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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 2003-9-SC. March 25, 2004]

RE: ADMINISTRATIVE CASE FOR DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT:

BENJAMIN R. KATLY, INFORMATION TECHNOLOGY OFFICER I, SYSTEMS DEVELOPMENT FOR JUDICIAL APPLICATION DIVISION, MISO, *respondent*.

SYNOPSIS

Respondent was administratively charged with dishonesty and falsification of official document for twice misrepresenting in his Personal Data Sheet (PDS) his educational attainment. Respondent admitted that he is not a holder of a baccalaureate degree, and that he was not qualified to his present position of Information Technology Officer I because it requires a Bachelor's Degree in a relevant course. He, however, claimed that that he made the erroneous entry in his PDS upon the advice of his former supervisor. He likewise claimed good faith and oversight in the preparation of his PDS and stressed that he had diligently performed the duties and functions of his position, and that he was instrumental to the success of the establishment of the Supreme Court's web site ad internet connection as well as several other MISO projects.

The Supreme Court found respondent's protestations of good faith and inadvertence too incredible to merit even the slightest

credence. To the mind of the Court, the respondent acted with malicious intent to perpetrate fraud. According to the Court, persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service. It will not tolerate dishonesty for the Judiciary expects the best from all its employees. An employee, such as respondent, who falsifies an official document to gain unwarranted advantage over other more qualified applicants to the same position and secure the sought-after promotion cannot be said to have measured up to the standards required of a public servant. While respondent had contributed greatly to the success of several MISO projects that redounded to the benefit of the entire Judiciary, the Court cannot turn a blind eye to what are clearly transgressions of the law. Dishonesty and falsification are malevolent acts that have no place in the Judiciary. Thus, the Court dismissed the respondent from the service for dishonesty and falsification of official document.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT WILL NOT TOLERATE DISHONESTY FOR THE JUDICIARY EXPECTS THE BEST FROM ALL ITS EMPLOYEES.—** We have repeatedly said that persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service. This Court will not tolerate dishonesty for the Judiciary expects the best from all its employees. An employee, such as respondent, who falsifies an official document to gain unwarranted advantage over other more qualified applicants to the same position and secure the sought-after promotion cannot be said to have measured up to the standards required of a public servant.
2. **ID.; ID.; ID.; DISHONESTY AND FALSIFICATION ARE MALEVOLENT ACTS THAT HAVE NO PLACE IN THE JUDICIARY.—** While respondent had contributed greatly to the success of several MISO projects that redounded to the benefit of the entire Judiciary, the Court cannot turn a blind eye to what are clearly transgressions of the law. Dishonesty

and falsification are malevolent acts that have no place in the Judiciary. Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct. A person aspiring for public office must observe honesty, candor, and faithful compliance with the law. Nothing less is expected.

3. ID.; ID.; ID.; DISHONESTY AND FALSIFICATION OF A PUBLIC DOCUMENT; RESPONDENT FOUND LIABLE THEREFOR; IMPOSABLE PENALTY IS DISMISSAL. — For having twice misrepresented in his Personal Data Sheets that he was a college graduate when in reality he was not, we are constrained to hold respondent liable for dishonesty by misrepresentation and falsification of a public document. Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of EO 292 and other Pertinent Civil Service Laws, dishonesty and falsification of public document are considered grave offenses for which the penalty of dismissal is prescribed even at the first instance. Section 9 of said Rule likewise provides that "The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits, and retirement benefits, and the disqualification for re-employment in the government service. This penalty is without prejudice to criminal liability of the respondent." With respect to accrued leave credits, a distinction must be made with respect to any accrued leave credits respondent earned before December 12, 1994, and the credits respondent may have earned from December 12, 1994, to the present. Respondent was entitled to leave credits earned before December 12, 1994, as he was employed in positions for which he was qualified. Any credits earned from December 12, 1994, to the present are forfeited because his ineligibility to assume positions requiring a Bachelor's degree retroacts to December 12, 1994, the date he was appointed as Computer Maintenance Technologist III.

R E S O L U T I O N

***PER CURIAM*:**

In a letter[1] dated March 17, 2003, Editha M. de la Peña, Director III, Public Information Service of the Civil Service

[1] *Rollo*, p. 36.

Commission, referred to the Administrative Services Office of this Court a text message received through the Commission's TEXTCSC Project. The text message charged respondent Benjamin R. Katly of dishonesty and falsification of official document. Katly is the Information Technology Officer I, Systems Development for Judicial Application Division of the Management Information Systems Office (MISO) of this Court. He has been an employee of the Court since July 1, 1991.[2]

The text message referred by the CSC reads as follows:

GUD PM. IM ASKING UR HELP RE. OFFICER BENJAMIN KATLY OF MIS OFFICE W/C FALSFY HIS SCHOOL RECORD OF BEING GRADUATD BUT KICKOUT. HES CLAIMING GRADUATD FROM MAPUA INSTITUTE OF TECHNOLOGY. BATCH 1994. BUT WHEN WE CHEK HIS STATUS IS OUT [sic].

Acting on the referral, the Administrative Services Office wrote the Registrar of the Mapua Institute of Technology and requested a certification that respondent had indeed graduated with a degree in Bachelor of Science in Electronics and Communications Engineering, as he claimed.[3]

In her reply letter[4] of May 8, 2003, Lilian T. Lerios, the Deputy Registrar of Mapua, certified that respondent was an undergraduate at the Mapua Institute of Technology School of Electronics and Communications Engineering from "the 1st semester of school year 1986-1987 up to 1st semester school year 1992-1993 as a 5th year undergraduate student."

Further investigation also revealed that sometime in 1994, respondent applied for a promotion to the position of Computer Maintenance Technologist III, a position that requires a Bachelor's degree relevant to the job. In the Personal Data Sheet (PDS) that respondent accomplished on December 15, 1994, respondent made an entry that was markedly different from his earlier

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[2] *Id*. at 1.

[3] *Id*. at 38.

[4] *Id*. at 39.

Personal Data Sheets. In Item No. 17, on educational attainment, respondent typed "B.S. E.C.E." under the heading "Degree/ Units Earned." He likewise wrote "GRADUATE" under the heading "Honors Received."[5] In all his previous Personal Data Sheets, respondent did not hide the fact that he had not graduated from the Mapua Institute of Technology[6] even when one of the positions he applied for, that of Computer Maintenance Technologist II, required him to be a holder of a Bachelor's degree.

On December 12, 1994, respondent was promoted[7] to the position of Computer Maintenance Technologist III upon the recommendation of the Selection and Promotion Board.

On December 6, 1995,[8] respondent again applied for promotion to the position of Information Technology Officer I, a higher position that also required a Bachelor's degree relevant to the job. Just as he had done in his previous application, respondent attached a copy of his resumé[9] to his application letter. In his resumé, respondent indicated his highest educational qualification as "Bachelor of Science in Electronics and Communications Engineering (BSECE)" with inclusive dates of attendance "1986 to 1993" at the Mapua Institute of Technology.[10] He likewise reiterated this in his Personal Data Sheet accomplished on an illegible date "5 1996."[11] There, respondent typed "B.S. ECE" under "Degree/Units Earned" in Item No. 17, for educational attainment.[12] Through these representations respondent secured on March 5, 1996, his present position as Information Technology

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[5] *Id*. at 27.

[6] *Id*. at 11, 13.

[7] *Id*. at 26.

[8] *Id*. at 28.

[9] *Id*. at 29-33.

[10] *Id*. at 29.

[11] *Id*. at 35.

[12] *Ibid*.

Officer I in the Systems Development for Judicial Application Division, MISO.[13]

Because of the apparent untruthful entries in his Personal Data Sheets submitted in 1994 and 1996, the Administrative Services Office directed respondent to submit a written comment and to explain why no disciplinary action should be taken against him for dishonesty and falsification of official document.[14]

In his comment,[15] respondent admits he is not a holder of a baccalaureate degree. He claims that he made the erroneous entry in connection with his application for promotion to his present position upon the advice of his former immediate supervisor, Noel V. Luna, who then occupied a position requiring a baccalaureate degree but who did not possess the required qualification. To explain his act, respondent implies that he had no choice but to follow Luna because the latter was his superior.

Respondent also declares that when he signed his updated Personal Data Sheet, he did not have time to review its contents because he was too busy and preoccupied with many calls from the different offices of the Court. He attributes his inadvertence to his belief that the assistant in their office only copied the details in his previous Personal Data Sheet without changing any detail. He likewise claims that he was not motivated by any malicious intention to falsify his records, as shown by the fact that he had not misrepresented his educational attainment in any of his earlier Personal Data Sheets.

Respondent stresses that he had diligently performed the duties and functions of his position, even claiming to be instrumental to the success of the establishment of the Supreme Court's website and internet connection as well as several other MISO projects. These accomplishments, according to him, had contributed greatly to the Judiciary.

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[13] *Id.* at 34.

[14] *Id.* at 40-41.

[15] *Id.* at 44-45.

Finally, respondent prays for kind consideration in his favor, promising to complete the qualification requirements of his present item at the soonest possible time.

After the hearing held on June 20, 2003, Chief Administrative Service Officer Eden T. Candelaria found respondent liable for dishonesty and falsification of official document. In her memorandum dated January 15, 2004,[16] Candelaria recommended that respondent be dismissed from the service.

We find the recommendation well founded.

Respondent admitted that he knew that the position of Information Technology Officer I requires a Bachelor's degree in a relevant course and that he was not qualified for it.[17] Yet, on the advice and example of his superior, Noel Luna, respondent made the false entry in his Personal Data Sheet. And for seven years since his appointment in March 5, 1996, respondent did nothing to inform this Court or the Administrative Services Office of his alleged oversight in his Personal Data Sheet. Instead, he continued to enjoy occupying the position of Information Technology Officer I. Under these circumstances, respondent's protestations of good faith and inadvertence are simply too incredible to merit even the slightest credence. To our mind, respondent acted with malicious intent to perpetrate a fraud.

Respondent has misrepresented his educational attainment to gain promotion once before. He started misrepresenting his educational attainment in connection with his appointment as Computer Maintenance Technologist III, a position that also required him to be a holder of a Bachelor's degree in a relevant course. Respondent did not have the motive to misrepresent his educational attainment when he applied for the position of Computer Maintenance Technologist II, his first promotion, because at the time he applied for this position, Civil Service Memorandum Circular No. 23, Series of 1991, was still in effect. Given his experience and the number of seminars he had attended,

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[16] *Id*. at 1-9.

[17] *Id*. at 60.

his appointment would still have been approved despite the fact that he did not have a Bachelor's degree.

At the time respondent was applying for the position of Computer Maintenance Technologist III, however, the policy on substitution of relevant training/seminars and experience to meet deficiencies in education under Civil Service Memorandum Circular No. 23, Series of 1991, was already disallowed effective January 1, 1993.[18] Hence, the only way respondent could secure his appointment was by misrepresenting his educational attainment. Respondent admitted that this was precisely what he did in his Personal Data Sheet dated December 15, 1994, although he knew that he was committing falsification of a public document.[19] He repeated his violation in his Personal Data Sheet when he applied for his present position as Information Technology Officer I.

We have repeatedly said that persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service.[20] This Court will not tolerate dishonesty for the Judiciary expects the best from all its employees.[21] An employee, such as respondent, who falsifies an official document to gain unwarranted advantage over other more qualified applicants to the same position and secure the sought-after promotion cannot be said to have measured up to the standards required of a public servant.[22]

While respondent had contributed greatly to the success of several MISO projects that redounded to the benefit of the entire Judiciary, the Court cannot turn a blind eye to what are

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[18] Civil Service Memorandum Circular No. 42, Series of 1991.

[19] *Rollo*, p. 61.

[20] *Ibay v. Lim*, A.M. No. P-99-1309, 11 September 2000, 340 SCRA 107, 113.

[21] *Musni v. Morales*, A.M. No. P-99-1340, 23 September 1999, 315 SCRA 85, 91.

[22] *De Guzman v. Delos Santos*, A.M. No. 2002-8-SC, 18 December 2002, 394 SCRA 210, 218.

clearly transgressions of the law. Dishonesty and falsification are malevolent acts that have no place in the Judiciary.[23] Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct.[24] A person aspiring for public office must observe honesty, candor, and faithful compliance with the law. Nothing less is expected.

For having twice misrepresented in his Personal Data Sheets that he was a college graduate when in reality he was not, we are constrained to hold respondent liable for dishonesty by misrepresentation and falsification of a public document.[25]

Under Section 23,[26] Rule XIV of the Omnibus Rules Implementing Book V of EO 292[27] and other Pertinent Civil Service Laws, dishonesty and falsification of public document are considered grave offenses for which the penalty of dismissal is prescribed even at the first instance. Section 9 of said Rule likewise provides that "The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits, and retirement benefits, and the disqualification for re-employment

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[23] *CSC v. Sta. Ana*, A. M. No. OCA-01-5, 1 August 2002, 386 SCRA 1, 11.

[24] *Supra*, note 22 at 219.

[25] *See* Administrative Case for Dishonesty and Falsification of Official Document against *NOEL V. LUNA, SC Chief Judicial Staff Officer, SPPE Division, MISO,* A.M. No. 2003-7-SC, 18 December 2003.

[26] Sec. 23. Administrative offenses with its (sic) corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its (sic) nature and effects of said acts on the government service.

The following are grave offenses with its corresponding penalties:

(a) Dishonesty (1st Offense, Dismissal)

x x x x x x x x x

(f) Falsification of official document (1st Offense, Dismissal)

[27] Administrative Code of 1987.

in the government service. This penalty is without prejudice to criminal liability of the respondent."[28]

With respect to accrued leave credits, a distinction must be made with respect to any accrued leave credits respondent earned before December 12, 1994, and the credits respondent may have earned from December 12, 1994, to the present. Respondent was entitled to leave credits earned before December 12, 1994, as he was employed in positions for which he was qualified. Any credits earned from December 12, 1994, to the present are forfeited because his ineligibility to assume positions requiring a Bachelor's degree retroacts to December 12, 1994, the date he was appointed as Computer Maintenance Technologist III.[29]

WHEREFORE, respondent BENJAMIN R. KATLY, Information Technology Officer I, Systems Development for Judicial Application Division, MISO, is found *GUILTY* of dishonesty and falsification of official document thereby warranting his *DISMISSAL* from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits earned before December 12, 1994.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Puno, J., on leave.

Vitug and *Panganiban, JJ.,* on official leave.

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[28] *CSC v. Sta. Ana,* A.M. No. P-03-1696, 30 April 2003, p. 11.

[29] See *De Guzman v. Delos Santos, supra,* at 219.

SECOND DIVISION

[A.M. No. MTJ-02-1448. March 25, 2004]
(Formerly OCA IPI No. 01-1136-MTJ)

ATTYS. JOSE B. JOSON and ANTHONY L. PO, *petitioners, vs.* **JUDGE BELEN B. ORTIZ, MeTC-Br. 49, Caloocan City,** *respondent*.

SYNOPSIS

Petitioners, counsel for the plaintiff in Civil Case No. 00-25537, for ejectment and damages, charged the respondent judge with gross inefficiency and violation of the Code of Judicial Conduct, particularly Rules 3.08 and 3.09 relative to the said case. Among other things, it was alleged that the respondent judge cancelled the scheduled preliminary conference without any notice whatsoever in view of the alleged attendance of the respondent judge in an emergency meeting of the Board of Directors of the Metropolitan and City Judges Association of the Philippines; that her 6 December 2000 Order was belatedly released to the parties; that she failed to decide the cases within the reglementary period. The respondent judge denied the charges against her. The Office of the Court Administrator recommended that the case be dismissed for lack of merit but that the respondent judge be advised to be more careful in the performance of her duties.

The explanations of the respondent judge to the allegations of complainants failed to absolve her from administrative liability. Firstly. The Supreme Court found the proffered purpose or nature of the "emergency" does not justify the cancellation of a scheduled hearing in the respondent judge's sala. The respondent judge was reminded that her duty to the court and the public is more important than attending to her duties to any private organization. Secondly. The respondent judge was remiss in her duties under Rules 3.08 and 3.09 of the Code of Judicial Conduct when she failed to ensure that her Order dated 6 December 2000 was properly sent out to the parties. The respondent judge cannot seek refuge in the alleged failure of her staff to send out her order immediately after it was issued

nor in the incompetence of his subordinates to excuse her own inefficiency since proper and efficient court management is her own responsibility. Also, the respondent judge cannot be heard to claim that the delay could have been avoided had complainants themselves been more vigilant in inquiring from the Clerk of Court whether the subject Order had been sent out and when. It was the responsibility of the respondent judge, not complainants, to ensure that her Order was accordingly released. Thirdly. The respondent judge cannot be excused by reason of her being Executive Judge, Presiding Judge of Branch 43 and Pairing Judge of Branches 50 and 53. The Court has already ruled that the designation of a judge as an Executive Judge or as Acting Presiding Judge of two other salas does not excuse the judge from complying with the duty to decide cases within the prescribed period. Verily, the Court cannot brush aside and label the acts of the respondent judge as mere oversights and dismisses the charges. Instead, the respondent judge must be imposed a proportionate penalty for conduct violative of the Code of Judicial Conduct to which she is bound as Judge. Considering that the respondent judge incurred a delay of three (3) months before she issued the 6 December 2000 Order, the Court deemed the imposition upon the respondent judge of a fine of Two Thousand Pesos (₱2,000) warranted under the circumstances.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; A SIMPLE EXPEDIENCY SUCH AS A COMPLAINANT'S CHANGE OF MIND FOLLOWED BY A WITHDRAWAL OF THE COMPLAINT WOULD NOT RESULT IN THE AUTOMATIC DISMISSAL OF THE CASE.—** The Court deems it necessary to rule on the allegations set forth in the complaint notwithstanding complainants' manifestation during the investigation conducted by Executive Judge Bello, Jr. that they were no longer interested in pursuing their complaint. It was no less than the Executive Judge herself who cited *Judge Cabatingan v. Judge Arcueno* where this Court ruled that "[a] simple expediency such as a complainant's change of mind followed by a withdrawal of the complaint would not result in the automatic dismissal of the case."

2. JUDICIAL ETHICS; JUDGES; DUTY TO THE COURT AND THE PUBLIC IS MORE IMPORTANT THAN ATTENDING TO THEIR DUTIES TO ANY PRIVATE ORGANIZATION; CASE AT BAR.— To the cancellation of the preliminary conference set on 15 November 2000, respondent Judge offered as an explanation the emergency meeting of the Board of Directors of the Metropolitan and City Judges Association of the Philippines (MCJAP), of which she is a member. In her position paper, she maintained that the purpose of the emergency meeting was "to conduct a final check and verification on the logistical/ manpower arrangements, program, speakers, *etc*. for the three-day convention and seminar of the MCJAP which was due to start the following day, 16 November 2000 at the Century Park Sheraton Hotel." The Court, however, finds that the proffered purpose or nature of the "emergency" does not justify the cancellation of a scheduled hearing in the respondent Judge's sala. She must be reminded that her duty to the court and the public is more important than attending to her duties to any private organization. The scheduled hearings of cases must be given priority as they have been priorly set with notice to all parties. Moreover, the setting of the preliminary conference for 15 November 2000 was "for the last time" according to respondent's own *Order*. She should have given meaning and due importance to her own warning.

3. ID.; ID.; JUDGES CANNOT SEEK REFUGE IN THE INCOMPETENCE OF THEIR SUBORDINATES TO EXCUSE THEIR OWN INEFFICIENCY SINCE PROPER AND EFFICIENT COURT MANAGEMENT IS THEIR OWN RESPONSIBILITY; CASE AT BAR.— The denial of respondent Judge that her 6 December 2000 *Order* was antedated, since it was given in open court during the preliminary conference may be acceptable because of the fact that it was done in open court. However, it does not mean that the transcription and finalization of said *Order* could not have been antedated, considering that it was much belatedly released to the parties. The records show that the subject *Order* of 6 December 2000 was only mailed on 8 March 2001, two (2) days after petitioners filed with the MeTC-Br. 53 their *Manifestation and Motion to Resolve and Render Decision in Civil Case No. 00-25537*. Clearly, the act of finally sending out the *Order* is by itself evidence of the blatant inefficiency,

if not, worse still, a desperate measure aimed at covering-up the patent neglect. Definitely, respondent judge cannot seek refuge in the alleged failure of her staff to send out her order immediately after it was issued nor in the incompetence of his subordinates to excuse her own inefficiency since proper and efficient court management is her own responsibility. She is the master of her own domain and should take responsibility for the mistakes of those under her.

4. ID.; ID.; RULES 3.08 AND 3.09 OF THE CODE OF JUDICIAL CONDUCT; VIOLATED BY THE RESPONDENT JUDGE WHEN SHE FAILED TO ENSURE THAT HER ORDER WAS PROPERLY SENT OUT TO THE PARTIES.— Thus, in failing to ensure that her *Order* dated 6 December 2000 was properly sent out to the parties, respondent was definitely remiss in her duties under Rules 3.08 and 3.09 of the Code of Judicial Conduct, thus: Rule 3.08. — A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel. Rule 3.09. — A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity. But more than that, she failed to give due importance to the very purpose for the adoption of the Revised Rule on Summary Procedure, *i.e.*, to provide an expeditious settlement of the cases covered by it, and to avoid unnecessary delays in their disposition. It is disappointing at the very least to know that it was the court, nay the judge herself, that occasioned the delay sought to be prevented by the Rule.

5. ID.; ID.; ID.; DESIGNATION OF A JUDGE AS AN EXECUTIVE JUDGE OR AS ACTING PRESIDING JUDGE OF TWO OTHER SALAS DOES NOT EXCUSE JUDGE FROM COMPLYING WITH THE DUTY TO DECIDE CASES WITHIN THE PRESCRIBED PERIOD.— Moreover, respondent Judge cannot be excused by reason of her being Executive Judge, Presiding Judge of Branch 43 and Pairing Judge of Branches 50 and 53. We have already ruled that the designation of a judge as an Executive Judge or as Acting Presiding Judge of two (2) other salas does not excuse the judge from complying with the duty to decide cases within the prescribed period. The

other branches temporarily assigned to her have their own Branch Clerks of Court to handle the affairs of their respective branches, so that respondent Judge cannot claim that her Branch Clerk of Court and the staff under her were overburdened because of the other branches assigned to her. Each branch has its own responsibilities even if assigned temporarily under the judge of another branch.

6. ID.; ID.; THIRTY (30) DAYS TO DECIDE CASES COVERED BY THE REVISED RULE ON SUMMARY PROCEDURE; CASE AT BAR.— The fact that Civil Case No. 00-25537 was not yet submitted for decision at the time complainants filed their *Manifestation and Motion to Resolve and Render Decision in Civil Case No. 00-25537* on 6 March 2001 is of no moment and cannot absolve respondent Judge from administrative liability. Precisely the reason why the subject case was decided only on 30 March 2001, or more than ten (10) months after it was filed on 26 May 2000, and more than three (3) months after the preliminary conference held on 6 December 2000 was because it took so long before the parties received respondent Judge's written *Order*. The date of receipt by the parties of the said *Order* is crucial since it is from there that the 10-day period for submission of position papers is to be reckoned. The date of filing of position papers, or the expiration of the period for filing them, is in turn crucial in determining the 30-day period within which the court ought to render judgment. Besides, it was respondent Judge cannot be heard to claim that the parties were given ten (10) days to file their position papers. She was well aware that upon the expiration of the period for submission by the parties of their position papers, or on 16 December 2000, the case would be submitted for decision. Why was there delay on her part to decide the case for more than thirty (30) days after the case was deemed submitted for decision? The reglementary period for deciding cases covered by the *Revised Rule on Summary Procedure* is only thirty (30) days and not three (3) months as respondent Judge *Comment* seems to impliedly in his *Comment*.

7. ID.; ID.; IT WAS UNTHINKABLE FOR A JUDGE TO CONTEND THAT COMPLAINANTS FAILED TO REMIND HER TO ISSUE THE ORDER, FOR IT IS NOT THEIR DUTY BUT HERS TO ISSUE A PRE-TRIAL ORDER.— Also,

respondent Judge cannot be heard to claim that delay could have been avoided had complainants themselves been more vigilant in inquiring from the Clerk of Court whether her *Order* of 6 December 2000 had been sent out and when; that instead of calling the attention of the Clerk of Court to the oversight immediately and simply without much "brouhaha," complainants allegedly allowed months to pass by knowing fully well that the case would be submitted for decision only after the parties shall have filed their respective position papers within ten (10) days from receipt of the order. In *Requierme, Jr. v. Yuipco*, we ruled that it was unthinkable for a judge to contend that complainants failed to remind her to issue the order, for it is not their duty but hers to issue a pre-trial order. In the instant case, it was herein respondent's responsibility, not complainants, to ensure that her *Order* of 6 December 2000 was accordingly released.

8. ID.; ID.; VIOLATION OF THE CODE OF JUDICIAL CONDUCT; IMPOSABLE PENALTY.— In fine, the explanations of respondent Judge to the allegations of complainants failed to absolve her from administrative liability. Her collective acts of inefficiency are clearly known in her inability to carry out her duties with efficacy and alacrity. Verily, the Court cannot brush aside and label her acts as mere oversights and dismiss the charges. Instead, respondent Judge must be imposed a proportionate penalty for conduct violative of the *Code of Judicial Conduct* to which she is bound as Judge. In *Belen v. Soriano*, the Court admonished the respondent Judge therein and imposed upon him a fine of Two Thousand Pesos (₱2,000.00) for failure to file his *Order* dismissing two criminal cases for grave threats for lack of jurisdiction, and for his delay of more than one year in furnishing the prosecution a copy of said *Order*. In *Heirs of the Late Nasser D. Yasin v. Felix*, the respondent Judge was ordered to pay a fine of Two Thousand Pesos (₱2,000.00) for failing to ensure that a written *Notice of Hearing* on a petition for *habeas corpus* was sent by his staff to the Provincial Prosecutor prior to the hearing. Considering that in the present case, the respondent Judge incurred a delay of three (3) months before she issued the 6 December 2000 *Order*, this Court deems the imposition upon respondent Judge of a fine of Two Thousand Pesos (₱2,000.00) warranted under the circumstances.

APPEARANCES OF COUNSEL

Anthony L. Po for petitioners.
Orosa Blanco & Ortiz Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

Attys. Jose B. Joson and Anthony L. Po, counsel for the plaintiff in Civil Case No. 00-25537, "*Perlinda Lim Yeung and Yeung Yan Seu v. Salvador Brecilla,*" for ejectment and damages before the Metropolitan Trial Court, Branch 53, Caloocan City (MeTC-Br. 53), in their verified *Complaint* dated 15 March 2001 charged respondent Judge Belen B. Ortiz, Presiding Judge, MeTC-Br. 49, Caloocan City, and Pairing Judge of MeTC-Br. 53 of the same court, with *Gross Inefficiency and Violation of the Code of Judicial Conduct*, particularly Rules 3.08 and 3.09 thereof.

Specifically, complainants alleged that —

(a) Respondent Judge cancelled the preliminary conference scheduled on 27 September 2000 on the bare manifestation of defendant's counsel that his brother "had already died," and reset the conference to 15 November 2000 "for the last time" despite the objection of plaintiff's counsel;

(b) The preliminary conference as reset was again cancelled without any notice whatsoever in view of the alleged attendance of respondent Judge in a seminar;

(c) Respondent Judge never bothered to send an order in reference to the ten (10)-day period she gave during the preliminary conference on 6 December 2000 to submit position papers;

(d) Respondent Judge, despite the expiration on 16 December 2000 of the 10-day period to submit position papers with only plaintiff submitting one, failed to decide the case for more than three (3) months after it was submitted for decision;

(e) The inaction of respondent Judge prompted them to file on 6 March 2001 a *Manifestation and Motion to Resolve and Render Decision in Civil Case No. 00-25537* and it was only then that respondent Judge acted by issuing an Order to the effect that the case could not be considered as submitted for decision yet on 16 December 2000 since there was no proof that the defendant had already received copy of her Order dated 6 December 2000; and

(f) The complainants received a copy of the Order dated 6 December 2000 on 14 March 2001 which was only mailed on 8 March 2001, which made them conclude that the order must have been either antedated or respondent Judge was grossly inefficient in failing to supervise her court staff that failed to send out her order promptly, if that be the case.

In her *Comment* dated 6 June 2001, respondent Judge claimed that as to the cancellation of the preliminary conference on 27 September 2000,[1] Atty. Ariel de Guzman, who appeared in place of Atty. Po, did not object to a resetting when defendant's counsel manifested that he was not mentally prepared to proceed with the conference as he had just received a long distance call informing him of the death of his brother. Hence, she contended that complainants could not claim that she cancelled the preliminary conference over the objection of plaintiff's counsel.

As to the 15 November 2000 setting of the preliminary conference, respondent Judge averred that the cancellation was due to an unexpected call to an emergency meeting of the Board of Directors of the Metropolitan and City Judges Association of the Philippines, of which she is a member. According to her, there was no time to inform complainants about the cancellation since Atty. Po did not leave any telephone number through which he could be reached.

Respondent Judge also denied that her subject *Order* was antedated considering that it was given in open court during the preliminary conference on 6 December 2000. She maintained that it was mere oversight on the part of the staff of MeTC-Br. 53,

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[1] Respondent Judge mistakenly referred to the cancelled conference on 27 September 2000 as 25 September 2000 in her Comment.

Caloocan, in failing to send out copies of her order immediately after it was issued, and that such oversight was neither intentional nor attended with malice. She contended that she cannot be faulted for relying on the court employees to prepare her order, present it to her for her signature, and thereafter send it out to the parties considering her numerous tasks as Executive Judge, Presiding Judge of Branch 43, and Pairing Judge of both Branches 50 and 53.

With respect to her alleged failure to decide the case for more than three (3) months after it was allegedly submitted for decision, respondent Judge alleged that the case had not yet even been submitted for decision at the time complainants filed on 6 March 2001 their *Manifestation and Motion to Resolve and Render Decision in Civil Case No. 00-25537* since copies of her *Order* dated 6 December 2000 anent the preliminary conference had not yet even been sent out and received by the parties.

On 26 March 2001, respondent Judge voluntarily inhibited herself from hearing and deciding the case and it was eventually re-raffled to Branch 51.

In its *Report*[2] dated 15 May 2002, the Office of the Court Administrator (OCA) recommended that this case be dismissed for lack of merit but that respondent Judge be advised to be more careful in the performance of her duties.

The Court, in its *Resolution* of 13 January 2003 directed the OCA to conduct a complete investigation of the complaint and submit its report and recommendation within a non-extendible period of thirty (30) days from receipt of notice thereof. This was done after due consideration of the seriousness of the allegations of inefficiency, antedating of a court order and violation of the Code of Judicial Conduct. Also, dismissing the complaint is too lenient considering that there are factual issues that are as yet to be determined, such as the following:

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[2] Penned by Deputy Court Administrator Christopher O. Lock, approved by Court Administrator Presbitero J. Velasco, Jr.

(1) Proof of the emergency meeting of the Board of Directors of the Metropolitan and City Judges Association of the Philippines which respondent Judge allegedly attended;

(2) The nature of the "emergency," which necessitated the cancellation of the scheduled preliminary conference which was supposedly "for the last time";

(3) The measures taken by respondent Judge in determining who was or were responsible for the belated release of subject Order dated 6 December 2000; and,

(4) The administrative sanction taken against the erring employee or employees, if any.

The Court, in its 26 March 2003 *Resolution*, upon recommendation of the OCA in its 24 February 2003 Memorandum, referred the instant administrative case to Honorable Silvestre H. Bello, Jr., Executive Judge, Regional Trial Court, Caloocan City for investigation, report and recommendation within sixty (60) days from receipt of records.

On 9 September 2003 Deputy Court Administrator Christopher O. Lock indorsed to Atty. Tomasita M. Dris, Clerk of Court of this Court's Second Division, the sealed *Report* submitted by Executive Judge Silvestre H. Bello, Jr., together with the complete records of subject case. The recommendation of Executive Judge Bello, Jr. recommended thus:

> We submit that the benefits of a mitigated liability be afforded the respondent Judge Belen B. Ortiz. That the case against her be DISMISSED but she would be WARNED to be more judicious in the supervision of her court personnel.

The Court deems it necessary to rule on the allegations set forth in the complaint notwithstanding complainants' manifestation during the investigation conducted by Executive Judge Bello, Jr. that they were no longer interested in pursuing their complaint.

It was no less than the Executive Judge herself who cited *Judge Cabatingan v. Judge Arcueno*[3] where this Court ruled

[3] A.M. No. MTJ-00-1323, 22 August 2002, 387 SCRA 532.

that "[a] simple expediency such as a complainant's change of mind followed by a withdrawal of the complaint would not result in the automatic dismissal of the case."[4] Moreover, the following exposition strongly militate against the exoneration of the respondent Judge.

First. To the cancellation of the preliminary conference set on 15 November 2000, respondent Judge offered as an explanation the emergency meeting of the Board of Directors of the Metropolitan and City Judges Association of the Philippines (MCJAP), of which she is a member. In her position paper, she maintained that the purpose of the emergency meeting was "to conduct a final check and verification on the logistical/manpower arrangements, program, speakers, *etc*. for the three-day convention and seminar of the MCJAP which was due to start the following day, 16 November 2000 at the Century Park Sheraton Hotel."[5] The Court, however, finds that the proffered purpose or nature of the "emergency" does not justify the cancellation of a scheduled hearing in the respondent Judge's sala. She must be reminded that her duty to the court and the public is more important than attending to her duties to any private organization. The scheduled hearings of cases must be given priority as they have been priorly set with notice to all parties.

Moreover, the setting of the preliminary conference for 15 November 2000 was "for the last time" according to respondent's own *Order*. She should have given meaning and due importance to her own warning.

Second. The denial of respondent Judge that her 6 December 2000 *Order* was antedated, since it was given in open court during the preliminary conference may be acceptable because of the fact that it was done in open court. However, it does not mean that the transcription and finalization of said *Order* could not have been antedated, considering that it was much belatedly released to the parties. The records show that the subject *Order*

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[4] *Id*. at 540.

[5] *Rollo*, p. 74.

of 6 December 2000 was only mailed on 8 March 2001, two (2) days after petitioners filed with the MeTC-Br. 53 their *Manifestation and Motion to Resolve and Render Decision in Civil Case No. 00-25537*. Clearly, the act of finally sending out the *Order* is by itself evidence of the blatant inefficiency, if not, worse still, a desperate measure aimed at covering-up the patent neglect.

Definitely, respondent judge cannot seek refuge in the alleged failure of her staff to send out her order immediately after it was issued nor in the incompetence of his subordinates to excuse her own inefficiency since proper and efficient court management is her own responsibility.[6] She is the master of her own domain and should take responsibility for the mistakes of those under her.[7]

Thus, in failing to ensure that her *Order* dated 6 December 2000 was properly sent out to the parties, respondent was definitely remiss in her duties under Rules 3.08 and 3.09 of the Code of Judicial Conduct, thus:

> Rule 3.08. — A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.
>
> Rule 3.09. — A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

But more than that, she failed to give due importance to the very purpose for the adoption of the Revised Rule on Summary Procedure, *i.e.*, to provide an expeditious settlement of the cases covered by it, and to avoid unnecessary delays in their disposition. It is disappointing at the very least to know that it was the court, nay the judge herself, that occasioned the delay sought to be prevented by the Rule.

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[6] *Ong v. Rosales*, A.M. No. MTJ-99-1459, February 2000, 325 SCRA 689.

[7] *Pantaleon v. Guadiz, Jr.*, A.M. No. RTJ-00-1525, 25 January 2000, 323 SCRA 147.

Moreover, respondent Judge cannot be excused by reason of her being Executive Judge, Presiding Judge of Branch 43 and Pairing Judge of Branches 50 and 53. We have already ruled that the designation of a judge as an Executive Judge or as Acting Presiding Judge of two (2) other salas does not excuse the judge from complying with the duty to decide cases within the prescribed period.[8] The other branches temporarily assigned to her have their own Branch Clerks of Court to handle the affairs of their respective branches, so that respondent Judge cannot claim that her Branch Clerk of Court and the staff under her were overburdened because of the other branches assigned to her. Each branch has its own responsibilities even if assigned temporarily under the judge of another branch.

Third. The fact that Civil Case No. 00-25537 was not yet submitted for decision at the time complainants filed their *Manifestation and Motion to Resolve and Render Decision in Civil Case No. 00-25537* on 6 March 2001 is of no moment and cannot absolve respondent Judge from administrative liability. Precisely the reason why the subject case was decided only on 30 March 2001,[9] or more than ten (10) months after it was filed on 26 May 2000, and more than three (3) months after the preliminary conference held on 6 December 2000 was because it took so long before the parties received respondent Judge's written *Order*. The date of receipt by the parties of the said *Order* is crucial since it is from there that the 10-day period for submission of position papers is to be reckoned.[10] The date of filing of position papers, or the expiration of the period for filing them, is in turn crucial

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[8] Cases submitted for decision before retired Judge Maximo A. Savellano, Jr., RTC-Br. 53, Manila, A.M. No. 99-7-250-RTC, 5 April 2000, 329 SCRA 637.

[9] Decision penned by Judge Eleanor R. Kwong, MeTC-Br. 51, Caloocan City, after respondent Judge Ortiz inhibited from the case on 26 March 2001 in view of this administrative complaint.

[10] Sec. 9, The 1991 Revised Rules on Summary Procedure.

in determining the 30-day period[11] within which the court ought to render judgment.[12]

Besides, it was respondent Judge cannot be heard to claim that the parties were given ten (10) days to file their position papers. She was well aware that upon the expiration of the period for submission by the parties of their position papers, or on 16 December 2000, the case would be submitted for decision. Why was there delay on her part to decide the case for more than thirty (30) days after the case was deemed submitted for decision? The reglementary period for deciding cases covered by the *Revised Rule on Summary Procedure* is only thirty (30) days and not three (3) months as respondent Judge *Comment* seems to impliedly in his *Comment*.

Fourth. Also, respondent Judge cannot be heard to claim that delay could have been avoided had complainants themselves been more vigilant in inquiring from the Clerk of Court whether her *Order* of 6 December 2000 had been sent out and when; that instead of calling the attention of the Clerk of Court to the oversight immediately and simply without much "brouhaha," complainants allegedly allowed months to pass by knowing fully well that the case would be submitted for decision only after the parties shall have filed their respective position papers within ten (10) days from receipt of the order.

In *Requierme, Jr. v. Yuipco*,[13] we ruled that it was unthinkable for a judge to contend that complainants failed to remind her to issue the order, for it is not their duty but hers to issue a pre-trial order. In the instant case, it was herein respondent's responsibility, not complainants, to ensure that her *Order* of 6 December 2000 was accordingly released.

In fine, the explanations of respondent Judge to the allegations of complainants failed to absolve her from administrative liability.

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[11] The period of deciding cases under Summary Procedure is only thirty (30) days and not three (3) months or ninety (90) days as alleged by complainants.

[12] *See* note 8, Sec. 10.

[13] A.M. No. RTJ-98-1427, 27 November 2000, 346 SCRA 25.

Her collective acts of inefficiency are clearly known in her inability to carry out her duties with efficacy and alacrity. Verily, the Court cannot brush aside and label her acts as mere oversights and dismiss the charges. Instead, respondent Judge must be imposed a proportionate penalty for conduct violative of the *Code of Judicial Conduct* to which she is bound as Judge.

In *Belen v. Soriano,*[14] the Court admonished the respondent Judge therein and imposed upon him a fine of Two Thousand Pesos (₱2,000.00) for failure to file his *Order* dismissing two criminal cases for grave threats for lack of jurisdiction, and for his delay of more than one year in furnishing the prosecution a copy of said *Order*.

In *Heirs of the Late Nasser D. Yasin v. Felix*,[15] the respondent Judge was ordered to pay a fine of Two Thousand Pesos (₱2,000.00) for failing to ensure that a written *Notice of Hearing* on a petition for *habeas corpus* was sent by his staff to the Provincial Prosecutor prior to the hearing.

Considering that in the present case, the respondent Judge incurred a delay of three (3) months before she issued the 6 December 2000 *Order*, this Court deems the imposition upon respondent Judge of a fine of Two Thousand Pesos (₱2,000.00) warranted under the circumstances.

WHEREFORE, for violation of Canons 3.08 and 3.09 of the Code of Judicial Conduct, respondent Judge Belen B. Ortiz, MeTC-Br. 49, Caloocan City, is FINED TWO THOUSAND PESOS (₱2,000.00), with warning that a repetition of the same will be dealt with more severely.

SO ORDERED.

Puno ((Chairman), Quisumbing, Austria-Martinez, and *Callejo, JJ.*, concur.

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[14] A.M. No. MTJ-94-920, January 20, 1995, 240 SCRA 298.

[15] A.M. No. RTJ-94-1167, December 4, 1995, 250 SCRA 545.

SECOND DIVISION

[A.M. No. MTJ-04-1537. March 25, 2004]
(Formerly A.M. OCA IPI No. 01-998-MTJ)

ARTEMIO SABATIN, *complainant, vs.* **JUDGE EFREN B. MALLARE, MUNICIPAL CIRCUIT TRIAL COURT, NATIVIDAD-LLANERA, NUEVA ECIJA,** *respondent.*

SYNOPSIS

Complainant charged the respondent, acting presiding judge of the 2nd Municipal Circuit Trial Court of Gen. Natividad-Llanera, Nueva Ecija, with gross ignorance of the law, serious misconduct and violation of Anti-Graft and Corrupt Practices Act, relative to Criminal Case No. 2751-N for illegal possession of firearms. Complainant alleged that the respondent judge (a) issued a search warrant against him despite his lack of authority to do so; (b) failed to timely resolve his Motion to Quash the subject search warrant. A perusal of the questioned search warrant showed that it was issued by Branch 30 of the RTC of Cabanatuan City, presided by Judge Federico F. Fajardo, Jr., but was signed by the respondent judge. Judge Fajardo denied issuing the said warrant. The respondent judge denied the accusation against him and claimed good faith.

The Court found the respondent judge guilty of gross inefficiency and dishonesty for which he was fined Fifteen Thousand Pesos (₱15,000). According to the Court, in resolving complainant's motion to quash almost four months after it was filed, the respondent judge violated Rule 3.05 of the Code of Judicial Conduct, which requires judges to dispose of the court's business promptly and to act, one way or the other, on pending cases within the prescribed period therefor. Judges are duty-bound to be faithful to the law and to maintain professional competence at all times. Considering that they are the visible representation of the law and of justice, the citizenry expects their official conduct as well as their personal behavior to always be beyond reproach.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; WITHDRAWAL OF THE COMPLAINT WILL NOT AUTOMATICALLY EXONERATE THE RESPONDENT FROM ANY ADMINISTRATIVE DISCIPLINARY ACTION.— The Court would like to stress that the dismissal or withdrawal of charges and the desistance of witnesses does not automatically result in the dismissal of an administrative case. The withdrawal of the complaint does not have the legal effect of automatically exonerating the respondent from any administrative disciplinary action. It does not operate to divest this Court with jurisdiction to determine the truth behind the matter stated in the complaint. Furthermore, the need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein. Pursuant to the foregoing, it was incumbent upon the Investigating Judge to delve into the matter subject of the complaint, considering that the pleadings submitted by the complainant and the respondent, as well as the annexes thereof, were forwarded by the OCA precisely for his perusal. The Court, in numerous cases, has even acted upon administrative complaints filed by anonymous complainants on the following rationale: Although the Court does not as a rule act on anonymous complaints, cases are excepted in which the charge could be fully borne by public records of indubitable integrity thus needing no corroboration by evidence to be offered by the complainant, whose identity and integrity could hardly be material where the matter involved is of *public interest*.

2. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RESOLVING A PENDING MOTION CONSTITUTES GROSS INEFFICIENCY AND A LESS SERIOUS CHARGE.— The records in the instant case clearly show that the respondent is administratively liable. A perusal of the questioned search warrant shows that although it was issued by Branch 30 of the RTC of Cabanatuan City, the signatory therein was the respondent. Judge Federico F. Fajardo, Jr. then presiding judge of Branch 30, Cabanatuan City denied that the questioned warrant was issued by him. The respondent then made a *volte-face* and denied that he ever issued any search

warrant against the complainant in his Order dated December 4, 2000, where he also granted the complainant's motion to quash. Furthermore, in resolving the complainant's motion to quash almost four months after it was filed, the respondent violated Rule 3.05 of The Code of Judicial Conduct, which requires judges to dispose of the court's business promptly and to act, one way or the other, on pending cases within the prescribed period therefor. Undue delay in resolving a pending motion constitutes gross inefficiency, and constitutes a less serious charge, punishable under Section 9 of Rule 140 of the Rules of Court.

3. ID.; ID.; DUTY-BOUND TO BE FAITHFUL TO THE LAW AND TO MAINTAIN PROFESSIONAL COMPETENCE AT ALL TIMES.— Judges are duty-bound to be faithful to the law and to maintain professional competence at all times. The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed on them and the institution they represent. Judges are also human, although they are expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so. Considering that they are the visible representation of the law and of justice, the citizenry expects their official conduct as well as their personal behavior to always be beyond reproach.

D E C I S I O N

CALLEJO, SR., *J.*:

The instant administrative case arose when Artemio Sabatin, in an Affidavit-Complaint[1] dated January 15, 2001, charged Judge Efren B. Mallare, Municipal Circuit Trial Court, Natividad-Llanera, Nueva Ecija, with gross ignorance of the law, serious misconduct and violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, relative to Criminal Case No. 2751-N entitled *People of the Philippines v. Artemio Sabatin* for illegal possession of firearms.

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[1] *Rollo*, pp. 1-5.

The complainant, the accused in the said criminal case, alleged that pursuant to Search Warrant No. 017-N-2000 issued by the respondent judge, elements of the Philippine National Police (PNP) of General Natividad, Nueva Ecija under the command of P/Sr. Insp. Franklin Versoza Simon, entered his home and conducted a search thereon without his consent. The complainant averred that the search warrant in question was actually issued against his brother Pedrito Sabatin. When the complainant pointed this out to the police, P/Sr. Insp. Simon merely instructed his men to erase the name "Pedrito" and replace it with "Artemio," making it appear that the warrant was, indeed, issued in the complainant's name.

The complainant further alleged that he was arrested and brought by the policemen to their station for investigation, but was later released. He then received a subpoena after a few days, and it was only then that he learned that a criminal complaint had been filed against him for illegal possession of firearms. The complainant, in turn, filed a complaint for illegal search, unlawful arrest, arbitrary detention and falsification of public document against P/Sr. Insp. Simon and his men before the Office of the City Prosecutor of Cabanatuan City and the Department of the Interior and Local Government (DILG).

On August 5, 2000, the complainant filed a Motion to Quash Search Warrant No. 017-N-2000 before the respondent judge's *sala*. After several postponements, the preliminary investigation was again set for November 8, 2001. The complainant narrated the events as follows:

17. *Na bago dumating and araw na iyon ay nakatanggap ako ng MOTION TO DISMISS, petsang Oktubre 12, 2000, para sa mga demanda ko [sic] ilalim ng I.S. No. H-3275-78 sa Cabanatuan City, galing sa inireklamo kong mga pulis, at kabilang sa mga UNANG PAGKAKATAON ay* ***nahawakan ko ang kopya ng "SEARCH WARRANT NO. 017-N-2000", na maliwanag na nanggaling pala sa Branch 30 ng Regional Trial Court ng Cabanatuan City, pero ang nakapirmang hukom ay si Judge EFREN B. MALLARE,*** *bilang Acting Presiding Judge, gaya nang makikita sa kopya ng nasabing "SEARCH WARRANT", na minarkahang* ***ANNEX "K";***

18. *Sa pagka-diskubre naming ang* Branch 30 *ng* Regional Trial Court *ng* Cabanatuan City *ang nag-*"issue" *ng pinalsipikang* SEARCH WARRANT, *ako, sa pamamagitan ng aking abogada, ay duon nag-"file" ng* MOTION TO QUASH SEARCH WARRANT NO. 017-N-2000, *kasabay ng kinakailangang i-"file" ko sa* 2nd Municipal Circuit Trial Court ng Gen. Natividad-Llanera, Nueva Ecija, *ng aking* OMNIBUS MOTION TO WITHDRAW MOTION TO QUASH SEARCH WARRANT NO. 017-N-2000 AND TO TRANSFER ITS RECORDS TO BRANCH 30, RTC, CABANATUAN CITY, WITH ADDED MOTIONS TO SUSPEND PRELIMINARY INVESTIGATION OF THE INSTANT CASE UNTIL RESOLUTION ON THIS PENDING INCIDENT AND TO FURNISH ACCUSED OF ALL PERTINENT DOCUMENTS/EVIDENCE OF THE PROSECUTION N ITS PRELIMINARY INVESTIGATION, *parehong may petsang Oktubre* 30, 2000. . .[2]

The complainant was surprised when Judge Federico F. Fajardo, Jr. of the RTC of Cabanatuan City, Branch 30, issued the following Order on November 7, 2000, to wit:

This is a Motion to Quash Search Warrant No. 017-N-2000, dated July __, 2000 which appears to have been issued by Judge Efren B. Mallare. Upon a careful examination of the said Search Warrant, the caption thereof appears to be RTC-Branch 30, Cabanatuan City. However, the Presiding Judge of RTC, Br. 30 is the undersigned presiding judge and not Judge Efren B. Mallare. Judge Mallare is the Acting Presiding Judge of the Municipal Circuit Trial Court of General Natividad and Llanera, Nueva Ecija.

The undersigned did not issue the questioned search warrant. He is not the Executive Judge who is the only one authorized to issue search warrants for illegal possession of firearm and ammunition. The Executive Judge of the RTC, Cabanatuan City is the Hon. Johnson Ballutay of RTC, Branch 25, Cabanatuan City.

Further, the questioned search warrant is not at all connected with any case pending in this Court, and therefore, this Court is not the proper forum for the quashing of the said search warrant.

WHEREFORE, premises considered, the motion to quash search warrant is hereby returned to the accused and his counsel, with the

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[2] *Rollo*, pp. 3-4 (Italics supplied).

advise that it be referred to the Hon. Executive Judge, RTC, Cabanatuan City or Judge Efren B. Mallare for appropriate action.[3]

The respondent judge thereafter issued an Order dated December 4, 2000, to wit:

> After a careful perusal of the grounds relied upon by the accused in seeking for the quashal/dismissal of this case, the Court noticed that the same appeared to be well taken as the records would readily show that the Chief of Police, PNP, Gen. Natividad, Nueva Ecija has applied for a search warrant against one Pedrito Sabatin *alias* Boyet and this has been admitted by the then Chief of Police Franklin Versoza Simon as per his comment dated 13 September 2000 (p. 27, rec.), although he misspelled the name Pedrito to Pablito by advancing reason that an error was committed when said first name was typewrote (sic) and in order to obviate any leakage thereof, a correction has been made from Pedrito/Pablito to Artemio Sabatin *alias* Boyet which led to the filing of the instant case.
>
> In short, the search warrant issued by this court against one Pedrito Sabatin *alias* Boyet, after it has complied with the requisite for issuing search warrant (Sec. 3, Rule 126 Revised Rules on Criminal Procedure), has not been fully implemented.
>
> Furthermore, the case filed before this Court against one Artemio Sabatin *y* Miguel *alias* Boyet *cannot be entertained by this court for this court has never issued any search warrant against said accused;* and, therefore, any evidence taken from him maybe considered inadmissible for the search undertaken by the PNP of Gen. Natividad, Nueva Ecija, is considered unlawful.
>
> WHEREFORE, finding the Motion To Quash/Dismiss Criminal Complaint meritorious, the same is hereby granted and this case is hereby dismissed.[4]

According to the complainant, the respondent judge issued the questioned search warrant despite his lack of authority to do so in order to protect P/Sr. Insp. Franklin V. Simon. He also alleged that the respondent later on denied that he issued the questioned warrant in order to escape possible administrative sanctions.

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[3] *Id*. at 108 (Italics supplied).

[4] *Id*. at 111-112 (Italics supplied).

In his Comment, the respondent averred that the normal procedure in criminal cases was to set them for preliminary examination in order to determine probable cause. However, in this case, the complainant (accused therein) through counsel practically waived the early resolution of the preliminary examination by filing several motions. Thus, the complainant cannot now question the delay in the early termination of the criminal case, for had it not been for the filing of said motions, the preliminary examination could have been terminated since September 2000 as provided for in the Rules of Criminal Procedure. The respondent further stated, thus:

> To recapitulate; therefore, the undersigned believes that being an Acting Presiding Judge of the 2nd Municipal Circuit Trial Court of Gen. Natividad-Llanera, N.E., he has performed and [is] still performing, in good faith, the duties and responsibilities vested upon his office. In fact the records will speak for itself, and being the Presiding Judge of the Municipal Trial Court, Sto. Domingo, Nueva Ecija, he has always been dedicated to his work and never committed any absence, and this fact can also be attested by the records of that Court which also speak for itself. Lastly, if ever the undersigned committed an error, the same had been committed in good faith and that the attached pertinent documents in the criminal case filed against Sabatin will readily reveal that the undersigned did not commit the accusation lodged against him in this administrative case.[5]

The respondent then prayed that the instant administrative case be dismissed for lack of merit.

Upon the Court Administrator's recommendation that a formal investigation was necessary to resolve the factual issues, the case was referred to Executive Judge Tomas B. Talavera, Regional Trial Court, Cabanatuan City.[6] The Executive Judge made the following findings:

> To this Court, it appears that the complainant is no longer interested in pursuing this case. If he still has any interest in the prosecution of this case he should have notified this Court of his whereabouts

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[5] *Id*. at 57-58.

[6] *Id*. at 148-149.

by furnishing his new address so that he could have been notified about the ongoing investigation. In this regards (*sic*), this Court was not able to acquire any evidence that would substantiate the allegations of the complainant in the present administrative case. It will be impossible for this Court to rule in favor of the complainant lacking the latter's evidence, whether oral or documentary, not to mention his un-cooperation (*sic*) in the investigation of this administrative case.

Be it noted that it was the respondent who was religiously attending the investigation is borne out by the record of the case. On the other hand, complainant did not appear even once though on April 24, 2003, he was notified through his wife Vilma Sabatin evidencing his lack of interest to further prosecute this administrative case.[7]

The Executive Judge apparently re-set the case for hearing for a total of four times, due to the complainant's repeated failure to appear.[8] It was, thus, recommended that the present administrative case be dismissed for lack of evidence, as well as the complainant's lack of interest to prosecute the case.[9]

We do not agree with the Investigating Judge.

The Court would like to stress that the dismissal or withdrawal of charges and the desistance of witnesses does not automatically result in the dismissal of an administrative case.[10] The withdrawal of the complaint does not have the legal effect of automatically exonerating the respondent from any administrative disciplinary action. It does not operate to divest this Court with jurisdiction to determine the truth behind the matter stated in the complaint.[11] Furthermore, the need to maintain the faith and confidence of

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[7] *Id*. at 167.

[8] The hearings were set on March 14, March 27, April 10, and April 24, 2003. For the first two settings, the complainant was notified through registered mail, but these notices were returned with the notation "Return to Sender." The notices for the last two settings were made through personal service, but the process server was unable to find the complainant at his given address (*Rollo*, p. 166).

[9] *Rollo*, p. 167.

[10] *Punzalan v. Plata*, 372 SCRA 534 (2001).

[11] *Guray v. Bautista*, 360 SCRA 489 (2001).

the people in the government and its agencies and instrumentalities should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.[12]

Pursuant to the foregoing, it was incumbent upon the Investigating Judge to delve into the matter subject of the complaint, considering that the pleadings submitted by the complainant and the respondent, as well as the annexes thereof, were forwarded by the OCA precisely for his perusal. The Court, in numerous cases, has even acted upon administrative complaints filed by anonymous complainants on the following rationale:

> Although the Court does not as a rule act on anonymous complaints, cases are excepted in which the charge could be fully borne by public records of indubitable integrity thus needing no corroboration by evidence to be offered by the complainant, whose identity and integrity could hardly be material where the matter involved is of *public interest*.[13]

The records in the instant case clearly show that the respondent is administratively liable. A perusal of the questioned search warrant shows that although it was issued by Branch 30 of the RTC of Cabanatuan City, the signatory therein was the respondent. Judge Federico F. Fajardo, Jr. then presiding judge of Branch 30, Cabanatuan City denied that the questioned warrant was issued by him. The respondent then made a *volte-face* and denied that he ever issued any search warrant against the complainant in his Order dated December 4, 2000, where he also granted the complainant's motion to quash. Furthermore, in resolving the complainant's motion to quash almost four months after it was filed, the respondent violated Rule 3.05 of The Code of Judicial Conduct, which requires judges to dispose of the court's business promptly and to act, one way or the other, on pending cases within the prescribed period therefor.[14] Undue delay in resolving a pending

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[12] *Dadap-Malinao v. Mijares*, 372 SCRA 128 (2001).

[13] *Anonymous Complaint v. Gibson A. Araula*, 81 SCRA 483 (1978).

[14] *Edgardo D. Balsamo v. Judge Pedro L. Suan*, A.M. No. RTJ-01-1656, September 17, 2003.

motion constitutes gross inefficiency,[15] and constitutes a less serious charge, punishable under Section 9 of Rule 140[16] of the Rules of Court.

Judges are duty-bound to be faithful to the law and to maintain professional competence at all times.[17] The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed on them and the institution they represent.[18] Judges are also human, although they are expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so. Considering that they are the visible representation of the law and of justice, the citizenry expects their official conduct as well as their personal behavior to always be beyond reproach.[19]

WHEREFORE, for gross inefficiency and dishonesty, the respondent Judge Efren B. Mallare is meted a *FINE* of Fifteen Thousand Pesos (₱15,000).

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.*, concur.

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[15] *Rodolfo Macachor v. Rolindo Beldia, Jr.*, A.M. No. RTJ-02-1724, June 12, 2003.

[16] Sec. 9. *Less Serious Charges*. — Less serious charges include:

1. Undue delay in rendering decision or order, or in transmitting the records of a case;

x x x x x x x x x

Section 11(b) of the same Rule provides the penalty therefor:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

[17] *Evelio Peña v. Judge Orlando Martizano*, A.M. No. MTJ-02-1451, May 30, 2003.

[18] *Judge Eliezer De Los Santos v. Judge Marvin Mangino*, A.M. No. MTJ-03-1496, July 10, 2003.

[19] *Maria Cristina Olondriz Pertierra v. Judge Alberto L. Lerma*, A.M. No. RTJ-03-1799, September 12, 2003.

SECOND DIVISION

[A.M. No. P-04-1797. March 25, 2004]
(Formerly A.M. OCA IPI No. 03-1725 P)

ELSA C. BECINA, *complainant, vs.* **JOSE A. VIVERO, CLERK OF COURT, MUNICIPAL TRIAL COURT, AURORA, ZAMBOANGA DEL SUR,** *respondent.*

SYNOPSIS

Complainant, one of the plaintiffs in Civil Cases Nos. 61-64, charged the respondent Clerk of Court with negligence in the performance of official function and dereliction of duty relative to aforesaid cases. Complainant alleged that the respondent's delay in the release of the court's 07 May 3002 Order to the parties, setting the hearing of the motion for the issuance of writ of execution, resulted in the delay in the execution of judgment. The respondent admitted his culpability for the delay and prayed for the Court's forgiveness and indulgence.

The Supreme Court found the respondent guilty of simple neglect of duty for which he was admonished to be more circumspect in the performance of his duties. According to the Court, the respondent's actuation cast suspicion on the integrity of the court and affected the efficiency of the process of administration of justice. Branch clerks of court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. The conduct of all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must at all times be beyond reproach. The Court condemns and cannot countenance any act or omission on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; SIMPLE NEGLECT OF DUTY; DEFINED.— The respondent is guilty of simple neglect of duty, which has been

defined as the failure of an employee to give attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. The respondent's actuation cast suspicion on the integrity of the court and affected the efficiency of the process of administration of justice. It must be stressed that any misconduct, whether true or only perceived, is likely to reflect adversely on the administration of justice.

2. ID.; ID.; COURT PERSONNEL; CLERK OF COURT; CANNOT ERR WITHOUT AFFECTING THE INTEGRITY OF THE COURT OR THE EFFICIENT ADMINISTRATION OF JUSTICE.— The respondent ought to be reminded that a clerk of court is a role model for other court employees to emulate in the performance of duties as well as in the conduct and behavior of a public servant. A clerk of court cannot err without affecting the integrity of the court or the efficient administration of justice. Branch clerks of court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. The conduct of all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must at all times be beyond reproach. The Court condemns and cannot countenance any act or omission on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.

D E C I S I O N

CALLEJO, SR., *J.*:

The instant administrative case arose when Elsa C. Becina filed an Affidavit-Complaint dated July 3, 2003 charging Jose Vivero, Clerk of Court, Municipal Trial Court, Aurora, Zamboanga del Sur, with gross negligence in the performance of official function and dereliction of duty relative to Civil Cases Nos. 61, 62, 63 and 64.

The complainant alleged that she was one of the plaintiffs in the aforesaid cases, and that they were able to obtain a favorable judgment which was upheld by this Court. After entry of judgment was received in the court of origin, the plaintiffs

filed a motion for execution of judgment on November 13, 2002. The motion was not resolved until the untimely demise of Presiding Judge Celestino Dicon. The motion was then calendared for hearing on May 7, 2003, one month after Judge Ramon Daomilas, Jr. assumed office.

On the said date, Judge Daomilas, Jr. issued an order giving counsel for the defendant fifteen (15) days to file his opposition to the motion and the plaintiff's counsel the same period of time to file his comment on the opposition. The respondent did not release the said order; nor were the parties informed about it. After the lapse of about two months, the complainant discovered that the Order of May 7, 2003 had not yet been released.

The complainant believes that the delay in the execution of judgment was caused by the respondent's gross negligence in the performance of official function and dereliction of duty, which brought prejudice to them and to the administration of justice. The complainant prays that because the decision, albeit favorable, was not duly and promptly executed, the respondent, the one who caused the delay, should be investigated and dealt with accordingly.

In his Comment,[1] the respondent admitted that indeed, the court issued an Order dated May 7, 2003, anent the hearing of the motion for issuance of writ of execution in Civil Cases Nos. 61-64. The respondent, however, made the following averments to justify the delay:

> That on May 7, 2003, I was not around because I was on leave of absence due to severe pain in my waist and hip cause[d] by a vehicular accident which happened on May 2, 2003 (application for leave attached hereto as Annex "A");
>
> That upon my reinstatement I was not informed by my co-personnel regarding the status of the case of Elsa Becina thus, I was not aware of the said Order;
>
> That on June 10, 11 and 12, 2003, I was on leave of absence for a medical check-up on my injured waist and hip (application for leave hereto attached as Annex "B");

[1] *Rollo,* p. 10.

That on June 18, 19, and 20, 2003, I was on leave again purposely to attend to the funeral of my uncle at Merida, Leyte (mourning leave hereto attached as Annex "C");

That on July 2, 2003, the date when Mrs. Elsa Becina appeared in court to follow up the said Order, I was not around, I was on leave for a follow up check-up on my injuries (application for leave hereto attached as Annex "D");[2]

In a Report dated November 17, 2003, the Court Administrator opined that the respondent be admonished to be more circumspect in the performance of his official duty and warned that repetition of the same or similar administrative lapses in the future would be more severely dealt with. The following findings were pointed out:

Respondent Clerk of Court Vivero does not deny that there was delay in furnishing [a] copy of the Order dated 07 May 2003 to the parties that resulted in delaying the execution of the judgment in Civil Cases Nos. 61-64 of the MTC, Aurora, Zamboanga del Sur. He does not deny either his culpability for the delay, in fact, he comes to the Court begging for forgiveness.

Indeed, he cannot plead total exculpation from responsibility by alluding to his series of leaves of absence from duty occasioned by injuries he suffered from a vehicular accident. From May 9 to June 10, 2003, he reported for duty and he had ample time to find out and examine the orders issued by the court during his absence and see to it that they had been properly attended to by the other concerned personnel of the court.

x x x x x x x x x

On the other hand, we do not view the offense of respondent Clerk of Court Vivero as amounting to gross negligence [.] . . . There was no doubt a delay in the release of the Order dated 07 May 2003 but it could not be attributed to the respondent's willful or intentional design to either favor or prejudice any of the parties in the case. The sequence of events that transpired from May 7, 2003, when he was absent from office owing to injuries he incurred in a vehicular accident and the series of leaves of absence he underwent to

[2] *Ibid*.

recuperate from his injuries could have greatly contributed to his failure to cause the early release of the order. We submit that respondent should be held culpable only for simple negligence. This being his first offense and with his show of repentance by seeking forgiveness for his shortcoming, a penalty of ADMONITION may be sufficient.[3]

We agree with the Executive Judge. The respondent is guilty of simple neglect of duty, which has been defined as the failure of an employee to give attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[4] The respondent's actuation cast suspicion on the integrity of the court and affected the efficiency of the process of administration of justice. It must be stressed that any misconduct, whether true or only perceived, is likely to reflect adversely on the administration of justice.[5]

The respondent ought to be reminded that a clerk of court is a role model for other court employees to emulate in the performance of duties as well as in the conduct and behavior of a public servant. A clerk of court cannot err without affecting the integrity of the court or the efficient administration of justice.[6] Branch clerks of court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.[7] The conduct of all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must at all times be beyond reproach. The Court condemns and cannot countenance any act or omission on the part of

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[3] *Rollo*, pp. 17-18.

[4] *Acting Presiding Judge Leopoldo V. Cañete v. Nelson Manlosa*, Adm. Matter No. P-02-1547, October 3, 2003.

[5] *Atty. Mary-Ann Paduganan-Peñaranda v. Grace L. Songcuya*, A.M. No. P-01-1510, September 18, 2003.

[6] *Office of the Court Administrator v. Celestina B. Corpuz*, A.M. No. P-00-1418, September 24, 2003.

[7] *Elena F. Pace v. Reno M. Leonardo*, A.M. No. P-03-1675, August 6, 2003.

court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[8]

We note that the respondent admitted his mistake and prayed for the Court's forgiveness and indulgence.

WHEREFORE, the Court finds respondent Jose A. Vivero, Clerk of Court, MTC, Aurora, Zamboanga del Sur, *GUILTY* of simple neglect of duty. He is *ADMONISHED* to be more circumspect in the performance of his duties, and *STERNLY WARNED* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.,* concur.

FIRST DIVISION

[A.M. No. P-04-1800. March 25, 2004]
[OCA-IPI No. 01-1243-P]

JUDGE BRICCIO B. AQUINO, *complainant, vs.* **LETICIA U. ISRAEL, Clerk of Court I; JULIET L. DUPAYA, Court Stenographer; ULYSSES D. DUPAYA, Clerk IV; ROSELLER O. ISRAEL, Cashier I; EMIL A. SIRIBAN, Process Server; JAMES D. LORILLA, Process Server,** *respondents*.

SYNOPSIS

At bar is an administrative case against the respondents, court employees of Municipal Trial Court of Lal-lo, Cagayan, for engaging in a verbal tussel during office hours, which resulted in physical violence.

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[8] *Noel G. Wabe v. Luisita P. Bionson,* A.M. No. P-03-1760, December 30, 2003.

The Supreme Court found the respondents guilty of misconduct in office for which they were fined One Thousand Pesos each. Time and again, the Court has stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility. The action of the respondents against each other fell short of this standard. High-strung and belligerent behavior has no place in government service where the personnel as enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence. The Court reminded not only the respondents, but all court personnel as well, that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ENJOINED TO ACT WITH SELF-RESTRAINT AND CIVILITY AT ALL TIMES EVEN WHEN CONFRONTED WITH RUDENESS AND INSOLENCE.—** Time and again, we have stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility. The records reveal that the action of the respondents against each other fell short of this standard. Misconduct is a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. High-strung and belligerent behavior has no place in government service where the personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence. Such conduct is exacted from them so that they will earn and keep the public's respect for and confidence in the judicial service. This standard is applied with respect to a court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the courts.

2. ID.; ID.; ID.; ADMINISTRATIVE CHARGE; COMPLAINANT'S WITHDRAWAL OR DESISTANCE DOES NOT DIVEST THE COURT OF ITS DISCIPLINARY AUTHORITY OVER COURT PERSONNEL.— Notwithstanding the allegation of both the complainant and the respondents that the parties have patched things up and have put the incident behind them, we will not shirk from our duty to impose the proper penalty upon the erring parties. The withdrawal or desistance of a complainant from pursuing an administrative complaint does not divest the Court of its disciplinary authority over court personnel.

3. ID.; ID.; ID.; REQUIRED TO PRESERVE THE JUDICIARY'S GOOD NAME AND STANDING AS A TRUE TEMPLE OF JUSTICE.— We take this opportunity to remind, not only the respondents, but all court personnel as well that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding. becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Fighting between court employees during office hours is a disgraceful behavior reflecting adversely on the good image of the judiciary. It displays a cavalier attitude towards the seriousness and dignity with which court business should be treated. Shouting at one another in the workplace and during office hours is arrant discourtesy and disrespect not only towards co-workers, but to the court as well.[1]

On July 26, 2001, the respondents, all court employees of Municipal Trial Court of Lal-lo, Cagayan, Branch 2, engaged in a verbal tussle which resulted in physical violence.

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[1] *Apaga v. Ponce*, A.M. No. P-95-1119, 21 June 1995, 245 SCRA 233.

When ordered[2] to explain their participation in the aforesaid incident, the respondents submitted their respective versions of the facts.

Respondents Ulysses and Juliet Dupaya alleged that at around 10:00 a.m. of July 26, 2001, Juliet Dupaya and Leticia Israel had a heated argument. Ulysses, husband of Juliet, approached the two and told them to stop. Ulysses brought his wife to the office of the Clerk of Court followed by Leticia Israel. When the Dupaya spouses entered the office, respondent Roseller Israel, Leticia's husband, suddenly stood up from his desk and made a gesture to attack Ulysses. In defense, Ulysses pushed Roseller backwards. Respondent Emil Siriban attacked and boxed Ulysses in the face and in other parts of the body. Respondent James Lorilla intervened and prevented Emil from further attacking Ulysses.

Roseller and Leticia alleged that at around 10:00 a.m. of July 26, 2001, while the two of them were sitting inside the Office of the Clerk of Court, the Dupaya spouses arrived and confronted Leticia. Ulysses asked Leticia in a threatening voice, "What do you want now?" He raised his hand as if to slap the latter. When Roseller asked Ulysses what was wrong, the latter cursed him and hit him on the right cheek with his fist.[3] Thereafter, Ulysses turned to pick up a chair but respondent Emil Siriban told him not to harm Roseller. Ulysses turned towards Emil with his fist closed. Sensing danger, Emil swung his right hand towards Ulysses but failed to hit him. He threw another punch and hit the right neck of Ulysses. Roseller then pushed Ulysses towards the door of the office where the two of them grappled and fell to the ground. While Emil was trying to separate the two, Roseller was hit at the back by respondent James Lorilla. The other officemates of the respondents tried to pacify them but failed. It was only when the police arrived that the scuffle stopped.

Respondent Emil Siriban corroborated the narration of the Israel spouses.

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[2] July 30, 2001 Memorandum of Judge Briccio Aquino; *Rollo*, p. 2.

[3] *Rollo*, pp. 7-8, 13-14.

On August 7, 2001, Judge Briccio Aquino of the Municipal Trial Court of Lal-lo, Cagayan wrote a letter-complaint to the Office of the Court Administrator against respondents.

On August 4, 2003, the parties were required to manifest if they are willing to have the case resolved on the basis of the pleadings/records on file. On September 5, 2003, Judge Aquino manifested that, since the respondents have already patched up their differences and are now in good harmony with each other, the complaint should be dismissed and/or resolved in favor of the respondents. All the respondents submitted their joint manifestation stating that they have patched up their differences and that they are submitting the case with the prayer that the same be dismissed.

We find the respondents guilty of committing Misconduct in Office.

Time and again, we have stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility.[4] The records reveal that the action of the respondents against each other fell short of this standard.

Misconduct is a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.[5] High-strung and belligerent behavior has no place in government service where the personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.[6] Such conduct is exacted from them so that they will earn and keep the public's respect for and confidence in the judicial service.[7] This standard is applied with respect to a

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[4] *Re: Ms. Teresita S. Sabido*, A.M. No. 94-3-20-MCTC, 17 March 1995, 242 SCRA 432.

[5] *Office of the Court Administrator v. Bucoy*, A.M. No. P-93-953, 25 August 1994, 235 SCRA 588.

[6] *Policarpio v. Fortus*, A.M. No. P-95-1114, 18 September 1995, 248 SCRA 272.

[7] *Tablate v. Seechung*, A.M. No. 92-10-425-OMB, 15 July 1994, 234 SCRA 161.

court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the courts.[8]

Notwithstanding the allegation of both the complainant and the respondents that the parties have patched things up and have put the incident behind them, we will not shirk from our duty to impose the proper penalty upon the erring parties. The withdrawal or desistance of a complainant from pursuing an administrative complaint does not divest the Court of its disciplinary authority over court personnel.[9]

We take this opportunity to remind, not only the respondents, but all court personnel as well that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.[10]

WHEREFORE, respondents Leticia U. Israel, Roseller O. Israel, Juliet L. Dupaya, Ulysses D. Dupaya, Emil A. Siriban and James D. Lorilla are *FINED* One Thousand Pesos each for misconduct in office. All respondents are *STERNLY WARNED* that a repetition of the same or similar act(s) in the future shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Carpio and *Azcuna, JJ.,* concur.

Panganiban, J., on official leave.

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[8] *Quiroz v. Orfila,* A.M. No. P-96-1210, 7 May 1997, 272 SCRA 324.

[9] *Casanova v. Cajayon,* A.M. No. P-02-1595, 3 April 2003.

[10] *Id*.

SECOND DIVISION

[G.R. No. 128563. March 25, 2004]

EQUATORIAL REALTY DEVELOPMENT, INC., *petitioner, vs.* **SPS. DESIDERIO & EDARLINA FROGOZO, and the HON. COURT OF APPEALS,** *respondents*.

SYNOPSIS

Private respondents paid earnest money to the Sps. Asis for the purchase of the property covered by Transfer Certificate of Title No. 119203 registered in the latter's name, the balance of the purchase price to be paid upon the execution of the deed of absolute sale. For no reason at all, the Sps. Asis refused to sign the formal Contract of Sale. Hence, on January 17, 1983, private respondents caused the annotation of an adverse claim, Entry No. 1245, at the back of TCT No. 119203. Three years later, petitioner Corporation levied on the property, annotating at the back of the same TCT a notice of levy under Entry No. 964-65. On February 12, 1988, private respondent and the spouses Asis executed a Deed of Absolute Sale, as a consequence of which new TCT No. 178892 was issued in the name of the private respondents. Thereafter, the Regional Trial Court of Manila, on petition of private respondent, cancelled the annotation of the notice of levy in favor of petitioner. Hence, petitioner appealed the said order before the Court of Appeals arguing that under Section 70 of the Property Registration Decree (P.D. 1529), the adverse claim annotated by private respondents was effective only for thirty days, even without any party seeking the cancellation of said annotation. An adverse claim, petitioner contended, automatically expires after thirty days from registration by sheer force of law, no judicial declaration to that effect being necessary. The appellate court, however, dismissed the appeal for lack of jurisdiction on the ground that the questions raised were purely legal.

Hence, the present Petition for Review.

The Court found the appeal unmeritorious. According to the Court sentence three, paragraph two of Section 70 of P.D.

1529 which provides that: "The adverse claim shall be effective for a period of thirty days from the date of registration" should be read in relation to the sentence following, which reads: "After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefore by the parties in interest." The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. For if the adverse claim has already ceased to be effective upon the lapse of the said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony. It should be noted that the law employs the phrase "may be cancelled," which obviously indicates, as inherent in its decision making power, that the court may or may not order the cancellation of an adverse claim notwithstanding such provision limiting the effectivity of an adverse claim for thirty days from the date of registration. The court cannot be bound by such period, as it would be inconsistent with the very authority vested in it. Anent the cancellation of levy under consideration, the Court affirmed the same ruling that the notice of levy cannot prevail over the subsisting adverse claim annotated at the back of the title at the instance of the private respondents. Thus, the Court denied the petition.

SYLLABUS

1. REMEDIAL LAW; JUDICIARY REORGANIZATION ACT OF 1980; COURT OF APPEALS; EXCLUSIVE APPELLATE JURISDICTION.— Section 9 of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, vests in the Court of Appeals exclusive appellate jurisdiction over all final decisions and orders of the Regional Trial Courts, except those falling within the appellate jurisdiction of the Supreme Court in accordance with, among others, the Constitution and Republic Act No. 296 (the Judiciary Act of 1948). Among the cases falling under the appellate jurisdiction of the Supreme Court and, thus, outside the appellate jurisdiction of the Court of Appeals are appeals where only questions of law are involved. In such case, Section 25 of the Interim Rules and Guidelines Implementing B.P. Blg. 129, in conjunction with

Section 3 of Republic Act No. 5440, provides that the appeal to the Supreme Court shall be taken by petition for *certiorari*, which shall be governed by Rule 45 of the Rules of Court.

2. ID.; CIVIL PROCEDURE; APPEALS; ERRONEOUS APPEALS; AN APPEAL TAKEN TO THE COURT OF APPEALS INVOLVING PURE QUESTIONS OF LAW SHALL BE DISMISSED.— There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts. The facts of this case are not in dispute. Therefore, as correctly pointed out by private respondents, and, as held by the Court of Appeals, the issues raised by petitioner on appeal are pure questions of law. Consequently, the dismissal by the Court of Appeals of petitioner's appeal was in order, pursuant to Supreme Court Circular No. 2-90, dated March 9, 1990, which mandates the dismissal of appeals involving pure questions of law erroneously brought to the Court of Appeals: 4. *Erroneous Appeals*. — An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed. . . . (c) *Raising issues purely of law in the Court of Appeals, or appeal by wrong mode*. — If an appeal under Rule 41 is taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said court. . . . (e) *Duty of counsel*. — It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether the case be of fact or of law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

3. ID.; ID.; JUDGMENTS; EXECUTION OF JUDGMENTS; VALIDITY OF THE WRIT SHOULD NOT BE LEFT TO THE DETERMINATION OF THE SHERIFF OR THE PARTIES.— Finally, the RTC did not err in ordering the cancellation of the notice of levy at the back of TCT No. 178892, and this Court affirms its ruling, as follows: x x x. It is true that, in the execution of money judgments, the Rules of Court allow the levying on "all the property, real and personal of every name and nature whatsoever, of the judgment debtor not exempt from execution,"

pursuant to which petitioner submits that the Rules should prevail over the writ of execution. Nevertheless, it is also true that the sheriff's duty in the execution of a writ issued by a court is purely ministerial. He is supposed to execute the order of the court strictly to the letter. Only that portion of a decision ordained or decreed in the dispositive portion should be the subject of execution. No more, no less. The validity of the writ of execution should not be left to the determination of the sheriff — or the parties, for that matter. As the writ of execution covered only "goods and chattels," the levy on the real property under TCT No. 119203 is in excess of the sheriff's authority. The cancellation of the annotation of such levy was justified.

4. ID.; ID.; ID.; ID.; NOTICE OF LEVY CANNOT PREVAIL OVER THE SUBSISTING ADVERSE CLAIM ANNOTATED AT THE BACK OF THE TITLE.— Even if the writ of execution covered real property, following *Sajonas* again, the notice of levy cannot prevail over the subsisting adverse claim annotated at the back of the title at the instance of the private respondents. Be it noted that, as recited in the affidavit of adverse claim, private respondents paid earnest money to the Asis spouses for the purchase of the property, with the balance of the purchase price to be paid upon the execution of the deed of absolute sale. Eventually, the Asis couple executed the deed of absolute sale in favor of private respondents, as a consequence of which a new title was issued in the name of the latter.

5. CIVIL LAW; LAND TITLES AND DEEDS; PROPERTY REGISTRATION DECREE, SECTION 70 THEREOF; PERIOD OF EFFECTIVITY OF AN INSCRIPTION OF ADVERSE CLAIM, CONSTRUED.— This Court rejected these same contentions in *Sajonas v. Court of Appeals*, thus: x x x. The question may be posed, was the adverse claim inscribed in the Transfer Certificate of Title No. N-190417 still in force when private respondent caused the notice of levy on execution to be registered and annotated in the said title, considering that more than thirty days had already lapsed since it was annotated? . . . For a definitive answer to this query, we refer to the law itself. Section 110 of Act 496 or the Land Registration Act reads: x x x. The validity of the above mentioned rules on adverse claims had to be reexamined in the light of the changes introduced by Section 70 of P.D. 1529, which provides: x x x. In construing the law aforesaid, care should

be taken that every part thereof be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole. For taken in solitude, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when a word or phrase is considered with those with which it is associated. In ascertaining the period of effectivity of an inscription of adverse claim, we must read the law in its entirety. Sentence three, paragraph two of Section 70 of P.D. 1529 provides: "The adverse claim shall be effective for a period of thirty days from the date of registration." At first blush, the provision in question would seem to restrict the effectivity of the adverse claim to thirty days. But the above provision cannot and should not be treated separately, but should be read in relation to the sentence following, which reads: "After the lapse of said period, the annotation of adverse claim *may be cancelled* upon filing of a verified petition therefore by the party in interest." If the rationale of the law was for the adverse claim *to ipso facto* lose force and effect after the lapse of thirty days, then it would not have been necessary to include the foregoing caveat to clarify and complete the rule. For then, no adverse claim need be cancelled. If it has been automatically terminated by mere lapse of time, the law would not have required the party in interest to do a useless act. A statute's clauses and phrases must not be taken separately, but in its relation to the statute's totality. Each statute must, in fact, be construed as to harmonize it with the pre-existing body of laws. Unless clearly repugnant, provisions of statutes must be reconciled. The printed pages of the published Act, its history, origin, and its purposes may be examined by the courts in their construction . . . Construing the provision as a whole would reconcile the apparent inconsistency between the portions of the law such that the provision on cancellation of adverse claim by verified petition would serve to qualify the provision on the effectivity period. The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. For if the adverse claim has already ceased to be effective upon the lapse of the said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony. It should

be noted that the law employs the phrase "may be cancelled," which obviously indicates, as inherent in its decision making power, that the court may or may not order the cancellation of an adverse claim notwithstanding such provision limiting the effectivity of an adverse claim for thirty days from the date of registration. The court cannot be bound by such period as it would be inconsistent with the very authority vested in it. A *fortiori*, the limitation on the period of effectivity is immaterial in determining the validity or invalidity of an adverse claim which is the principal issue to be decided in the court hearing. It will therefore depend upon the evidence at a proper hearing for the court to determine whether it will order the cancellation of the adverse claim or not. To interpret the effectivity period of the adverse claim as absolute and without qualification limited to thirty days defeats the purpose for which the statute provides for the remedy of an inscription of an adverse claim, as the annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act or Act 496 (now P.D. 1529 or the Property Registration Decree), and serves as a warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof. The reason why the law provides for a hearing where the validity of the adverse claim is to be threshed out is to afford the adverse claimant an opportunity to be heard, providing a venue where the propriety of his claimed interest can be established or revoked, all for the purpose of determining at last the existence of any encumbrance on the title arising from such adverse claim. This is in line with the provision immediately following: "Provided, however, that after cancellation, no second adverse claim shall be registered by the same claimant." Should the adverse claimant fail to sustain his interest in the property, the adverse claimant will be precluded from registering a second adverse claim based on the same ground. It was held that "validity or efficaciousness of the claim may only be determined by the Court upon petition by an interested party, in which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. And it is only when such claim is found unmeritorious that the registration of the adverse

claim may be cancelled, thereby protecting the interest of the adverse claimant and giving notice and warning to third parties."

APPEARANCES OF COUNSEL

Emiliano S. Samson for petitioner.
Tan Manzano & Velez for respondents.

D E C I S I O N

TINGA, *J.*:

Spouses Zosimo and Benita Asis were the owners of a parcel of land, and the improvements thereon, located in Manila, and covered by *Transfer Certificate of Title* (TCT) No. 119203.

On January 17, 1983, spouses Desiderio and Edarlina Frogozo, private respondents herein, caused the annotation of an adverse claim, Entry No. 1245,[1] at the back of said TCT No. 119203.

Three years later, on August 28, 1986, petitioner Equatorial Realty Development, Inc. (ERDI) levied on the property,

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[1] Said Entry states:

Entry No. 1245/T-119203-NOTICE OF ADVERSE CLAIM — Filed by Desiderio T. Frogozo claiming among others that an earnest money in the amount of ₱10,000.00 has been paid to Benita Asis for herself and in behalf of the husband and the balance in the amount of ₱145,000.00 to be paid after execution of a Deed of Absolute Sale on the property covered by this title;

x x x x x x x x x

ADVERSE CLAIM

x x x x x x x x x

2. I claim interest over the above-described property by reason of the following circumstances, to wit: On 29 December, 1982, the registered owners, Spouses Zosimo and Benita Asis, have sold the subject property to me and my wife in consideration of the sum of ₱155,000.00. I have paid the Spouses Zosimo and Benita Asis the sum of ₱10,000.00 on 29 December 1982 and earnest money, with the balance payable upon the execution of the formal

annotating at the back of the same TCT a notice of levy under Entry No. 964-65.

On February 12, 1988, the spouses Asis and the spouses Frogozo executed a Deed of Absolute Sale, as a result of which TCT No. 178892 was issued in the name of the latter. As TCT No. 178892 carried with it the annotation of the notice of levy in favor of ERDI, the Frogozos asked for the cancellation of said annotation before the Regional Trial Court (RTC) of Manila on March 4, 1988. The RTC granted the cancellation of the annotation in LRC Record No. 4004.

On May 14, 1993, ERDI appealed the RTC *Order* to the Court of Appeals, raising the question of whether the RTC erred in ordering the cancellation of the annotation of the notice of levy.

After the parties filed their respective briefs, petitioner filed a *Reply* to which respondent followed with a *Rejoinder* and a *Supplemental Rejoinder*. Petitioner moved to expunge the latter two pleadings but the Court of Appeals purportedly did not act on said motions. Instead, on March 12, 1997, the appellate court rendered its *Decision*[2] denying the appeal on the ground that the issues raised by ERDI, being pure questions of law, were not reviewable by it.

ERDI thus filed with this Court the present *Petition for Review*.

Contract of Sale which upon prior arrangement with Mr. & Mrs. Asis I had prepared by my lawyer. The Contract of Sale is with Mr. & Mrs. Asis and it embodies the terms in accordance with their letter to me dated 29 December 1982 accepting my offer to buy. For no reason at all, Mr. & Mrs. Asis are now refusing to sign the formal Contract of Sale. Despite this, I am claiming a right [to] the property as the buyer since for all intents and purposes, and in particular having paid earnest money, and ready to pay the balance, I am now entitled to own the property. (CA *Rollo*, pp. 62-63).

[2] Penned by Associate Justice (later Supreme Court Associate Justice) Arturo B. Buena, concurred in by Associate Justice (now Supreme Court Associate Justice) Alicia Austria-Martinez and Associate Justice Bernardo Ll. Salas.

Petitioner ERDI submits that the Court of Appeals erred in considering private respondent spouses Frogozo's rejoinders without resolving ERDI's motions to expunge. This contention has no merit. Although the Court of Appeals did not resolve the motions expressly, it did so tacitly, albeit belatedly, when it rendered its *Decision*. By proceeding to decide the case, the appellate court in effect denied petitioner's motions to expunge and considered respondent's rejoinder and supplemental rejoinder as properly and reasonably filed.[3]

Petitioner likewise claims that the Court of Appeals erred in dismissing its appeal for lack of jurisdiction on the ground that the questions raised were purely legal.

Section 9 of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, vests in the Court of Appeals exclusive appellate jurisdiction over all final decisions and orders of the Regional Trial Courts, except those falling within the appellate jurisdiction of the Supreme Court in accordance with, among others, the Constitution and Republic Act No. 296 (the Judiciary Act of 1948). Among the cases falling under the appellate jurisdiction of the Supreme Court and, thus, outside the appellate jurisdiction of the Court of Appeals are appeals where only questions of law are involved. In such case, Section 25 of the Interim Rules and Guidelines Implementing B.P. Blg. 129, in conjunction with Section 3 of Republic Act No. 5440, provides that the appeal to the Supreme Court shall be taken by petition for *certiorari*, which shall be governed by Rule 45 of the Rules of Court.

There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts.[4] The facts of this case are not in dispute. Therefore, as correctly pointed out by private respondents, and, as held by the Court

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[3] *Ong v. Fonacier*, G.R. No. L-20887, July 8, 1966, 17 SCRA 617, cited in *Lavides v. Pre*, G.R. No. 127830, October 17, 2001, 367 SCRA 382.

[4] *Calvo v. Vergara*, G.R. No. 134741, December 19, 2001, 372 SCRA 650; *Western Shipyard Services, Inc. v. Court of Appeals*, G.R. No. 110340, May 28, 2001, 358 SCRA 257.

of Appeals, the issues raised by petitioner on appeal are pure questions of law, to wit:

(a) Petitioner's adverse claim, registered on January 17, 1983, is effective only for a period of thirty (30) days from the date of registration or until February 16, 1983. (page 4, appellant's Brief).

(b) All property of the judgment debtor, real and personal, of every name and nature whatsoever and which may be disposed of for value, may be levied upon on execution. What is controlling is the law/Rules of Court, not the writ. (page 12, *ibid*.).

(c) The fact that the title over the subject property is no longer in the name of the spouses Asis cannot and should not militate against oppositor's claim/levy because at the time of levy of August 28, 1986, the property was still in the name of Asis. (page 13, *ibid*.).

(d) The act of registration is the operative act to effect [sic] the land insofar as third persons are concerned. From the standpoint of third parties, it is a positive rule that a property registered under the Torrens system remains, for all legal intents and purposes, the property of the person in whose name it is registered or inscribed, notwithstanding the alleged execution of any Deed of Conveyance or encumbrance, unless the corresponding deed is inscribed or registered (page 13, *ibid*.).[5]

Consequently, the dismissal by the Court of Appeals of petitioner's appeal was in order, pursuant to Supreme Court Circular No. 2-90, dated March 9, 1990, which mandates the dismissal of appeals involving pure questions of law erroneously brought to the Court of Appeals:

4. *Erroneous Appeals*. — An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

x x x x x x x x x

(c) *Raising issues purely of law in the Court of Appeals, or appeal by wrong mode*. — If an appeal under Rule 41 is

[5] CA *Rollo*, pp. 102-103.

> taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said court. . . .
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> x x x x x x x x x
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> (e) *Duty of counsel*. — It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether the case be of fact or of law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

In any case, petitioner's appeal before the Court of Appeals has no merit. There, petitioner claimed that the RTC erred in ordering the cancellation of the annotation of the petitioner's levy appearing as Entry No. 964-65, at the back of TCT No. 178892. Petitioner argued that under Section 70 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, the adverse claim annotated by private respondents Frogozos on January 17, 1983 was effective only for thirty (30) days or up to February 16, 1983, even without any party seeking the cancellation of said annotation.[6] An adverse claim, petitioner contended, "automatically expires after thirty (30) days from registration by sheer force of law, no judicial declaration to that effect being necessary."[7] According to petitioner, "[r]esort to the Court is only necessary when the party aggrieved by the adverse claim cannot wait for the lapse of the thirty (30) days from annotation, and wants the adverse claim cancelled before the expiration of the thirty (30) day period."[8]

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[6] CA *Rollo*, p. 13.

[7] *Id*. at 18.

[8] *Id*. at 19.

Before this Court, petitioner echoed the same arguments.

This Court rejected these same contentions in *Sajonas v. Court of Appeals*,[9] thus:

> Noting the changes made in the terminology of the provisions of the law, private respondent interpreted this to mean that a Notice of Adverse Claim remains effective only for a period of 30 days from its annotation, and automatically loses its force afterwards. Private respondent further maintains that the notice of adverse claim was annotated on August 27, 1984, hence, it will be effective only up to September 26, 1984, after which it will no longer have any binding force and effect pursuant to Section 70 of P.D. No. 1529 . . ..
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> The question may be posed, was the adverse claim inscribed in the Transfer Certificate of Title No. N-190417 still in force when private respondent caused the notice of levy on execution to be registered and annotated in the said title, considering that more than thirty days had already lapsed since it was annotated? . . .
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> x x x x x x x x x
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> For a definitive answer to this query, we refer to the law itself. Section 110 of Act 496 or the Land Registration Act reads:
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> "Sec. 110. Whoever claims any part or interest in registered lands adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.
>
> ["]The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. The statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the

[9] G.R. No. 102377, July 5, 1996, 258 SCRA 79.

registration shall be cancelled. If in any case, if the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble the costs in its discretion."

The validity of the above mentioned rules on adverse claims had to be reexamined in the light of the changes introduced by P.D. 1529, which provides:

"Sec. 70. Adverse claim — whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of certificates or title of the registered owner, and a description of the land in which the right or interest is claimed.

["]The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. *The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of the said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefore by the party in interest:* Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

["]Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing shall find that the adverse claims thus registered was frivolous, it may fine the claimant in the amount not less than one thousand pesos, nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect." (Italics ours[.])

In construing the law aforesaid, care should be taken that every part thereof be given effect and a construction that could render a

provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole. For taken in solitude, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when a word or phrase is considered with those with which it is associated. In ascertaining the period of effectivity of an inscription of adverse claim, we must read the law in its entirety. Sentence three, paragraph two of Section 70 of P.D. 1529 provides:

"The adverse claim shall be effective for a period of thirty days from the date of registration."

At first blush, the provision in question would seem to restrict the effectivity of the adverse claim to thirty days. But the above provision cannot and should not be treated separately, but should be read in relation to the sentence following, which reads:

"After the lapse of said period, the annotation of adverse claim *may be cancelled* upon filing of a verified petition therefore by the party in interest."

If the rationale of the law was for the adverse claim to *ipso facto* lose force and effect after the lapse of thirty days, then it would not have been necessary to include the foregoing caveat to clarify and complete the rule. For then, no adverse claim need be cancelled. If it has been automatically terminated by mere lapse of time, the law would not have required the party in interest to do a useless act.

A statute's clauses and phrases must not be taken separately, but in its relation to the statute's totality. Each statute must, in fact, be construed as to harmonize it with the pre-existing body of laws. Unless clearly repugnant, provisions of statutes must be reconciled. The printed pages of the published Act, its history, origin, and its purposes may be examined by the courts in their construction . . ..

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Construing the provision as a whole would reconcile the apparent inconsistency between the portions of the law such that the provision on cancellation of adverse claim by verified petition would serve to qualify the provision on the effectivity period. The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. For if the adverse claim has already ceased to be effective upon the lapse

of the said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony.

It should be noted that the law employs the phrase "may be cancelled," which obviously indicates, as inherent in its decision making power, that the court may or may not order the cancellation of an adverse claim notwithstanding such provision limiting the effectivity of an adverse claim for thirty days from the date of registration. The court cannot be bound by such period as it would be inconsistent with the very authority vested in it. A *fortiori,* the limitation on the period of effectivity is immaterial in determining the validity or invalidity of an adverse claim which is the principal issue to be decided in the court hearing. It will therefore depend upon the evidence at a proper hearing for the court to determine whether it will order the cancellation of the adverse claim or not.

To interpret the effectivity period of the adverse claim as absolute and without qualification limited to thirty days defeats the purpose for which the statute provides for the remedy of an inscription of an adverse claim, as the annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act or Act 496 (now P.D. 1529 or the Property Registration Decree), and serves as a warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof.

The reason why the law provides for a hearing where the validity of the adverse claim is to be threshed out is to afford the adverse claimant an opportunity to be heard, providing a venue where the propriety of his claimed interest can be established or revoked, all for the purpose of determining at last the existence of any encumbrance on the title arising from such adverse claim. This is in line with the provision immediately following:

"Provided, however, that after cancellation, no second adverse claim shall be registered by the same claimant."

Should the adverse claimant fail to sustain his interest in the property, the adverse claimant will be precluded from registering a second adverse claim based on the same ground.

It was held that "validity or efficaciousness of the claim may only be determined by the Court upon petition by an interested party, in

which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. And it is only when such claim is found unmeritorious that the registration of the adverse claim may be cancelled, thereby protecting the interest of the adverse claimant and giving notice and warning to third parties."

In sum, the disputed inscription of adverse claim on the Transfer Certificate of Title No. N-79073 was still in effect on February 12, 1985 when Quezon City Sheriff Roberto Garcia annotated the notice of levy on execution thereto. Consequently, he is charged with knowledge that the property sought to be levied upon on execution was encumbered by an interest the same as or better than that of the registered owner thereof. Such notice of levy cannot prevail over the existing adverse claim inscribed on the certificate of title in favor of the petitioners. This can be deduced from the pertinent provision of the Rules of Court, to wit:

"Section 16. Effect of levy on execution as to third persons. — The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, *subject to liens or encumbrances then existing*." (Italics supplied[.])

To hold otherwise would be to deprive petitioners of their property, who waited a long time to complete payments on their property, convinced that their interest was amply protected by the inscribed adverse claim.[10]

The ruling in *Sajonas* found reiteration and affirmation in *Diaz-Duarte v. Ong*.[11]

Finally, the RTC did not err in ordering the cancellation of the notice of levy at the back of TCT No. 178892, and this Court affirms its ruling, as follows:

. . . While admittedly the notice of levy was originally annotated on the certificate of title of Benita Asia (one of the judgment debtors in Civil Case No. 097455) under Transfer Certificate of Title No. 119203 such that even if her title is later on cancelled and a new one issued to a subsequent transferee, the notice of levy is still binding

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[10] *Id.* at 93-99.

[11] G.R. No. 130352, November 3, 1998, 298 SCRA 388.

on the latter, the Court is of the view that this is not so in the notice of levy under consideration because the same is ineffective for being unauthorized considering that as earlier stated **the writ of execution pursuant to which the notice was taken made mention only of the goods and chattels of both Benita Asis and Guadalupe Lucila . . .**[12]

It is true that, in the execution of money judgments, the Rules of Court[13] allow the levying on "all the property, real and personal of every name and nature whatsoever, of the judgment debtor not exempt from execution," pursuant to which petitioner submits that the Rules should prevail over the writ of execution. Nevertheless, it is also true that the sheriff's duty in the execution of a writ issued by a court is purely ministerial. He is supposed to execute the order of the court strictly to the letter.[14] Only that portion of a decision ordained or decreed in the dispositive portion should be the subject of execution. No more, no less.[15] The validity of the writ of execution should not be left to the determination of the sheriff — or the parties, for that matter. As the writ of execution covered only "goods and chattels," the levy on the real property under TCT No. 119203 is in excess of the sheriff's authority. The cancellation of the annotation of such levy was justified.

Even if the writ of execution covered real property, following *Sajonas*[16] again, the notice of levy cannot prevail over the subsisting adverse claim annotated at the back of the title at the instance of the private respondents. Be it noted that, as recited in the affidavit of adverse claim,[17] private respondents paid

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[12] CA *Rollo*, p. 33. (Emphasis supplied.)

[13] Sec. 15, Rule 39.

[14] *Araza v. Garcia*, A.M. No. P-00-1363, February 8, 2000, 325 SCRA 1; *Wenceslao v. Madrazo*, A.M. No. P-92-768, August 28, 1995, 247 SCRA 696.

[15] *V.C. Ponce Co., Inc. v. Eduarte*, A.M. No. RTJ-99-1495, October 18, 2000, 343 SCRA 445.

[16] *Supra* note 9, at 98-99.

[17] *Supra* note 1.

earnest money to the Asis spouses for the purchase of the property, with the balance of the purchase price to be paid upon the execution of the deed of absolute sale. Eventually, the Asis couple executed the deed of absolute sale in favor of private respondents, as a consequence of which a new title was issued in the name of the latter.

The foregoing renders unnecessary the resolution of the other substantive issues raised by petitioner.

WHEREFORE, the *Petition* is DENIED.

SO ORDERED.

Puno (Chairman), Quisumbing, and *Callejo, Sr., JJ.,* concur.

Austria-Martinez, J., no part.

SECOND DIVISION

[G.R. No. 134971. March 25, 2004]

HERMINIO TAYAG, *petitioner, vs.* **AMANCIA LACSON, ROSENDO LACSON, ANTONIO LACSON, JUAN LACSON, TEODOSIA LACSON-ESPINOSA and THE COURT OF APPEALS,** *respondents.*

SYNOPSIS

On March 17, 1996, a group of tenants/tillers individually executed Deeds of Assignment in favor of the petitioner, obliging themselves to assign and transfer their rights or interest as agricultural farmers/laborer/sub-tenants over three parcels of land registered in the names of herein respondents, and granting the petitioner the exclusive right to buy said property subject to the occurrence of certain conditions. On August 8, 1998, the tenants/tillers informed the petitioner that they have

decided to sell their rights and interest over the landholding to the respondents, instead of honoring their obligation under the Deeds of Assignment. Hence, the petitioner filed a complaint with the Regional Trial Court of San Fernando, Pampanga asking the latter to fix a period within which to pay the balance of the purchase price to the defendants-tenants/tillers and praying for injunctive relief to enjoin them from rescinding their contract and from alienating their rights and interest over said property in favor of respondents or any other third persons; and prohibit the respondents from encumbering/alienating the property. Respondents moved to dismiss/deny petitioner's plea for injunctive relief citing several grounds. The trial court denied the motion ruling that the petitioner was entitled to a writ of preliminary injunction against the respondents on the basis of the material averments of the complaint. The Court of Appeals, however, annulled and set aside the orders of the trial court, and permanently enjoined it from proceeding with the case.

Hence, the instant petition for review on *certiorari*.

The Supreme Court held that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction in denying the respondents' motion to deny or dismiss the petitioner's plea for a writ of preliminary injunction. According to the Court, the trial court cannot enjoin the respondents at the instance of the petitioner from selling, disposing of and encumbering their property. As the registered owners of the property, the respondents have the right to enjoy and dispose of their property without any other limitations than those established by law. The respondents cannot be enjoined from selling or encumbering their property because they were not parties to the Deed of Assignment. There was no evidence that the respondents agreed, expressly or impliedly, to the said deeds or the terms and conditions set forth therein. Moreover, petitioner has no cause of action against the respondents for the principal relief prayed for in the complaint. The respondents were not privies to the deeds of assignment. The matter of the period for the petitioner to pay the balance of the purchase price to each of the defendants-tenants/tillers was an issue between the parties to the deed. However, the Court held that the appellate court erred when it permanently enjoined the RTC from continuing with the proceedings in the case. By permanently

enjoining the trial court from proceeding with the case, the appellate court acted arbitrarily and effectively dismissed the complaint *motu proprio*, including the counterclaims of the respondents and that of the defendants-tenants/tillers. The Court therefore lifted and set aside the writ of injunction issued by the appellate court and ordered the trial court to continue with the proceedings in the subject civil case.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; OPTIONS AVAILABLE TO THE RESPONDENT WHEN A PLEA FOR A WRIT OF PRELIMINARY INJUNCTION HAS BEEN FILED AGAINST HIM.— Contrary to the ruling of the trial court, the motion of the respondents to dismiss/deny the petitioner's plea for a writ of preliminary injunction after the petitioner had adduced his evidence, testimonial and documentary, and had rested his case on the incident, was proper and timely. It bears stressing that the petitioner had the burden to prove his right to a writ of preliminary injunction. He may rely solely on the material allegations of his complaint or adduce evidence in support thereof. The petitioner adduced his evidence to support his plea for a writ of preliminary injunction against the respondents and the defendants-tenants and rested his case on the said incident. The respondents then had three options: (a) file a motion to deny/dismiss the motion on the ground that the petitioner failed to discharge his burden to prove the factual and legal basis for his plea for a writ of preliminary injunction and, if the trial court denies his motion, for them to adduce evidence in opposition to the petitioner's plea; (b) forgo their motion and adduce testimonial and/or documentary evidence in opposition to the petitioner's plea for a writ of preliminary injunction; or, (c) waive their right to adduce evidence and submit the incident for consideration on the basis of the pleadings of the parties and the evidence of the petitioner. The respondents opted not to adduce any evidence, and instead filed a motion to deny or dismiss the petitioner's plea for a writ of preliminary injunction against them, on their claim that the petitioner failed to prove his entitlement thereto. The trial court cannot compel the respondents to adduce evidence in

opposition to the petitioner's plea if the respondents opt to waive their right to adduce such evidence. Thus, the trial court should have resolved the respondents' motion even without the latter's opposition and the presentation of evidence thereon.

2. ID.; ID.; ID.; CONDITIONS FOR THE ISSUANCE THEREOF.— A preliminary injunction is an extraordinary event calculated to preserve or maintain the *status quo* of things *ante litem* and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard. Injunction is accepted as the strong arm of equity or a transcendent remedy. While generally the grant of a writ of preliminary injunction rests on the sound discretion of the trial court taking cognizance of the case, extreme caution must be observed in the exercise of such discretion. Indeed, in *Olalia v. Hizon*, we held: It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it. The very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

3. ID.; ID.; ID.; REQUISITES FOR THE GRANT THEREOF; POSSIBILITY OF IRREPARABLE DAMAGE WITHOUT PROOF OF ADEQUATE EXISTING RIGHTS IS NOT A GROUND FOR INJUNCTION.— For the court to issue a writ of preliminary injunction, the petitioner was burdened to establish the following: (1) a right in *esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. Thus, in the

absence of a clear legal right, the issuance of the injunctive writ constitutes a grave abuse of discretion. Where the complainant's right is doubtful or disputed, injunction is not proper. Injunction is a preservative remedy aimed at protecting substantial rights and interests. It is not designed to protect contingent or future rights. The possibility of irreparable damage without proof of adequate existing rights is not a ground for injunction. We have reviewed the pleadings of the parties and found that, as contended by the respondents, the petitioner failed to establish the essential requisites for the issuance of a writ of preliminary injunction. Hence, the trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in denying the respondents' comment/motion as well as their motion for reconsideration.

4. **ID.; ID.; ID.; APPELLATE COURT ERRED IN PERMANENTLY ENJOINING THE REGIONAL TRIAL COURT FROM CONTINUING WITH THE PROCEEDINGS IN CASE AT BAR.—** We agree with the petitioner's contention that the appellate court erred when it permanently enjoined the RTC from continuing with the proceedings in Civil Case No. 10910. The only issue before the appellate court was whether or not the trial court committed a grave abuse of discretion amounting to excess or lack of jurisdiction in denying the respondents' motion to deny or dismiss the petitioner's plea for a writ of preliminary injunction. Not one of the parties prayed to permanently enjoin the trial court from further proceeding with Civil Case No. 10910 or to dismiss the complaint. It bears stressing that the petitioner may still amend his complaint, and the respondents and the defendants-tenants may file motions to dismiss the complaint. By permanently enjoining the trial court from proceeding with Civil Case No. 10910, the appellate court acted arbitrarily and effectively dismissed the complaint *motu proprio*, including the counterclaims of the respondents and that of the defendants-tenants. The defendants-tenants were even deprived of their right to prove their special and affirmative defenses.

5. **ID.; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION, LACK OF.—** A reading of the averments of the complaint will show that the petitioner clearly has no cause of action against the respondents for the principal relief prayed for therein, for the trial court to fix a period within which to pay to each of

the defendants-tenants the balance of the ₱50.00 per square meter, the consideration under the Deeds of Assignment executed by the defendants-tenants. The respondents are not parties or privies to the deeds of assignment. The matter of the period for the petitioner to pay the balance of the said amount to each of the defendants-tenants is an issue between them, the parties to the deed.

6. CIVIL LAW; PROPERTY; OWNERSHIP; REGISTERED OWNERS OF THE PROPERTY HAVE THE RIGHT TO ENJOY AND DISPOSE OF THEIR PROPERTY WITHOUT ANY OTHER LIMITATIONS THAN THOSE ESTABLISHED BY LAW; CASE AT BAR.— The trial court cannot enjoin the respondents, at the instance of the petitioner, from selling, disposing of and encumbering their property. As the registered owners of the property, the respondents have the right to enjoy and dispose of their property without any other limitations than those established by law, in accordance with Article 428 of the Civil Code. The right to dispose of the property is the power of the owner to sell, encumber, transfer, and even destroy the property. Ownership also includes the right to recover the possession of the property from any other person to whom the owner has not transmitted such property, by the appropriate action for restitution, with the fruits, and for indemnification for damages. The right of ownership of the respondents is not, of course, absolute. It is limited by those set forth by law, such as the agrarian reform laws. Under Article 1306 of the New Civil Code, the respondents may enter into contracts covering their property with another under such terms and conditions as they may deem beneficial provided they are not contrary to law, morals, good conduct, public order or public policy. The respondents cannot be enjoined from selling or encumbering their property simply and merely because they had executed Deeds of Assignment in favor of the petitioner, obliging themselves to assign and transfer their rights or interests as agricultural farmers/ laborers/sub-tenants over the landholding, and granting the petitioner the exclusive right to buy the property subject to the occurrence of certain conditions. The respondents were not parties to the said deeds. There is no evidence that the respondents agreed, expressly or impliedly, to the said deeds or to the terms and conditions set forth therein. Indeed, they assailed the validity of the said deeds on their claim that the same were

contrary to the letter and spirit of P.D. No. 27 and Rep. Act No. 6657. The petitioner even admitted when he testified that he did not know any of the respondents, and that he had not met any of them before he filed his complaint in the RTC. He did not even know that one of those whom he had impleaded as defendant, Angelica *Vda. de* Lacson, was already dead.

7. ID.; OBLIGATIONS AND CONTRACTS; CONTRACTS; OPTION CONTRACT; NATURE; PERSON WHO IS NOT THE REGISTERED OWNER OF THE PROPERTY CANNOT LEGALLY GRANT TO ANOTHER THE OPTION, MUCH LESS THE EXCLUSIVE RIGHT TO BUY THE PROPERTY.— We do not agree with the contention of the petitioner that the deeds of assignment executed by the defendants-tenants are perfected option contracts. An option is a contract by which the owner of the property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with certain terms and conditions, or which gives to the owner of the property the right to sell or demand a sale. It imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Until accepted, it is not, properly speaking, treated as a contract. The second party gets *in praesenti*, not lands, not an agreement that he shall have the lands, but the right to call for and receive lands if he elects. An option contract is a separate and distinct contract from which the parties may enter into upon the conjunction of the option. In this case, the defendants-tenants-subtenants, under the deeds of assignment, granted to the petitioner not only an option but the exclusive right to buy the landholding. But the grantors were merely the defendants-tenants, and not the respondents, the registered owners of the property. Not being the registered owners of the property, the defendants-tenants could not legally grant to the petitioner the option, much less the "exclusive right" to buy the property. As the Latin saying goes, "*NEMO DAT QUOD NON HABET*."

8. ID.; ID.; ID.; ARTICLE 1314 OF THE NEW CIVIL CODE; REQUISITES; WHERE THERE WAS NO MALICE IN THE INTERFERENCE OF A CONTRACT, AND THE IMPULSE BEHIND ONE'S CONDUCT LIES IN A PROPER BUSINESS

INTEREST RATHER THAN IN WRONGFUL MOTIVES, A PARTY CANNOT BE A MALICIOUS INTERFERER; CASE AT BAR.— The petitioner impleaded the respondents as parties-defendants solely on his allegation that the latter induced or are inducing the defendants-tenants to violate the deeds of assignment, contrary to the provisions of Article 1314 of the New Civil Code which reads: Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. In *So Ping Bun v. Court of Appeals*, we held that for the said law to apply, the pleader is burdened to prove the following: (1) the existence of a valid contract; (2) knowledge by the third person of the existence of the contract; and (3) interference by the third person in the contractual relation without legal justification. Where there was no malice in the interference of a contract, and the impulse behind one's conduct lies in a proper business interest rather than in wrongful motives, a party cannot be a malicious interferer. Where the alleged interferer is financially interested, and such interest motivates his conduct, it cannot be said that he is an officious or malicious intermeddler. In fine, one who is not a party to a contract and who interferes thereon is not necessarily an officious or malicious intermeddler. The only evidence adduced by the petitioner to prove his claim is the letter from the defendants-tenants informing him that they had decided to sell their rights and interests over the landholding to the respondents, instead of honoring their obligation under the deeds of assignment because, according to them, the petitioner harassed those tenants who did not want to execute deeds of assignment in his favor, and because the said defendants-tenants did not want to have any problem with the respondents who could cause their eviction for executing with the petitioner the deeds of assignment as the said deeds are in violation of P.D. No. 27 and Rep. Act No. 6657. The defendants-tenants did not allege therein that the respondents induced them to breach their contracts with the petitioner.

9. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; COMPREHENSIVE AGRARIAN REFORM PROGRAM; PETITIONER HAS NO RIGHT TO ENFORCE THE DEEDS OF ASSIGNMENT UNLESS AND UNTIL THE DEPARTMENT OF AGRARIAN REFORM APPROVED THE SAME; CASE AT BAR.— On the face of the complaint, the action of the petitioner against the respondents and the

defendants-tenants has no legal basis. Under the Deeds of Assignment, the obligation of the petitioner to pay to each of the defendants-tenants the balance of the purchase price was conditioned on the occurrence of the following events: (a) the respondents agree to sell their property to the petitioner; (b) the legal impediments to the sale of the landholding to the petitioner no longer exist; and, (c) the petitioner decides to buy the property. When he testified, the petitioner admitted that the legal impediments referred to in the deeds were (a) the respondents' refusal to sell their property; and, (b) the lack of approval of the Department of Agrarian Reform: It is only upon the occurrence of the foregoing conditions that the petitioner would be obliged to pay to the defendants-tenants the balance of the ₱50.00 per square meter under the deeds of assignment. There is no showing in the petitioner's complaint that the respondents had agreed to sell their property, and that the legal impediments to the agreement no longer existed. The petitioner and the defendants-tenants had yet to submit the Deeds of Assignment to the Department of Agrarian Reform which, in turn, had to act on and approve or disapprove the same. In fact, as alleged by the petitioner in his complaint, he was yet to meet with the defendants-tenants to discuss the implementation of the deeds of assignment. Unless and until the Department of Agrarian Reform approved the said deeds, if at all, the petitioner had no right to enforce the same in a court of law by asking the trial court to fix a period within which to pay the balance of the purchase price and praying for injunctive relief.

10. ID.; ID.; ID.; SECTION 22 THEREOF; BENEFICIARIES UNDER P.D. NO. 27 WHO HAVE CULPABLY SOLD, DISPOSED OF, OR ABANDONED THEIR LAND, ARE DISQUALIFIED FROM BECOMING BENEFICIARIES.— Even if the respondents received an offer from the defendants-tenants to assign and transfer their rights and interests on the landholding, the respondents cannot be enjoined from entertaining the said offer, or even negotiating with the defendants-tenants. The respondents could not even be expected to warn the defendants-tenants for executing the said deeds in violation of P.D. No. 27 and Rep. Act No. 6657. Under Section 22 of the latter law, beneficiaries under P.D. No. 27 who have culpably sold, disposed of, or abandoned their land, are disqualified from becoming beneficiaries.

11. ID.; ID.; ID.; REPUBLIC ACT NO. 3844, SECTION 12 THEREOF; LESSEE'S RIGHT OF PREEMPTION OR REDEMPTION; CASE AT BAR.— From the pleadings of the petitioner, it is quite evident that his purpose in having the defendants-tenants execute the Deeds of Assignment in his favor was to acquire the landholding without any tenants thereon, in the event that the respondents agreed to sell the property to him. The petitioner knew that under Section 11 of Rep. Act No. 3844, if the respondents agreed to sell the property, the defendants-tenants shall have preferential right to buy the same under reasonable terms and conditions: x x x. Under Section 12 of the law, if the property was sold to a third person without the knowledge of the tenants thereon, the latter shall have the right to redeem the same at a reasonable price and consideration. By assigning their rights and interests on the landholding under the deeds of assignment in favor of the petitioner, the defendants-tenants thereby waived, in favor of the petitioner, who is not a beneficiary under Section 22 of Rep. Act No. 6657, their rights of preemption or redemption under Rep. Act No. 3844. The defendants-tenants would then have to vacate the property in favor of the petitioner upon full payment of the purchase price. Instead of acquiring ownership of the portions of the landholding respectively tilled by them, the defendants-tenants would again become landless for a measly sum of ₱50.00 per square meter. The petitioner's scheme is subversive, not only of public policy, but also of the letter and spirit of the agrarian laws. That the scheme of the petitioner had yet to take effect in the future or ten years hence is not a justification. The respondents may well argue that the agrarian laws had been violated by the defendants-tenants and the petitioner by the mere execution of the deeds of assignment. In fact, the petitioner has implemented the deeds by paying the defendants-tenants amounts of money and even sought their immediate implementation by setting a meeting with the defendants-tenants. In fine, the petitioner would not wait for ten years to evict the defendants-tenants. For him, time is of the essence.

APPEARANCES OF COUNSEL

Ernesto L. Pineda for petitioner.
Rafael De Claro for respondents.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] and the Resolution[2] of respondent Court of Appeals in CA-G.R. SP No. 44883.

The Case for the Petitioner

Respondents Angelica Tiotuyco *Vda. de* Lacson,[3] and her children Amancia, Antonio, Juan, and Teodosia, all surnamed Lacson, were the registered owners of three parcels of land located in Mabalacat, Pampanga, covered by Transfer Certificates of Title (TCT) Nos. 35922-R, 35923-R, and 35925-R, registered in the Register of Deeds of San Fernando, Pampanga. The properties, which were tenanted agricultural lands,[4] were administered by Renato Espinosa for the owner.

On March 17, 1996, a group of original farmers/tillers, namely, Julio Tiamson, Renato Gozun, Rosita Hernandez, Bienvenido Tongol, Alfonso Flores, Norma Quiambao, Rosita Tolentino, Jose Sosa, Francisco Tolentino, Sr., Emiliano Laxamana, Ruben Torres, Meliton Allanigue, Dominga Laxamana, Felicencia de Leon, Emiliano Ramos, and another group, namely, Felino G. Tolentino, Rica Gozun, Perla Gozun, Benigno Tolentino, Rodolfo Quiambao, Roman Laxamana, Eddie San Luis, Ricardo Hernandez, Nicenciana Miranda, Jose Gozun, Alfredo Sosa, Jose Tiamson, Augusto Tolentino, Sixto Hernandez, Alex Quiambao, Isidro Tolentino, Ceferino de Leon, Alberto Hernandez, Orlando Flores, and Aurelio Flores,[5] individually

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[1] Penned by Associate Justice Demetrio G. Demetria with Associate Justices Minerva P. Gonzaga-Reyes, later a member of the Supreme Court, now retired, and Ramon A. Barcelona, retired, concurring.

[2] CA *Rollo*, p. 142.

[3] Also referred to as Angela or Angelina Tiotuyco *Vda. de* Lacson.

[4] *Rollo*, pp. 34, 56.

[5] The petitioner alleged in his complaint that the other group are sub-tenants but the respondents specifically denied allegation in their answer to the complaint.

executed in favor of the petitioner separate Deeds of Assignment[6] in which the assignees assigned to the petitioner their respective rights as tenants/tillers of the landholdings possessed and tilled

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[6] Herein is a sample of such deed of assignment similarly signed by the thirty-five defendants-tenants —

x x x x x x x x x

WHEREAS, the ASSIGNOR is one of the agricultural lessee of a certain real property covered under Transfer Certificate of Title No. 35925-R registered in the names of the following persons:

1. ANGELA TIOTUYCO *VDA. DE* LACSON
2. AMANCIA LACSON
3. ANTONIO LACSON
4. JUAN LACSON
5. TEODOSIA LACSON

situated at ANGELES CITY, MABALACAT and MAGALANG, PAMPANGA.

WHEREAS, the said property is being administered by MR. RENATO ESPINOSA with postal address at Chateau de Bai Condominium, Roxas Boulevard cor. Airport Road, Baclaran, Parañaque, Metro Manila;

WHEREAS, the ASSIGNOR offered to assign his rights as tenant/lessee over the portion of the aforecited land actually tilled and possessed by him and the ASSIGNEE has agreed and accepted such offer under the following terms and conditions to wit:

1. That the consideration of the said DEED OF ASSIGNMENT is the sum of TEN THOUSAND (₱10,000.00) Philippine Currency receipt of which is hereby acknowledged by, ASSIGNOR;
2. That in case the ASSIGNOR and LANDOWNER will mutually agree to sell said lot to the ASSIGNEE, who is given an exclusive and absolute right to buy the lot, the ASSIGNOR shall receive the sum of FIFTY PESOS (₱50.00) per square meter as consideration of the total area actually tilled and possessed by ASSIGNOR, less whatever amount received by the ASSIGNOR including commissions, taxes & all allowable deductions relative to the sale of the subject properties.
3. That this exclusive and absolute right given to the ASSIGNEE shall be exercised only when no legal impediments exist to the lot to effect the smooth transfer of lawful ownership of the lot/property in the name of the ASSIGNEE;
4. That the ASSIGNOR will remain in peaceful possession over the said property and shall enjoy the fruits/earnings and/or harvest of the said lot until such time that full payment of the agreed purchase price had been made by the ASSIGNEE.

by them for and in consideration of ₱50.00 per square meter. The said amount was made payable "when the legal impediments to the sale of the property to the petitioner no longer existed." The petitioner was also granted the exclusive right to buy the property if and when the respondents, with the concurrence of the defendants-tenants, agreed to sell the property. In the *interim*, the petitioner gave varied sums of money to the tenants as partial payments, and the latter issued receipts for the said amounts.

On July 24, 1996, the petitioner called a meeting of the defendants-tenants to work out the implementation of the terms of their separate agreements.[7] However, on August 8, 1996, the defendants-tenants, through Joven Mariano, wrote the petitioner stating that they were not attending the meeting and instead gave notice of their collective decision to sell all their rights and interests, as tenants/lessees, over the landholding to the respondents.[8] Explaining their reasons for their collective decision, they wrote as follows:

Kami ay nagtiwala sa inyo, naging tapat at nanindigan sa lahat ng ating napagkasunduan, hindi tumanggap ng ibang buyer o ahente, pero sinira ninyo ang aming pagtitiwala sa pamamagitan ng demanda ninyo at pagbibigay ng problema sa amin na hindi naman nagbenta ng lupa.

Kaya kami ay nagpulong at nagpasya na ibenta na lang ang aming karapatan o ang aming lupang sinasaka sa landowner o sa mga pamilyang Lacson, dahil ayaw naming magkaroon ng problema.

Kaya kung ang sasabihin ninyong ito'y katangahan, lalo sigurong magiging katangahan kung ibebenta pa namin sa inyo ang aming lupang sinasaka, kaya pasensya na lang Mister Tayag. Dahil sinira ninyo ang aming pagtitiwala at katapatan.[9]

The petitioner claims that aside from the said deed, the defendants-tenants executed Memoranda of Agreement and Supplemental Deeds of Assignment.

[7] CA *Rollo*, p. 33.

[8] *Id*. at 31.

[9] *Id*. at 31.

On August 19, 1996, the petitioner filed a complaint with the Regional Trial Court of San Fernando, Pampanga, Branch 44, against the defendants-tenants, as well as the respondents, for the court to fix a period within which to pay the agreed purchase price of ₱50.00 per square meter to the defendants, as provided for in the Deeds of Assignment. The petitioner also prayed for a writ of preliminary injunction against the defendants and the respondents therein.[10] The case was docketed as Civil Case No. 10910.

In his complaint, the petitioner alleged, *inter alia*, the following:

4. That defendants Julio Tiamson, Renato Gozun, Rosita Hernandez, Bienvenido Tongol, Alfonso Flores, Norma Quiambao, Rosita Tolentino, Jose Sosa, Francisco Tolentino, Sr., Emiliano Laxamana, Ruben Torres, Meliton Allanigue, Dominga Laxamana, Felicencia de Leon, Emiliano Ramos are original farmers or direct tillers of landholdings over parcels of lands covered by Transfer Certificate of Title Nos. 35922-R, 35923-R and 35925-R which are registered in the names of defendants LACSONS; while defendants Felino G. Tolentino, Rica Gozun, Perla Gozun, Benigno Tolentino, Rodolfo Quiambao, Roman Laxamana, Eddie San Luis, Alfredo Gozun, Jose Tiamson, Augusto Tolentino, Sixto Hernandez, Alex Quiambao, Isidro Tolentino, Ceferino de Leon, Alberto Hernandez, and Aurelio Flores are sub-tenants over the same parcel of land.

5. That on March 17, 1996 the defendants TIAMSON, *et al*., entered into Deeds of Assignment with the plaintiff by which the defendants assigned all their rights and interests on their landholdings to the plaintiff and that on the same date (March 17, 1996), the defendants received from the plaintiff partial payments in the amounts corresponding to their names. Subsequent payments were also received:

	1st PAYMENT	2nd PAYMENT	CHECK NO.	TOTAL
1. Julio Tiamson	₱20,000	₱10,621.54	231281	₱30,621.54
2. Renaton Gozun [son of Felix Gozun (deceased)]	₱10,000	96,000		106,000.00
3. Rosita Hernandez	₱5,000	14,374.24	231274	19,374.24
4. Bienvenido Tongol [Son of Abundio Tongol (deceased)]	₱10,000	14,465,90	231285	24,465.90
5. Alfonso Flores	₱30,000	26,648.40	231271	56,648.40

[10] *Rollo*, p. 33.

6. Norma Quiambao	₱10,000	41,501.10	231279	51,501.10
7. Rosita Tolentino	₱10,000	22,126.08	231284	32,126.08
8. Jose Sosa	₱10,000	14,861.31	231291	24,861.31
9. Francisco Tolentino Sr.	₱10,000	24,237.62	231283	34,237.62
10. Emiliano Laxamana	₱10,000	-------	-------	-------
11. Ruben Torres	₱10,000	₱33,587.31	-------	₱43,587.31
[Son of Mariano Torres (deseased)]				
12. Meliton Allanigue	₱10,000	12,944.77	231269	22,944.77
13. Dominga Laxamana	₱ 5,000	22,269.02	231275	27,269.02
14. Felicencia de Leon	10,000	-------	-------	-------
15. Emiliano Ram	5,000	18,869.60	231280	23,869.60
16. Felino G. Gozun	10,000	-------	-------	-------
17. Rica Gozun	5,000	-------	-------	-------
18. Perla Gozun	10,000	-------	-------	-------
19. Benigno Tolentino	10,000	-------	-------	-------
20. Rodolfo Quiambao	10,000	-------	-------	-------
21. Roman Laxamana	10,000	-------	-------	-------
22. Eddie San Luis	10,000	-------	-------	-------
23. Ricardo Hernandez	10,000	-------	-------	-------
24. Nicenciana Miranda	10,000	-------	-------	-------
25. Jose Gozun	10,000	-------	-------	-------
26. Alfredo Sosa	5,000	-------	-------	-------
27. Jose Tiamson	10,000	-------	-------	-------
28. Augusto Tolentino	5,000	-------	-------	-------
29. Sixto Hernandez	10,000	-------	-------	-------
30. Alex Quiambao	10,000	-------	-------	-------
31. Isidro Tolentino	10,000	-------	-------	-------
32. Ceferino de Leon	-------	11,378.70	231270	-------
33. Alberto Hernandez	10,000	-------	-------	-------
34. Orlando Florez	10,000	-------	-------	-------
35. Aurelio Florez	10,000	-------	-------	-------

6. That on July 24, 1996, the plaintiff wrote the defendants TIAMSON, *et al.*, inviting them for a meeting regarding the negotiations/implementations of the terms of their Deeds of Assignment;

7. That on August 8, 1996, the defendants TIAMSON, *et al.*, through Joven Mariano, replied that they are no longer willing to pursue with the negotiations, and instead they gave notice to the plaintiff that they will sell all their rights and interests to the registered owners (defendants LACSONS).

A copy of the letter is hereto attached as Annex "A" *etc*.;

8. That the defendants TIAMSON, *et al*., have no right to deal with the defendants LACSON or with any third persons while their contracts with the plaintiff are subsisting; defendants LACSONS are inducing or have induced the defendants TIAMSON, *et al.*, to violate their contracts with the plaintiff;

9. That by reason of the malicious acts of all the defendants, plaintiff suffered moral damages in the forms of mental anguish, mental torture and serious anxiety which in the sum of ₱500,000.00 for which defendants should be held liable jointly and severally.[11]

In support of his plea for injunctive relief, the petitioner, as plaintiff, also alleged the following in his complaint:

11. That to maintain the status quo, the defendants TIAMSON, *et al*., should be restrained from rescinding their contracts with the plaintiff, and the defendants LACSONS should also be restrained from accepting any offer of sale or alienation with the defendants TIAMSON, *et al*., in whatever form, the latter's rights and interests in the properties mentioned in paragraph 4 hereof; further, the LACSONS should be restrained from encumbering/alienating the subject properties covered by TCT No. 35922-R, 35923-R and TCT No. 35925-R, Registry of Deeds of San Fernando, Pampanga;

12. That the defendants TIAMSON, *et al*., threaten to rescind their contracts with the plaintiff and are also bent on selling/alienating their rights and interests over the subject properties to their co-defendants (LACSONS) or any other persons to the damage and prejudice of the plaintiff who already invested much money, efforts and time in the said transactions;

13. That the plaintiff is entitled to the reliefs being demanded in the complaint;

14. That to prevent irreparable damages and prejudice to the plaintiff, as the latter has no speedy and adequate remedy under the ordinary course of law, it is essential that a Writ of Preliminary Injunction be issued enjoining and restraining the defendants TIAMSON, *et al.*, from rescinding their contracts with the plaintiff and from selling/alienating their properties to the LACSONS or other persons;

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[11] CA *Rollo*, pp. 23-25.

15. That the plaintiff is willing and able to put up a reasonable bond to answer for the damages which the defendants would suffer should the injunction prayed for and granted be found without basis.[12]

The petitioner prayed, that after the proceedings, judgment be rendered as follows:

1. Pending the hearing, a Writ of Preliminary Injunction be issued prohibiting, enjoining and restraining defendants Julio Tiamson, Renato Gozun, Rosita Hernandez, Bienvenido Tongol, Alfonso Flores, Norma Quiambao, Rosita Tolentino, Jose Sosa, Francisco Tolentino Sr., Emiliano Laxamana, Ruben Torres, Meliton Allanigue, Dominga Laxamana, Felicencia de Leon, Emiliano Ramos, Felino G. Tolentino, Rica Gozun, Perla Gozun, Benigno Tolentino, Rodolfo Quiambao, Roman Laxamana, Eddie San Luis, Ricardo Hernandez, Nicenciana Miranda, Jose Gozun, Alfredo Sosa, Jose Tiamson, Augusto Tolentino, Ceferino de Leon, Alberto Hernandez, Orlando Flores, and Aurelio Flores from rescinding their contracts with the plaintiff and from alienating their rights and interest over the aforementioned properties in favor of defendants LACSONS or any other third persons; and prohibiting the defendants LACSONS from encumbering/ alienating TCT Nos. 35922-R, 35923-R and 35925-R of the Registry of Deeds of San Fernando, Pampanga.

2. And pending the hearing of the Prayer for a Writ of Preliminary Injunction, it is prayed that a restraining order be issued restraining the aforementioned defendants (TIAMSON, *et al*.) from rescinding their contracts with the plaintiff and from alienating the subject properties to the defendants LACSONS or any third persons; further, restraining and enjoining the defendants LACSONS from encumbering/ selling the properties covered by TCT Nos. 35922-R, 35923-R, and 35925-R of the Registry of Deeds of San Fernando, Pampanga.

3. Fixing the period within which plaintiff shall pay the balance of the purchase price to the defendants TIAMSON, *et al*. after the lapse of legal impediment, if any.

4. Making the Writ of Preliminary Injunction permanent;

5. Ordering the defendants to pay the plaintiff the sum of ₱500,000.00 as moral damages;

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[12] *Id*. at 26-27.

6. Ordering the defendants to pay the plaintiff attorney's fees in the sum of ₱100,000.00 plus litigation expenses of ₱50,000.00;

Plaintiff prays for such other relief as may be just and equitable under the premises.[13]

In their answer to the complaint, the respondents as defendants asserted that (a) the defendant Angelica *Vda. de* Lacson had died on April 24, 1993; (b) twelve of the defendants were tenants/lessees of respondents, but the tenancy status of the rest of the defendants was uncertain; (c) they never induced the defendants Tiamson to violate their contracts with the petitioner; and, (d) being merely tenants-tillers, the defendants-tenants had no right to enter into any transactions involving their properties without their knowledge and consent. They also averred that the transfers or assignments of leasehold rights made by the defendants-tenants to the petitioner is contrary to Presidential Decree (P.D.) No. 27 and Republic Act No. 6657, the Comprehensive Agrarian Reform Program (CARP).[14] The respondents interposed counterclaims for damages against the petitioner as plaintiff.

The defendants-tenants Tiamson, *et al*., alleged in their answer with counterclaim for damages, that the money each of them received from the petitioner were in the form of loans, and that they were deceived into signing the deeds of assignment:

a) That all the foregoing allegations in the Answer are hereby repleaded and incorporated in so far as they are material and relevant herein;

b) That the defendants Tiamson, *et al.*, in so far as the Deeds of Assignment are concern[ed] never knew that what they did sign is a Deed of Assignment. What they knew was that they were made to sign a document that will serve as a receipt for the loan granted [to] them by the plaintiff;

c) That the Deeds of Assignment were signed through the employment of fraud, deceit and false pretenses of plaintiff and

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[13] *Id*. at 27-29.

[14] *Id*. at 41.

made the defendants believe that what they sign[ed] was a mere receipt for amounts received by way of loans;

d) That the documents signed in blank were filled up and completed after the defendants Tiamson, *et al.*, signed the documents and their completion and accomplishment was done in the absence of said defendants and, worst of all, defendants were not provided a copy thereof;

e) That as completed, the Deeds of Assignment reflected that the defendants Tiamson, *et al.*, did assign all their rights and interests in the properties or landholdings they were tilling in favor of the plaintiff. That if this is so, assuming *arguendo* that the documents were voluntarily executed, the defendants Tiamson, *et al.*, do not have any right to transfer their interest in the landholdings they are tilling as they have no right whatsoever in the landholdings, the landholdings belong to their co-defendants, Lacson, *et al.*, and therefore, the contract is null and void;

f) That while it is admitted that the defendants Tiamson, *et al.*, received sums of money from plaintiffs, the same were received as approved loans granted by plaintiff to the defendants Tiamson, *et al.*, and not as part consideration of the alleged Deeds of Assignment; and by way of : . . .[15]

At the hearing of the petitioner's plea for a writ of preliminary injunction, the respondents' counsel failed to appear. In support of his plea for a writ of preliminary injunction, the petitioner adduced in evidence the Deeds of Assignment,[16] the receipts[17] issued by the defendants-tenants for the amounts they received from him; and the letter[18] the petitioner received from the defendants-tenants. The petitioner then rested his case.

The respondents, thereafter, filed a Comment/Motion to dismiss/deny the petitioner's plea for injunctive relief on the following grounds: (a) the Deeds of Assignment executed by

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[15] *Id*. at 34-35.

[16] Exhibits "A" to "HH".

[17] Exhibits "I" to "II-18".

[18] Exhibit "JJ".

the defendants-tenants were contrary to public policy and P.D. No. 27 and Rep. Act No. 6657; (b) the petitioner failed to prove that the respondents induced the defendants-tenants to renege on their obligations under the "Deeds of Assignment"; (c) not being privy to the said deeds, the respondents are not bound by the said deeds; and, (d) the respondents had the absolute right to sell and dispose of their property and to encumber the same and cannot be enjoined from doing so by the trial court.

The petitioner opposed the motion, contending that it was premature for the trial court to resolve his plea for injunctive relief, before the respondents and the defendants-tenants adduced evidence in opposition thereto, to afford the petitioner a chance to adduce rebuttal evidence and prove his entitlement to a writ of preliminary injunction. The respondents replied that it was the burden of the petitioner to establish the requisites of a writ of preliminary injunction without any evidence on their part, and that they were not bound to adduce any evidence in opposition to the petitioner's plea for a writ of preliminary injunction.

On February 13, 1997, the court issued an Order[19] denying the motion of the respondents for being premature. It directed the hearing to proceed for the respondents to adduce their evidence. The court ruled that the petitioner, on the basis of the material allegations of the complaint, was entitled to injunctive relief. It also held that before the court could resolve the petitioner's plea for injunctive relief, there was need for a hearing to enable the respondents and the defendants-tenants to adduce evidence to controvert that of the petitioner. The respondents filed a motion for reconsideration, which the court denied in its Order dated April 16, 1997. The trial court ruled that on the face of the averments of the complaint, the pleadings of the parties and the evidence adduced by the petitioner, the latter was entitled to injunctive relief unless the respondents and the defendants-tenants adduced controverting evidence.

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[19] CA *Rollo*, p. 62.

The respondents, the petitioners therein, filed a petition for *certiorari* in the Court of Appeals for the nullification of the February 13, 1997 and April 16, 1997 Orders of the trial court. The case was docketed as CA-G.R. SP No. 44883. The petitioners therein prayed in their petition that:

1. An order be issued declaring the orders of respondent court dated February 13, 1997 and April 16, 1997 as null and void;

2. An order be issued directing the respondent court to issue an order denying the application of respondent Herminio Tayag for the issuance of a Writ of Preliminary Injunction and/or restraining order.

3. In the meantime, a Writ of Preliminary Injunction be issued against the respondent court, prohibiting it from issuing its own writ of injunction against Petitioners, and thereafter making said injunction to be issued by this Court permanent.

Such other orders as may be deemed just & equitable under the premises also prayed for.[20]

The respondents asserted that the Deeds of Assignment executed by the assignees in favor of the petitioner were contrary to paragraph 13 of P.D. No. 27 and the second paragraph of Section 70 of Rep. Act No. 6657, and, as such, could not be enforced by the petitioner for being null and void. The respondents also claimed that the enforcement of the deeds of assignment was subject to a supervening condition:

3. That this exclusive and absolute right given to the assignee shall be exercised only when no legal impediments exist to the lot to effect the smooth transfer of lawful ownership of the lot/property in the name of the ASSIGNEE.[21]

The respondents argued that until such condition took place, the petitioner would not acquire any right to enforce the deeds by injunctive relief. Furthermore, the petitioner's plea in his complaint before the trial court, to fix a period within which to

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[20] *Id*. at 20.

[21] *Id*. at 14.

pay the balance of the amounts due to the tenants under said deeds after the "lapse" of any legal impediment, assumed that the deeds were valid, when, in fact and in law, they were not. According to the respondents, they were not parties to the deeds of assignment; hence, they were not bound by the said deeds. The issuance of a writ of preliminary injunction would restrict and impede the exercise of their right to dispose of their property, as provided for in Article 428 of the New Civil Code. They asserted that the petitioner had no cause of action against them and the defendants-tenants.

On April 17, 1998, the Court of Appeals rendered its decision against the petitioner, annulling and setting aside the assailed orders of the trial court; and permanently enjoining the said trial court from proceeding with Civil Case No. 10901. The decretal portion of the decision reads as follows:

> However, even if private respondent is denied of the injunctive relief he demands in the lower court still he could avail of other course of action in order to protect his interest such as the institution of a simple civil case of collection of money against TIAMSON, *et al*.
>
> For all the foregoing considerations, the orders dated 13 February 1997 and 16 April 1997 are hereby NULLIFIED and ordered SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Accordingly, public respondent is permanently enjoined from proceeding with the case designated as Civil Case No. 10901.[22]

The CA ruled that the respondents could not be enjoined from alienating or even encumbering their property, especially so since they were not privies to the deeds of assignment executed by the defendants-tenants. The defendants-tenants were not yet owners of the portions of the landholdings respectively tilled by them; as such, they had nothing to assign to the petitioner. Finally, the CA ruled that the deeds of assignment executed by the defendants-tenants were contrary to P.D. No. 27 and Rep. Act No. 6657.

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[22] *Id*. at 97.

On August 4, 1998, the CA issued a Resolution denying the petitioner's motion for reconsideration.[23]

Hence, the petitioner filed his petition for review on *certiorari* before this Court, contending as follows:

I

A MERE ALLEGATION IN THE ANSWER OF THE TENANTS COULD NOT BE USED AS EVIDENCE OR BASIS FOR ANY CONCLUSION, AS THIS ALLEGATION, IS STILL THE SUBJECT OF TRIAL IN THE LOWER COURT (RTC).[24]

II

THE COURT OF APPEALS CANNOT ENJOIN THE HEARING OF A PETITION FOR PRELIMINARY INJUNCTION AT A TIME WHEN THE LOWER COURT (RTC) IS STILL RECEIVING EVIDENCE PRECISELY TO DETERMINE WHETHER OR NOT THE WRIT OF PRELIMINARY INJUNCTION BEING PRAYED FOR BY TAYAG SHOULD BE GRANTED OR NOT.[25]

III

THE COURT OF APPEALS CANNOT USE "FACTS" NOT IN EVIDENCE, TO SUPPORT ITS CONCLUSION THAT THE TENANTS ARE NOT YET "AWARDEES OF THE LAND REFORM. [26]

IV

THE COURT OF APPEALS CANNOT CAUSE THE PERMANENT STOPPAGE OF THE ENTIRE PROCEEDINGS BELOW INCLUDING THE TRIAL ON THE MERITS OF THE CASE CONSIDERING THAT THE ISSUE INVOLVED ONLY THE PROPRIETY OF MAINTAINING THE STATUS QUO. [27]

V

THE COURT OF APPEALS CANNOT INCLUDE IN ITS DECISION THE CASE OF THE OTHER 35 TENANTS WHO DO NOT QUESTION

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[23] *Id*. at 142.

[24] *Rollo*, p. 16.

[25] *Id*. at 17.

[26] *Id*. at 19.

[27] *Id*. at 21.

THE JURISDICTION OF THE LOWER COURT (RTC) OVER THE CASE AND WHO ARE IN FACT STILL PRESENTING THEIR EVIDENCE TO OPPOSE THE INJUNCTION PRAYED FOR, AND TO PROVE AT THE SAME TIME THE COUNTER-CLAIMS THEY FILED AGAINST THE PETITIONER.[28]

VI

THE LOWER COURT (RTC) HAS JURISDICTION OVER THE CASE FILED BY TAYAG FOR "FIXING OF PERIOD" UNDER ART. 1197 OF THE NEW CIVIL CODE AND FOR "DAMAGES" AGAINST THE LACSONS UNDER ART. 1314 OF THE SAME CODE. THIS CASE CANNOT BE SUPPRESSED OR RENDERED NUGATORY UNCEREMONIOUSLY.[29]

The petitioner faults the Court of Appeals for permanently enjoining the trial court from proceeding with Civil Case No. 10910. He opines that the same was too drastic, tantamount to a dismissal of the case. He argues that at that stage, it was premature for the appellate court to determine the merits of the case since no evidentiary hearing thereon was conducted by the trial court. This, the Court of Appeals cannot do, since neither party moved for the dismissal of Civil Case No. 10910. The petitioner points out that the Court of Appeals, in making its findings, went beyond the issue raised by the private respondents, namely, whether or not the trial court committed a grave abuse of discretion amounting to excess or lack of jurisdiction when it denied the respondent's motion for the denial/ dismissal of the petitioner's plea for a writ of preliminary injunction. He, likewise, points out that the appellate court erroneously presumed that the leaseholders were not DAR awardees and that the deeds of assignment were contrary to law. He contends that leasehold tenants are not prohibited from conveying or waiving their leasehold rights in his favor. He insists that there is nothing illegal with his contracts with the leaseholders, since the same shall be effected only when there are no more "legal impediments."

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[28] *Id*.

[29] *Id*. at 22.

At bottom, the petitioner contends that, at that stage, it was premature for the appellate court to determine the merits of his case since no evidentiary hearing on the merits of his complaint had yet been conducted by the trial court.

The Comment/Motion of the Respondents to Dismiss/Deny Petitioner's Plea for a Writ of Preliminary Injunction Was Not Premature.

Contrary to the ruling of the trial court, the motion of the respondents to dismiss/deny the petitioner's plea for a writ of preliminary injunction after the petitioner had adduced his evidence, testimonial and documentary, and had rested his case on the incident, was proper and timely. It bears stressing that the petitioner had the burden to prove his right to a writ of preliminary injunction. He may rely solely on the material allegations of his complaint or adduce evidence in support thereof. The petitioner adduced his evidence to support his plea for a writ of preliminary injunction against the respondents and the defendants-tenants and rested his case on the said incident. The respondents then had three options: (a) file a motion to deny/dismiss the motion on the ground that the petitioner failed to discharge his burden to prove the factual and legal basis for his plea for a writ of preliminary injunction and, if the trial court denies his motion, for them to adduce evidence in opposition to the petitioner's plea; (b) forgo their motion and adduce testimonial and/or documentary evidence in opposition to the petitioner's plea for a writ of preliminary injunction; or, (c) waive their right to adduce evidence and submit the incident for consideration on the basis of the pleadings of the parties and the evidence of the petitioner. The respondents opted not to adduce any evidence, and instead filed a motion to deny or dismiss the petitioner's plea for a writ of preliminary injunction against them, on their claim that the petitioner failed to prove his entitlement thereto. The trial court cannot compel the respondents to adduce evidence in opposition to the petitioner's plea if the respondents opt to waive their right to adduce such evidence. Thus, the trial court should have resolved

the respondents' motion even without the latter's opposition and the presentation of evidence thereon.

The RTC Committed a Grave Abuse of Discretion Amounting to Excess or Lack of Jurisdiction in Issuing its February 13, 1997 and April 16, 1997 Orders

In its February 13, 1997 Order, the trial court ruled that the petitioner was entitled to a writ of preliminary injunction against the respondents on the basis of the material averments of the complaint. In its April 16, 1997 Order, the trial court denied the respondents' motion for reconsideration of the previous order, on its finding that the petitioner was entitled to a writ of preliminary injunction based on the material allegations of his complaint, the evidence on record, the pleadings of the parties, as well as the applicable laws:

> . . . For the record, the Court denied the LACSONS' COMMENT/ MOTION on the basis of the facts culled from the evidence presented, the pleadings and the law applicable unswayed by the partisan or personal interests, public opinion or fear of criticism (Canon 3, Rule 3.02, Code of Judicial Ethics).[30]

Section 3, Rule 58 of the Rules of Court, as amended, enumerates the grounds for the issuance of a writ of preliminary injunction, thus:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some

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[30] CA *Rollo*, p. 74.

act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

A preliminary injunction is an extraordinary event calculated to preserve or maintain the *status quo* of things *ante litem* and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard. Injunction is accepted as the strong arm of equity or a transcendent remedy.[31] While generally the grant of a writ of preliminary injunction rests on the sound discretion of the trial court taking cognizance of the case, extreme caution must be observed in the exercise of such discretion.[32] Indeed, in *Olalia v. Hizon*,[33] we held:

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[34]

The very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[35]

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[31] *Cagayan de Oro City Landless Residents Asso., Inc. v. Court of Appeals*, 254 SCRA 220 (1996).

[32] *Ong Ching Kian Chuan v. Court of Appeals*, 363 SCRA 145 (2001).

[33] 196 SCRA 665 (1991).

[34] *Id*. at 672-673.

[35] *Id*., citing *Golding v. Balatbat*, 36 Phil. 941 (1917).

For the court to issue a writ of preliminary injunction, the petitioner was burdened to establish the following: (1) a right in *esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[36] Thus, in the absence of a clear legal right, the issuance of the injunctive writ constitutes a grave abuse of discretion. Where the complainant's right is doubtful or disputed, injunction is not proper. Injunction is a preservative remedy aimed at protecting substantial rights and interests. It is not designed to protect contingent or future rights. The possibility of irreparable damage without proof of adequate existing rights is not a ground for injunction.[37]

We have reviewed the pleadings of the parties and found that, as contended by the respondents, the petitioner failed to establish the essential requisites for the issuance of a writ of preliminary injunction. Hence, the trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in denying the respondents' comment/motion as well as their motion for reconsideration.

First. The trial court cannot enjoin the respondents, at the instance of the petitioner, from selling, disposing of and encumbering their property. As the registered owners of the property, the respondents have the right to enjoy and dispose of their property without any other limitations than those established by law, in accordance with Article 428 of the Civil Code. The right to dispose of the property is the power of the owner to sell, encumber, transfer, and even destroy the property. Ownership also includes the right to recover the possession of the property from any other person to whom the owner has not transmitted such property, by the appropriate action for restitution, with the

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[36] *Crystal v. Cebu International School*, 356 SCRA 296 (2001); *Verzosa v. Court of Appeals*, 299 SCRA 100 (1998).

[37] *Arcegas v. Court of Appeals*, 275 SCRA 176 (1997); *Idolor v. Court of Appeals*, 351 SCRA 399 (2001).

fruits, and for indemnification for damages.[38] The right of ownership of the respondents is not, of course, absolute. It is limited by those set forth by law, such as the agrarian reform laws. Under Article 1306 of the New Civil Code, the respondents may enter into contracts covering their property with another under such terms and conditions as they may deem beneficial provided they are not contrary to law, morals, good conduct, public order or public policy.

The respondents cannot be enjoined from selling or encumbering their property simply and merely because they had executed Deeds of Assignment in favor of the petitioner, obliging themselves to assign and transfer their rights or interests as agricultural farmers/ laborers/sub-tenants over the landholding, and granting the petitioner the exclusive right to buy the property subject to the occurrence of certain conditions. The respondents were not parties to the said deeds. There is no evidence that the respondents agreed, expressly or impliedly, to the said deeds or to the terms and conditions set forth therein. Indeed, they assailed the validity of the said deeds on their claim that the same were contrary to the letter and spirit of P.D. No. 27 and Rep. Act No. 6657. The petitioner even admitted when he testified that he did not know any of the respondents, and that he had not met any of them before he filed his complaint in the RTC. He did not even know that one of those whom he had impleaded as defendant, Angelica *Vda. de* Lacson, was already dead.

Q: But you have not met any of these Lacsons?

A: Not yet, sir.

Q: Do you know that two (2) of the defendants are residents of the United States?

A: I do not know, sir.

Q: You do not know also that Angela Tiotuvie (*sic*) *Vda. de* Lacson had already been dead?

A: I am aware of that, sir.[39]

We are one with the Court of Appeals in its ruling that:

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[38] Tolentino, *Civil Code of the Philippines*, Vol. II, 1963 ed., p. 41.

[39] CA *Rollo*, p. 50.

We cannot see our way clear on how or why injunction should lie against petitioners. As owners of the lands being tilled by TIAMSON, *et al.*, petitioners, under the law, have the right to enjoy and dispose of the same. Thus, they have the right to possess the lands, as well as the right to encumber or alienate them. This principle of law notwithstanding, private respondent in the lower court sought to restrain the petitioners from encumbering and/or alienating the properties covered by TCT No. 35922-R, 35923-R and TCT No. 35925-R of the Registry of Deeds of San Fernando, Pampanga. This cannot be allowed to prosper since it would constitute a limitation or restriction, not otherwise established by law on their right of ownership, more so considering that petitioners were not even privy to the alleged transaction between private respondent and TIAMSON, *et al.*[40]

Second. A reading of the averments of the complaint will show that the petitioner clearly has no cause of action against the respondents for the principal relief prayed for therein, for the trial court to fix a period within which to pay to each of the defendants-tenants the balance of the ₱50.00 per square meter, the consideration under the Deeds of Assignment executed by the defendants-tenants. The respondents are not parties or privies to the deeds of assignment. The matter of the period for the petitioner to pay the balance of the said amount to each of the defendants-tenants is an issue between them, the parties to the deed.

Third. On the face of the complaint, the action of the petitioner against the respondents and the defendants-tenants has no legal basis. Under the Deeds of Assignment, the obligation of the petitioner to pay to each of the defendants-tenants the balance of the purchase price was conditioned on the occurrence of the following events: (a) the respondents agree to sell their property to the petitioner; (b) the legal impediments to the sale of the landholding to the petitioner no longer exist; and, (c) the petitioner decides to buy the property. When he testified, the petitioner admitted that the legal impediments referred to in the deeds were (a) the respondents' refusal to sell their property; and, (b) the lack of approval of the Department of Agrarian Reform:

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[40] *Rollo*, p. 30.

Q: There is no specific agreement prior to the execution of those documents as when they will pay?

A: We agreed to that, that I will pay them when there are no legal impediment, sir.

Q: Many of the documents are unlattered (*sic*) and you want to convey to this Honorable Court that prior to the execution of these documents you have those tentative agreement for instance that the amount or the cost of the price is to be paid when there are no legal impediment, you are using the word "legal impediment," do you know the meaning of that?

A: When there are (*sic*) no more legal impediment exist, sir.

Q: Did you make how (*sic*) to the effect that the meaning of that phrase that you used the unlettered defendants?

A: We have agreed to that, sir.

ATTY. OCAMPO:

May I ask, Your Honor, that the witness please answer my question not to answer in the way he wanted it.

COURT:

Just answer the question, Mr. Tayag.

WITNESS:

Yes, Your Honor.

ATTY. OCAMPO:

Q: Did you explain to them?

A: Yes, sir.

Q: What did you tell them?

A: I explain[ed] to them, sir, that the legal impediment then especially if the Lacsons will not agree to sell their shares to me or to us it would be hard to (*sic*) me to pay them in full. And those covered by DAR. I explain[ed] to them and it was clearly stated in the title that there is [a] prohibited period of time before you can sell the property. I explained every detail to them.[41]

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[41] *Id*. at 61-62.

It is only upon the occurrence of the foregoing conditions that the petitioner would be obliged to pay to the defendants-tenants the balance of the ₱50.00 per square meter under the deeds of assignment. Thus:

> 2. That in case the ASSIGNOR and LANDOWNER will mutually agree to sell the said lot to the ASSIGNEE, who is given an exclusive and absolute right to buy the lot, the ASSIGNOR shall receive the sum of FIFTY PESOS (₱50.00) per square meter as consideration of the total area actually tilled and possessed by the ASSIGNOR, less whatever amount received by the ASSIGNOR including commissions, taxes and all allowable deductions relative to the sale of the subject properties.
>
> 3. That this exclusive and absolute right given to the ASSIGNEE shall be exercised only when no legal impediments exist to the lot to effect the smooth transfer of lawful ownership of the lot/property in the name of the ASSIGNEE;
>
> 4. That the ASSIGNOR will remain in peaceful possession over the said property and shall enjoy the fruits/earnings and/or harvest of the said lot until such time that full payment of the agreed purchase price had been made by the ASSIGNEE.[42]

There is no showing in the petitioner's complaint that the respondents had agreed to sell their property, and that the legal impediments to the agreement no longer existed. The petitioner and the defendants-tenants had yet to submit the Deeds of Assignment to the Department of Agrarian Reform which, in turn, had to act on and approve or disapprove the same. In fact, as alleged by the petitioner in his complaint, he was yet to meet with the defendants-tenants to discuss the implementation of the deeds of assignment. Unless and until the Department of Agrarian Reform approved the said deeds, if at all, the petitioner had no right to enforce the same in a court of law by asking the trial court to fix a period within which to pay the balance of the purchase price and praying for injunctive relief.

We do not agree with the contention of the petitioner that the deeds of assignment executed by the defendants-tenants

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[42] *Id*. at 43.

are perfected option contracts.[43] An option is a contract by which the owner of the property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with certain terms and conditions, or which gives to the owner of the property the right to sell or demand a sale. It imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Until accepted, it is not, properly speaking, treated as a contract.[44] The second party gets *in praesenti*, not lands, not an agreement that he shall have the lands, but the right to call for and receive lands if he elects.[45] An option contract is a separate and distinct contract from which the parties may enter into upon the conjunction of the option.[46]

In this case, the defendants-tenants-subtenants, under the deeds of assignment, granted to the petitioner not only an option but the exclusive right to buy the landholding. But the grantors were merely the defendants-tenants, and not the respondents, the registered owners of the property. Not being the registered owners of the property, the defendants-tenants could not legally grant to the petitioner the option, much less the "exclusive right" to buy the property. As the Latin saying goes, *"NEMO DAT QUOD NON HABET."*

Fourth. The petitioner impleaded the respondents as parties-defendants solely on his allegation that the latter induced or are inducing the defendants-tenants to violate the deeds of assignment, contrary to the provisions of Article 1314 of the New Civil Code which reads:

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[43] *Id*. at 21.

[44] *Adelfa Properties, Inc. v. Court of Appeals*, 240 SCRA 565 (1995).

[45] *Litonjua v. L & R Corporation*, 328 SCRA 796 (2000).

[46] *Laforteza v. Machuca*, 333 SCRA 643 (2000).

Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.

In *So Ping Bun v. Court of Appeals*,[47] we held that for the said law to apply, the pleader is burdened to prove the following: (1) the existence of a valid contract; (2) knowledge by the third person of the existence of the contract; and (3) interference by the third person in the contractual relation without legal justification.

Where there was no malice in the interference of a contract, and the impulse behind one's conduct lies in a proper business interest rather than in wrongful motives, a party cannot be a malicious interferer. Where the alleged interferer is financially interested, and such interest motivates his conduct, it cannot be said that he is an officious or malicious intermeddler.[48]

In fine, one who is not a party to a contract and who interferes thereon is not necessarily an officious or malicious intermeddler. The only evidence adduced by the petitioner to prove his claim is the letter from the defendants-tenants informing him that they had decided to sell their rights and interests over the landholding to the respondents, instead of honoring their obligation under the deeds of assignment because, according to them, the petitioner harassed those tenants who did not want to execute deeds of assignment in his favor, and because the said defendants-tenants did not want to have any problem with the respondents who could cause their eviction for executing with the petitioner the deeds of assignment as the said deeds are in violation of P.D. No. 27 and Rep. Act No. 6657.[49] The defendants-tenants did not allege therein that the respondents induced them to breach their contracts with the petitioner. The petitioner himself admitted when he testified that his claim that the respondents induced the defendants-assignees to violate contracts with him was based merely on what "he heard," thus:

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[47] 314 SCRA 751 (1999).

[48] *Id.*, citing *Gilchrist v. Cuddy,* 29 Phil. 542 (1915).

[49] Exhibit "JJ".

Q: Going to your last statement that the Lacsons induces (*sic*) the defendants, did you see that the Lacsons were inducing the defendants?

A: I heard and sometime in [the] first week of August, sir, they went in the barrio (*sic*). As a matter of fact, that is the reason why they sent me letter that they will sell it to the Lacsons.

Q: Incidentally, do you knew (*sic*) these Lacsons individually?

A: No, sir, it was only Mr. Espinosa who I knew (*sic*) personally, the alleged negotiator and has the authority to sell the property.[50]

Even if the respondents received an offer from the defendants-tenants to assign and transfer their rights and interests on the landholding, the respondents cannot be enjoined from entertaining the said offer, or even negotiating with the defendants-tenants. The respondents could not even be expected to warn the defendants-tenants for executing the said deeds in violation of P.D. No. 27 and Rep. Act No. 6657. Under Section 22 of the latter law, beneficiaries under P.D. No. 27 who have culpably sold, disposed of, or abandoned their land, are disqualified from becoming beneficiaries.

From the pleadings of the petitioner, it is quite evident that his purpose in having the defendants-tenants execute the Deeds of Assignment in his favor was to acquire the landholding without any tenants thereon, in the event that the respondents agreed to sell the property to him. The petitioner knew that under Section 11 of Rep. Act No. 3844, if the respondents agreed to sell the property, the defendants-tenants shall have preferential right to buy the same under reasonable terms and conditions:

SECTION 11. *Lessee's Right of Pre-emption*. — In case the agricultural lessor desires to sell the landholding, the agricultural lessee shall have the preferential right to buy the same under reasonable terms and conditions: *Provided*, That the entire landholding offered for sale must be pre-emped by the Land Authority if the landowner so desires, unless the majority of the lessees object to such acquisition: *Provided, further*, That were there are two or more

[50] CA *Rollo*, pp. 51-52.

agricultural lessees, each shall be entitled to said preferential right only to the area actually cultivated by him . . .[51]

Under Section 12 of the law, if the property was sold to a third person without the knowledge of the tenants thereon, the latter shall have the right to redeem the same at a reasonable price and consideration. By assigning their rights and interests on the landholding under the deeds of a assignment in favor of the petitioner, the defendants-tenants thereby waived, in favor of the petitioner, who is not a beneficiary under Section 22 of Rep. Act No. 6657, their rights of preemption or redemption under Rep. Act No. 3844. The defendants-tenants would then have to vacate the property in favor of the petitioner upon full payment of the purchase price. Instead of acquiring ownership of the portions of the landholding respectively titled by them, the defendants-tenants would again become landless for a measly sum of ₱50.00 per square meter. The petitioner's scheme is subversive, not only of public policy, but also of the letter and spirit of the agrarian laws. That the scheme of the petitioner had yet to take effect in the future or ten years hence is not a justification. The respondents may well argue that the agrarian laws had been violated by the defendants-tenants and the petitioner by the mere execution of the deeds of assignment. In fact, the petitioner has implemented the deeds by paying the defendants-tenants amounts of money and even sought their immediate implementation by setting a meeting with the defendants-tenants. In fine, the petitioner would not wait for ten years to evict the defendants-tenants. For him, time is of the essence.

The Appellate Court Erred In Permanently Enjoining The Regional Trial Court From Continuing with the Proceedings in Civil Case No. 10910.

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[51] *Supra*.

We agree with the petitioner's contention that the appellate court erred when it permanently enjoined the RTC from continuing with the proceedings in Civil Case No. 10910. The only issue before the appellate court was whether or not the trial court committed a grave abuse of discretion amounting to excess or lack of jurisdiction in denying the respondents' motion to deny or dismiss the petitioner's plea for a writ of preliminary injunction. Not one of the parties prayed to permanently enjoin the trial court from further proceeding with Civil Case No. 10910 or to dismiss the complaint. It bears stressing that the petitioner may still amend his complaint, and the respondents and the defendants-tenants may file motions to dismiss the complaint. By permanently enjoining the trial court from proceeding with Civil Case No. 10910, the appellate court acted arbitrarily and effectively dismissed the complaint *motu proprio*, including the counterclaims of the respondents and that of the defendants-tenants. The defendants-tenants were even deprived of their right to prove their special and affirmative defenses.

IN LIGHT OF ALL THE FOREGOING, the petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals nullifying the February 13, 1996 and April 16, 1997 Orders of the RTC is *AFFIRMED*. The writ of injunction issued by the Court of Appeals permanently enjoining the RTC from further proceeding with Civil Case No. 10910 is hereby *LIFTED* and *SET ASIDE*. The Regional Trial Court of Mabalacat, Pampanga, Branch 44, is *ORDERED* to continue with the proceedings in Civil Case No. 10910 as provided for by the Rules of Court, as amended.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.,* concur.

THIRD DIVISION

[G.R. No. 138480. March 25, 2004]

JOSE T. VELASQUEZ, JR., ROLANDO T. VELASQUEZ, REYNALDO T. VELASQUEZ, FORTUNATO T. VELASQUEZ, CEFERINO T. VELASQUEZ, VIRGINIA T. VELASQUEZ-MACUJA, *petitioners, vs.* **THE COURT OF APPEALS and AYALA LAND, INC.,** *respondents*.

[G.R. No. 139449. March 25, 2004]

AYALA LAND, INC., *petitioners, vs.* **JOSE T. VELASQUEZ, JR., ROLANDO T. VELASQUEZ, REYNALDO T. VELASQUEZ, FORTUNATO T. VELASQUEZ, CEFERINO T. VELASQUEZ, VIRGINIA T. VELASQUEZ-MACUJA, and JOHN DOES,** *respondents*.

SYNOPSIS

Eduardo Guico formerly owned a tract of land situated in Las Piñas City and for which he applied for land registration. The land was subsequently sold at the auction when Guico failed to pay the realty taxes from 1949 to 1953. Jose Velasquez, Sr., the late father of petitioners Velasquez, posted the highest bid and was thereafter issued a certificate of sale. Meanwhile, pursuant to his application for registration of the land and the ensuing promulgation of a decree, Original Certificate of Title No. 1421 covering the subject property was issued in favor of applicant Guico. Thereafter, he made several conveyances of the property to different buyers in whose names the corresponding TCTs were issued successively. Alarmed, Velasquez Sr. filed before the Regional Trial Court of Pasig a petition for review of judgment and decree of registration, and praying for the cancellation of OCT No. 1421. He likewise caused to be annotated on one of the purchaser's titles a notice of *lis pendens*. Pending resolution of his petition, the land was sold to Interbank. A notice of *lis pendens* was annotated at the back of Interbank's title. On September 24,

1986, the RTC of Pasig cancelled and sets aside Guico's OCT No. 1421 and all its subsequent TCTs. Inerbank moved for reconsideration but it later entered into a compromise agreement with Velasquez, Sr. wherein the latter, for valuable consideration, indubitably acknowledged the legality and validity, and recognized the full transmission, of the ownership and title of Interbank and its transferees like Goldernrod, Inc., and PAL Savings and Loan Association (PESALA), who were all innocent purchasers for value. On December 12, 1986, the RTC of Pasig approved the compromise agreement and rendered judgment based thereon, which eventually attained finality. On April 6, 1988, Ayala Land, INC. (ALI) purchased the property from PESALA. On July 21, 1997, 32 years after the demise of their mother, petitioners Velasquez filed a complaint for partition against ALI, with the RTC of Las Piñas. Petitioners argued that all the transactions entered into by their father regarding the disputed property could not adversely affect their ownership over their ½ undivided share therein. ALI moved to dismiss the complaint but it was denied by the trial court. On appeal, the Court of Appeals reversed the RTC orders and dismissed the complaint of petitioners Velasquez. According to the appellate court, by his single act of entering into a compromise agreement, Velasquez, Sr. may be said to have repudiated and abandoned any and all adverse claims on the property in question, whoever was in possession thereof under claim of ownership.

Hence, the instant petition.

The Supreme Court affirmed *in toto* the decision of the Court of Appeals. According to the Court, Velasquez, Sr. surrendered and relinquished in favor of Interbank and all subsequent purchasers all his right over the property when he executed the compromise agreement with Interbank. Once a compromise agreement is stamped with judicial approval, it becomes more than a mere contract binding upon the parties. Having been vested with the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment. It is immediately executory and not appealable. It has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. Furthermore, material facts or questions in issue in a former action and were there admitted or judicially determined become conclusively settled by a judgment on a compromise

agreement. The issues thus become *res judicata* and may not be litigated again in a subsequent action between the same parties or their privies.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; APPELLATE COURT'S FINDINGS OF FACT GENERALLY DEEMED CONCLUSIVE.—** At the outset, the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are generally deemed conclusive. The Court is not bound to analyze and weigh all over again the evidence already considered in the proceedings below. The paramount question of whether ALI was a buyer in good faith or an innocent purchaser for value is no doubt a question of fact on which the Court of Appeals has already made its findings.

2. **ID.; CIVIL PROCEDURE; JUDGMENTS; COMPROMISE JUDGMENT; IMMEDIATELY EXECUTORY AND NOT APPEALABLE AND HAS THE FORCE OF *RES JUDICATA* BETWEEN THE PARTIES AND SHOULD NOT BE DISTURBED EXCEPT FOR VICES OF CONSENT OR FORGERY.—** Velasquez, Sr. surrendered and relinquished in favor of Interbank and all subsequent purchasers all his rights over the property when he executed the compromise agreement with Interbank. In the agreement, as approved by the trial court, Velasquez, Sr. indubitably acknowledged the legality and validity, and recognized the full transmission, of the ownership and title of Interbank and its transferees who were all innocent purchasers for value. Once a compromise agreement is stamped with judicial approval, it becomes more than a mere contract binding upon the parties. Having been vested with the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. It is immediately executory and not appealable. It has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. Furthermore, material facts or questions in issue in a former action and were there admitted or judicially determined become conclusively settled by a judgment on a compromise agreement. The issues thus become

res judicata and may not be litigated again in a subsequent action between the same parties or their privies.

3. ID.; ID.; APPEALS; APPEAL BY *CERTIORARI*; MUST NOT INVOLVE AN EXAMINATION OF THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED BY THE LITIGANTS.— With respect to the alleged co-ownership between petitioners and ALI, we concur with the conclusions of the Court of Appeals: x x x. The Court of Appeals expounded in detail on the issue of co-ownership. Its analysis was precise and thorough. It painstakingly studied and reviewed the facts of the case as well as the evidence proffered by the parties. Finally, we note the Velasquez siblings' long and deafening silence for 32 years which has remained unexplained to this date. It certainly invites, to say the least, a nagging suspicion as to their motive in filing the suit for partition. We thus find no ground to reverse or even modify the factual findings of the Court of Appeals. Questions that may be entertained in a petition for *certiorari* under Rule 45 of the Revised Rules of Court must not involve an examination of the probative value of the evidence presented by the litigants. We find no misapprehension of facts nor contradictions in the evidence on record. Such being the case, the CA's factual findings become conclusive and binding on this Court.

4. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; REFUSAL OF A PARTY TO CONCEDE DEFEAT, MANIFESTED BY UNCEASING ATTEMPTS TO PROLONG THE FINAL DISPOSITION OF CASES, OBSTRUCTS THE ADMINISTRATION OF JUSTICE AND CONSTITUTES CONTEMPT OF COURT.— We however, dismiss ALI's petition for indirect contempt in G.R. No. 139449. We are willing to assume that the petitioners Velasquez acted in good faith when they filed the administrative complaint against the three Court of Appeals Justices. Moreover, there appears to be no evidence showing that it was the petitioners Velasquez who caused the publication of the said administrative proceedings in connection with the subject matter in G.R. No. 138480. However, while the Court recognizes the rights of litigants to criticize judges or justices in the performance of their functions, under no circumstances may a litigant or counsel be allowed to engage the Court in interminable squabbling about

the correctness of its orders and dispositions. The refusal of a party to concede defeat, manifested by unceasing attempts to prolong the final disposition of cases, obstructs the administration of justice and therefore constitutes contempt of court. In the case at bar, the power of contempt, being a drastic and extraordinary remedy, should not be exercised unless clearly necessary in the interest of justice.

5. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; EVEN IF THE PROCUREMENT OF A CERTIFICATE OF TITLE IS TAINTED WITH FRAUD AND MISREPRESENTATION, SUCH DEFECTIVE TITLE MAY BE THE SOURCE OF A COMPLETELY LEGAL AND VALID TITLE IN THE HANDS OF AN INNOCENT PURCHASER FOR VALUE.— In an action for cancellation of title, the complaint must allege that the purchaser was aware of the defects in his title. In the absence of such an allegation and proof of bad faith, it would be impossible for the court to render a valid judgment against the purchaser who has already acquired title, due to the indefeasibility and conclusiveness of his title. It is a fundamental principle in land registration that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Even if the procurement of a certificate of title is tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for Ayala Land, Inc.

Manuel Ramirez and *Edwin Ballesteros* for J. Velasquez, *et al.*

D E C I S I O N

CORONA, *J.*:

Before us are two consolidated petitions: (1) G.R. No. 138480, a petition for review on *certiorari* seeking to nullify and set

aside the decision[1] of the Court of Appeals (CA) dated December 9, 1998 and its resolution dated April 30, 1999 denying petitioners' motion for reconsideration, and (2) G.R. No. 139449, a petition for indirect contempt filed by Ayala Land Inc. (ALI) against petitioners in G.R. No. 138480 (Velasquezes) in view of the publication in newspapers of general circulation of certain articles concerning the assailed CA decision, and the institution of an administrative case against CA Associate Justices Cancio C. Garcia, Conrado M. Vasquez, Jr. and Teodoro P. Regino.

Stripped of the non-essentials, the facts of the case follow.

Involved in the instant case is a tract of land situated in Las Piñas City, Metro Manila which was formerly owned by one Eduardo Guico way back in 1930 and for which he applied for land registration.

On August 3, 1953, the Acting Provincial Treasurer of Rizal placed the land in question on the auction block for non-payment of realty taxes from 1949 to 1953. Jose Velasquez, Sr., the late father of petitioners Velasquez, posted the highest bid and was thereafter issued a certificate of sale. Despite Guico's subsequent inability to redeem the property, however, the Provincial Treasurer refused to issue a final deed of sale to Velasquez, Sr., prompting the latter to file suit to compel said official to issue it.

Meanwhile, pursuant to his application for registration of the land and the ensuing promulgation of a decree of registration, Original Certificate of Title (OCT) No. 1421 covering the subject property was issued in favor of applicant Guico. Thereafter, (he) made several conveyances of the property to different buyers in whose names the corresponding Transfer Certificates of Title (TCTs) were issued successively. Alarmed, Velasquez, Sr. filed on November 18, 1958 a petition for review of the judgment and decree of registration, and praying for the cancellation of OCT No. 1421. It was docketed as Land Registration Case No. 976. He likewise

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[1] Penned by then Associate Justice Cancio C. Garcia (now Presiding Justice) and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Teodoro P. Regino of the Eighth Division.

caused to be annotated on one of the purchasers' titles a notice of *lis pendens*. Pending resolution of his petition, the land was sold to Interbank, a commercial bank then existing. A notice of *lis pendens* was annotated at the back of Interbank's title.

On September 24, 1986, the Regional Trial Court (RTC)[2] of Pasig rendered a partial decision on the petition for review of Velasquez, Sr., cancelling and setting aside Guico's OCT No. 1421 and all its subsequent TCTs. Interbank filed a motion for reconsideration but later entered into a compromise agreement with Velasquez, Sr. *Interbank and Velasquez, Sr., to finally settle and forever lay to rest their conflicting claims over the subject property, then filed a joint motion for judgment on their compromise agreement wherein Velasquez, Sr., for valuable consideration, expressly acknowledged the validity and legality of Interbank's title to the property as well as that of subsequent purchasers like Goldenrod, Inc. and PAL Employees Savings and Loan Association (PESALA).*[3] On December 12, 1986, the RTC of Pasig, after it found the recitals and contents of the compromise agreement not contrary to law, morals, public policy and order, approved the compromise agreement and rendered judgment which eventually attained finality.

On July 21, 1997, 32 years after the demise of their mother Loreto Tiongkiao, the children of Jose Velasquez, Sr., namely Jose T. Velasquez, Jr., Rolando T. Velasquez, Reynaldo T. Velasquez, Fortunato T. Velasquez, Ceferino T. Velasquez, and Virginia T. Velasquez-Macuja, filed a complaint for partition against ALI with the Regional Trial Court of Las Piñas City, docketed as Civil Case No. LP-97-0175. The Velasquez siblings argued that all the transactions entered into by their father, Velasquez, Sr., regarding the disputed property could not adversely

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[2] Branch 167, Judge Nicolas P. Lapena, Jr. presiding.

[3] Goldenrod, Inc. acquired the property from Interbank and the title issued pursuant thereto was devoid of inscription of any notice of *lis pendens*. Goldenrod later sold the property to PESALA. Likewise, the title did not contain any notice of *lis pendens* but contained the adverse claim of Velasquez, Sr. PESALA then sold the property to ALI.

affect their ownership over their ½ undivided share therein. ALI, on the other hand, prayed for the dismissal of the complaint and interposed the following affirmative defenses: (a) that the trial court had no jurisdiction over the complaint; (b) plaintiffs had no cause of action; (c) the complaint was barred by prescription/ laches and (d) ALI was an innocent purchaser for value.

On February 20, 1998, the RTC of Las Piñas[4] denied ALI's motion to dismiss. Aggrieved, ALI went up to the Court of Appeals which reversed the RTC orders and dismissed the complaint of the Velasquez siblings:

> All told, it is our view that the respondent judge, in denying petitioner's motion to dismiss on the basis of its affirmative defenses, decided certain questions of substance in a way not in accord with law or applicable jurisprudence. To us, he committed errors so egregious as to justify a charge of grave abuse of discretion, or of acting outside the bounds of his jurisdiction. His misguided attempt to trifle with the Torrens System is regrettable and ought to be stopped.
>
> WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the public respondent's resolution dated February 20, 1998 and order dated June 24, 1998 are hereby ANNULLED and SET ASIDE and Civil Case No. LP-97-0175 DISMISSED.[5]

Hence, the instant petition raising the following errors:

THE RESPONDENT COURT OF APPEALS UNLAWFULLY AND ILLEGALLY APPLIED THE PRINCIPLE ON LAND REGISTRATION THAT PRIVATE RESPONDENT ALI CAN BE CONSIDERED A BUYER IN GOOD FAITH OR AN INNOCENT PURCHASER FOR VALUE AS IT IS WITHOUT NOTICE OF DEFECT AT THE TIME OF THE PURCHASE OF THE LAND IN QUESTION.

THE RESPONDENT COURT OF APPEALS HAS UNLAWFULLY AND ILLEGALLY BRUSHED ASIDE THE ADVERSE CLAIM INSCRIBED BY VELASQUEZ, SR. ON THE TITLE OF PESALA, STATING THAT THE ADVERSE CLAIM DOES NOT MAKE SUCH CLAIM VALID, NOR IS IT PERMANENT IN CHARACTER.

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[4] Branch 253, Judge Jose F. Caoibes, Jr. presiding.

[5] *Rollo*, p. 102.

THE RESPONDENT COURT OF APPEALS PATENTLY MISAPPRECIATED THE LEGAL EFFECTS OF THE ADVERSE CLAIM OF VELASQUEZ, SR. WHICH CLAIM SHOULD HAVE REDOWNED (SIC) TO THE BENEFIT OF PETITIONERS.

THE RESPONDENT COURT OF APPEALS MISINTERPRETED THE LEGAL EFFECTS OF THE ACTS OF VELASQUEZ, SR. "AS HAVING REPUDIATED OR ABANDONED HIS ADVERSE CLAIM UPON THE EXECUTION OF THE COMPROMISE AGREEMENT."

On August 12, 1999, ALI filed with this Court a petition to cite the Velasquez siblings for indirect contempt for instituting administrative proceedings against Court of Appeals Justices Cancio C. Garcia, Conrado M. Vasquez, Jr. and Teodoro P. Regino even before G.R. No. 138480 had been resolved with finality, and for causing the publication of the controversy in the newspapers.

On April 16, 2001, G.R. Nos. 138480 and 139449 were consolidated.

At the outset, the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are generally deemed conclusive. The Court is not bound to analyze and weigh all over again the evidence already considered in the proceedings below.[6] The paramount question of whether ALI was a buyer in good faith or an innocent purchaser for value is no doubt a question of fact on which the Court of Appeals has already made its findings:

> Concededly, inscription of an adverse claim serves as a warning to third parties dealing with a piece of real property that someone is claiming an interest thereon or a superior right than that of the titled owner (*Sanchez vs. Court of Appeals*, 69 SCRA 327). It ought to be kept in mind, however, that the inscription of an adverse claim does not make such claim valid, nor is it permanent in character (*Garbin vs. Court of Appeals*, 253 SCRA 188). Similarly, it ought to be borne in mind, too, that in the present case, what was annotated on PESALA's title consisted merely of the adverse claim of Velasquez,

[6] *Republic vs. Court of Appeals*, 349 SCRA 451 [2001].

Sr. alone. *Undeniably, no adverse claim at the instance of any of the herein private respondents appeared on PESALA'S title even as Loreto Tiongkiao — from whom private respondents trace their successional claim to the subject land — had been dead long before PESALA acquired the property. In a very real sense, therefore, ALI had no notice of private respondents' claim as to reduce both, at least insofar as both are concerned into the category of buyers in bad faith.* Hence, private respondents cannot invoke whatever legal effects may have sprung from such annotation.

Moreover, it must be stressed herein that at the time ALI purchased the property on April 6, 1988, the adverse claim of Velasquez, Sr. had for all intents and purposes been cancelled, or at least had already lost force and effect. For, at that time, the judgment based on the Velasquez, Sr. — Interbank compromise agreement (Annex "E", Petition), was already in effect, rendered as it were on December 12, 1986. By his single act of entering into a compromise agreement, Velasquez, Sr. may be said to have repudiated and abandoned any and all adverse claims on the property in question, whoever was in possession thereof under claim of ownership.

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Petitioner certainly had every reason to expect and believe that Velasquez, Sr. had authority to enter into the compromise agreement and that all interests he represented in such agreement were not prejudiced, *approved as the agreement was by the very same court which earlier pronounced him, via a partial decision dated September 24, 1986, supra, as entitled to the property in question.* Needless to state, the judgment by compromise rendered on December 12, 1986 (Annex "E", Petition; *Rollo*, pp. 110–112), worked to supersede the said partial decision and may be said to have dismissed Velasquez, Sr.'s petition for review and denied his prayers thereon, foremost of which prayers was the nullification of Guico's OCT No. 1421 and all titles descending therefrom.[7]

We agree with the decision of the Court of Appeals. In an action for cancellation of title, the complaint must allege that the purchaser was aware of the defects in his title. In the absence of such an allegation and proof of bad faith, it would be impossible for the court to render a valid judgment against the purchaser

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[7] *Rollo*, pp. 92-94.

who has already acquired title, due to the indefeasibility and conclusiveness of his title.[8] It is a fundamental principle in land registration that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[9] Even if the procurement of a certificate of title is tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value.[10]

Velasquez, Sr. surrendered and relinquished in favor of Interbank and all subsequent purchasers all his rights over the property when he executed the compromise agreement with Interbank. In the agreement, as approved by the trial court, Velasquez, Sr. indubitably acknowledged the legality and validity, and recognized the full transmission, of the ownership and title of Interbank and its transferees who were all innocent purchasers for value.

Once a compromise agreement is stamped with judicial approval, it becomes more than a mere contract binding upon the parties. Having been vested with the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment.[11] It is immediately executory and not appealable.[12] It has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery.[13]

Furthermore, material facts or questions in issue in a former action and were there admitted or judicially determined become conclusively settled by a judgment on a compromise agreement. The issues thus become *res judicata* and may not be litigated

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[8] *Chu, Sr. vs. Benelda Estate*, 353 SCRA 424 [2001].

[9] *Vda. De Retuerto vs. Barz*, 372 SCRA 712 [2001].

[10] *Cabuhat vs. CA*, 366 SCRA 176 [2001].

[11] *Domingo vs. Court of Appeals*, 255 SCRA 189 [1996].

[12] *Thermphil, Inc. vs. Court of Appeals*, 369 SCRA 682 [2001].

[13] *Magat vs. Delizo*, 360 SCRA 508 [2001].

again in a subsequent action between the same parties or their privies.[14] Notably, Loreto Tiongkiao, petitioners' mother, died in 1965 or 21 years before the compromise agreement in 1986. And petitioners themselves claim that the petition earlier filed by their father Velasquez, Sr. was initiated for the protection of their interests as well. In fact, in the memorandum they filed in the trial court, they claimed that:

> The argument of defendant in Par. 6.3 of its Memorandum that Jose T. Velasquez, Sr. never had the authority to bind the plaintiffs in the petition for review is not only ridiculous but also short-minded theory and self-centered argument. x x x Since there was as yet no physical partition of the subject property, separating their aliquot shares, *it cannot be validly argued that plaintiffs' interest therein were (sic) not included in the petition for review filed by their father*.x x x[15] (Italics supplied)

With respect to the alleged co-ownership between petitioners and ALI, we concur with the conclusions of the Court of Appeals:

> The actuality of an existing co-ownership between petitioner and the private respondents can only be contextually posited under a scenario where the former traces its claimed ownership from Jose Velasquez, Sr. Private respondents put things in proper perspective with the ensuing allegation in their complaint: *"That since the demise of the plaintiffs' mother Loreto Tiongkiao they by operation of law have been the co-owner of their father Jose T. Velasquez, Sr."* The hard reality, however, is that petitioner, unlike the private respondents, did not derive its title from Velasquez, Sr., which is equivalent to saying that it did not step into the shoes of the elder Velasquez insofar as the property in question is concerned. In fine, Velasquez, Sr. did not form part of the chain whence petitioner sourced its right and title to such property. In the ultimate analysis, petitioner derived its title from Guico whose interest on the property is very much opposed to that of Velasquez, Sr.
>
> It may well be that the Guico Decree was improperly issued. It may also be that Guico's OCT No. 1421 may had (*sic*) been infected. Nonetheless, titles descending from such purchaser for value, like

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[14] *Avisado vs. Rumbua*, 354 SCRA 245 [2001].

[15] Memorandum, November 27, 1997, p. 5.

the petitioner, by fiction of law perfect and indefeasible after the passage of time. In such situation, the sole remedy of the landowner whose property may have been erroneously registered in another's name — after one (1) year from the date of the decree — is not to set aside the decree or seek petition, but, respecting the decree as incontrovertible, to bring an action for damages (*Ching vs. Court of Appeals*, 181 SCRA 9, and case cited therein).

There should be no question that the contemplated action for partition can plausibly succeed only when the Guico Decree and the titles derived therefrom, not to mention the judgment by compromise, shall have been cancelled and set aside. Unless and until that eventuality happens, going full steam ahead with the action for partition while the presumptively valid decree and the derivative titles subsist, as the respondent judge is wont to do, would be to subvert the Torrens system, the real purpose of which is to quiet title to land and to stop forever any question as to its legality (*National Grains Authority vs. IAC*, 157 SCRA 380, cited in *Ching vs. CA, supra*). And any suggestion that the court *a quo* can order the setting aside of the Guico Decree and/or the cancellation of petitioner's title[s] and/or the judgment by compromise in LRC No. 976 as mere incidents in the action for partition in Civil Case No. KP-97-0175 is absolutely unacceptable.

The Court of Appeals expounded in detail on the issue of co-ownership. Its analysis was precise and thorough. It painstakingly studied and reviewed the facts of the case as well as the evidence proffered by the parties.

Finally, we note the Velasquez siblings' long and deafening silence for 32 years which has remained unexplained to this date. It certainly invites, to say the least, a nagging suspicion as to their motive in filing the suit for partition.

We thus find no ground to reverse or even modify the factual findings of the Court of Appeals. Questions that may be entertained in a petition for *certiorari* under Rule 45 of the Revised Rules of Court must not involve an examination of the probative value of the evidence presented by the litigants.[16] We find no misapprehension of facts nor contradictions in the evidence on

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[16] *Western Shipyards Services, Inc. vs. Court of Appeals*, 358 SCRA 257 [2001].

record. Such being the case, the CA's factual findings become conclusive and binding on this Court.

We however, dismiss ALI's petition for indirect contempt in G.R. No. 139449. We are willing to assume that the petitioners Velasquez acted in good faith when they filed the administrative complaint against the three Court of Appeals Justices. Moreover, there appears to be no evidence showing that it was the petitioners Velasquez who caused the publication of the said administrative proceedings in connection with the subject matter in G.R. No. 138480.

However, while the Court recognizes the rights of litigants to criticize judges or justices in the performance of their functions, under no circumstances may a litigant or counsel be allowed to engage the Court in interminable squabbling about the correctness of its orders and dispositions. The refusal of a party to concede defeat, manifested by unceasing attempts to prolong the final disposition of cases, obstructs the administration of justice and therefore constitutes contempt of court.[17]

In the case at bar, the power of contempt, being a drastic and extraordinary remedy, should not be exercised unless clearly necessary in the interest of justice.[18]

WHEREFORE, the petition in G.R. No. 138480 is *DENIED* and the decision of the Court of Appeals dated December 9, 1998 is hereby affirmed *in toto*. The petition in G.R. No. 139449 is hereby ***DISMISSED*** for lack of merit.

SO ORDERED.

Sandoval-Gutierrez (Acting Chairman) and *Carpio Morales, JJ.*, concur.

Vitug, J. (Chairman), on official business leave.

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[17] *Ortigas and Company Limited Partnership vs. Velasco*, 254 SCRA 239 [1996].

[18] *Paredes-Garcia vs. Court of Appeals*, 261 SCRA 693 [1996].

THIRD DIVISION

[G.R. No. 140992. March 25, 2004]

SAMAHANG MANGGAGAWA SA SULPICIO LINES, INC.–NAFLU, RODOLFO ALINDATO, ROQUE TAN, JESSIE LIM, SUSAN TOPACIO, LYDDA PASCUAL, BERNARDO ALCANTARA, GELACIO DESQUITADO, RODRIGO AVELINO, LEONARDO ANDRADE, DANILO CHUA, AMANDO EUGENIO, CALVIN LOPEZ, ANDRES BASCO, JR., and CIRILO ALON, *petitioners, vs.* **SULPICIO LINES, INC.,** *respondent.*

SYNOPSIS

Assailed in the instant petition for review on *certiorari* under Rule 45 of the 1997 of Civil Procedure, as amended, is the Decision of the Court of Appeals in CA-G.R. SP No. 51322, affirming the NLRC Resolutions. In its Decision, the appellate court held: (1) that the one-day work stoppage of the officers and members of the petitioner union was an illegal strike because they failed to comply with the mandatory procedural requirements of a valid strike; (2) that the dismissal of the petitioner's officers who knowingly participated in an illegal strike was valid; and (3) that the NLRC has jurisdiction to resolve the issue of legality of the strike.

Petitioner union insisted that the strike can still be declared legal for it was done in good faith, being in response to what its officers and members honestly perceived as unfair labor practice or union busting committed by respondent; that what transpired was not a strike but merely a "one-day work absence" or a simple act of absenteeism.

In denying the petition, the Supreme Court held: (1) that the strike mounted by the petitioners on May 20, 1994 was illegal for failure of petitioners to comply with the mandatory requirements of Article 263 (c) and (f) of the Labor Code as to filing of a notice of strike, strike vote and notice given to the Department of Labor. There was no showing that the petitioner

union observed the 7-day strike ban; and that the results of the strike vote were submitted by petitioners to the Department of Labor and Employment at least seven (7) days before the strike. Thus, even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike votes were conducted, the said strike was illegal; (2) that petitioners failed to prove that respondent company committed any unfair labor practice. The union has the burden of proof to present substantial evidence to support its allegations of unfair labor practices committed by the respondent company; (3) that what transpired on May 20, 1994 was strike because the cessation of work by petitioners' concerted action resulted from a labor dispute and not merely a "one-day work absence" or a simple act of absenteeism as claimed by the petitioners; (4) that the participation of the union officers in an illegal strike forfeits their employment status; (5) that the NLRC has jurisdiction over the case at bar.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE; CONSIDERED ILLEGAL WHERE UNION FAILED TO COMPLY WITH THE COOLING-OFF PERIOD AND THE SEVEN-DAY STRIKE BAN; CASE AT BAR.—** There is no showing that the petitioner union observed the 7-day strike ban; and that the results of the strike vote were submitted by petitioners to the Department of Labor and Employment at least seven (7) days before the strike. We thus hold that for failing to comply with the mandatory requirements of Article 263 (c) and (f) of the Labor Code, the strike mounted by petitioner union on May 20, 1994 is illegal. In *Gold City Integrated Port Service, Inc. vs. NLRC*, we stressed that "the language of the law leaves no room for doubt that the cooling-off period and *the seven-day strike ban after the strike-vote report were intended to be mandatory*."

2. **ID.; ID.; ID.; ALLEGATION OF UNFAIR LABOR PRACTICE OR UNION BUSTING MUST BE PROVED BY SUBSTANTIAL EVIDENCE; BURDEN OF PROOF LIES ON THE UNION.—** Petitioner's accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge. In

Tiu vs. NLRC, we held: "x x x *It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations* (of unfair labor practices committed by management). "x x x. "x x x, but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. *It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a prima facie showing to warrant such a belief.*"

3. **ID.; ID.; ID.; CONSIDERED ILLEGAL IF NO NOTICE OF STRIKE AND A STRIKE VOTE WERE CONDUCTED, EVEN IF THE UNION ACTED IN GOOD FAITH THAT THE COMPANY WAS COMMITTING AN UNFAIR LABOR PRACTICE.—** We explained in *National Federation of Labor vs. NLRC* that "with the enactment of Republic Act No. 6715 which took effect on March 21, 1989, the rule now is that *such requirements as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature*. Thus, *even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal*."

4. **ID.; ID.; ID.; DEFINED; ELEMENTS; PRESENT IN CASE AT BAR.—** A strike, as defined in Article 212(o) of the Labor Code, as amended, means "any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute." The term "strike" shall comprise not only concerted work stoppages, but also slowdowns, mass leaves, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities. The basic elements of a strike are present in the case at bar. First, petitioner's officers and members numbering 167, in a concerted manner, did not report for work on May 20, 1994; second, they gathered in front of respondent's office at Pier 12, North Harbor at Manila to participate in a strike voting conducted by petitioner; and third, such union activity was an aftermath of petitioner's second notice of strike by reason of respondent's unfair labor practice/s. Clearly, what transpired

then was a strike because the cessation of work by petitioner's concerted action resulted from a labor dispute.

5. ID.; ID.; ID.; PARTICIPATION OF THE UNION OFFICERS IN AN ILLEGAL STRIKE FORFEITS THEIR EMPLOYMENT STATUS.— Invoking compassion, petitioner pleads that its officers who participated in the one-day strike should not be dismissed from the service, considering that respondent's business activities were not interrupted, much less paralyzed. While we sympathize with their plight, however, we must take care that in the contest between labor and capital, the results achieved are fair and in conformity with the law. Pertinent is Article 264(a) of the same Code, thus: x x x. It is worth reiterating that the strike is illegal for failure of petitioner to submit the strike vote to the Department of Labor and Employment at least seven (7) days prior thereto. Also, petitioner failed to prove that respondent company committed any unfair labor practice. Amid this background, the *participation of the union officers in an illegal strike forfeits their employment status.*

6. ID.; ID.; ID.; EFFECTS OF ILLEGAL STRIKES.— In *Telefunken Semiconductors Employees Union-FFW vs. Secretary of Labor and Employment*, we explained — "The effects of such illegal strikes, outlined in Article 265 (now Article 264) of the Labor Code, make a distinction between workers and union officers who participate therein. "A union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost their employment status. *An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike*."

7. ID.; ID.; ID.; JURISDICTION OF THE NLRC OVER LABOR DISPUTES.— Moreover, petitioner maintains that the Labor Arbiter, not the NLRC, should have taken cognizance of the case at bar. We do not agree. In *International Pharmaceuticals, Inc. v. Secretary of Labor and Employment*, we held: 'x x x [T]he Secretary was explicitly granted by Article 263 (g) of the Labor Code the authority to assume jurisdiction over a labor dispute

causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, *this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction*.' "In the same manner, *when the Secretary of Labor and Employment certifies the labor dispute to the NLRC for compulsory arbitration the latter is concomitantly empowered to resolve all questions and controversies arising therefrom including cases otherwise belonging originally and exclusively to the Labor Arbiter*."

APPEARANCES OF COUNSEL

Flores Saladero Bunao & Olalia Law Offices for petitioners.
Rufer D. Tolentino for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

A strike is a powerful weapon of the working class. But like a sensitive explosive, it must be handled carefully, lest it blows up in the workers' own hands.[1] Thus, the right to strike has to be pursued within the bounds of law.

For our resolution is the instant petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[2] dated May 28, 1999 and the Resolution[3] dated November 25, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 51322, entitled "*Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU vs. National Labor Relations Commission and Sulpicio Lines, Inc.*"

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[1] See *Batangas Laguna Tayabas Bus Company vs. NLRC*, G.R. No. 101858, August 21, 1992, 212 SCRA 792.

[2] Annex "A", Petition for Review, *Rollo* at 63-78.

[3] Annex "B", *id*. at 80.

The factual antecedents as gleaned from the records are:

On February 5, 1991, Sulpicio Lines, Inc. (herein respondent) and the Samahang Manggagawa sa Sulpicio Lines Inc. – NAFLU (herein petitioner) executed a collective bargaining agreement (CBA) with a term of five (5) years (from October 17, 1990 to October 16, 1995).

After three (3) years or on December 15, 1993, petitioner union and respondent company started their negotiation on the CBA's economic provisions.[4] But this negotiation remained at stalemate.

On March 1, 1994, petitioner filed with the National Conciliation and Mediation Board (NCMB), National Capital Region, a notice of strike due to collective bargaining deadlock, docketed as NCMB-NCR-NS-03-118-94.

For its part, respondent, on March 21, 1994, filed with the Office of the Secretary, Department of Labor and Employment a petition praying that the Labor Secretary assume jurisdiction over the controversy.

On March 23, 1994, former Labor Secretary Nieves R. Confesor issued an Order assuming jurisdiction over the labor dispute pursuant to Article 263 (g) of the Labor Code, as amended, thus:

"WHEREFORE PREMISES CONSIDERED, this Office assumes jurisdiction over the labor dispute at Sulpicio Lines, Inc. pursuant to Article 263 (g) of the Labor Code, as amended.

"Accordingly, any strike or lockout whether actual or intended is hereby enjoined.

"Further, the parties are directed to cease and desist from committing any and all acts that might exacerbate the situation.

"SO ORDERED."

Meanwhile, on May 20, 1994, petitioner filed with the NCMB a second notice of strike alleging that respondent company

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[4] The negotiated economic provisions of the CBA have a term of two (2) years from October 17, 1993 to October 16, 1995.

committed acts[5] constituting unfair labor practice amounting to union busting, docketed as NCMB NCR-05-261-94.

Provoked by respondent's alleged unfair labor practice/s, petitioner union immediately conducted a strike vote. Thus, on May 20, 1994, about 9:30 o'clock in the morning, 167 rank-and-file employees, officers and members of petitioner, did not report for work and instead gathered in front of Pier 12, North Harbor at Manila.

As a remedial measure, former Labor Secretary Confesor issued an Order dated May 20, 1994 directing the striking employees to return to work; and certifying the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration. This certified labor dispute was docketed as NLRC Case No. CC-0083-94.

Meanwhile, respondent company filed with the NLRC a complaint for "illegal strike/clearance for termination," docketed as NLRC NCR Case No. 00-05-04705-94.

On September 29, 1995, the NLRC issued a Resolution[6] declaring the strike of petitioner's officers and members illegal, with notice to respondent of the option to terminate their (petitioner's officers) employment. In the same Resolution, the NLRC dismissed petitioner's complaint against respondent, thus:

"WHEREFORE, premises considered, after a careful and judicious consideration of the facts, arguments and evidence thus adduced, it is the considered opinion of the Commission that the union (Samahang Manggagawa sa Sulpicio Lines, Inc.) had clearly engaged in an illegal strike on May 20, 1994, when its officers and members actively participated in a well concerted refusal, stoppage and cessation to

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[5] Petitioner alleged the following unfair labor practices committed by respondent: (1) illegal mass dismissal of union officers and active members; (2) discrimination in wages; (3) coercion and intimidation; (4) illegal suspension; (5) illegal salary deduction; (6) illegal transfer of assignments; (7) oral defamation/harassment; (8) non-compliance with NLRC decision; (9) wage distortion; (10) gross violation of CBA provisions; (11) hiring of casuals to fill-up regular positions; and (12) interference in union activities.

[6] Annex "A", Petition for *Certiorari*, *Rollo* at 118-133.

render work at Sulpicio Lines, Inc. In clear violation not only of the procedural requirements of a valid strike, but worse, in clear and blatant contravention of the assumption order of the Secretary of Labor and Employment. Consequently, the following *union officers* named in the complaint, to wit:

1) Allan F. Aguhar
2) Rodolfo Alindato
3) Roque Tan
4) Jessie Lim
5) Susan Topacio
6) Lydda Pascual
7) Bernardo Alcantara
8) Gelacio Dequitado
9) Rodrigo Avelino
10) Leonardo Andrade
11) Danilo Chua
12) Amando Eugenio
13) Calvin Lopez
14) Andres Basco, Jr.
15) Cirilo Alon

are declared to have lost their employment status with the company, and the latter may now, if it so desires, terminate their employment with it. The union's complaint against the company is hereby DISMISSED for lack of merit.

"SO ORDERED."

Petitioner filed a motion for reconsideration but was denied by the NLRC in a Resolution[7] dated January 15, 1996.

On March 19, 1996, petitioner filed with this Court a petition for *certiorari* assailing the NLRC Resolutions. Pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*,[8] we referred the petition to the Court of Appeals for its appropriate action and disposition.

On May 28, 1999, the Court of Appeals rendered a Decision affirming the NLRC Resolutions. The Appellate Court held (1) that the NLRC has jurisdiction to resolve the issue of legality of the strike; (2) that the May 20, 1994 temporary work stoppage by the officers and members of petitioner amounted to an illegal strike; (3) that even assuming that respondent committed unfair

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[7] Annex "B", *id.* at 134-139.

[8] G.R. No. 130866, September 16, 1998, 295 SCRA 494, holding that the appeal from the NLRC should be initially filed with the Court of Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.

labor practice/s, still, the strike is illegal because it failed to comply with the mandatory procedural requirements of a valid strike under Article 263 (c) and (f) of the Labor Code, as amended; and (4) that the dismissal of petitioner's officers who knowingly participated in an illegal strike is in accordance with Article 264 (a) of the Labor Code, as amended.

On October 20, 1995, petitioner filed a motion for reconsideration but was denied by the Court of Appeals in a Resolution dated November 25, 1999.

Hence, this petition for review on *certiorari*. Petitioner alleged that the Court of Appeals seriously erred (1) in holding that the one-day work stoppage of petitioner's officers and members is an illegal strike; (2) in sustaining the dismissal from the service of its officers; and (3) in ruling that the NLRC has jurisdiction over a petition to declare the strike illegal.

The basic issue for our determination is whether the strike staged by petitioner's officers and members is illegal. Articles 263 and 264 of the Labor Code, as amended, provide:

"ART. 263. STRIKES, PICKETING AND LOCKOUTS.

x x x x x x x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike x x x with the Ministry (now Department) at least 30 days before the intended date thereof. *In cases of unfair labor practice, the period of notice shall be 15 days* and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, *in case of dismissal from employment of union officers* duly elected in accordance with the union constitution and by-laws, *which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.*

x x x x x x x x x

(f) *A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that*

purpose x x x The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry (now Department) may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. *In every case, the union x x x shall furnish the Ministry (now Department) the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.*

x x x x x x x x x.

ART. 264. *PROHIBITED ACTIVITIES.*

(a) *No labor organization* or employer *shall declare a strike* or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding article or *without the necessary strike or lockout vote first having been obtained and reported to the Ministry (now Department).*

x x x x x x x x x."

Following are the Implementing Guidelines of the above provisions issued by the Department of Labor and Employment:

1. A strike shall be filed with the Department of Labor and Employment at least 15 days if the issues raised are unfair labor practice or at least 30 days if the issue involved bargaining deadlock. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately;

2. The strike shall be supported by a majority vote of the members of the union obtained by secret ballot in a meeting called for the purpose; and

3. A strike vote shall be reported to the Department of Labor and Employment at least seven (7) days before the intended strike.

There is no showing that the petitioner union observed the 7-day strike ban; and that the results of the strike vote were submitted by petitioners to the Department of Labor and Employment at least seven (7) days before the strike.

We thus hold that for failing to comply with the mandatory requirements of Article 263 (c) and (f) of the Labor Code, the strike mounted by petitioner union on May 20, 1994 is illegal.

In *Gold City Integrated Port Service, Inc. vs. NLRC,*[9] we stressed that "the language of the law leaves no room for doubt that the cooling-off period and *the seven-day strike ban after the strike-vote report were intended to be mandatory*."

But petitioner insists that the strike can still be declared legal for it was done in good faith, being in response to what its officers and members honestly perceived as unfair labor practice or union busting committed by respondent.

Petitioner's accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge.

In *Tiu vs. NLRC,*[10] we held:

"x x x. *It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations* (of unfair labor practices committed by management).

"x x x x x x x x x.

"x x x, but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. *It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a* ***prima facie*** *showing to warrant such a belief*."

We explained in *National Federation of Labor vs. NLRC*[11] that "with the enactment of Republic Act No. 6715 which took

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[9] G.R. No. 103560, July 6, 1995, 245 SCRA 628, 636, citing *National Federation of Sugar Workers (NFSW) vs. Ovejera*, 114 SCRA 354 (1982).

[10] G.R. No. 123276, August 18, 1997, 277 SCRA 680, 687.

[11] G.R. No. 113466, December 15, 1997, 283 SCRA 275, 287-288, citing *First City Interlink Transportation, Co. vs. The Honorable Secretary*, G.R. No. 106316, May 5, 1997.

effect on March 21, 1989, the rule now is that *such requirements as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature.* Thus, *even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal*."

In a desperate attempt to justify its position, petitioner insists that what transpired on May 20, 1994 was not a strike but merely a "one-day work absence"[12] or a "simple act of absenteeism."[13]

We are not convinced. A strike, as defined in Article 212(o) of the Labor Code, as amended, means "any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute." The term "strike" shall comprise not only concerted work stoppages, but also slowdowns, mass leaves, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities.[14]

The basic elements of a strike are present in the case at bar. First, petitioner's officers and members numbering 167, in a concerted manner, did not report for work on May 20, 1994; second, they gathered in front of respondent's office at Pier 12, North Harbor at Manila to participate in a strike voting conducted by petitioner; and third, such union activity was an aftermath of petitioner's second notice of strike by reason of respondent's unfair labor practice/s. Clearly, what transpired then was a strike because the cessation of work by petitioner's concerted action resulted from a labor dispute.

Invoking compassion, petitioner pleads that its officers who participated in the one-day strike should not be dismissed from the service, considering that respondent's business activities were not interrupted, much less paralyzed. While we sympathize

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[12] Annex "D", Petition for Review, *Rollo* at 98-99.

[13] *Id*. at 105.

[14] Section 2, PD No. 823, as amended by PD No. 849.

with their plight, however, we must take care that in the contest between labor and capital, the results achieved are fair and in conformity with the law.[15]

Pertinent is Article 264(a) of the same Code, thus:

"ART. 264. *PROHIBITED ACTIVITIES.*

"x x x *Any union officer who knowingly participates in an illegal strike* and any worker or union officer who knowingly participates in the commission of illegal acts during a strike *may be declared to have lost his employment status*: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

x x x x x x x x x."

It is worth reiterating that the strike is illegal for failure of petitioner to submit the strike vote to the Department of Labor and Employment at least seven (7) days prior thereto. Also, petitioner failed to prove that respondent company committed any unfair labor practice. Amid this background, the *participation of the union officers in an illegal strike forfeits their employment status*.

In *Telefunken Semiconductors Employees Union-FFW vs. Secretary of Labor and Employment*,[16] we explained —

"The effects of such illegal strikes, outlined in Article 265 (now Article 264) of the Labor Code, make a distinction between workers and union officers who participate therein.

"A union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost their employment status. *An ordinary striking worker cannot*

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[15] See *Reliance Surety and Insurance Co., Inc. vs. NLRC*, G.R. Nos. 86917-18, January 25, 1991, 139 SCRA 365.

[16] G.R. Nos. 122743 & 127215, December 12, 1997, 283 SCRA 145, 151, citing *Gold City Integrated Port Service, Inc. vs. NLRC*, 245 SCRA 627, 637-638 (1995).

be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike."

Moreover, petitioner maintains that the Labor Arbiter, not the NLRC, should have taken cognizance of the case at bar. We do not agree.

In *International Pharmaceuticals, Inc. v. Secretary of Labor and Employment*,[17] we held:

'x x x [T]he Secretary was explicitly granted by Article 263 (g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, *this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction'* (italics supplied).

"In the same manner, *when the Secretary of Labor and Employment certifies the labor dispute to the NLRC for compulsory arbitration the latter is concomitantly empowered to resolve all questions and controversies arising therefrom including cases otherwise belonging originally and exclusively to the Labor Arbiter*."

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals dated May 28, 1999 and November 25, 1999 are hereby *AFFIRMED*.

SO ORDERED.

Corona and *Carpio Morales, JJ.,* concur.

Vitug, J. (Chairman), on official leave.

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[17] G.R. Nos. 92981-83, January 9, 1992, 205 SCRA 59, cited in *PASVIL/ Pascual Liner, Inc. Workers Union-NAFLU vs. NLRC,* G.R. No. 124823, July 28, 1999, 311 SCRA 444, 451-452.

THIRD DIVISION

[G.R. No. 141117. March 25, 2004]

UNITED PULP AND PAPER CO., INC., *petitioner, vs.* **UNITED PULP AND PAPER CHAPTER-FEDERATION OF FREE WORKERS,** *respondent*.

SYNOPSIS

For being insufficient in form, the Court of Appeals denied due course and dismissed petitioner Corporation's petition for review of the Decision and Resolution of the Voluntary Arbitrators. In its Resolution, the appellate court held that the following defects warrant the outright dismissal of petitioner's petition: (1) the verification and certification of non-forum shopping was signed only by the counsel for the petitioner corporation; (2) petitioner did not attach to the petition the registry receipts evidencing mailing of the petition to the other party, and a written explanation why the service or filing was not done personally.

Hence, this petition for review on *certiorari* where petitioner alleged that the appellate court seriously erred in dismissing its petition for review on mere technicalities.

In denying the petition, the Supreme Court held that: First, the signing of the certificate of non-forum shopping by petitioner's counsel violates Section 5, Rule 7 of the Rules of Court which requires that the certification should be signed by the plaintiff or principal party. There was no showing that the petitioner's counsel was authorized by the corporation to represent the latter and to sign the certification. The petition is flawed where the certificate of non-forum shopping was signed only by counsel and not by the party; Second, petitioner's failure to attach with the petition a written explanation why the service or filing was not done personally violates Section 11, Rule 13 of the same Rules. Where no explanation is offered to justify the service of pleadings by other modes, the discretionary power of the court to expunge the pleading becomes mandatory; Third, procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CERTIFICATION AGAINST FORUM-SHOPPING; SHOULD BE SIGNED BY THE PLAINTIFF OR PRINCIPAL PARTY; PETITION IS FLAWED WHERE THE CERTIFICATE ON NON-FORUM SHOPPING WAS SIGNED ONLY BY COUNSEL AND NOT BY THE PARTY; CASE AT BAR.—** Section 5, Rule 7 of the same Rules provides that it is the plaintiff or principal party who shall certify under oath in the complaint or other initiatory pleading that he has not commenced any action involving the same issues in any court, tribunal or quasi-judicial agency. Here, only petitioner's counsel signed the certification against forum-shopping. There is no showing that he was authorized by the petitioner company to represent the latter and to sign the certification. In *Sy Chin vs. Court of Appeals*, we held that "the petition is flawed as the certificate of non-forum shopping was signed only by counsel and not by the party." The rule requires that it should be the plaintiff or principal party who should sign the certification, otherwise, this requirement would easily be circumvented by the signature of every counsel representing corporate parties.

2. **ID.; ID.; ID.; FILING AND SERVICE OF PLEADINGS; PERSONAL SERVICE; WHERE NO EXPLANATION IS OFFERED TO JUSTIFY THE SERVICE OF PLEADINGS BY OTHER MODES, THE DISCRETIONARY POWER OF THE COURT TO EXPUNGE THE PLEADING BECOMES MANDATORY.—** Moreover, petitioner's failure to attach with the petition a written explanation why the service or filing was not done personally violates Section 11, Rule 13 of the same Rules. We have ruled that where no explanation is offered to justify the service of pleadings by other modes, the discretionary power of the court to expunge the pleading becomes mandatory. Thus, the Court of Appeals correctly considered the petition as not having been filed, in view of petitioner's failure to present a written explanation why it failed to effect personal service of its petition for review.

3. **ID.; RULES OF PROCEDURE; NOT TO BE DISDAINED AS MERE TECHNICALITIES.—** In *Kowloon House/Willy Ng vs. Hon. Court of Appeals*, we held that "(r)ules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit

the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies."

APPEARANCES OF COUNSEL

Filomeno A. Arteche III and *Amer L. Macapundog* for petitioner.

Allan Montano for private respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ,[*] *J.*:

For our resolution is the instant petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolutions dated October 12, 1999[1] and December 10, 1999[2] of the Court of Appeals in CA-G.R. SP No. 55245, entitled *"United Pulp and Paper Co., Inc. vs. United Pulp and Paper Chapter-Federation of Free Workers."*

The antecedent facts giving rise to the controversy at bar are as follows:

Sometime in July 1991, United Pulp and Paper Co., Inc., petitioner, implemented a "Promotions Policy[3] that recognizes the excellent and meritorious work performance of deserving employees during the last twelve (12) months. The "Promotions Policy" sets forth the following guidelines:

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[*] Acting Chairman.

[1] Annex "A", Petition for Review, *Rollo* at 51-52.

[2] Annex "B", *id.* at 57-58.

[3] Annex "C-1", *id.* at 91-99.

"VI. ADMINISTRATIVE GUIDELINES

"1. Except in abnormal situations (subject to approval by the General Manager), promotions shall be made only if a vacancy in the next higher position occurs and Management has decided to fill-up such vacancy through approval of the Personnel Requisition form.

x x x x x x x x x

"9. In case of union employees, the promotional increase shall be 5% compounded for every pay class jump. However, the resulting effect of 5% promotional increase shall not cause the promoted employee's salary to exceed that of the lowest paid incumbent within first, the section, second, department, and third, division. If this constraint will result to a promotional increase of lower than 3% over his previous salary, the employee will receive an increase of 3%.

x x x x x x x x x."[4]

On April 1, 1998, Teodorico Simbulan was promoted from Welder I to Welder II with the corresponding pay class (PC) movement from PC V to PC VIII.

For and in behalf of Simbulan, United Pulp and Paper Chapter-Federation of Free Workers, respondent, questioned the regularity or correctness of the salary increase granted by petitioner. Invoking Section 1, Article XVII of the collective bargaining agreement (CBA),[5] respondent maintains that Simbulan is entitled to a 5% salary increase (for every pay class movement) because such salary increase does not exceed the salary rates of other incumbents. Respondent also contends that petitioner is guilty of discrimination against Simbulan since other employees, like Enrique Cruz and

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[4] *Id*. at 94-96.

[5] Section 1. *Benefits and Practices*. The terms and conditions of employment of employees within the above-defined bargaining unit shall be those as are embodied herein. Benefits and personnel practices not otherwise modified by this Agreement and which are being regularly enjoyed by the employees prior to the date of effectivity of this Agreement shall continue to be enjoyed by them.

Joselito de Castro who were previously promoted, enjoy the 5% salary increase for their pay class movements.

The controversy was submitted to the grievance machinery, but the parties failed to reach an acceptable settlement.

Thus, the matter was elevated to a panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (NCMB), Regional Branch No. III at San Fernando, Pampanga, docketed as NCMB-AC-583-RB3-10-024-98.

On July 1, 1999, the Voluntary Arbitrators rendered a Decision[6] partly reproduced as follows:

"In light of all the foregoing, this Panel holds that the promotional increase in the case of union employees is 5% compounded for every pay class jump unless the effect of such increase will be such as to cause the promoted employee's salary to exceed that of the lowest paid incumbent in the same position as that to which the employee is being promoted, in which case the promotional increase shall be limited to not less than 3%.

"Consequently, in the case of the subject employee, Teodorico Simbulan, since there is no showing that, for the second and third jumps in his promotion on 1 April 1998, his salary would have exceeded that of the lowest paid incumbent in the pertinent position if granted a 5% promotional increase, he is entitled to a salary increase of 5%+5%+5%, compounded for each pay class, effective as of the said date.

"WHEREFORE, respondent United Pulp and Paper Co., Inc. is hereby ordered to pay Teodorico Simbulan the difference between the promotional increase of 5%+5%+5%, compounded for each pay class, and the salary increase be actually received as a result of his promotion, effective as of 1 April 1998.

"The respondent is also directed to continue implementing the promotions policy, in appropriate cases, in the manner stated in this Decision.

"SO ORDERED."

Petitioner filed a motion for reconsideration but was denied by the Voluntary Arbitrators in a Resolution[7] dated September 3, 1999.

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[6] Annex "A", Petition for Review, *Rollo* at 146-154.

[7] Annex "B", *id*. at 161-165.

On October 6, 1999, petitioner filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision and Resolution of the Voluntary Arbitrators.

In a Resolution dated October 12, 1999, the Appellate Court dismissed the petition outright for being insufficient in form, thus:

"1. The verification and certification of non-forum shopping was signed only by counsel for the petitioner corporation, rather than by a duly-authorized officer thereof;

"2. The affidavit of service is inadequate, as the registry receipts evidencing mailing of copies of the petition to the respondent were not attached;

"3. Absence of the mandatory written explanation required under Sec. 11, Rule 13, 1997 Rules of Civil Procedure to explain why personal service upon the respondents of copies of the petition was not resorted to.

"The foregoing defects warrant an outright dismissal of the instant petition.

"IN VIEW THEREOF, the Petition is hereby DENIED DUE COURSE and DISMISSED.

"SO ORDERED."

On October 29, 1999, petitioner filed a motion for reconsideration but was denied by the Appellate Court in a Resolution dated December 10, 1999.

Hence, this petition for review on *certiorari* alleging that the Court of Appeals seriously erred in dismissing its petition for review on mere technicalities.

We agree with the Court of Appeals. Section 5, Rule 7 of the same Rules[8] provides that it is the plaintiff or principal party

[8] Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced

who shall certify under oath in the complaint or other initiatory pleading that he has not commenced any action involving the same issues in any court, tribunal or quasi-judicial agency.

Here, only petitioner's counsel signed the certification against forum-shopping. There is no showing that he was authorized by the petitioner company to represent the latter and to sign the certification.

In *Sy Chin vs. Court of Appeals*,[9] we held that "the petition is flawed as the certificate of non-forum shopping was signed only by counsel and not by the party." The rule requires that it should be the plaintiff or principal party who should sign the certification, otherwise, this requirement would easily be circumvented by the signature of every counsel representing corporate parties.[10]

Moreover, petitioner's failure to attach with the petition a written explanation why the service or filing was not done personally violates Section 11, Rule 13 of the same Rules.[11]

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any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x

[9] G.R. No. 136233, November 23, 2000, 345 SCRA 673, 684.

[10] See *Zulueta vs. Asia Brewery*, G.R. No. 138137, March 8, 2001, 354 SCRA 100, 109.

[11] Section 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

We have ruled that where no explanation is offered to justify the service of pleadings by other modes, the discretionary power of the court to expunge the pleading becomes mandatory.[12] Thus, the Court of Appeals correctly considered the petition as not having been filed, in view of petitioner's failure to present a written explanation why it failed to effect personal service of its petition for review.

In *Kowloon House/Willy Ng vs. Hon. Court of Appeals*,[13] we held that "(r)ules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies."

WHEREFORE, the petition is *DENIED*. Costs against the petitioner.

SO ORDERED.

Corona and *Carpio Morales, JJ.*, concur.

Vitug, J. (Chairman), on official leave.

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[12] See *Zulueta vs. Asia Brewery, Inc., supra,* citing *Solar Team Entertainment, Inc. vs. Ricafort*, 293 SCRA 661 (1998).

[13] G.R. No. 140024, June 18, 2003 at 4-5 citing *Favila vs. Second Division*, 308 SCRA 303 (1999) and *CIR vs. CA*, 351 SCRA 436 (2001).

THIRD DIVISION

[G.R. No. 150256. March 25, 2004]

CATALINO P. ARAFILES, *petitioner, vs.* **PHILIPPINE JOURNALISTS, INC., ROMY MORALES, MAX BUAN, JR., and MANUEL C. VILLAREAL, JR.,** *respondents.*

SYNOPSIS

Respondent Romy Morales, a reporter of People's Journal Tonight, wrote an account of the complaint filed by Emelita Despuig, an employee of National Institute of Atmospheric Sciences (NIAS), at the Western Police District Headquarters against the petitioner, a NIAS director, for forcible abduction with rape and forcible abduction with attempted rape. Respondent Morales' report was published and appeared on the April 14, 1987 issue of the People's Journal Tonight. About a year following the publication of the said report, petitioner instituted a complaint before the Regional Trial Court of Quezon City against respondents for damages arising therefrom. Petitioner alleged that on account of the grossly malicious and overly sensationalized reporting in the news item, aspersions were cast on his character, his reputation as a director of the NIAS was injured; he became the object of public contempt and ridicule as he was depicted as a sex-crazed stalker and serial rapist; and the news item deferred his promotion to the position of Deputy Administrator. In their Answer, respondents alleged that the news item, having been source from the Police Blotter, which is an official public document and bolstered by a personal interview of the victim was therefore, privileged and falls within the protective constitutional provision of freedom of the press. The trial court decided the case in favor of the petitioner. On appeal, the Court of Appeals dismissed petitioner's complaint finding that the petitioner was not able to prove by a preponderance of evidence that respondents were motivated by a sinister intent to cause harm and injury to the petitioner when they published the subject news item. Hence, petitioner brought the case before the Supreme Court.

In denying the petition, the Court found that the case against respondents has not been sufficiently established by

preponderance of evidence. According to the Court, in an action for damages for libel, it is axiomatic that the published work alleged to contain libelous material must be examined and viewed as a whole. Here, the presentation of the news item subject of petitioner's complaint may have been in a sensational manner, but it was not *per se* illegal. Respondents could have been more circumspect in their choice of words as the headline and first seven paragraphs of the news item give the impression that a certain director of the NIAS actually committed the crimes complained of by Emelita. The succeeding paragraphs in which petitioner and complainant Emelita were eventually identified sufficiently convey to the readers, however, that the narration of events was only an account of what Emelita had reported at the police headquarters. In determining the manner in which a given event should be presented as a news item and the importance attached thereto, newspapers must enjoy a certain degree of discretion. In the preparation of stories, press reporters and editors usually have to race with their deadlines and consistently with good faith and reasonable care, they should not be held to account to a point of suppression for honest mistakes or imperfections in the choice of words.

SYLLABUS

1. **CIVIL LAW; HUMAN RELATIONS; ARTICLE 33 OF THE CIVIL CODE; ACTIONS FOR DAMAGES FOR LIBEL; SHALL BE INSTITUTED AND PROSECUTED TO FINAL JUDGMENT AND PROVED BY PREPONDERANCE OF EVIDENCE SEPARATELY FROM AND ENTIRELY INDEPENDENT OF THE INSTITUTION, PENDENCY OR RESULT OF THE CRIMINAL ACTION.—** It bears noting that the complaint petitioner instituted is one for damages under Article 33 of the Civil Code which provides: x x x. Article 33 contemplates a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case. A civil action for libel under this article shall be instituted and prosecuted to final judgment and proved by preponderance of evidence separately from and entirely independent of the institution, pendency or result of the criminal action because it is *governed by the provisions of the New Civil Code* and not by the Revised Penal Code governing the criminal offense charged and the civil liability arising therefrom.

2. ID.; ID.; ID.; ID.; PUBLISHED WORK ALLEGED TO CONTAIN LIBELOUS MATERIAL MUST BE EXAMINED AND VIEWED AS A WHOLE.— In actions for damages for libel, it is axiomatic that the published work alleged to contain libelous material must be examined and viewed as a whole. The article must be construed as an entirety including the headlines, as they may enlarge, explain, or restrict or be enlarged, explained or strengthened or restricted by the context. Whether or not it is libelous, depends upon the scope, spirit and motive of the publication taken in its entirety. x x x A publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So, the whole item, including display lines, should be read and construed together, and its meaning and signification thus determined. In order to ascertain the meaning of a published article, the whole of the article must be considered, each phrase must be construed in the light of the entire publication x x x The headlines of a newspaper must also be read in connection with the language which follows.

3. ID.; ID.; ID.; ID.; ID.; PRESENTATION OF THE NEWS ITEM IN A SENSATIONAL MANNER NOT *PER SE* ILLEGAL.— The entry made by Patrolman Chio in the police blotter which respondent Morales scrutinized at the WPD headquarters recorded indeed Emelita's complaint about only a case for abduction with rape which occurred on March 14, 1987. In her above-quoted sworn statement, however, earlier given before the same Patrolman Chio *in the presence of Morales who subsequently interviewed her*, Emelita reported about an abduction with rape incident which occurred on March 14, 1987 *and* an abduction incident which occurred on April 13, 1987. Petitioner's anchoring of his complaint for damages on a charge of "malicious" sensationalization of fabricated facts thus fails. The presentation of the news item subject of petitioner's complaint may have been in a sensational manner, but it is not *per se* illegal.

4. ID.; ID.; ID.; ID.; PRESS REPORTERS AND EDITORS SHOULD NOT BE HELD TO ACCOUNT, TO A POINT OF SUPPRESSION, FOR HONEST MISTAKES OR IMPERFECTION IN THE CHOICE OF WORDS.— Respondents could of course have been more circumspect in their choice of words as the headline and first seven paragraphs of the news

item give the impression that a certain director of the NIAS actually committed the crimes complained of by Emelita. The succeeding paragraphs (in which petitioner and complainant Emelita were eventually identified) sufficiently convey to the readers, however, that the narration of events was only an account of what Emelita had reported at the police headquarters. In determining the manner in which a given event should be presented as a news item and the importance to be attached thereto, newspapers must enjoy a certain degree of discretion. Every citizen of course has the right to enjoy a good name and reputation, but we do not consider that the respondents, under the circumstances of this case, had violated said right or abused the freedom of the press. *The newspapers should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy. In the preparation of stories, press reporters and [editors] usually have to race with their deadlines; and consistently with good faith and reasonable care, they should not be held to account, to a point of suppression, for honest mistakes or imperfection in the choice of words.*

APPEARANCES OF COUNSEL

Luis Q.U. Uranza, Jr. & Associates for petitioner.
Ruby Ruiz-Bruno for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner, Catalino P. Arafiles, seeks a review of the July 31, 2001 Decision[1] of the Court of Appeals dismissing his complaint for damages against respondents Philippine Journalists, Inc., Romy Morales, Max Buan, Jr., and Manuel C. Villareal, Jr.

About 2 a.m. on *April 14, 1987*, while respondent Morales, a reporter of People's Journal Tonight, was at the Western Police District (WPD) Headquarters along United Nations Avenue, Manila, Emelita Despuig (Emelita), an employee of the National Institute

[1] *Rollo* at 37-49.

of Atmospheric Sciences (NIAS), lodged a complaint against petitioner, a NIAS director, for forcible abduction with rape and forcible abduction with attempted rape before the then on duty Patrolman Benito Chio at the General Assignments Section of the headquarters.[2]

In the presence of Morales, Emelita executed a sworn statement[3] narrating the events surrounding the reported offenses committed against her by petitioner. The pertinent portions of her sworn statement are reproduced hereunder:

T: Ano ang dahilan at ikaw ay naririto ngayon sa aming tanggapan at nagbibigay ng isang malaya at kusang loob na salaysay?

A: Para po magsuplong, tungkol sa karumaldumal naginawa sa akin ni Director Catalino P. Arafiles ng PAG-ASA.

T: Kailan at saan ito nangyari?

A: Noong hong March 14, 1987, diyan ho sa Plaza Miranda ako sapilitan isinakay sa kotse niya at itinuloy sa Flamingo hotel bandang alas pagitan ng 5:30 at 6:00 ng hapon.

T: Kailan naman ang sumunod na pagtatangka sa puri mo si Direktor Arafiles?

S: Kagabi ho. Bandang alas 9:00 ng gabi.

T: Sa ikaliliwanag ng pagsisiyasat na ito maari bang isalaysay mo sa akin sa isang maikling talata kung paano nangyari ang ipinagsusumbong mong ito?

S: Kagagaling ko lang po sa aking klase sa Feati University noong March 14, 1987, bandang alas 5:45 ng hapon, humigit kumulang, habang ako ay naghihintay ng sasakyan pauwi mula sa Plaza Miranda ng may tumigil sa sasakyan sa tabi ko, at bigla na lang po akong hinaltak ni Direktor Arafiles papasok sa loob ng kotse niya at may ipina-amoy sa akin na nasa tissue na kulay yellow at bigla na lamang akong naghina at nahilo. Sabay din ho sa pagpapa-amoy niya sa akin ang pagtutok niya sa akin ng isang kutsilyo, at sabi sa akin ay huwag daw akong makulit tapos ay pinatakbo na niya ang kotse niya. Pamaya-maya ay nararamdaman kong karga-karga

[2] TSN, April 12, 1991 at 10-11.

[3] Exhibit "2", Records at 450-451.

> *niya ako pa-akyat sa isang hagdanan. Tapos ibinaba ako sa isang kamang naroroon at akoy unti-unti niyang hinuhubaran. Pamaya-maya ho ay pinaghahalikan po niya ako at nararamdaman ko rin ang mga kamay niya sa mga maseselan na parte ng katawan ko, pero wala akong sapat na lakas para pigilin siya o sumigaw man lamang. Nagawa niyang makuha ang aking pagka-babae noong gabing iyon at nararamdaman kong masakit na masakit ang buong katawan ko. Tinakot niya ako na huwag magsumbong sa mga kapatid ko at sa mga maykapangyarihan at kung hindi ay papatayin daw ako at tatanggalin pa sa trabaho at pati mga kapatid ko ay papatayin daw po. Binibigyan ako ng pera pero ayaw kung tanggapin pero pilit niyang inilagay sa bag ko at ng tingnan ko ay ₱55.00 lang. Pagkatapos ay hinila na niya akong pababa at pilit ding pinasakay sa kotse niya at doon ako pinababa sa isang lugar na maraming dumadaan ng biyaheng Quiapo at sumakay na lamang ako ng jeep pauwi. Kagabi naman po, bandang alas-9:00 ng gabi, sa may kanto ng United Nations Ave. at Taft Ave., Ermita, Mla., habang hinihintay ko ang pinsan ko na umihi lang matapos akong bumili ng gamot ng tumigil na naman sa tapat ko ang kotse ni Director. Bigla na lamang niya akong hinila papasok sa kotse sabay tutok sa akin ng kutsilyo at sabi sa akin ay huwag na raw akong papalag, total ay butas na raw ako. Sa takot ko ay hindi ako nakakibo at itinuloy din ako sa Flamingo hotel. Ng hinuhubaran na niya ako ay bigla na lamang nag-buzzer tapos naka-usap niya yong bellboy na nagsabi sa kanya na may naghahanap daw sa akin o sa amin dalawa na nakakita sa paghaltak niya sa akin. Ng umakyat sa itaas yong bellboy ay nag-usap sila sandali tapos nakita ko pinagbibigyan niya ng pera yong bellboy at yong guwardiya. Tapos ay doon kami bumaba sa likod na sa tingin ko ay fire escape at nakalabas kami ng hotel tapos doon ako ibinaba sa isang lugar na hindi ko rin matandaan kong saan at doon na lang ako kumuha ng taxi at nagpahatid ako sa Pasay City Police ngunit dito rin ako itinuro.*[4] (Italics supplied)

Following the execution by Emelita of her sworn statement, Patrolman Chio made the following entry in the Police Blotter which was perused by Morales:

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[4] *Ibid.*

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11:00 PM

4/13/87 PAT BENITO CHIO ON DUTY

2:00 AM 4/14/87 Subject Emelita Despuig y Puaso reported and personally came to this office that she was abducted by a certain Catalino P. Arafiles and alledgely (*sic*) rape (*sic*) last March 14, 1987 in a motel in Ermita. The undersigned made a referral to Medico-legal for Physical/Genital Exam. B. Chio.[5]

Morales thereupon personally interviewed Emelita for the purpose of reporting the same in the next issue of People's Journal Tonight.[6] By his claim, he, after the interview, tried to contact Arafiles at the NIAS office to verify Emelita's story but failed, the office having already closed.[7]

Morales then wrote an account about Emelita's complaint and submitted it to his editor.[8]

That same day, April 14, 1987, Morales' report appeared as headline on People's Journal Tonight reading:

GOV'T EXEC RAPES COED
By ROMY MORALES

A PRETTY coed, working as a grant-in-aid scholar at a Manila university and as an office worker at a government office in Quezon City, was *raped by her boss*, a government agency director, *last March 15,* but afraid to lose her job — and of being harmed — she chose to keep her ordeal to herself.

Last night, the government man, a director of the National Institute of Atmospheric Science, a branch of PAGASA, *again abducted the girl* after following her around, forcing her into his car and locking her up in a Malate motel.

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[5] Exhibit "1", Records at 449.

[6] TSN, May 3, 1991 at 7.

[7] TSN, April 12, 1991 at 13-14.

[8] TSN, May 3, 1991 at 5.

This time, however, the girl was not to be raped as easily as the first time, when the man used chloroform in forcing her into submission.

The girl fought like a tigress, alerting roomboys at the Flamingo Motel at corner Carolina and Quirino Ave. Perhaps as a ploy, motel personnel called up the room and told the man some Capcom soldiers were waiting for them outside.

The call saved the girl from being raped the second time around.

Her abductor immediately left the motel, with the girl in tow, and then dropped her off somewhere in Ermita.

When the man had gone, the girl took a taxi and went straight to the Western Police District and filed a complaint.

The girl, 20-year-old Emilita Arcillano (not her real name), said she was first raped last March 15 by her boss whom she identified as a certain Director Catalino Arafiles.

She recalled that while waiting for a ride at Plaza Miranda, Arafiles alighted from his Volkswagen Beetle, dragged her inside and then pressed a cotton with chloroform on her mouth and nose.

When she regained consciousness she was already inside the Flamingo Motel, already raped, she said.

She said Arafiles told her not to report the matter or she would lose her job and she and her family would be harmed.

When the act was to be repeated last night, Emilita decided to fight. "*Nanlaban ako at nagsisigaw at sinabi kong mabuti pang patayin na lang niya ako*," Emilita told Pat. Benito Chio of WPD General Assignments Section.

She said the suspect abducted her at the corner of Taft Ave. and United Nations Ave. at about 9:15 last night.

When Arafiles was told Capcom soldiers were waiting for them outside the Flamingo Motel, he allegedly paid ₱100 each to four roomboys to help him go out through a side gate.

The police will pick up Arafiles for questioning today.[9]

(Emphasis and italics supplied)

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[9] Exhibit "B", Records at 386-387.

About a year following the publication of above-quoted report or on April 13, 1988, petitioner instituted a complaint before the Regional Trial Court of Quezon City against respondents for damages[10] arising therefrom.

In his Complaint, docketed as Civil Case No. Q-53399, petitioner alleged that on account of the "grossly malicious and overly sensationalized reporting in the news item" prepared by respondent Morales, edited by respondent Buan, Jr., allowed for publication by respondent Villareal, Jr. as president of Philippine Journalists, Inc., and published by respondent Philippine Journalists, Inc., aspersions were cast on his character; his reputation as a director of the NIAS at the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) was injured; he became the object of public contempt and ridicule as he was depicted as a sex-crazed stalker and serial rapist; and the news item deferred his promotion to the position of Deputy Administrator of PAGASA.

In their Answer,[11] respondents prayed for the dismissal of the Complaint, they alleging that "the news item, having been sourced from the Police Blotter which is an official public document and bolstered by a personal interview of the victim is therefore privileged and falls within the protective constitutional provision of freedom of the press . . .," and by way of Compulsory Counterclaim, they prayed for the award of moral and exemplary damages plus attorney's fees.

Branch 97 of the Quezon City RTC, noting as follows:

> [T]he publication stated that a "pretty coed was raped by her boss," and not qualifying said statement that it was merely a report, with such phrases as "allegedly" or "reportedly". Furthermore, the article in question continued reporting as if it were fact and truth the alleged abduction of the same girl by her boss, identified as "Director of the National Institute of Atmospheric Science." The questioned article did not even hint that it was merely based on interview with the said girl or that it was reflected in the police blotter, and then it would have been fair, for the mind of the reader

[10] *Id*. at 29-65.

[11] *Id*. at 109-114.

would be offered the other side to speculate on. As it turned out, the other side, the side of the defamed and libeled had an alibi to prove the story false, aside from his testimony that proved the inherent unnaturalness and untruthfulness of the alleged victim of the alleged rape and abduction,[12]

rendered a Decision[13] of August 13, 1992, in favor of petitioner, disposing as follows:

> In view of the above evidence and the foregoing considerations, this Court hereby renders judgment in favor of plaintiff and against the above-mentioned defendants, and orders the latter to pay jointly and severally to the plaintiff the following amounts: 1.) ₱1,000,000.00, as nominal damages; 2.) ₱50,000.00, as exemplary damages; 3.) ₱1,000.000.00, as moral damages; 4.) ₱50,000.00, as attorney's fees; and 5.) Costs of suit.
>
> SO ORDERED.[14]

Respondents' motion for reconsideration[15] of the trial court's decision having been denied by Resolution[16] of March 2, 1993, they appealed to the Court of Appeals (CA).

Citing *Borjal, et al. v. Court of Appeals, et al.*[17] which held that:

> The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. *In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based*

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[12] *Id*. at 93-94.

[13] *Id*. at 347-353.

[14] *Id*. at 353.

[15] *Id*. at 354-375.

[16] *Id*. at 424.

[17] 301 SCRA 1 (1999).

on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might be reasonably inferred from the facts.[18] (Italics supplied),

the CA found that herein petitioner "was not able to prove by a preponderance of evidence that [herein respondents] were motivated by a sinister intent to cause harm and injury to [herein petitioner] . . ." Accordingly, by Decision of July 31, 2001, the CA reversed and set aside the trial court's decision and dismissed petitioner's complaint.[19] Petitioner's motion for reconsideration[20] of the appellate court's decision was denied by Resolution of October 12, 2001,[21] hence, the petition at bar.

The petition revolves around the issue of whether the CA erred in holding that the publication of the news item was not attended with malice to thus free respondents of liability for damages.

It bears noting that the complaint petitioner instituted is one for damages under Article 33 of the Civil Code which provides:

> Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, shall require only a preponderance of evidence.

Article 33 contemplates a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case.[22] A civil action for libel under this article shall be instituted and prosecuted to final judgment and proved by preponderance of evidence separately from and entirely independent of the institution, pendency or result of the criminal action because it is *governed by the provisions of the New_Civil Code* and

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[18] *Id*. at 23.

[19] *Rollo* at 49.

[20] CA *Rollo* at 190-214.

[21] *Rollo* at 51.

[22] *Azucena v. Potenciano*, 5 SCRA 468, 471 (1962).

not by the Revised Penal Code governing the criminal offense charged and the civil liability arising therefrom.[23]

The pertinent provisions of the Civil Code, those found in the Chapter on Human Relations, namely Articles 19 and 21, provide:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

In actions for damages for libel, it is axiomatic that the published work alleged to contain libelous material must be examined and viewed as a whole.[24]

The article must be construed as an entirety including the headlines, as they may enlarge, explain, or restrict or be enlarged, explained or strengthened or restricted by the context. Whether or not it is libelous, depends upon the scope, spirit and motive of the publication taken in its entirety. x x x

A publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So, the whole item, including display lines, should be read and construed together, and its meaning and signification thus determined.

In order to ascertain the meaning of a published article, the whole of the article must be considered, each phrase must be construed in the light of the entire publication x x x The headlines of a newspaper must also be read in connection with the language which follows.[25]

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[23] Cesar S. Sangco, *TORTS AND DAMAGES*, Vol. 1, 1993 ed. At 332.

[24] *Bulletin Publishing Corp. v. Noel*, 167 SCRA 255, 261 (1988) (citations omitted); *Quisumbing v. Lopez, et al*, 96 Phil. 510, 513 (1955) (citations omitted); *Jimenez v. Reyes*, 27 Phil. 52, 59 (1914) (citation omitted).

[25] *Quisumbing v. Lopez*, 96 Phil. 510, 513 (1955) (citations omitted).

Petitioner brands the news item as a "malicious sensationalization" of a patently embellished and salacious narration of fabricated facts involving rape and attempted rape incidents. For, so petitioner argues, the police blotter which was the sole basis for the news item plainly shows that there was only one count of abduction and rape reported by Emelita.

The entry made by Patrolman Chio in the police blotter which respondent Morales scrutinized at the WPD headquarters recorded indeed Emelita's complaint about only a case for abduction with rape which occurred on March 14, 1987. In her above-quoted sworn statement, however, earlier given before the same Patrolman Chio *in the presence of Morales who subsequently interviewed her*, Emelita reported about an abduction with rape incident which occurred on March 14, 1987 *and* an abduction incident which occurred on April 13, 1987.

Petitioner's anchoring of his complaint for damages on a charge of "malicious" sensationalization of fabricated facts thus fails.

The presentation of the news item subject of petitioner's complaint may have been in a sensational manner, but it is not *per se* illegal.[26]

Respondents could of course have been more circumspect in their choice of words as the headline and first seven paragraphs of the news item give the impression that a certain director of the NIAS actually committed the crimes complained of by Emelita. The succeeding paragraphs (in which petitioner and complainant Emelita were eventually identified) sufficiently convey to the readers, however, that the narration of events was only an account of what Emelita had reported at the police headquarters.

In determining the manner in which a given event should be presented as a news item and the importance to be attached thereto, newspapers must enjoy a certain degree of discretion.

Every citizen of course has the right to enjoy a good name and reputation, but we do not consider that the respondents, under the circumstances of this case, had violated said right or abused the

[26] *Policarpio v. Manila Times Pub. Co., Inc*., 5 SCRA 148, 155 (1962).

freedom of the press. *The newspapers should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy. In the preparation of stories, press reporters and [editors] usually have to race with their deadlines; and consistently with good faith and reasonable care, they should not be held to account, to a point of suppression, for honest mistakes or imperfection in the choice of words.*[27] (Italics supplied)

In fine, this Court finds that case against respondents has not been sufficiently established by preponderance of evidence.

WHEREFORE, the petition is hereby *DENIED*.

SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.*, concur.

Vitug, J. (Chairman), on official leave.

THIRD DIVISION

[G.R. No. 150610. March 25, 2004]

FEDERICO A. POBLETE, BIENVENIDO C. POBRE, JUANITO GALANG, RICARDO FLORES, SALVADOR OLAES, LEO V. PADILLA AND PEDRO PATERNO, *petitioners, vs.* **HONORABLE JUSTICES EDILBERTO G. SANDOVAL, GODOFREDO L. LEGASPI and RAOUL V. VICTORINO, in their capacity as Associate Justices of the Sandiganbayan, Second Division, HEDELIZA C. ANTHONY, ROSALINDA M. ESPIRITU, ANDREA D. VIASON, JOSEPHINE N. RANCE, and MARITES C. MIRAFLOR,** *respondents*.

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[27] 96 Phil. 510 (1955).

SYNOPSIS

Petitioners, municipal officials of Kawit, assailed the October 10, 2001 and November 8, 2001 Resolutions of the Sandiganbayan denying petitioners Motion to Quash the first amended information filed against them and granting the prosecution's Motion to Admit the second amended information, respectively. The Information sought to be quashed charges the petitioners with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. Petitioners contended that the Sandiganbayan committed grave abuse of discretion when it denied their Motion to Quash the first amended Information citing as grounds therefor that the facts charged do not constitute an offense, and the information contained averments, which, if true, would constitute a legal excuse or justification. Petitioners further alleged that the Sandiganbayan erred when it admitted the second Amended Information, arguing that it failed to consider that their co-accused co-petitioner Bienvenido C. Pobre had already been arraigned under the first Amended Information and cannot thus be made to re-plead to the second Amended Information without his constitutional right to double jeopardy being violated.

The test for the correctness of the first ground invoked by the petitioners in their Motion to Quash the first Amended Information is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*. Contrary to petitioners' position, the information need not state the manner by which the injury to the local fisherfolk or the government came about or the extent by which they exhibited partiality, bad faith or negligence in the enactment of SB Resolution 3-97 authorizing the sale of foreshore land, it being sufficient that the information alleges that petitioners acted with manifest partiality, evident bad faith, and took advantage of their public positions by passing SB Resolution No. 3-97 despite the legal prohibition provided under the law, thereby causing undue injury to the local fishermen and the government. Anent the second ground of the Motion to Quash, it is erroneous for petitioners to argue that the payment of the amount of ₱123,123,123.00 by FJI Property Developers, Inc. for the lot in question, which enriched the coffers of the government, was a

legal excuse and justification to free them from criminal liability. For if the elements of the offense — violation of Section 3(e) of Republic Act 3019 — are proven , the proffered excuse is immaterial. Anent the second Amended Information, an objective appraisal thereof showed that the amendments are merely formal for they do not touch upon the recital of facts constituting the offense charged nor on the determination of the jurisdiction of the court. Instead, the amendments merely involve deletions, transpositions and re-phrasings, thereby raising the same issue and the same operative facts already found in the first Amended Information. Moreover, the mere re-arrangement of the words and phrases in the second Amended Information which are also alleged in the first Amended Information does not change the basic theory of the prosecution, thus creating no material change or modification in the defenses of the accused. Contrary to petitioners' position, it having established that the questioned amendments are merely formal, there was no longer any need for accused Bienvenido Pobre to be re-arraigned on the second Amended Information. Hence, petitioners having failed to substantiate the grounds they invoked in their Motion to Quash the first Amended Information, and it having been established that the amendments introduced in the second Amended Information are mere matters of form, the Sandiganbayan did not commit grave abuse of discretion in issuing its assailed Resolutions.

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT; SECTION 3 (E) THEREOF; ELEMENTS; CASE AT BAR.— Under settled jurisprudence, the following elements need to be proven in order to constitute a violation of Section 3(e) of Republic Act 3019, *viz*: 1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them; 2. The public officer committed the prohibited act during the performance of his official duty in relation to his public position; 3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 4. His action caused undue injury to the government or any private party, or gave any party

unwarranted benefit, advantage or reference to such parties. Contrary to petitioners' position, the information need not state the manner by which the injury to the local fisherfolk or the government came about or the extent by which they exhibited partiality, bad faith or negligence in the enactment of SB Resolution 3-97 authorizing the sale of foreshore land, it being sufficient that the information alleges that petitioners acted with manifest partiality, evident bad faith, and took advantage of their public positions by passing SB Resolution No. 3-97 despite the legal prohibition provided under the law, thereby causing undue injury to the local fishermen and the government.

2. ID.; ID.; ID.; ID.; IF PROVEN, THE FACT THAT THE TRANSACTION ENRICHED THE COFFERS OF THE GOVERNMENT WILL NOT FREE RESPONDENTS FROM LIABILITY.— Anent the second ground of the Motion to Quash, it is erroneous for petitioners to argue that the payment of the amount of ₱123,123,123.00 by FJI Property Developers, Inc. for the lot in question, which enriched the coffers of the government, was a legal excuse and justification to free them from criminal liability. For if the elements of the offense — violation of Section 3(e) of Republic Act 3019 — are proven, the proffered excuse is immaterial.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; AMENDMENT OR SUBSTITUTION; TEST IN DETERMINING WHETHER AN AMENDMENT IS A MATTER OF FORM OR SUBSTANCE.— While petitioners cite *People v. Casey* which laid down the test in determining whether an amendment is a matter of form or substance, to wit: The test as to whether a defendant is prejudiced by an amendment has been said to be whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the new form as in the other. A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to

be one of form and not of substance — not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 (now Section 14) of the Revised Rules of Court, they fail to show how or why the amendments may be considered as matters of substance which will prejudice their rights as accused.

4. ID.; ID.; ID.; ID.; WHEN CONSIDERED A MATTER OF FORM; CASE AT BAR.— An objective appraisal, however, of the second Amended Information shows that the amendments are merely formal for they do not touch upon the recital of facts constituting the offense charged nor on the determination of the jurisdiction of the court. Instead, the amendments merely involve deletions, transpositions and re-phrasings, thereby raising the same issue and the same operative facts already found in the first Amended Information. As laid down by this Court, an amendment is only in form when it merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged. The second Amended Information, while adding the word "public officers," does not introduce a new and material fact as the accused in the first Amended Information were referred to as either the Mayor, Vice-Mayor or Members of the Sangguniang Bayan. Likewise, in the second Amended Information, the phrase "while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with each other" is but a clearer restatement of the phrase "in conspiracy and taking advantage of their official positions" found in the first Amended Information.

5. ID.; ID.; ID.; ID.; AFTER THE PLEA, FORMAL AMENDMENTS MAY BE MADE PROVIDED THE RIGHTS OF THE ACCUSED ARE NOT PREJUDICED THEREBY; TEST.— Section 14, Rule 110 moreover provides that in allowing formal amendments in cases where the accused have already pleaded, it is necessary that the amendments do not prejudice the rights of the accused. The test on whether the rights of an accused are prejudiced by the amendment of a complaint or information is whether a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and

when any evidence the accused might have would be inapplicable to the complaint or information. The mere re-arrangement of the words and phrases in the second Amended Information which are also alleged in the first Amended Information does not change the basic theory of the prosecution, thus creating no material change or modification in the defenses of the accused. Contrary to petitioners' position, it having been established that the questioned amendments are merely formal, there is no longer any need for accused Bienvenido Pobre to be re-arraigned on the second Amended Information.

6. ID.; ID.; MOTION TO QUASH; LACK OF PROBABLE CAUSE DURING A PRELIMINARY INVESTIGATION NOT PROPER SUBJECT THEREOF.— Clearly, petitioners' allegations are factual and evidentiary in nature which may best be considered as matters of defense to be ventilated in a full-blown trial. Lack of probable cause during the preliminary investigation is not one of the grounds for a motion to quash. A motion to quash should be based on a defect in the information, which is evident on its face. The guilt or innocence of the accused, and their degree of participation, which should be appreciated, are properly the subject of trial on the merits rather than on a motion to quash.

APPEARANCES OF COUNSEL

Philip Sigfrid A. Fortun and *Floresita C. Gan* for petitioners.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed *via* petition for *certiorari* are the Sandiganbayan October 10, 2001 Resolution[1] denying petitioners' Motion to Quash the first amended information filed against them, and November 8, 2001 Resolution[2] granting the prosecution's Motion to Admit the second amended information.

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[1] *Rollo* at 36-37.

[2] *Id*. at 38.

The antecedents of the case are as follows:

On September 27, 1999, the officers of Samahan ng Lahing Mandaragat ng Pulborista, Inc., a non-stock, non-profit, non-government organization based in Barangay Pulborista, Binakayan, Kawit, Cavite, filed a complaint[3] before the Office of the Ombudsman against the following municipal officials of Kawit for 1995 to 2001: Mayor Federico Poblete, Vice-Mayor Rodrigo Caimol, and Sangguniang Bayan (SB) Members Bienvenido C. Pobre, Juanito Galang, Ricardo Flores, Pedro Paterno, Salvador Olaes, Cherry Rosario Nolasco, Doe Padilla (who was later identified as Leo Padilla), and Peter Doe (who was later identified as Hernan Jamir).

The complaint alleged that the officials caused the registration of foreshore land located in Barangay Binakayan, Kawit in the name of the Municipality of Kawit and subsequently sold the same to a corporation, FJI Property Developers, Inc., notwithstanding that under Commonwealth Act No. 141, specifically, Title III, Chapter [8], Section 59[4] in relation to Section 61,[5] the land is inalienable and cannot be disposed by any mode or transfer, except by lease.

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[3] *Id*. at 57-60.

[4] Commonwealth Act 141, Title III, Section 59. — The lands disposable under this title shall be classified as follows:

(a) Lands reclaimed by the Government by dredging, filing and other means;

(b) Foreshore;

(c) Marshy lands or lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

(d) Lands not included in any of the foregoing classes.

[5] Commonwealth Act 141, Title III, Section 61. — The lands comprised in classes (a), (b) and (c) of Section fifty-nine shall be disposed of to private parties by leases only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provision of this Act.

The complaint further averred that the sale of the land caused undue prejudice and injury to poor people, especially the indigent families who claimed it as communal fishing grounds since time immemorial, and gave private parties unwarranted benefits, the contract or transaction being manifestly and grossly disadvantageous to the government and the public.

The respondents to the complaint jointly filed a Counter-affidavit[6] and a Memorandum[7] contending that the land was legally and validly reclaimed; that the certificate of title was obtained in accordance with existing laws and regulations; that the sale and transfer were approved by the Commission on Audit; that there is no communal fishing ground in Kawit; and that Commonwealth Act No. 141 is inapplicable to the case.

In a related move, the Senate Committees on Accountability of Public Officers and Investigations and on Environment and Natural Resources conducted on February 7 and 14, 2000 an inquiry in aid of legislation following a September 27, 1999 privilege speech of Senator Ramon B. Revilla entitled "Cavite Land Scam" bearing on the questioned sale of the land.[8]

The Senate subsequently approved the above-said Committees' Report No. 227[9] disclosing that the questioned lot is foreshore, and that bad faith attended its registration and titling with the use of falsified documents, and thus recommending the prosecution of the municipal officials.

By Order[10] of March 30, 2000, the Ombudsman directed the filing of an information against the mayor and members of the Sangguniang Bayan of Kawit for violation of Section 3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act).

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[6] *Rollo* at 61-71.

[7] *Id*. at 72-93.

[8] *Id*. at 162.

[9] *Id*. at 160-176.

[10] *Id*. at 105-107.

The necessary information[11] was thus filed against said officials including herein petitioners, which was raffled to herein public respondent, 2nd Division, Sandiganbayan.

All the accused filed a Motion for Reinvestigation[12] which the Sandiganbayan denied by Order[13] of April 28, 2000 on the ground that it had not yet acquired jurisdiction over their persons as they had not yet posted bonds nor surrendered.

Except for Hernan Jamir, the rest of the accused filed anew a Motion for Reinvestigation,[14] averring that they voluntarily surrendered on May 2, 2000 before the Regional Trial Court of Imus, Cavite and posted cash bonds of twenty thousand each.[15]

The Ombudsman Prosecutor, by Comment/Opposition[16] to the Motion for Reinvestigation, contended that the motion was filed out of time and the grounds relied thereon are evidentiary in nature which could be resolved during trial. To this Comment, the accused filed their Reply.[17]

In an *Ex-parte* Motion to Admit Amended Information[18] to which the accused filed their Comment,[19] the Ombudsman Prosecutor sought to amend the information by inserting the number of the lot under controversy, Lot 4431, and the amount of ₱123,123,123.00 representing the price paid by FJI Property Developers Inc. for it.

By Resolution[20] of October 17, 2000, the Sandiganbayan admitted the Amended Information on the ground that the Motion

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[11] *Id*. at 120-122.
[12] *Id*. at 123-125.
[13] *Id*. at 126.
[14] *Id*. at 127-130.
[15] *Id*. at 128.
[16] *Id*. at 131-136.
[17] *Id*. at 137-142.
[18] *Id*. at 143-144.
[19] *Id*. at 148-152.
[20] *Id*. at 177-178.

to Admit it was presented before arraignment and the amendments were mere matters of form. In the same resolution, the Sandiganbayan denied the Motion for Reinvestigation on the ground that it was filed out of time, and the matters raised therein could hardly be considered as newly discovered evidence and would be better ventilated during the trial of the case as defense evidence.

All the accused, except Hernan Jamir and Rosario "Cherry" Nolasco, filed an Omnibus Motion [21] (for reconsideration of the Resolution dated October 17, 2000 and/or to Quash the Amended Information), to which the prosecution filed its Comment and Opposition.[22] Thereafter, the accused filed their Reply[23] to the Prosecution's Comment and Opposition.

By Resolution of July 6, 2001, the Sandiganbayan denied the accused's Omnibus Motion.[24]

In the meantime or on July 12, 2001, the accused-herein petitioner Bienvenido C. Pobre was arraigned and pleaded "not guilty."[25]

On July 23, 2001, the accused filed a Motion to Quash[26] the Amended Information on the grounds that the facts charged do not constitute an offense, and the information contained averments which, if true, would constitute a legal excuse or justification.

As the Ombudsman approved on August 31, 2001 a Memorandum[27] recommending further amendments to the

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[21] *Id*. at 179-187.

[22] *Id*. at 188-191.

[23] *Id*. at 192-197.

[24] *Id*. at 12.

[25] *Id*. at 53.

[26] *Id*. at 198-202.

[27] *Id*. at 39-40.

information, the prosecution filed on September 14, 2001 a Motion to Admit Amended Information[28] (second Amended Information).

For lack of merit, the Sandiganbayan, by Resolution[29] of October 10, 2001, denied the Motion to Quash the first amended information.

By a subsequent Resolution[30] issued on November 8, 2001, the Sandiganbayan granted the Motion to Admit the second Amended Information.

Hence, the present petition for *certiorari*.

In determining whether the Sandiganbayan committed grave abuse of discretion in issuing the Resolution of October 10, 2001, it is necessary to re-examine the grounds invoked by petitioners in their Motion to Quash the first Amended Information.

Petitioners' Motion to Quash is anchored on Sections 3(a) and 3(h) of Rule 117 of the Rules of Court which provides:

> Rule 117, Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:
>
> (a) That the facts charged do not constitute an offense;
>
> x x x x x x x x x
>
> (h) That it contains averments which, if true, would constitute a legal excuse or justification;

The test for the correctness of the ground under Section 3(a) of Rule 117 is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law[31] without considering matters *aliunde*.

The information sought to be quashed is hereinbelow quoted *verbatim*:

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[28] *Id.* at 42-47.

[29] *Id*. at 36-37.

[30] *Id*. at 38.

[31] *Cruz v. Court of Appeals*, 194 SCRA 145, 150 (1991).

The undersigned Ombudsman Prosecutor, Office of the Special Prosecutor, hereby accuses Federico Poblete, Rodrigo Caimol, Bienvenido Pobre, Juanito Galang, Ricardo Flores, Pedro Paterno, Salvador Olaes, Rosario Nolasco, Leo Padilla and Hernan Jamir, of Violation of Sec. 3(e) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

> That on or about 28 January 1995 to 28 November 1997 or prior or subsequent thereto, in the Municipality of Kawit, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, FEDERICO POBLETE, then *Municipal Mayor*, in conspiracy with then *Vice Mayor*, RODRIGO CAIMOL and *SB Members* BIENVENIDO POBRE, JUANITO GALANG, RICARDO FLORES, PEDRO PATERNO, SALVADOR OLAES, ROSARIO "CHERRY" NOLASCO, LEO PADILLA and HERNAN JAMIR, *taking advantage of their official positions, with evident bad faith, and manifest* partiality to FJI Property Developers, Inc., did then and there willfully, unlawfully and criminally give unwarranted benefits to FJI Property Developers, Inc. and cause *undue injury to the local fishermen and the government* sold a foreshore land, Lot 4431 *through the passage of SB Resolution No. 3-97*, Series of 1997 authorizing the sale of the land situated in Binakayan, Kawit, Cavite in favor of FJI Property Developers, Inc. in the amount of ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TWENTY THREE THOUSAND ONE HUNDRED TWENTY THREE PESOS (₱123,123,123.00) with the Municipality of Kawit, Cavite, represented by then mayor FEDERICO POBLETE as vendor, despite full knowledge, and in *complete disregard, of the legal prohibition under Sections 159 and 61, Commonwealth Act No. 141*, against the disposition through sale of foreshore, and notwithstanding the warning of the Department of Environment and Natural Resources (DENR) on the prohibition against the lease of foreshore lands along Manila Bay towards Cavite and Bataan.[32] (Italics supplied).

The information thus charges petitioners with violation of Section 3 (e) of R.A. 3019, to wit:

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[32] *Rollo* at 146.

Sec. 3. *Corrupt practices by public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practice of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

Under settled jurisprudence, the following elements need to be proven in order to constitute a violation of Section 3(e) of Republic Act 3019, *viz*:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
4. His action caused undue injury to the government or any private party, or gave any party unwarranted benefit, advantage or reference to such parties.[33]

Contrary to petitioners' position, the information need not state the manner by which the injury to the local fisherfolk or the government came about or the extent by which they exhibited partiality, bad faith or negligence in the enactment of SB Resolution 3-97[34] authorizing the sale of foreshore land, it being sufficient that the information alleges that petitioners acted with manifest partiality, evident bad faith, and took advantage of their public positions by passing SB Resolution No. 3-97 despite

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[33] *Quibal v. Sandiganbayan*, 244 SCRA 224, 231 (1995).

[34] *Rollo* at 199.

the legal prohibition provided under the law, thereby causing undue injury to the local fishermen and the government.

Anent the second ground of the Motion to Quash, it is erroneous for petitioners to argue that the payment of the amount of ₱123,123,123.00 by FJI Property Developers, Inc. for the lot in question, which enriched the coffers of the government,[35] was a legal excuse and justification to free them from criminal liability. For if the elements of the offense — violation of Section 3(e) of Republic Act 3019 — are proven, the proffered excuse is immaterial.

The grounds — bases of petitioners in the Motion to Quash the first Amended Information being unwarranted, the Sandiganbayan did not commit grave abuse of discretion in issuing the Resolution of October 10, 2001 denying the same.

Contending that the Sandiganbayan also committed grave abuse of discretion in issuing its Resolution of November 8, 2001, petitioners argue that it failed to consider Section 14, Rule 110 of the Rules of Court which provides:

> Sec. 14. *Amendment or substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused,

their co-accused co-petitioner Bienvenido C. Pobre having already been arraigned[36] under the first Amended Information and cannot thus be made to re-plead to the second Amended Information without his constitutional right to double jeopardy being violated. Petitioners moreover argue that they and their co-accused having been charged of acting in concert, they cannot be convicted on the basis of different informations.

The crux of the issue therefore hinges on whether the amendments in the second Amended Information are mere matters of form which do not prejudice the rights of the accused.

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[35] *Id*. at 201.

[36] *Id*. at 53.

The second Amended Information is hereinbelow quoted *verbatim*:

That on or about 28 January 1995 to 28 November 1997 or *sometime* prior or subsequent thereto, in the Municipality of Kawit, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused *public officials*, Federico Poblete, then Municipal Mayor, Rodrigo Caimol, then Vice Mayor and Bienvenido Pobre, Juanito Galang, Ricardo Flores, Pedro Paterno, Salvador Olaes, Rosario "Cherry" Nolasco, Leo Padilla and Hernan Jamir, then *Sangguniang Bayan Members*, all of the Municipality of Kawit, Cavite, *while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating* with each other, did then and there willfully, unlawfully and criminally, *with evident bad faith and manifest partiality*, cause undue injury to the Government and local fishermen of the *Municipality of Kawit, Cavite in the following manner: the said accused public officials maliciously sold a foreshore land* described as Lot 4431 through the passage of *Sangguniang Bayan* Resolution No. 3-97, Series of 1997 authorizing the sale said land situated in Binakayan, Kawit, Cavite in favor of FJI Property Developers, Inc. *in the amount of ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TWENTY THREE THOUSAND ONE HUNDRED TWENTY THREE PESOS (₱123,123,123.00) Philippine Currency,* despite their full knowledge, and in complete disregard, of the legal prohibition under Sections 159 *in relation to* Section 61, Commonwealth Act No. 141, *prohibiting* the disposition through sale of foreshore *land thereby giving unwarranted benefits to FJI Property Developers, Inc. to the damage* and injury to the Government in the aforementioned amount. (Italics in the original)

While petitioners cite *People v. Casey*[37] which laid down the test in determining whether an amendment is a matter of form or substance, to wit:

The test as to whether a defendant is prejudiced by an amendment has been said to be whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally

[37] 103 SCRA 21 (1981).

applicable to the information in the new form as in the other. A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance — not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 (now Section 14) of the Revised Rules of Court,

they fail to show how or why the amendments may be considered as matters of substance which will prejudice their rights as accused.

An objective appraisal, however, of the second Amended Information shows that the amendments are merely formal for they do not touch upon the recital of facts constituting the offense charged nor on the determination of the jurisdiction of the court. Instead, the amendments merely involve deletions, transpositions and re-phrasings, thereby raising the same issue and the same operative facts already found in the first Amended Information.

As laid down by this Court, an amendment is only in form when it merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts,[38] and merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged.[39]

The second Amended Information, while adding the word "public officers," does not introduce a new and material fact as the accused in the first Amended Information were referred to as either the Mayor, Vice-Mayor or Members of the Sangguniang Bayan.

Likewise, in the second Amended Information, the phrase "while in the performance of their official functions, committing

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[38] *Caparas v. Gonzales and Lindayag*, 117 Phil. 201, 206 (1963).

[39] *People v. Montenegro*, 159 SCRA 236, 241 (1988).

the offense in relation to their office, conspiring and confederating with each other" is but a clearer restatement of the phrase "in conspiracy and taking advantage of their official positions" found in the first Amended Information.

Section 14, Rule 110 moreover provides that in allowing formal amendments in cases where the accused have already pleaded, it is necessary that the amendments do not prejudice the rights of the accused.

The test on whether the rights of an accused are prejudiced by the amendment of a complaint or information is whether a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have would be inapplicable to the complaint or information.[40]

The mere re-arrangement of the words and phrases in the second Amended Information which are also alleged in the first Amended Information does not change the basic theory of the prosecution, thus creating no material change or modification in the defenses of the accused.

Contrary to petitioners' position, it having been established that the questioned amendments are merely formal, there is no longer any need for accused Bienvenido Pobre to be re-arraigned on the second Amended Information.[41]

Petitioners additionally argue that the Sandiganbayan failed to consider the irregularity in the preliminary investigation which they have been harping upon, the particulars of which were stated in their Motion for Reinvestigation — that Lot No. 4431 covered by Original Certificate of Title No. 0-3115 was no longer foreshore as it had already evolved into a landmass and was ripe for titling, and that a portion of OCT No. 0-3115 was alienated in accordance with law.

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[40] *People v. Montenegro*, 159 SCRA 236, 241 (1998).

[41] *Teehankee v. Madayag*, 207 SCRA 134, 140 (1992).

Clearly, petitioners' allegations are factual and evidentiary in nature which may best be considered as matters of defense to be ventilated in a full-blown trial. Lack of probable cause during the preliminary investigation is not one of the grounds for a motion to quash. A motion to quash should be based on a defect in the information, which is evident on its face. The guilt or innocence of the accused, and their degree of participation, which should be appreciated, are properly the subject of trial on the merits rather than on a motion to quash.[42]

As for the propriety or impropriety of the filing of the information by the Ombudsman, this Court may not pass. Neither may it independently make a factual finding of whether there was indeed irregularity in the conduct of the preliminary investigation. For petitioners are not, in the present petition, assailing the denial by the Sandiganbayan of their Motion for Reinvestigation.

Petitioners having failed to substantiate the grounds they invoked in their Motion to Quash the first Amended Information, and it having been established that the amendments introduced in the second Amended Information are mere matters of form, the Sandiganbayan did not commit grave abuse of discretion in issuing its Resolutions of October 10, 2001 and November 8, 2001.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.*, concur.

Vitug, J. (Chairman), on official leave.

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[42] *People v. Tac-an,* 300 SCRA 265, 277 (1998).

EN BANC

[G.R. No. 153248. March 25, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JESUS MORILES, JR.,** *y* **QUEBEC,** *appellant.*

SYNOPSIS

Appellant assailed the Decision of the Regional Trial Court of Carigara, Leyte finding him guilty of murder for stabbing to death one Gary Basco and imposing upon him the penalty of death. Appellant contended that the trial court erred: (1) in giving weight and credence to the testimony of the prosecution eyewitness positively identifying him as the malefactor. According to the appellant, the possibility that the eyewitness could have recognized him as the offender was unlikely since the incident happened at 2:00 a.m. at a place where the illumination was poor; (2) in rejecting his defenses of denial and alibi; (3) in appreciating the qualifying circumstance of treachery against him; and (4) in imposing the death penalty.

In affirming the judgment of conviction, the Supreme Court held that: Firstly, there was no showing that the illumination at the *situs criminis* was so poor at the time of the incident sufficient to raise doubt on the positive identification by the eyewitness of the appellant as the assailant. Where the conditions of visibility are favorable and the witness appears to be unbiased against the man on the dock, his statements as to the identity of the assailant deserve full faith and credence; Secondly, appellant failed to demonstrate physical impossibility for him to be at the scene of the crime when it was committed; Thirdly, appellant's flight after the stabbing incident evidences guilt and guilty conscience; Fourthly, treachery was properly appreciated against the appellant. The sudden execution of the attack was such that it was impossible for the victim to defend himself. However, the Court reduced the penalty to *reclusion perpetua* since neither aggravating nor mitigating circumstance attended the commission of the crime.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STATEMENTS OF THE WITNESS AS TO THE IDENTITY OF THE ASSAILANT DESERVE FULL FAITH AND CREDENCE WHERE CONDITIONS OF VISIBILITY ARE FAVORABLE AND THE WITNESS APPEARS TO BE UNBIASED.—** After considering carefully the evidence on record, we find appellant's arguments unavailing. First, nowhere in the record is there a showing that the illumination at the *situs criminis* was so poor at the time of the incident sufficient to raise doubt on the positive identification by the eyewitness of the appellant as the assailant. Second, appellant himself admitted that Dadis and he lived as neighbors and they knew each other since childhood. Appellant's physical features, build, and movements were familiar to the witness, Dadis. Familiarity with the physical features, particularly those of the face, is actually the best way to identify the person. Third, on cross-examination, appellant admitted that there was no bad blood between Dadis and him. Thus, he did not know any reason or motive why Dadis should testify falsely against him. As held in previous cases, where the conditions of visibility are favorable and the witness appears to be unbiased against the man on the dock, his statements as to the identity of the assailant deserve full faith and credence.

2. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST DEMONSTRATE PHYSICAL IMPOSSIBILITY FOR HIM TO BE AT THE SCENE OF THE CRIME WHEN IT WAS COMMITTED.—** Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime happened and the place where it was committed, as well as the facility of access between the two places. In this case, the Gagante residence where appellant claimed to be at the time of the incident was located in the same *barangay* where the fatal stabbing took place. Weak as the appellant's alibi is, it became even weaker when he failed to demonstrate that it was impossible for him to be at the scene of the crime when it was committed.

3. ID.; ID.; FLIGHT EVIDENCES GUILT AND GUILTY CONSCIENCE.— Noteworthy, after the stabbing incident, appellant took flight. A warrant of arrest against the appellant was issued on January 3, 1995. But it was only on April 11, 1999, that the appellant was taken into custody by the police. For five years, appellant disappeared from view, until the long arm of the law caught up with him. As previously held, the flight of the accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence." Flight evidences guilt and guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; PRESENT IN CASE AT BAR.— Treachery is present when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. What is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself. Stated differently, the essence of treachery is the swift and unexpected attack by an aggressor on an unarmed and unsuspecting victim who does not give any slight provocation, depriving the latter of any real chance to defend himself. At the time of the fatal stabbing, Basco had just come from the house of the local beauty Dayluz whom he was courting. He was unarmed, walking by the riverside, in the company of a new friend. There had been no altercation between him and appellant at the benefit dance. Although he was not a resident of *Barangay* Lemon, Capoocan, he was not a total stranger to the place. He had previously visited Lemon with no unusual incident. Then some time after the dance ended, he was stabbed by an assailant who came from behind. Clearly, the sudden execution of the attack was such that it was impossible for the victim to defend himself. Thus, we find that the trial court did not err in appreciating treachery as qualifying the offense to murder.

5. ID.; MURDER; IMPOSABLE PENALTY.— The penalty for murder under Article 248 of the Revised Penal Code, as amended by

Rep. Act No. 7659 is *reclusion perpetua* to death. Since neither aggravating nor mitigating circumstance attended the commission of the crime, the proper penalty, in conformity with Article 63 of the Revised Penal Code is *reclusion perpetua*.

6. CIVIL LAW; DAMAGES; AWARD OF TEMPERATE DAMAGES INSTEAD OF ACTUAL DAMAGES.— As a rule, claims for actual damages must be supported by evidence. In this case, no receipts were offered to support the funeral expenses claimed by the victim's family. Hence, the award of ₱19,000.00 in actual damages must be stricken for lack of proof. However, considering that the victim's heirs did incur funeral and other expenses because of his death, the award of temperate damages in the amount of ₱25,000.00 would be justified. Lastly, concerning the award of civil indemnity, the amount thereof should be reduced to ₱50,000.00, in line with prevailing case law.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On automatic review is the decision[1] dated February 15, 2002, in Criminal Case No. 2883, of the Regional Trial Court of Carigara, Leyte, Branch 13, finding herein appellant Jesus Moriles, Jr., guilty of murder and imposing upon him the penalty of death, and ordering him to pay the heirs of the victim, Gary Basco, the sum of ₱75,000.00 as civil indemnity, ₱19,000.00 as actual damages, and ₱50,000.00 as moral damages.

In an Information dated May 19, 1999, the Provincial Prosecutor of Leyte accused Jesus Moriles, Jr., of murder, as follows:

That on or about the 13th day of March, 1994, in the municipality of Capoocan, Province of Leyte, Philippines and within the jurisdiction

[1] Records, pp. 81-93.

of this Honorable Court, the above-named accused, with deliberate intent, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and stab one GARY BASCO with the use of a knife (*pisao*) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

1. *Rigor mortis*
2. Stab wound at the 6th ICS directed upward 2-¼ cm, in length 13-½ cm. depth, 7 cm. from the left median line.

Internal Findings

1. Presence of blood and blood clots inside the Thoracic Cavity.
2. Penetrating wound ½ cm. wide left lobe of the lung.
3. Penetrating wound ½ cm. wide at the left portion of the heart.

which wounds caused the death of said Gary Basco.

CONTRARY TO LAW.[2]

A warrant of arrest was issued against Moriles immediately following the fatal stabbing incident in March 1994. But it was not until April 11, 1999 that the long arm of the law finally caught up with him.[3]

On June 17, 1999, when he was arraigned with the assistance of counsel, he pleaded not guilty.[4] The case then proceeded to trial.

Evidence presented by the prosecution sought to establish its version of the fatal incident. At around 9:00 p.m. of March 12, 1994, a benefit dance was held at *Barangay* Lemon, Capoocan, Leyte. The dance lasted until around 1:00 a.m. the following day. Present were the victim Gary Basco, appellant Moriles and prosecution eyewitness Francisco Dadis, Jr.,[5] among others.

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[2] *Id*. at 1.

[3] *Id*. at 11.

[4] *Id*. at 19.

[5] TSN, 29 July 1999, pp. 10-11.

Basco was not from Capoocan. He was from Abuyog, Leyte.[6] However, he frequented Capoocan as he was courting a local belle Dayluz Octavio, related to Dadis.[7] Basco and Dadis were strangers to each other. On meeting at the dance, they struck an instant friendship and shared some liquor and talked about women.[8] Dayluz was present at the dance. After the dance ended, Basco and Dadis proceeded to the girl's house so Basco could pay court.[9]

Soon thereafter or at around 2:00 a.m. in the early morning of March 13, 1994, Basco and Dadis left the girl's residence. They were walking beside the river when, without warning, but in full sight of eyewitness Dadis,[10] appellant suddenly appeared from behind and stabbed Basco once in the chest. The scene was illuminated by a street fluorescent lamp some five meters away.[11] This made it easy for Dadis to see appellant, with whom Dadis was very familiar. They were after all neighbors.[12] Dadis identified appellant in open court as Basco's assailant.

Dadis testified that the suddenness of the assault caught Basco and him off-guard. Basco had no opportunity to defend himself while Dadis said he had no chance to come to Basco's defense.

Appellant's weapon was a small bolo, locally known as *pisao*, about 6-1/2 inches long, inclusive of the handle.[13] Appellant was able to keep the *pisao* out of sight by keeping it in line with his arm until the very moment of the stabbing,[14] said Dadis. Stab wounds resulted in Basco's death.

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[6] TSN, 27 October 1999, p. 3.

[7] *Supra*, note 5 at 9.

[8] *Id*. at 7-8, 10.

[9] *Ibid*.

[10] *Id*. at 3-4.

[11] *Id*. at 5.

[12] *Supra*, note 5 at 3.

[13] *Id*. at 4.

[14] *Id*. at 13.

Dr. Bibiana O. Cardente, municipal health officer of Capoocan, Leyte, examined the victim's cadaver. Her postmortem findings indicated that the victim died of severe hemorrhage due to a stab wound at the chest.[15] The contents of the postmortem report as well as Dr. Cardente's expertise were admitted without any opposition by the defense.[16]

In his defense, appellant interposed denial and alibi. He claimed that at the time of the incident, he was drinking beer at the house of Montano Gagante.[17] He admitted being at the benefit dance at around 10:00 p.m. of March 12, 1994, but claimed that after an hour, he left with a certain Domingo Alegado.[18] They headed toward Gagante's store, where they continued drinking.[19] Due to a sudden rain, the dance ended at 1:00 a.m. of March 13, 1994. At about that time, Alegado and Gagante joined appellant's group at Gagante's house. They continued to drink beer, gin, and coke until 5:00 a.m. of March 13, 1994, Thereafter, appellant staggered home.[20]

Appellant further testified that at around 6:00 a.m. on March 13, 1994, Francisco Dadis, Jr., went to his house. Dadis asked appellant to go with him to Dadis' residence. There they were met by two policemen who questioned appellant about the stabbing incident. Appellant denied any knowledge of the incident and was allowed to go home.[21] He denied that he ever went into hiding. He disclaimed any knowledge of a warrant of arrest having been issued against him.

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[15] Folder of Exhibits, Exh. "A".

[16] TSN, 28 July 1999, pp. 2-3.

[17] TSN, 29 January 2002, p. 3.

[18] *Id.*, at 4. In the corroborative testimony of Montano Gagante, the latter referred to this person as "Dominador Aligano." See TSN, 15 January 2002, p. 5.

[19] *Id*. at 4.

[20] *Id*. at 5-6.

[21] *Supra*, note 17 at 6.

In his testimony for the defense, Montano Gagante corroborated appellant's version of events.[22] Gagante testified that his house was only eighty meters away from the place where the benefit dance was held.[23] However, on cross-examination, he admitted that the place of the alleged stabbing incident was only thirty meters away from the place where the benefit dance was held.[24]

The trial court disbelieved the appellant's defense while it found the prosecution's version worthy of credence. Accordingly, the court rendered judgment as follows:

> WHEREFORE, premises considered, pursuant to Sec. 6, Art. 248 of the Revised Penal Code, as amended and subsequently amended by R.A. No. 7659, otherwise known as the Death Penalty Law, the Court found accused JESUS MORILES, JR., GUILTY beyond reasonable doubt of the crime of Murder and sentenced to suffer the Maximum penalty of DEATH and indemnify the heirs of Gary Basco the amount of Seventy Five Thousand (₱75,000.00) Pesos, pay actual damages in the amount of Nineteen Thousand (₱19,000.00) Pesos and moral damages in the amount of Fifty (₱50,000.00) Thousand Pesos and pay the Cost.
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> SO ORDERED.[25]

Hence, this automatic review.

In his Brief, the appellant ascribes the following errors to the trial court.

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

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[22] *Supra*, note 18 at 4-6.

[23] *Id*. at 5.

[24] TSN, 18 January 2002, p. 5.

[25] Records, p. 93.

II

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WITHOUT CONSIDERING THE ATTENDANT CIRCUMSTANCES OF THE CASE.

III

THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

IV

THE COURT *A QUO* GRAVELY ERRED IN AWARDING ACTUAL DAMAGES.[26]

Simply put, the issues before us concern: (1) the sufficiency of the prosecution's evidence to prove the appellant's guilt beyond reasonable doubt; (2) the correctness of the penalty imposed; and (3) the propriety of the award of actual damages.

On the *first issue*, appellant faults the trial court for giving credence to the testimony of the prosecution eyewitness, Francisco Dadis, Jr. He insists that Dadis could not have identified him as the malefactor since the alleged incident happened at 2:00 a.m. at a place where the illumination was poor. Furthermore, Dadis admitted he was some four meters away from Basco when he was stabbed. Appellant contends that under the foregoing conditions, the possibility that Dadis could have recognized him as the offender was unlikely.

For the State, the Office of the Solicitor General (OSG) submits that not only was the scene of the crime well lighted, as shown by the records, but also according to appellant's own admission, Dadis knew him since childhood. Appellant and Dadis were neighbors. Moreover, appellant could not cite any reason why Dadis would bear witness against him falsely. Hence, the OSG contends, no reversible error could be ascribed to the trial court when it chose to give weight and credence to the testimony of the prosecution eyewitness to convict appellant.

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[26] *Rollo*, p. 43.

After considering carefully the evidence on record, we find appellant's arguments unavailing. First, nowhere in the record is there a showing that the illumination at the *situs criminis* was so poor at the time of the incident sufficient to raise doubt on the positive identification by the eyewitness of the appellant as the assailant. Second, appellant himself admitted that Dadis and he lived as neighbors and they knew each other since childhood.[27] Appellant's physical features, build, and movements were familiar to the witness, Dadis. Familiarity with the physical features, particularly those of the face, is actually the best way to identify the person.[28] Third, on cross-examination, appellant admitted that there was no bad blood between Dadis and him. Thus; he did not know any reason or motive why Dadis should testify falsely against him.[29] As held in previous cases, where the conditions of visibility are favorable and the witness appears to be unbiased against the man on the dock, his statements as to the identity of the assailant deserve full faith and credence.[30]

Against the positive identification of the appellant by eyewitness Dadis, all that appellant could offer in his defense were denial and alibi. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.[31] Physical impossibility refers to the distance between the place where the appellant was when the crime happened and the place where it was committed, as

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[27] *Supra*, note 17.

[28] *People v. Rios*, G.R. No. 132632, 19 June 2000, 333 SCRA 823, 832 citing *People v. Lagnas*, G.R. Nos. 102949-51, 28 May 1993, 222 SCRA 745, 757; *People v. Reception*, G.R. No. 94127, 1 July 1991, 198 SCRA 670, 677.

[29] *Supra*, note 17 at 8.[30] *People v. Garcia*, G.R. No. 129216, 20 April 2001, 357 SCRA 151, 159-160 citing *People v. Galanza*, G.R. No. 89685, 8 November 1993, 227 SCRA 526, 531; *People v. Alvarez*, G.R. No. 70446, 31 January 1989, 169 SCRA 730, 738.

[31] *People v. Ponsaran*, G.R. Nos. 139616-17, 6 February 2002, 376 SCRA 434, 449 citing *People v. Saban*, G.R. No. 110559, 24 November 1999, 319 SCRA 36, 46.

well as the facility of access between the two places.[32] In this case, the Gagante residence where appellant claimed to be at the time of the incident was located in the same *barangay* where the fatal stabbing took place. Weak as the appellant's alibi is, it became even weaker when he failed to demonstrate that it was impossible for him to be at the scene of the crime when it was committed.[33]

Noteworthy, after the stabbing incident, appellant took flight. A warrant of arrest against the appellant was issued on January 3, 1995. But it was only on April 11, 1999, that the appellant was taken into custody by the police. For five years, appellant disappeared from view, until the long arm of the law caught up with him. As previously held, the flight of the accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."[34] Flight evidences guilt and guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.[35]

Appellant's defense, however, questions the trial court's finding of murder. Appellant's counsel contends that, assuming *arguendo*, that indeed he stabbed the victim, there was no direct evidence to show that the attack was sudden and that the victim was deprived of an opportunity to defend himself. The defense points to eyewitness testimony that appellant was some twelve meters

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[32] *People v. Pascual, Jr.*, G.R. No. 132870, 29 May 2002, 382 SCRA 470, 477.

[33] *People v. Alajay*, G.R. Nos. 133796-97, 12 August 2003, pp. 7-8.

[34] *Luces v. People*, G.R. No. 149492, 20 January 2003, 395 SCRA 524, 532 citing *People v. Del Mundo*, G.R. No. 138929, 2 October 2001, 366 SCRA 471, 483-484.

[35] *People v. Acosta, Sr.*, G.R. No. 140402, 28 January 2003, 396 SCRA 348, 373 citing *People v. Rabanal*, G.R. No. 119542, 19 January 2001, 349 SCRA 655, 661; *People v. Gregorio*, G.R. Nos. 109614-15, 29 March 1996, 255 SCRA 380, 392.

away from the victim at the start of the encounter, hence there was no sudden assault upon him by appellant.

For the appellee, the OSG calls attention to the fact that at the time of the attack, the victim was promenading beside a river, unarmed and unsuspecting, enjoying the company of his new found friend, Dadis. There was no premonition, much less recognition of imminent danger to his person from any source. The victim was therefore taken unaware by appellant's sudden assault.

Treachery is present when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[36] What is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself.[37] Stated differently, the essence of treachery is the swift and unexpected attack by an aggressor on an unarmed and unsuspecting victim who does not give any slight provocation, depriving the latter of any real chance to defend himself.[38]

At the time of the fatal stabbing, Basco had just come from the house of the local beauty Dayluz whom he was courting. He was unarmed, walking by the riverside, in the company of a new friend. There had been no altercation between him and appellant at the benefit dance. Although he was not a resident of *Barangay* Lemon, Capoocan, he was not a total stranger to the place. He had previously visited Lemon with no unusual incident. Then some time after the dance ended, he was stabbed by an assailant who came from behind. Clearly, the sudden execution of the attack was such that it was impossible for the victim to defend himself. Thus, we find that the trial court did

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[36] *People v. Arca*, G.R. No. 135857, 18 June 2003, p. 14.

[37] *People v. Almedilla*, G.R. No. 150590, 21 August 2003, p. 7 citing *People v. Lucena*, G.R. No. 137281, 3 April 2001, 356 SCRA 90, 103.

[38] *People v. Musa, Jr.*, G.R. No. 137042, 17 June 2003, p. 5 citing *People v. Samson*, G.R. No. 124666, 15 February 2002, 377 SCRA 25, 37.

not err in appreciating treachery as qualifying the offense to murder.

On the *second issue*, the prosecution agrees with the defense that it was an error for the trial court to impose the death penalty, absent any aggravating circumstances to warrant its imposition.

The penalty for murder under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659 is *reclusion perpetua* to death. Since neither aggravating nor mitigating circumstance attended the commission of the crime, the proper penalty, in conformity with Article 63 of the Revised Penal Code is *reclusion perpetua*.

On the *third issue*, the parties are again in agreement that the award of actual damages in the amount of ₱19,000.00 should be deleted in the absence of evidence, such as receipts, to justify its award. However, the OSG recommends that in lieu thereof, temperate damages should be awarded, as the victim's heirs incurred expenses as a result of his death. Moreover, the award of civil indemnity in the amount of ₱75,000.00 should be reduced to ₱50,000.00 to conform with prevailing jurisprudence.

The recommendations of the OSG are well taken. As a rule, claims for actual damages must be supported by evidence.[39] In this case, no receipts were offered to support the funeral expenses claimed by the victim's family. Hence, the award of ₱19,000.00 in actual damages must be stricken for lack of proof. However, considering that the victim's heirs did incur funeral and other expenses because of his death, the award of temperate damages in the amount of ₱25,000.00 would be justified.[40] Lastly, concerning the award of civil indemnity, the amount thereof should be reduced to ₱50,000.00, in line with prevailing case law.[41]

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[39] *People v. Cabical*, G.R. No. 148519, 29 May 2003, p. 13.

[40] *People v. Buayaban*, G.R. No. 112459, 28 March 2003, p. 24; *People v. Abrazaldo*, G.R. No. 124392, 7 February 2003, 397 SCRA 137, 150.

[41] *People v. Sibonga*, G.R. No. 95901, 16 June 2003, p. 21.

WHEREFORE, the decision dated February 15, 2002, of the Regional Trial Court of Carigara, Leyte, Branch 13, in Criminal Case No. 2883, is *AFFIRMED with MODIFICATION*. Appellant JESUS MORILES, JR., *y* QUEBEC is declared *GUILTY* beyond reasonable doubt of Murder, but the penalty imposed upon him is reduced to *reclusion perpetua*. He is *ORDERED* to pay the heirs of the late Gary Basco the sum of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages. Costs *de oficio*.

SO ORDERED.

Davide, C.J., Puno, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.*, concur.

Vitug, J., on O.B. abroad.

Panganiban, J., on official leave.

SECOND DIVISION

[G.R. No. 159971. March 25, 2004]

SALOME M. CASTILLO, represented by her attorney-in-fact Atty. Jose M. Castillo, *petitioner, vs.* **HON. COURT OF APPEALS, and SPS. RUBEN AND ERLINDA ASEDILLO,** *respondents.*

SYNOPSIS

Petitioner represented by her attorney-in-fact Atty. Jose M. Castillo, sought to set aside the Resolution of the Court of Appeals which dismissed her petition for review on procedural grounds as well as her subsequent motion for reconsideration thereof. The assailed Resolution of the Court of Appeals dismissed the petition on the following grounds, *viz*: the certification of non-forum shopping was not signed by Atty.

Jose M. Castillo as attorney-in-fact of the petitioner, and even if duly signed, the certification could be properly repudiated since the attached Special Power of Attorney executed by petitioner Salome Castillo was merely a photocopy and did not bear the acknowledgement page; the petitioner failed to submit the mandatory written explanation on why copies of the petition were served upon respondents by way of registered mail rather than through personal service; and the attached decision of the Regional Trial Court was only a photocopy while the Metropolitan Trial Court Decision was not even attached. On his part, Atty. Castillo cited substantial compliance and resort to a liberal application of procedural rules. According to him, the omissions "are all within the tolerable limit, a matter of sound discretion xxx to overlook."

The Supreme Court found petitioner's submission contrary to procedural law and jurisprudence. It held that the dismissal by the appellate court of Castillo's petition was warranted under the Rules and did not constitute reversible error. According to the Court, strict compliance with the mandatory rules of procedure is the established norm and any relaxation from that standard could only be an exception. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Accordingly, the Court denied the petition.

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; UTTER DISREGARD OF THE RULES CANNOT BE JUSTLY RATIONALIZED BY HARKING ON THE POLICY OF LIBERAL CONSTRUCTION; CASE AT BAR. —Jose Castillo failed to sign the "Certification on Non-Forum Shopping." Thus, he failed to comply with the requirement ordained by Section 2, Rule 42 and made mandatory by Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides that failure to comply with the certification on non-forum shopping requirement is not curable by mere amendment, but shall be cause for the dismissal of the case without prejudice. Moreover, the second page of the SPA which is the page containing the acknowledgement was not attached to the *Petition* filed with the Court of Appeals and it is only a mere photocopy. As noted in the assailed *Resolution*, the Court of Appeals could very well repudiate the certification on that

ground. Likewise the failure to provide a written explanation on why copies of the petition were served by registered mail to the respondents violates Section 11, Rule 13 of the 1997 Rules on Civil Procedure. That is another mandatory rule and violation thereof is cause to consider the pleading as not having been filed at all. Finally, Castillo's failure to attach a duplicate original or true copy of the assailed judgment of the RTC contravenes Section 2, Rule 42 of the Rules of Civil Procedure and under Section 3 of the same Rule such a lapse constitutes ground for the dismissal of the *Petition for Review*. Clearly then, the dismissal by the Court of Appeals of Castillo's *Petition* is warranted under the Rules and does not constitute reversible error. Strict compliance with the mandatory rules of procedure is the established norm and any relaxation from that standard could only be an exception. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.

2. ID.; EVIDENCE; CONCLUSIONS REACHED BY THE MTC AND THE RTC ACCORDED DUE CREDENCE WHEN SUPPORTED BY THE EVIDENCE. —Castillo also sought the Court's examination of what she has characterized as "the more substantive issue," namely: whether "with the payment of earnest money was there a perfected contract of sale or was there a mere contract to sell." This submission is misleading, as it assumes that the issue is legal rather than factual. However, an examination of the assailed trial court decisions reveals that the disposal of the case requires a determination of the true circumstances surrounding the negotiations between Jose Castillo and Erlinda Asedillo. The MTC and RTC arrived at the twin factual findings that there was no perfected contract of sale and that the amount covered by the check issued by Asedillo does not constitute earnest money. Not a being a trier of facts, this Court has to accord due credence to the factual conclusions reached by the MTC and the RTC, especially so when their conclusions are more than amply supported by the evidence.

APPEARANCES OF COUNSEL

Jose M. Castillo for petitioner.
Ramon U. Ampil for private respondents.

R E S O L U T I O N

TINGA, *J.*:

Petitioner Salome M. Castillo ("Castillo") seeks to set aside the *Resolution*, dated 17 March 2003, of the Court of Appeals First Division,[1] dismissing her *Petition for Review* on procedural grounds, as well as the *Resolution*, dated 17 September 2003, of the Court of Appeals Former First Division, denying her *Motion for Reconsideration* of the earlier resolution. Hence, the present *Petition for Review*.

Salome Castillo is a resident of Long Beach, California, and the registered owner of a duly titled[2] parcel of land with improvements, located at 960 Adelina Street, Sampaloc, Manila. On 5 June 1989, Salome Castillo executed a *Special Power of Attorney* ("SPA") in favor of her son, Jose M. Castillo ("Jose Castillo"), authorizing the latter, among others things, to sell the property. Jose Castillo caused the publication of an advertisement that the property was for sale for the sum of Two Million Eight Hundred Pesos (₱2,800,000.00). The advertisement caught the attention of defendant Erlinda Asedillo, who promptly approached Jose Castillo about purchasing the property. Allegedly, Asedillo agreed to purchase the property for the amount of Two Million Four Hundred Thirty Seven Thousand Five Hundred Pesos (₱2,437,500.00). Asedillo issued to Jose Castillo City Trust Check No. 1544262[3] dated 13 June 1995, for One Hundred Thousand Pesos (₱100,000.00). However, on the same day, Asedillo instructed City Trust Bank to stop payment of the check. Asedillo also refused to give further payment to Jose Castillo, citing as basis the fact that

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[1] Decision penned by Justice E.R. Bello, Jr., and concurred in by Presiding Justice C. Garcia and Justice S. Pestaño.

[2] The property is covered by Transfer Certificate of Title No. 102599 issued by the Register of Deeds of Manila, under the name "Salome Castillo, married to Feliberto V. Castillo." *Rollo*, p. 30.

[3] See *Rollo*, p. 87.

a notice of *lis pendens* was annotated on the title of the property. Still, Jose Castillo insisted that Asedillo pay what according to him was the stipulated purchase price. When Asedillo refused to proceed with the sale and give further payment, Jose Castillo, representing Salome Castillo, filed against her a complaint with the Quezon City Metropolitan Trial Court (MTC), Branch 32.[4] In the complaint, captioned "Salome M. Castillo represented by her attorney-in fact, *Atty. Jose M. Castillo, Plaintiff, versus Spouses Ruben and Erlinda Asedillo, Defendants*", the plaintiff prayed, among others, that the "earnest money" of One Hundred Thousand Pesos (₱100,000.00) covered by the City Trust Check "be forfeited" in her favor.[5]

Jose Castillo, as attorney-in-fact of his mother, alleged that Asedillo had agreed to purchase the property, and that the amount of One Hundred Thousand Pesos (₱100,000.00) represented "earnest money" in relation to the sale.[6] In support of the allegation, Jose Castillo presented a receipt[7] which he himself signed, stating that he received the amount from Asedillo as "earnest money" in connection with the sale of the property.

On the other hand, Asedillo denied that there was a definite agreement to purchase the property. She claimed that her negotiations with Jose Castillo were merely preliminary, with the final agreement to purchase, if any, subject to verification, confirmation and eventual documentation by her husband.[8] She further alleged that Jose Castillo had initially demanded a large amount for deposit, but she agreed to give as deposit only the token amount of One Hundred Thousand Pesos (₱100,000.00). On 14 June 1995, Asedillo's husband, Atty. Ruben Asedillo, confronted Jose Castillo, inquiring whether the SPA signed by Salome Castillo in 1989 was still good; whether Salome Castillo was still alive considering that her son Jose appeared to be

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[4] Presided by Judge Ofelia Arellano-Marquez.

[5] *Rollo*, p. 86.

[6] *Id*. at 83.

[7] *Id*. at 88.

[8] *Id*. at 93.

already in his sixties; and whether the property was paraphernal.[9] Jose Castillo allegedly evaded the questions and instead demanded that the sale push through, since the contract of sale was already perfected.

The MTC dismissed the complaint, holding that no contract of sale was perfected but only a contract to sell which depended on the conditions laid down by Asedillo.[10] On appeal, the Quezon City Regional Trial Court (RTC), Branch 99,[11] initially reversed the MTC,[12] but on Asedillo's *Motion for Reconsideration* later upheld the MTC *Decision*.[13] Salome Castillo, represented by Jose Castillo, then filed a *Petition for Review* with the Court of Appeals.

The assailed *Resolution* of the Court of Appeals First Division dated 17 March 2003 dismissed the petition on the following grounds, *viz*: the certification of non-forum shopping was not signed by Atty. Jose M. Castillo as attorney-in-fact of the petitioner, and even if duly signed, the certification could be properly repudiated since the attached SPA executed by Salome Castillo is merely a photocopy and does not bear the acknowledgement page; the petitioner failed to submit the mandatory written explanation on why copies of the petition were served upon respondents by way of registered mail rather than through personal service; and the attached RTC decision was only a photocopy while the MTC decision was not even attached.[14] Castillo moved to reconsider the ruling of the Court of Appeals, citing substantial compliance and resort to a liberal application of procedural rules. The Court of Appeals denied the *Motion for Reconsideration*.[15]

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[9] *Id*. at 32.

[10] *Id*. at 30-39.

[11] Presided by Judge Rose Marie Alonzo-Legasto.

[12] *Rollo*, pp. 68-72.

[13] *Id*. at 79-81.

[14] *Id*. at 17-18.

[15] *Id*. at 54.

Before this Court, Castillo claims that the omissions "are all within the tolerable limit, a matter of sound discretion x x x to overlook."[16] This submission is contrary to procedural law and jurisprudence.

Jose Castillo failed to sign the "Certification on Non-Forum Shopping." Thus, he failed to comply with the requirement ordained by Section 2, Rule 42 and made mandatory by Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides that failure to comply with the certification on non-forum shopping requirement is not curable by mere amendment, but shall be cause for the dismissal of the case without prejudice. Moreover, page 2 of the SPA which is the page containing the acknowledgement was not attached to the *Petition* filed with the Court of Appeals while page 1 is a mere photocopy. As noted in the assailed *Resolution*, the Court of Appeals could very well repudiate the certification on that ground.[17] Likewise the failure to provide a written explanation on why copies of the petition were served by registered mail to the respondents violates Section 11, Rule 13 of the 1997 Rules on Civil Procedure. That is another mandatory rule and violation thereof is cause to consider the pleading as not having been filed at all. Finally, Castillo's failure to attach a duplicate original or true copy of the assailed judgment of the RTC contravenes Section 2, Rule 42 of the Rules of Civil Procedure and under Section 3 of the same Rule, such a lapse constitutes ground for the dismissal of the *Petition for Review*.

Clearly then, the dismissal by the Court of Appeals of Castillo's *Petition* is warranted under the Rules and does not constitute reversible error. Strict compliance with the mandatory rules of procedure is the established norm and any relaxation from that standard could only be an exception. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[18]

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[16] *Id*. at 9.

[17] *Id*. at 17.

[18] *Digital Microwave Corp. v. Court of Appeals*, G.R. No. 128550, March 16, 2000, 328 SCRA 286.

Castillo also sought the Court's examination of what she has characterized as "the more substantive issue,"[19] namely: whether "with the payment of earnest money was there a perfected contract of sale or was there a mere contract to sell." This submission is misleading, as it assumes that the issue is legal rather than factual. However, an examination of the assailed trial court decisions reveals that the disposal of the case requires a determination of the true circumstances surrounding the negotiations between Jose Castillo and Erlinda Asedillo. The MTC and RTC arrived at the twin factual findings that there was no perfected contract of sale and that the amount covered by the check issued by Asedillo does not constitute earnest money. Not a being a trier of facts, this Court has to accord due credence to the factual conclusions reached by the MTC and the RTC, especially so when their conclusions are more than amply supported by the evidence.

Significantly, Salome Castillo lost her case at three levels of the judiciary, namely at the MTC, the RTC and the Court of Appeals.

One final note. In connection with the controversy subject of this case, Jose Castillo has consistently relied upon the SPA signed by his mother Salome Castillo as the basis of his representation of the latter. He used the SPA in filing the complaint before the MTC in 1994, in appealing the MTC *Decision* to the RTC in 1998, in elevating the RTC *Order* to the Court of Appeals in January of 2003, and finally in filing the present *Petition* with this Court in October of 2003.[20] However, the filing of a case in court in behalf of Salome Castillo is not one of the acts Jose Castillo is explicitly authorized to do under the SPA. While certain powers in connection with possible litigation involving the property are mentioned in the SPA,[21] significantly

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[19] *Rollo*, p. 10.

[20] *Rollo*, pp. 23, 40, 67, 82.

[21] Paragraph No. 4 of the SPA states:

"4. In case of any litigation involving the said property/ies, to attend the pre-trial conference/s; for this purpose, to enter into amicable

it does not include the authority to decide for Salome Castillo whether or not to file a case in her behalf, let alone an action for the forfeiture of "earnest money" which was not paid in cash but by check and is not supported by any written agreement. What is not included should be deemed excluded.

Even on the assumption that Jose Castillo is empowered under the SPA to file the complaint with the MTC and the present *Petition* before this Court,[22] still in view of the lapse of a considerable period of time since the time of its execution in 1989, it is doubtful that it still retained in efficacy at the time the present *Petition* was filed. In fact, the respondents had raised doubts whether the SPA was still effective five (5) years after it was executed. In 1994 when the MTC case was filed, Jose Castillo appeared to the respondents to be in his sixties. Hence, the respondents entertained skepticism as to whether Salome Castillo was still alive and, correspondingly, whether the SPA was still binding at that time. The same misgivings are relevant today ten (10) years later, in fact more than ever, if not on Salome Castillo's existence but certainly on her mental capacity in view of her advanced age. As noted before, in filing the current *Petition*, Jose Castillo relied on the same SPA which her mother executed fifteen (15) years ago.

ACCORDINGLY, the *Petition* is *DENIED*, no reversible error having been committed by the Court of Appeals.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

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settlement or submit to arbitration; to enter into stipulations or admissions of facts and of documents, to agree to preliminary conference of the issues to a commissioner, and such other matters as may aid in the prompt disposition of the action or actions. See *Rollo*, p. 23.

[22] Yet oddly enough, the said SPA is attached to the current *Petition* only as one of the annexes to the copy of Castillo's Motion for Reconsideration before the Court of Appeals.

EN BANC

[A.M. No. RTJ-02-1726. March 29, 2004]
(Formerly OCA I.P.I. No. 01-1221-RTJ)

P/C Supt. LUCAS M. MANAGUELOD, *complainant, vs.* **Judge FERNANDO M. PACLIBON, JR., Regional Trial Court, Branch 28, Sta. Cruz, Laguna and Judge FRANCISCO J. GO, Municipal Trial Court, Pila, Laguna,** *respondents*.

SYNOPSIS

At bar is an administrative case against Judge Francisco J. Go and Judge Fernando M. Paclibon, Jr. Judge Francisco J. Go allegedly committed procedural lapses in granting bail to accused Ariel Palacol in Criminal Case No. SC-8235 for violation of the Dangerous Drugs Act of 1972, as amended, without conducting a hearing on the application for bail, and in quashing the search warrants issued in connection with Criminal Case Nos. SC-7604 and SC-7603 after the police authorities had already conducted the search and seized a total of more than 400 grams of *shabu*. On the other hand, respondent Judge Fernando M. Paclibon, Jr. allegedly hastily issued an order for the release of accused Palacol. Considering that the weight of the *shabu* confiscated was more than 200 grams, the offense committed should have been treated as a heinous crime and therefore non-bailable crime. In his comment, Judge Go explained that in Criminal Case No. SC-8235, the weight of the confiscated *shabu* was not yet determined at the time the accused filed his motion to fix bail. He justifies his action that, in case of doubt, it should be resolved in favor of the accused. As regards Criminal Case Nos. SC-7604 and SC-7603, he justified his action by claiming that the search warrants were in the nature of "general warrants," which were unconstitutional. Respondent Judge Paclibon, Jr. on the other hand, explained that he relied on the order of respondent Judge Go fixing the bail at ₱200,000 when he ordered the release of the accused. Nevertheless,

he issued another order directing the issuance of a warrant of arrest for the apprehension of accused Palacol.

The Court dismissed the charges against Judge Paclibon, Jr., for lack of evidence. On the other hand, it found Judge Go guilty of gross ignorance of the law for failure to conduct any hearing on the application for bail; thus, warranting his dismissal from the service. According to the Court, it is imperative that judges be conversant with basic legal principles and possess sufficient proficiency in the law. Respondent Judge Go should have known the procedure to be followed when a motion for admission to bail is filed by the accused. The fact that the provincial prosecutor interposed no objection to the application for bail by the accused did not relieve Judge Go of the duty to set the motion for bail for hearing. Extreme care, not to mention the highest sense of personal integrity, is required of him in granting bail, especially in cases where bail is not a matter of right. Further, the Court found highly dubious the actuations of Judge Go in Criminal Case Nos. SC-7604 and SC-7603. He never explained why he issued such unconstitutional warrants. The Court frowns on and will never countenance the conduct of respondent judge for he should know that his behavior must always be beyond reproach and free from any appearance of impropriety to protect the image and integrity of the judiciary, specially considering that drugs were involved. Lamentably, respondent judge failed to measure up to such exacting norm.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; DUTIES OF THE JUDGE IN APPLICATION FOR BAIL; CASE AT BAR.— The duties of a judge, in case an application for bail is filed, are to: (1) notify the prosecutor of the hearing on the application for bail or require him to submit his recommendation; (2) conduct a hearing on the application for bail whether or not the prosecution presents evidence to show that the guilt of the accused is strong, to enable the court to exercise its discretion; (3) decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution, and (4) if the guilt of the accused is not

strong, discharge the accused upon the approval of the bailbond. In this case, the records do not reveal that respondent Judge Go ever conducted any hearing on the motion to fix bail filed by accused Palacol before he allowed him to post bail. Respondent Judge Go merely relied on the comment filed by Provincial Prosecutor Dan B. Rodrigo favoring the fixing of bail as prayed for by the accused in his motion. We find it highly suspicious that respondent Judge Go granted bail and fixed the amount thereof on the very same day the accused filed his motion. Thereafter, he inhibited himself from further hearing the case. The weight of the *shabu* confiscated was more than 200 grams, thereby qualifying the offense as a heinous crime, pursuant to RA 6425 as amended by RA 7659.

2. JUDICIAL ETHICS; JUDGES; MUST BE CONVERSANT WITH BASIC LEGAL PRINCIPLES AND MUST POSSESS SUFFICIENT PROFICIENCY IN LAW; FAILURE TO CONDUCT ANY HEARING ON THE APPLICATION FOR BAIL CONSTITUTES GROSS IGNORANCE OF THE LAW.— It is imperative that judges be conversant with basic legal principles and possess sufficient proficiency in the law. In offenses punishable by *reclusion perpetua* or death, the accused has no right to bail when the evidence of guilt is strong. Respondent Judge Go should have known the procedure to be followed when a motion for admission to bail is filed by the accused. Extreme care, not to mention the highest sense of personal integrity, is required of him in granting bail, specially in cases where bail is not a matter of right. The fact that the provincial prosecutor interposed no objection to the application for bail by the accused did not relieve respondent judge of the duty to set the motion for bail for hearing. A hearing is of utmost necessity because certain guidelines in fixing bail (the nature of the crime, character and reputation of the accused, weight of evidence against him, the probability of the accused appearing at the trial, among other things) call for the presentation of evidence. It was impossible for respondent judge to determine the application of these guidelines in an *ex-parte* determination of the propriety of Palacol's motion for bail. Thus, for his failure to conduct any hearing on the application for bail, we hold respondent Judge Go guilty of gross ignorance of the law justifying the imposition of the severest disciplinary sanction on him.

3. ID.; ID.; RELATIVE IMMUNITY IS NOT A LICENSE TO BE NEGLIGENT, ABUSIVE OR ARBITRARY IN THE PERFORMANCE OF THEIR ADJUDICATORY PREROGATIVES.— A judge is human; this we acknowledge. But a judge is expected to rise above human frailties. The Court frowns on and will never countenance the conduct of respondent judge for he should know that his behavior must always be beyond reproach and free from any appearance of impropriety to protect the image and integrity of the judiciary, specially considering that drugs were involved. Lamentably, respondent judge failed to measure up to such exacting norm. Although a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent, abusive or arbitrary in the performance of his adjudicatory prerogatives.

4. ID.; ID.; SHOULD ALWAYS BE IMBUED WITH A HIGH SENSE OF DUTY AND RESPONSIBILITY IN THE DISCHARGE OF THEIR OBLIGATION TO ADMINISTER JUSTICE.— No position in the government service exacts a greater demand for personal honesty and integrity than a seat in the judiciary. He must not sacrifice for expediency's sake the fundamental requirements of due process or to forget that he must conscientiously endeavor each time to seek the truth, to know and correctly apply the law, and to dispose of controversies objectively and impartially — to the end that justice is done to every party. Canon 2 of the Code of Judicial Conduct provides that a judge should not only avoid impropriety but also the appearance of impropriety in all his acts. By the very nature of his work, he should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to administer justice.

R E S O L U T I O N

***PER CURIAM*:**

In a letter-complaint dated April 14, 2000, complainant Atty. Lucas M. Managuelod, Police Chief Superintendent then stationed in Camp Vicente Lim, Calamba, Laguna, charged respondents Judge Fernando M. Paclibon, Jr. of the Regional Trial Court,

Branch 28, Sta. Cruz, Laguna and Judge Francisco J. Go of the Municipal Trial Court of Pila, Laguna, with having committed procedural lapses in granting bail to accused Ariel Palacol in Criminal Case No. SC-8235, entitled *People vs. Palacol,* and in quashing the search warrants issued in connection with Criminal Case No. 7604, entitled *People vs. Jaime Manambit, et al.* and Criminal Case No. 7603, entitled *People vs. Ferdinand Pagkaliwanagan.*

In Criminal Case No. SC-8235, complainant averred that, pursuant to a search warrant issued by respondent Judge Francisco Go, the police confiscated 214.40 grams of *shabu* from Ariel Palacol who was arrested and criminally prosecuted for violation of RA 6425, the Dangerous Drugs Act of 1972, as amended by RA 7659. Considering the amount of *shabu* confiscated from the accused, the offense committed should have been treated as a heinous and therefore non-bailable crime. However, on March 17, 2000, accused Palacol filed a motion to fix bail which respondent Judge Go granted on the same day without conducting any hearing thereon. He fixed the bail for the provisional liberty of the accused at ₱200,000. In the same order, respondent Judge Go inhibited himself from further hearing the case. On March 16, 2000, respondent Judge Fernando Paclibon, Jr. issued an order for the release of accused Palacol.

Complainant further alleged that, in Criminal Case No. SC-7604, respondent Judge Go issued two search warrants, pursuant to which 214.57 grams of *shabu* were confiscated by the police from the accused Jaime Manambit *et al.* The corresponding criminal case was then filed in court. However, on motion of the accused, the search warrants were quashed by respondent Judge Go because they allegedly took on the nature of general warrants, hence unconstitutional. On appeal, respondent Judge Paclibon affirmed the findings of Judge Go.

The same thing happened in Criminal Case No. SC-7603, where the *shabu* confiscated weighed 225.03 grams.

In his comment dated July 27, 2000, respondent Judge Go explained that in Criminal Case No. SC-8235, the weight of

the confiscated *shabu* was not yet determined at the time the accused filed his motion to fix bail. In fact, the *shabu* seized from the accused was forwarded to the PNP Crime Laboratory for examination only on March 13, 2000. He further averred that the receipt of the seized article specified only "one piece transparent plastic with suspected *shabu*" and not one plastic bag of *shabu*. He justifies his action that, in case of doubt, it should be resolved in favor of the accused. As regards Criminal Case Nos. SC-7604 and SC-7603, he clarified that the search warrants he issued were quashed based on the pleadings submitted.

Respondent Judge Paclibon, on the other hand, explained that, in ordering the release of accused Palacol, he merely relied on the March 17, 2000 order of respondent Judge Go fixing the bail at ₱200,000. Nevertheless, when Criminal Case No. 8235 was eventually raffled to his sala, he issued another order, dated May 5, 2000, which set aside the assailed order of Judge Go and directed the issuance of a warrant of arrest for the apprehension of accused Palacol. By virtue thereof, Palacol was arrested and detained at the Laguna Provincial Jail.

Regarding Criminal Case Nos. SC-7604 and SC-7603, respondent Judge Paclibon attached to his comment copies of the orders he issued in those cases which he alleged could very well explain the rationale of his decisions therein.

In a resolution dated October 9, 2002, the Third Division of this Court dismissed the charges against Judge Paclibon, Jr., as recommended by the Office of the Court Administrator, for lack of evidence, it appearing that his only participation in Criminal Case No. SC-8235 was the alleged irregular and hasty issuance of the order of release, a copy of which was not even attached to the records.

What is left now to be resolved by this Court is the recommendation of the Office of the Court Administrator to suspend respondent Judge Go for three months, without pay, effective upon notice, for having failed to conduct a hearing on the application for bail by accused Palacol.

The duties of a judge, in case an application for bail is filed, are to: (1) notify the prosecutor of the hearing on the application for bail or require him to submit his recommendation; (2) conduct a hearing on the application for bail whether or not the prosecution presents evidence to show that the guilt of the accused is strong, to enable the court to exercise its discretion; (3) decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution, and (4) if the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond.[1]

In this case, the records do not reveal that respondent Judge Go ever conducted any hearing on the motion to fix bail filed by accused Palacol before he allowed him to post bail. Respondent Judge Go merely relied on the comment filed by Provincial Prosecutor Dan B. Rodrigo favoring the fixing of bail as prayed for by the accused in his motion. We find it highly suspicious that respondent Judge Go granted bail and fixed the amount thereof on the very same day the accused filed his motion. Thereafter, he inhibited himself from further hearing the case. The weight of the *shabu* confiscated was more than 200 grams, thereby qualifying the offense as a heinous crime, pursuant to RA 6425 as amended by RA 7659.

It is imperative that judges be conversant with basic legal principles and possess sufficient proficiency in the law. In offenses punishable by *reclusion perpetua* or death, the accused has no right to bail when the evidence of guilt is strong.[2] Respondent Judge Go should have known the procedure to be followed when a motion for admission to bail is filed by the accused. Extreme care, not to mention the highest sense of personal integrity, is required of him in granting bail, specially in cases where bail is not a matter

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[1] *People vs. Cabral,* 303 SCRA 361 [1999].

[2] *People vs. Manes,* 303 SCRA 231 [1999].

of right.[3] The fact that the provincial prosecutor interposed no objection to the application for bail by the accused did not relieve respondent judge of the duty to set the motion for bail for hearing. A hearing is of utmost necessity because certain guidelines in fixing bail (the nature of the crime, character and reputation of the accused, weight of evidence against him, the probability of the accused appearing at the trial, among other things) call for the presentation of evidence. It was impossible for respondent judge to determine the application of these guidelines in an *ex-parte* determination of the propriety of Palacol's motion for bail. Thus, for his failure to conduct any hearing on the application for bail, we hold respondent Judge Go guilty of gross ignorance of the law justifying the imposition of the severest disciplinary sanction on him.

Further, the actuations of respondent judge in Criminal Case Nos. SC-7604 and SC-7603 were likewise highly dubious. In said cases, he issued several search warrants, only to quash them later after the police authorities had already conducted the search and seized a total of more than 400 grams of *shabu*. He justified his action by claiming that the search warrants he issued were in the nature of "general warrants," which were unconstitutional. He, however, never explained why he, in the first place, issued such unconstitutional warrants.

A judge is human; this we acknowledge. But a judge is expected to rise above human frailties.[4] The Court frowns on and will never countenance the conduct of respondent judge for he should know that his behavior must always be beyond reproach and free from any appearance of impropriety to protect the image and integrity of the judiciary, specially considering that drugs were involved. Lamentably, respondent judge failed to measure up to such exacting norm. Although a judge may not always be subjected to disciplinary action for

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[3] *Cruz vs. Yaneza*, 304 SCRA 285 [1999].

[4] *Lorena vs. Encomienda*, 302 SCRA 632 [1999].

every erroneous order or decision he renders, that relative immunity is not a license to be negligent, abusive or arbitrary in the performance of his adjudicatory prerogatives.[5]

No position in the government service exacts a greater demand for personal honesty and integrity than a seat in the judiciary.[6] He must not sacrifice for expediency's sake the fundamental requirements of due process or to forget that he must conscientiously endeavor each time to seek the truth, to know and correctly apply the law, and to dispose of controversies objectively and impartially — to the end that justice is done to every party.[7] Canon 2 of the Code of Judicial Conduct provides that a judge should not only avoid impropriety but also the appearance of impropriety in all his acts. By the very nature of his work, he should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to administer justice.

WHEREFORE, respondent Judge Francisco J. Go of the Municipal Trial Court of Pila, Laguna is hereby *DISMISSED* from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

This resolution is immediately executory.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.*, concur.

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[5] *de Vera vs. Dames II*, 310 SCRA 213 [1999].

[6] *Cruz vs. Yaneza*, 304 SCRA 285 [1999].

[7] *Young vs. De Guzman*, 303 SCRA 254 [1999].

SECOND DIVISION

[G.R. No. 149462. March 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PRISCILLA DEL NORTE,** *appellant.*

SYNOPSIS

Appellant assailed the decision of the Regional Trial Court of Caloocan City finding her guilty beyond reasonable doubt of the crime of illegal possession of drugs and sentencing her to *reclusion perpetua* and a fine. Appellant assailed the validity of the search warrant against her. She argued that the *marijuana* seized, as a result of the search was inadmissible due to the irregularity of the search warrant, which contained the name Ising Gutierrez Diwa, and not Priscilla del Norte, appellant's name. She alleged that Ising is her sister and that she lived at 376 Dama de Noche, Barangay Baesa, Caloocan City and not at No. 275 North Service Road corner Cruzada St., Bagong Barrio, Caloocan City as specified in the search warrant. She claimed that she does not own the house subject of the search.

The Constitution requires search warrants to particularly describe not only the place to be searched, but also the persons to be arrested. The Supreme Court has ruled in rare instances that mistakes in the name of the persons subject of the search do not invalidate the warrant, provided the place to be searched is properly described. In the case at bar, the Court cannot countenance the irregularity of the search warrant. The authorities did not have personal knowledge of the circumstances surrounding the search. They did not conduct surveillance before obtaining the warrant. It was only when they implemented the warrant that they coordinated with the *barangay* officials. One of the *barangay* officials informed SPO3 De Leon that Ising Gutierrez Diwa and Priscilla Del Norte are one and the same person, but said *barangay* official was not presented in court. The authorities based their knowledge on pure hearsay.

On the merits, the Court believed that the prosecution failed to discharge its burden of proving appellant's guilt beyond reasonable doubt. First, the prosecution's witnesses failed to

establish the appellant's ownership of the house where the prohibited drugs were discovered. Except for their bare testimonies, no other proof was presented. Second, the prosecution failed to prove that appellant was in actual possession of the prohibited articles at the time of her arrest. In fact, it seems that the authorities had difficulty looking for the drugs, which were not in plain view. The Court detests drug addiction in our society. However, it has the duty to protect appellant where the evidence presented show "insufficient factual nexus" of her participation in the commission of the offense charged. Thus, the Court reversed the decision of the trial court and acquitted the appellant based on reasonable doubt.

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.

2. **ID.; ID.; ID.; ACCUSED'S OWNERSHIP OF THE HOUSE WHERE PROHIBITED DRUGS WERE DISCOVERED NOT ESTABLISHED IN CASE AT BAR.—** On the merits, we believe the prosecution failed to discharge its burden of proving appellant's guilt beyond reasonable doubt. The prosecution's witnesses failed to establish appellant's ownership of the house where the prohibited drugs were discovered. Except for their bare testimonies, no other proof was presented. This is in contrast to appellant's proof of her residence. The prosecution did not contest the *punong barangay's* certification, Christina's school ID and the rental receipt, all of which show that appellant and her family live at 376 Dama de Noche St. There being no substantial contrary evidence offered, we conclude that appellant does not own the house subject of the search.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; MISTAKES IN THE NAME OF THE PERSON SUBJECT OF THE SEARCH WARRANT DO NOT INVALIDATE THE WARRANT PROVIDED THE PLACE TO BE SEARCHED IS PROPERLY DESCRIBED; CASE AT BAR.—** The Constitution requires search warrants to particularly describe not only the

place to be searched, but also the persons to be arrested. We have ruled in rare instances that mistakes in the name of the person subject of the search warrant do not invalidate the warrant, provided the place to be searched is properly described. In *People v. Tiu Won Chua*, we upheld the validity of the search warrant despite the mistake in the name of the persons to be searched. In the cited case, the authorities conducted surveillance and a test-buy operation before obtaining the search warrant and subsequently implementing it. They had personal knowledge of the identity of the persons and the place to be searched although they did not specifically know the names of the accused. The case at bar is different. We cannot countenance the irregularity of the search warrant. The authorities did not have personal knowledge of the circumstances surrounding the search. They did not conduct surveillance before obtaining the warrant. It was only when they implemented the warrant that they coordinated with the *barangay* officials. One of the *barangay* officials informed SPO3 De Leon that Ising Gutierrez Diwa and Priscilla Del Norte are one and the same person, but said *barangay* official was not presented in court. The authorities based their knowledge on pure hearsay.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; TO BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED BEYOND REASONABLE DOUBT; CASE AT BAR.— The prosecution likewise failed to prove that appellant was in actual possession of the prohibited articles at the time of her arrest. In all criminal cases, it is appellant's constitutional right to be presumed innocent until the contrary is proved beyond reasonable doubt. In the case at bar, we hold that the prosecution's evidence treads on shaky ground. We detest drug addiction in our society. However, we have the duty to protect appellant where the evidence presented show "insufficient factual nexus" of her participation in the commission of the offense charged. In *People vs. Laxa*, we held: The government's drive against illegal drugs deserves everybody's support. But it cannot be pursued by ignoble means which are violative of constitutional rights. It is precisely when the government's purposes are beneficent that we should be most on our guard to protect these rights. As Justice Brandeis warned long ago, "the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning without understanding."

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PUNO, *J.*:

Before us is an appeal from the decision of the Regional Trial Court of Caloocan City, Branch 28, finding appellant Priscilla del Norte guilty of the crime of illegal possession of drugs, *viz*:

> WHEREFORE, in view of all the foregoing, this Court finds the accused Pricilla (*sic*) Del Norte (g)uilty beyond reasonable doubt of the crime for (*sic*) Violation of Sec. 8, Art. II, R.A. 6425, and hereby sentences her to suffer imprisonment of *Reclusion (P)erpetua* and a fine of ₱1,000,000.00, without subsidiary imprisonment in case of insolvency.
>
> The marijuana subject matter of this case is confiscated and forfeited in favor of the Government. The Branch Clerk of Court is directed to turn-over the subject marijuana to the Dangerous Drugs Board for proper disposal/destruction.
>
> The City Jail Warden of Caloocan City is hereby ordered to transfer the accused Priscilla del Norte to the Correccion (*sic*) Institution for Women, Mandaluyong City for the service of her sentence.
>
> SO ORDERED.[1]

A search warrant was served on a certain Ising Gutierrez Diwa, on August 1, 1997, by SPO1 Angel Lumabas, SPO3 Celso de Leon, Maj. Dionisio Borromeo, Capt. Jose, SPO3 Malapitan, PO2 Buddy Perez and PO2 Eugene Perida.

As a result of the search, an information against appellant Priscilla del Norte was filed with the trial court, *viz*:

INFORMATION

> The undersigned Assistant City Prosecutor accuses PRISCILLA DEL NORTE *Y* DIWA AND JANE DOE, true name, real identity and present

[1] *Rollo*, p. 25.

whereabouts of the last accused still unknown(,) of the crime of VIOLATION OF SEC. 8, ART. II, R.A. (No.) 6425, committed as follows:

That on or about the 1st day of August 1997(,) in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with (*sic*) one another, without authority of law, did then and there willfully, unlawfully and feloniously have in their possession, custody and control(,) MARIJUANA weighing 6748.37 gms. knowing the same to be a prohibited drug under the provisions of the above-entitled law.

CONTRARY TO LAW.[2]

SPO1 Lumabas testified that on August 1, 1997, their group was tasked to serve a search warrant[3] against a certain Ising Gutierrez Diwa residing at No. 275 North Service Road corner Cruzada St., Bagong Barrio, Caloocan City, for alleged violation of Republic Act No. 6425. They were ordered to "forthwith seize and take possession of an undetermined quantity of *shabu* and marijuana leaves." They coordinated with the *barangay* officials and proceeded to the house pointed out to them by the local officials. Upon reaching the house, its door was opened by a woman. SPO3 De Leon introduced themselves as policemen to the woman who opened the door, whom they later identified in court as the appellant.[4] They informed her they had a search warrant, but appellant suddenly closed and locked the door. It was only after some prodding by the *barangay* officials that she reopened the door. The authorities then conducted the search. They found a bundle of marijuana wrapped in Manila paper under the bed and inside the room.[5] They asked appellant who owned the marijuana. She cried and said she had no means of livelihood.[6] Appellant was brought to the police headquarters for further investigation. Both SPO1

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[2] *Id*. at 6.

[3] Records, p. 219.

[4] TSN, SPO1 Angel Lumabas, February 4, 1999, pp. 3-4; TSN, SPO3 Carlos De Leon, September 3, 2000, p. 8.

[5] TSN, SPO3 Carlos De Leon, September 3, 2000, pp. 9-12.

[6] *Id*. at 14 & 17-18.

Lumabas and SPO3 De Leon identified the confiscated five (5) bundles of marijuana[7] in court.

Mrs. Grace Eustaquio, a forensic chemist testified that pursuant to a letter request[8] from the Chief of the Caloocan City Police, she conducted an examination on a specimen consisting of five bundles of suspected marijuana. She found that each of the bundles was positive for marijuana. This finding was reduced to a Laboratory Report.[9] The report also contained a finding on the supposed weight of each bundle in grams, *i.e.*, (A) 973.45, (B) 1,840.31, (C) 472.99, (D) 1,678.8, and (E) 1,782.82.[10]

SPO2 Florencio Ramirez, a police officer in the Intelligence Branch of the Caloocan Police Station, testified that on August 1, 1997, the appellant was brought before him by SPO3 De Leon and SPO1 Lumabas. They also submitted two weighing scales, five bricks of marijuana leaves, and two bunches of marijuana leaves wrapped in an old newspaper.[11] He apprised appellant of her constitutional rights before investigating her. After the laboratory test showed that the evidence yielded was marijuana, he sent a referral slip[12] to Prosecutor Zaldy Quimpo for inquest.

Appellant assailed the validity of the search warrant against her. She contended that she lived at 376 Dama de Noche, Barangay Baesa, Caloocan City,[13] and that on August 1, 1997, she was merely visiting a friend, Marlyn, who lived at 275 North Service Road corner Cruzada St., Bagong Barrio, Caloocan City. She went to Marlyn's house to borrow money. Marlyn was out and she waited. While appellant was seated near the door, several people introduced themselves as policemen, made her sign a white paper

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[7] Marked as Exhibits "A" to "E".

[8] Exhibit "J"; Records, p. 220.

[9] Exhibit "K"; *Id*. at 221.

[10] TSN, Grace M. Eustaquio, July 15, 1999, pp. 3-7.

[11] SPO2 Ramirez identified Exhibits "A" to "E" as the bricks of marijuana turned over to him by SPO3 De Leon and SPO1 Lumabas.

[12] Exhibit "L" Records, p. 222.

[13] Appellant presented a *barangay* certificate from the *barangay* chairman, Exhibit "1" Records, p. 243.

and entered the house. She heard them say "we already got Ising," and was surprised why they suddenly arrested her. She saw Ising, her sister, at a house two steps away from the house where she was arrested. Despite her claim that she was not Ising, the policemen brought her to the police station.[14]

Appellant's daughter, Christine also took the witness stand. She testified that she is one of the eight children of the appellant. Since June 1997, she recalled that they had lived at 376 Dama de Noche St., Caloocan City, as proved by the address stated in her school identification card,[15] and a receipt evidencing payment for the rental of their house at Dama de Noche St. from July 18 to August 18, 1997.[16]

The trial court convicted appellant. In this appeal, she raises the lone error that "the lower court erred in convicting the accused-appellant of the crime charged, when her guilt has not been proved beyond reasonable doubt."[17]

Appellant contends that the prosecution failed to establish who owned the house where the search was conducted, and avers that her mere presence therein did not automatically make her the owner of the marijuana found therein. She likewise argues that the search warrant specified the name of Ising Gutierrez as the owner of the house to be searched, and that since she is not Ising Gutierrez, the lower court erred in admitting the confiscated drugs as evidence against her.[18]

The Solicitor General contends that "the totality of the evidence demonstrates appellant's guilt beyond reasonable doubt."[19] He cites the case of *United States vs. Gan Lian Po*,[20] that when illegal drugs are found in the premises occupied by a certain person, such person is presumed to be in possession of the prohibited

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[14] TSN, Priscilla del Norte, February 13, 2001, pp. 2-22.

[15] Exhibit "4".

[16] Exhibit "5".

[17] *Rollo*, p. 43.

[18] *Id*. at 50-54.

[19] *Id*. at 6.

[20] 34 Phil. 880 (1976).

articles. It then becomes the accused's burden to prove the absence of *animus possidendi*.[21]

We reverse the trial court's decision. The prosecution failed to establish the guilt of appellant beyond reasonable doubt.

In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[22]

We first rule on the validity of the search warrant. Article III, Section 2 of the 1987 Philippine Constitution provides:

> *SEC. 2.* The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and *particularly describing* the place to be searched and *the persons* or things *to be seized.* (*italics supplied*)

Appellant argues that the marijuana seized as a result of the search is inadmissible due to the irregularity of the search warrant which contained the name Ising Gutierrez Diwa and not Priscilla del Norte. She alleges that Ising is her sister. During her arrest, she claimed she saw Ising nearby and pointed her to the authorities, but her efforts were futile — the authorities arrested her.

The Constitution requires search warrants to particularly describe not only the place to be searched, but also the persons to be arrested. We have ruled in rare instances that mistakes in the name of the person subject of the search warrant do not invalidate the warrant, provided the place to be searched is properly described. In *People v. Tiu Won Chua*,[23] we upheld the validity of the search warrant

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[21] *Rollo,* pp. 6-14.

[22] *People v. Michael Sy*, G.R. No. 147348, September 24, 2002.

[23] G.R. No. 149878, July 1, 2003.

despite the mistake in the name of the persons to be searched. In the cited case, the authorities conducted surveillance and a test-buy operation before obtaining the search warrant and subsequently implementing it. They had personal knowledge of the identity of the persons and the place to be searched although they did not specifically know the names of the accused.

The case at bar is different. We cannot countenance the irregularity of the search warrant. The authorities did not have personal knowledge of the circumstances surrounding the search. They did not conduct surveillance before obtaining the warrant. It was only when they implemented the warrant that they coordinated with the *barangay* officials. One of the *barangay* officials informed SPO3 De Leon that Ising Gutierrez Diwa and Priscilla Del Norte are one and the same person, but said *barangay* official was not presented in court. The authorities based their knowledge on pure hearsay.

On the merits, we believe the prosecution failed to discharge its burden of proving appellant's guilt beyond reasonable doubt. The prosecution's witnesses failed to establish appellant's ownership of the house where the prohibited drugs were discovered. Except for their bare testimonies, no other proof was presented.

This is in contrast to appellant's proof of her residence. The prosecution did not contest the *punong barangay's* certification,[24] Christina's school ID [25] and the rental receipt,[26] all of which show that appellant and her family live at 376 Dama de Noche St. There being no substantial contrary evidence offered, we conclude that appellant does not own the house subject of the search.

The prosecution likewise failed to prove that appellant was in actual possession of the prohibited articles at the time of her arrest. This is shown by the testimony of the prosecution's witness:

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[24] Exhibit "1".

[25] Exhibit "4".

[26] Exhibit "5".

Fiscal Lomadilla to Witness —

Q: What did you find in that house at No. 275?
A: We found marijuana.

Q: What is the quantity of the marijuana you found?
A: Five bunch (*sic*) or bricks of marijuana and two weighing scale(s), sir

Q: Mr. Lumabas, you mentioned a search warrant issued by Judge Rivera. What was the result of the execution of that search warrant?
A: We were able to find marijuana inside the house of Priscilla del Norte.

Q: What is the quantity?
A: More or less six kilos.

Q: Was it arranged? How was it placed?
A: It was wrapped inside the plastic tape and it looks (*sic*) like in bricks form.[27]

x x x x x x x x x

Q: What part of the house did you discover these five bricks of marijuana?
A: Inside the room, sir, under the bed.

Q: You said you found the accused Priscilla del Norte, where was she when you found her?
A: Inside the sala, sir.[28]

In fact, it seems that the authorities had difficulty looking for the drugs which were not in plain view, *viz*:

Atty. Yap to witness —

Q: You made mention about the bricks found?
A: Yes, Sir.

Q: And you said further that it was inside the room?
A: Yes, Sir.

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[27] TSN, SPO1 Angel Lumabas, July 22, 1999, p. 4.
[28] *Id.*, p. 6.

Q: Now, when you entered the room, was it locked?
A: No, Sir.

Q: As a matter of fact, there was no padlock of that room, is it correct?
A: I did not notice, sir, but it was open.

Q: And this alleged marijuana was protruding under the bed?
A: No, sir but it was under the bed, "*dulong-dulo*."

Q: Was it also the same plastic bag?
A: No, Sir.

Q: Was it also already wrapped in newspaper?
A: No, sir, only plastic tape. We were not able to notice that it was marijuana because it is (*sic*) wrapped in a plastic tape.

Q: How long did you search?
A: Half an hour, sir.[29]

The prosecution's weak evidence likewise shows from the following testimony:

Atty. Yap to witness —

Q: Were you able to search the personal effects?
A: "*Yung iba*."

Q: Did you find any I.D. (of the persons) who occupy this room?
A: No, sir.

Q: In other words, your assumption is because Priscilla del Norte was around so (*sic*) it follows that she was the possessor of that illegal drugs?
A: Yes, sir because it is their house.

Q: Was there a picture or photograph taken inside the room of that particular person?
A: None, sir.

Q: So a family lived thereat?
A: None, sir.

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[29] *Id*., at 10-11.

Q: Was there a separate picture of Ising Gutierrez?
A: I did not see any.

Q: *There was no incriminating evidence except this (sic) drugs taken by Police Officer de Leon and the barangay tanod, no other incriminating evidence?*
A: *None, sir.* (*italics supplied*)

In all criminal cases, it is appellant's constitutional right to be presumed innocent until the contrary is proved beyond reasonable doubt.[30] In the case at bar, we hold that the prosecution's evidence treads on shaky ground. We detest drug addiction in our society. However, we have the duty to protect appellant where the evidence presented show "insufficient factual nexus" of her participation in the commission of the offense charged.[31] In *People vs. Laxa,*[32] we held:

> The government's drive against illegal drugs deserves everybody's support. But it cannot be pursued by ignoble means which are violative of constitutional rights. It is precisely when the government's purposes are beneficent that we should be most on our guard to protect these rights. As Justice Brandeis warned long ago, "the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning without understanding."

IN VIEW WHEREOF, the decision of Branch 28 of the Regional Trial Court of Caloocan City is reversed. Appellant is acquitted based on reasonable doubt.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

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[30] Article III, Section 14, 1987 Philippine Constitution.

[31] *People v. Edelma Lagata y Manfoste*, G.R. No. 135323, June 25, 2003.

[32] 361 SCRA 622 (2001).

SECOND DIVISION

[G.R. No. 153176. March 29, 2004]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. ZEIDA AURORA B. GARFIN, In her capacity as Presiding Judge of RTC, Branch 19, of the City of Naga and SERAFIN SABALLEGUE,** *respondents*.

SYNOPSIS

The Regional State Prosecutor of Legapi City accused private respondent Serafin Saballegue of violation of Section 22(a) in relation to Sections 19(b) and 28(e) of Republic Act No. 8282 otherwise known the "Social Security Act" which was raffled to Branch 19 of the Regional Trial Court of Naga City. Private respondent pled not guilty to the offense charged. However, upon motion, it was dismissed by the trial court on the ground that the information was filed without prior written authority or approval of the city prosecutor as required under Section 4, Rule 112 of the Revised Rules of Court. Hence, this petition.

The Court held that, in the absence of a directive from the Secretary of Justice designating State Prosecutor Tolentino as Special Prosecutor for SSS cases or a prior written approval of the information by the provincial or city prosecutor, the information in Criminal Case No. RTC 2001-0597 was filed by an officer without authority to file the same. As this infirmity in the information constitutes a jurisdictional defect that cannot be cured, the respondent judge did not err in dismissing the case for lack of jurisdiction.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION FOR RECONSIDERATION; CAN BE FILED ON THE NEXT WORKING DAY IF THE LAST DAY OF FILING IS GOOD FRIDAY. — Respondent contends that the motion for reconsideration filed on April 1, 2002 is late because it was filed eighteen days after March 14, 2002, the date when petitioner

received the first questioned order. Respondent has overlooked that the 15th day after March 14 is a Good Friday. Hence, petitioner's last day to file the motion for reconsideration was on the next working day after Good Friday, April 1.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; *PRO FORMA* MOTION FOR NEW TRIAL OR RECONSIDERATION SHALL NOT TOLL THE REGLEMENTARY PERIOD OF APPEAL; NOT APPLICABLE IN CASE AT BAR. — Next, respondent argues that having been considered as a mere scrap of paper, the motion for reconsideration of the petitioner did not toll the running of the reglementary period. Respondent, however, erroneously assumes that the present case is an appeal by *certiorari* under Rule 45. As stated at the outset, this is an original petition for *certiorari* and *mandamus* under Rule 65. Sec. 2, Rule 37 of the Rules of Court is clear. It provides that "(a) *pro forma* motion for new trial or *reconsideration* shall not toll the reglementary period *of appeal."* Hence, the same provision has no application in the case at bar.

3. POLITICAL LAW; ADMINISTRATIVE LAW; POWER OF ADMINISTRATIVE SUPERVISION DISTINGUISHED FROM THE POWER OF "SUPERVISION AND CONTROL." — The power of administrative supervision is limited to "the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them." This is distinguished from the power of "supervision and control" which includes the authority "to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs."

4. ID.; ID.; ADMINISTRATIVE AGENCIES; DEPARTMENT OF JUSTICE; REGIONAL STATE PROSECUTOR IS VESTED ONLY WITH THE POWER OF ADMINISTRATIVE SUPERVISION. — The Regional State Prosecutor is clearly vested only with the power of administrative supervision. As administrative supervisor, he has no power to direct the city and provincial prosecutors to inhibit from handling certain cases. At most, he can request for their inhibition. Hence, the said directive of the regional state prosecutor to the city and provincial prosecutors is questionable to say the least.

5. ID.; ID.; PRESIDENTIAL DECREE NO. 1275; REGIONAL STATE PROSECUTOR WAS NOT GRANTED THE POWER TO APPOINT SPECIAL PROSECUTOR ARMED WITH THE AUTHORITY TO FILE AN INFORMATION. — Petitioner cannot lean on the cases of *Galvez* and *Sanchez.* In those cases, the special prosecutors were acting under the directive of the Secretary of Justice. They were appointed in accordance with law. Nowhere in P.D. No. 1275 is the regional state prosecutor granted the power to appoint a special prosecutor armed with the authority to file an information without the prior written authority or approval of the city or provincial prosecutor or chief state prosecutor.

6. ID.; ID.; DEPARTMENT OF JUSTICE ORDER NO. 318; REGIONAL STATE PROSECUTORS WERE ORDERED TO INVESTIGATE AND/OR PROSECUTE, UPON THE DIRECTIVE OF THE SECRETARY OF JUSTICE, SPECIFIC CRIMINAL CASES FILED WITHIN THE REGION. — Under Department Order No. 318, "Defining the authority, duties and responsibilities of regional state prosecutors," then Acting Secretary of Justice Silvestre H. Bello III ordered the appointed regional state prosecutors (which included Regional State Prosecutor Turingan for Region V) to, among others, "(i)nvestigate and/or prosecute, *upon the directive of the Secretary of Justice*, specific criminal cases filed within the region."

7. ID.; ID.; DEPARTMENT OF JUSTICE CIRCULAR NO. 27, S. 2001; ALL IMPORTANT CASES OF THE SOCIAL SECURITY SYSTEM SHOULD BE REFERRED TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL. — In the case at bar, there is no pretense that a

directive was issued by the Secretary of Justice to Regional State Prosecutor Turingan to investigate and/or prosecute SSS cases filed within his territorial jurisdiction. A bare reading of the alleged letter of commendation by then Secretary Hernando Perez would show that it does not amount to a directive or even a recognition of this authority. In fact, while the letter of Secretary Perez commends the efforts of Regional State Prosecutor Turingan in successfully prosecuting SSS cases, it also negates his authority to prosecute them. Secretary Perez called the Regional State Prosecutor's attention to DOJ Circular No. 27, series of 2001, which states that all important cases of the SSS should be referred to the Office of the Government Corporate Counsel. Thus, Regional State Prosecutor Turingan cannot be considered a special prosecutor within the meaning of the law.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; PRIOR AUTHORITY OR APPROVAL OF THE CITY, PROVINCIAL OR CHIEF STATE PROSECUTOR IS NECESSARY BEFORE AN INFORMATION CAN BE FILED BEFORE THE PROPER COURT. — Petitioner argues that the word "may" is permissive. Hence, there are cases when prior written approval is not required, and this is one such instance. This is too simplistic an interpretation. Whether the word "may" is mandatory or directory depends on the context of its use. We agree with the OSG that the use of the permissive word "may" should be read together with the other provisions in the same section of the Rule. The paragraph immediately preceding the quoted provision shows that the word "may" is mandatory. It states: Sec. 4, Rule 112. – x x x Within five (5) days from his resolution, he (investigating prosecutor) *shall* forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

9. ID.; ID.; ID.; LACK OF AUTHORITY ON THE PART OF THE FILING OFFICER PREVENTS THE COURT FROM ACQUIRING JURISDICTION OVER THE CASE. — The case of *Villa vs. Ibañez, et al.* is authority for the principle that lack of authority on the part of the filing officer prevents

the court from acquiring jurisdiction over the case. Jurisdiction over the subject matter is conferred by law while jurisdiction over the case is invested by the act of plaintiff and attaches upon the filing of the complaint or information. Hence, while a court may have jurisdiction over the subject matter, like a violation of the SSS Law, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of the information.

10. ID.; ID.; ID.; ID.; APPLIED IN CASE AT BAR. — [W]e hold that, in the absence of a directive from the Secretary of Justice designating State Prosecutor Tolentino as Special Prosecutor for SSS cases or a prior written approval of the information by the provincial or city prosecutor, the information in Criminal Case No. RTC 2001-0597 was filed by an officer without authority to file the same. As this infirmity in the information constitutes a jurisdictional defect that cannot be cured, the respondent judge did not err in dismissing the case for lack of jurisdiction.

11. ID.; ID.; THE MOMENT THE CHOICE OF THE COURT WHERE TO BRING AN ACTION HAS BEEN EXERCISED, THE MATTER BECOMES JURISDICTIONAL — In the United States, an information has been held as a jurisdictional requirement upon which a defendant stands trial. Thus, it has been ruled that in the absence of probable cause, the court lacks jurisdiction to try the criminal offense. In our jurisdiction, we have similarly held that: "While the choice of the court where to bring an action, where there are two or more courts having concurrent jurisdiction thereon, is a matter of procedure and not jurisdiction, as suggested by appellant, the moment such choice has been exercised, the matter becomes jurisdictional. *Such choice is deemed made when the proper complaint or information is filed with the court having jurisdiction over the crime, and said court acquires jurisdiction over the person of the defendant, from which time the right and power of the court to try the accused attaches. It is not for the defendant to exercise that choice, which is lodged upon those who may validly file or subscribe to the complaint or information under Sections 2 and 3 of Rule 106 of the Rules of Court."*

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Alfredo Abundo for respondent.

D E C I S I O N

PUNO, *J.*:

For determination in this petition is a question in procedural law — whether an information filed by a state prosecutor without the prior written authority or approval of the city or provincial prosecutor or chief state prosecutor should be dismissed after the accused has entered his plea under the information.

Petitioner comes before us with a petition for *certiorari* and *mandamus* under Rule 65 of the Revised Rules of Court, seeking to declare as null and void the Orders issued by the Regional Trial Court of Naga City, Branch 19 dated February 26, 2002[1] and April 3, 2002[2] which dismissed for lack of jurisdiction the case of *People vs. Serafin Saballegue*, Criminal Case No. RTC 2001-0597, and denied petitioner's motion for reconsideration.

The antecedent facts are undisputed.

On June 22, 2001, private respondent was charged with violation of Section 22(a) in relation to Sections 19(b) and 28(e) of Republic Act No. 8282, otherwise known as the "Social Security Act," in an information which reads:

> The undersigned State Prosecutor of the Office of the Regional State Prosecutor, Legazpi City, accuses SERAFIN SABALLEGUE, as proprietor of Saballegue Printing Press with business address at 16 San Mateo St., Peñafrancia Ave., Naga City for Violation of Section 22(a) in relation to Sections 19(b) and 28(e) of R.A. 8282 otherwise known as the Social Security Act of 1997, committed as follows:

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[1] *Rollo*, pp. 42-44.

[2] *Id*. at 51.

That on or about February 1990 and up to the present, in the City of Naga, Philippines, within the functional jurisdiction of SSS Naga Branch and the territorial jurisdiction of this Honorable Court, the above named accused, while being the proprietor of Saballegue Printing Press, did then and there willfully, unlawfully, and criminally refuse and fail and continuously refuse and fail to remit the premiums due for his employee to the SSS in the amount of SIX THOUSAND FIVE HUNDRED THIRTY-THREE PESOS (₱6,533.00), Philippine Currency, representing SSS and EC premiums for the period from January 1990 to December 1999 (n.i.), and the 3% penalty per month for late remittance in the amount of ELEVEN THOUSAND ONE HUNDRED FORTY-THREE PESOS and 28/100 (₱11,143.28) computed as of 15 March 2000, despite lawful demands by letter in violation of the above-cited provisions of the law, to the damage and prejudice of the SSS and the public in general.

CONTRARY TO LAW.

Legazpi City for Naga City. 22 June 2001.

(sgd.) ROMULO SJ. TOLENTINO
State Prosecutor
Special Prosecutor on SSS Cases
in Region V[3]

The information contains a certification signed by State Prosecutor Romulo SJ. Tolentino which states:

I hereby certify that the required investigation in this case has been conducted by the undersigned Special Prosecutor in accordance with law and under oath as officer of the court, that there is reasonable ground to believe that the offense has been committed, that the accused is probably guilty thereof and that the filing of the information is with the prior authority and approval of the Regional State Prosecutor.[4]

The case was raffled to Branch 19 of the Regional Trial Court of Naga City presided by respondent judge Hon. Zeida

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[3] *Id*. at 52.

[4] *Id*. at 53.

Aurora B. Garfin. On September 24, 2001, accused Serafin Saballegue pleaded not guilty to the charge and the case was set for pre-trial.[5] Three days thereafter, the accused filed a motion to dismiss[6] on the ground that the information was filed without the prior written authority or approval of the city prosecutor as required under Section 4, Rule 112 of the Revised Rules of Court.[7]

The People, through State Prosecutor Tolentino, filed an opposition,[8] against which the accused filed a rejoinder.[9] The People filed a reply to the rejoinder[10] on December 21, 2001. A rejoinder to the reply[11] was filed by the accused on January 21, 2002.

After considering the arguments raised, the trial court granted the motion to dismiss in its first questioned Order dated February 26, 2002, to wit:

> After considering the respective arguments raised by the parties, the Court believes and so resolves that the Information has not been filed in accordance with Section 4, par. 3 of Rule 112 of the 2000 Rules on Criminal Procedure, thus:
>
> 'Rule 112, Section 4 x x x
>
> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.'

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[5] Original Records, p. 44.

[6] *Id*. at 46.

[7] Rule 112, Section 4, paragraph (3) provides that, "(n)o complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy."

[8] Original Records, p. 49.

[9] *Id*. at 56.

[10] *Id*. at 61.

[11] *Id*. at 64.

Expresio unius est exclusio alterius.

The Information will readily show that it has not complied with this rule as it has not been approved by the City Prosecutor.

This Court holds that the defendant's plea to the Information is not a waiver to file a motion to dismiss or to quash on the ground of lack of jurisdiction. By express provision of the rules and by a long line of decisions, questions of want of jurisdiction may be raised at any stage of the proceedings (*People vs. Eduarte*, 182 SCRA 750).

The Supreme Court in *Villa vs. Ibañez* (88 Phil 402) dwelt on lack of authority of the officer who filed the information and on jurisdiction at the same time, pertinent portions run as follows:

> The defendant had pleaded to the information before he filed a motion to quash, and it is contended that by his plea he waived all objections to the information. The contention is correct as far as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of Section 10 of Rule 113 of the Rules of Court, and by a long line of uniform decisions, questions of want of jurisdiction may be raised at any stage of the proceedings. Now, the objection to the respondent's actuations goes to the very foundations of jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity of the nature noted in the information cannot be cured by silence, acquiescence, or even by express consent.

Prosecutor Tolentino also contends that having been duly designated to assist the City Prosecutor in the investigation and prosecution of all SSS cases by the Regional State prosecutor as alter ego of the Secretary of Justice in Region V, then that authority may be given to other than the City Prosecutor. The Court finds this contention to be devoid of merit. The Regional State Prosecutor is not the alter ego of the Secretary of Justice but a mere subordinate official and if ever the former files cases, it is by virtue of a delegated authority by the Secretary of Justice. *Potestas delegada non potesta delegare* (*sic*) — what has been delegated cannot be redelegated.

In his opposition, the state prosecutor also attached a memorandum dated June 22, 2001 by Regional State Prosecutor Santiago M.

Turingan addressed to Provincial Prosecutor and City Prosecutors of Region V directing them to inhibit and to append the following NOTATION after the certification in the Information for filing.

> NOTATION: The herein City/Provincial Prosecutor is inhibiting from this case and the Special Prosecution Team on SSS Cases in Region V is authorized to dispose of the case without my approval in view of the request for inhibition of the SSS Regional Manager as granted by the Regional State Prosecutor.

A perusal of the Information, however, would readily show that nowhere in the Information has the City Prosecutor of Naga City appended the above-quoted notation/inhibition. At most, the authority of the special prosecutor is only for the conduct of preliminary investigations and the prosecution of cases after they are filed. The Court, however, believes that the filing of this Information must be in conformity with the Rules on Criminal Procedure, particularly Section 4 of Rule 112.

WHEREFORE, premises considered and for lack of jurisdiction, the Court hereby resolves to DISMISS this case without pronouncement as to cost.

SO ORDERED.[12]

A motion for reconsideration was filed by the People contending that as a special prosecutor designated by the regional state prosecutor to handle SSS cases within Region V, State Prosecutor Tolentino is authorized to file the information involving violations of the SSS law without need of prior approval from the city prosecutor.[13] Letters of commendation from Chief State Prosecutor Jovencito Zuño[14] and Secretary Hernando Perez [15] were offered as proof to show that State Prosecutor Tolentino's authority to file the information was recognized. In response,

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[12] *Supra* note 1.

[13] *Rollo*, p. 45.

[14] *Id*. at 47.

[15] *Id*. at 48.

the defense pointed out in its opposition that the motion for reconsideration lacked a notice of hearing, hence it is *pro forma* or a mere scrap of paper.[16]

On April 3, 2002, respondent judge issued the second questioned Order which reads:

> Acting upon the Motion for Reconsideration filed by State Prosecutor Romulo SJ. Tolentino, Special Prosecutor on SSS cases in Region V, and it appearing that the same has failed to comply with the requirement of notice prescribed in Sections 4 and 5, Rule 15 of the Rules of Court, the same is hereby DENIED for being a mere scrap of paper.
>
> SO ORDERED.[17]

Hence, this petition by the People through Regional State Prosecutor Santiago Turingan and State Prosecutor Romulo SJ. Tolentino. Petitioner attributes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent judge, *viz*:[18]

1. RESPONDENT JUDGE DISMISSED THE INFORMATION WITHOUT THE REQUIRED SUPPORTING FACTUAL AND LEGAL BASES;
2. RESPONDENT JUDGE DELIBERATELY AND CAPRICIOUSLY IGNORED THE PRESUMPTION OF REGULARITY IN FAVOR OF THE PROSECUTION WITHOUT THE REQUIRED SUFFICIENCY OF REBUTTAL EVIDENCE. THE WORD "MAY" IN SEC. 4, RULE 112 OF THE RULES OF COURT IS NOT MANDATORY;
3. RESPONDENT JUDGE COMMITTED GRAVE ERROR IN DELIBERATELY IGNORING THE JUDICIALLY KNOWN INHIBITION OF THE CITY PROSECUTOR AND THE SETTLED JURISPRUDENCE ON THE MATTER;
4. RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION IN INTERFERING WITH THE PURELY EXECUTIVE FUNCTION

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[16] Original Records, p. 78.

[17] *Rollo*, p. 51.

[18] *Id*. at 17.

OF FILING AN INFORMATION BY RULING ON THE AUTHORITY OF THE FILING OFFICER TO FILE THE INFORMATION.

The Office of the Solicitor General (OSG) filed its comment[19] in compliance with this Court's Resolution dated September 23, 2002.[20] It opines that the dismissal of the information is mandated under Section 4, Rule 112 of the Rules of Criminal Procedure.

Private respondent contends that:[21] 1) the instant petition was filed out of time; 2) the special State Prosecutor is only authorized to conduct preliminary investigation and prosecution of SSS cases and not to sign the information; and 3) the City Prosecutor did not expressly inhibit himself from handling SSS cases nor signing the information.

We shall first resolve the procedural issues. Respondent contends that the motion for reconsideration filed on April 1, 2002 is late because it was filed eighteen days after March 14, 2002, the date when petitioner received the first questioned order. Respondent has overlooked that the 15th day after March 14 is a Good Friday. Hence, petitioner's last day to file the motion for reconsideration was on the next working day after Good Friday, April 1.[22]

Next, respondent argues that having been considered as a mere scrap of paper, the motion for reconsideration of the petitioner did not toll the running of the reglementary period. Respondent, however, erroneously assumes that the present case is an appeal by *certiorari* under Rule 45. As stated at the outset, this is an original petition for *certiorari* and *mandamus* under Rule 65.

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[19] *Id*. at 126.

[20] *Id*. at 170.

[21] *Id*. at 465.

[22] Section 1, Rule 22, Revised Rules of Civil Procedure.

Sec. 2, Rule 37 of the Rules of Court is clear. It provides that "(a) *pro forma* motion for new trial or *reconsideration* shall not toll the reglementary period *of appeal*." (*italics supplied*) Hence, the same provision has no application in the case at bar.

The reckoning date is the receipt of the second questioned Order and not the receipt of the first. Section 4, Rule 65, as amended by *En Banc* Resolution A.M. No. 00-2-03-SC, September 1, 2000, provides, *viz*:

> Sec. 4. When and where petition filed. — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from notice of the denial of said motion.
>
> x x x x x x x x x

As shown by the records, petitioner received the first questioned order dated February 26, 2002 on March 14, 2002.[23] A motion for reconsideration was timely filed on April 1, 2002[24] which was dismissed for lack of notice of hearing in an Order dated April 3, 2002.[25] This second questioned order was received by petitioner on April 11, 2002.[26] A motion for extension of time to file a petition for review on *certiorari* was filed on April 18, 2002.[27] A motion for leave to file and admit the instant petition for *certiorari* and *mandamus* was filed on May 29, 2002.[28] Having been filed within the reglementary period, petitioner's motion for leave to file the instant petition was granted in this Court's Resolution dated July 15, 2002.[29]

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[23] *Rollo*, p. 45.

[24] *Ibid*.

[25] *Supra* note 2.

[26] *Rollo*, p. 11.

[27] *Id*. at 2.

[28] *Id*. at 75.

[29] *Id*. at 77.

We now come to the other issue: whether the prior written authority and approval of the city or provincial prosecutor or chief state prosecutor is necessary in filing the information at bar.

Petitioner takes the unbending view that the approval of the city or provincial prosecutor is no longer required. It is contended that the Regional State Prosecutor has already directed the city or provincial prosecutor to inhibit from handling SSS cases.[30] Petitioner cites the letter of Regional State Prosecutor Santiago M. Turingan to SSS Regional Director in Naga City dated June 6, 1997[31] and copies of Regional Orders No. 97-024-A[32] and 2001-033[33] dated July 14, 1997 and September 28, 2001, respectively, showing the designation of State Prosecutor Tolentino as special prosecutor for SSS cases in Region V. Petitioner relies on *Galvez, et al. v. Court of Appeals, et al.*[34] and *Sanchez v. Demetriou, et al.*[35] to prop up its contention that given the designation of State Prosecutor Tolentino, the city prosecutor need not participate in the filing and prosecution of the information in the case at bar.

We disagree. Under Presidential Decree No. 1275, the powers of a Regional State Prosecutor are as follows:

> Sec. 8. The Regional State Prosecution Office: Functions of Regional State Prosecutor. — The Regional State Prosecutor shall, *under the control of the Secretary of Justice*, have the following functions:
>
> a) Implement policies, plans, programs, memoranda, orders, circulars and rules and regulations of the Department of Justice relative to the investigation and prosecution of criminal cases in his region.

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[30] *Id*. at 62.

[31] *Id*. at 71.

[32] *Id*. at 72.

[33] *Id*. at 73.

[34] 237 SCRA 685 (1994).

[35] 227 SCRA 627 (1993).

b) Exercise *immediate administrative supervision* over all provincial and city fiscals and other prosecuting officers of provinces and cities comprised within his region.

c) Prosecute any case arising within the region.

d) With respect to his regional office and the offices of the provincial and city fiscals within his region, he shall:

1) Appoint such member of subordinate officers and employees as may be necessary; and approve transfers of subordinate personnel within the jurisdiction of the regional office.

2) Investigate administrative complaints against fiscals and other prosecuting officers within his region and submit his recommendation thereon to the Secretary of Justice who shall, after review thereof, submit the appropriate recommendation to the Office of the President: *Provided*, that where the Secretary of Justice finds insufficient grounds for the filing of charges, he may render a decision of dismissal thereof.

3) Investigate administrative complaints against subordinate personnel of the region and submit his recommendations thereon to the Secretary of Justice who shall have the authority to render decision thereon. (italics supplied)

The power of administrative supervision is limited to "the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them."[36] This is distinguished from the power of

[36] Sec. 38 (2), Chapter 7, Book IV, Executive Order No. 292 otherwise known as the "Administrative Code of 1987."

"supervision and control" which includes the authority "to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs."[37]

The Regional State Prosecutor is clearly vested only with the power of administrative supervision. As administrative supervisor, he has no power to direct the city and provincial prosecutors to inhibit from handling certain cases. At most, he can request for their inhibition. Hence, the said directive of the regional state prosecutor to the city and provincial prosecutors is questionable to say the least.

Petitioner cannot lean on the cases of *Galvez* and *Sanchez*. In those cases, the special prosecutors were acting under the directive of the Secretary of Justice. They were appointed in accordance with law. Nowhere in P.D. No. 1275 is the regional state prosecutor granted the power to appoint a special prosecutor armed with the authority to file an information without the prior written authority or approval of the city or provincial prosecutor or chief state prosecutor. P.D. No. 1275 provides the manner by which special prosecutors are appointed, to wit:

> Sec. 15. Special Counsels. — Whenever the exigencies of the service require the creation of positions of additional counsel to assist provincial and city fiscals in the discharge of their duties, *positions of Special Counsels may be created by any province or city, subject to the approval of the Secretary of Justice,* and with salaries chargeable against provincial or city funds. *The Secretary of Justice shall appoint said Special Counsels, upon recommendation of the provincial or city fiscal and regional state prosecutors concerned, either on permanent or temporary basis.*
>
> Special Counsel shall be appointed from members of the bar and

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[37] *Id.,* Sec. 38(1).

shall be allowed not more than the salary rate provided in this Decree for the lowest rank or grade of assistant fiscal in the province or city where assigned. (italics supplied)

Under Department Order No. 318,[38] "Defining the authority, duties and responsibilities of regional state prosecutors," then Acting Secretary of Justice Silvestre H. Bello III ordered the appointed regional state prosecutors (which included Regional State Prosecutor Turingan for Region V) to, among others, "(i)nvestigate and/or prosecute, *upon the directive of the Secretary of Justice*, specific criminal cases filed within the region." (italics supplied)

In the case at bar, there is no pretense that a directive was issued by the Secretary of Justice to Regional State Prosecutor Turingan to investigate and/or prosecute SSS cases filed within his territorial jurisdiction. A bare reading of the alleged letter of commendation by then Secretary Hernando Perez would show that it does not amount to a directive or even a recognition of this authority. In fact, while the letter of Secretary Perez commends the efforts of Regional State Prosecutor Turingan in successfully prosecuting SSS cases, it also negates his authority to prosecute them. Secretary Perez called the Regional State Prosecutor's attention to DOJ Circular No. 27, series of 2001, which states that all important cases of the SSS should be referred to the Office of the Government Corporate Counsel.[39] Thus, Regional State Prosecutor Turingan cannot be considered a special prosecutor within the meaning of the law.

Petitioner argues that the word "may" is permissive. Hence, there are cases when prior written approval is not required, and this is one such instance. This is too simplistic an interpretation. Whether the word "may" is mandatory or directory depends on the context of its use. We agree with the OSG that the use of the permissive word "may" should be read together with the other provisions in the same section of the Rule. The paragraph

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[38] Dated August 28, 1991.

[39] *Rollo*, p. 48.

immediately preceding the quoted provision shows that the word "may" is mandatory. It states:

> Sec. 4, Rule 112. — x x x
>
> Within five (5) days from his resolution, he (investigating prosecutor) *shall* forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action. (*italics supplied*)

Having settled that the prior authority and approval of the city, provincial or chief state prosecutor should have been obtained, we shall now resolve the more important issue: whether the lack of prior written approval of the city, provincial or chief state prosecutor in the filing of an information is a defect in the information that is waived if not raised as an objection before arraignment.

We hold that it is not.

The provisions in the 2000 Revised Rules of Criminal Procedure that demand illumination are Sections 3 and 9 of Rule 117 in relation to paragraph 3, Section 4 of Rule 112, to wit:

> Rule 117, Section 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:
>
> (a) That the facts charged do not constitute an offense;
>
> (b) That the court trying the case has no jurisdiction over the offense charged;
>
> (c) That the court trying the case has no jurisdiction over the person of the accused;
>
> *(d) That the officer who filed the information had no authority to do so;*
>
> (e) That it does not conform substantially to the prescribed form;
>
> (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

x x x x x x x x x

Section 9. Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule. (*italics supplied*)

Rule 112, Section 4, paragraph 3 provides, *viz*:

No complaint or information may be filed or dismissed by an investigating prosecutor without the *prior written authority or approval of the provincial or city prosecutor or chief state prosecutor* or the Ombudsman or his deputy. (*italics supplied*)

Private respondent and the OSG take the position that the lack of prior authority or approval by the city or provincial prosecutor or chief state prosecutor is an infirmity in the information that prevented the court from acquiring jurisdiction over the case. Since lack of jurisdiction is a defect that may be raised as an objection anytime even after arraignment, the respondent judge did not err in granting the motion to dismiss based on this ground. As basis, they cite the case of *Villa v. Ibañez, et al.*[40] where we held, *viz*:

The defendant had pleaded to an information before he filed a motion to quash, and it is contended that by his plea he waived all objections to the informations. The contention is correct as far as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of Section 10 of Rule 113 of the Rules of Court (now Section 9 of Rule 117), and by a long line

[40] 88 Phil. 402 (1951).

of uniform decisions, questions of want of jurisdiction may be raised at any stage of the proceeding. Now, *the objection to the respondent's actuations goes to the very foundation of the jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity in the information cannot be cured by silence, acquiescence, or even by express consent.*[41] (*italics supplied*)

The case of *Villa* is authority for the principle that lack of authority on the part of the filing officer prevents the court from acquiring jurisdiction over the case. Jurisdiction over the subject matter is conferred by law while jurisdiction over the case is invested by the act of plaintiff and attaches upon the filing of the complaint or information.[42] Hence, while a court may have jurisdiction over the subject matter, like a violation of the SSS Law, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of the information.

In the United States, an information has been held as a jurisdictional requirement upon which a defendant stands trial. Thus, it has been ruled that in the absence of probable cause, the court lacks jurisdiction to try the criminal offense.[43] In our jurisdiction, we have similarly held that:

While the choice of the court where to bring an action, where there are two or more courts having concurrent jurisdiction thereon, is a matter of procedure and not jurisdiction, as suggested by appellant, the moment such choice has been exercised, the matter becomes jurisdictional. *Such choice is deemed made when the proper complaint or information is filed with the court having jurisdiction over the crime, and said court acquires jurisdiction over the person of the defendant, from which time the right and power of the court to try the accused attaches. (citations omitted) It is not for the defendant to exercise that choice, which is lodged upon those who may validly file or subscribe to the complaint or information under*

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[41] *Id*. at 405.

[42] C.D. Quiason, *Philippine Courts and their Jurisdictions* (1982), p. 89.

[43] Am Jur 2d Vol. 41, Sec. 19, p. 659 (1995).

Sections 2 and 3 of Rule 106 of the Rules of Court.[44] (*italics supplied*)

A closer look at *Villa* would be useful in resolving the issue at hand. In that case, Atty. Abelardo Subido, Chief of the Division of Investigation in the Office of the Mayor of Manila, was appointed by the Secretary of Justice as special counsel to assist the City Fiscal of Manila in the cases involving city government officials or employees. Pursuant to his appointment, Atty. Subido filed an information against Pedro Villa for falsification of a payroll. Atty. Subido's authority to file the information was challenged on the ground that he was disqualified for appointment under Section 1686 of the Revised Administrative Code, as amended by Section 4 of Commonwealth Act No. 144, to wit:

> SEC. 1686. Additional counsel to assist fiscal. — The Secretary of Justice may appoint any lawyer, being either a subordinate from his office or a competent person not in the public service, temporarily to assist a fiscal or prosecuting attorney in the discharge of his duties, and with the same authority therein as might be exercised by the Attorney General or Solicitor General.[45]

We held, *viz*:

> Appointments by the Secretary of Justice in virtue of the foregoing provisions of the Revised Administrative Code, as amended, were upheld in *Lo Cham vs. Ocampo et al*., 44 Official Gazette, 458, and *Go Cam et al., vs. Gatmaitan et al*., (47 Official Gazette, 5092). But in those cases, the appointees were officials or employees in one or another of the bureaus or offices under the Department of Justice, and were rightly considered subordinates in the office of the Secretary of Justice within the meaning of Section 1686, *ante*.

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[44] *Alimajen v. Valera*, 107 Phil. 244, 245 (1960).

[45] Under Republic Act No. 4007 (June 18, 1964), the Secretary may now appoint any lawyer in the government service provided that if the person is outside the jurisdiction of the Department of Justice, such appointment may only be made with the consent of the Department Head concerned.

The case at bar does not come within the rationale of the above decisions. Attorney Subido is a regular officer or employee in the Department of Interior, more particularly in the City Mayor's office. For this reason, he belongs to the class of persons disqualified for appointment to the post of special counsel.

That to be eligible as special counsel to aid a fiscal the appointee must be either an employee or officer in the Department of Justice is so manifest from a bare reading of Section 1686 of the Revised Administrative Code as to preclude construction. And the limitation of the range of choice in the appointment or designation is not without reason.

The obvious reason is to have appointed only lawyers over whom the Secretary of Justice can exercise exclusive and absolute power of supervision. An appointee from a branch of the government outside the Department of Justice would owe obedience to, and be subject to orders by, mutually independent superiors having, possibly, antagonistic interests. Referring particularly to the case at hand for illustration, Attorney Subido could be recalled or his time and attention be required elsewhere by the Secretary of Interior or the City Mayor while he was discharging his duties as public prosecutor, and the Secretary of Justice would be helpless to stop such recall or interference. An eventuality or state of affairs so undesirable, not to say detrimental to the public service and specially the administration of justice, the Legislature wisely intended to avoid.

The application of the 1951 *Villa ruling* is not confined to instances where the person who filed the information is disqualified from being a special prosecutor under Section 1686 of the Revised Administrative Code, as amended, but has been extended to various cases where the information was filed by an unauthorized officer as in the case at bar. In *Cruz, Jr. v. Sandiganbayan, et al.*,[46] the Court held that it is a fundamental principle that when on its face the information is null and void for lack of authority to file the same, it cannot be cured nor resurrected by amendment. In that case, the Presidential Commission on Good Government (PCGG) conducted an investigation and filed an information with the Sandiganbayan against petitioner Roman Cruz, Jr.

[46] 194 SCRA 474 (1991).

charging him with graft and corruption. The petitioner sought to quash the information on the ground that the crime charged did not constitute a "Marcos crony related crime" over which the PCGG had authority to investigate and file an information. The Court found that the crime alleged in the information was not among those which PCGG was authorized to investigate under Executive Orders No. 1 and 14 of then President Corazon Aquino and ruled that the information was null and void. Of similar import is *Romualdez v. Sandiganbayan, et al.*[47] where we ruled that the information having been filed by an unauthorized party (the PCGG), the information was fatally flawed. We noted that this defect is not a mere remediable defect of form, but a defect that could not be cured.

In *Cudia v. Court of Appeals, et al.,*[48] we also reiterated the *Villa ruling*. The accused in that case was apprehended in Mabalacat, Pampanga for illegal possession of firearms and was brought to Angeles City where the headquarters of the arresting officers was located. The City Prosecutor of Angeles City filed an information in the Regional Trial Court of Angeles City. We invalidated the information filed by the City Prosecutor because he had no territorial jurisdiction, as the offense was committed in Mabalacat, Pampanga and his territorial jurisdiction was only in Angeles City. We held that an information, when required by law to be filed by a public prosecuting officer, cannot be filed by another.[49] Otherwise, the court does not acquire jurisdiction.[50] It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter thereof. The accused's plea to an information may be a waiver of all formal objections to the said information but not when there is want of jurisdiction. Questions relating to lack of jurisdiction may be raised at any stage of the proceeding. An

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[47] 385 SCRA 436 (2002).

[48] 284 SCRA 173 (1998).

[49] *Id*., citing 42 CJS Indictments and Informations S67.

[50] *Id*., citing 41 Am Jur 2d, Indictments and Informations S41.

infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent.[51]

Despite modifications of the provisions on unauthorized filing of information contained in the 1940 Rules of Criminal Procedure under which *Villa* was decided, the 1951 *Villa ruling* continues to be the prevailing case law on the matter.[52]

The 1940 Rules of Court provided in Rule 113, Section 10 that, if the defendant fails to move to quash the complaint or information before he pleads thereto, he shall be taken to have waived all objections which are grounds for a motion to quash *except* (1) "when the complaint or information does not charge an offense" or (2) "the *court is without jurisdiction* of the same." (*italics ours*) Among the enumerated grounds for a motion to quash under Section 2 of the same Rule was "(t)hat the fiscal has no authority to file the information." With only the above two exceptions provided by the 1940 Rules, the Court nevertheless made the *Villa ruling* that if the filing officer lacks authority to file the information, jurisdiction is not conferred on the court and this infirmity cannot be cured by silence or waiver, acquiescence, or even by express consent.

The 1940 Rules of Court was amended in 1964. With only minimal changes introduced, the 1964 Rules of Court contained provisions on unauthorized filing of information similar to the above provisions of the 1940 Rules.[53]

Then came the 1985 Rules of Criminal Procedure. Lack of authority of the officer who filed the information was also a

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[51] *Id*., citing *Villa v. Ibanez,* 88 Phil. 402 (1951).

[52] *See* Regalado, F., *Remedial Law Compendium* (2000), p. 408; Agpalo, R., *Handbook on Criminal Procedure* (2001), pp. 365-367; Pineda, E., *The Revised Rules on Criminal Procedure* (2003), p. 346.

[53] Rule 117 provides in relevant part, *viz*:

Sec. 2. *Motion to Quash — Grounds*. — The defendant may move to quash the complaint or information on any of the following grounds:

ground for a motion to quash under these rules. The 1985 Rules also provided for waiver of the grounds for a motion to quash under Rule 117, Section 8, but enumerated the following exceptions to the waiver: (a) the facts charged do not constitute an offense; (b) the court trying the case has no jurisdiction over the offense charged or the person of the accused; (c) the criminal action or liability has been extinguished; and (d) the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged. Apparently, the want of jurisdiction under the 1985 Rules refers to jurisdiction over the offense and the person, and not *over the case* as in *Villa* where the court did not acquire jurisdiction over the case for lack of authority of the officer who filed the information. Still, despite the enumeration, the Court continued to apply the *Villa ruling* as shown in the afore-cited *Cruz* and *Cudia* cases.

The 1985 Rules was amended in 2000. The 2000 Revised Rules of Criminal Procedure also provide for lack of authority of the filing officer as among the grounds for a motion to quash and the waiver of these grounds. Similar to the 1985 Rules, the Revised Rules enumerate the exceptions from the waiver, namely: (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense

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x x x x x x x x x

(c) (t)hat the officer who has filed the information has no authority to do so; x x x"

x x x x x x x x x

Sec. 10. Failure to move to quash — Effect of Exception. — If the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or *the court is without jurisdiction of the same*. If, however, the defendant learns after he has pleaded or has moved to quash on some other ground that the offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court may in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction, acquittal or jeopardy.

charged; (c) that the criminal action or liability has been extinguished; and (d) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. Under the regime of the 2000 Revised Rules, we reiterated the *Villa ruling* in the above-cited *Romualdez case*. With the enumeration of the four exceptions, which was almost a replica of the enumeration in the 1985 Rules, the 2000 Rules did not intend to abandon *Villa*. The *Villa ruling* subsisted alongside the enumerated exceptions under the 1985 Rules, and it remains to do so under the enumerated exceptions under the 2000 Rules. Neither the Rationale of the 2000 Revised Rules of Criminal Procedure nor the Minutes of the Meeting of the Committee on the Revision of the Rules of Court evinces any intent to abandon the doctrine enunciated in *Villa*.

In sum, we hold that, in the absence of a directive from the Secretary of Justice designating State Prosecutor Tolentino as Special Prosecutor for SSS cases or a prior written approval of the information by the provincial or city prosecutor, the information in Criminal Case No. RTC 2001-0597 was filed by an officer without authority to file the same. As this infirmity in the information constitutes a jurisdictional defect that cannot be cured, the respondent judge did not err in dismissing the case for lack of jurisdiction.

WHEREFORE, premises considered, the petition is *DENIED*. The respondent court's orders dated February 26, 2002 and April 3, 2002 are *AFFIRMED*. Criminal Case No. RTC 2001-0597 is *DISMISSED* without prejudice to the filing of a new information by an authorized officer.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 156278. March 29, 2004]

PLANTERS PRODUCTS, INC., *petitioner, vs.* **FERTIPHIL CORPORATION,** *respondent.*

SYNOPSIS

In the complaint for collection and damages for the refund of ₱6,698,144.00 paid under Letter of Instruction (LOI) No.1465 filed by Fertiphil Corporation against Fertilizer and Pesticide Authority (FPA) and Planters Products, Inc. (PPI), the trial court ordered PPI to return the amount which Fertiphil paid thereunder. PPI filed notice of appeal on February 20, 1992. On January 5, 2001, Fertiphil moved to dismiss PPI's appeal from the trial court's decision on the ground, among others, of non-payment of the appellate docket fee. The trial court, however, denied the said motion. Fertiphil then filed a special civil action for *certiorari* with the Court of Appeals. The appellate court then ruled that although PPI filed its appeal in 1992, the 1997 Rules of Civil Procedure should nevertheless be followed since it applies to actions pending and undetermined at the time of its passage. But then, due to PPI's failure to pay the appellate docket fee for three (3) years from the time the 1997 Rules of Civil Procedure took effect until Fertiphil moved to dismiss the appeal in 2001, the trial court's decision became final and executory. Hence, PPI filed the instant petition.

The petition was granted. The 1997 Rules of Civil Procedure which took effect on July 1, 1997 and which required that appellate docket and other lawful fees should be paid within the same period for taking an appeal, can not affect PPI's appeal which was already perfected in 1992. Much less could it be considered a ground for dismissal thereof since PPI's period for taking an appeal, likewise the period for payment of the appellate docket fee as now required by the rules, has long lapsed in 1992. While the right to appeal is statutory, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified only when the vested rights are not impaired. Thus, failure to pay the appellate docket fee when the 1997 Rules of Procedure

took effect cannot operate to deprive PPI of its right, already perfected in 1992, to have its case reviewed on appeal. In fact the Court of Appeals recognized such fact when it gave PPI a fresh period to pay the appellate docket fee in an Order dated April 9, 2002 directing it to pay the fee within fifteen (15) days from receipt thereof.

SYLLABUS

1. **STATUTORY CONSTRUCTION; RETROSPECTIVE APPLICATION OF RULES OF PROCEDURE IS ALLOWED IF NO VESTED RIGHTS ARE IMPAIRED. —** As a general rule, rules of procedure apply to actions pending and undetermined at the time of their passage, hence, retrospective in nature. However, the general rule is not without an exception. Retrospective application is allowed if no vested rights are impaired. Thus, in *Land Bank of the Philippines v. de Leon* our ruling that the appropriate mode of review from decisions of Special Agrarian Courts is a petition for review under Sec. 60 of R.A. No. 6657 and not an ordinary appeal as Sec. 61 thereof seems to imply, was not given retroactive application. We held that to give our ruling a retrospective application would prejudice petitioner's pending appeals brought under said Sec. 61 before the Court of Appeals at a time when there was yet no clear pronouncement as to the proper interpretation of the seemingly conflicting Secs. 60 and 61. In fine, to apply the Court's ruling retroactively would prejudice LBP's right to appeal because its pending appeals would then be dismissed outright on a mere technicality thereby sacrificing the substantial merits of the cases.

2. **REMEDIAL LAW; 1997 RULES OF CIVIL PROCEDURE; CANNOT AFFECT AN APPEAL WHICH WAS PERFECTED IN 1992; CASE AT BAR. —** [T]he *1997 Rules of Civil Procedure* which took effect on July 1, 1997 and which required that appellate docket and other lawful fees should be paid within the same period for taking an appeal, can not affect PPI's appeal which was already perfected in 1992. Much less could it be considered a ground for dismissal thereof since PPI's period for taking an appeal, likewise the period for payment of the appellate docket fee as now required by the rules, has long

lapsed in 1992. While the right to appeal is statutory, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified only when vested rights are not impaired. Thus, failure to pay the appellate docket fee when the *1997 Rules of Procedure* took effect cannot operate to deprive PPI of its right, already perfected in 1992, to have its case reviewed on appeal. In fact the Court of Appeals recognized such fact when it gave PPI a fresh period to pay the appellate docket fee in an Order dated April 9, 2002 issued in UDK-CV-No. 0304 directing it to pay the fee within fifteen (15) days from receipt thereof.

3. ID.; ID.; APPEAL; FAILURE TO PAY THE APPELLATE DOCKET FEE DOES NOT AUTOMATICALLY RESULT IN THE DISMISSAL THEREOF. — We have also previously ruled that failure to pay the appellate docket fee does not automatically result in the dismissal of an appeal, dismissal being discretionary on the part of the appellate court. And in determining whether or not to dismiss an appeal on such ground, courts have always been guided by the peculiar legal and equitable circumstances attendant to each case.

4. ID.; ID.; ID.; *PEDROSA v. HILL* AND *GEGARE v. COURT OF APPEALS*; APPEALS WERE DISMISSED FOR FAILURE TO PAY THE APPELLATE DOCKET FEES DESPITE ITS ADMONITIONS THAT APPEALS WOULD BE DISMISSED IN CASE OF NON-COMPLIANCE. — [I]n *Pedrosa v. Hill* and *Gegare v. Court of Appeals*, the appeals were dismissed because appellants failed to pay the appellate docket fees despite timely notice given them by the Court of Appeals and despite its admonitions that the appeals would be dismissed in case of non-compliance.

5. ID.; ID.; ID.; *MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY v. MANGUBAT*; APPEAL WAS NOT DISMISSED BECAUSE OF APPELLANT'S IMMEDIATE PAYMENT OF THE FEES WHEN REQUIRED TO DO SO; APPLIED IN CASE AT BAR. — [T]he appeal in *Mactan Cebu International Airport Authority v. Mangubat* was not dismissed because we took into account the fact that the *1997 Rules of Civil Procedure* had only been in effect for fourteen (14) days when the Office of the Solicitor General appealed

from the decision of the RTC of Lapu-Lapu City on July 14, 1997 without paying the appellate court docket fees as required by the new rules. Considering the recency of the changes and appellant's immediate payment of the fees when required to do so, the appeal was not dismissed. We can do no less in the instant case where PPI was not even required under the rules in 1992 to pay the appellate docket fees at the time it filed its appeal. We note moreover that PPI, like the appellant in *Mactan*, promptly paid the fees when required to do so for the first time by the RTC of Makati in its Order dated April 3, 2001, and informed the Court of Appeals of such compliance when it in turn notified PPI that the fees were due, in an Order dated April 9, 2002. The remedy of appeal being an essential part of our judicial system, caution must always be observed so that every party-litigant is not deprived of its right to appeal, but rather, given amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.

APPEARANCES OF COUNSEL

Albert Dennis Anover for petitioner.
Lito A. Mondragon for respondent.

D E C I S I O N

PUNO, *J.*:

Before us is a petition for review under Rule 45 assailing the Decision dated July 19, 2002[1] of the Court of Appeals in CA-G.R. SP No. 67434, and its Resolution dated December 4, 2002 denying petitioner's motion for reconsideration.

Petitioner Planters Products, Inc. ("PPI") and respondent Fertiphil Corporation ("Fertiphil") are domestic corporations engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals. On the strength of Letter of Instruction No. 1465 issued by then President Ferdinand E. Marcos on June 3, 1985, Fertiphil and other domestic corporations engaged

[1] *Rollo*, pp. 41-51.

in the fertilizer business paid ₱10.00 for every bag of fertilizer sold in the country to the Fertilizer and Pesticide Authority (FPA), the government agency governing the fertilizer industry. FPA in turn remitted the amount to PPI for its rehabilitation, according to the express mandate of LOI No. 1465.[2]

After the EDSA I revolution in 1986, the imposition of ₱10.00 by the FPA on every bag of fertilizer sold was voluntarily stopped. Fertiphil demanded from PPI the refund of ₱6,698,144.00 which it paid under LOI No. 1465. PPI refused. Hence, on September 14, 1987, Fertiphil filed a collection and damage suit against FPA and PPI before the Regional Trial Court of Makati City docketed as Civil Case No. 17835 demanding refund of the ₱6,698,144.00. Fertiphil contended that LOI No. 1465 was void and unconstitutional for being a glaring example of crony capitalism as it favored PPI only. PPI filed its answer but for failure to attend the pre-trial conference, it was declared in default and Fertiphil was allowed to present evidence *ex-parte*.

On November 20, 1991, the RTC of Makati City, Branch 147, decided in favor of Fertiphil declaring LOI No. 1465 void and unconstitutional. It ordered PPI to return the amount which Fertiphil paid thereunder, with twelve percent (12%) interest from the time of judicial demand. PPI's motion for reconsideration was denied in an Order dated February 13, 1992. Hence, it filed notice of appeal on February 20, 1992. At the same time, Fertiphil moved for execution of the decision pending appeal. The trial court granted the motion and a writ of execution pending appeal was issued upon the posting of a surety bond by Fertiphil in the amount of ₱6,698,000.00. PPI assailed the propriety of the execution pending appeal before the Court of Appeals and, thereafter, to this Court. We resolved the case in its favor in

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[2] LOI No. 1465 specifically ordered: "The Administrator of the Fertilizer and Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10.00 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution component shall be applied by FPA to all domestic sales of fertilizers in the Philippines."

our Decision dated October 22, 1999 in G.R. No. 106052.[3] Fertiphil was ordered to return all the properties of PPI taken in the course of execution pending appeal or the value thereof, if return is no longer possible. After the decision became final and executory, PPI moved for execution before the trial court and Fertiphil's bank deposits were accordingly garnished.

On January 5, 2001, Fertiphil moved to dismiss PPI's appeal from the trial court's Decision dated November 20, 1991 citing as grounds the non-payment of the appellate docket fee and alleged failure of PPI to prosecute the appeal within a reasonable time. The trial court denied the motion in an Order dated April 3, 2001 ruling that the payment of the appellate docket fee within the period for taking an appeal is a new requirement under the *1997 Rules of Civil Procedure* which was not yet applicable when PPI filed its appeal in 1992. Moreover, the court found that PPI did not fail to prosecute the appeal within a reasonable time.

On April 5, 2001, the court issued another order, upon PPI's motion, directing Fertiphil's banks to deliver to the Deputy Sheriff the garnished deposits maintained with them and for the levying upon of the surety bond posted by Fertiphil.

Fertiphil moved to reconsider the Orders dated April 3 and 5, 2001, to no avail. Hence, on October 30, 2001, it filed a special civil action for *certiorari* with the Court of Appeals imputing grave abuse of discretion on the part of the trial court in issuing the two orders.[4] The Court of Appeals partially granted the petition and set aside the Order dated April 3, 2001. It ruled that although PPI filed its appeal in 1992, the *1997 Rules of Civil Procedure* should nevertheless be followed since it applies to actions pending and undetermined at the time of its passage. Due to PPI's failure to pay the appellate docket fee

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[3] Entitled "*Planters Products, Inc. v. Court of Appeals and Fertiphil Corporation, Inc.*"

[4] Docketed as CA-G.R. SP No. 67434 entitled: "*Fertiphil Corporation v. Hon. Teofilo Guadiz, Jr., Presiding Judge, RTC-Branch 147, Makati City and Planters Products, Inc.*"

for three (3) years from the time the *1997 Rules of Civil Procedure* took effect on July 1, 1997 until Fertiphil moved to dismiss the appeal in 2001, the trial court's decision became final and executory. The Court of Appeals thus disposed of the petition, *viz*:

> WHEREFORE, the instant petition is PARTIALLY GRANTED and the Order of 03 April 2001 of the Regional Trial Court of Makati City, Branch 147, is SET ASIDE. The decision of 20 November 1991 of the said court is hereby declared final and executory.
>
> The Clerk of Court is directed to return to the Regional Trial Court of Makati City, Branch 147, the record of Civil Case No. 17385 (*sic*) entitled *"Fertiphil Corporation vs. Planters Product(s) Inc., and Fertilizer and Pesticide Authority,"* for the computation of the amount due the petitioner Fertiphil Corporation pursuant to the 20 November 1991 decision.
>
> SO ORDERED.[5]

Hence, this petition by PPI.

As a general rule, rules of procedure apply to actions pending and undetermined at the time of their passage, hence, retrospective in nature. However, the general rule is not without an exception. Retrospective application is allowed if no vested rights are impaired.[6] Thus, in *Land Bank of the Philippines v. de Leon*[7] our ruling that the appropriate mode of review from decisions of Special Agrarian Courts is a petition for review under Sec. 60 of R.A. No. 6657 and not an ordinary appeal as Sec. 61 thereof seems to imply, was not given retroactive application. We held that to give our ruling a retrospective application would prejudice petitioner's pending appeals brought under said Sec. 61 before the Court of Appeals at a time when there was yet no clear pronouncement as to the proper interpretation of the seemingly conflicting Secs. 60 and 61. In fine, to apply the Court's ruling retroactively would prejudice LBP's right to appeal because its pending appeals would

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[5] Decision dated July 19, 2002; *Rollo*, pp. 41-51.

[6] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 365 SCRA 697, 724 (2001); and *Aguillon v. Director of Lands*, 17 Phil. 506, 508 (1910).

[7] G.R. No. 143275, March 20, 2003.

then be dismissed outright on a mere technicality thereby sacrificing the substantial merits of the cases.

In the instant case, at the time PPI filed its appeal in 1992, all that the rules required for the perfection of its appeal was the filing of a notice of appeal with the court which rendered the judgment or order appealed from, within fifteen (15) days from notice thereof.[8] PPI complied with this requirement when it filed a notice of appeal on February 20, 1992 with the RTC of Makati City, Branch 147, after receiving copy of its Order dated February 13, 1992 denying its motion for reconsideration of the adverse Decision dated November 20, 1991 rendered in Civil Case No. 17835. PPI's appeal was therefore already perfected at that time.

Thus, the *1997 Rules of Civil Procedure* which took effect on July 1, 1997 and which required that appellate docket and other lawful fees should be paid within the same period for taking an appeal,[9] can not affect PPI's appeal which was already perfected in 1992. Much less could it be considered a ground for dismissal thereof since PPI's period for taking an appeal, likewise the period for payment of the appellate docket fee as now required by the rules, has long lapsed in 1992. While the right to appeal is statutory, the mode or manner by which this right may be exercised is a

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[8] Under the Interim Rules and Guidelines issued by this Court on January 11, 1983 implementing the Judiciary Reorganization Act of 1981 (B.P. Blg. 129), which provides, *viz*:

19. *Period on Appeals*.—

(a) All appeals, except in *habeas corpus* cases and in the cases referred to in paragraph (b) hereof, must be taken within fifteen (15) days from notice of the judgment, order, resolution or award appealed from. xxx xxx xxx

20. *Procedure for taking an appeal*. — An appeal x x x from the regional trial courts to the Intermediate Appellate Court in actions or proceedings originally filed in the former shall be taken by filing a notice of appeal with the court that rendered the judgment or order appealed from.

[9] Sec. 4, Rule 41, 1997 Rules of Civil Procedure which provides: "*Appellate court docket and other lawful fees*. — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal."

question of procedure which may be altered and modified only when vested rights are not impaired.[10] Thus, failure to pay the appellate docket fee when the *1997 Rules of Procedure* took effect cannot operate to deprive PPI of its right, already perfected in 1992, to have its case reviewed on appeal. In fact the Court of Appeals recognized such fact when it gave PPI a fresh period to pay the appellate docket fee in an Order dated April 9, 2002 issued in UDK-CV-No. 0304[11] directing it to pay the fee within fifteen (15) days from receipt thereof.

This is not all. We have also previously ruled that failure to pay the appellate docket fee does not automatically result in the dismissal of an appeal, dismissal being discretionary on the part of the appellate court.[12] And in determining whether or not to dismiss an appeal on such ground, courts have always been guided by the peculiar legal and equitable circumstances attendant to each case. Thus, in *Pedrosa v. Hill*[13] and *Gegare v. Court of Appeals*,[14] the appeals were dismissed because appellants failed to pay the appellate docket fees despite timely notice given them by the Court of Appeals and despite its admonitions that the appeals would be dismissed in case of non-compliance. On the other hand, the appeal in *Mactan Cebu International Airport Authority v. Mangubat*[15] was not dismissed because we took into account the fact that the *1997 Rules of Civil Procedure* had only been in effect for fourteen (14) days when the Office of the Solicitor General appealed from the decision of the RTC of Lapu-Lapu City on July 14, 1997 without paying the appellate court docket fees as required by the new rules. Considering the recency of the changes and appellant's immediate payment of the fees when required to do so, the appeal

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[10] *Supra*, note 6.

[11] Now docketed as CA-G.R. CV No. 75501 entitled "*Fertiphil Corporation v. Planters Products, Inc.*"

[12] *De Leon v. Court of Appeals*, 383 SCRA 216, 229-230 (2002); *Martinez v. Court of Appeals*, 358 SCRA 38, 55 (2001); *Fajardo v. Court of Appeals*, 354 SCRA 736, 743 (2001); *Yambao v. Court of Appeals*, 346 SCRA 141, 146 (2000).

[13] 257 SCRA 373 (1996).

[14] 297 SCRA 587 (1998).

[15] 312 SCRA 463 (1999).

was not dismissed. We can do no less in the instant case where PPI was not even required under the rules in 1992 to pay the appellate docket fees at the time it filed its appeal. We note moreover that PPI, like the appellant in *Mactan*, promptly paid the fees when required to do so for the first time by the RTC of Makati in its Order dated April 3, 2001, and informed the Court of Appeals of such compliance when it in turn notified PPI that the fees were due, in an Order dated April 9, 2002. The remedy of appeal being an essential part of our judicial system, caution must always be observed so that every party-litigant is not deprived of its right to appeal, but rather, given amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[16]

Having so ruled, we shall refrain from delving into the merits of petitioner's other contentions, discussion of one being the proper subject of the appeal before the Court of Appeals,[17] and the other, being premature at this point.[18]

IN VIEW WHEREOF, the petition is *GRANTED*. The questioned Decision dated July 19, 2002 of the Court of Appeals in CA-G.R. SP No. 67434 and its Resolution dated December 4, 2002 denying petitioner's motion for reconsideration are *SET ASIDE*.

The Order dated April 3, 2001 of the Regional Trial Court of Makati City, Branch 147, in Civil Case No. 17835 is reinstated, and the Court of Appeals is ordered to proceed with the resolution of petitioner's appeal docketed as CA-G.R. CV No. 75501 entitled "*Fertiphil Corporation v. Planters Products, Inc.*"

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

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[16] *Salazar v. Court of Appeals*, 376 SCRA 459, 470-471 (2002); *Moslares v. Court of Appeals*, 291 SCRA 440, 448 (1998).

[17] Whether the constitutionality of LOI No. 1465 can be collaterally attacked in a collection and damage suit.

[18] Whether legal compensation applies to offset Fertiphil's and PPI's debts to each other.

SECOND DIVISION

[A.C. No. 5280. March 30, 2004]

WILLIAM S. UY, *complainant, vs.* **ATTY. FERMIN L. GONZALES,** *respondent*.

SYNOPSIS

This is an administrative case filed by William S. Uy against Atty. Fermin L. Gonzales for violation of confidentiality of their lawyer-client relationship. Uy claimed that he engaged the services of respondent to prepare and file a petition for the issuance of a new certificate of title. However, respondent unceremoniously turned against him in filing a complaint for *estafa* thru falsification of public documents just because he refused to grant respondent's request for additional compensation. In his comment, respondent claimed that he dealt with complainant because he redeemed the property which complainant had earlier purchased from respondent's son. However, complainant failed to fulfill his obligation because of the alleged loss of the title which he had admitted to respondent as having prematurely transferred to his children, thus prompting respondent to offer his assistance so as to secure the issuance of a new title to the property, in lieu of the lost one, with complainant assuming the expenses therefor, to which the latter agreed. However, when he went to complainant's office informing him that the petition is ready for filing and needs funds for expenses, he was not entertained by the latter which infuriated him and prompted him to withdraw the petition he prepared.

The Court ruled that evidently, the facts alleged in the complaint for "*Estafa* Through Falsification of Public Documents" filed by respondent against complainant were obtained by respondent due to his personal dealings with complainant. Respondent volunteered his service to hasten the issuance of the certificate of title of the land he has redeemed from complainant. Respondent's immediate objective was to secure the title of the property that complainant had earlier bought from his son. Clearly, there was no attorney-client relationship between respondent and complainant. The preparation and the proposed filing of the petition was only

incidental to their personal transaction. Accordingly, the instant administrative case was dismissed.

SYLLABUS

1. **LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; NO INVESTIGATION SHALL BE INTERRUPTED OR TERMINATED BY REASON OF THE DESISTANCE OR FAILURE OF THE COMPLAINANT TO PROSECUTE THE SAME.** — Preliminarily, we agree with Commissioner Villanueva-Maala that the manifestation of complainant Uy expressing his desire to dismiss the administrative complaint he filed against respondent, has no persuasive bearing in the present case. Sec. 5, Rule 139-B of the Rules of Court states that: …. No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same. This is because: A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges.

2. **ID.; ID.; LAWYER MAY BE DISBARRED OR SUSPENDED FOR ANY MISCONDUCT WHETHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY; NOT PRESENT IN CASE AT BAR.** — Practice of law embraces any activity, in or out of court, which requires the application of law, as well as legal principles, practice or procedure and calls for legal knowledge, training and experience. While it is true that a lawyer may be disbarred or suspended for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character,

in honesty, probity and good demeanor or unworthy to continue as an officer of the court, complainant failed to prove any of the circumstances enumerated above that would warrant the disbarment or suspension of herein respondent.

3. ID.; ATTORNEY-CLIENT RELATIONSHIP; ELUCIDATED. — *As a rule, an attorney-client relationship is said to exist when a lawyer voluntarily permits or acquiesces with the consultation of a person, who in respect to a business or trouble of any kind, consults a lawyer with a view of obtaining professional advice or assistance. It is not essential that the client should have employed the attorney on any previous occasion or that any retainer should have been paid, promised or charged for, neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had, for as long as the advice and assistance of the attorney is sought and received, in matters pertinent to his profession.*

4. ID.; ID.; NOT PRESENT WHEN THE PREPARATION AND THE PROPOSED FILING OF THE PETITION WAS ONLY INCIDENTAL TO THEIR PERSONAL TRANSACTION; CASE AT BAR. — Evidently, the facts alleged in the complaint for "Estafa Through Falsification of Public Documents" filed by respondent against complainant were obtained by respondent due to his personal dealings with complainant. Respondent volunteered his service to hasten the issuance of the certificate of title of the land he has redeemed from complainant. Respondent's immediate objective was to secure the title of the property that complainant had earlier bought from his son. Clearly, there was no attorney-client relationship between respondent and complainant. The preparation and the proposed filing of the petition was only incidental to their personal transaction. x x x The alleged "secrets" of complainant were not specified by him in his affidavit-complaint. Whatever facts alleged by respondent against complainant were not obtained by respondent in his professional capacity but as a redemptioner of a property originally owned by his deceased son and therefore, when respondent filed the complaint for estafa against herein complainant, which necessarily involved alleging facts that would constitute estafa, respondent was not, in any way, violating Canon 21. There is no way we can equate the filing of the affidavit-complaint against herein complainant to a misconduct that is wanting in moral character, in honesty, probity

and good demeanor or that renders him unworthy to continue as an officer of the court. To hold otherwise would be precluding any lawyer from instituting a case against anyone to protect his personal or proprietary interests.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

William S. Uy filed before this Court an administrative case against Atty. Fermin L. Gonzales for violation of the confidentiality of their lawyer-client relationship. The complainant alleges:

Sometime in April 1999, he engaged the services of respondent lawyer to prepare and file a petition for the issuance of a new certificate of title. After confiding with respondent the circumstances surrounding the lost title and discussing the fees and costs, respondent prepared, finalized and submitted to him a petition to be filed before the Regional Trial Court of Tayug, Pangasinan. When the petition was about to be filed, respondent went to his (complainant's) office at Virra Mall, Greenhills and demanded a certain amount from him other than what they had previously agreed upon. Respondent left his office after reasoning with him. Expecting that said petition would be filed, he was shocked to find out later that instead of filing the petition for the issuance of a new certificate of title, respondent filed a letter-complaint dated July 26, 1999 against him with the Office of the Provincial Prosecutor of Tayug, Pangasinan for "Falsification of Public Documents."[1] The letter-complaint contained facts and circumstances pertaining to the transfer certificate of title that was the subject matter of the petition which respondent was supposed to have filed. Portions of said letter-complaint read:

The undersigned complainant accuses WILLIAM S. UY, of legal age, Filipino, married and a resident of 132-A Gilmore Street corner 9th Street, New Manila, Quezon City, Michael Angelo T. UY, CRISTINA EARL T. UY, minors and residents of the aforesaid address, Luviminda G. Tomagos, of legal age, married, Filipino and a resident of Carmay

[1] *Rollo,* p. 7.

East, Rosales, Pangasinan, and F. Madayag, with office address at A12, 2/F Vira Mall Shopping Complex, Greenhills, San Juan, Metro Manila, for ESTAFA THRU FALSIFICATION OF PUBLIC DOCUMENTS, committed as follows:

That on March 15, 1996, William S. Uy acquired by purchase a parcel of land consisting of 4.001 ha. for the amount of ₱100,000.00, Philippine Currency, situated at Brgy. Gonzales, Umingan, Pangasinan, from FERMIN C. GONZALES, as evidenced by a Deed of Sale executed by the latter in favor of the former . . .; that in the said date, William S. Uy received the Transfer Certificate of Title No. T-33122, covering the said land;

That instead of registering said Deed of Sale and Transfer Certificate of Title (TCT) No. T-33122, in the Register of Deeds for the purpose of transferring the same in his name, William S. Uy executed a Deed of Voluntary Land Transfer of the aforesaid land in favor of his children, namely, Michael Angelo T. Uy and Cristina Earl T. Uy, wherein William S. Uy made it appear that his said children are of legal age, and residents of Brgy. Gonzales, Umingan, Pangasinan, when in fact and in truth, they are minors and residents of Metro Manila, to qualify them as farmers/ beneficiaries, thus placing the said property within the coverage of the Land Reform Program;

That the above-named accused, conspiring together and helping one another procured the falsified documents which they used as supporting papers so that they can secure from the Office of the Register of Deeds of Tayug, Pangasinan, TCT No. T-5165 (Certificate of Land Ownership Award No. 004 32930) in favor of his above-named children. Some of these Falsified documents are purported Affidavit of Seller/Transferor and Affidavit of Non-Tenancy, both dated August 20, 1996, without the signature of affiant, Fermin C. Gonzales, and that on that said date, Fermin C. Gonzales was already dead . . .;

That on December 17, 1998, William S. Uy with deceit and evident intent to defraud undersigned, still accepted the amount of ₱340,000.00, from Atty. Fermin L. Gonzales, ₱300,000.00, in PNB Check No. 0000606, and ₱40,000.00, in cash, as full payment of the redemption of TCT No. 33122 . . . knowing fully well that at that time the said TCT cannot be redeemed anymore because the same was already transferred in the name of his children;

That William S. Uy has appropriated the amount covered by the aforesaid check, as evidenced by the said check which was encashed by him . . .;

That inspite of repeated demands, both oral and in writing, William S. Uy refused and continue to refuse to deliver to him a TCT in the name of the undersigned or to return and repay the said ₱340,000.00, to the damage and prejudice of the undersigned.[2]

With the execution of the letter-complaint, respondent violated his oath as a lawyer and grossly disregarded his duty to preserve the secrets of his client. Respondent unceremoniously turned against him just because he refused to grant respondent's request for additional compensation. Respondent's act tarnished his reputation and social standing.[3]

In compliance with this Court's Resolution dated July 31, 2000,[4] respondent filed his Comment narrating his version, as follows:

On December 17, 1998, he offered to redeem from complainant a 4.9 hectare-property situated in Brgy. Gonzales, Umingan, Pangasinan covered by TCT No. T-33122 which the latter acquired by purchase from his (respondent's) son, the late Fermin C. Gonzales, Jr.. On the same date, he paid complainant ₱340,000.00 and demanded the delivery of TCT No. T-33122 as well as the execution of the Deed of Redemption. Upon request, he gave complainant additional time to locate said title or until after Christmas to deliver the same and execute the Deed of Redemption. After the said period, he went to complainant's office and demanded the delivery of the title and the execution of the Deed of Redemption. Instead, complainant gave him photocopies of TCT No. T-33122 and TCT No. T-5165. Complainant explained that he had already transferred the title of the property, covered by TCT No. T-5165 to his children Michael and Cristina Uy and that TCT No. T-5165 was misplaced and cannot be located despite efforts to locate it. Wanting to protect his interest over the property coupled with his desire to get hold of TCT No. T-5165 the earliest possible time, he offered his assistance *pro bono* to prepare a petition for lost title provided that all necessary expenses incident

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[2] *Rollo*, p. 7.

[3] *Rollo*, pp. 1-2.

[4] *Id.*, p. 9.

thereto including expenses for transportation and others, estimated at ₱20,000.00, will be shouldered by complainant. To these, complainant agreed.

On April 9, 1999, he submitted to complainant a draft of the petition for the lost title ready for signing and notarization. On April 14, 1999, he went to complainant's office informing him that the petition is ready for filing and needs funds for expenses. Complainant who was with a client asked him to wait at the anteroom where he waited for almost two hours until he found out that complainant had already left without leaving any instructions nor funds for the filing of the petition. Complainant's conduct infuriated him which prompted him to give a handwritten letter telling complainant that he is withdrawing the petition he prepared and that complainant should get another lawyer to file the petition.

Respondent maintains that the lawyer-client relationship between him and complainant was terminated when he gave the handwritten letter to complainant; that there was no longer any professional relationship between the two of them when he filed the letter-complaint for falsification of public document; that the facts and allegations contained in the letter-complaint for falsification were culled from public documents procured from the Office of the Register of Deeds in Tayug, Pangasinan.[5]

In a Resolution dated October 18, 2000, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[6]

Commissioner Rebecca Villanueva-Maala ordered both parties to appear on April 2, 2003 before the IBP.[7] On said date, complainant did not appear despite due notice. There was no showing that respondent received the notice for that day's hearing and so the hearing was reset to May 28, 2003.[8]

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[5] *Rollo*, pp. 12-15.

[6] *Id*., p. 18.

[7] *Id*., p. 20.

[8] *Id*., p. 22.

On April 29, 2003, Commissioner Villanueva-Maala received a letter from one Atty. Augusto M. Macam dated April 24, 2003, stating that his client, William S. Uy, had lost interest in pursuing the complaint he filed against Atty. Gonzales and requesting that the case against Atty. Gonzales be dismissed.[9]

On June 2, 2003, Commissioner Villanueva-Maala submitted her report and recommendation, portions of which read as follows:

> The facts and evidence presented show that when respondent agreed to handle the filing of the Verified Petition for the loss of TCT No. T-5165, complainant had confided to respondent the fact of the loss and the circumstances attendant thereto. When respondent filed the Letter-Complaint to the Office of the Special Prosecutor in Tayug, Pangasinan, he violated Canon 21 of the Code of Professional Responsibility which expressly provides that "A lawyer shall preserve the confidences and secrets of his client even after the attorney-client relation is terminated." Respondent cannot argue that there was no lawyer-client relationship between them when he filed the Letter-Complaint on 26 July 1999 considering that as early as 14 April 1999, or three (3) months after, respondent had already terminated complainant's perceived lawyer-client relationship between them. The duty to maintain inviolate the client's confidences and secrets is not temporary but permanent. It is in effect perpetual for "it outlasts the lawyer's employment" (Canon 37, Code of Professional Responsibility) which means even after the relationship has been terminated, the duty to preserve the client's confidences and secrets remains effective. Likewise Rule 21.02, Canon 21 of the Rules of Professional Responsibility provides that "A lawyer shall not, *to the disadvantage of his client*, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with the full knowledge of the circumstances consents thereto."
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> On 29 April 2003, the Commission received a letter dated 24 April 2003 from Atty. Augusto M. Macam, who claims to represent complainant, William S. Uy, alleging that complainant is no longer interested in pursuing this case and requested that the same be dismissed. The aforesaid letter hardly deserves consideration as proceedings of this nature cannot be "*interrupted by reason of desistance,*

[9] *Id*., p. 23.

settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same. (Section 5, Rule 139-B, Rules of Court). Moreover, in *Boliver vs. Simbol*, 16 SCRA 623, the Court ruled that *"any person may bring to this Court's attention the misconduct of any lawyer, and action will usually be taken regardless of the interest or lack of interest of the complainant, if the facts proven so warrant."*

IN VIEW OF THE FOREGOING, we find respondent Atty. Fermin L. Gonzales to have violated the Code of Professional Responsibility and it is hereby recommended that he be *SUSPENDED* for a period of *SIX (6) MONTHS* from receipt hereof, from the practice of his profession as a lawyer and member of the Bar.[10]

On June 21, 2003, the Board of Governors of the Integrated Bar of the Philippines issued Resolution No. XV-2003-365, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and finding the recommendation fully supported by the evidence on record and applicable laws and rules, and considering that respondent violated Rule 21.02, Canon 21 of the Canons of Professional Responsibility, Atty. Fermin L. Gonzales is hereby *SUSPENDED* from the practice of law for six (6) months.[11]

Preliminarily, we agree with Commissioner Villanueva-Maala that the manifestation of complainant Uy expressing his desire to dismiss the administrative complaint he filed against respondent, has no persuasive bearing in the present case.

Sec. 5, Rule 139-B of the Rules of Court states that:

x x x x x x x x x

No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

This is because:

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[10] *Rollo,* pp. 31-32.

[11] *Id.,* p. 27.

A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges.[12]

Now to the merits of the complaint against the respondent.

Practice of law embraces any activity, in or out of court, which requires the application of law, as well as legal principles, practice or procedure and calls for legal knowledge, training and experience.[13] While it is true that a lawyer may be disbarred or suspended for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, probity and good demeanor or unworthy to continue as an officer of the court,[14] complainant failed to prove any of the circumstances enumerated above that would warrant the disbarment or suspension of herein respondent.

Notwithstanding respondent's own perception on the matter, a scrutiny of the records reveals that the relationship between complainant and respondent stemmed from a personal transaction or dealings between them rather than the practice of law by respondent. Respondent dealt with complainant only because he redeemed a property which complainant had earlier purchased

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[12] *Rayos-Ombac vs. Atty. Rayos*, A.C. No. 2884, 285 SCRA 93, 100-101 (1998).

[13] *J.K. Mercado and Sam Agricultural Enterprises, Inc. vs. de Vera*, 371 SCRA 251, 259 (2001).

[14] *Maligsa vs. Cabanting*, 272 SCRA 408, 414 (1997).

from his (complainant's) son. It is not refuted that respondent paid complainant ₱340,000.00 and gave him ample time to produce its title and execute the Deed of Redemption. However, despite the period given to him, complainant failed to fulfill his end of the bargain because of the alleged loss of the title which he had admitted to respondent as having prematurely transferred to his children, thus prompting respondent to offer his assistance so as to secure the issuance of a new title to the property, in lieu of the lost one, with complainant assuming the expenses therefor.

As a rule, an attorney-client relationship is said to exist when a lawyer voluntarily permits or acquiesces with the consultation of a person, who in respect to a business or trouble of any kind, consults a lawyer with a view of obtaining professional advice or assistance. It is not essential that the client should have employed the attorney on any previous occasion or that any retainer should have been paid, promised or charged for, neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had, for as long as the advice and assistance of the attorney is sought and received, in matters pertinent to his profession.[15]

Considering the attendant peculiar circumstances, said rule cannot apply to the present case. Evidently, the facts alleged in the complaint for "Estafa Through Falsification of Public Documents" filed by respondent against complainant were obtained by respondent due to his personal dealings with complainant. Respondent volunteered his service to hasten the issuance of the certificate of title of the land he has redeemed from complainant. Respondent's immediate objective was to secure the title of the property that complainant had earlier bought from his son. Clearly, there was no attorney-client relationship between respondent and complainant. The preparation and the proposed filing of the petition was only incidental to their personal transaction.

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[15] *Hilado vs. David*, No. L-961, 84 Phil. 569, 576 (1949).

Canon 21 of the Code of Professional Responsibility reads:

Canon 21 — A LAWYER SHALL PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED.

Rule 21.01 — A lawyer shall not reveal the confidences or secrets of his client except:

a) When authorized by the client after acquainting him of the consequences of the disclosure;

b) When required by law;

c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

The alleged "secrets" of complainant were not specified by him in his affidavit-complaint. Whatever facts alleged by respondent against complainant were not obtained by respondent in his professional capacity but as a redemptioner of a property originally owned by his deceased son and therefore, when respondent filed the complaint for estafa against herein complainant, which necessarily involved alleging facts that would constitute estafa, respondent was not, in any way, violating Canon 21. There is no way we can equate the filing of the affidavit-complaint against herein complainant to a misconduct that is wanting in moral character, in honesty, probity and good demeanor or that renders him unworthy to continue as an officer of the court. To hold otherwise would be precluding any lawyer from instituting a case against anyone to protect his personal or proprietary interests.

WHEREFORE, Resolution No. XV-2003-365 dated June 21, 2003 of the Integrated Bar of the Philippines is *REVERSED* and *SET ASIDE* and the administrative case filed against Atty. Fermin L. Gonzales, docketed as A.C. No. 5280, is *DISMISSED* for lack of merit.

SO ORDERED.

Puno (Chairman), Quisumbing, Callejo, Sr., and *Tinga, JJ.,* concur.

FIRST DIVISION

[G.R. No. 124899. March 30, 2004]

RENATO C. SALVADOR, *petitioner, vs.* **COURT OF APPEALS, MARIA ROMAYNE MIRANDA and GILBERT MIRANDA,** *respondents*.

SYNOPSIS

Respondent Gilbert Miranda as attorney-in-fact of respondent Maria Romayne Miranda entered into a Development and Construction Contract with petitioner Renato C. Salvador for the development of Romayne's property into the Haven of Peace Memorial Park. The project started in July 1990 upon payment by Gilbert of the 20% of the agreed Contract Price. Thereafter, Gilbert promptly paid the progress billing. However, in December 1990, Salvador demanded from Gilbert additional amount for worth of filling materials, 20% escalation or adjustment of the unpaid balance of the Contract Price and the cost of the additional works. Gilbert paid only an additional ₱100,000 and ₱150,000 as advances on the escalation of the Contract Price and contended that further demands for additional costs and escalation were baseless and unreasonable. Consequently, Salvador ceased construction work on the Project on 14 January 1991. On 15 January 1991, one of the Salvador's engineers received a cease-and-desist order from the Department of Public Works and Highways (DPWH). On 31 January 1991, Salvador filed before the trial court a complaint for collection of sum of money and damages or for declaration of claim as lien against Romayne and Gilbert. After trial, the trial court dismissed Salvador's complaint and respondents' counterclaims for insufficiency of basis. On appeal, the Court of Appeals upheld the denial of Salvador's claims but ruled that the receipts submitted by respondents during the trial adequately established the damage respondents sustained when Salvador ceased work on the Project. Hence, this petition.

The Court cannot attribute Salvador's failure to complete the Project within the contract period solely to his voluntary work stoppage. The DPWH Notice suspended the running of

the period given to Salvador to complete the Project. Respondents were not able to show that the DPWH lifted the cease-and-desist order, or that they subsequently secured a building permit. Since respondents failed to prove that they had fulfilled their obligation under the contract, Salvador's failure to complete the Project within the contract cannot be attributed solely to his voluntary work stoppage. There is, therefore, no legal basis to grant respondents' counterclaim for ₱1,685,532.48, the amount they allegedly spent to complete the Project. Accordingly, the decision of the trial court was reinstated.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITIONS FOR REVIEW ON *CERTIORARI*; LIMITED TO QUESTIONS OF LAW. —** Petitions for review on *certiorari* under Rule 45 are generally limited to questions of law. Moreover, factual findings of the Court of Appeals, particularly when they affirm those of the trial court, are binding on this Court.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; TWO REQUISITES IN ORDER THAT A CONTRACTOR MAY CLAIM ADDITIONAL COSTS. —** There are two requisites in order that a contractor may claim additional costs: Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided: (1) Such change has been authorized by the proprietor in writing; and (2) The additional price to be paid to the contractor has been determined in writing by both parties. Compliance with *both* of these requirements is a condition precedent to the recovery of additional costs. Even the absence of one of the elements required by Article 1724 bars recovery.

3. **ID.; ID.; ENFORCEABILITY OF AN ESCALATION CLAUSE IS SUBJECT TO THE CONDITIONS STIPULATED IN THE CONTRACT. —** Construction contracts may provide for the escalation or increase of the price originally agreed upon by

the parties in certain instances. As the Court explained in *Baylen Corporation v. Court of Appeals:* Escalation clauses in construction contracts commonly provide for increases in the contract price *under certain specified circumstances, e.g., as the cost of selected commodities* (cement, fuel, steel bars) or the cost of living in the general community (as measured by, for instance, the Consumer Price Index officially published regularly by the Central Bank) *move up beyond specified levels.* The parties may validly agree on an escalation clause. However, the enforceability of an escalation clause is subject to the conditions stipulated in the contract.

4. ID.; ID.; CONTRACTOR HAD THE OBLIGATION TO SHOW THAT THERE WERE SUBSTANTIAL INCREASES IN THE PRICES OF PARTICULAR MATERIALS USED IN THE PROJECT. — The records show that respondents were amenable to an escalation of the Contract Price, and that they in fact paid Salvador ₱250,000 in anticipation of the escalation. Respondents were merely insisting that Salvador comply with what the Contract required, that is, specify the increase in the prices of particular materials purchased for the Project. Under paragraph 18, Salvador had the obligation to show that there were substantial increases in the prices of particular materials used in the Project.

5. ID.; ID.; ID.; CONTRACT PRICE COULD BE ADJUSTED ONLY UP TO THE ACTUAL INCREASE IN THE PRICES OF PARTICULAR ITEM/S OR MATERIALS USED IN THE PROJECT. — Under the terms of paragraph 18 of the Contract, the Contract Price "shall be *adjusted accordingly as to the particular item/s o[r] materials involved in the increase/s of prices."* This stipulation is plainly worded, requiring no interpretation. The Contract Price could be adjusted only up to the actual increase in the prices of "*particular item/s or materials*" used in the Project. Paragraph 18 of the Contract did not give Salvador the right to determine arbitrarily the proportion or amount of the escalation in the Contract Price. The Contract requires that any escalation in the Contract Price must result from "*substantial increase/s*" in the prices of "*particular item/s or materials*" used in the Project. This certainly excludes escalation based on estimates or blanket increases. The computation Salvador provided failed to identify

the particular materials that had increased in price and the amount of such price increases. His general claim that the prices of construction materials had increased by 40% was not sufficient under the terms of paragraph 18. There was thus no basis for Salvador's demand of a blanket 20% increase on all materials.

6. ID.; ID.; A CONTRACT IS THE LAW BETWEEN THE PARTIES AND THEY ARE BOUND BY ITS STIPULATIONS. — A contract is the law between the parties and they are bound by its stipulations. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

7. ID.; ID.; AUTHORIZING ONE PARTY TO DETERMINE UNILATERALLY THE ESCALATION OF THE CONTRACT PRICE IS VOID. — Assuming *arguendo* that the Contract authorized Salvador to determine unilaterally the escalation of the Contract Price, such a provision would be void for violating the principle of mutuality. In *Philippine National Bank v. Court of Appeals*, the Court struck down the increases in interest rates unilaterally imposed by Philippine National Bank pursuant to an escalation clause, and declared that: In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (*Garcia vs. Rita Legarda, Inc*., 21 SCRA 555). Hence, even assuming that the ₱1.8 million loan agreement between the PNB and private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (*Qua vs. Law Union & Rock Insurance Co.*, 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.

8. ID.; ID.; MATTERS RELATING TO THE PROJECT NOT STIPULATED IN THE CONTRACT ARE DEEMED NOT INCLUDED THEREIN UNLESS THE PARTIES MAY AGREE ON SAID MATTERS IN WRITING. — We agree with the trial court that Salvador has no basis to charge respondents a fee of 20% or ₱39,000 on filling materials that respondents supplied to the Project. Salvador himself testified that: (1) respondents ordered and purchased the filling materials for ₱196,000; and (2) respondents caused the delivery of the materials to the Project site. Neither the Contract nor any other document presented during trial provided for a 20% charge on materials that respondents supplied to the Project. On the contrary, under paragraph 20 of the Contract, "matters relating to the Project not stipulated in this contract are deemed not included herein unless the parties may agree on said matters in writing." Under the Contract, Salvador had the obligation to supply the materials for the construction of the Project. We cannot penalize respondents and reward Salvador for respondents' act in assuming part of Salvador's obligation under the Contract when Salvador himself did not object to such act.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, FACTUAL FINDINGS OF THE LOWER COURTS ARE CONCLUSIVE ON THE SUPREME COURT; EXCEPTIONS. — While factual findings of the lower courts are generally conclusive on this Court, the rule is subject to certain exceptions, as when the findings of fact of the trial court and Court of Appeals diverge.

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RULE IN CONTRACT INVOLVING RECIPROCAL OBLIGATIONS, WHEN A PARTY MAY BE DECLARED IN DEFAULT. — In a contract involving reciprocal obligations, the rules on when a party may be declared in default are found in Article 1169: Art. 1169. Those obliged to deliver or to do something, incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x In reciprocal obligations, *neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him.* From the moment one of the parties fulfills his obligation, delay by the other begins.

11. ID.; ID.; FAILURE OF CONTRACTOR TO COMPLETE THE PROJECT WITHIN THE CONTRACT PERIOD CANNOT BE ATTRIBUTED SOLELY TO HIS VOLUNTARY WORK STOPPAGE; CASE AT BAR. — The National Building Code requires a building permit on all construction projects. In the present case, the parties were able to start and even almost complete the Project without a building permit. The failure of respondents to secure the required building permit constitutes a breach of their obligation under the Contract. Even if Salvador did not voluntarily stop working on the Project, he would not have been able to complete the Project because of the cease-and-desist order from the DPWH. x x x The DPWH Notice suspended the running of the period given to Salvador to complete the Project. Respondents were not able to show that the DPWH lifted the cease-and-desist order, or that they subsequently secured a building permit. Since respondents failed to prove that they had fulfilled their obligation under the Contract, Salvador's failure to complete the Project within the contract period cannot be attributed solely to his voluntary work stoppage. There is, therefore, no legal basis to grant respondents' counterclaim for ₱1,685,532.48, the amount they allegedly spent to complete the Project.

12. ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES WAS DELETED SINCE BOTH PARTIES DID NOT COMPLY WITH THEIR OBLIGATIONS. — We also find untenable the award of moral and exemplary damages, as well as attorney's fees to respondents. A breach of contract may give rise to an award of moral damages if the party guilty of the breach acted fraudulently or in bad faith. In this case, both parties did not comply with their obligations under the Contract. Respondents must share part of the blame for the stoppage of work on the Project, as the stoppage was partly due to respondents' failure to obtain the necessary building permit. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Neither the records nor the decisions of the trial and appellate courts indicate that Salvador behaved in such a manner and to such degree as to warrant the grant of exemplary damages. We also delete the award of attorney's

fees since none of the grounds for awarding attorney's fees under Article 2208 of the Civil Code applies to the present case.

APPEARANCES OF COUNSEL

Eliezer L. Castellano for petitioner.
Rolando P. Quimbo for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] of 30 April 1996 of the Court of Appeals in CA-G.R. CV No. 39661. The Court of Appeals set aside the Decision[3] of 18 August 1992 of the Regional Trial Court of San Mateo, Rizal, Branch 76, in Civil Case No. 754. The trial court dismissed petitioner's complaint and respondents' counterclaims for insufficiency of basis. The appellate court found for respondents, and directed petitioner to pay damages.

Antecedent Facts

Maria Romayne Miranda ("Romayne") is the owner of a parcel of land ("Property") with an area of 17,748 square meters in Cabcaben, Mariveles, Bataan. The Property is registered with the Register of Deeds of Bataan under TCT No. T-129442.

Romayne appointed her cousin, Gilbert Miranda ("Gilbert"), as her attorney-in-fact under a General Power of Attorney[4] dated 15 April 1990. Romayne authorized Gilbert to execute contracts on her behalf and to manage her properties, including

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Artemon D. Luna and Ramon A. Barcelona concurring.

[3] Penned by Judge Jose C. Reyes, Jr.

[4] Exhibit "B", Records, p. 14.

the Property subject of the present case, and to perform other acts in her place.

On 9 July 1990, Gilbert, as Romayne's agent, entered into a Development and Construction Contract[5] ("Contract") with Renato C. Salvador ("Salvador"), a duly licensed contractor and proprietor of Montariza Construction. The Contract was for the development of the Property into the Haven of Peace Memorial Park ("Project") and the construction of several structures for that purpose. Salvador agreed to undertake the Project for the consideration of ₱3,986,643.50 ("Contract Price").

Salvador undertook to complete the Project within 180 working days from receipt of the down payment, with a grace period of 45 working days. The Contract also contained the following provisions:

> 17. In case of changes, alterations or deviations in the plans, specifications and bill of materials hereinabove mentioned as may be necessary in the course of the implementation of the development and construction, the same shall be mutually agreed upon by the herein parties in writing;
>
> 18. In case of substantial increase/s of prices of the materials, like cement, G.I. corrugated sheets, the said contract price shall be adjusted accordingly as to the particular item/s of (sic) material/s involved in the increase/s of prices;
>
> x x x x x x x x x
>
> 20. All other matters relating to the project not stipulated in this contract are deemed not included herein unless the parties may agree on said matters in writing;
>
> x x x x x x x x x.[6]

Work on the Project began sometime in July 1990 upon Gilbert's payment of ₱797,328.70 as twenty per cent (20%) down payment. Salvador periodically submitted progress billings, which Gilbert

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[5] Exhibit "A", *Ibid.*, p. 9.

[6] *Ibid*.

promptly paid. The billings included work on the structures stipulated in the Contract, as well as additional works and change orders.

In December 1990, however, Salvador demanded that Gilbert pay the following amounts in addition to the Contract Price: (1) ₱39,000 or a 20% fee on ₱196,000 worth of filling materials respondents themselves supplied for the Project; (2) a 20% escalation or adjustment of the unpaid balance of the Contract Price in the amount of ₱637,862.96; and (3) billing for alleged additional works in the amount of ₱399,190.46.

Salvador was particularly insistent on the escalation of the Contract Price. In his first letter dated 18 December 1990, Salvador informed Gilbert that the prices of construction materials had increased by "about forty (40%) percent."[7] Two days later, Salvador wrote again to advise Gilbert that although the Project was almost 90% completed, the latter's failure to grant the escalation would leave Salvador with "no choice but to stop operation and wait for you (Gilbert) to initiate a renegotiation."[8]

Gilbert responded by requesting for a detailed computation of the proposed escalation. On 25 December 1990, Salvador submitted a breakdown of the services and construction work done on the Project. The breakdown included the total cost of each service and the portion of the Contract Price still due for each service. To arrive at the proposed escalation of ₱637,862.96, the computation merely imposed a uniform increase of 20% on the outstanding balance still payable on each service.[9]

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[7] Exhibit "C", Records, p. 16.

[8] Exhibit "D", *ibid.*, p. 18.

[9] Exhibit "F" to "F-2", *ibid.*, p. 19. The salient portion of the computation states:

SCOPE OF WORK	*BALANCE*	*20% ADJUSTMENT*
Mobilization	₱ 64,000.00	₱ 12,800.00
Relocation, Lay-out, *etc.*	210,528.00	42,105.60
Site Clearing, Grading	315,200.00	63,040.00
Drainage, Manhole	316,332.80	63,266.56

Dissatisfied with the computation, Gilbert required Salvador to submit receipts showing the purchase of construction materials used in the Project, the dates of purchase of these materials, and the increase in their prices. Gilbert pointed out that he had already paid a total of ₱3,775,804.80 for work on the Project and that the remaining balance due under the Contract was ₱210,838.71. Salvador agreed to submit the required documents while Gilbert agreed to release an additional ₱120,065.80. Thus, only ₱90,772.91 of the Contract Price remained unpaid.

Gilbert also paid Salvador an additional ₱100,000[10] and ₱150,000[11] as advances on the escalation of the Contract Price. However, citing paragraph 17 of the Contract, Gilbert contended that further demands for additional costs and escalation were baseless and unreasonable.

On 11 January 1991, Salvador reiterated his "last and final demand" that Gilbert pay within 5 days a total of ₱1,076,253.32 — representing the 20% charge on filling materials, the 20% escalation of the Contract Price and the latest billing for additional works. Otherwise, Salvador would stop work on the Project because he had "no more funds and resources to continue the operation."[12] Salvador ceased construction work on the Project on 14 January 1991.

Road, Sidewalk	827,683.10	165,536.62
Chapel, Adm. Building	763,840.00	152,768.00
Gate, Perimeter Fence	274,631.20	54,926.24
Electrical/Street Lights	113,288.00	22,657.60
Plumbing	10,964.00	2,192.80
Painting	37,548.00	7,509.60
Landscaping	129,856.00	25,971.20
Bone Crypt, *Etc*.	113,443.20	22,688.64
Demobilization	12,000.00	2,400.00
TOTAL	₱3,189,314.30	₱637,862.86

[10] Exhibit "2", Defendants' exhibit folder.

[11] Exhibit "17", *Ibid*.

[12] Exhibit "I", Records, p. 24.

In a letter dated 16 January 1991, Salvador informed Gilbert that his office had received a notice of illegal construction ("DPWH Notice") from the Balanga, Bataan district office of the Department of Public Works and Highways. The DPWH Notice,[13] copy of which Salvador attached to his letter, was dated 8 January 1991 and received by one of Salvador's engineers on 15 January 1991.[14] The DPWH Notice stated that the Project had no building permit and ordered Salvador to stop immediately all building activities and to contact the district office within 3 days. Salvador reminded Gilbert that it was the latter's responsibility under the Contract to secure the necessary permits and licenses for the Project.

A few days later, Gilbert received a demand letter from Salvador's counsel requiring the payment of ₱1,076,253.32 and 10% attorney's fees within 3 days. On 31 January 1991, Salvador filed before the trial court a complaint for collection of sum of money and damages or for declaration of claim as lien against Romayne and Gilbert ("respondents").

In March 1991, Gilbert replaced Salvador with a new contractor and ejected Salvador's crew from the Project site.

The Ruling of the Trial Court

After trial on the merits, the trial court dismissed Salvador's complaint and respondents' counterclaims for insufficiency of basis.

The trial court observed that the escalation clause in the Contract required Salvador to specify the materials the prices of which had increased. Since the documents submitted by Salvador did not specify these materials, the trial court held that there was no basis for an adjustment or escalation of the Contract Price.

The trial court likewise ruled that Salvador failed to prove that the parties had agreed on the ₱399,190.46 worth of additional

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[13] Exhibit "K", *Ibid*., p. 26.

[14] Exhibit "K-1-B", *Ibid*.

work performed on the Project. There was neither a written agreement nor notice to respondents that Salvador would undertake such additional work.

The trial court denied Salvador's claim for ₱39,000 or 20% of the cost of filling materials for lack of basis. The evidence showed that respondents themselves purchased the filling materials for ₱196,000 and had them delivered to the Project site. Salvador merely caused the spreading of the filling materials. The trial court ruled that no provision in the Contract or subsequent written agreement justified the 20% charge on materials not procured or delivered by Salvador.

The salient portion of the trial court's decision reads as follows:

> The totality of the evidence adduced in this case would show the need for the herein parties to make a true and honest accounting of all the expenses incurred in the implementation of the subject construction contract, in the presence of an independent third party. As it now stands, plaintiff's cause of action herein is insufficiently supported, wanting in fact [and] in credible and competent basis, as afore-discussed.
>
> WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant case for insufficiency of basis. No pronouncement as to costs.
>
> Defendants' counterclaims are likewise dismissed for insufficiency of basis.
>
> SO ORDERED.[15]

Salvador appealed the trial court's decision to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals upheld the denial of Salvador's claims. However, the appellate court ruled that the receipts submitted by respondents during the trial adequately established the damage respondents sustained when Salvador ceased work on the Project.

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[15] CA *Rollo*, pp. 160-161.

The Court of Appeals also found Salvador in bad faith for stopping the construction of the Project without valid reasons.

The Court of Appeals granted respondents' counterclaims and awarded damages:

> WHEREFORE, premises considered, the judgment of the lower court is hereby REVERSED and SET ASIDE and a new one is entered:
>
> a) Dismissing the Complaint;
>
> b) Ordering plaintiff to reimburse defendant the amount of ₱1,685,532.48 representing the amount spent by the defendant in completing the project herself less the ₱90,772.91 that defendant admitted to be the balance of her obligation to plaintiff as of December 28, 1990;
>
> c) Ordering plaintiff to pay defendant ₱100,000.00 moral damages and ₱50,000.00 exemplary damages;
>
> d) Ordering plaintiff to pay defendant ₱20,000.00 as attorney's fees.
>
> Cost against plaintiff-appellant.[16]

Hence, the instant petition.

The Issues

The petition contends that:

1. THE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING PETITIONER TO REIMBURSE THE PRIVATE RESPONDENTS OF ₱1,685,532.48[17] ALLEGEDLY SPENT IN COMPLETING THE PROJECT;
2. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM FOR ADJUSTMENT OR ESCALATION OF THE CONTRACT PRICE HAD NO REASONABLE BASIS, IN THE LIGHT OF THE ADMISSION OF THE OBLIGATION BY PRIVATE RESPONDENTS AND CLEAR EVIDENCE;

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[16] *Rollo*, pp. 42-43.

[17] The Court of Appeals actually ordered petitioner to reimburse respondents ₱1,685,532.48 *less ₱90,772.91*, or a total of ₱1,594,759.57.

3. THE COURT OF APPEALS ERRED IN HOLDING THAT THE ADDITIONAL WORKS OF PETITIONER WERE NOT AUTHORIZED, IN THE LIGHT OF THE ADMISSION OF THE OBLIGATION BY PRIVATE RESPONDENTS AND THE CLEAR EVIDENCE.

4. THE COURT OF APPEALS ERRED IN HOLDING THAT THE ACT OF PETITIONER IN STOPPING WORK IN THE PROJECT WAS DUE TO NON-PAYMENT OF THE ESCALATED PRICE AND ADDITIONAL WORKS, CONTRARY TO THE CLEAR EVIDENCE.[18]

The central issues left for the resolution of this Court are: (1) whether Salvador's claims for additional work, including the 20% charge on filling materials, and escalation of the Contract Price are valid; and (2) whether respondents are entitled to their counterclaim and damages.

The Ruling of the Court

The petition is partly meritorious.

The Claims for Additional Works Done on the Project and for Escalation of the Contract Price

It is evident from the issues raised that the petition seeks a review of some of the factual findings of the Court of Appeals.

Petitions for review on *certiorari* under Rule 45 are generally limited to questions of law. Moreover, factual findings of the Court of Appeals, particularly when they affirm those of the trial court, are binding on this Court.[19]

Upon examining the evidence, the trial and appellate courts found that: (1) respondents did not authorize additional works on the Project nor agree to a price for such works; and (2) Salvador did not specify the particular items or materials which

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[18] *Rollo*, p. 8.

[19] *Manila Electric Company v. Court of Appeals*, 413 Phil. 338 (2001).

had increased in price. The Court will not disturb these factual findings absent compelling or exceptional reasons.[20]

Given these facts, we rule that the law and the Contract do not allow petitioner's claims for additional works and escalation of the Contract Price.

There are two requisites in order that a contractor may claim additional costs:

> Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
>
> 1) Such change has been authorized by the proprietor in writing; and
>
> (2) The additional price to be paid to the contractor has been determined in writing by both parties.[21]

Compliance with *both* of these requirements is a condition precedent to the recovery of additional costs.[22] Even the absence of one of the elements required by Article 1724 bars recovery.[23]

In the present case, Salvador failed to present any written authority from respondents for any change in the plans or specifications agreed upon in the Contract. Salvador also failed to present any agreement on the price for such additional work. Salvador did not notify respondents in advance of the additional work he performed on the Project. The Contract did not authorize

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[20] See *Fuentes v. Court of Appeals*, G.R. No. 109849, 26 February 1997, 268 SCRA 703.

[21] Civil Code, Art. 1724.

[22] *Weldon Construction Corporation v. Court of Appeals*, No. L-35721, 12 October 1987, 154 SCRA 618.

[23] *Ibid*.

Salvador to determine unilaterally the changes to be made in the Project, or what price to charge for such changes. Not having fulfilled any of the requirements in Article 1724, Salvador's claim of ₱399,190.46 for alleged additional works has no legal basis.

On the other hand, Salvador's demand for an escalation of the Contract Price hinges on paragraph 18[24] of the Contract.

Construction contracts may provide for the escalation or increase of the price originally agreed upon by the parties in certain instances. As the Court explained in ***Baylen Corporation v. Court of Appeals:***[25]

> Escalation clauses in construction contracts commonly provide for increases in the contract price *under certain specified circumstances, e.g., as the cost of selected commodities* (cement, fuel, steel bars) or the cost of living in the general community (as measured by, for instance, the Consumer Price Index officially published regularly by the Central Bank) *move up beyond specified levels.* (Italics supplied)

The parties may validly agree on an escalation clause.[26] However, the enforceability of an escalation clause is subject to the conditions stipulated in the contract.[27]

Paragraph 18 of the Contract expressly provides for the escalation or adjustment of the Contract Price in the event of "*substantial increase/s of prices* of the materials, like cement, G.I. corrugated sheets."[28] Clearly, paragraph 18 of the Contract authorizes an escalation of the Contract Price only if there are substantial increases

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[24] See note 5.

[25] G.R. No. 76787, 14 December 1987, 156 SCRA 505.

[26] *Concepcion v. CA*, G.R. No. 122079, 27 June 1997, 274 SCRA 614; *Banco Filipino Savings and Mortgage Bank v. Navarro*, G.R. No. L-46591, 28 July 1987, 152 SCRA 346.

[27] *Insular Bank of Asia and America v. Salazar*, G.R. No. 82082, 25 March 1988, 159 SCRA 133.

[28] See note 5.

in the prices of materials such as cement and G.I. corrugated sheets. Absent substantial increases in the prices of materials used in the Project, paragraph 18 would not apply.

The records show that respondents were amenable to an escalation of the Contract Price, and that they in fact paid Salvador ₱250,000 in anticipation of the escalation. Respondents were merely insisting that Salvador comply with what the Contract required, that is, specify the increase in the prices of particular materials purchased for the Project. Under paragraph 18, Salvador had the obligation to show that there were substantial increases in the prices of particular materials used in the Project. The trial and appellate courts found, and the records support the finding, that Salvador did not comply with this obligation.

Salvador contends that the computation[29] he submitted dated 25 December 1990 sufficiently complied with the conditions of paragraph 18. He alleges that the 20% increase in the cost of the services enumerated in the computation necessarily included the increase in the prices of the materials used. He had also informed respondents earlier that the prices of construction materials had increased by as much as 40%. Salvador further argues that the burden of proof had shifted to respondents to present a "counter-computation" as to what they considered the correct escalation of the Contract Price.

We do not agree.

Salvador supplied the materials for the construction of the Project.[30] Salvador would thus be in the best position to provide the actual increases in the prices of the materials. Salvador also alleged that the prices of construction materials rose substantially since the Project began in July 1990. The rule is that he who alleges a fact has the burden of proving it.[31] Salvador never presented

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[29] See note 9.

[30] Paragraph 3 of the Contract provide that "the Contractor shall provide and use his/its own materials, equipment, manpower, supervision and administration as may be necessary of the completion of the project."

[31] *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 991 (1999).

receipts, billings from suppliers or similar documents substantiating his claim. Indeed, Salvador's obdurate refusal to provide the simple details required by the Contract puzzles the Court.

A contract is the law between the parties and they are bound by its stipulations.[32] If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[33]

Under the terms of paragraph 18 of the Contract, the Contract Price "shall be *adjusted accordingly as to the particular item/s o[r] materials involved in the increase/s of prices*."[34] This stipulation is plainly worded, requiring no interpretation. The Contract Price could be adjusted only up to the actual increase in the prices of "*particular item/s or materials*" used in the Project.

Paragraph 18 of the Contract did not give Salvador the right to determine arbitrarily the proportion or amount of the escalation in the Contract Price. The Contract requires that any escalation in the Contract Price must result from "*substantial increase/s*" in the prices of "*particular item/s or materials*" used in the Project. This certainly excludes escalation based on estimates or blanket increases. The computation Salvador provided failed to identify the particular materials that had increased in price and the amount of such price increases. His general claim that the prices of construction materials had increased by 40% was not sufficient under the terms of paragraph 18. There was thus no basis for Salvador's demand of a blanket 20% increase on all materials.

Assuming *arguendo* that the Contract authorized Salvador to determine unilaterally the escalation of the Contract Price, such a provision would be void for violating the principle of mutuality.[35] In ***Philippine National Bank v. Court of Appeals***,

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[32] *R & M General Merchandise, Inc. v. Court of Appeals*, 419 Phil. 131 (2001).

[33] Civil Code, Art. 1370.

[34] See note 5.

[35] Article 1308 of the Civil Code provides: "The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

the Court struck down the increases in interest rates unilaterally imposed by Philippine National Bank pursuant to an escalation clause, and declared that:

> In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (*Garcia vs. Rita Legarda, Inc.,* 21 SCRA 555). Hence, even assuming that the ₱1.8 million loan agreement between the PNB and private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (*Qua vs. Law Union & Rock Insurance Co.,* 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.[36]

Moreover, the computation Salvador submitted plainly shows a 20% increase in the cost of *services*. The Contract does not authorize any escalation in the cost of services Salvador would render to the Project.

We agree with the trial court that Salvador has no basis to charge respondents a fee of 20% or ₱39,000 on filling materials that respondents supplied to the Project. Salvador himself testified that: (1) respondents ordered and purchased the filling materials for ₱196,000; and (2) respondents caused the delivery of the materials to the Project site.[37] Neither the Contract nor any other document presented during trial provided for a 20% charge on materials that respondents supplied to the Project. On the contrary, under paragraph 20 of the Contract, "matters relating

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[36] *Philippine National Bank v. Court of Appeals*, G.R. No. 88880, 30 April 1991, 196 SCRA 536, reiterated in *Philippine National Bank v. Court of Appeals*, G.R. No. 109563, 9 July 1996, 258 SCRA 549.

[37] TSN, 6 January 1992, pp. 4-5.

to the Project not stipulated in this contract are deemed not included herein unless the parties may agree on said matters in writing." Under the Contract, Salvador had the obligation to supply the materials for the construction of the Project.[38] We cannot penalize respondents and reward Salvador for respondents' act in assuming part of Salvador's obligation under the Contract when Salvador himself did not object to such act.

Respondents' Counterclaim and the Damages Awarded by the Court of Appeals

The trial court ruled that respondents' counterclaim had no basis. On appeal, the Court of Appeals reversed this ruling and ordered Salvador to reimburse respondents ₱1,594,759.57, representing the amount allegedly spent by respondents in completing the Project less the ₱90,772.91 balance of the Contract Price. On the ground that Salvador was in bad faith, the appellate court also awarded respondents ₱100,000 in moral damages, ₱50,000 in exemplary damages and ₱20,000 in attorney's fees.

While factual findings of the lower courts are generally conclusive on this Court, the rule is subject to certain exceptions, as when the findings of fact of the trial court and Court of Appeals diverge.[39]

The Court of Appeals concluded that Salvador stopped work on the Project due to respondents' failure to accede to his demand for payment of the price escalation. The evidence on record supports this. Salvador sent respondents several letters threatening to halt construction of the Project precisely for this reason.

Salvador maintains, however, that he was merely complying with the DPWH Notice when he stopped all construction activities on 14 January 1991. This argument does not convince us. Despite Salvador's claim that he received the DPWH Notice on 14 January 1991, the DPWH Notice itself shows that a certain Dennis

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[38] See note 30.

[39] *Aclon v. Court of Appeals*, G.R. No. 106880, 20 August 2002, 387 SCRA 415.

Coronado received the notice on 15 January 1991,[40] *the day after Salvador ceased to work on the Project.*

In a contract involving reciprocal obligations, the rules on when a party may be declared in default are found in Article 1169:

> Art. 1169. Those obliged to deliver or to do something, incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> x x x x x x x x x
>
> In reciprocal obligations, *neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him.* From the moment one of the parties fulfills his obligation, delay by the other begins.[41] (Italics supplied.)

Although Salvador stopped work on the Project in breach of the Contract and in violation of the law,[42] respondents were likewise remiss in their obligations under the Contract. Paragraph 7 of the Contract states:

> 7. The project owner shall be responsible in applying for and obtaining at his/her own expens/es (sic) whatever permits, licenses and/or documents as may be necessary from the Government or any of its agencies, or otherwise; x x x

The National Building Code requires a building permit on all construction projects.[43] In the present case, the parties were

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[40] Exhibit "K-1-B", *supra*, note 14.

[41] Civil Code, Art. 1169.

[42] See note 21. The relevant portion of Article 1724 states that, "The contractor who undertakes to build a structure or any other work for a stipulated price x x x *can neither withdraw from the contract* nor demand an increase in the price on account of the higher cost of labor or materials x x x"

[43] Section 301 of Presidential Decree No. 1096 provides:

> Sec. 301. *Building Permits*
>
> No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

able to start and even almost complete the Project without a building permit. The failure of respondents to secure the required building permit constitutes a breach of their obligation under the Contract. Even if Salvador did not voluntarily stop working on the Project, he would not have been able to complete the Project because of the cease-and-desist order from the DPWH.

Thus, we cannot attribute Salvador's failure to complete the Project within the contract period solely to his voluntary work stoppage. Paragraph 6 of the Contract provides:

> 6. That should there be any restraining order and/or injunction from the court or *any legal authority which will cause stoppage of the work* of the CONTRACTOR relating to the said project, the same should be considered as [a] fortuitous event and/or *force majeure*, and the *time of stoppage of work shall be deducted from the agreed time of completion* of the project;[44] (Italics supplied)

The DPWH Notice suspended the running of the period given to Salvador to complete the Project. Respondents were not able to show that the DPWH lifted the cease-and-desist order, or that they subsequently secured a building permit. Since respondents failed to prove that they had fulfilled their obligation under the Contract, Salvador's failure to complete the Project within the contract period cannot be attributed solely to his voluntary work stoppage. There is, therefore, no legal basis to grant respondents' counterclaim for ₱1,685,532.48, the amount they allegedly spent to complete the Project.

Respondents point out that when a new contractor took over to complete the Project, no one from the DPWH stopped the Project, showing that Salvador could also have completed the Project even without the required building permit.[45] Respondents betray a disturbingly cavalier attitude towards the strict requirements of the law, including the Sanitation Code,[46] in

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[44] See note 5.

[45] Comments to the Petition, *Rollo*, p. 223.

[46] Sections 90, 100 and 101, Chapter XXI of the Sanitation Code of the Philippines (PD No. 856) provide as follows:

establishing a memorial park or cemetery. The State strictly regulates the establishment of memorial parks or cemeteries because they affect public health. Memorial parks or cemeteries must be located and constructed without contaminating rivers, underground water tables and the surrounding areas.[47]

SECTION 90. Burial Grounds Requirements. — The following requirements shall be applied and enforced:

a. It shall be unlawful for any person to bury remains in places other than those legally authorized in conformity with the provisions of this Chapter.

b. *A burial ground shall at least be 25 meters distant from any dwelling house and no house shall be constructed within the same distance from any burial ground.*

c. No burial ground shall be located within 50 meters from either side of a river or within 50 meters from any source of water supply.

x x x x x x x x x

SECTION 100. Responsibility of the Local Health Authority. — The local health authority shall:

a. Administer city or municipal cemeteries;

b. Issue permits to inter, disinter or transfer remains;

x x x x x x x x x

SECTION 101. Responsibility of Local Government. — Local governments shall:

a. Reserve appropriate tracts of land under their jurisdiction, for cemeteries subject to approval of Regional Directors concerned;

x x x x x x x x x

c. Close cemeteries under their jurisdiction subject to approval of the Regional Director.

[47] The current Implementing Rules and Regulations of Chapter XXI of PD No. 856 (promulgated on 30 September 1996 by the Department of Health) provide in part:

SECTION 3. Burial Ground Requirements. —

3.1 The following are the requirements for securing an initial clearance from the Department of Health in establishing and opening of a public cemetery or memorial park:

3.1.1 Application for establishing and opening of a cemetery or a memorial park.

3.1.2 Resolution of the city/municipal council for the cemetery site embodying therein the strict compliance to these rules and regulations.

We also find untenable the award of moral and exemplary damages, as well as attorney's fees to respondents. A breach

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3.1.3 Map of the proposed cemetery in triplicate copies indicating the dimensions of the cemetery in length and width and the 25-50 meter zones, the dwelling places and sources of water supply within said zones.

3.1.4 Title of ownership of the land proposed to be utilized as a cemetery, duly registered with the office of the register of deeds of the province/ city.

3.1.5 Certification from the sanitary engineer of the Department of Health with regards to the suitability of the land proposed to be utilized as a cemetery, as to the depth of water table during the dry and rainy seasons, highest flood level, direction of run-off, drainage disposal, the distance of any dwelling house within the 25 meter zone and drilling of a well or any source of potable water supply within the 50 meter zone.

3.1.6 Plan for the construction of a reinforced concrete wall or steel grille or combination thereof with a minimum height of two (2) meters around the cemetery with a steel grille main door provided with a lock.

x x x x x x x x x

3.1.8 Plan for the construction of a 4-meter wide main road from the gate to the rear and the 1-meter minimum cross roads which divide the cemetery in lots and sections.

3.1.9 Topographic map of the cemetery zone.

3.1.10 Technical description of the proposed cemetery showing the following:

a. The name of the cemetery or memorial park or in case of private burying ground, the name of applicant, and the *barangay*, municipality or city or province where the proposed site is located;

b. Exact dimension of all the sides of the proposed cemetery site;

c. The area of said site;

d. The 25 meter zone around the property delimited;

e. The name of all the land or residential owners within the 25 meter zone, indicating the portion/s belonging to each owner;

f. The direction of the compass, the top of the plan be the North; and

g. The distance of the corners of the proposed cemetery site proper from some known and permanent topographical objects, or some characteristics of the place which will facilitate the accurate identification of the cemetery site proper even if its fence or wall is removed.

x x x x x x x x x

3.5 The following are the requirements for securing an initial clearance from the Department of Health for private burial grounds or place of enshrinement (including sectarian burial areas, catacomb, mausoleum):

of contract may give rise to an award of moral damages if the party guilty of the breach acted fraudulently or in bad

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3.5.1 Compliance to Section 3, paragraph 3.1, sub-paragraphs 3.1.1, 3.1.3–3.1.6 and 3.1.9–3.1.10 of these rules and regulations;

3.5.2 Resolution by the city/municipal council permitting the establishment of the private burial ground;

3.5.3 Certification by the city/municipal planning and development office with regards to the proposed site location;

3.5.4 Certification by the city/municipal engineer that the design of the proposed structures conforms to the National Building Code of the Philippines;

3.5.5 Size of the burial private ground shall be at least 1.2 hectares which includes a buffer zone of 50 meters around the niche or space for interment;

3.5.6 Burial shall be limited to 10 niches occupying an area not more than 30 square meters to be located at the center of the proposed site;

3.5.7 Additional burials shall not exceed or go beyond the 30 square meters designated site and shall be constructed only over and above the existing niches, but in no case more than 4 niches or 3.0 meter high whichever is lower;

3.5.8 All niches shall be totally enclosed with concrete or other impervious material strictly watertight and the flooring slightly sloped at the center; a 5 cm. noncorrosive "weep hole" shall be provided and constructed directly resting on the ground; the "weep hole" shall be located at the opposite side of the niche's opening and not exposed to the atmosphere as a drain; a reverse of an air vent; (also applicable to apartment-type or honeycomb-type or capsule-type arrangement of niches).

3.6 The regional health director shall issue an initial clearance upon submission and review of the requirements stated in paragraph 3.1 for public cemetery/memorial park or paragraph 3.5 for private burial grounds.

3.7 Upon completion of the cemetery or memorial park or private burial ground and before its operation, a validation as to compliance to the requirements stated in paragraph 3.1 or paragraph 3.5, as the case may be, shall be conducted by the regional health office concerned. An operational clearance shall be issued by the regional health director which shall be the basis for issuance of the sanitary permit by the local health office.

3.8 Sanitary Requirements for Burial Grounds:

3.8.1 Toilet and Handwashing Facilities

a. Adequate, clean and accessible toilet facilities for male, female and disabled persons/personnel shall be provided in properly located areas.

b. Adequate lavatories with sufficient supply of soap and hand dryer shall be provided within or adjacent the toilet rooms.

c. Toilet rooms shall be completely enclosed, properly lighted and ventilated.

d. All toilets shall have good ventilation either by windows or exhaust fans.

e. Odor absorbent materials such as saw dust and activated carbon shall be installed in the toilet rooms.

f. The walls of toilet rooms shall be painted or finished in light color.

g. The number of water closets shall be provided in accordance with the following tables:

x x x x x x x x x

3.8.2 Toilet Structural Requirements

a. Approval of the local health officer based on the recommendation of the city/municipal engineer or sanitary engineer as to the following:

i. Plans of the toilet

ii. Plumbing connection (in compliance with the National Plumbing Code of the Philippines)

iii. Individual sewage disposal system, sub-surface absorption system or other treatment device.

b. Minimum Space Requirement:

Table 4. Comfort Room Space Requirement

x x x x x x x x x

3.8.3 Water Supply

a. The water supply shall be adequate and potable whether from a public or from a private water supply system. The quality of water used shall be in accordance with the Philippine National Standards for Drinking Water.

i. All water sources shall have a certificate of potability of drinking water issued by the local health officer.

ii. A minimum supply of forty (40) liters per capita per day shall be maintained.

x x x x x x x x x

3.8.5 Sewage Disposal and Drainage

a. Sewage from the burial ground plumbing system shall be connected to a public sewerage system, or in the absence thereof, to a septic tank or other wastewater treatment facility and subsurface absorption field. A transition of one (1) year period shall be afforded to the owner of the burial ground to comply with these rules and regulations. No renewal of sanitary permit shall be issued after the transition period.

b. Storm water shall be discharged to a storm sewer system in all areas where it exists.

3.8.6 Solid Waste Management

x x x x x x x x x

faith.[48] In this case, both parties did not comply with their obligations under the Contract. Respondents must share part of the blame for the stoppage of work on the Project, as the stoppage was partly due to respondents' failure to obtain the necessary building permit. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[49] Neither the records nor the decisions of the trial and appellate courts indicate that Salvador behaved in such a manner and to such degree as to warrant the grant of exemplary damages. We also delete the award of attorney's fees since none of the grounds for awarding attorney's fees under Article 2208 of the Civil Code applies to the present case.

WHEREFORE, the Decision of 30 April 1996 of the Court of Appeals in CA-G.R. CV No. 39661 is *REVERSED*. The Decision of 18 August 1992 of the Regional Trial Court of San Mateo, Rizal, Branch 76, in Civil Case No. 754, dismissing petitioner Renato C. Salvador's complaint as well as respondents Maria Romayne Miranda and Gilbert Miranda's counterclaims, is *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

Davide, Jr. C.J. (Chairman), Panganiban, Ynares-Santiago and *Azcuna, JJ.,* concur.

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[48] Civil Code, Art. 2220.

[49] *Ibid*., Art. 2232.

FIRST DIVISION

[G.R. No. 126280. March 30, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGER GULPE and RICARDO VIGAS,** *appellants.*

SYNOPSIS

Appellants Roger Gulpe and Ricardo Vigas were convicted by the trial court of the crime of Rape with Homicide. However, considering that at the time the crime was committed the death penalty had been reduced to *reclusion perpetua* by Section 19 (1) of Article III of the Constitution and the appellants were minors, they were sentenced to suffer an indeterminate penalty of 8 years and 1 day of *prision mayor*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal*, as maximum. On appeal, the Court of Appeals modified the penalty imposed. It opined that, even before the effectivity of Republic Act No. 7659, the penalty prescribed for the special complex crime of Rape with Homicide was already death but death could not be imposed only because the Constitution had proscribed its imposition. Since the death penalty was not abolished, the appellate court concluded that in offenses where the death penalty is prescribed, it must still be reckoned with in determining the imposable penalty. In the present case, since the penalty for Rape with Homicide is death, the presence of the privileged mitigating circumstance of minority should reduce the penalty by one degree lower from death. Consequently, it imposed upon the appellants the penalty of *reclusion perpetua*. Thus, in this appeal, appellants asked this Court to reverse the portion of the Court of Appeals' ruling which increased the penalty imposed upon them.

The issue in this case has already been discussed and resolved in *People v. Quintori,* to wit: " …[W]hile the trial court was correct in ruling that the prescribed penalty for rape was *death*, but that it could not, however, be imposed in view of the prohibition in Section 19(1) of Article III of the Constitution, the RTC nevertheless erred in reasoning that the prescribed penalty was changed to *reclusion perpetua*, hence, the penalty next lower in degree was *reclusion temporal*. In *People v.*

Munoz, [170 SCRA 107 (1989)] we ruled that the constitutional prohibition did not alter the periods for the penalty for murder for purposes of determining the proper imposable penalty, *i.e.*, the intent of the framers of the Constitution was merely to consider the death penalty automatically reduced to *reclusion perpetua*. The same thing may be said as regards rape with homicide. The penalty of death provided under the governing law then was deemed reduced to *reclusion perpetua; however, for purposes of determining the proper penalty because of the mitigating circumstance of minority, the penalty of death was still the penalty to be reckoned with …*" Accordingly, the Court of Appeals correctly increased appellants' penalty to *reclusion perpetua*.

SYLLABUS

CRIMINAL LAW; PENALTIES; CONSTITUTIONAL PROHIBITION ON THE IMPOSITION OF DEATH PENALTY DID NOT ALTER THE PERIODS FOR PURPOSES OF DETERMINING THE PROPER IMPOSABLE PENALTY. — The issue in this case has already been discussed and resolved in *People v. Quintori*, to wit: …[W]hile the trial court was correct in ruling that the prescribed penalty for rape was *death*, but that it could not, however, be imposed in view of the prohibition in Section 19(1) of Article III of the Constitution, the RTC nevertheless erred in reasoning that the prescribed penalty was changed to *reclusion perpetua*, hence, the penalty next lower in degree was *reclusion temporal*. In *People v. Munoz*, [170 SCRA 107 (1989)] we ruled that the constitutional prohibition did not alter the periods for the penalty for murder for purposes of determining the proper imposable penalty, *i.e.*, the intent of the framers of the Constitution was merely to consider the death penalty automatically reduced to *reclusion perpetua*. The same thing may be said as regards rape with homicide. The penalty of death provided under the governing law then was deemed reduced to *reclusion perpetua*; *however, for purposes of determining the proper penalty because of the mitigating circumstance of minority, the penalty of death was still the penalty to be reckoned with…* Accordingly, the Court of Appeals correctly increased appellants' penalty to *reclusion perpetua.*

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

AZCUNA, *J.*:

Appellants Roger Gulpe (Gulpe) and Ricardo Vigas (Vigas) were convicted of the crime of Rape with Homicide by the Regional Trial Court of Iriga City (RTC).[1] Appellants do not assail their conviction, but have filed the present petition to reverse the portion of the Court of Appeals' ruling which increased the penalty imposed upon them.

Based on eyewitness accounts,[2] in the afternoon of June 30, 1990, in Sitio x x x, x x x, at about 4:00 o'clock, Gulpe was seen having sexual intercourse with the seven-year-old victim AAA. While this was happening, Vigas was holding down AAA's right shoulder with his right hand, pinning her left shoulder on the ground with his left elbow and covering her mouth with his left hand. Thereafter, Gulpe exchanged positions with Vigas and the latter was then seen having sexual intercourse with AAA while the other appellant was holding her down. When Vigas finished having sex with AAA, they called for Villaruel, Jr., a co-accused who was acquitted. Villaruel, Jr., however, left. Vigas then got a piece of bamboo and stabbed the victim with it, causing her death.

The crime of Rape with Homicide carried with it the penalty of *reclusion perpetua* to death under Article 335 of the Revised Penal Code.[3] However, considering that at the time the crime was committed, on June 30, 1992, the death penalty had been

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[1] Branch 37; Criminal Case No. IR-2840.

[2] TSN, October 12, 1990, pp. 5-8.

[3] The crime was committed prior to the enactment of Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, which had repealed Article 335 of the Revised Penal Code.

reduced to *reclusion perpetua* by Section 19(1) of Article III of the Constitution and that Gulpe and Vigas were then 17 years old and 16 years old, respectively, the RTC appreciated the privileged mitigating circumstance of minority in their favor and reduced appellants' penalty by one degree lower from *reclusion perpetua*. Consequently, appellants were sentenced each to suffer an indeterminate penalty of 8 years and 1 day of *prision mayor*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal*, as maximum.

On appeal, the Court of Appeals modified the penalty imposed. It opined that, even before the effectivity of Republic Act No. 7659,[4] the penalty prescribed for the special complex crime of Rape with Homicide was already death but death could not be imposed only because the Constitution had proscribed its imposition. Therefore, the Court of Appeals did not consider the death penalty abolished but as, in a sense, "in a state of hibernation."[5]

Since the death penalty was not abolished, the Court of Appeals concluded that in offenses where the death penalty is prescribed, it must still be reckoned with in determining the imposable penalty. In the present case, since the penalty for Rape with Homicide is death, the presence of the privileged mitigating circumstance of minority should reduce the penalty by one degree lower from death. Consequently, the Court of Appeals modified the judgment of the RTC and imposed upon appellants the penalty of *reclusion perpetua*.

The Court of Appeals is correct.

The issue in this case has already been discussed and resolved in *People v. Quintori*,[6] to wit:

> . . . [W]hile the trial court was correct in ruling that the prescribed penalty for rape *was death*, but that it could not, however, be imposed in view of the prohibition in Section 19(1) of Article III of the Constitution, the RTC nevertheless erred in reasoning that the

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[4] Death Penalty Law.

[5] *Rollo*, p. 38; Court of Appeals' Decision, p. 15.

[6] 285 SCRA 196 (1998).

prescribed penalty was changed to *reclusion perpetua*, hence, the penalty next lower in degree was *reclusion temporal*. In *People v. Munoz*, [170 SCRA 107 (1989)] we ruled that the constitutional prohibition did not alter the periods for the penalty for murder for purposes of determining the proper imposable penalty, *i.e.*, the intent of the framers of the Constitution was merely to consider the death penalty automatically reduced to *reclusion perpetua*. The same thing may be said as regards rape with homicide. The penalty of death provided under the governing law then was deemed reduced to *reclusion perpetua*; *however, for purposes of determining the proper penalty because of the mitigating circumstance of minority, the penalty of death was still the penalty to be reckoned with* . . . (italics supplied)

Accordingly, the Court of Appeals correctly increased appellants' penalty to *reclusion perpetua*.

WHEREFORE, the petition for review is *DENIED* and the Decision of the Court of Appeals is *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Ynares-Santiago, and *Carpio, JJ.,* concur.

THIRD DIVISION

[G.R. No. 132422. March 30, 2004]

FILADAMS PHARMA, INC., *petitioner, vs.* **HONORABLE COURT OF APPEALS and ANTONIO FERIA,** *respondents*.

SYNOPSIS

Petitioner Filadams Pharma, Inc. charged private respondent Antonio Feria with the crime of estafa. It claimed that respondent Feria was its sales agent who upon audit was found to be

accountable for ₱41,733.01 representing unsold but unreturned stocks and samples, unremitted collections and unliquidated cash advance. In his defense, respondent denied the charge by claiming that, although he was an agent of the corporation, he was not the trustee of its products. The cash advance were spent, as intended and it was only the unexpended amount that was supposed to be returned by way of liquidation. And if ever, his obligation was purely civil in nature. Thereafter, the Assistant City Prosecutor of Quezon City dismissed the complaint for lack of cause of action. The Department of Justice (DOJ) also dismissed the appeal. It ruled that if at all, respondent's liability to the company is purely civil in nature as the acts complained of do not constitute the crime of estafa. In the petition for *certiorari,* the Court of Appeals denied it on grounds that the proper remedy for the petitioner was a petition for review under Rule 45 and not a petition for *certiorari* and assuming that a petition for *certiorari* was proper, the DOJ decision was not marked by grave abuse of discretion. Hence, this petition.

The Court ruled that based on the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations – now the 2000 NPS Rule on Appeals – the petitioner could appeal to the Secretary of Justice. In this case, the petitioner did appeal to the Secretary of Justice but his appeal was dismissed. His motion for reconsideration was also dismissed. Since there was no more appeal or other remedy available in the ordinary course of law, the petitioner correctly filed a petition for *certiorari* with the Court of Appeals on the ground of grave abuse of discretion.

Moreover, the rule that "the failure to account, upon demand, for funds or property held *in trust* is circumstantial evidence of misappropriation" applies without doubt in the present case. Since a preliminary investigation is merely a determination of "whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial," we find the documented allegations in the complainant-affidavit and reply-affidavit of petitioner Filadams sufficient to generate such well-founded belief.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY WHEN THE SECRETARY OF JUSTICE DISMISSED THE APPEAL OF THE RESOLUTION IN PRELIMINARY INVESTIGATION. — With our ruling in *Bautista* that the Office of the Prosecutor was not covered by the appellate process under Rule 43 of the Rules of Court, what then was petitioner's remedy from the resolution of the Assistant Prosecutor dismissing his complaint? Based on the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations — now the 2000 NPS Rule on Appeals — the petitioner could appeal to the Secretary of Justice. In this case, the petitioner did appeal to the Secretary of Justice but his appeal was dismissed. His motion for reconsideration was also dismissed. Since there was no more appeal or other remedy available in the ordinary course of law, the petitioner correctly filed a petition for *certiorari* with the Court of Appeals on the ground of grave abuse of discretion.

2. CRIMINAL LAW; ESTAFA; ELEMENTS. — To determine whether there was probable cause warranting the filing of the information for estafa through misappropriation or with abuse of confidence, the presence of the following elements assumes critical importance: 1. that money, goods, or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; 2. that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; 3. that such misappropriation or conversion or denial is to the prejudice of another; and, 4. that there is a demand made by the offended party on the offender.

3. ID.; ID.; FAILURE TO ACCOUNT, UPON DEMAND, FOR FUNDS OR PROPERTY HELD *IN TRUST* IS CIRCUMSTANTIAL EVIDENCE OF MISAPPROPRIATION. — The essence of estafa under Article 315 (1)(b) of the Revised Penal Code is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit,

use and enjoyment. The failure to account, upon demand, for funds or property held *in trust* is circumstantial evidence of misappropriation. For example, in an agency for the sale of jewelry, it is the agent's duty to return the jewelry upon demand of the owner and the failure to do so is evidence of conversion of the property by the agent. In other words, the demand for the return of the thing delivered *in trust* and the failure of the accused to account for it are circumstantial evidence of misappropriation. However, this presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust, he may not be held liable for estafa.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DOCUMENTED ALLEGATIONS IN THE AFFIDAVITS ARE SUFFICIENT TO GENERATE A WELL-FOUNDED BELIEF. — The rule that "the failure to account, upon demand, for funds or property held *in trust* is circumstantial evidence of misappropriation" applies without doubt in the present case. Since a preliminary investigation is merely a determination of "whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial," we find the documented allegations in the complaint-affidavit and reply-affidavit of petitioner Filadams sufficient to generate such well-founded belief.

5. ID.; ID.; ID.; COURT'S GENERAL POLICY NOT TO INTERFERE IN THE CONDUCT THEREOF; EXCEPTIONS. — While it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, we have nonetheless made some exceptions to the general rule, such as: 1. when necessary to afford adequate protection to the constitutional rights of the accused; 2. when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; 3. when there is a prejudicial question which is *sub judice*; *4. when the acts of the officer are without or in excess of authority;* 5. where the prosecution is under an invalid law, ordinance or regulation; 6. when double jeopardy is clearly apparent; 7. where the court has no jurisdiction over the offense; 8. where it is a case of persecution rather than prosecution; 9. where the charges are manifestly false and motivated by the lust for

vengeance; 10.when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.

APPEARANCES OF COUNSEL

Alexander C. Estebal for petitioner.
Perfecto A. Sotoridona, Jr. for private respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court seeking to annul and set aside the resolution[1] dated May 29, 1997 of the Court of Appeals denying petitioner's petition for *certiorari* and its resolution[2] dated January 23, 1998 denying petitioner's motion for reconsideration.

The antecedent facts follow.

Petitioner Filadams Pharma, Inc. (Filadams) was a corporation engaged in the business of selling medicines to wholesalers. Private respondent Antonio Feria was its sales representative from November 3, 1993 until his dismissal on March 9, 1994. In an audit conducted sometime between March 10 to 26, 1994, respondent Feria was found accountable for ₱41,733.01 representing unsold but unreturned stocks and samples, unremitted collections and unliquidated cash advances. Filadams alleged that these shortages and accountabilities were admitted by respondent through his wife and counsel in a conference held at its office but despite repeated demands, respondent failed to settle them to its damage and prejudice.[3]

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[1] Penned by Associate Justice Hector L. Hofileña and concurred in by Associate Justices Artemon D. Luna and Artemio G. Tuquero of the Twelfth Division; *Rollo*, pp. 34-35.

[2] *Rollo*, pp. 44-45.

[3] Annex "A", Resolution of Chief State Prosecutor Zuno; *Rollo*, p. 23.

In his defense, respondent denied the charge. He averred that, although he was an agent of the corporation, he was not the trustee of its products. The cash advances were spent, as intended, for promoting the products of the company and it was only the unexpended amount that was supposed to be returned by way of liquidation. The cash rebates were properly given to the customers concerned although the same were given in kind, as requested by the customers. In a spot check conducted in his area in January and February of 1994, the stock overages in his possession were segregated and returned to the company but he was not given the returned goods slip (RGS). He also returned various items or medicines on March 14, 1994 amounting to ₱19,615.49 but what was reflected in the inventory report was only ₱8,185.30. He maintained that he neither misappropriated nor converted the subject sums of money for his personal use or benefit. If ever, his obligation was purely civil in nature and the company in fact accepted his partial payment of ₱3,000 through his wife in a conference held at petitioner's office on September 13, 1994.[4]

In a reply-affidavit, the internal auditor of Filadams asserted that respondent occupied a position of trust and confidence. He was not given a new cash advance but merely a replenishment of the used revolving fund. The cash rebates were never received by the customer as confirmed by the customer himself. Respondent signed the physical inventory report so he could not claim that he made returns that were not recorded. Paying back the amount of ₱3,000 to the company was an acknowledgment of his stock shortages and proof of his breach of trust and confidence resulting in the company's damage and prejudice.[5]

The Assistant City Prosecutor of Quezon City dismissed the complaint-affidavit for lack of cause of action:

> A careful examination of the affidavit complaint plus the reply affidavit of complainant failed to state the ultimate facts constituting the cause of action.

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[4] *Ibid*.

[5] *Ibid*., p. 24.

While complainant states that their audit resulted in Feria's misappropriation of the company's products, unremitted collections, unreturned advances and unsubmitted sales proceeds in the total amount of ₱41,733.01, the specifics of the misappropriation, (*i.e.*, [ineligible]. . . when committed, where committed, how much per act of misappropriation or was the misappropriation a one-act deal…[ineligible]) were all conclusions a general recitals (*sic*) of the fact of commission/omission followed by the personal conclusion of guilt by the complainant which are not sustained by admissible evidence.[6]

Petitioner filed a motion for reconsideration but this was denied by 1st Assistant City Prosecutor Gerona who ruled that there was no "manifest error or grave abuse of discretion to justify reversal, alteration or modification of the challenged resolution."[7]

Petitioner appealed to the Secretary of Justice under the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations.[8]

But the Department of Justice (DOJ), through the Office of the Chief State Prosecutor,[9] also dismissed the appeal:

While it is an undisputed fact that respondent incurred some accountabilities with Filadams during the duration of his employment, as shown by respondent's payment of the amount of ₱3,000.00 on September 13, 1994, mere acknowledgment by respondent of these accountabilities does not of itself establish that estafa under par. 1 (b) was committed. What is apparent from the evidence adduced is the

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[6] Records, p. 33.

[7] *Ibid*., p. 39.

[8] Records, pp. 41-47.

[9] Previously, appeals to the Secretary of Justice may be referred to and resolved by the Chief State Prosecutor. This practice was changed on October 12, 1998 by Department Circular No. 69 entitled "Disposition and Resolution of Petitions for Review / Appeals to the Department and all Motions for Reconsideration Arising Therefrom" which provides that *"all petitions for review/appeals to the Department of Justice from the resolutions of the Regional State Prosecutors, Provincial and City Prosecutors together with the Motions for Reconsideration arising therefrom shall be referred, resolved and acted upon only by [the Secretary of Justice]."*

necessity for the parties to sit down together and make an accounting of the alleged accountability. Complainant failed to present any evidence of conversion of the property to the benefit of the respondent or of some other person. Respondent's failure to return the goods or cash advances in this case is not sufficient proof of conversion. If at all, respondent's liability to the company is purely civil in nature as the acts complained of do not constitute the crime of estafa.[10]

On the ground of grave abuse of discretion, Filadams filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court seeking to annul the above-quoted decision of the DOJ dismissing its appeal and affirming the resolution of the Assistant City Prosecutor of Quezon City. The Court of Appeals denied the petition on two grounds: (1) the proper remedy for the petitioner was a petition for review under Rule 45 and not a petition for *certiorari* inasmuch as *certiorari* was available only if there was no appeal or any plain, speedy and adequate remedy in the ordinary course of law, and (2) assuming that a petition for *certiorari* was proper, the DOJ decision was not marked by grave abuse of discretion.[11]

Hence, the petitioner filed the instant petition seeking to annul the decision of the Court of Appeals and raising the following issues:

I

WHETHER OR NOT APPEAL AND NOT *CERTIORARI* IS THE PROPER REMEDY IN ASSAILING THE TWO RESOLUTIONS OF THE CHIEF STATE PROSECUTOR FINDING THE ABSENCE OF PROBABLE CAUSE.

II

WHETHER OR NOT BOTH THE CHIEF STATE PROSECUTOR AND THE COURT OF APPEALS HAVE COMMITTED A (*SIC*) GRAVE ABUSE OF DISCRETION IN DISREGARDING THE GUIDELINES SET BY THIS HON. SUPREME COURT IN DETERMINING THE

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[10] *Rollo*, pp. 24-25.

[11] *Ibid*., pp. 44-45.

EXISTENCE OF A PROBABLE CAUSE TO WARRANT THE FILING OF AN INFORMATION IN COURT.[12]

Before anything else, we need to clarify some ground rules. This case was elevated to the Court of Appeals by way of a petition on *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. The Court of Appeals dismissed the petition for *certiorari* on the ground that the proper remedy was petition for review under Revised Circular No. 1-91, now embodied in Rule 43 of the 1997 Rules of Civil Procedure. Rule 43 applies to "appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by *any quasi-judicial agency in the exercise of quasi-judicial functions* to the Court of Appeals."[13] The question is: was the Office of the Prosecutor of Quezon City a quasi-judicial agency whose resolutions were appealable to the Court of Appeals under Rule 43? In *Bautista vs. Court of Appeals*,[14] we ruled:

> Petitioner submits that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, citing *Cojuangco v. PCGG, Koh v. Court of Appeals, Andaya v. Provincial Fiscal of Surigao del Norte* and *Crespo v. Mogul*. In these cases this Court held that the power to conduct preliminary investigation is quasi-judicial in nature. But this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court. Here is where the similarity ends.
>
> A closer scrutiny will show that preliminary investigation is very different from other quasi-judicial proceedings. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."
>
> In *Luzon Development Bank v. Luzon Development Bank Employees*, we held that a voluntary arbitrator, whether acting solely or in a panel, enjoys in law the status of a quasi-judicial agency,

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[12] *Rollo*, pp. 14-15.

[13] Sec. 1, Rule 43, 1997 Rules of Civil Procedure.

[14] 360 SCRA 618 [2001].

hence his decisions and awards are appealable to the Court of Appeals. This is so because the awards of voluntary arbitrators become final and executory upon the lapse of the period to appeal; and since their awards determine the rights of parties, their decisions have the same effect as judgments of a court. Therefore, the proper remedy from an award of a voluntary arbitrator is a petition for review to the Court of Appeals, following Revised Administrative Circular No. 1-95, which provided for a uniform procedure for appellate review of all adjudications of quasi-judicial entities, which is now embodied in Rule 43 of the 1997 Rules of Civil Procedure.

On the other hand, the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.

Hence, the Office of the Prosecutor is not a quasi-judicial body; necessarily, its decisions approving the filing of a criminal complaint are not appealable to the Court of Appeals under Rule 43. Since the ORSP (Office of the Regional State Prosecutor) has the power to resolve appeals with finality only where the penalty prescribed for the offense does not exceed *prision correccional*, regardless of the imposable fine, the only remedy of petitioner, *in the absence of grave abuse of discretion*, is to present her defense in the trial of the case.

With our ruling in *Bautista* that the Office of the Prosecutor was not covered by the appellate process under Rule 43 of the Rules of Court, what then was petitioner's remedy from the resolution of the Assistant Prosecutor dismissing his complaint? Based on the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations — now the 2000 NPS[15] Rule

[15] National Prosecution Service.

on Appeals — the petitioner could appeal to the Secretary of Justice. In this case, the petitioner did appeal to the Secretary of Justice but his appeal was dismissed. His motion for reconsideration was also dismissed. Since there was no more appeal or other remedy available in the ordinary course of law, the petitioner correctly filed a petition for *certiorari* with the Court of Appeals on the ground of grave abuse of discretion.

The next question now arises: was the Court of Appeals correct in dismissing the petition for *certiorari* on the ground that there was no grave abuse of discretion on the part of the DOJ (in dismissing the petitioner's appeal, thus affirming the resolution of the Assistant City Prosecutor)? The Court of Appeal's cryptic ruling on this matter read:

> His ruling that "in the crime of estafa under Art. 315 par. 1 (b), it is an essential element that there be proof of misappropriation or conversion," is not inconsistent with the ruling of the Supreme Court in *Ilagan vs. Court of Appeals*, 239 SCRA 575, on which petitioner relies that the operative act in the perpetration of estafa under the said article and paragraph is the failure of the agent to turn over or deliver to his principal the amounts he collected despite the duty to do so.[16]

To determine whether there was probable cause warranting the filing of the information for estafa through misappropriation or with abuse of confidence,[17] the presence of the following elements assumes critical importance:

1. that money, goods, or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
2. that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
3. that such misappropriation or conversion or denial is to the prejudice of another; and,

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[16] *Rollo*, p. 35.

[17] Subdivision No. 1, Par. (b), Article 315, Revised Penal Code.

4. that there is a demand made by the offended party on the offender.[18]

The first, third and fourth elements were duly established by the complaint-affidavits and were not disputed by the parties. What was disputed was whether the element of misappropriation, the most important element of the crime charged, was shown by the affidavits to engender a well-founded belief that a crime was committed and the respondent was probably guilty thereof.[19] Invoking *Ilagan vs. Court of Appeals*,[20] petitioner contends that it is the mere failure to turn over or to deliver to the principal the amounts collected, despite the duty to do so, that constitutes the operative fact in the crime of estafa through unfaithfulness or abuse of confidence. In short, the mere failure of respondent Feria to turn over the stock shortages, money collections, cash advances and unused cash rebates, despite demand and the duty to do so, constituted *prima facie* evidence of misappropriation.

The essence of estafa under Article 315 (1)(b) of the Revised Penal Code is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment. The failure to account, upon demand, for funds or property held *in trust* is circumstantial evidence of misappropriation.[21] For example, in an agency for the sale of jewelry, it is the agent's duty to return the jewelry upon demand of the owner and the failure to do so is evidence of conversion of the property by the agent.[22] In other words, the demand for the return of the thing delivered *in trust* and the failure of the accused to account for it are circumstantial evidence of misappropriation. However, this

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[18] *Mangio vs. Court of Appeals*, 371 SCRA 466, 477 [2001].

[19] Section 1, Rule 112, 2000 Revised Rules of Criminal Procedure.

[20] 239 SCRA 575 [1994].

[21] *Tubb vs. People*, 101 Phil 114 [1957]; *Panlilio vs. CA*, 115 Phil. 168 [1962]; *Sullano vs. People*, 17 SCRA 488 [1966].

[22] *U.S. vs. Zamora*, 2 Phil. 583 [1903].

presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust, he may not be held liable for estafa.[23]

Did private respondent Feria satisfactorily explain his failure to produce the goods delivered to him in trust as well as turn over his collections upon demand by the petitioner? His own counter-affidavit showed that he did not. He claimed that he returned various items sometime in March, 1994 amounting to ₱19,615.49. He, however, neither presented any supporting evidence nor clarified why he failed to account for his collections. His explanations, on the other hand, regarding his unliquidated cash advances and unused cash rebates were also inadequate inasmuch they were self-serving and unsubstantiated.[24]

In its reply-affidavit, petitioner was able to controvert the explanations of respondent. The unrecorded returns claimed by respondent were belied by the physical inventory report prepared and signed by both the warehouseman and respondent himself. Respondent admitted that he was given checks for cash rebates to particular customers. Since the rebates given to customers were in the form of goods, as admitted by the respondent himself, why did he therefore not return the checks given to him? With respect to the unliquidated cash advances, petitioner clarified that it was incorrect for respondent to allege that he had already liquidated his cash advances when he was given another ₱1,500 after his first cash advance of ₱2,500. The truth was that he was given another ₱1,500 not because he had already liquidated his first cash advance of ₱2,500 but because it was the company's practice to replenish the revolving fund to its original amount. Therefore, the release of a new cash advance was not proof of liquidation of his previous cash advances. The inventory clearly showed in fact that he still had not liquidated his cash advances.[25]

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[23] III R. Aquino, *THE REVISED PENAL CODE* 264 [1997].

[24] Records, pp. 24-25.

[25] *Ibid*., pp. 27-31.

In the face of petitioner's fully documented evidence (inventory reports, receipts, balances of accountabilities, computations of short/over samples, job description and demand letter addressed to respondent), all respondent Feria could offer were a lame denial and an unsubstantiated, off-tangent explanation. He offered absolutely no clarification concerning the unremitted collections and unreturned, unused check rebates.

The rule that "the failure to account, upon demand, for funds or property held *in trust* is circumstantial evidence of misappropriation" applies without doubt in the present case. Since a preliminary investigation is merely a determination of "whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial,"[26] we find the documented allegations in the complaint-affidavit and reply-affidavit of petitioner Filadams sufficient to generate such well-founded belief.

While it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause,[27] we have nonetheless made some exceptions to the general rule, such as:

1. when necessary to afford adequate protection to the constitutional rights of the accused;
2. when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
3. when there is a prejudicial question which is *sub judice*;
4. *when the acts of the officer are without or in excess of authority;*

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[26] Section 1, Rule 112, 2000 Revised Rules of Criminal Procedure; *Advincula vs. CA,* 343 SCRA 583 [2000].

[27] *Mendoza-Arce vs. Ombudsman*, 380 SCRA 325 [2002], citing *Sebastian, Sr. vs. Garchitorena*, 343 SCRA 463 [2000]; *Camanag vs. Guerrero*, 268 SCRA 473 [1997]; *Fernando vs. Sandiganbayan*, 212 SCRA 680 [1992].

5. where the prosecution is under an invalid law, ordinance or regulation;
6. when double jeopardy is clearly apparent;
7. where the court has no jurisdiction over the offense;
8. where it is a case of persecution rather than prosecution;
9. where the charges are manifestly false and motivated by the lust for vengeance;
10. when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[28] (italics ours)

From the records, it is clear to us that a *prima facie* case for estafa exists. The dismissal of petitioner's complaint-affidavit and the DOJ's affirmance thereof on appeal was a *patent error* constituting grave abuse of discretion within the ambit of exception no. 4 above.

WHEREFORE, the petition is hereby *GRANTED*. The resolution of the Court of Appeals dated May 29, 1997 finding no grave abuse of discretion and its resolution dated January 23, 1998 denying petitioner's motion for reconsideration are hereby *REVERSED* and *SET ASIDE*; and the resolution of the Department of Justice through the Chief State Prosecutor dated January 8, 1997 dismissing the appeal of the petitioner and affirming the resolution of the Assistant City Prosecutor of Quezon City dated February 28, 1995 dismissing petitioner's complaint for estafa against private respondent Antonio Feria is hereby *ANNULLED* for grave abuse of discretion.

SO ORDERED.

Sandoval-Gutierrez (Acting Chairman) and *Carpio Morales, JJ.,* concur.

Vitug, J. (Chairman), on official business leave.

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[28] *Mendoza-Arce vs. Ombudsman*, 380 SCRA 325 [2002], citing *Posadas vs. Ombudsman*, 341 SCRA 388 [2000]; *Venus vs. Desierto*, 298 SCRA 196 [1998]; *Brocka vs. Enrile*, 192 SCRA 183 [1990].

FIRST DIVISION

[G.R. No. 145176. March 30, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SANTIAGO PERALTA *y* POLIDARIO (at large), ARMANDO DATUIN JR. *y* GRANADOS (at large), ULYSSES GARCIA *y* TUPAS, MIGUELITO DE LEON *y* LUCIANO, LIBRANDO FLORES *y* CRUZ and ANTONIO LOYOLA *y* SALISI,** *accused*, **ULYSSES GARCIA *y* TUPAS, MIGUELITO DE LEON *y* LUCIANO, LIBRANDO FLORES *y* CRUZ and ANTONIO LOYOLA *y* SALISI,** *appellants*.

SYNOPSIS

In this appeal, appellants Ulysses Garcia, Miguelito De Leon, Librando Flores and Antonio Loyola questioned their conviction for the crime of qualified theft for allegedly stealing the punctured currency notes due for shredding in the total amount of ₱194,190.00 belonging to the Central Bank of the Philippines. They claimed, among others, that the three Sworn Statements given by appellant Ulysses Garcia during the custodial investigation and the three ₱100 perforated notes were inadmissible as evidence.

The Court ruled that a waiver in writing, like that which the trial court relied upon in the present case, is not enough. Without the assistance of a counsel, the waiver has no evidentiary relevance. The Constitution states that "[a]ny confession or admission obtained in violation of Article III, Section 12 of the 1987 Constitution shall be inadmissible in evidence x x x." Hence, the trial court was in error when it admitted in evidence the uncounseled confessions of Garcia and convicted appellants on the basis thereof. The question of whether he was tortured becomes moot.

Moreover, the police arrested Garcia without a warrant, while he had merely been waiting for a passenger bus after being pointed out by the Cash Department personnel of the Bangko Sentral ng Pilipinas (BSP). Hence, he was not lawfully arrested.

Nonetheless, not having raised the matter before entering his plea, he is deemed to have waived the illegality of his arrest. Note, however, that this waiver is limited to the arrest. It does not extend to the search made as an incident thereto or to the subsequent seizure of evidence allegedly found during the search. In the present case, the perforated ₱100 currency notes were obtained as a result of a search made without a warrant subsequent to an unlawful arrest; hence, they are inadmissible in evidence. Consequently, appellants were acquitted.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS UNDER CUSTODIAL INVESTIGATION; RIGHT TO COUNSEL; ELUCIDATED.** — The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The basic law specifically requires that any waiver of this right must be made in writing *and* executed in the presence of a counsel. In such case, counsel must not only ascertain that the confession is voluntarily made and that the accused understands its nature and consequences, but also advise and assist the accused continuously from the time the first question is asked by the investigating officer until the signing of the confession.

2. **ID.; ID.; ID.; ID.; ACCUSED IS ENTITLED TO EFFECTIVE, VIGILANT AND INDEPENDENT COUNSEL.** — [T]he lawyer's role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused. The accused is entitled to effective, vigilant and independent counsel.

3. **ID.; ID.; ID.; ID.; ID.; EVIDENCE OBTAINED IN VIOLATION THEREOF IS INADMISSIBLE.** — A waiver in writing, like that which the trial court relied upon in the present case, is not enough. Without the assistance of a counsel, the waiver has no evidentiary relevance. The Constitution states that "[a]ny confession or admission obtained in violation of [the aforecited Section 12] shall be inadmissible in evidence x x x." Hence, the trial court was in error when it admitted in evidence the uncounseled confessions of Garcia and convicted appellants

on the basis thereof. The question of whether he was tortured becomes moot.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; CONSTITUTION PROSCRIBES UNREASONABLE SEARCHES AND SEIZURES OF WHATEVER NATURE; EXCEPTIONS. — The Constitution proscribes unreasonable searches and seizures of whatever nature. Without a judicial warrant, these are allowed only under the following exceptional circumstances: (1) a search incident to a lawful arrest, (2) seizure of evidence in plain view, (3) search of a moving motor vehicle, (4) customs search, (5) stop and frisk situations, and (6) consented search.

5. ID.; ID.; ID.; WHERE THE ARREST WAS INCIPIENTLY ILLEGAL, IT FOLLOWS THAT THE SUBSEQUENT SEARCH WAS SIMILARLY ILLEGAL. — Where the arrest was incipiently illegal, it follows that the subsequent search was similarly illegal. Any evidence obtained in violation of the constitutional provision is legally inadmissible in evidence under the exclusionary rule. In the present case, the perforated ₱100 currency notes were obtained as a result of a search made without a warrant subsequent to an unlawful arrest; hence, they are inadmissible in evidence.

6. ID.; ID.; ID.; WAIVER OF THE ILLEGALITY OF THE ARREST DOES NOT EXTEND TO THE SEARCH MADE AS AN INCIDENT THERETO OR TO THE SUBSEQUENT SEIZURE OF EVIDENCE ALLEGEDLY FOUND DURING THE SEARCH. — The police arrested Garcia without a warrant, while he had merely been waiting for a passenger bus after being pointed out by the Cash Department personnel of the BSP. At the time of his arrest, he had not committed, was not committing, and was not about to commit any crime. Neither was he acting in a manner that would engender a reasonable ground to suspect that he was committing a crime. None of the circumstances justifying an arrest without a warrant under Section 5 of Rule 113 of the Rules of Court was present. Hence, Garcia was not lawfully arrested. Nonetheless, not having raised the matter before entering his plea, he is deemed to have waived the illegality of his arrest. Note, however, that this waiver is limited to the arrest. It does not extend to the search made as

an incident thereto or to the subsequent seizure of evidence allegedly found during the search.

7. ID.; ID.; SEARCH AND SEIZURE; OBJECTION TO AN UNLAWFUL SEARCH AND SEIZURE IS PURELY PERSONAL AND CANNOT BE AVAILED BY THIRD PARTIES. — [U]ntenable is the solicitor general's argument that Appellants De Leon, Flores and Loyola waived the illegality of the arrest and seizure when, without raising objections thereto, they entered a plea of guilty. It was Garcia who was unlawfully arrested and searched, not the aforementioned three appellants. The legality of an arrest can be contested only by the party whose rights have been impaired thereby. Objection to an unlawful search and seizure is purely personal, and third parties cannot avail themselves of it.

8. ID.; ID.; MOTION TO DISMISS; TRIAL COURT'S DENIAL MAY NOT BE DISTURBED UNLESS THERE IS GRAVE ABUSE OF DISCRETION. — On the exercise of sound judicial discretion rests the trial judge's determination of the sufficiency or the insufficiency of the evidence presented by the prosecution to establish a *prima facie* case against the accused. Unless there is a grave abuse of discretion amounting to lack of jurisdiction, the trial court's denial of a motion to dismiss may not be disturbed.

9. ID.; EVIDENCE; ADMISSIBILITY; CONFESSIONS WILL CONSTITUTE *PRIMA FACIE* EVIDENCE OF THE GUILT OF THE ACCUSED. — [T]he inadmissibility of the confessions of Garcia did not become apparent until after Atty. Francisco had testified in court. Even if the confiscated perforated notes from the person of the former were held to be inadmissible, the confessions would still have constituted *prima facie* evidence of the guilt of appellants. On that basis, the trial court did not abuse its discretion in denying their demurrer to evidence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Edgardo G. Peña for M. L. De Leon.
Jose Hernandez Dy for U. T. Garcia.

D E C I S I O N

PANGANIBAN, *J.*:

The right of the accused to counsel demands effective, vigilant and independent representation. The lawyer's role cannot be reduced to being that of a mere witness to the signing of an extra-judicial confession.

The Case

Before the Court is an appeal from the August 21, 2000 Decision[1] of the Regional Trial Court (RTC) of Manila (Branch 18) in Criminal Case No. 92-112322. Appellants Ulysses Garcia *y* Tupas, Miguelito de Leon *y* Luciano, Librando Flores *y* Cruz and Antonio Loyola *y* Salisi, as well as their co-accused — Santiago Peralta *y* Polidario and Armando Datuin Jr. *y* Granados — were convicted therein of qualified theft. The dispositive portion of the Decision reads:

"WHEREFORE, the accused, Santiago Peralta *y* Polidario, Armando Datuin, Jr. *y* Granados, Ulysses Garcia *y* Tupas, Miguelito De Leon *y* Luciano, Librando Flores y Cruz and Antonio Loyola *y* Salisi, are hereby convicted of the crime of qualified theft of ₱194,190.00 and sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law, and to pay the costs. Moreover, all the accused are ordered to pay the Central Bank of the Philippines, now Bangko Sentral ng Pilipinas, actual damages in the sum of ₱194,190.00 with interest thereon at the legal rate from the date of the filing of this action, November 9, 1992, until fully paid."[2]

In an Information dated November 9, 1992,[3] appellants and their co-accused were charged as follows:

"That sometime in the year 1990 and including November 4, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present

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[1] Penned by Judge Perfecto A. S. Laguio Jr.

[2] RTC Decision, p. 5; *rollo*, p. 33.

[3] Signed by Assistant Prosecutor Leoncia R. Dimagiba.

whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away punctured currency notes due for shredding in the total amount of ₱194,190.00, belonging to the Central Bank of the Philippines as represented by Pedro Labita *y* Cabriga, to the damage and prejudice of the latter in the aforesaid sum of ₱194,190.00 Philippine currency;

"That said accused Santiago Peralta *y* Polidario, Armando Datuin, Jr. *y* Granados, Ulysses Garcia *y* Tupas, Miguelito de Leon *y* Luciano and Antonio Loyola *y* Salisi committed said offense with grave abuse of confidence they being at the time employed as Currency Reviewers, Driver, Currency Assistant I and Money Counter of the offended party and as such they had free access to the property stolen."[4]

Garcia was arrested on November 4, 1992; and his co-accused, on November 9, 1992. Appellants, however, obtained two Release Orders from RTC Vice Executive Judge Corona Ibay-Somera on November 9 and 10, 1992, upon their filing of a cash bond to secure their appearance whenever required by the trial court.[5]

During their arraignment on May 4, 1993, appellants, assisted by their respective counsels, pleaded not guilty.[6] On September 30, 1998, the trial court declared that Datuin Jr. and Peralta were at large, because they had failed to appear in court despite notice.[7]

After trial in due course, they were all found guilty and convicted of qualified theft in the appealed Decision.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

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[4] *Rollo*, p. 9.

[5] Records, pp. 53 & 58.

[6] Order dated May 4, 1993; records, p. 90.

[7] Order dated September 30, 1998; records, p. 434.

"About 10:00 o'clock in the morning of November 4, 1992, Pedro Labita of Central Bank of the Philippines (CBP) [now Bangko Sentral ng Pilipinas (BSP)] went to the Theft and Robbery Section of Western Police District Command (WPDC), and filed a complaint for Qualified Theft against Santiago Peralta, Armando Datuin, Jr., Ulysses Garcia, Miguelito de Leon, Librando Flores and Antonio S. Loyola.

"Pedro Labita submitted to SPO4 Cielito Coronel, the investigating officer at WPDC, punctured currency notes in ₱100.00 and ₱500.00 bills with a face value of Php194,190.00. Said notes were allegedly recovered by the BSP Cash Department during its cash counting of punctured currency bills submitted by different banks to the latter. The punctured bills were rejected by the BSP money counter machine and were later submitted to the investigation staff of the BSP Cash Department. As a result of the investigation, it was determined that said rejected currency bills were actually punctured notes already due for shredding. These currency bills were punctured because they were no longer intended for circulation. Before these notes could be shredded, they were stolen from the BSP by the above-named accused.

"On the basis of the complaint filed by Pedro Labita, Ulysses Garcia was apprehended in front of Golden Gate Subdivision, Las Piñas City, while he was waiting for a passenger bus on his way to the BSP. Garcia was brought to the police station for investigation.

"On November 4, 5 and 6, 1992, while in the custody of the police officers, Garcia gave three separate statements admitting his guilt and participation in the crime charged. He also identified the other named accused as his cohorts and accomplices and narrated the participation of each and everyone of them.

"On the basis of Garcia's sworn statements, the other named accused were invited for questioning at the police station and were subsequently charged with qualified theft together with Garcia."[8] (Citations omitted)

Version of the Defense

The defense states its version of the facts in the following manner:

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[8] Appellee's Brief, pp. 8-11; *rollo*, pp. 154-157.

"Accused-appellant Garcia served as a driver of the armored car of the Central Bank from 1978 to 1994.

"On November 4, 1992, between 7:00 a.m. and 8:00 a.m., a man who had identified himself as a police officer arrested accused-appellant Garcia while waiting for a passenger bus in front of the Golden Gate Subdivision, Las Piñas City. He was arrested without any warrant for his arrest. The police officer who had arrested accused-appellant Garcia dragged the latter across the street and forced him to ride x x x a car.

"While inside the car, he was blindfolded, his hands were handcuffed behind his back, and he was made to bend with his chest touching his knees. Somebody from behind hit him and he heard some of the occupants of the car say that he would be salvaged if he would not tell the truth. When the occupants of the car mentioned perforated notes, he told them that he does not know anything about those notes.

"After the car had stopped, he was dragged out of the car and x x x up and down x x x the stairs. While being dragged out of the car, he felt somebody frisk his pocket.

"At a safe house, somebody mentioned to him the names of his co-accused and he told them that he does not know his co-accused. x x x Whenever he would deny knowing his co-accused, somebody would box him on his chest. Somebody poured water on accused-appellant Garcia's nose while lying on the bench. He was able to spit out the water that had been poured on his nose [at first], but somebody covered his mouth. As a result, he could not breath[e].

"When accused-appellant Garcia realized that he could not bear the torture anymore, he decided to cooperate with the police, and they stopped the water pouring and allowed him to sit down.

"Accused-appellant Garcia heard people talking and he heard somebody utter, '*may nakikinig*.' Suddenly his two ears were hit with open palm[s]. x x x As he was being brought down, he felt somebody return his personal belongings to his pocket. Accused-appellant Garcia's personal belongings consisted of [his] driver's license, important papers and coin purse.

"He was forced to ride x x x the car still with blindfold. His blindfold and handcuffs were removed when he was at the office of police

officer Dante Dimagmaliw at the Western Police District, U.N. Avenue, Manila.

"SPO4 Cielito Coronel asked accused-appellant Garcia about the latter's name, age and address. The arrival of Mr. Pedro Labita of the Cash Department, Central Bank of the Philippines, interrupted the interview, and Mr. Labita instructed SPO4 Coronel to get accused-appellant Garcia's wallet and examine the contents thereof. SPO4 Coronel supposedly found three pieces of ₱100 perforated bill in accused-appellant Garcia's wallet and the former insisted that they recovered the said perforated notes from accused-appellant's wallet. SPO4 Coronel took down the statement of Mr. Labita.

"It was actually Mr. Labita, and not accused-appellant Garcia, who gave the answers appearing in accused-appellant Garcia's alleged three sworn statements dated November 4, 1992, November 5, 1992 and x x x November 6, 1992.

"At or about 6:00 p.m. on November 5, 1992, accused-appellant Garcia was brought to the cell of the Theft and Robbery Section of the WPD. At or about 8:00 p.m., he was brought to the office of Col. Alladin Dimagmaliw where his co-accused were also inside. He did not identify his co-accused, but he merely placed his hands on the shoulders of each of his co-accused, upon being requested, and Mr. Labita took x x x pictures while he was doing the said act.

"Accused-appellant Garcia came to know Atty. Francisco Sanchez of the Public Attorney's Office on November 4, 1992, at the office of police officer Dante Dimagmaliw, when SPO4 Coronel introduced Atty. Sanchez to accused-appellant Garcia and told him that Atty. Sanchez would be his lawyer. However, accused-appellant Garcia did not agree to have Atty. Sanchez to be his lawyer. Atty. Sanchez left after talking to SPO4 Coronel, and accused-appellant Garcia had not met Atty. Sanchez anymore since then. He was not present when Atty. Sanchez allegedly signed x x x the alleged three (3) sworn statements.

"During the hearing of the case on April 6, 2000, Atty. Sanchez manifested in open court that he did not assist accused-appellant Garcia when the police investigated accused-appellant Garcia, and that he signed x x x the three (3) sworn statements only as a witness thereto.

"Accused-appellant Garcia signed the alleged three sworn statements due to SPO4 Coronel's warning that if he would not do so, he would again be tortured by water cure.

"SPO[4] Coronel caused the arrest without any warrant of accused appellants De Leon, Loyola, [Flores] on the basis of the complaint of Mr. Pedro Labita, and which arrest was effected on November 5, 1992, by SPO1 Alfredo Silva and SPO1 Redelico.

"SPO4 Coronel, in his letter dated November 6, 1992, forwarded the case to the Duty Inquest Prosecutor assigned at the WPDC Headquarters."[9] (Citations omitted)

Ruling of the Trial Court

The trial court found that all the accused used to work for the BSP. Garcia was a driver assigned to the Security and Transport Department; while Peralta, Datuin Jr., De Leon, Flores and Loyola were laborers assigned to the Currency Retirement Division. Their main task was to haul perforated currency notes from the currency retirement vault to the basement of the BSP building for shredding.

On several occasions, during the period 1990-1992, they handed to Garcia perforated currency notes placed in a coin sack that he, in turn, loaded in an armored escort van and delivered to someone waiting outside the premises of the building. The trial court held that the coordinated acts of all the accused unerringly led to the conclusion that they had conspired to pilfer the perforated currency notes belonging to the BSP.

The RTC rejected the disclaimer by Garcia of his own confessions, as such disclaimer was "an eleventh hour concoction to exculpate himself and his co-accused." The trial court found his allegations of torture and coerced confessions unsupported by evidence. Moreover, it held that the recovery of three pieces of perforated ₱100 bills from Garcia's wallet and the flight of Peralta and Datuin Jr. were indicative of the guilt of the accused.

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[9] Appellant Garcia's Brief, pp. 2-5; *rollo*, pp. 109-112.

Hence, this appeal.[10]

Issues

In his Brief, Garcia raises the following issues:

"1

The trial court erred in admitting in evidence the alleged three Sworn Statements of Accused-appellant Garcia and the alleged three pieces of ₱100 perforated notes.

"2

The trial court erred in finding the accused-appellant guilty of qualified theft."[11]

In their joint Brief, De Leon, Loyola and Flores interpose this additional assignment of errors:

"1

The trial court erred in admitting in evidence the alleged three sworn statements of Accused Ulysses Garcia (Exhibits 'I', 'J' and 'K') and the alleged three pieces of ₱100 perforated notes (Exhibits 'N' to 'N-2') over the objections of the accused-appellants.

"2

The trial court erred in denying the demurrer to evidence of Accused-appellants De Leon, Loyola and Flores;

"3

The trial court erred in denying the Motion for Reconsideration of the Order denying the demurrer to evidence;

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[10] This case was deemed submitted for decision on October 18, 2002, upon receipt by this Court of Appellant Garcia's Reply Brief, signed by Atty. Jose Hernandez-Dy; and of Appellants De Leon, Flores and Loyola's Reply Brief, signed by Atty. Edgardo G. Pena. Appellee's Brief, signed by Asst. Solicitors General Carlos N. Ortega and Nestor J. Ballacillo and Associate Solicitor Maricar S. A. Prudon, was filed on June 20, 2002. Appellants De Leon, Flores and Loyola's Brief was filed on January 2, 2002, while Appellant Garcia's, on January 14, 2002.

[11] Appellant Garcia's Brief, p. 1; *rollo*, p. 108; original in upper case.

"4

The trial court erred when it failed to consider the evidence adduced by the accused-appellants, consisting of exhibits '1', '2' to '2-B', '3' and '4' and the testimony of their witness, State Auditor Esmeralda Elli;

"5

The trial court erred in finding the accused-appellants guilty of qualified theft."[12]

Simplified, the issues are as follows: (1) the sufficiency of the evidence against appellants, including the admissibility of Garcia's confessions and of the three perforated ₱100 currency notes; and (2) the propriety of the denial of their demurrer to evidence.

The Court's Ruling

The appeal has merit.

First Issue:
Sufficiency of Evidence

The trial court convicted appellants mainly on the strength of the three confessions given by Garcia and the three perforated ₱100 currency notes confiscated from him upon his arrest. Appellants, however, contend that these pieces of evidence are inadmissible.

Extrajudicial Confessions

Appellants aver that the alleged three Sworn Statements of Garcia were obtained without the assistance of counsel — in violation of his rights under Article III, Section 12 (1) and (2) of the 1987 Constitution, which provides thus:

"SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel,

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[12] Appellants De Leon, Loyola and Flores' Brief, pp. 1-2; *rollo*, pp. 61-62; original in upper case.

preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

"(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incomunicado*, or other similar forms of detention are prohibited."

On the other hand, the OSG contends that counsel, Atty. Francisco Sanchez III of the Public Attorney's Office, duly assisted Garcia during the custodial investigation.

It is clear from a plain reading of the three extrajudicial confessions[13] that Garcia was not assisted by Atty. Sanchez. The signature of the latter on those documents was affixed after the word "*SAKSI*." Moreover, he appeared in court and categorically testified that he had not assisted Garcia when the latter was investigated by the police, and that the former had signed the Sworn Statement only as a witness.[14]

The written confessions, however, were still admitted in evidence by the RTC on the ground that Garcia had expressed in writing his willingness and readiness to give the Sworn Statements without the assistance of counsel. The lower court's action is manifest error.

The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The basic law specifically requires that any waiver of this right must be made in writing *and* executed in the presence of a counsel. In such case, counsel must not only ascertain that the confession is voluntarily made and that the accused understands its nature and consequences, but also advise and assist the accused continuously from the time the first question is asked by the investigating officer until the signing of the confession.

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[13] Records, pp. 19-27.

[14] Order dated April 6, 2000; records, p. 468.

Hence, the lawyer's role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused.[15] The accused is entitled to effective, vigilant and independent counsel.[16]

A waiver in writing, like that which the trial court relied upon in the present case, is not enough. Without the assistance of a counsel, the waiver has no evidentiary relevance.[17] The Constitution states that "[a]ny confession or admission obtained in violation of [the aforecited Section 12] shall be inadmissible in evidence. x x x" Hence, the trial court was in error when it admitted in evidence the uncounseled confessions of Garcia and convicted appellants on the basis thereof. The question of whether he was tortured becomes moot.

Perforated Currency Notes

Appellants contend that the three ₱100 perforated currency notes (Exhibits "N" to "N-2") allegedly confiscated from Garcia after his arrest were "fruits of the poisonous tree" and, hence, inadmissible in evidence.

The solicitor general evades the issue and argues, instead, that appellants waived the illegality of their arrest when they entered a plea. He further contends that the exclusion from the evidence of the three punctured currency bills would not alter the findings of the trial court.

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[15] *People v. Binamira*, 277 SCRA 232, 238, August 14, 1997; *People v. Ordonio*, 334 SCRA 673, 688, June 28, 2000; *People v. Rodriguez*, 341 SCRA 645, 653, October 2, 2000; *People v. Rayos*, 351 SCRA 336, 344, February 7, 2001; and *People v. Patungan*, 354 SCRA 413, 424, March 14, 2001.

[16] *People v. Patungan, supra; People v. Rayos, supra*; and *People v. Bermas*, 306 SCRA 135, 147, April 21, 1999.

[17] *People v. Gerolaga*, 331 Phil. 441, October 15, 1996; *People v. Cabintoy*, 317 Phil. 528, August 21, 1995.

The police arrested Garcia without a warrant, while he had merely been waiting for a passenger bus after being pointed out by the Cash Department personnel of the BSP. At the time of his arrest, he had not committed, was not committing, and was not about to commit any crime. Neither was he acting in a manner that would engender a reasonable ground to suspect that he was committing a crime. None of the circumstances justifying an arrest without a warrant under Section 5 of Rule 113 of the Rules of Court was present.

Hence, Garcia was not lawfully arrested. Nonetheless, not having raised the matter before entering his plea, he is deemed to have waived the illegality of his arrest. Note, however, that this waiver is limited to the arrest. It does not extend to the search made as an incident thereto or to the subsequent seizure of evidence allegedly found during the search.

The Constitution proscribes unreasonable searches and seizures[18] of whatever nature. Without a judicial warrant, these are allowed only under the following exceptional circumstances: (1) a search incident to a lawful arrest, (2) seizure of evidence in plain view, (3) search of a moving motor vehicle, (4) customs search, (5) stop and frisk situations, and (6) consented search.[19]

Where the arrest was incipiently illegal, it follows that the subsequent search was similarly illegal.[20] Any evidence obtained in violation of the constitutional provision is legally

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[18] *Hizon v. Court of Appeals*, 333 Phil. 358, 371, December 13, 1996; *People v. Valdez*, 363 Phil. 481, 487, March 3, 1999.

[19] *Hizon v. Court of Appeals, supra*, pp. 371-372; *Malacat v. Court of Appeals*, 347 Phil. 462, 479, December 12, 1997; *People v. Usana*, 380 Phil. 719, 734, January 28, 2000; *People v. Encinada*, 345 Phil. 301, 316, October 2, 1997.

[20] *People v. Aruta*, 351 Phil. 868, 885, April 3, 1998; *People v. Bolasa*, 378 Phil. 1073, 1080, December 22, 1999.

inadmissible in evidence under the exclusionary rule.[21] In the present case, the perforated ₱100 currency notes were obtained as a result of a search made without a warrant subsequent to an unlawful arrest; hence, they are inadmissible in evidence.

Moreover, untenable is the solicitor general's argument that Appellants De Leon, Flores and Loyola waived the illegality of the arrest and seizure when, without raising objections thereto, they entered a plea of guilty. It was Garcia who was unlawfully arrested and searched, not the aforementioned three appellants. The legality of an arrest can be contested only by the party whose rights have been impaired thereby. Objection to an unlawful search and seizure is purely personal, and third parties cannot avail themselves of it.[22]

Indeed, the prosecution sufficiently proved the theft of the perforated currency notes for retirement. It failed, however, to present sufficient admissible evidence pointing to appellants as the authors of the crime.

The evidence presented by the prosecution shows that there were other people who had similar access to the shredding machine area and the currency retirement vault.[23] Appellants were pinpointed by Labita because of an anonymous phone call informing his superior of the people allegedly behind the theft; and of the unexplained increase in their spending, which was incompatible with their income. Labita, however, did not submit sufficient evidence to support his allegation.

Without the extrajudicial confession and the perforated currency notes, the remaining evidence would be utterly inadequate to overturn the constitutional presumption of innocence.

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[21] *People v. Valdez, supra; Manalili v. Court of Appeals*, 280 SCRA 400, 413, October 9, 1997; *People v. Che Chun Ting*, 385 Phil. 305, 318, March 21, 2000.

[22] *Uy v. Bureau of Internal Revenue*, 344 SCRA 36, 67, October 20, 2000.

[23] Exhs. "Q" and "R"; records, pp. 140-141 & 142-143.

Second Issue:
Demurrer to Evidence

Appellants contend that the trial court seriously erred when it denied the demurrer to evidence filed by Appellants Loyola, De Leon and Flores. Not one of the documents offered by the prosecution and admitted in evidence by the RTC established the alleged qualified theft of perforated notes, and not one of the pieces of evidence showed appellants' participation in the commission of the crime.

On the exercise of sound judicial discretion rests the trial judge's determination of the sufficiency or the insufficiency of the evidence presented by the prosecution to establish a *prima facie* case against the accused. Unless there is a grave abuse of discretion amounting to lack of jurisdiction, the trial court's denial of a motion to dismiss may not be disturbed.[24]

As discussed earlier, the inadmissibility of the confessions of Garcia did not become apparent until after Atty. Francisco had testified in court. Even if the confiscated perforated notes from the person of the former were held to be inadmissible, the confessions would still have constituted *prima facie* evidence of the guilt of appellants. On that basis, the trial court did not abuse its discretion in denying their demurrer to evidence.

WHEREFORE, the assailed Decision is *REVERSED* and *SET ASIDE*. Appellants are hereby *ACQUITTED* and ordered immediately *RELEASED*, unless they are being detained for any other lawful cause. The director of the Bureau of Corrections is hereby directed to submit his report on the release of the appellant or the reason for his continued detention within five (5) days from notice of this Decision. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[24] *People v. Mercado*, 159 SCRA 453, 459, March 30, 1988.

THIRD DIVISION

[G.R. No. 145255. March 30, 2004]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EDMUNDO L. TAN & THE HONORABLE SANDIGANBAYAN (Fifth Division),** *respondents*.

SYNOPSIS

This petition for *certiorari* sought to annul the Resolution of the Sandiganbayan which ordered the exclusion of private respondent Edmundo L. Tan as one of the party defendants in the complaint for annulment of contract and reconveyance, accounting, damages and forfeiture docketed as SB No. 0145 entitled "*Republic of the Philippines vs. Eduardo M. Cojuangco, et al*." However, pending determination of this petition, the main case was dismissed by the Sandiganbayan for lack of jurisdiction over the subject matter.

The Court ruled that private respondent did not file a motion to dismiss the complaint for lack of jurisdiction of the Sandiganbayan over the subject matter, he having instead filed a motion for exclusion as party defendant, is of no moment. Jurisdiction of courts over the subject matter is conferred exclusively by the Constitution and by law. It is determined by the allegations of the complaint and cannot be made to depend on the defenses of private respondent. The Sandiganbayan's lack of jurisdiction over the complaint could not be waived by private respondent or cured by his silence, acquiescence or even express consent. Accordingly, the instant petition was dismissed.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL INQUIRY; FOR A COURT TO EXERCISE ITS POWER OF ADJUDICATION, THERE MUST BE AN ACTUAL CASE OR CONTROVERSY. — The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual

case or controversy – one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.

2. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; CONFERRED EXCLUSIVELY BY THE CONSTITUTION AND BY LAW. —** That private respondent did not file a motion to dismiss the complaint for lack of jurisdiction of the Sandiganbayan over the subject matter, he having instead filed a motion for exclusion as party defendant, is of no moment. Jurisdiction of courts over the subject matter is conferred exclusively by the Constitution and by law. It is determined by all allegations of the complaint and cannot be made to depend on the defenses of private respondent.

3. **ID.; ID.; MOTION TO DISMISS; LACK OF JURISDICTION OVER THE SUBJECT MATTER; CANNOT BE WAIVED BY DEFENDANT OR CURED BY HIS SILENCE, ACQUIESCENCE OR EVEN EXPRESS CONSENT. —** The Sandiganbayan's lack of jurisdiction over the complaint could not be waived by private respondent or cured by his silence, acquiescence or even express consent. In fine, the dismissal of the complainant by the Sandiganbayan *for lack of jurisdiction over the subject matter* which this Court affirmed with finality in G.R. No. 153272 has rendered the present petition moot and academic.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Tan Acut & Lopez for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Via a petition for *certiorari*, the Republic of the Philippines (petitioner) seeks to annul the Resolution dated September 22, 1999[1] (promulgated on October 1, 1999) and another dated August 31, 2000[2] (promulgated on September 13, 2000) of the Sandiganbayan in SB No. 0145, "*Republic of the Philippines v. Eduardo M. Cojuangco, et al.,*" which granted private respondent Edmundo L. Tan's motion for reconsideration and ordered his exclusion as party-defendant in said case, citing *Regala v. Sandiganbayan*.[3]

Petitioner filed on April 29, 1992 with the Sandiganbayan a complaint for annulment of contract and reconveyance, accounting, damages and forfeiture against several individuals including private respondent. The case was docketed as SB No. 0145. The allegations in the complaint pertinent to private respondent is hereinbelow quoted *verbatim*:

> 10. Defendants named hereunder acted as subordinates, dummies, agents, and/or nominees of defendants Eduardo M. Cojuangco, Jr. and the Heirs of Eduardo Cojuangco, Sr. and Ernesto Oppen, Jr. by allowing themselves to be named incorporators, stockholders, directors and/or corporate officers of defendant-corporations abovementioned.
>
> Private defendants aboverreffered (*sic*) to may be served with summons and other court processes at the addresses stated hereunder:

Names:	Addresses:
a) ANTONIO C. CARAG	c/o Southern Textile Mills, Inc. 16th Flr., Gammon Center 126 Alfonso Street Salcedo Village, Makati Metro Manila

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[1] *Rollo* at 22-28.

[2] *Id*. at 29-30.

[3] 262 SCRA 123 (1996).

b)	ELEAZAR B. REYES	Aero Park Better Living Subdv. Parañaque, M.M.
c)	ARMANDO Q. ONGSIAKO	94 Segundo Street Gatchalian Subdv. Sucat Rd., Parañaque Metro Manila
d)	FLAVIO P. GUTIERREZ	27 Gloria Street B.F. Homes, Almanza Las Piñas, M.M.
e)	**EDMUNDO L. TAN**	65 A. Zobel Street B.F. Homes, Parañaque Metro Manila
f)	EUSEBIO V. TAN	40 Fisher Avenue Pasay City, M.M.[4] (Emphasis and underscoring supplied)

Motions to dismiss the complaint were filed by Gutierrez and Eusebio Tan, Cojuangco and Ongsiako on September 28, 1992,[5] October 7, 1992,[6] and December 5, 1992,[7] respectively, while Estrella, in his manifestation filed on October 14, 1992,[8] adopted the motion to dismiss of Cojuangco.

On October 19, 1992, private respondent filed a motion for bill of particulars[9] to which petitioner filed on December 1, 1992 a manifestation by way of opposition and comment.[10]

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[4] Records Vol. I at 7-8.

[5] Records Vol. II at 449-464.

[6] *Id*. at 472-612.

[7] Records Vol. III at 759-777.

[8] Records Vol. II at 622-623.

[9] Records Vol. III at 628-644.

[10] *Id*. at 754-756.

On July 21, 1998, private respondent filed a motion for exclusion as party-defendant,[11] maintaining that his participation in the acts charged was "in furtherance of legitimate lawyering in line with his work as an associate of ACCRA Law Firm at the time [said] acts charged were supposed to have been committed by his co-defendants," and that this Court's ruling in *Regala v. Sandiganbayan*, upon which the Sandiganbayan anchored its Resolution ordering his exclusion as party-defendant, is applicable in light of the similarity between the factual circumstances of his supposed involvement and those of the petitioners in *Regala*.

On August 19, 1998, petitioner filed a manifestation and motion[12] praying that the Sandiganbayan direct private respondent to furnish petitioner with documents supporting his claim that the acts of which he was charged were done pursuant to a legitimate exercise of his profession.

Private respondent failed to comment on petitioner's manifestation and motion, prompting the Sandiganbayan to, by Resolution of November 18, 1998,[13] grant the motion and accordingly direct private respondent to furnish petitioner within ten days from receipt of said resolution any document to support his claim that the acts of which he was being charged were committed in the legitimate exercise of the legal profession.

Private respondent filed on December 2, 1998 a motion for reconsideration[14] of the Sandiganbayan November 18, 1998 Resolution, arguing that to compel him to produce the required documents would be contrary to the ruling in *Regala*.

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[11] *Id.* at 822-829.

[12] *Id*. at 841-843.

[13] *Id*. at 867.

[14] *Id*. at 877-883.

To the motion petitioner filed its opposition[15] on January 22, 1999.

On October 1, 1999, the Sandiganbayan, by Resolution of September 22, 1999, granted private respondent's motion for reconsideration, citing *Regala* in support thereof. Petitioner filed a motion for reconsideration[16] of the said resolution which the Sandiganbayan denied by Resolution of August 31, 2000 (promulgated on September 13, 2000),[17] hence, the present petition for *certiorari* under Rule 65, petitioner imputing grave abuse of discretion to the Sandiganbayan, *viz*:

THE HONORABLE SANDIGANBAYAN (FIFTH DIVISION) ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (*sic*) EXCESS OF JURISDICTION IN RULING THAT "THE FACTUAL ANTECEDENTS IN THE PRESENT CASE ARE ON ALL FOURS WITH THOSE OF *REGALA, ET AL. V. SANDIGANBAYAN AND HAYUDINI V. SANDIGANBAYAN*" AND CONSEQUENTLY, IN RULING THAT PRIVATE RESPONDENT MAY NOT BE COMPELLED TO FURNISH PETITIONER "DOCUMENTS SHOWING THAT THE ACTS FOR WHICH HE WAS CHARGED ARE IN FURTHERANCE OF LEGITIMATE LAWYERING," AND THAT PRIVATE RESPONDENT IS EXCLUDED AS PARTY DEFENDANT IN CIVIL CASE NO. 0145.[18]

In the meantime, almost a decade after the complaint was filed, the Sandiganbayan, by Resolution of September 17, 2001,[19] granted the separate motions to dismiss filed by Cojuangco, Gutierrez and Eusebio Tan, and Ongsiako, as well as that of Conrado Estrella. Accordingly, the complaint was dismissed for *lack of jurisdiction over the subject matter,* the pertinent portions of which Resolution are hereinbelow quoted *verbatim*:

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[15] *Id*. at 897-903.

[16] *Id*. at 945-949.

[17] *Id*. at 1020-1021.

[18] *Rollo* at 10-11.

[19] Records Vol. IV at 27-30.

It is, thus, clear from the recitals of the Complaint itself that what we have here is a case for declaration of nullity, not one for recovery of ill-gotten wealth, a matter obviously within the jurisdiction of the Regional Trial Court (RTC), since it involves title to or possession of real properties. Section 19 of Batas Pambansa Bilang 129, as amended, provides, as follows:

"*Section 9. Jurisdiction in Civil Cases*. — Regional Trial Courts shall exercise original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve title to, or possession of, real property, or any interest therein, where the assessed value of the property exceeds Twenty Thousand Pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty Thousand Pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts";

The case is not within the purview of Presidential Decree No. 1606 as amended by Republic Act No. 7975 and further amended by Republic Act No. 8249, which provides that this Court shall be jurisdiction over the following cases, to wit:

"*Sec. 4 Jurisdiction.* — The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379 and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

x x x x x x x x x

(b) Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office

(c) Civil and criminal cases filed pursuant to and in connection with Executive Orders Nos. 1, 2, 14 and 14-A issued in 1986.

Suffice it to state that with the above ruling, there is no further need to discuss the other grounds for the various Motions to Dismiss. Even assuming *argumenti gratia* that the other grounds are not meritorious, just the same, the Complaint still has to be dismissed for lack of jurisdiction on the part of this Court.

ACCORDINGLY, the various Motions to Dismiss are GRANTED and the Complaint is hereby ordered DISMISSED without prejudice.

Resolutions on the various bill of particulars filed by various defendants have become unnecessary too.[20] (Emphasis in the original)

Aggrieved by the Sandiganbayan's dismissal of its complaint, petitioner filed on October 9, 2001 a motion for reconsideration,[21] which the Sandiganbayan denied by Resolution of April 23, 2002.[22] Petitioner thereupon assailed the dismissal by petition for review with this Court, docketed as G.R. No. 153272, which was denied by Resolution of July 24, 2002 in this wise:

G.R. No. 153272 (Republic of the Philippines vs. Eduardo M. Cojuangco, Jr., et al.). — Considering the allegations, issues, and arguments adduced in the petition for review on *certiorari* of the resolutions of the Sandiganbayan dated September 17, 2001 and April 23, 2002, the Court Resolves to ***DENY*** the petition for failure of the petitioner to sufficiently show that the Sandiganbayan committed any reversible error in the challenged resolutions as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case. . .[23] (Emphasis and italics in the original)

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[20] *Id*. at 29-30.

[21] *Id*. at 43-54.

[22] *Id*. at 160.

[23] *Id*. at 224.

Undaunted, petitioner filed a motion for reconsideration of this Court's July 24, 2002 Resolution and a motion to refer the case to the Court *En Banc* on August 23, 2002 and September 3, 2002, respectively. By Resolution of September 11, 2002,[24] this Court denied with finality petitioner's motion for reconsideration:

> ***G.R. No. 153272 (Republic of the Philippines vs. Eduardo M. Cojuangco, Jr., et al.).*** — Acting on the motion of petitioner for reconsideration of the resolution of July 24, 2002 which denied the petition for review on *certiorari* and considering that there is no substantial argument to warrant a modification of this Court's resolution, the Court Resolves to ***DENY*** reconsideration with ***FINALITY***.[25] (Emphasis and italics in the original)

As for petitioner's motion to refer the case to the Court *En Banc*, it was, by Resolution of October 2, 2002,[26] denied for lack of merit.

In a desperate attempt to salvage the case, petitioner filed a motion for leave to file and to admit a second motion for reconsideration which was attached thereto,[27] citing "extraordinary persuasive reasons" to justify the filing of such second motion. By Resolution of November 13, 2002,[28] this Court denied for lack of merit this motion "considering that a second motion for reconsideration is a prohibited pleading under Sec. 2, Rule 52 in relation to Sec. 4, Rule 56 of the 1997 Rules of Civil Procedure as amended."

This Court having denied petitioner's petition in G.R. No. 153272, the present petition has been rendered moot and academic.

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[24] *Id*. at 166-167.

[25] *Id*. at 166.

[26] *Id*. at 211-212.

[27] *Id*. at 168-205.

[28] *Id*. at 219-220.

The case of *Garron v. Arca and Pineda*[29] is instructive. A petition for *certiorari* was filed with this Court, arising from a complaint for replevin. Before the petition could be acted upon, the complaint for replevin was dismissed. This Court held that a decision in the petition became unnecessary, the same having become moot.

> We cannot quite agree with this plea much as we desire to rule on the merits of the case. The duty of the court is to decide actual controversies, not mere hypothetical cases. When this case was brought to this Court, there was actual controversy. Several issues were raised. The main purpose is to have the replevin case dismissed for lack of jurisdiction. This purpose however has already been accomplished, although on a different ground. If the petitioners wanted to have the case decided on the merits so that a ruling may be had on the issue of jurisdiction or on the matter affecting ownership of the articles involved, they should have appealed from the order of the dismissal in the replevin case. This they failed to do. ***The replevin case has ceased to have legal existence. And as this case of certiorari is but an outgrowth of the main case, it must fall on its own weight. The order of dismissal is now final in character and cannot be revived. There is, therefore, no point to continue with this case when the main case is nonexistent. This Court finds no other alternative than to dismiss it*** without prejudice on the part of the petitioners to take such action as may be proper relative to the articles seized from Domingo Pineda.[30] (Emphasis and italics supplied)

The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.[31] Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be

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[29] 88 Phil. 490 (1951).

[30] *Id*. at 492-493.

[31] *Joya v. PCGG*, 225 SCRA 568, 579 (1993).

of no practical use or value[32] as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[33]

That private respondent did not file a motion to dismiss the complaint for lack of jurisdiction of the Sandiganbayan over the subject matter, he having instead filed a motion for exclusion as party defendant, is of no moment. Jurisdiction of courts over the subject matter is conferred exclusively by the Constitution and by law.[34] It is determined by the allegations of the complaint and cannot be made to depend on the defenses of private respondent.[35] The Sandiganbayan's lack of jurisdiction over the complaint could not be waived by private respondent or cured by his silence, acquiescence or even express consent.[36]

In fine, the dismissal of the complaint by the Sandiganbayan *for lack of jurisdiction over the subject matter* which this Court affirmed with finality in G.R. No. 153272 has rendered the present petition moot and academic.

WHEREFORE, the instant petition is hereby *DISMISSED.*

SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.*, concur.

Vitug, J. (Chairman), on official leave.

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[32] *Jaafar v. COMELEC*, 304 SCRA 672, 678 (1999).

[33] *Guingona, Jr. v. Court of Appeals*, 292 SCRA 402, 413 (1998).

[34] *Oca v. Court of Appeals*, 378 SCRA 642, 647 (2002); *Alemar's (Sibal & Sons), Inc. v. Court of Appeals*, 350 SCRA 333, 339 (2001).

[35] *Atuel v. Valdez*, G.R. No. 139561, June 10, 2003; *Roxas v. Court of Appeals*, 391 SCRA 351, 361 (2002); *Ceroferr Realty Corporation v. Court of Appeals*, 376 SCRA 144, 150 (2002).

[36] *Bongato v. Malvar*, 387 SCRA 327, 340-341 (2002); *Duero v. Court of Appeals*, 373 SCRA 11, 19 (2002).

THIRD DIVISION

[G.R. No. 147473. March 30, 2004]

ACD INVESTIGATION SECURITY AGENCY, INC., *petitioner, vs.* **PABLO D. DAQUERA,** *respondent*.

SYNOPSIS

The Court of Appeals affirmed *in toto* the decision of the National Labor Relations Commission that declared that respondent Pablo D. Daquera was illegally dismissed as security guard assigned to Public Estate Authority by petitioner ACD Investigation Security Agency, Inc. It ruled that it becomes apparent that the evidence upon which said dismissal is professedly based does not measure up to that modicum of substantiality. Anent the procedural aspect of the alleged illegal dismissal, the record was bereft of any showing that the private respondent had been given ample opportunity to be heard and notified of the nature and cause of his termination from employment. Thus, petitioner interposed this petition for review on *certiorari*.

In denying this petition, the Court ruled that we have been very careful in cases of dismissal based on dishonesty, serious misconduct, and loss of trust and confidence because the same can easily be concocted by an abusive employer.

Moreover, the records show that respondent was never notified in writing of the particular acts constituting the charge of dishonesty. Neither was he required to give his side regarding the alleged serious misconduct imputed against him. Simply stated, respondent was not served by petitioner with notices, verbal or written, informing him of the particular acts for which his dismissal is sought. As gleaned from the foregoing circumstances, the Court of Appeals correctly ruled that respondent was deprived of both his substantive and procedural rights to due process and, therefore, his termination from the service is illegal.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; INCUMBENT UPON THE EMPLOYER TO PROVE THAT THE DISMISSAL OF AN EMPLOYEE IS NOT ILLEGAL. — [I]n *Bolinao Security and Investigation Service, Inc. vs. Toston*, we emphasized that "it is incumbent upon the employer to prove by the quantum of evidence required by law that the dismissal of an employee is not illegal, otherwise, the dismissal would be unjustified."

2. ID.; ID.; ID.; LACK OF URGENCY ON THE PART OF EMPLOYER IN TAKING ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE NEGATES THE VERACITY AND MERIT OF ITS CHARGES. — It bears stressing that dishonesty is too serious an offense not to be exposed at the first opportunity. The seeming lack of urgency on the part of petitioner in taking any disciplinary action against respondent negates the veracity and merit of its charges.

3. ID.; ID.; ID.; CASES OF DISMISSAL BASED ON DISHONESTY, SERIOUS MISCONDUCT, AND LOSS OF TRUST AND CONFIDENCE CAN EASILY BE CONCOCTED. — We have been very careful in cases of dismissal based on dishonesty, serious misconduct, and loss of trust and confidence because the same can easily be concocted by an abusive employer.

4. ID.; ID.; ID.; ABANDONMENT; ESSENTIAL REQUIREMENTS. — In *Samarca vs. Arc-Men Industries, Inc.*, we held that "for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. Deliberate and unjustified refusal on the part of the employee to go back to his work post and resume his employment must be established. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer."

5. ID.; ID.; ID.; REQUIREMENT OF TWO NOTICES IS MANDATORY. — In *Loadstar Shipping Co., Inc. vs. Mesano*, we held: "The law requires that an employee sought to be dismissed must be served two written notices before termination of his employment. The first notice is to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; and the second notice is to inform the employee of the employer's decision to dismiss him. Failure to comply with the requirement of two notices makes the dismissal illegal. The procedure is mandatory. Non-observance thereof renders the dismissal of an employee illegal and void."

6. ID.; ID.; ID.; REQUISITES FOR A VALID DISMISSAL. — [I]n order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself.

7. ID.; ID.; ID.; ID.; DUE PROCESS; NOT PRESENT IN CASE AT BAR. — Records show that respondent was never notified in writing of the particular acts constituting the charge of dishonesty. Neither was he required to give his side regarding the alleged serious misconduct imputed against him. Simply stated, respondent was not served by petitioner with notices, verbal or written, informing him of the particular acts for which his dismissal is sought. As gleaned from the foregoing circumstances, the Court of Appeals correctly ruled that respondent was deprived of both his *substantive and procedural rights to due process* and, therefore, his termination from the service is illegal.

8. ID.; ID.; ID.; ILLEGAL DISMISSAL; ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES; EXCEPTION. — Respondent who was illegally dismissed from work is actually entitled to reinstatement without loss of seniority rights and other privileges as well as to his full backwages, inclusive of allowances, and to other benefits or their monetary equivalent *computed from the time his compensation was withheld from him up to the time of his actual reinstatement*. However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Antagonism caused a severe strain in the relationship between him and petitioner. A more equitable

disposition would be an award of separation pay equivalent to at least one month pay for every year of service in addition to his full backwages, allowances and other benefits. Records show that respondent was employed from February 15, 1990 to April 4, 1996, or for at least six (6) years, with a monthly salary of ₱6,000.00. Hence, he is entitled to a separation pay of ₱36,000.00.

9. ID.; ID.; ID.; QUITCLAIMS, WAIVERS AND/OR COMPLETE RELEASES ARE AGAINST PUBLIC POLICY. — We hold that the Court of Appeals did not err when it affirmed the award of monetary benefits to respondent despite his quitclaim. In *JMM Promotions and Management, Inc. vs. Court of Appeals,* we held that "quitclaims, waivers and/or complete releases executed by employees do not stop them from pursuing their claims — if there is a showing of undue pressure or duress. The basic reason for this is that such quitclaims, waivers and/or complete releases, being figuratively exacted through the barrel of a gun, are against public policy and therefore null and void *ab initio*. Accordingly, respondent's signature in the subject waiver or quitclaim, as in this case, never foreclosed his right to pursue a case for money claim." As found by the Court of Appeals, it was out of desperation and helplessness that respondent agreed to affix his signature on the quitclaim. Therefore, he is deemed not to have waived any of his rights. *Renuntiatio non praesumitur*.

APPEARANCES OF COUNSEL

Rolando L. Villones and *Silverio L. Ibay, Sr.* for petitioner.
Quintin C. Mendoza for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated October 20, 2000 and the

[1] Annex "A", Petition for Review, *Rollo* at 45-56.

Resolution[2] dated March 14, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 50510, entitled *"ACD Investigation Security Agency, Inc. vs. National Labor Relations Commission and Pablo D. Daquera."*

The controversy herein stemmed from a complaint of Pablo Daquera, respondent, for illegal dismissal, illegal suspension, illegal deduction, and non-payment of benefits[3] against ACD Investigation Security Agency, Inc. (ACDISA), petitioner, Alfonso Dilla, Sr. and Public Estates Authority. The complaint was filed with the Labor Arbiter, docketed as NLRC NCR Case No. 00-05-03335-96.

Respondent, in his complaint, alleged that on February 15, 1990, he was employed as a security guard by petitioner. Subsequently or on September 1, 1994, he was reassigned to Public Estates Authority as a security officer with a monthly salary of ₱6,000.00 for a twelve (12) hour daily work shift. However, he was illegally suspended on April 4, 1996 and thereafter illegally dismissed for dishonesty, without prior written notice and investigation.

For its part, petitioner claims that sometime in March, 1996, it received several complaints against respondent for abandonment of post, drinking liquor while on duty, and extortion from subordinate security guards. Thus, an administrative investigation was conducted. Meantime, respondent was placed on one-month preventive suspension effective April 4, 1996. After evaluating the evidence, petitioner found respondent guilty of dishonesty and neglect of duty. Instead of terminating respondent's services, petitioner reassigned him to another post. However, he refused and took a leave of absence to seek employment elsewhere. After one week, respondent still failed to report for work and instead filed with the Labor Arbiter a complaint against petitioner.

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[2] Annex "B", *id.* at 57.

[3] Overtime compensation, premium pay, night differential pay, holiday pay, service incentive leave pay and 13th month pay.

After the submission of the parties' pleadings and position papers, the Labor Arbiter rendered a Decision dated July 3, 1997 finding respondent's dismissal from employment illegal and ordering petitioner and Alfonso Dilla (1) to reinstate him to his former or equivalent position; and (2) to pay him, jointly and severally, backwages of ₱78,000.00, ₱314,518.00 as monetary benefits , and attorney's fees. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, the dismissal of the complainant is hereby declared as illegal. Consequently, respondents ACD Investigation Security Agency, Inc. and/or Alfonso Dilla Sr., are hereby ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay him jointly and severally his backwages of SEVENTY EIGHT THOUSAND PESOS (₱78,000.00) and his money claims totaling TWO HUNDRED THIRTY SIX THOUSAND FIVE HUNDRED EIGHTEEN PESOS and 88/100, all in the aggregate of THREE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED EIGHTEEN PESOS and 88/100 CENTAVOS (₱314,518.00) plus attorney's fees equivalent to ten (10%) percent of the total award.

"SO ORDERED."

On appeal, the National Labor Relations Commission (NLRC), in its Decision dated June 2, 1998, affirmed the Arbiter's Decision, declaring that respondent was dismissed illegally and ordering his reinstatement with payment of backwages and other benefits, but discharging Dilla from liability. Petitioner filed a motion for reconsideration but was denied by the NLRC in a Resolution dated November 9, 1998.

Petitioner then filed with the Court of Appeals a petition for *certiorari* seeking to set aside the NLRC Decision and Resolution.

In due course, the Court of Appeals issued the assailed Decision dated October 20, 2000, affirming *in toto* the Decision of the NLRC, thus:

"After a punctilious assessment of the records, it becomes apparent that the 'evidence' upon which said dismissal is professedly based does not measure up to that modicum of substantiality. Elsewise stated, the petitioner was unable to affirmatively show rationally adequate evidence that the dismissal was for a just cause *(Western Shipping Agency, Inc. vs. NLRC, 253 SCRA 405; P.I. Manpower Placements, Inc. vs. NLRC, 276 SCRA 451; Brahm Industries, Inc. vs. NLRC, 280 SCRA 828; Caurdanetaan Piece Workers Union vs. Laguesma, 286 SCRA 401; Stolt-Nielsen Marine Services, Inc. vs. NLRC, 3000 SCRA 713).*

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"Verily, there was no substantial evidence to speak of; hence, the charges leveled against the private respondent were nothing but plain hearsay. The petitioner placed immense, albeit undue, reliance on the affidavit of the operations manager (page 134 of the Record). Such affidavit being self-serving must be received with caution. By themselves, generalized and *pro-forma* affidavits cannot constitute relevant evidence which a reasonable mind may accept as adequate (*Madlos vs. NLRC, supra*). An affidavit is only *prima facie* evidence and should be received with caution because of its weak probative value. It is not a complete reproduction of what the declarant had in mind. Nor is it indubitable when prepared on command or as a requirement by someone in authority. Unless the affiant is placed on the witness stand to testify hereon, an affidavit is considered hearsay. *(Carlos A. Gothong Lines, Inc. vs. NLRC, 303 SCRA 164).*

x x x x x x x x x

"Neither can we say that the private respondent's actions were indicative of abandonment (pages 31-32, 72 of the Record; pages 13-15, 124-126 of the *Rollo*). To constitute such a ground for dismissal, there must be — (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention, as manifested by some overt acts, to sever the employer-employee relationship *(Pure Blue Industries, Inc. vs. NLRC, 271 SCRA 259; Hagonoy Rural Bank, Inc. vs. NLRC, 285 SCRA 297; Leonardo vs. NLRC, G.R. Nos. 125303, 126937, June 16, 2000).*

x x x x x x x x x

"The petitioner contends that the private respondent is estopped from pursuing his money claims inasmuch as the certification of payment (pages 17, 128 of the *Rollo*) is tantamount to waiver and

quitclaim and is an admission against his interest (pages 33, 38, 102, 140-142 of the Record).

"We are not persuaded.

"Quitclaims by laborers are frowned upon as contrary to public policy and are held to be ineffective to bar recovery for the full measure of the workers' rights (*Marcos vs. NLRC*, 248 SCRA 146; *Agoy vs. NLRC*, 252 SCRA 588). The reason for such rule was laid down in *Cariño vs. ACCFA* (18 SCRA 183), x x x:

x x x x x x x x x

"Anent the procedural aspect of the alleged illegal dismissal, the record is bereft of any showing that the private respondent had been given ample opportunity to be heard and notified of the nature and cause of his termination from employment. Therefore, as argued by the Solicitor General, 'the procedural requirement in validly terminating the employment of Daquera was not complied with.' (page 75 of the *Rollo*). Notwithstanding that the two-notice rule had not been lawfully complied with, such infirmity does not militate against the legality of the dismissal.

x x x x x x x x x

"Insofar as the money claims are concerned, We find no compelling reason to modify the same. The Labor Arbiter correctly ruled that —

> 'The claim for separation pay is not in order since the dismissal of the complainant is illegal and the relief due to him x x x is reinstatement with full backwages. Likewise, the claim for underpayment and damages are dismissed for lack of merit.' (page 87 of the Record)

x x x x x x x x x

"**WHEREFORE**, the petition is **DENIED**, hereby AFFIRMING the resolution (promulgated on November 9, 1998) of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-05-03335-96 (NLRC CA No. 013359-97).

"SO ORDERED."

On November 21, 2000, petitioner filed a motion for reconsideration but was denied by the Appellate Court in a Resolution dated March 14, 2001.

In this petition for review on *certiorari*, petitioner contends that the Court of Appeals erred in not considering that dishonesty, serious misconduct and willful breach of trust are valid causes for dismissing respondent from the service. Petitioner also contends that respondent is not entitled to reinstatement with backwages since he abandoned his work. Furthermore, the Appellate Court erred in awarding respondent his monetary benefits considering his quitclaim.

First, in *Bolinao Security and Investigation Service, Inc. vs. Toston*,[4] we emphasized that "it is incumbent upon the employer to prove by the quantum of evidence required by law that the dismissal of an employee is not illegal, otherwise, the dismissal would be unjustified." Petitioner, however, failed to discharge its burden.

If it were true that respondent is guilty of demanding money from his subordinates and that he should be terminated for dishonesty, serious misconduct and breach of trust, why then did petitioner still retain his services and even promised him a future reassignment?

It bears stressing that dishonesty is too serious an offense not to be exposed at the first opportunity. The seeming lack of urgency on the part of petitioner in taking any disciplinary action against respondent negates the veracity and merit of its charges.

We have been very careful in cases of dismissal based on dishonesty, serious misconduct, and loss of trust and confidence because the same can easily be concocted by an abusive employer.

Second, we are also not convinced that respondent abandoned his work and that terminating his services is a lawful sanction.

In *Samarca vs. Arc-Men Industries, Inc.*,[5] we held that "for abandonment of work to exist, it is essential (1) that the

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[4] G.R. No. 139135, January 26, 2004 at 1-2, citing *Vicente Sy et al. vs. Hon. Court of Appeals*, G.R. No. 142293, February 27, 2003.

[5] G.R. No. 146118, October 8, 2003, citing *MSMG-UWP vs. Ramos*, 326 SCRA 428 (2000).

employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. Deliberate and unjustified refusal on the part of the employee to go back to his work post and resume his employment must be established. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer." However, the above twin essential requirements for abandonment to exist are not present in the case at bar.

Third, it appears that petitioner was remiss in affording respondent his right to due process.

In *Loadstar Shipping Co., Inc. vs. Mesano*,[6] we held:

"The law requires that an employee sought to be dismissed must be served two written notices before termination of his employment. The first notice is to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; and the second notice is to inform the employee of the employer's decision to dismiss him. Failure to comply with the requirement of two notices makes the dismissal illegal. The procedure is mandatory. Non-observance thereof renders the dismissal of an employee illegal and void."

Moreover, in order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself.[7]

Records show that respondent was never notified in writing of the particular acts constituting the charge of dishonesty. Neither was he required to give his side regarding the alleged

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[6] G.R. No. 138956, August 6, 2003, citing *Cruz vs. NLRC*, 324 SCRA 770 (2000).

[7] *Id*.

serious misconduct imputed against him. Simply stated, respondent was not served by petitioner with notices, verbal or written, informing him of the particular acts for which his dismissal is sought.

As gleaned from the foregoing circumstances, the Court of Appeals correctly ruled that respondent was deprived of both his *substantive and procedural rights to due process* and, therefore, his termination from the service is illegal.

Respondent who was illegally dismissed from work is actually entitled to reinstatement without loss of seniority rights and other privileges as well as to his full backwages, inclusive of allowances, and to other benefits or their monetary equivalent *computed from the time his compensation was withheld from him up to the time of his actual reinstatement.*[8]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Antagonism caused a severe strain in the relationship between him and petitioner. A more equitable disposition would be an award of separation pay equivalent to at least one month pay for every year of service in addition to his full backwages, allowances and other benefits.[9] Records show that respondent was employed from February 15, 1990 to April 4, 1996, or for at least six (6) years, with a monthly salary of ₱6,000.00. Hence, he is entitled to a separation pay of ₱36,000.00.

One final note. We hold that the Court of Appeals did not err when it affirmed the award of monetary benefits to respondent despite his quitclaim. In *JMM Promotions and*

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[8] See *Cebu Marine Beach Resort vs. NLRC*, G.R. No. 143252, October 23, 2003 at 10, citing *Damasco vs. NLRC*, 346 SCRA 714 (2000).

[9] See *Bolinao Security and Investigation Service, Inc. vs. Toston, supra*. at 11-12, citing *Cebu Marine Beach Resort vs. NLRC*, G.R. No. 143252, October 23, 2003, *Samarca vs. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, and *Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC*, 300 SCRA 37 (1998).

Management, Inc. vs. Court of Appeals,[10] we held that "quitclaims, waivers and/or complete releases executed by employees do not stop them from pursuing their claims — if there is a showing of undue pressure or duress. The basic reason for this is that such quitclaims, waivers and/or complete releases, being figuratively exacted through the barrel of a gun, are against public policy and therefore null and void *ab initio*. Accordingly, respondent's signature in the subject waiver or quitclaim, as in this case, never foreclosed his right to pursue a case for money claim."

As found by the Court of Appeals, it was out of desperation and helplessness that respondent agreed to affix his signature on the quitclaim. Therefore, he is deemed not to have waived any of his rights. *Renuntiatio non praesumitur*.

In fine, we see no compelling reason to reverse the assailed Decision and Resolution of the Court of Appeals.

WHEREFORE, the assailed Decision dated October 20, 2000 and Resolution dated March 14, 2001 of the Court of Appeals are hereby *AFFIRMED* with *MODIFICATION* in the sense that in lieu of reinstatement, respondent is awarded separation pay equivalent to ₱36,000.00; and his full backwages, other privileges and benefits, or their monetary equivalent, corresponding to the period from his dismissal up to his supposed actual reinstatement.

Costs against petitioner.

SO ORDERED.

Corona and *Carpio Morales, JJ.,* concur.

Vitug, J. (Chairman), is on official leave.

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[10] See G.R. No. 139401, October 2, 2002, 390 SCRA 223, 231-232, citing *Carino vs. Agricultural Credit and Cooperative Financing Administration*, 18 SCRA 183 (1966).

FIRST DIVISION

[G.R. Nos. 148689-92. March 30, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TORIBIO GALIDO *y* DE LA CRUZ,** *appellant.*

SYNOPSIS

On appeal is the decision of the trial court convicting appellant Toribio Galido of three counts of rape and one count of light threats. Appellant claimed that the trial court erred in convicting him for three counts of rape under a fatally defective information. He also questioned the credibility of the complainant.

The Court ruled that the sufficiency of the Informations was never questioned by appellant during trial. Neither did he object to the prosecution's presentation and offer of evidence of force and intimidation. That evidence, which is now extant in the records, cured the defect of the Informations. Hence, he cannot now assail those Informations or claim a violation of the right to be informed of the nature and cause of the accusation against him.

As to complainant's credibility, time and time again, the Court has said that a rape victim – especially one of tender age – would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. Thus, when a woman – more so if she is a minor – says that she has been raped, she says in effect all that is necessary to show that rape was committed. And as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone. Accordingly, the appeal was denied.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AN ACCUSED CANNOT BE CONVICTED OF AN OFFENSE UNLESS IT IS CLEARLY CHARGED IN

THE COMPLAINT OR INFORMATION. — As a rule, the accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Otherwise, their constitutional right to be informed of the nature and cause of the accusation against them would be violated.

2. ID.; ID.; ID.; COMPLAINT SUFFICIENTLY SUPPLIED THE DEFICIENCY OF THE INFORMATION IN THE RAPE CHARGE; CASE AT BAR. — In the present case, appellant was informed at the outset that he was being charged with rape through force and intimidation. All the elements of the crime were sufficiently alleged in the Complaint, copies of which were given to him and attached to the records. The Complaint sufficiently supplied the deficiency of the Information as regards the particulars of the rape charge.

3. ID.; ID.; ID.; RIGHT TO ASSAIL THE SUFFICIENCY OF THE INFORMATION OR THE ADMISSION OF EVIDENCE MAY BE WAIVED BY THE ACCUSED. — [I]n *People v. Palarca*, the Court held that the evidence presented during trial cured the failure of the Information to allege specifically that the rape had been committed through force or intimidation. Thus, the Court said: "While the accusatory portion of the information failed to specifically allege that the rape was committed through force or intimidation, the prosecution was able to establish by evidence that accused-appellant was guilty of rape as defined under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended. x x x. "In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. x x x." This ruling was recently reiterated in *People v. Torellos*. The Information therein, which had failed to allege that the rape had been committed through force and intimidation, was considered by the Court as merely defective. It ruled that the deficiency was cured by the failure of the accused to object to the

sufficiency of the Information and by competent evidence presented during trial. In the present case, the sufficiency of the Informations was never questioned by appellant during trial. Neither did he object to the prosecution's presentation and offer of evidence of force and intimidation. That evidence, which is now extant in the records, cured the defect of the Informations. Hence, he cannot now assail those Informations or claim a violation of his right to be informed of the nature and cause of the accusation against him.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLES IN THE ASSESSMENT THEREOF. — In assessing the credibility of witnesses, we are guided by the following principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) one who testifies in a clear, positive and convincing manner and remains consistent during cross-examination is a credible witness.

5. CRIMINAL LAW; RAPE; NOT NECESSARY THAT THE FORCE OR INTIMIDATION EMPLOYED IS SO GREAT AS COULD NOT BE RESISTED. — It is not necessary that the force or intimidation employed in committing rape be so great or of such character as could not be resisted. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind. By itself, the act of holding a knife is strongly suggestive of force or at least of intimidation. In the present case, threatening private complainant with a knife was sufficient to bring her into submission.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT DETRACTED BY THE SEEMINGLY IDENTICAL NARRATIONS OF THE FIRST TWO RAPES. — Her seemingly identical narrations of the first two rapes does not detract from her credibility. Verily, the trial court was correct in its observation that the cross-examination, to

which she was subjected, even tended to improve her recollection of the rape incidents.

7. ID.; ID.; ID.; COMPLAINANT'S TESTIMONY IS SUPPORTED BY THE FINDINGS OF THE MEDICOLEGAL EXPERT; RAPE VICTIM'S ACCOUNT IS SUFFICIENT TO SUPPORT A CONVICTION FOR RAPE. — [Complainant's] testimony is supported by the findings of the medicolegal expert. The Medical Certificates show that the victim had healed lacerations at the five o'clock and the seven o'clock positions of her vaginal orifice. This finding is consistent with penile invasion. A rape victim's account is sufficient to support a conviction for rape if it is straightforward, candid and corroborated by the medical findings of the examining physician, as in the present case.

8. ID.; ID.; ID.; RAPE VICTIM OF TENDER AGE WOULD NOT NORMALLY CONCOCT A STORY OF DEFLORATION. — Time and time again, we have said that a rape victim — especially one of tender age — would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. Thus, when a woman — more so if she is a minor — says that she has been raped, she says in effect all that is necessary to show that rape was committed. And as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PANGANIBAN, *J.*:

An information that fails to allege the use of force and intimidation in a rape case is cured by the failure of the accused to question before the trial court the sufficiency of that information; by the allegation in the original *complaint* that the

accused is being charged with rape through force and intimidation; and by unobjected competent evidence proving that the rape was indeed committed through such means.

Statement of the Case

Toribio Galido appeals the April 20, 2001 Decision[1] of the Regional Trial Court (RTC) of Sorsogon, Sorsogon (Branch 53), in Criminal Case Nos. 96-4254, 96-4255, 96-4256 and 96-4257, convicting him of three counts of rape and one count of light threats. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, by reason of the foregoing premises, judgment is hereby rendered against Toribio Galido *y* de la Cruz:

1. Imposing the penalty of three (3) terms of *reclusion perpetua* — one for each of the three (3) counts of rape;

2. Imposing the penalty of thirty (30) days of *arresto menor* for light threats;

3. To pay AAA ₱150,000.00 for civil indemnity and another ₱150,000.00 as moral damages for the three (3) counts of rape at ₱50,000.00 for each count in the two (2) categories of damages; and

4. To pay the cost.'"[2]

Four separate Informations,[3] all dated September 11, 1996, charged appellant as follows:

Criminal Case No. 96-4254

"That on or about the 24th day of April, 1994 at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully,

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[1] *Rollo*, pp. 22-34. Penned by Judge Boanerges C. Candolea.

[2] RTC Decision, p. 13; *rollo*, p. 34.

[3] Signed by Assistant Provincial Prosecutor Amado D. Dimaano and approved by Provincial Prosecutor Jose L. Madrid.

unlawfully and feloniously, have carnal knowledge with one AAA, 14 years old, against her will and without her consent, to her damage and prejudice."[4]

Criminal Case No. 96-4255

"That on or about the 7th day of January, 1996 at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with oneAAA, 14 years old, against her will and without her consent, to her damage and prejudice."[5]

Criminal Case No. 96-4256

"That on or about the 16th day of May, 1996 at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one AAA, 14 years old, against her will and without her consent, to her damage and prejudice."[6]

Criminal Case No. 96-4257

"That on or about the 8th day of August, 1996 at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously, by means of force, threat and intimidation, with lewd design, commence the commission of Rape, directly by overt acts of embracing and kissing one AAA, with the intent of having carnal knowledge of her, and if the accused did not accomplish his purpose, that is, to have carnal knowledge of the said AAA, it was not because of his own voluntary desistance but because the said offended party succeeded in resisting the criminal attempt of the said accused and because of the opportune discovery and presence of the members of the family of the offended party, to her damage and prejudice."[7]

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[4] *Rollo,* p. 8.

[5] *Id*., p. 10.

[6] *Id*., 12.

[7] RTC Decision, p. 2. *rollo,* p. 23.

During his arraignment on December 17, 1996, appellant, assisted by his counsel,[8] pled not guilty to the charges.[9] After a joint trial of the cases, the lower court rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"In 1994, the victim, AAA, was a twelve (12) year old Grade 6 student of x x x Elementary School who lived with her adoptive mother and the latter's daughters in a one-room dwelling in Barangay x x x, x x x, x x x. Appellant lived six to seven meters away from the place where AAA lived.

"On April 24, 1994, around 11:30 in the morning, AAA was alone in their house. She took a bath in the bathroom located adjacent to their house. She was still wrapped in a towel when she re-entered their abode. To her utter surprise, appellant who seemed drunk appeared inside their home. She asked him what he was doing there. Appellant did not answer instead he forcibly took her hand and pulled her. She screamed. Appellant then brought out a bladed weapon and poked it at her mouth. Without removing the weapon from her mouth, he then took off his shirt and tied it around her mouth and with another shirt tied her hands behind her back. Thereafter, appellant lowered down his shorts. She was able to escape briefly but he chased and boxed her. AAA kept on kicking him but appellant managed to force her to lie on the floor. Soon afterward, appellant laid on top of her and succeeded in having sexual knowledge of her. AAA cried in pain. Afterwards, appellant put on his clothes and left.

"On January 7, 1996, around one o'clock in the afternoon, AAA was again alone in their house. She had just taken a bath when appellant suddenly entered their home. AAA recalled what happened to her before and began to be afraid. She raised her right hand and pleaded to appellant not to abuse her again. She could not shout

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[8] A certain Atty. Laguna, whose first name does not appear in the records.

[9] *See* Order dated December 17, 1996; records, p. 26.

because he already poked a bladed instrument on her chest. Before long, appellant pushed her against the concrete wall of their house, which weakened her. He commanded her to lie on the floor. Thereafter, he pulled down his shorts, removed her panties and placed himself on top of her. He inserted his organ inside hers. Afterwards, he left. When AAA looked down, she saw blood on the floor which she supposed came from her.

"In yet another fateful day on May 16, 1996, around twelve thirty in the afternoon, AAA was on her way home from a *barrio fiesta* in Barangay x x x, x x x, x x x. She was walking through an infrequently traversed trail in the woods when she heard a tree branch snap. When she turned around, she saw appellant more or less eight (8) meters behind her. AAA ran uphill while shouting for help but to no avail. Appellant overtook her, grabbed her hands and pulled her hair. They both tumbled downhill but he chased her still and even boxed her on her shoulder. He then pulled out his knife and ordered her to lie on the grass. He covered her mouth, tied her up and undressed her. After undressing himself, appellant ravished the 14-year-old AAA again.

"In all three x x x occasions of sexual molestations, appellant threatened AAA not to tell anybody of the rape incidents or else he would kill her and her family. She frightfully complied.

"On August 8, 1996, around eleven o'clock in the evening, AAA, together with her two elder sisters, was sleeping inside their houses. Their mother was away for work. AAA was awakened when appellant covered her mouth with a shirt. He then poked a knife at her as he was undressing her. She tried to kick appellant but instead she hit her sister CCC. The latter woke up and when she beamed a flashlight on AAA she saw appellant poking a bladed weapon on AAA who was crying. Appellant immediately left. AAA was reduced to tears.

"The following day, August 9, 1996, around six o'clock in the evening, the victim's mother, BBB, arrived home from work. One of the victim's sisters, CCC, related to her the incident. She then summoned the victim who confirmed the tale. The victim likewise narrated that she was sexually abused since she was twelve. The victim and her mother then proceeded to the *barangay* captain who advised her to return the following morning and report the matter to the police authorities.

"The next morning, the victim went to the police station and executed a sworn statement. A criminal complaint was then formally filed.

"Afterwards, on August 15, 1996, the victim and her mother went to the Municipal Health Officer of Sorsogon, Dr. Liduvina Dorion, who conducted a physical and mental examination on the victim for which she issued two (2) Medical Certificates. The medical findings stated therein, in part, as explained by Dr. Liduvina Dorion on direct examination, were as follows:

> 'Pelvic Examination — wide flourchet in [the area of the] developing [vulva] x x x; moderate pubic hair; IE shows healed lacerations at 6:00 and 10:00 o'clock over the vaginal orifice; easily admits one finger; great difficulty with two. Extremities — no significant findings.'

"The examining physician explained that the finding of 'wide flourchet' suggests that the penetration happened several times. The membrane covering the vagina or hymen, which is the first part that is lacerated is already absent. The healed lacerations indicate that they are more [than] two (2) weeks old. She concluded that indeed there was penetration."[10] (Citations omitted)

Version of the Defense

In his Brief, appellant presents his version of the facts in the following manner:

"Accused Toribio Galido testified that during the farming season, he operated a hand tractor and during the harvest season he operated a thresher. December and January are the farming season. Harvest season is on March, April and May.

"On April 24, 1994 at around 1:00 p.m., he was operating the *palay* thresher at the place of his godfather. They began working at 7:00 a.m. until 5:00 p.m.

"The fiesta of Rocadel is on April 27, not April 24.

If you are inside the house of AAA and will shout, it will be heard by the nearest neighbor. There were 3 neighbors' houses.

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[10] Appellee's Brief, pp. 5-10; *rollo*, pp. 122-127.

"The motive of the private complainant is that before, they requested him to testify on a case of a certain Junior Jasoro but when he refused, they got angry with him. Junior was convicted of a crime and has already been transferred to the Bilibid Prison. AAA is the complainant in the case against Junior.

"On January 7, 1996 at around 1:00 p.m., he was at the ricefield operating the tractor owned by *Tio* Lando del Rosario. The ricefield was about 1 and a half kilometers from the house of AAA. He was with Otoy, his godbrother.

"He started working at around 5:00 a.m., and finished at 4:00 p.m. He took his lunch in the center of the ricefield.

"On May 16, 1996 at around 12:30 p.m., he was threshing the palay. This was the *barangay fiesta* at Barangay Bayoyong. He did not go to the *fiesta* because they were threshing the palay.

"They began their work at 7:00 a.m., at the home of Padrino Juanito. They finished at 4:00 p.m.

"It is not true that his son accompanied AAA because of the fact that they are angry with him for his refusal to testify against accused Junior.

"He denied that on August 8, 1996 at around 11:00 p.m., he tried to rape AAA. How can he do that when Grace had companions inside the house. He was also sleeping at the time.

"Edgar Bonos testified that he was a *barangay* captain. He knows Brgy. Pocdol. April 27 is their *barangay fiesta*."[11]

The Trial Court's Ruling

The RTC gave full credence to the clear and positive testimony of private complainant. It found the "responses of x x x AAA during both her direct and cross testimon[ies] x x x prompt, direct to the point, simple and forthright. x x x. In fact, her responses during the cross examination tended to improve her recollection of her harrowing experience from the beastly acts of the accused. These characteristics of her testimony, to the mind of the court, are badges of truth."[12]

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[11] Appellant's Brief, pp. 8-9; *id.*, pp. 68-69.

[12] RTC Judgment, p. 9; *id.*, p. 30.

The trial court rejected the defense of alibi proffered by appellant and observed that it was not physically impossible for him to be at the *locus criminis* when the alleged crimes were committed."[13]

As regards the charge of attempted rape, however, the trial court found that the prosecution "only proved beyond reasonable doubt the overt acts that the accused covered the mouth of the victim and poked a knife on her and was not able to proceed further. [Thus], the offense he committed is only light threats under Article 285 paragraph 1 of the Revised Penal Code. x x x."[14]

Hence, this appeal.[15]

The Issues

In his Brief, appellant submits the following assignment of errors for our consideration:

"I.

"The trial court gravely erred in finding the accused guilty beyond reasonable doubt of the crime of rape (3x) committed through force and intimidation under a fatally defective information.

"II.

"The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape (3x) notwithstanding the private complainant's testimony was not credible or convincing."[16]

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[13] *Id.*, pp. 11 & 32.

[14] *Id.*, pp. 12 & 33.

[15] This case was deemed submitted for resolution on February 20, 2003, upon this Court's receipt of appellant's Reply Brief, signed by Attorneys Amelia C. Garchitorena and Teresita S. de Guzman of the Public Attorney's Office (PAO). Appellee's Brief — signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitors General Carlos N. Ortega and Josefina C. Castillo, and Associate Solicitor Catherine Joy R. Mallari — was received by the Court on December 23, 2002. Appellant's Brief was filed on August 16, 2002.

[16] Appelant's Brief, p. 1; *rollo*, p. 61. Original in upper case.

The Court's Ruling

The appeal is devoid of merit.

First Issue:
Defective Information

Appellant avers that because the Informations on which he was arraigned and convicted did not allege the element of force or intimidation, he was deprived of his constitutional right to be informed of the nature and cause of the accusation against him. He insists that such failure was a fatal defect that rendered the Informations void.

As a rule, the accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information.[17] Otherwise, their constitutional right to be informed of the nature and cause of the accusation against them would be violated.[18]

In the present case, appellant correctly pointed out that the element of "force or intimidation" should have been expressly alleged in the Informations. This omission is not[19] fatal, however, because the Complaint[20] specifically accused him of three counts of rape committed by means of force and intimidation, as follows:

"That on or about the 24th day of April 1994, 7th day of January 1996 and 16th day of May 1996, at Bgy x x x and x x x, in the [M]unicipality of x x x, [P]rovince of x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd desire, by means of force and intimidation, willfully, unlawfully and feloniously, did, then and there, have x x x carnal knowledge against AAA, adopted child of the undersigned Offended Party, a girl below 18 years of age, against the victim['s] will."

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[17] *People v. Lopez*, 346 SCRA 469, November 29, 2000; *People v. Larena*, 309 SCRA 305, June 29, 1999.

[18] *Ibid*.

[19] *People v. Mendez*, 335 SCRA 147, 154, July 5, 2000.

[20] Records, p. 1.

In *People v. Mendez*,[21] the Information against the accused therein also failed to state that the victim had been raped "through force or intimidation." The former questioned the defective Information and claimed that he "cannot be validly convicted in an indictment that does not charge an offense." Ruling squarely on the matter, the Court said:

"As correctly pointed out by ROSENDO, the information or complaint for rape should expressly allege the commission of the rape in the manner prescribed in Article 335. Hence, in the case of *People v. Oso* the allegation in the complaint that the accused had carnal intercourse with the offended woman 'against her will' or 'without her consent' is insufficient to warrant a conviction for rape, although the evidence proves the commission of the crime. However, in this case, the complaint filed by VIRGINITA expressly alleges that the rape was committed 'by means of force,' *viz.*:

x x x x x x x x x

"What we have here is a complaint specifically accusing ROSENDO of rape committed 'by means of force' and an information that failed to allege this essential element. x x x The failure of the information to state that ROSENDO raped VIRGINITA 'through force or intimidation' is not a fatal omission in this case because the complaint alleged the ultimate fact that ROSENDO raped VIRGINITA 'by means of force.' So, at the outset, ROSENDO could have readily ascertained that he was being accused of rape committed through force, a charge that sufficiently complies with Article 335."[22]

In the present case, appellant was informed at the outset that he was being charged with rape through force and intimidation. All the elements of the crime were sufficiently alleged in the Complaint, copies of which were given to him and attached to the records. The Complaint sufficiently supplied the deficiency of the Information as regards the particulars of the rape charge.

Furthermore, in *People v. Palarca*,[23] the Court held that the evidence presented during trial cured the failure of the Information

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[21] *Supra* at 19.

[22] *Id.*, pp. 153-154, per Gonzaga-Reyes, *J.*

[23] 328 SCRA 741, May 29, 2002.

to allege specifically that the rape had been committed through force or intimidation.[24] Thus, the Court said:

"While the accusatory portion of the information failed to specifically allege that the rape was committed through force or intimidation, the prosecution was able to establish by evidence that accused-appellant was guilty of rape as defined under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended. x x x.

"In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. x x x."[25]

This ruling was recently reiterated in *People v. Torellos*.[26] The Information therein, which had failed to allege that the rape had been committed through force and intimidation, was considered by the Court as merely defective. It ruled that the deficiency was cured by the failure of the accused to object to the sufficiency of the Information and by competent evidence presented during trial.

In the present case, the sufficiency of the Informations was never questioned by appellant during trial. Neither did he object to the prosecution's presentation and offer of evidence of force and intimidation. That evidence, which is now extant in the records, cured the defect of the Informations. Hence, he cannot now assail those Informations or claim a violation of his right to be informed of the nature and cause of the accusation against him.

Second Issue:

Credibility of Private Complainant

Appellant questions the identical narration by private complainant of the first two alleged occasions of rape. He casts doubt on her

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[24] See also *People v. Villamor*, 297 SCRA 262, October 7, 1998.

[25] *Id*., pp. 747-748, per Ynares-Santiago, *J*.

[26] G.R. No. 143084, April 1, 2003.

credibility, claiming that she gave her testimony in a mechanical and scripted manner.

We are not persuaded. In assessing the credibility of witnesses, we are guided by the following principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) one who testifies in a clear, positive and convincing manner and remains consistent during cross-examination is a credible witness.[27]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we find no cogent reason to overturn the factual findings of the lower court. A careful scrutiny of the records and the transcripts shows that the RTC had ample opportunity to assess the credibility of private complainant. She narrated how appellant had overpowered her into submitting to his desires in this wise:

On the incident of April 24, 1994:

"Q: What was he carrying when he held you and placed you on his lap?

A: He was armed by a dagger.

Q: What happened next after that?

A: He tied me and placed a T-shirt on my mouth.

Q: What did you do when your hands were tied and your mouth was covered?

A: I kept on kicking him.

Q: After you kicked him, what happened next?

A: I was able to free from him but he was able to overtake me and boxed me.

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[27] *People v. Santos*, 394 SCRA 113, December 17, 2002; citing *People v. Penaso*, 383 Phil. 200, February 23, 2000.

Q: What happened to you when you were boxed by him?
A: I felt weak and commanded me to lie on a floor.

Q: What happened after that?
A He removed his clothes and placed himself on top of me.

Q: When he placed himself on top of you, what did he do next?
A: He inserted his organ into mine."[28]

On the January 7, 1996, incident:

"Q: When he closed the door of your house, what did you do next?
A: He pushed me and tied my hands and placed a cover on my mouth.

Q: When he did that to you, did you not shout?
A: I could not shout, there was an object placed on my mouth and he kept on threatening me with a knife.

Q: What did you do next when he was covering your mouth and threatening you with a knife?
A: He pushed me on the concrete wall of our house.

x x x x x x x x x

Q: After that, what happened next?
A: He ordered me to lie on the floor.

x x x x x x x x x

Q: After he removed his short, what happened next?
A: He placed himself on top of me.

Q: When he placed [himself] on top of you, what did he do next?
A: He placed his organ on my organ."[29]

On the incident of May 16, 1996:

"Q: What happened when he pulled his knife and kept on twirling it?
A: He pulled me towards the woods.

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[28] TSN, June 1, 1998, pp. 5-6.

[29] *Id*., pp. 8-9.

Q: When he pulled you towards the woods, what happened next?
A: At the woods, he ordered me to lie on a grassy portion.
Q: What happened when you were on that position?
A: He covered my mouth.
Q: After he covered your mouth, what did he do next?
A: He tied me.
Q: Then, what happened after that?
A: He undress[ed] me after that.
Q: When you were already undressed, what did he do next?
A: He also undress[ed] himself?
Q: After he undressed himself, what did he do?
A: He mounted on me and placed his organ inside mine."[30]

It is not necessary that the force or intimidation employed in committing rape be so great or of such character as could not be resisted. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind.[31] By itself, the act of holding a knife is strongly suggestive of force or at least of intimidation. In the present case, threatening private complainant with a knife was sufficient to bring her into submission.[32]

Her seemingly identical narrations of the first two rapes does not detract from her credibility. Verily, the trial court was correct in its observation that the cross-examination, to which she was subjected, even tended to improve her recollection of the rape incidents.

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[30] *Id*., pp. 11-12.

[31] *People v. Alfeche*, 355 Phil. 776, August 17, 1998; *People v. Marabillas*, 362 Phil. 688, February 18, 1999; *People v. Cesista*, 386 SCRA 233, August 6, 2002.

[32] *People v. Tolentino*, 352 SCRA 228, February 19, 2001; *People v. De la Peña*, 354 SCRA 186, March 12, 2001.

Moreover, her testimony is supported by the findings of the medico-legal expert.[33] The Medical Certificates show that the victim had healed lacerations at the five o'clock and the seven o'clock positions of her vaginal orifice. This finding is consistent with penile invasion.[34] A rape victim's account is sufficient to report a conviction for rape if it is straightforward, candid and corroborated by the medical findings of the examining physician, as in the present case.[35]

Time and time again, we have said that a rape victim — especially one of tender age — would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished.[36] Thus, when a woman — more so if she is a minor — says that she has been raped, she says in effect all that is necessary to show that rape was committed. And as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.[37]

WHEREFORE, the appeal is ***DENIED*** and the RTC Decision ***AFFIRMED***. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[33] Dr. Liduvina Dorion.

[34] TSN, May 19, 1997, p. 7.

[35] *People v. Gabawa*, G.R. No. 139833, February 28, 2003; *People v. Cañaveral*, 386 SCRA 54, August 1, 2002; *People v. Arillas*, 389 Phil. 284, June 19, 2000.

[36] *People v. Ramirez*, 334 Phil. 305, January 20, 1997; *People v. Mendoza*, 392 SCRA 667, November 26, 2002; *People v. Plurad*, 393 SCRA 306, December 3, 2002.

[37] *People v. Mendoza, supra*.

FIRST DIVISION

[G.R. No. 149927. March 30, 2004]

REPUBLIC OF THE PHILIPPINES, Represented by the Department of Environment and Natural Resources (DENR) Under then Minister ERNESTO R. MACEDA; and Former Government Officials CATALINO MACARAIG, FULGENCIO S. FACTORAN, ANGEL C. ALCALA, BEN MALAYANG, ROBERTO PAGDANGANAN, MARIANO Z. VALERA and ROMULO SAN JUAN, *petitioners, vs.* **ROSEMOOR MINING AND DEVELOPMENT CORPORATION, PEDRO DE LA CONCHA, and ALEJANDRO and RUFO DE GUZMAN,** *respondents*.

SYNOPSIS

Dr. Lourdes S. Pascual, Dr. Pedro De la Concha, Alejandro De la Concha and Rufo De Guzman applied with the Bureau of Mines a license to exploit the marble deposits at the Biak-na-Bato mountain range. Thereafter, the Bureau of Mines now Mine and Geosciences Bureau issued Quarry License/Permit (QLP) No.33 to Rosemoor Mining and Development Corporation, as the corporation of the applicants. However, shortly after petitioner Ernesto R. Maceda was appointed as Minister of the Department of Energy and Natural Resources, he cancelled the QLP No. 33 through his letter to Rosemoor Mining and Development Corporation. Consequently, herein respondents assailed the cancellation of QLP No. 33. The trial court ruled, among others, then that the cancellation was unjustified because the area that could be covered by the four separate applications of respondents was 400 hectares and that Proclamation No.84 which confirmed the cancellation of the license was an *ex post facto* law, as such, it violated Section 3 of Article XVIII of the 1987 Constitution. On appeal, the Court of Appeals affirmed *in toto* the trial court's decision. It held that the grant of the quarry license covering 330.3062 hectares to respondents was authorized by Presidential Decree No. 463 or the Mineral

Resources Development Decree of 1974 because the license was embraced by four (4) separate applications – each for an area of 81 hectares. Hence, this petition.

The petition was granted. The language of Presidential Decree No. 463 of the Mineral Resources Development Decree of 1974 is clear. It states in categorical and mandatory terms that a quarry license, like that of respondents, should cover a maximum of 100 hectares in any given province. This law neither provides any exception nor makes any reference to the number of applications for a license. Section 69 of PD 463 must be taken to mean exactly what it says. Where the law is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Clearly, the intent of the law would be brazenly circumvented by ruling that a license may cover an area exceeding the maximum by the mere expediency of filing several applications. Such ruling would indirectly permit an act that is directly prohibited by the law.

Moreover, respondents' license may be revoked or rescinded by executive action when the national interest so requires, because it is not a contract, property or a property right protected by the due process clause of the Constitution.

It is settled that an *ex post facto* law is limited in its scope only to matters criminal in nature. Proclamation 84, which merely restored the area excluded from the Biak-na-Bato National Park by cancelling respondents' license, is clearly not penal in character.

SYLLABUS

1. POLITICAL LAW; LAW ON NATURAL RESOURCES; PRESIDENTIAL DECREE NO. 463; CONTRARY TO OR VIOLATIVE OF THE EXPRESS MANDATE OF THE 1987 CONSTITUTION. — PD 463, as amended, pertained to the old system of exploration, development and utilization of natural resources through licenses, concessions or leases. While these arrangements were provided under the 1935 and the 1973 Constitutions, they have been omitted by Section 2 of Article XII of the 1987 Constitution. With the shift of constitutional policy toward "full control and supervision of the State" over

natural resources, the Court in *Miners Association of the Philippines v. Factoran Jr.* declared the provisions of PD 463 as contrary to or violative of the express mandate of the 1987 Constitution. The said provisions dealt with the lease of mining claims; quarry permits or licenses covering privately owned or public lands; and other related provisions on lease, licenses and permits.

2. ID.; ID.; REPUBLIC ACT NO. 7942 (PHILIPPINE MINING ACT OF 1995); REPEALED OR AMENDED ALL LAWS OR PARTS THEREOF THAT ARE INCONSISTENT WITH ANY OF ITS PROVISIONS. — RA 7942 or the Philippine Mining Act of 1995 embodies the new constitutional mandate. It has repealed or amended all laws, executive orders, presidential decrees, rules and regulations — or parts thereof — that are inconsistent with any of its provisions. It is relevant to state, however, that Section 2 of Article XII of the 1987 Constitution does not apply retroactively to a "license, concession or lease" granted by the government under the 1973 Constitution or before the effectivity of the 1987 Constitution on February 2, 1987. As noted in *Miners Association of the Philippines v. Factoran Jr.*, the deliberations of the Constitutional Commission emphasized the intent to apply the said constitutional provision prospectively. While RA 7942 has expressly repealed provisions of mining laws that are inconsistent with its own, it nonetheless respects previously issued valid and existing licenses[.]

3. ID.; ID.; PRESIDENTIAL DECREE NO. 463; QUARRY LICENSE SHOULD COVER A MAXIMUM OF 100 HECTARES IN ANY GIVEN PROVINCE. — The language of PD 463 is clear. It states in categorical and mandatory terms that a quarry license, like that of respondents, should cover a maximum of 100 hectares in any given province. This law neither provides any exception nor makes any reference to the number of applications for a license. Section 69 of PD 463 must be taken to mean exactly what it says. Where the law is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. x x x The interpretation adopted by the lower courts is contrary to the purpose of Section 69 of PD 463. Such intent to limit, without qualification, the area of a *quarry* license strictly to 100 hectares in any one province is shown by the opening proviso that reads: "Notwithstanding

the provisions of Section 14 hereof x x x." The mandatory nature of the provision is also underscored by the use of the word *shall*. Hence, in the application of the 100-hectare-per-province limit, no regard is given to the size or the number of mining claims under Section 14[.] x x x Clearly, the intent of the law would be brazenly circumvented by ruling that a license may cover an area exceeding the maximum by the mere expediency of filing several applications. Such ruling would indirectly permit an act that is directly prohibited by the law.

4. ID.; ID.; QUARRY LICENSE MAY BE REVOKED OR RESCINDED BY EXECUTIVE ACTION WHEN THE NATIONAL INTEREST SO REQUIRES. — This Court ruled on the nature of a natural resource exploration permit, which was akin to the present respondents' license, in *Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*, which held: "x x x. As correctly held by the Court of Appeals in its challenged decision, EP No. 133 merely evidences a privilege granted by the State, which may be amended, modified or rescinded when the national interest so requires. This is necessarily so since the exploration, development and utilization of the country's natural mineral resources are matters impressed with great public interest. Like timber permits, mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution, since the State, under its all-encompassing police power, may alter, modify or amend the same, in accordance with the demands of the general welfare." This same ruling had been made earlier in *Tan v. Director of Forestry* with regard to a timber license, a pronouncement that was reiterated in *Ysmael v. Deputy Executive Secretary*[.] x x x In line with the foregoing jurisprudence, respondents' license may be revoked or rescinded by executive action when the national interest so requires, because it is not a contract, property or a property right protected by the due process clause of the Constitution.

5. ID.; ID.; ID.; CANCELLATION OR REVOCATION OF THE QUARRY LICENSE IS VESTED IN THE DIRECTOR OF MINES AND GEO-SCIENCES. — The determination of what is in the public interest is necessarily vested in the State as owner of all mineral resources. That determination was based

on policy considerations formally enunciated in the letter dated September 15, 1986, issued by then Minister Maceda and, subsequently, by the President through Proclamation No. 84. As to the exercise of prerogative by Maceda, suffice it to say that while the cancellation or revocation of the license is vested in the director of mines and geo-sciences, the latter is subject to the former's control as the department head. We also stress the clear prerogative of the Executive Department in the evaluation and the consequent cancellation of licenses in the process of its formulation of policies with regard to their utilization. Courts will not interfere with the exercise of that discretion without any clear showing of grave abuse of discretion.

6. ID.; ID.; QUARRY LICENSE CAN BE VALIDLY REVOKED BY THE STATE IN THE EXERCISE OF POLICE POWER. — [G]ranting that respondents' license is valid, it can still be validly revoked by the State in the exercise of police power. The exercise of such power through Proclamation No. 84 is clearly in accord with *jura regalia*, which reserves to the State ownership of all natural resources. This Regalian doctrine is an exercise of its sovereign power as owner of lands of the public domain and of the patrimony of the nation, the mineral deposits of which are a valuable asset.

7. ID.; ID.; QUARRY LICENSE IS NOT A CONTRACT TO WHICH THE PROTECTION ACCORDED BY THE NON-IMPAIRMENT CLAUSE MAY EXTEND. — Proclamation No. 84 cannot be stigmatized as a violation of the non-impairment clause. As pointed out earlier, respondents' license is not a contract to which the protection accorded by the non-impairment clause may extend. Even if the license were, it is settled that provisions of existing laws and a reservation of police power are deemed read into it, because it concerns a subject impressed with public welfare. As it is, the non-impairment clause must yield to the police power of the state.

8. ID.; ID.; PROCLAMATION NO. 84; NOT A BILL OF ATTAINDER. — We cannot sustain the argument that Proclamation No. 84 is a bill of attainder; that is, a "legislative act which inflicts punishment without judicial trial." Its declaration that QLP No. 33 is a patent nullity is certainly not a declaration of guilt. Neither is the cancellation of the license a punishment within the purview

of the constitutional proscription against bills of attainder.

9. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; *EX POST FACTO* LAW; SIX RECOGNIZED INSTANCES. — There are six recognized instances when a law is considered as such: 1) it criminalizes and punishes an action that was done before the passing of the law and that was innocent when it was done; 2) it aggravates a crime or makes it greater than it was when it was committed; 3) it changes the punishment and inflicts one that is greater than that imposed by the law annexed to the crime when it was committed; 4) it alters the legal rules of evidence and authorizes conviction upon a less or different testimony than that required by the law at the time of the commission of the offense; 5) it assumes the regulation of civil rights and remedies only, but in effect imposes a penalty or a deprivation of a right as a consequence of something that was considered lawful when it was done; and 6) it deprives a person accused of a crime of some lawful protection to which he or she become entitled, such as the protection of a former conviction or an acquittal or the proclamation of an amnesty.

10. ID.; ID.; ID.; ID.; LIMITED ITS SCOPE ONLY TO MATTERS CRIMINAL IN NATURE. — It is settled that an *ex post facto* law is limited in its scope only to matters criminal in nature. Proclamation 84, which merely restored the area excluded from the Biak-na-Bato national park by canceling respondents' license, is clearly not penal in character.

11. ID.; LAW ON NATURAL RESOURCES; PROCLAMATION NO. 84; IN THE ISSUANCE THEREOF, PRESIDENT AQUINO WAS VALIDLY EXERCISING LEGISLATIVE POWERS UNDER THE PROVISIONAL CONSTITUTION. — Finally, it is stressed that at the time President Aquino issued Proclamation No. 84 on March 9, 1987, she was still validly exercising legislative powers under the Provisional Constitution of 1986. Section 1 of Article II of Proclamation No. 3, which promulgated the Provisional Constitution, granted her legislative power "until a legislature is elected and convened under a new Constitution." The grant of such power is also explicitly recognized and provided for in Section 6 of Article XVII of the 1987 Constitution.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Hector Reuben D. Feliciano for respondents.

D E C I S I O N

PANGANIBAN, *J.*:

A mining license that contravenes a mandatory provision of the law under which it is granted is void. Being a mere privilege, a license does not vest absolute rights in the holder. Thus, without offending the due process and the non-impairment clauses of the Constitution, it can be revoked by the State in the public interest.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the May 29, 2001 Decision[2] and the September 6, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 46878. The CA disposed as follows:

"**WHEREFORE**, premises considered, the appealed Decision is hereby **AFFIRMED *in toto***."[4]

The questioned Resolution denied petitioners' Motion for Reconsideration.

On the other hand, trial court's Decision, which was affirmed by the CA, had disposed as follows:

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[1] *Rollo*, pp. 17-59.

[2] Penned by Justice Eliezer R. de Los Santos and concurred in by Justice Godardo A. Jacinto (chairman, Special Eighth Division) and Justice Hilarion L. Aquino.

[3] *Rollo*, p. 72.

[4] CA Decision, p. 8; *rollo*, p. 69.

"WHEREFORE, judgment is hereby rendered as follows:

'1. Declaring that the cancellation of License No. 33 was done without jurisdiction and in gross violation of the Constitutional right of the petitioners against deprivation of their property rights without due process of law and is hereby set aside.

'2. Declaring that the petitioners' right to continue the exploitation of the marble deposits in the area covered by License No. 33 is maintained for the duration of the period of its life of twenty-five (25) years, less three (3) years of continuous operation before License No. 33 was cancelled, unless sooner terminated for violation of any of the conditions specified therein, with due process.

'3. Making the Writ of preliminary injunction and the Writ of Preliminary Mandatory Injunction issued as permanent.

'4. Ordering the cancellation of the bond filed by the Petitioners in the sum of ₱1 Million.

'5. Allowing the petitioners to present evidence in support of the damages they claim to have suffered from, as a consequence of the summary cancellation of License No. 33 pursuant to the agreement of the parties on such dates as maybe set by the Court; and

'6. Denying for lack of merit the motions for contempt, it appearing that actuations of the respondents were not contumacious and intended to delay the proceedings or undermine the integrity of the Court.

'No pronouncement yet as to costs.'"[5]

The Facts

The CA narrated the facts as follows:

"The four (4) petitioners, namely, Dr. Lourdes S. Pascual, Dr. Pedro De la Concha, Alejandro De La Concha, and Rufo De Guzman, after having been granted permission to prospect for marble deposits in the mountains of Biak-na-Bato, San Miguel, Bulacan, succeeded in discovering marble deposits of high quality and in commercial quantities in Mount Mabio which forms part of the Biak-na-Bato mountain range.

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[5] RTC Decision, pp. 11-12; *rollo*, pp. 157-158; penned by Judge Pedro M. Areola.

"Having succeeded in discovering said marble deposits, and as a result of their tedious efforts and substantial expenses, the petitioners applied with the Bureau of Mines, now Mines and Geosciences Bureau, for the issuance of the corresponding license to exploit said marble deposits.

x x x x x x x x x

"After compliance with numerous required conditions, License No. 33 was issued by the Bureau of Mines in favor of the herein petitioners.

x x x x x x x x x

"Shortly after Respondent Ernesto R. Maceda was appointed Minister of the Department of Energy and Natural Resources (DENR), petitioners' License No. 33 was cancelled by him through his letter to ROSEMOOR MINING AND DEVELOPMENT CORPORATION dated September 6, 1986 for the reasons stated therein. Because of the aforesaid cancellation, the original petition was filed and later substituted by the petitioners' AMENDED PETITION dated August 21, 1991 to assail the same.

x x x x x x x x x

"Also after due hearing, the prayer for injunctive relief was granted in the Order of this Court dated February 28, 1992. Accordingly, the corresponding preliminary writs were issued after the petitioners filed their injunction bond in the amount of ONE MILLION PESOS (₱1,000,000.00).

x x x x x x x x x

"On September 27, 1996, the trial court rendered the herein questioned decision."[6]

The trial court ruled that the privilege granted under respondents' license had already ripened into a property right, which was protected under the due process clause of the Constitution. Such right was supposedly violated when the license was cancelled without notice and hearing. The cancellation was said to be unjustified, because the area that could be covered by the four separate applications of respondents was 400 hectares. Finally, according to the RTC, Proclamation No. 84,

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[6] CA Decision, pp. 3-4; *rollo*, pp. 64-65.

which confirmed the cancellation of the license, was an *ex post facto* law; as such, it violated Section 3 of Article XVIII of the 1987 Constitution.

On appeal to the Court of Appeals, herein petitioners asked whether PD 463 or the Mineral Resources Development Decree of 1974 had been violated by the award of the 330.3062 hectares to respondents in accordance with Proclamation No. 2204. They also questioned the validity of the cancellation of respondents' Quarry License/Permit (QLP) No. 33.

Ruling of the Court of Appeals

Sustaining the trial court *in toto*, the CA held that the grant of the quarry license covering 330.3062 hectares to respondents was authorized by law, because the license was embraced by four (4) separate applications — each for an area of 81 hectares. Moreover, it held that the limitation under Presidential Decree No. 463 — that a quarry license should cover not more than 100 hectares in any given province — was supplanted by Republic Act No. 7942,[7] which increased the mining areas allowed under PD 463.

It also ruled that the cancellation of respondents' license without notice and hearing was tantamount to a deprivation of property without due process of law. It added that under the clause in the Constitution dealing with the non-impairment of obligations and contracts, respondents' license must be respected by the State.

Hence, this Petition.[8]

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[7] The Mining Act of 1995, effective March 3, 1995.

[8] The Petition was deemed submitted for decision on September 5, 2002, upon the Court's receipt of the Manifestation of respondents, adopting as their Memorandum the Comment to the Petition for Review they had filed on January 28, 2002. Their Manifestation was signed by Atty. Hector Reuben D. Feliciano. Petitioners' Memorandum, which was received by the Court on July 26, 2002, was signed by Assistant Solicitor General Cecilio O. Estoesta and Solicitor Evaristo M. Padilla.

Issues

Petitioners submit the following issues for the Court's consideration:

"(1) [W]hether or not QLP No. 33 was issued in blatant contravention of Section 69, P.D. No. 463; and (2) whether or not Proclamation No. 84 issued by then President Corazon Aquino is valid. The corollary issue is whether or not the Constitutional prohibition against *ex post facto* law applies to Proclamation No. 84"[9]

The Court's Ruling

The Petition has merit.

First Issue:
Validity of License

Respondents contend that the Petition has no legal basis, because PD 463 has already been repealed.[10] In effect, they ask for the dismissal of the Petition on the ground of mootness.

PD 463, as amended, pertained to the old system of exploration, development and utilization of natural resources through licenses, concessions or leases.[11] While these arrangements were provided under the 1935[12] and the

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[9] Petitioners' Memorandum, p. 19; *rollo*, p. 319.

[10] Respondents' Comment to the Petition for Review, p. 22; *rollo*, p. 252.

[11] *Miners Association of the Philippines, Inc., v. Factoran Jr.,* 240 SCRA 100, 113-114, January 16, 1995.

[12] Section 1, Article XIII of the 1935 Constitution, reads:

"SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. *Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources* shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or

1973[13] Constitutions, they have been omitted by Section 2 of Article XII of the 1987 Constitution.[14]

With the shift of constitutional policy toward "full control and supervision of the State" over natural resources, the Court in *Miners Association of the Philippines v. Factoran Jr.*[15] declared the provisions of PD 463 as contrary to or violative of the express mandate of the 1987 Constitution. The said provisions dealt with the lease of mining claims; quarry permits

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industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant." (Italics supplied)

[13] Section 8, Article XIV of the 1973 Constitution, is quoted thus:

"SEC. 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential and resettlement lands of the public domain, natural resources shall not be alienated, and *no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural* resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant." (Italics supplied)

[14] The pertinent provision of Section 2 of Article XII of the 1987 Constitution provides:

"Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. *The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.* Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In case of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

x x x x x x x x x." (Italics supplied)

[15] *Supra*, p. 114.

or licenses covering privately owned or public lands; and other related provisions on lease, licenses and permits.

RA 7942 or the Philippine Mining Act of 1995 embodies the new constitutional mandate. It has repealed or amended all laws, executive orders, presidential decrees, rules and regulations — or parts thereof — that are inconsistent with any of its provisions.[16]

It is relevant to state, however, that Section 2 of Article XII of the 1987 Constitution does not apply retroactively to a "license, concession or lease" granted by the government under the 1973 Constitution or before the effectivity of the 1987 Constitution on February 2, 1987.[17] As noted in *Miners Association of the Philippines v. Factoran Jr.*, the deliberations of the Constitutional Commission[18] emphasized the intent to apply the said constitutional provision prospectively.

While RA 7942 has expressly repealed provisions of mining laws that are inconsistent with its own, it nonetheless respects previously issued valid and existing licenses, as follows:

"SECTION 5. Mineral Reservations. — When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor: Provided, That a small scale-mining cooperative covered by Republic Act No. 7076 shall be given preferential right to apply for a small-scale mining agreement for a maximum aggregate area of twenty-five percent (25%) of such mineral reservation, *subject to valid existing mining/quarrying rights as provided under Section 112 Chapter XX hereof.* All submerged lands within the contiguous zone and in the exclusive economic zone of the Philippines are hereby declared to be mineral reservations.

"x x x xx x x x x

[16] Section 115 of RA 7942.

[17] *Miners Association of the Philippines v. Factoran Jr., supra*, p. 116.

[18] *Ibid*.

"SECTION 7. Periodic Review of Existing Mineral Reservations. — The Secretary shall periodically review existing mineral reservations for the purpose of determining whether their continued existence is consistent with the national interest, and upon his recommendation, the President may, by proclamation, alter or modify the boundaries thereof or revert the same to the public domain *without prejudice to prior existing rights*."

"SECTION 18. Areas Open to Mining Operations. — *Subject to any existing rights or reservations and prior agreements of all parties,* all mineral resources in public or private lands, including timber or forestlands as defined in existing laws, shall be open to mineral agreements or financial or technical assistance agreement applications. Any conflict that may arise under this provision shall be heard and resolved by the panel of arbitrators."

"SECTION 19. Areas Closed to Mining Applications. — *Mineral agreement or financial or technical assistance agreement applications shall not be allowed:*

(a) In military and other government reservations, except upon prior written clearance by the government agency concerned;

(b) Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;

(c) *In areas covered by valid and existing mining rights;*

(d) In areas expressly prohibited by law;

(e) In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socioeconomic development of the community concerned; and

(f) Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly

prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws."

"SECTION 112. Non-impairment of Existing Mining/ Quarrying Rights. — *All valid and existing mining lease contracts, permits/ licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall be recognized by the Government:* Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: Provided, further, That no renewal of mining lease contracts shall be made after the expiration of its term: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations.

"SECTION 113. Recognition of Valid and Existing Mining Claims and Lease/Quarry Application. — *Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government* within two (2) years from the promulgation of the rules and regulations implementing this Act." (Italics supplied)

Section 3(p) of RA 7942 defines an existing mining/quarrying right as "a valid and subsisting mining claim or permit or quarry permit or any mining lease contract or agreement covering a mineralized area granted/issued under pertinent mining laws." Consequently, determining whether the license of respondents falls under this definition would be relevant to fixing their entitlement to the rights and/or preferences under RA 7942. Hence, the present Petition has not been mooted.

Petitioners submit that the license clearly contravenes Section 69 of PD 463, because it exceeds the maximum area that may be granted. This incipient violation, according to them, renders the license void *ab initio*.

Respondents, on the other hand, argue that the license was validly granted, because it was covered by four separate applications for areas of 81 hectares each.

The license in question, QLP No. 33,[19] is dated August 3, 1982, and it was issued in the name of Rosemoor Mining Development Corporation. The terms of the license allowed the corporation to extract and dispose of marbleized limestone from a 330.3062-hectare land in San Miguel, Bulacan. The license is, however, subject to the terms and conditions of PD 463, the governing law at the time it was granted; as well as to the rules and regulations promulgated thereunder.[20] By the same token, Proclamation No. 2204 — which awarded to Rosemoor the right of development, exploitation, and utilization of the mineral site — expressly cautioned that the grant was subject to "existing policies, laws, rules and regulations."[21]

The license was thus subject to Section 69 of PD 463, which reads:

"Section 69. Maximum Area of Quarry License — Notwithstanding the provisions of Section 14 hereof, *a quarry license shall cover an area of not more than one hundred (100) hectares in any one province* and not more than one thousand (1,000) hectares in the entire Philippines." (Italics supplied)

The language of PD 463 is clear. It states in categorical and mandatory terms that a quarry license, like that of respondents, should cover a maximum of 100 hectares in any given province. This law neither provides any exception nor makes any reference to the number of applications for a license. Section 69 of PD 463 must be taken to mean exactly what it says. Where the law is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[22]

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[19] *Rollo*, pp. 86-89.

[20] No. 1 of the terms and conditions of the license.

[21] Dispositive provision of Proclamation No. 2204.

[22] *Del Mar v. Philippine Amusement and Gaming Corporation*, 411 Phil. 430, 463, June 19, 2001; *Republic v. CA*, 359 Phil. 530, 559, November 25, 1998; *Land Bank of the Philippines v. CA*, 327 Phil. 1047, 1052, July 5, 1996.

Moreover, the lower courts' ruling is evidently inconsistent with the fact that QLP No. 33 was issued solely in the name of Rosemoor Mining and Development Corporation, rather than in the names of the four individual stockholders who are respondents herein. It likewise brushes aside a basic postulate that a corporation has a separate personality from that of its stockholders.[23]

The interpretation adopted by the lower courts is contrary to the purpose of Section 69 of PD 463. Such intent to limit, without qualification, the area of a *quarry* license strictly to 100 hectares in any one province is shown by the opening proviso that reads: "Notwithstanding the provisions of Section 14 hereof x x x." The mandatory nature of the provision is also underscored by the use of the word *shall*. Hence, in the application of the 100-hectare-per-province limit, no regard is given to the size or the number of mining claims under Section 14, which we quote:

"SECTION 14. Size of Mining Claim. — For purposes of registration of a mining claim under this Decree, the Philippine territory and its shelf are hereby divided into meridional blocks or quadrangles of one-half minute (1/2) of latitude and longitude, *each block or quadrangle containing area of eighty-one (81) hectares, more or less.*

"A mining claim shall cover one such block although a lesser area may be allowed if warranted by attendant circumstances, such as geographical and other justifiable considerations as may be determined by the Director: Provided, That in no case shall the locator be allowed to register twice the area allowed for lease under Section 43 hereof." (Italics supplied)

Clearly, the intent of the law would be brazenly circumvented by ruling that a license may cover an area exceeding the maximum by the mere expediency of filing several applications. Such

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[23] *Padilla v. CA,* 421 Phil. 883, 894, November 22, 2001; *Lim v. CA,* 380 Phil. 61, 74, January 24, 2000; *Complex Electronics Employees Association v. National Labor Relations Commission,* 369 Phil. 666, 681, July 19, 1999.

ruling would indirectly permit an act that is directly prohibited by the law.

Second Issue:
Validity of Proclamation No. 84

Petitioners also argue that the license was validly declared a nullity and consequently withdrawn or terminated. In a letter dated September 15, 1986, respondents were informed by then Minister Ernesto M. Maceda that their license had illegally been issued, because it violated Section 69 of PD 463; and that there was no more public interest served by the continued existence or renewal of the license. The latter reason, they added, was confirmed by the language of Proclamation No. 84. According to this law, public interest would be served by reverting the parcel of land that was excluded by Proclamation No. 2204 to the former status of that land as part of the Biak-na-Bato national Park.

They also contend that Section 74 of PD 463 would not apply, because Minister Maceda's letter did not cancel or revoke QLP No. 33, but merely declared the latter's nullity. They further argue that respondents waived notice and hearing in their application for the license.

On the other hand, respondents submit that, as provided for in Section 74 of PD 463, their right to due process was violated when their license was cancelled without notice and hearing. They likewise contend that Proclamation No. 84 is not valid for the following reasons: 1) it violates the clause on the non-impairment of contracts; 2) it is an *ex post facto* law and/or a bill of attainder; and 3) it was issued by the President after the effectivity of the 1987 Constitution.

This Court ruled on the nature of a natural resource exploration permit, which was akin to the present respondents' license, in *Southeast Mindanao Gold Mining Corporation v. Balite Portal Mining Cooperative*,[24] which held:

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[24] 380 SCRA 145, April 3, 2002.

"x x x As correctly held by the Court of Appeals in its challenged decision, EP No. 133 merely evidences a privilege granted by the State, which may be amended, modified or rescinded when the national interest so requires. This is necessarily so since the exploration, development and utilization of the country's natural mineral resources are matters impressed with great public interest. Like timber permits, mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution, since the State, under its all-encompassing police power, may alter, modify or amend the same, in accordance with the demands of the general welfare."[25]

This same ruling had been made earlier in *Tan v. Director of Forestry*[26] with regard to a timber license, a pronouncement that was reiterated in *Ysmael v. Deputy Executive Secretary*,[27] the pertinent portion of which reads:

"x x x *Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause [See* Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. Also, *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."[28] (Italics supplied)

In line with the foregoing jurisprudence, respondents' license may be revoked or rescinded by executive action when the national interest so requires, because it is not a contract, property or a property right protected by the due process clause of the

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[25] *Id.*, pp. 155-156, per Ynares-Santiago, *J.*

[26] 210 Phil. 244, 265, October 27, 1983.

[27] 190 SCRA 673, October 18, 1990.

[28] *Id.*, p. 684, per Cortes, *J.*

Constitution.[29] Respondents themselves acknowledge this condition of the grant under paragraph 7 of QLP No. 33, which we quote:

> *"7. This permit/license may be revoked or cancelled at any time by the Director of Mines and Geo-Sciences when, in his opinion public interests so require* or, upon failure of the permittee/licensee to comply with the provisions of Presidential Decree No. 463, as amended, and the rules and regulations promulgated thereunder, as well as with the terms and conditions specified herein; *Provided,* That if a permit/license is cancelled, or otherwise terminated, the permittee/licensee shall be liable for all unpaid rentals and royalties due up to the time of the termination or cancellation of the permit/license[.]"[30] (Italics supplied)

The determination of what is in the public interest is necessarily vested in the State as owner of all mineral resources. That determination was based on policy considerations formally enunciated in the letter dated September 15, 1986, issued by then Minister Maceda and, subsequently, by the President through Proclamation No. 84. As to the exercise of prerogative by Maceda, suffice it to say that while the cancellation or revocation of the license is vested in the director of mines and geo-sciences, the latter is subject to the former's control as the department head. We also stress the clear prerogative of the Executive Department in the evaluation and the consequent cancellation of licenses in the process of its formulation of policies with regard to their utilization. Courts will not interfere with the exercise of that discretion without any clear showing of grave abuse of discretion.[31]

Moreover, granting that respondents' license is valid, it can still be validly revoked by the State in the exercise of police

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[29] *Oposa v. Factoran Jr.,* 224 SCRA 792, 811, July 30, 1993.

[30] *Rollo,* p. 87.

[31] *Ysmael Jr. & Co., Inc. v. Deputy Executive Secretary, supra;* as cited in *C & M Timber Corporation (CMTC) v. Alcala,* 339 Phil. 589, 603, June 13, 1997.

power.[32] The exercise of such power through Proclamation No. 84 is clearly in accord with *jura regalia*, which reserves to the State ownership of all natural resources.[33] This Regalian doctrine is an exercise of its sovereign power as owner of lands of the public domain and of the patrimony of the nation, the mineral deposits of which are a valuable asset.[34]

Proclamation No. 84 cannot be stigmatized as a violation of the non-impairment clause. As pointed out earlier, respondents' license is not a contract to which the protection accorded by the non-impairment clause may extend.[35] Even if the license were, it is settled that provisions of existing laws and a reservation of police power are deemed read into it, because it concerns a subject impressed with public welfare.[36] As it is, the non-impairment clause must yield to the police power of the state.[37]

We cannot sustain the argument that Proclamation No. 84 is a bill of attainder; that is, a "legislative act which inflicts

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[32] *Miners Association of the Philippines, Inc. v. Factoran, supra*, p. 118; *Surigao Electric Co., Inc. v. Municipality of Surigao*, 133 Phil. 860, 866, August 30, 1968.

[33] *Supra; La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, p. 46, January 27, 2004; *United Paracale Mining Company, Inc. v. Dela Rosa*, 221 SCRA 108, 116, April 7, 1993.

[34] *United Paracale Mining Company, Inc. v. Dela Rosa, supra; Republic v. Court of Appeals*, 160 SCRA 228, 239, April 15, 1988; *Santa Rosa Mining Company, Inc. v. Leido, Jr.*, 156 SCRA 1, pp. 8-9, December 1, 1987.

[35] *Oposa v. Factoran Jr., supra*, p. 812.

[36] *JMM Production and Management, Inc. v. CA*, 329 Phil. 87, 101, August 5, 1996.

[37] *Bogo-Medellin Sugarcane Planters Association, Inc. v. National Labor Relations Commission*, 357 Phil. 110, 126, September 25, 1998; *Republic Planters Bank v. Agana Sr.*, 336 Phil. 1, 12, March 3, 1997; *JMM Production and Management, Inc. v. CA, supra*, citing *Philippine Association of Service Exporters, Inc. v. Drilon*, 163 SCRA 386, 397, June 30, 1988.

punishment without judicial trial."[38] Its declaration that QLP No. 33 is a patent nullity[39] is certainly not a declaration of guilt. Neither is the cancellation of the license a punishment within the purview of the constitutional proscription against bills of attainder.

Too, there is no merit in the argument that the proclamation is an *ex post facto* law. There are six recognized instances when a law is considered as such: 1) it criminalizes and punishes an action that was done before the passing of the law and that was innocent when it was done; 2) it aggravates a crime or makes it greater than it was when it was committed; 3) it changes the punishment and inflicts one that is greater than that imposed by the law annexed to the crime when it was committed; 4) it alters the legal rules of evidence and authorizes conviction upon a less or different testimony than that required by the law at the time of the commission of the offense; 5) it assumes the regulation of civil rights and remedies only, but in effect imposes a penalty or a deprivation of a right as a consequence of something that was considered lawful when it was done; and 6) it deprives a person accused of a crime of some lawful protection to which he or she become entitled, such as the protection of a former conviction or an acquittal or the proclamation of an amnesty.[40]

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[38] *Misolas v. Panga*, 181 SCRA 648, 659, January 30, 1990; *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, 150 SCRA 181, 233, May 27, 1987.

[39] The second Whereas clause of Proclamation No. 84 provides:

"WHEREAS, the award to Rosemoor Mining and Development Corporation under Proclamation No. 2204 denominated as Quarry License No. 33 dated August 3, 1982, is a patent violation of the then, and presently, existing policy of the Government to limit quarry licenses or permits to cover only an area of not more than one hundred (100) hectares in any one province as provided for in Section 69, Chapter XIII of Presidential Decree No. 463, as amended[.]"

[40] *Benedicto v. CA*, 416 Phil. 722, 748, September 4, 2001, citing *In the Matter of the Petition for the Declaration of the Petitioner's Rights and Duties under Sec. 8 of RA 6132*, 146 Phil. 429, 432, October 22, 1970; *Republic v. Desierto*, 416 Phil. 59, 74, August 23, 2001.

Proclamation No. 84 does not fall under any of the enumerated categories; hence, it is not an *ex post facto* law.

It is settled that an *ex post facto* law is limited in its scope only to matters criminal in nature.[41] Proclamation 84, which merely restored the area excluded from the Biak-na-Bato national park by canceling respondents' license, is clearly not penal in character.

Finally, it is stressed that at the time President Aquino issued Proclamation No. 84 on March 9, 1987, she was still validly exercising legislative powers under the Provisional Constitution of 1986.[42] Section 1 of Article II of Proclamation No. 3, which promulgated the Provisional Constitution, granted her legislative power "until a legislature is elected and convened under a new Constitution." The grant of such power is also explicitly recognized and provided for in Section 6 of Article XVII of the 1987 Constitution.[43]

WHEREFORE, this Petition is hereby *GRANTED* and the appealed Decision of the Court of Appeals *SET ASIDE*. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[41] *Sevilleja v. Commission on Elections*, 194 Phil. 132, 152, August 31, 1981, citing *Santos v. Commission on Elections*, 191 Phil. 212, 221, March 31, 1981.

[42] The Provisional Constitution was promulgated under Proclamation No. 3. See *JG Summit Holdings, Inc. v. CA*, 345 SCRA 143, 160, November 20, 2000; *Roxas v. CA*, 378 Phil. 727, 745, December 17, 1999.

[43] Section 6 of the Transitory Provisions reads:

"SEC. 6. The incumbent President shall continue to exercise legislative powers until the first Congress is convened."

FIRST DIVISION

[G.R. No. 152145. March 30, 2004]

SALUD D. LOPEZ, REMEDIOS LOPEZ-MARZAN, ROSE LOPEZ-CO, AMADO D. LOPEZ, CYNTHIA LOPEZ-PORTUGAL, JOSE D. LOPEZ JR., and MAY LOPEZ RUEDA represented by SALUD D. LOPEZ, *petitioners, vs.* **ROBERT P. DAVID JR. and CLEOPATRA DAVID CAMPO-RUIZ,** *respondents*.

SYNOPSIS

The Court of Appeals reversed and set aside the decision of the Metropolitan Trial Court (MeTC) and the Regional Trial Court (RTC) favoring the petitioners in the unlawful detainer case filed by them against the respondent. It ruled that the MeTC erred in taking cognizance of the ejectment suit since the case was filed beyond one year from the withholding of possession. In this petition, petitioners insisted that the Court of Appeals erred in dismissing the case for ejectment on the ground of lack of jurisdiction considering that respondents participated in all the proceedings before the MeTC and RTC.

The petition was denied. It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. Indeed, the general rule is that a question of jurisdiction may be raised at any time, provided that doing so does not result in the mockery of the tenets of fair play. An exception to this rule arises when the party is barred by estoppel, in which case the issue of jurisdiction may not be raised. In this case, respondents cannot be perceived to have warranted the presumption that they were abandoning or declining to assert the right to question the jurisdiction of the MeTC. From the beginning, they have been challenging its jurisdiction and asserting that the RTC, not the MeTC, had jurisdiction over the case.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION OF THE COURT AND THE NATURE OF THE ACTION ARE DETERMINED BY THE AVERMENTS IN THE COMPLAINT.— Well-settled is the rule that the jurisdiction of the court and the nature of the action are determined by the averments in the complaint. To give the court jurisdiction to effect the ejectment of an occupant or a deforciant from the land, it is necessary that the complaint should embody a statement of facts that brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. On its face, the complaint must show enough ground for the court to assume jurisdiction without resort to parol testimony.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ONE-YEAR PERIOD FOR FILING THEREOF SHOULD BE COUNTED FROM THE DATE OF DEMAND. — Under Section 1 of Rule 70, the one-year period within which a complaint for unlawful detainer can be filed should be counted from the date of demand, because only upon the lapse of that period does the possession become unlawful. In the present case, it is undisputed that petitioners' Complaint was filed beyond one year from the time that respondents' possession allegedly became unlawful. We have ruled that "forcible entry and unlawful detainer are quieting processes and the one-year time bar to the suit is in pursuance of the summary nature of the action." Thus, we have nullified proceedings in the MeTC when it improperly assumed jurisdiction of a case in which the unlawful deprivation or withholding of possession had exceeded one year.

3. ID.; CIVIL PROCEDURE; *ACCION PUBLICIANA*; ELUCIDATED. — After the lapse of the one-year period, the suit must be commenced in the RTC via an *accion publiciana. Accion publiciana* is a suit for recovery of the right to possess. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. The CA was thus correct in declaring that jurisdiction belonged to the RTC.

4. ID.; ID.; JURISDICTION; ANY DECISION RENDERED WITHOUT JURISDICTION IS A TOTAL NULLITY AND MAY BE STRUCK DOWN AT ANY TIME, EVEN ON APPEAL. — It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. Indeed, the general rule is that a question of jurisdiction may be raised at any time, provided that doing so does not result in the mockery of the tenets of fair play. An exception to this rule arises when the party is barred by estoppel, in which case the issue of jurisdiction may not be raised.

5. ID.; ID.; ID.; ID.; EXCEPTION. — In bringing up the issue of estoppel, petitioners principally anchor their argument on *Tijam v. Sibonghanoy*. Applying the rule on estoppel by laches, we declared therein that the failure to raise the question of jurisdiction at an earlier stage barred the party from questioning it later. x x x We have applied this doctrine to succeeding cases by denying allegations of lack of jurisdiction if the question was not raised at an earlier stage, but brought up only after an adverse decision. We have also stressed, however, that this doctrine is merely an exception to the general rule and time-honored principle that jurisdiction is not lost by waiver or by estoppel.

6. ID.; ID.; ID.; ESTOPPEL BY LACHES; DEFINED. — As defined in that case, estoppel by laches occurs when a party fails — through negligence or omission — to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned or declined to assert it.

7. ID.; ID.; ID.; ID.; NOT APPLICABLE IN CASE AT BAR. — [R]espondents cannot be perceived to have warranted the presumption that they were abandoning or declining to assert the right to question the jurisdiction of the MeTC. From the beginning, they have been challenging its jurisdiction and asserting that the RTC, not the MeTC, had jurisdiction over the case. Thus, in their Answer with affirmative defenses and counterclaim, they challenged the MeTC's jurisdiction over the Complaint. The same objections were alleged and presented as issues in their pretrial brief.

8. ID.; ID.; ID.; STRICT INTERPRETATION OF THE JURISDICTION RULE; APPLIED IN CASE AT BAR. — [W]e find it necessary to apply the strict interpretation of the jurisdiction rule, given the fact that (1) respondents have been in possession of the property since 1954; (2) proceedings of forcible entry and unlawful detainer are summary in nature; and (3) the one-year time bar to the suit is consistent with the summary nature of the action.

APPEARANCES OF COUNSEL

Joson Carlota & Associates for petitioners.
Edward P. David for private respondents.

D E C I S I O N

PANGANIBAN, *J.*:

Ejectment proceedings must observe jurisdictional requirements to complement their summary nature. Among them is the one-year bar within which to bring the suit. After the lapse of this period, plaintiffs can no longer avail themselves of the summary suits in the Metropolitan Trial Court (MeTC) or the Municipal Trial Court (MTC), but must litigate in the Regional Trial Court in an ordinary action to recover possession.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the April 26, 2001 Decision[2] and the February 5, 2002 Resolution[3] of the Court of Appeals

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[1] *Rollo*, pp. 8-21.

[2] *Id.*, pp. 136-140. Fifth Division. Penned by Justice Edgardo P. Cruz, with the concurrence of Justices Ramon Mabutas Jr. (Division chairman) and Roberto A. Barrios (member).

[3] *Id.*, pp. 22-23. Special Former Fifth Division. Penned by Justice Edgardo P. Cruz, with the concurrence of Justices Roberto A. Barrios (acting Division chairman) and Marina L. Buzon (member).

(CA) in CA-GR SP No. 59724. The assailed Decision disposed as follows:

"**WHEREFORE**, the petition is **GIVEN DUE COURSE**. The appealed decision of the Regional Trial Court of Quezon City (Branch 95) is **REVERSED** and **SET ASIDE** and another rendered **DISMISSING** the ejectment case."[4]

On the other hand, the challenged Resolution denied petitioners' Motion for Reconsideration.

The Facts

The facts of the case are narrated by the CA as follows:

"Subject of an action for ejectment before the Metropolitan Trial Court [MeTC] of Quezon City (Branch 38) was a 540 square-meter land (or 'subject property'), located at No. 174 Sct. Fuentebella, Quezon City and covered by TCT No. RT-109698 (26613) in the name of Jose C. Lopez (or 'Lopez').

"The action was instituted on October 2, 1996 by Salud D. Lopez, Remedios Lopez-Marzan, Rose Lopez-Co, Amado D. Lopez, Cynthia Lopez-Portugal, Jose D. Lopez, Jr. and May Lopez-Rueda [or 'petitioners'] against Robert P. David and Cleopatra David Campo-Ruiz [or 'respondents']. It was predicated on the averments that [petitioners] are the owners of the subject property which was purchased from the People's Homesite and Housing Corporation by Lopez, deceased husband of [petitioner] Salud D. Lopez (or 'Salud') and father of the rest of the [petitioners]; that in 1954, upon her request, Cirila Sadsad *Vda*. *De* David (or 'Cirila'), Salud's mother and [respondents'] grandmother, was allowed by Salud to build a residential house on the subject property and to stay thereon until she could find a suitable residence of her own; that upon Cirila's death, [respondents] continued her occupancy of the subject property; that the possession of Cirila and [respondents] of the subject property, without paying rentals and a written contract, was upon tolerance of Salud; that [petitioners] withdrew their consent to [respondents] occupancy of the subject property per their lawyer's letter dated August 10, 1995 demanding of them to vacate the same on or before September 15, 1995, which [respondents] did not heed.

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[4] CA Decision, p. 4; *rollo*, p. 139.

"In their defense, [respondents] alleged that the subject property is owned in common by Cirila's children, Salud, Robert S. David, Sr. (father of [respondent] Robert P. David) and Celestina S. David (mother of the other [respondent]); that the subject property was placed in the name of Lopez upon the agreement that it would be held in trust for Cirila's children; and that Salud, Ligaya S. David (mother of [respondent] Robert P. David) and Celestina S. David built a three-door apartment on the subject property which equally belongs to them.

"On August 15, 1997, the [MeTC] rendered a decision, the dispositive portion of which reads:

> 'WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioners] and against [respondents]. Accordingly, the latter is hereby ordered as follows:
>
> a) To vacate the disputed property, specifically located at No. 174 Sct. Fuentebella St., Diliman, Quezon City and completely surrender possession thereof to [petitioners];
>
> b) To pay [petitioners] the amount of ₱10,000.00 as a reasonable amount of compensation or rental for the use and occupancy thereof per unit each month, to be reckoned from September 15, 1995 until they shall have vacated the same;
>
> c) To pay [petitioners] the sum of ₱10,000.00 as and for attorney's fees; and
>
> d) To pay the costs of suit.
>
> The counter-claim of [respondents] is hereby dismissed for lack of merit.
>
> 'SO ORDERED.'

"Petitioners appealed to the Regional Trial Court (or 'RTC') of Quezon City (Branch 95) which, on December 17, 1999, rendered a decision affirming *en toto* that of the [MeTC]. x x x"[5]

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[5] *Id.*, pp. 1-3 & 136-138.

Ruling of the Court of Appeals

The CA found that the MeTC erred in taking cognizance of the ejectment suit, since the case had been filed beyond one year from the withholding of possession.[6] The appellate court ruled thus:

"It appears that pursuant to the demand letter dated August 10, 1995 of [petitioners'] lawyer, [respondents] were given until September 15, 1995 within which to vacate the subject property and surrender possession thereof to [petitioners]. Under the situation, [respondents'] possession became unlawful on September 16, 1995, or upon expiration of the grace period, when they continued occupying the subject property. However, the ejectment suit was only instituted on October 2, 1996, or more than one year from expiration of the period given [respondents] to vacate the subject property.

"The one-year period provided for in Sec. 1, Rule 70 of the 1997 Rules of Civil Procedure commences from accrual of the cause of action or from the unlawful withholding of possession of the realty. In an action for unlawful detainer, as in the case at bench, it is counted from the last letter of demand to vacate.

"Since the ejectment suit was instituted after a year from the demand to vacate, it is an *accion publiciana* which is cognizable by the RTC. *Accion publiciana* is the plenary action to recover the right of possession when the dispossession has lasted for more than one year.

"Consequently, the MTC has no jurisdiction over the subject matter of the action. And in affirming the decision of the MTC, the RTC had committed a palpable error and/or had acted with grave abuse of discretion amounting to lack or excess of jurisdiction."[7] (Citations omitted)

In denying petitioners' Motion for Reconsideration,[8] the CA noted that "among the affirmative defenses pleaded in the Answer was that 'this Honorable Court does not have any jurisdiction over the case' because the real issue is ownership, while in the [pretrial]

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[6] *Id*., pp. 3-4 & 138-139.

[7] *Ibid*.

[8] *Rollo*, p. 142. Original in upper case.

brief, [respondents] posed the issue of whether the court of origin 'has jurisdiction over the subject matter of the case considering that there is no lessor-lessee relationship between the parties."[9]

Hence, this Petition.[10]

The Issue

In their Memorandum, petitioners raised this sole issue for our consideration:

"Whether the Honorable Court of Appeals erred in dismissing the case for ejectment [on] the ground of lack of jurisdiction despite the submission of respondents to the MTC and RTC and all the proceedings therein."[11]

The Court's Ruling

The Petition is bereft of merit.

Sole Issue:
Jurisdiction

Petitioners contend that, having participated in the trial of the case and having belatedly raised the issue of jurisdiction for the first time on appeal with the CA, respondents are estopped from questioning the jurisdiction of the MeTC.

Jurisdiction Lies with the RTC

Well-settled is the rule that the jurisdiction of the court and the nature of the action are determined by the averments in the complaint.[12] To give the court jurisdiction to effect the

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[9] *Id*., pp. 22-23.

[10] This case was deemed submitted for resolution on December 2, 2002, upon this Court's receipt of respondents' Memorandum signed by Atty. Edward P. David. Petitioners' Memorandum, signed by Atty. Rolando F. Carlota, was received by this Court on November 19, 2002.

[11] Petitioners' Memorandum, p. 5; *rollo*, p. 185. Original in upper case.

[12] *Sarmiento v. CA*, 320 Phil. 146, 153, November 16, 1995; *Arcal v. CA*, 348 Phil. 813, 823, January 26, 1998; *Sumulong v. CA*, 232 SCRA 372, 385, May 10, 1994; *Cruz v. Torres*, 316 SCRA 193, 196, October 4, 1999.

ejectment of an occupant or a deforciant from the land, it is necessary that the complaint should embody a statement of facts that brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature.[13] On its face, the complaint must show enough ground for the court to assume jurisdiction without resort to parol testimony.[14]

Pertinent allegations in petitioners' complaint are as follows:

"3. That [petitioners] x x x are co-owners of a parcel of land located at Diliman, Quezon City x x x;

"4. That sometime in 1954, [petitioner] SALUD D. LOPEZ's mother, CIRILA SADSAD *Vda*. *DE* DAVID, requested herein [petitioners] to allow the former to temporarily build a residential house at [petitioners'] property and stay in the premises until her mother shall [have] found a suitable residence of her own;

"5. That since then, [petitioners] allowed said Cirila David to occupy the premises without paying monthly rent and without the benefit of a written contract but thru sheer tolerance of the [petitioners];

"6. That upon the death of [petitioner] Salud D. Lopez's mother, [respondents] continued to occupy the subject premises without paying any rentals and were allowed to continue to occupy two (2) separate units thru sheer generosity and mere tolerance of herein [petitioners];

"7. That subsequently, [petitioners] withdrew their consent and repeated demands were made upon [respondents] to vacate the subject premises but [respondents] refused and failed to heed the demand violative of [petitioners'] preferential right of possession over the subject 2 units;

"8. That on August 4, 1995, [petitioners] were constrained to refer the matter to their previous lawyer for appropriate legal action, to which a letter of demand was sent to [respondents] to vacate the premises but x x x the latter refused x x x to vacate the subject premises; x x x"[15]

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[13] *Arcal v. CA, supra*, p. 823.

[14] *Ibid.; Sarmiento v. CA, supra*, p. 156.

[15] Complaint, pp. 2-3; *rollo*, pp. 40-41.

To summarize, petitioners aver that (1) they are the owners of the property; (2) they allowed respondents to occupy it by tolerance; (3) they withdrew their consent; and (4) they demanded that respondents leave the property, but the latter refused to do so.

Based on the foregoing averments, the case at bar involves unlawful deprivation or withholding of possession. Hence, it could either be one for unlawful detainer cognizable by the MeTC under Rule 70 or one for *accion publiciana*, which is cognizable by the regional trial court.[16]

The Complaint filed by petitioners alleges that the demand letter required respondents to leave on September 15, 1995. The ejectment case was filed on September 24, 1996.[17] Thus, the MeTC had no jurisdiction to hear the case.

Under Section 1 of Rule 70,[18] the one-year period within which a complaint for unlawful detainer can be filed should be

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[16] *Heirs of Fernando Vinzons v. CA*, 315 SCRA 541, 546, September 30, 1999.

[17] The MeTC in its August 15, 1997 Decision and the CA in its April 26, 2001 Decision found that the action had been instituted on October 2, 1996 (*rollo*, pp. 62, 136), but both petitioners and respondents in their respective Memoranda aver that the Complaint was filed on September 24, 1996 (*id*., pp. 181, 304). On the Complaint, the stamp "Received" (by the MeTC) was dated "Sep 24, 1996" (*id*., p. 39).

[18] Section 1 of Rule 70 reads:

"Section 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth[;] or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs."

counted from the date of demand, because only upon the lapse of that period does the possession become unlawful.[19] In the present case, it is undisputed that petitioners' Complaint was filed beyond one year from the time that respondents' possession allegedly became unlawful.

We have ruled that "forcible entry and unlawful detainer are quieting processes and the one-year time bar to the suit is in pursuance of the summary nature of the action."[20] Thus, we have nullified proceedings in the MeTC when it improperly assumed jurisdiction of a case in which the unlawful deprivation or withholding of possession had exceeded one year.[21]

After the lapse of the one-year period, the suit must be commenced in the RTC via an *accion publiciana*.[22] *Accion publiciana* is a suit for recovery of the right to possess. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[23] It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.[24] The CA was thus correct in declaring that jurisdiction belonged to the RTC.

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[19] *Sarona v. Villegas*, 131 Phil. 365, 372, March 27, 1968; *Villaluz v. CA*, 344 Phil. 77, 89, September 5, 1997; *Arcal v. CA, supra*, p. 825.

[20] *De Guzman v. CA*, 271 SCRA 728, 732, April 18, 1997, per Puno, *J.*

[21] *Heirs of Fernando Vinzons v. Court of Appeals, supra; Gener v. De Leon*, 419 Phil. 920, 936, October 19, 2001; *De Guzman v. CA, supra; Bongato v. Malvar*, 387 SCRA 327, 339, August 14, 2002.

[22] *Sarona v. Villegas, supra*, p. 374; *Cruz v. Torres, supra*, p. 197; *Heirs of Fernando Vinzons v. CA, supra*, p. 547; *Del Castillo v. Aguinaldo*, 212 SCRA 169, 175, August 5, 1992.

[23] *Cruz v. Torres, supra*, p. 197, citing *Aguilon v. Bohol*, 79 SCRA 482, October 20, 1977; and *Desbarats v. Vda. de Laureano*, 18 SCRA 116, September 27, 1966.

[24] *Ibid*., citing *Bernabe v. Dayrit*, 210 Phil., 349, 351, October 27, 1983.

Estoppel Does Not Apply

It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.[25] Indeed, the general rule is that a question of jurisdiction may be raised at any time, provided that doing so does not result in the mockery of the tenets of fair play.[26] An exception to this rule arises when the party is barred by estoppel, in which case the issue of jurisdiction may not be raised.[27]

In bringing up the issue of estoppel, petitioners principally anchor their argument on *Tijam v. Sibonghanoy*.[28] Applying the rule on estoppel by laches, we declared therein that the failure to raise the question of jurisdiction at an earlier stage barred the party from questioning it later. We explained:

"A party may be estopped or barred from raising a question in different ways and for different reasons. Thus, we speak of estoppel in *pais*, of estoppel by deed or by record, and of estoppel by *laches*.

"Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

"The doctrine of *laches* or of 'stale demands' is based upon grounds of public policy which requires, for the peace of society,

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[25] *Solid Homes, Inc. v. Payawal*, 177 SCRA 72, 80, August 29, 1989; *Trinidad v. Yatco*, 111 Phil. 466, 470, March 27, 1961; *Corominas Jr. and Corominas & Co. v. Labor Standard Commission*, 112 Phil. 551, 562, June 30, 1961; *Roxas v. CA*, 391 SCRA 351, 358, October 29, 2002.

[26] *Roxas v. CA, supra; Jimenez v. Patricia, Inc*., 340 SCRA 525, 531, September 18, 2000.

[27] *Solid Homes v. Payawal, supra*; TCL *Sales Corp. v. CA*, 349 SCRA 35, 44, January 5, 2001; *National Steel Corporation v. CA*, 362 Phil. 150, 160, February 2, 1999; *ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting Corporation*, 364 Phil. 133, 141, March 11, 1999.

[28] 131 Phil. 556, April 15, 1968.

the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted."[29]

We have applied this doctrine to succeeding cases by denying allegations of lack of jurisdiction if the question was not raised at an earlier stage, but brought up only after an adverse decision.[30] We have also stressed, however, that this doctrine is merely an exception to the general rule and time-honored principle that jurisdiction is not lost by waiver or by estoppel.[31]

Considering these established facts, we find that the *Tijam* doctrine is inapplicable.

As defined in that case, estoppel by laches occurs when a party fails — through negligence or omission — to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned or declined to assert it.

Herein, respondents cannot be perceived to have warranted the presumption that they were abandoning or declining to assert the right to question the jurisdiction of the MeTC. From the beginning, they have been challenging its jurisdiction and asserting that the RTC, not the MeTC, had jurisdiction over the case. Thus, in their Answer with affirmative defenses and counterclaim,[32] they challenged the MeTC's jurisdiction over the Complaint.[33] The same objections were alleged and presented as issues in their pretrial Brief.[34]

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[29] *Id.*, pp. 563-564, per Dizon, *J.*

[30] *Macahilig v. Heirs of Grace M. Magalit*, 344 SCRA 838, 851, November 15, 2000; *Aragon v. CA*, 337 Phil. 289, 297, March 26, 1997; *Rodriguez v. CA*, 139 Phil. 847, 859, August 29, 1969.

[31] *Calimlim v. Hon. Ramirez*, 204 Phil. 25, 35, November 19, 1982.

[32] *Rollo*, pp. 44-47.

[33] *Id.*, p. 45.

[34] *Id.*, pp. 154, 157.

We also note that respondents consistently allege that they "have been in peaceful possession of the premises since 1951."[35] Their argument is that the MeTC has no jurisdiction, since the unlawful withholding of possession has already exceeded one year. In their Memorandum[36] submitted on appeal to the RTC, respondents argued:

"10. It is also an undisputed fact that [respondents] have been in continuous and uninterrupted possession of the premises from 1951 up to present time or [for] a period of forty seven years (47).

x x x x x x x x x

'Even if one is the owner of the property, the possession thereof *cannot be wrested from another who had been in the physical or material possession of the same for more than one year by resorting to a summary action for ejectment*. x x x'[37]

x x x x x x x x x

'*Accion publiciana* is the plenary action to recover the right of possession when dispossession has lasted for more than one year or when dispossession was effected by means other than those mentioned in Rule 70 of the Rules of Court.'"[38]

It is apparent that respondents have been questioning the jurisdiction of the MeTC and alleging that the controversy was originally cognizable by the RTC, contrary to the contention of petitioners. Thus, we cannot countenance petitioners' position that respondents are already estopped from raising the issue of jurisdiction or of whether the ejectment case was filed within the one-year period after the withholding of possession.

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[35] Respondents stated in their Answer with Affirmative Defenses and Counterclaim "h) That [they] have been in peaceful possession of the premises since 1951, a period of forty five years." (*Rollo*, p. 45.)

[36] *Rollo*, pp. 69-91.

[37] *Id*., pp. 80-81; citing *Sarmiento v. CA*, 250 SCRA 108, November 16, 1995.

[38] *Id*., p. 81; citing *De Leon v. CA*, 245 SCRA 166, June 19, 1995.

With regard to the lapse of the one-year period from the date of demand, even assuming that respondents raised the issue only for the first time on appeal with the CA, the foregoing argument can be considered without violating fair play. This position is consistent with the theory adopted and constantly raised by respondents in the lower courts: that the MeTC had no jurisdiction.

Finally, we find it necessary to apply the strict interpretation of the jurisdiction rule, given the fact that (1) respondents have been in possession of the property since 1954; (2) proceedings of forcible entry and unlawful detainer are summary in nature; and (3) the one-year time bar to the suit is consistent with the summary nature of the action.[39]

WHEREFORE, this Petition is *DENIED* and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

EN BANC

[G.R. Nos. 152586-87. March 30, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANDRES PAAS ISLABRA,** *appellant*.

SYNOPSIS

In the two counts of rape filed by thirteen-year old AAA against her first cousin, herein appellant Andres Islabra, the

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[39] *A. Francisco Realty and Development Corp. v. CA*, 358 Phil. 833, 842, October 30, 1998; *Sarona v. Villegas, supra*, p. 373, citing *Monteblanco v. Hinigaran Sugar Plantation*, 63 Phil. 797, 802-803, November 27, 1936.

trial court gave credence to the testimony of complainant and convicted the appellant of one count of simple rape and one count of qualified rape. Hence, this automatic review.

The Court ruled that it is well-settled that an accused in rape cases may be convicted solely on the basis of the uncorroborated testimony of the rape victim where such testimony is clear, positive, convincing and consistent with human nature and the normal course of things. Her credibility is the single most important issue, and when her testimony meets the test of credibility, conviction inevitably ensues.

However, since the use of a knife was not alleged in the information in Crim. Case No. 2523, accused-appellant may be held liable for simple rape only and accordingly sentenced to *reclusion perpetua*. His conviction and sentence in Crim. Case No. 2522 were affirmed.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AN ACCUSED IN RAPE CASES MAY BE CONVICTED BASED SOLELY ON THE UNCORROBORATED TESTIMONY OF THE VICTIM. —** The rule is well-settled that an accused in rape cases may be convicted solely on the basis of the uncorroborated testimony of the rape victim where such testimony is clear, positive, convincing and consistent with human nature and the normal course of things. Her credibility is the single most important issue, and when her testimony meets the test of credibility, conviction inevitably ensues.

2. **ID.; ID.; ID.; NO STANDARD FORM OF BEHAVIOR CAN BE ANTICIPATED OF A RAPE VICTIM. —** It is not accurate to say that there is a typical reaction or norm of behavior among rape victims. On the contrary, people react differently to emotional stress and no standard form of behavior can be anticipated of a rape victim following her defilement.

3. **ID.; ID.; ID.; NOT AFFECTED BY THE INCONSISTENCIES ON MINOR OR TRIVIAL MATTERS. —** On the alleged inconsistencies between the testimonies of AAA and DDD on whether AAA was laid on the bed by accused-appellant as claimed by AAA or on the floor as testified to by BBB, and

whether it was FFF who reported what happened to Rodelio, as testified to by AAA, or whether Rodelio learned about it during the drinking spree in Jun Movilla's house, as claimed by GGG, suffice it to say that inconsistencies on minor or trivial matters do not affect the credibility of prosecution witnesses and are, on the contrary, badges of truth and safeguards against coached testimony.

4. **CRIMINAL LAW; RAPE; MEDICAL EXAMINATION OR CERTIFICATE HAS NEVER BEEN CONSIDERED AS AN INDISPENSABLE ELEMENT IN THE PROSECUTION THEREOF. —** [W]hile Dr. Factora's explanation of "coaptated" labia may be a bit nebulous, it cannot be said that it contradicted private complainant's testimony of the rapes committed against her. At any rate, a medical examination or certificate has never been considered an indispensable element in the prosecution of rape cases being merely corroborative in nature.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; MUST PROPERLY PLEAD AGGRAVATING CIRCUMSTANCES; NOT PRESENT IN CASE AT BAR. —** We reduce the penalty to *reclusion perpetua*. Qualifying circumstances which increase the penalty by degree rather than merely affect the period of the penalty as in the case of aggravating circumstances must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him. Thus, when the use of a deadly weapon in the commission of a rape was not alleged in the information, the penalty would be that prescribed for simple rape only, which is *reclusion perpetua*, to be imposed regardless of the presence of any mitigating or aggravating circumstances, pursuant to Art. 63 of the Revised Penal Code. Since the use of a knife was not alleged in the information in Crim. Case No. 2523, accused-appellant may be held liable for simple rape only and accordingly sentenced to *reclusion perpetua.*

6. **CRIMINAL LAW; RAPE; CIVIL LIABILITY; CIVIL INDEMNITY REDUCED TO ₱50,000. —** The civil indemnity of ₱75,000.00 awarded by the trial court must likewise be reduced to ₱50,000.00, consistent with jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appelant.

D E C I S I O N

PUNO, *J.*:

Before us for automatic review is the Decision dated November 27, 2001[1] of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19, in Criminal Case Nos. 2522-23 finding Andres Paas Islabra guilty beyond reasonable doubt of one count of simple rape and sentencing him to suffer the penalty of *reclusion perpetua*, and one count of qualified rape and sentencing him to death.

The private complainant, thirteen-year-old AAA, and accused-appellant, thirty-two-year-old Andres Islabra, are first cousins, the former's father, BBB, being the brother of the latter's mother, Rosita. In 1997 AAA and her brothers, CCC, DDD, and EEE came to Magsaysay, Sultan Kudarat to study and work as farmhands, respectively, while their parents remained in Columbo, Sultan Kudarat. They stayed in the house of accused-appellant upon the latter's invitation while their own house was still under construction. Younger sisters FFF, eight years old, and GGG, seven years old, joined them later on. All was apparently well. However, on July 29, 1998, AAA executed a sworn written complaint accusing Andres of raping her on two occasions. Two separate Informations were filed against Andres, *viz*:

Criminal Case No. 2522

That on or about 8:00 o'clock in the evening of July 4, 1998, at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, and within the preliminary jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design and by means of force and intimidation, did then and there, wilfully (*sic*), unlawfully and

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[1] Original Record, Crim. Case No. 2522, pp. 108-149; *Rollo*, pp. 23-64.

feloniously lie and succeeded in having carnal knowledge of one AAA, a thirteen (13)-year old girl, against her will and consent.

CONTRARY TO LAW, particularly Article 335 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659.[2]

Criminal Case No. 2523

That on or about 11:30 o'clock in the morning of July 12, 1998, at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, and within the preliminary jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design and by means of force and intimidation, did then and there, wilfully (*sic*), unlawfully and feloniously lie and succeeded in having carnal knowledge of one AAA, a thirteen (13)-year old girl, against her will and consent.

CONTRARY TO LAW, particularly Article 335 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659.[3]

Accused-appellant pleaded "not guilty" to both Informations. Trial ensued.

Private complainant testified that at around 8:30 in the evening of July 4, 1998 she was sleeping in the house of accused-appellant while her three brothers were watching television in a neighbor's house. Accused-appellant woke her up, warned her not to make any noise, kissed her face, removed her underwear and took his penis out of his short pants. She asked accused-appellant, whom she called "*Kuyang* Andres," why he was doing those things but the latter again warned her not to make any noise or she would be killed. Accused-appellant then inserted his penis into her vagina but after a partial penetration, withdrew the same when complainant complained of pain. He threatened complainant against reporting the incident to anybody, otherwise, he would kill her and her brothers. After accused-appellant left, complainant cried and examined her vagina. Fluid was oozing from it. She left her cousin's house the following morning, never to return. She stayed in the house of a neighbor until she and her brothers moved on July 9, 1998 to their newly-constructed

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[2] *Id*. at 14-15; *Id*. at 4-5.

[3] Original Record, Crim. Case No. 2523, pp. 1-2; *Rollo*, pp. 6-7.

house[4] located about a hundred meters away from that of accused-appellant. Gripped by fear, complainant did not inform her brothers of the incident.[5]

Anent the second rape incident, complainant testified that at around 11:30 in the morning of July 12, 1998, accused-appellant arrived at their newly-constructed house and asked her and her sister FFF if they had eaten lunch. They answered "no." FFF then went outside to play. Thereupon, accused-appellant, armed with a knife, ordered complainant into a room, instructed her not to shout, otherwise, he would kill her. Complainant complied out of fear. Accused-appellant ordered her to remove her underwear and likewise removed his own. He then laid complainant, who was already crying, on the bed, kissed her on the face and neck, inserted his penis fully into her vagina, and did push and pull movements for about seven minutes while holding complainant by her hands. After satisfying his lust, accused-appellant got up and put on his short pants. At this point, FFF entered the room and asked what "*Kuyang* Andres" was doing in the room. The latter did not answer. Instead, he told them not to report the matter to anybody, and left in a huff. AAA confided to FFF the incident. When CCC arrived at noon, FFF in turn narrated to him the event. CCC cried and punched the wall of their house in anger.[6] He wanted to confront accused-appellant but was restrained by EEE.[7] After their parents were informed that AAA had been raped, they arrived from Columbo and immediately brought their daughter to the police station where she executed her sworn written complaint. She was also brought to the Provincial Hospital where she was medically examined on July 29, 1998.

Accused-appellant denied the charges. Backed up by the testimony of his wife and mother-in-law, accused-appellant claimed that AAA and her brothers were no longer staying in

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[4] TSN, Hilda Paas, Cross-examination, August 10, 1999, pp. 11-12.

[5] *Id*. at 10-17.

[6] *Id*. at 17-29.

[7] *Id*. at 18.

his house at the time of the alleged rape on July 4, 1998, having left the same by the time his wife gave birth on December 27, 1997. Hence, he said, he could not have raped her there. Besides, he was not home in the evening of July 4, 1998 having left the same early in the morning with his two sons, Balong and Dagol, for their farm located about two kilometers away where they spent the whole day and passed the night. They returned home the following morning.[8]

As to the alleged rape at noon on July 12, 1998, accused-appellant claimed that he was in the house of his neighbor Jun Movilla from nine in the morning to two o'clock in the afternoon having a drinking spree with the latter and his brother Edwin, as well as with his cousins CCC and EEE, private complainant's brothers.[9] His wife saw him the whole time since Jun's house was just across the road from their house.

The defense likewise imputed motive on the part of complainant's family in filing the rape charges. Rosita Calla, accused-appellant's mother, testified that complainant's parents, BBB and HHH, her brother and sister-in-law, respectively, got angry with her when she helped a granddaughter find a lawyer in 1993 after she was allegedly raped by III, one of complainant's brothers. Since then, Rosita's relationship with her brother and sister-in-law turned sour.[10] Rodrigo Islabra, accused-appellant's brother, likewise testified that complainant's father told him when he went to speak to private complainant after Andres was arrested for the rape charges, that they will incur the same expenses that complainant's family incurred when it was III who was accused of rape in 1993.[11]

On November 27, 2001, the trial court rendered a decision convicting the accused and sentencing him to suffer *reclusion perpetua* in Crim. Case No. 2522, and death in Crim. Case No. 2523. He was likewise ordered to pay private complainant ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages,

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[8] TSN, Andres Islabra, September 22, 1999, pp. 5-10.

[9] *Id*. at 10-11.

[10] TSN, Rosita Calla, September 7, 1999, pp. 3-6, 12.

[11] TSN, Rodrigo Islabra, September 22, 1999, p. 31.

and ₱25,000.00 as exemplary damages for each count of rape, and to pay the costs.

Hence, this automatic review.

Accused-appellant contends that the trial court erred in finding him guilty of the alleged rape committed in his house on July 4, 1998 considering that CCC testified that he and his siblings left the same in January 1998. Moreover, private complainant's unbelievably composed behavior after the rape of turning on the light, coolly examining her vagina and observing the fluid oozing therefrom are inconsistent with that of a real rape victim. As to the second rape incident, accused-appellant contends that the inconsistencies in the testimonies of AAA and GGG and the contradictory results of the medical examination justify an acquittal. Even if he was indeed guilty of the second rape, the death penalty should not have been imposed considering that use of a knife in the commission thereof was not alleged in the Information.

The Office of the Solicitor General (OSG), while maintaining that accused-appellant's guilt has been proven beyond reasonable doubt in both cases, agreed that the death penalty should not have been imposed in Crim. Case No. 2523.

We affirm the trial court's decision with modification.

The rule is well-settled that an accused in rape cases may be convicted solely on the basis of the uncorroborated testimony of the rape victim where such testimony is clear, positive, convincing and consistent with human nature and the normal course of things.[12] Her credibility is the single most important issue, and when her testimony meets the test of credibility, conviction inevitably ensues.[13]

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[12] *People v. Purazo*, G.R. No. 133189, May 5, 2003; *People v. Malaya*, 351 SCRA 707, 713 (2001); *People v. Sale*, 345 SCRA 490, 497 (2000); *People v. Brondial*, 343 SCRA 600, 607-608 (2000); *People v. Flores*, 322 SCRA 779, 784 (2000).

[13] *People v. Palero*, 357 SCRA 724, 736 (2001); *People v. Awing*, 352 SCRA 188, 201 (2001); *People v. San Agustin*, 350 SCRA 216, 223 (2001); *People v. Tundag*, 342 SCRA 704, 711 (2000).

In the instant cases, the court *a quo* found private complainant's account of how she was raped by the accused in the evening of July 4, 1998 and at noon of July 12, 1998 to be clear, positive and straightforward, *viz*:

"Q: At about 8:30 o'clock that evening of July 4, 1998 while your brother CCC and EEE were watching tv on (*sic*) the neighbor's house and you were already sleeping in the house of your *Kuyang* Andres, do you remember what happened?

A: He went to the place where we were sleeping and he awakened me, sir.

Q: You said he, who was that he who went to your room where you are (*sic*) sleeping?

A: Andres Islabra, sir.

Q: Who was your companion or who were your companions in that room where you sleep (*sic*) where (*sic*) you were awakened by accused Andres Islabra?

A: The eldest and his second child, sir.

Q: Where (*sic*) they girls?

A: No, Sir.

Q: How old is the eldest son who was sleeping in that room?

A: Still young, sir. He is a grade 3 pupil.

Q: How about the second to the eldest who were (*sic*) sleeping with you in that room, how old?

A: Maybe about eight years old.

x x x x x x x x x

Q: When the accused went up and entered the room where you are (*sic*) sleeping and awakened you, what follows (*sic*)?

A: He told me not to make noise.

x x x x x x x x x

Q: And after telling you don't be noisy, what happened next?

A: He kiss (*sic*) me, sir.

Q: Where did he kiss you?

A: On my face, sir.

Q: And what did you do when the accused kiss (*sic*) you on your face?

A: I asked "why are you kissing me *Kuyang*."

Q: And what did he tell you when you asked him?

A: He just told me not to be noisy.

Q: What happened after that?

A: After that he removed my panty.

Q: What were you wearing that evening?

A: A skirt.

Q: Your upper wear what were you wearing?

A: T-shirt, sir.

x x x x x x x x x

Q: After he removed your panty or underwear, what else did he do?

A: He laid me down after that he mounted on (*sic*) me.

Q: What did he do with his shortpants (*sic*), you said he is wearing shortpants (*sic*)?

A: He did not remove his shortpants (*sic*) he just have his penis out.

Q: Has (*sic*) his short pants a (*sic*) zipper?

A: It has no zipper it has only a cord.

Q: How did he have (*sic*) his penis out when there was no zipper on (*sic*) his short pants but only a cord?

A: He had his penis out through his thigh or he just raise (*sic*) his short pants and had his penis out thru the hemline of his short pants.

Q: Now, what happened after his penis out (*sic*) of his short pants?

A: After that, sir, he mounted on (*sic*) me and inserted his penis on (*sic*) my vagina.

Q: Was his penis erecting (*sic*) at that time?

A: Yes, sir.

Q: And were you not complaining why he was doing that to you?
A: I was complaining, sir.

Q: How were you complaining?
A: I asked him, "*Kuyang* why are you doing this to me." He just told me not to make any noise because he will kill me.

Q: Was he able to insert his penis into your vagina?
A: Only a portion that (*sic*) was inserted, sir.

Q: Why?
A: Because of pain, sir.

Q: In other words, you were complaining of pain?
A: Yes, sir.

Q: And because you were complaining of pain and could not penetrate only a portion, what happened?
A: He just left and after that, sir, I felt wet.

Q: Where did you feel wet in your body?
A: On (*sic*) my vagina, sir.

x x x x x x x x x

Q: Now, what did he tell you if he told you any when he left?
A: He told me not to report this matter to anybody because he will kill all of us, sir.

Q: Did you not shout while he was doing this (*sic*) to you?
A: I did not, sir, because I was afraid.

Q: And after he left what did you do?
A: I cried, sir.[14]

x x x x x x x x x

Q: At about 11:30 o'clock in the morning of July 12, 1998, where were you?
A: I was in the house built by my older brother.

Q: Where was your older brother CCC at that time?
A: He was in his farm, sir.

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[14] TSN, AAA, Direct-examination, August 10, 1999, pp. 11-16.

Q: Where was FFF your sister?

A: She was with me, sir, in that house.

Q: At 11:30 in the morning, do you remember what happened?

A: At that time, sir, Andres went to our house and asked if we had taken our meal.

x x x x x x x x x

Q: And when this Andres Islabra arrived in your house asking whether you have taken your meal, what did you tell him?

A: We told him we have not yet taken our meals.

x x x x x x x x x

Q: Now, where was FFF at that time?

A: She went outside and play (*sic*), sir.

Q: Now what did Andres Islabra do after FFF went outside to play?

A: He went inside, sir.

xxx x x x x x x

Q: After Andres Islabra entered the house, what happened?

A: At that time, sir, he told me not to shout because he will kill me and at that time he was bringing (*sic*) with him a knife.

x x x x x x x x x

Q: Now, what was he doing to you when he said don't make any noisy (*sic*) and bringing (*sic*) with him a knife?

A: He ordered me to get inside the room and I followed him because I was afraid.

x x x x x x x x x

Q: What happened after you entered the room?

A: He followed me inside, sir.

x x x x x x x x x

Q: After you entered the room and he followed, what else transpired, what did he do?

A: He ordered me to remove my panty.

Q: And did you follow him?
A: Yes, sir, because I was afraid.

Q: After you removed your panty what did he do?
A: He also removed his short pants.

Q: Did he have a brief?
A: Yes, sir.

Q: What did he do with his brief?
A: He also removed his brief.

Q: You saw his penis?
A: Yes, sir.

Q: Now, after that what did you do?
A: I was crying at that time, sir.

Q: What was the appearance of his penis? Was it erecting (*sic*)?
A: Yes, sir.

Q: Now, what happened next?
A: After that, sir, he was kissing me and he mounted on (*sic*) me.

Q: Where was he kissing you?
A: On my neck and face.

Q: And what was your position at that time?
A: He laid me down, sir.

Q: While you were in that position lying in (*sic*) that bed, kissing you on your neck and cheek, what did you do?
A: His penis was inserted in (*sic*) my vagina.

Q: How did you feel?
A: Still pain (*sic*), sir.

Q: He forcibly inserted his penis in (*sic*) your vagina?
A: Yes, sir.

Q: Has (*sic*) his penis entirely entered (*sic*) your vagina?
A: Yes, sir.

Q: After it entered your vagina what did he do?
A: He removed it, sir.

Q: Then he entered it again?

A: Yes, sir.

Q: What motion did he do to (*sic*) his penis when it entered your vagina?

A: He was doing a push and pull motion.

Q: Push and pull motion while his penis was inside your vagina?

A: Yes, sir.

x x x x x x x x x

COURT:

Q: He did not utter any words while he was doing the push and pull motion?

A: I told him to stop it, or "that's enough *Kuyang*."

x x x x x x x x x

Q: How about the two arms of Andres, what was he doing at that time?

A: I was pushing him, Your Honor, but his two arms were holding my arms.

x x x x x x x x x

Q: For how long did Andres Islabra do the push and pull motion on you?

A: About seven minutes, sir.

Q After that seven minutes push and pull (*sic*) and sticky fluid came out what did Andres Islabra do?

A: After that, sir, Andres Islabra stood up and wear (*sic*) his short pants at that time my younger sister FFF arrived and she was able to see Andres wearing his short pants.

Q: What did FFF do when he saw Andres in the act of wearing or putting on his short pants?

A: My sister FFF asked him "*Kuyang* what are you doing there."

Q: Was (*sic*) the accused answered (*sic*) FFF of that querry (*sic*)?

A: He did not, sir.

Q: And instead he left?

A: He answered, sir, but he told us "do not report this to anybody."[15]

Accused-appellant contends that complainant's claim that he raped her on July 4, 1998 in his house was tainted by her brother CCC's testimony that they were no longer staying there at the time, having already left in January 1998.

We do not agree. A careful review of CCC's testimony reveals that he was not unequivocal on this point. During his direct-examination, CCC testified that he and his siblings stayed in accused-appellant's house until they moved on July 6, 1998 into their own house. However, in another breath, he said that they were no longer staying there on July 4, 1998.[16] But during his cross-examination, he again affirmed that they were still staying in the house of their cousin on the date in question[17] and reiterated the same during his re-direct examination on October 7, 1999. The trial judge perceived CCC's vacillation as arising from his ignorance as to the proper order of the months in a year, whether January or July comes first, prompting him to ask about CCC's educational attainment, *viz*:

Q: Tell the Court once more, until when did you stay with your sibling in the house of Andres Paas and transferred to your house?

A: It was sometime in the month of January, your Honor.

Q: What year?

A: In 1998, your Honor.

Q: Earlier you said in your answer to the question of the Provincial Prosecutor that on July 4, 1998 you were still residing in the house of Andres Paas, and now you are telling the court that you left the house of Andres Paas on July 4, 1998, which is which now?

A: I cannot remember anymore the date, your Honor.

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[15] TSN, AAA, Direct-examination, August 10, 1999, pp. 17-25.

[16] TSN, CCC, Direct-examination, August 12, 1999, p. 11.

[17] *Id*. at 17.

Q: What is your educational attainment?
A: Only Grade VI, your Honor.

Q: Do you know how many months (*sic*) in a year?
A: Yes, sir.

Q: What is the first month of the year?
A: January, your Honor.

Q: So, you are now telling the Court that on January 4, 1998 you have already left the house of the accused together with your brothers and sisters and transferred to your newly built (*sic*) house?
A: On that date January 4, 1998 we have not yet transferred to our new house, your Honor.[18]

In light of the above, we cannot consider CCC's testimony as having dented private complainant's positive and straightforward testimony that she was raped by accused-appellant on the evening of July 4, 1998 in his own house. There is another reason for CCC's apparent vacillation in his testimony. It can be due to the fact that he and brother EEE slept in their own house from time to time, leaving their sister in accused-appellant's house, even while their house was still undergoing construction, as testified to by accused-appellant himself, *viz*:

Q: The construction of the house of her brothers was finished in the month of October 1997?
A: The construction of the house was not immediately finished, Your Honor, because of lack of materials to be used for the construction of their house, Your Honor.

Q: In other words, because of lack of materials the house was only completed the following year 1998?
A: Actually what happened they (*sic*) built a new house and they only put roofing and in completing that they only used a tent which serves (*sic*) as walling of the house and the two were already sleeping in that house, I am referring to Balong and Sandy.[19]

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[18] *Id*. at 4.

[19] Nicknames of EEE and CCC, respectively.

Q: Only the two of them?

A: During nighttime only, your Honor.

Q: When was that when Balong and Sandy were already sleeping on (*sic*) their unfinished newly constructed house?

A: After they finished putting the roofing of their house that's the time they started sleeping in their unfinished house.

x x x x x x x x x

Q: And because their house was not yet walled they only used temporary walling only Sandy and Balong can be accommodated in that house?

A: Yes, sir.

Q: It does (*sic*) not fit for a woman to sleep there?

A: Sometimes the other siblings were also sleeping (*sic*) in that house.

Q: And that house was only completed sometime in January or February 1998, was it not?

A: No, sir.

Q: When was it completed?

A: In my own, as far as I can remember about December 5, 1997.

Q: And they all transferred in their house on December 5, 1997, is that what you mean?

A: I could not say, sir, that they transferred in that house on that date, December 4, 1997, because after they slept on that day in their own house they again (*sic*) sleep in my house and again they transferred to their newly built (*sic*) house and that's the time they stayed in their house.[20]

The defense likewise denounces private complainant's actuations after the alleged first rape of turning on the light, coolly examining her vagina and observing the fluid oozing therefrom, as not befitting that of a real rape victim. We do not agree. It is not accurate to say that there is a typical reaction or norm of behavior among rape victims.[21] On the contrary, people react differently to emotional

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[20] TSN, Andres Islabra, September 22, 1999, pp. 20-23.

[21] *People v. Santos*, 366 SCRA 52, 59 (2001).

stress and no standard form of behavior can be anticipated of a rape victim following her defilement.[22]

On the alleged inconsistencies between the testimonies of AAA and GGG on whether AAA was laid on the bed by accused-appellant as claimed by AAA or on the floor as testified to by GGG, and whether it was FFF who reported what happened to CCC, as testified to by AAA, or whether CCC learned about it during the drinking spree in Jun Movilla's house, as claimed by GGG, suffice it to say that inconsistencies on minor or trivial matters do not affect the credibility of prosecution witnesses and are, on the contrary, badges of truth and safeguards against coached testimony.[23]

Finally, the defense takes exception to the alleged contradictory results of the medical examination conducted on private complainant. That is, while Dra. Divinagracia Factora, Medical Officer III of the Sultan Kudarat Provincial Hospital, testified that private complainant's *labia majora* and *minora* are well-coaptated or "*magkadikit*" which indicates virginity, she likewise testified that private complainant's vaginal canal sustained healed superficial lacerations at 2:00 and 6:00 positions.

The medico-legal certificate issued by Dra. Factora showed the following findings:

PERTINENT PHYSICAL EXAMINATION:

— *Labia majora* and *minora* are well coaptated.

— Healed superficial laceration at 2:00 and 6:00 o'clock positions of the vaginal canal.[24]

Although Dra. Factora indeed testified in the beginning that coaptated or "*magkadikit*" *labia majora* and *minora* indicates virginity,[25] in the latter part of her testimony, however, she

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[22] *People v. Iluis*, G.R. No. 145995, March 20, 2003.

[23] *People v. Soriano*, G.R. No. 131636, March 5, 2003; *People v. Emilio*, G.R. Nos. 144305-07, February 6, 2003; *People v. Agravante*, 372 SCRA 64, 76 (2001).

[24] Exh. "D"; Original Record, p. 64.

[25] TSN, Dr. Divinagracia Factora, August 24, 1999, pp. 2-3.

clarified that the same may or may not actually be a sign of virginity.[26] In the particular case of private complainant, she could not definitely say that private complainant was a virgin or not. On the contrary, superficial healed lacerations at 2:00 and 6:00 positions were definitely found on her, one of the causes of which may be a hardened human penis.[27] Thus, while Dr. Factora's explanation of "coaptated" *labia* may be a bit nebulous, it cannot be said that it contradicted private complainant's testimony of the rapes committed against her. At any rate, a medical examination or certificate has never been considered an indispensable element in the prosecution of rape cases[28] being merely corroborative in nature.[29]

We come to the penalty imposed in Crim. Case No. 2523: The death penalty was imposed by the trial court considering that the second rape incident was accomplished with the use of a knife. Under the second paragraph of Art. 266-B[30] of the Revised Penal Code, as amended by Republic Act No. 8353, the proper imposable penalty is *reclusion perpetua* to death. The death penalty was imposed after the trial court further considered that complainant was raped in her own house, hence, the aggravating circumstance of dwelling was appreciated in her favor.

We reduce the penalty to *reclusion perpetua*. Qualifying circumstances which increase the penalty by degree rather than merely affect the period of the penalty as in the case of aggravating circumstances must be properly pