize them to occupy and possess the area.[14]

Consequently, on May 22, 2013, the Building Official of the Office of the City Engineer, Panabo City issued a Certification stating that no one among the accused-appellants had been issued a building permit.[15]

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[9] Id. at 57-58.
[10] Id. at 31.
[11] Id.
[12] *Rollo*, p. 6.
[13] Id. at 7.
[14] Id.
[15] Id.

Version of the Defense:

The defense presented the following version of events:

Accused-appellants admitted that they are members of the WSBFC and occupied the foreshore area prior to July 13, 2009. On June 10, 2005, WSBFC, headed by Zosimo Lasco (Lasco), filed a foreshore lease application with the CENRO-DENR Region XI-2B, Panabo City over an area of 93,497 square meters (sqm) for the establishment of a beach resort.[16] As per DENR-LMS, Region XI, Davao City, the subject area was classified as "foreshore".[17]

They further alleged that the Municipality of Panabo, Davao del Norte, through its *Sanggunian*, passed Resolution No. 299, Series of 2000 dated May 14, 2000 confirming Resolution No. 46, Series of 2000 of the *Sangguniang Barangay* of San Pedro, Municipality of Panabo, declaring the white sand area as a beach resort.[18] They insisted that they did not know that they needed to secure a permit to set up stores and conduct business activities in the subject area. They alleged that no one from the government informed them of the need to secure a permit. They, however, acknowledged the need to apply for a foreshore lease with the DENR. However, they contended that their occupation and economic activities are lawful pending their foreshore lease application.[19]

Furthermore, they claimed that the MTCC, Panabo City authorized their continued possession of the subject area as per the injunctive relief issued on November 8, 2009 and the December 4, 2009 Decision in Special Civil Case (SCC) No. 30-08, an action for forcible entry filed by accused-appellants against Manuel W. Tan (Tan) and other defendants, which ultimately restored accused-appellants to their possession of the subject foreshore area.[20]

Ruling of the Municipal Trial Court in Cities:

On March 7, 2016, the MTCC rendered its Decision[21] convicting accused-appellants of violation of Article 91(B)(3) of PD 1067. The dispositive portion of the Decision reads:

> WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, they are each sentenced to pay a fine of Three Thousand (P3,000.00) Pesos, with subsidiary imprisonment in case of insolvency.
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> SO ORDERED.[22]

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16 Id.
17 Id. at 8.
18 Id.
19 Id.
20 Id.
21 CA *rollo*, pp. 56-65.
22 Id. at 65.

The MTCC held that a pending foreshore lease application does not automatically authorize a person or group to occupy and/or construct structures or establishments or otherwise put up a beach resort in a foreshore classified area. Also, the December 4, 2009 Decision of the MTCC in SCC No. 30-08 cannot be made as a defense or an excuse in a criminal charge for violation of Article 91(B)(3) of PD 1067. The restoration of accused-appellants' possession over the subject foreshore area is founded on their right of prior physical possession *de facto* which was disturbed and violated by defendants Tan and others, who, claiming ownership over the subject area, placed the law into their hands and forcibly took the subject property.[23]

Ruling of the Regional Trial Court:

On September 5, 2017, the RTC rendered a Decision[24] affirming *in toto* the March 7, 2016 Decision of the MTCC. The *fallo* of the RTC Decision reads:

> **WHEREFORE**, finding no reversible error in the Decision rendered by the court *a quo*, the same is affirmed in toto.
>
> SO ORDERED.[25]

The RTC ruled that not one of the accused-appellants nor WSBFC sought and secured a permit as required by law. The accused-appellants admitted having constructed the structures for beach resort purposes and operated makeshift sheds and sari-sari stores. The lack of the required permit to build or construct a building or establishment is a violative act *per se*. PD 1067 is a special law which punishes and sanctions acts defined and prohibited therein regardless of the intention, motive or reason of the doer. As a general rule, acts punished under special law are *malum prohibitum*. Criminal intent is completely immaterial. The RTC reiterated that a pending foreshore lease application does not automatically authorize a person or group to occupy, build or construct structures or establishments or otherwise put up a beach resort in a foreshore classified area. Thus, accused-appellants should have secured the necessary permit from the government before they constructed or built their buildings and establishments.[26]

Also, the RTC ruled that the subject area is within the definition of "seashore" as provided in PD 1067 even when the Information used the term "foreshore." The RTC declared that the term "seashore" encompasses the concept of a "foreshore area" as the former is much broader and wider, and the latter specifically limits itself to that area or portion of the seashore that lies between the high and low water marks, and alternately wet and dry according to the flow of the tide. Article 51 of PD 1067 provides for a three-meter margin

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[23] Id. at 65.
[24] Id. at 28-35.
[25] Id. at 35.
[26] Id. at 32-33.

within the zone of the entire length of the shore which pertains to the entire seashore. The RTC held that it is logical to conclude that the foreshore area declared by the authorities is well within the seashore.[27]

Moreover, the RTC held that the December 4, 2009 Decision of the MTCC in SCC No. 30-08 cannot exculpate accused-appellants from the criminal charge of violation of Article 91(B)(3) of PD 1067. Even though accused-appellants were declared entitled to the possession of the foreshore area against Tan and other defendants, the subsequent occupation, possession, and construction of structures without appropriate authority or permit from the government was constitutive of a violation.[28]

Lastly, the RTC explained that accused-appellants' contention that there was no exhaustion of administrative remedy, which allegedly violated their right to due process, was misplaced. The concept of exhaustion of administrative remedies is not applicable in criminal cases as Article 93 of PD 1067 explicitly states that all offenses punishable shall be brought before the proper court. The law does not mandate the prior exhaustion of administrative remedies in relation to the alleged violation of PD 1067.[29]

Ruling of the Court of Appeals:

On November 21, 2018, the CA rendered its Decision[30] affirming the RTC's September 5, 2017 Decision. The dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant petition for review is DENIED for lack of merit. The Decision dated 5 September 2017 of the Regional Trial Court, Branch 4, Panabo City, in Criminal Case No. CrC 01-2017 is AFFIRMED.
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> SO ORDERED.[31]

The CA ruled that the instant criminal complaint filed against accused-appellants for violation of Article 91(B)(3) of PD 1067 need not be filed by the NWRB nor it be initiated by CENRO as the Joint Affidavit-Complaint of the CENRO employees was filed before the prosecution' s office, and not directly in court. Under Rule 110 of the Rules of Criminal Procedure, a complaint filed before the prosecutor's office prior to judicial action may be initiated by any person, who does not need to be the offended party, any peace officer, or other public officer charged with the enforcement of the law violated. Thus, although CENRO is not the agency tasked to enforce PD 1067, it can still file a complaint before the office of the prosecutor but not directly in court. Also, the CA noted that even though NWRB manages our water resources, accused-appellants filed

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[27] Id. at 33-34.
[28] Id. at 34-35.
[29] Id. at 35.
[30] *Rollo*, pp. 4-18.
[31] Id. at 17-18.

their foreshore lease application before the CENRO and not with NWRB. Hence, accused-appellants cannot deny CENRO's interest in the utilization and protection of our foreshore land.[32]

Also, the CA found that accused-appellants are guilty of violating Article 91(B)(3) of PD 1067. Although the term used in the Information is "foreshore" and not "seashore", the CA reiterated that seashore obviously covers foreshore. Hence, it ruled that the RTC did not err in affirming MTCC's March 7, 2016 Decision.[33]

A motion for reconsideration[34] was filed by the accused-appellants which was denied by the CA in its June 17, 2019 Resolution.[35] Accused-appellants elevated the instant case *via* a notice of appeal or ordinary appeal.[36]

Issue

Are accused-appellants guilty of violating Article 91(B)(3) of PD 1067?

Our Ruling

After due consideration, we resolve to affirm accused-appellants' conviction of violating Article 91(B)(3) of PD 1067 or unauthorized occupancy of foreshore area without the necessary permit.

At the outset, the Court notes that accused-appellants availed of the wrong mode of appeal by filing a mere notice of appeal, the proper remedy being a petition for review on *certiorari* under Rule 45. Section 1, Rule 45 of the Rules of Court provides that:

> Section 1. *Filing of petition with Supreme Court.* — **A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals**, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, **may file with the Supreme Court a verified petition for review on *certiorari.*** The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.
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> Section 2. *Time for filing; extension.* — **The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.** On motion duly filed and served, with full payment of the docket and other lawful fees and the

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[32] Id. at 13-14.
[33] Id. at 16-17.
[34] CA *rollo*, pp. 148-160.
[35] Id. at 186-189.
[36] Id. at 190.

> deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (Emphasis and underscoring supplied)

In addition, Sections 3 and 6 of Rule 56 explicitly states that:

> SEC 3. *Mode of appeal.* – **An appeal to the Supreme Court, may be taken only by a petition for review on certiorari**, except in criminal cases where the penalty imposed is death, reclusion perpetua or life imprisonment.
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> x x x x
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> SEC. 6. *Disposition of improper appeal.* – Except as provided in Section 3, Rule 122 regarding appeals in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, **an appeal taken to the Supreme Court by notice of appeal shall be dismissed**. (Emphasis and underscoring supplied)

Accused-appellants received the CA's November 21, 2018 Decision and June 17, 2019 Resolution on December 14, 2018 and July 1, 2019, respectively. Hence, they have 15 days from receipt on July 1, 2019 within which to file a petition for review on *certiorari* under Rule 45 to assail the CA's November 21, 2019 Decision and June 17, 2019 Resolution. However, instead of availing of the proper remedy under Rule 45, accused-appellants merely filed an ordinary appeal.

On this alone, accused-appellants' employment of improper mode of appeal warrants the dismissal of the case. The implication of such improper appeal is that the notice of appeal did not toll the reglementary period[37] for the filing of a petition for review on *certiorari* under Rule 45 which is the proper remedy in the instant case. **The right to appeal is not a natural right or a part of due process but a mere statutory privilege. The perfection of appeal in the manner and within the period prescribed is not only mandatory but also jurisdictional.**[38] Accused-appellants have now lost their remedy of appeal from the receipt of the CA's November 21, 2019 Decision and June 17, 2019 Resolution. Their failure to conform with the rules on appeal renders the judgment final and executory.

Even granting that accused-appellants availed of the proper remedy, we see no error in the CA's November 21, 2019 Decision and June 17, 2019 Resolution affirming accused-appellants' conviction for violating Article 91(B)(3) of PD 1067 which provides, thus:

> ARTICLE 91. A. A fine of not exceeding Three Thousand Pesos (P3,000.00) or imprisonment for not more than three (3) years, or both such fine and imprisonment, in the discretion of the Court, shall be imposed upon any person who commits any of the following acts:

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[37] *Silverio, Jr. v. Court of Appeals*, 616 Phil. 1, 14 (2009).
[38] *Lefebre v. A Brown Co., Inc.*, 818 Phil. 1046, 1060 (2017).

x x x x

B. A fine exceeding Three Thousand Pesos (P3,000.00) but not more than Six Thousand Pesos (P6,000.00) or imprisonment exceeding three (3) years but not more than six (6) years, or both such fine and imprisonment in the discretion of the Court, shall be imposed on any person who commits any of the following acts:

x x x x

3. **Unauthorized** obstruction of a river or waterway, or **occupancy of** a river bank or **seashore without permission**.

Admittedly, accused-appellants constructed and occupied various structures on the subject area, which is classified as a foreshore land, without the necessary permit. It is immaterial that the Information adverted to "foreshore" instead of "seashore" in charging them of violating Article 91(B)(3) of PD 1067. This inadvertence does not warrant their acquittal. As correctly held by the courts *a quo*, the term seashore encompasses foreshore lands. Article 51 of PD 1067 states that the shores of the seas are subject to the easement of public use and that **no person is allowed to stay** in the said zone, *i.e.*, **three meters in urban areas**, 20 meters in agricultural areas and 40 meters in forest areas, longer than what is necessary for recreation, navigation, floatage, fishing or salvage, or **to build structures of any kind**. Hence, any unauthorized occupancy of the three-meter shore without permission would entail the corresponding penalty as provided under Article 91(B)(3) of PD 1067.

On the other hand, foreshore land is that "strip of land that lies between the high and low water marks and that is alternatively wet and dry according to the flow of the tide."[39] Obviously, foreshore land must be within the three-meter seashore provided under Article 51 of PD 1067 as it is logically adjacent to the sea since it lies between the high and low water marks.

What PD 1067 penalizes is the unauthorized occupancy of the "seashore" which necessarily includes the "foreshore". Hence, although the Information charged accused-appellants of building and constructing structures on "foreshore area" instead of "seashore" without securing the necessary permit, accused-appellants cannot deny the fact that they committed a violation of Article 91(B)(3) of PD 1067. In fact, they admitted that they had a pending foreshore lease application with the DENR which means that at the time of their unauthorized occupancy, they knew that they needed to secure a permit before they could build and construct various structures on the subject foreshore area.

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[39] *Republic v. Alagad*, 251 Phil. 406, 416 (1989).

Also, although an act prohibited by a special law does not automatically make it *malum prohibitum*, the act of unauthorized occupancy of seashore without the necessary permit punished under Article 91(B)(3) of PD 1067 is considered *malum prohibitum*. The test to determine when the act is *mala in se* and not *malum prohibitum* is whether it is inherently immoral or the vileness of the penalized act.[40] The mere occupancy and construction of various structures by accused-appellants on the subject foreshore land without the necessary permit is not inherently immoral but constitutes a violation of and penalized by Article 91(B)(3) of PD 1067. Hence, as *malum prohibitum*, accused-appellants' pending foreshore lease application over the subject area with the DENR is not a defense to exculpate them of the criminal charge.

Even the restoration of their possession of the subject foreshore area against the alleged rightful owners thereof in the forcible entry case filed before the MTCC in SCC No. 30-08 is not a valid defense to their unauthorized occupancy of the foreshore land without the necessary permit. To reiterate, accused-appellants admitted that they occupied and constructed various structures on the foreshore land without the necessary permit, and during the pendency of their foreshore lease application with the DENR. Intent is immaterial. Hence, despite their good intention, the pendency of their foreshore lease application, or the restoration of their possession in a forcible entry case, the offense is already committed which warrants the application and implementation of PD 1067.

Furthermore, Article 93 of PD 1067 explicitly states that "all actions or offenses punishable under Article 91 of this Code shall be brought before the proper court." Thus, there is no merit in accused-appellants' contention that the prosecution violated the principle of exhaustion of administrative remedies, especially when the instant case involved a criminal charge where jurisdiction is specifically provided for by law under Batas Pambansa Bilang 129 or the Judiciary Reorganization Act.[41]

In addition, Section 1, Rule 9 of the Rules of Procedure for Environmental Cases states that any offended party, peace officer or any public officer charged with enforcement of an environmental law may file a complaint before the

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[40] *Dungo v. People*, 762 Phil. 630, 658-659 (2015).

[41] **Section 32.** *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in criminal cases.* – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

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(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof: *Provided, however,* That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction thereof. *(as amended by R.A. No. 7691)*

proper officer in accordance with the Rules of Court. Section 2 thereof further provides that an information, charging a person with a violation of an environmental law and subscribed by the prosecutor, shall be filed with the court. Clearly, any information charging an offense in violation of PD 1067 should be filed by the prosecutor with the proper court with jurisdiction over the offense, and not with the NWRB. Thus, the subject Information subscribed by Prosecutor Roman P. Bondaon was properly filed with the MTCC which has jurisdiction over the offense. The principle of exhaustion of administrative remedies has therefore no application in this case.

Moreover, the filing of a criminal complaint for violation of any environmental law is not only limited to the public officer charged with the enforcement of said law as it may also be filed by an offended party or a peace officer. Nevertheless, the herein criminal complaint was properly filed by the DENR, being the primary government agency charged with the conservation, management, development, and proper use of the Philippines' environment and natural resources, including those in reservations, watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources.[42]

Although the NWRB is the main government agency which controls and regulates the utilization, development, conservation, and protection of water resources in accordance with the specific provisions of the Water Code,[43] there is no doubt that the DENR's mandate to protect our environmental and natural resources, which include foreshore land, renders the herein criminal complaint properly filed by a public officer charged with the enforcement of environmental law, *i.e.*, unauthorized occupancy of foreshore land without the necessary permit in violation of Article 91(B)(3) of PD 1067. Also, it bears stressing that the DENR is the agency which issues licensing permit in order for the applicants to occupy, build structures, and operate their business on the subject foreshore area.

Based on the foregoing, we affirm accused-appellants' conviction of unauthorized occupancy of the subject foreshore area without the necessary permit in violation of Article 91(B)(3) of PD 1067 with the penalty of fine in the amount of ₱3,000.00 each.

WHEREFORE, the appeal is **DISMISSED.** The November 21, 2018 Decision and June 17, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 01622-MIN are hereby **AFFIRMED.**

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[42] Executive Order No. 192 (1987).
[43] Executive Order No. 123 (2002).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice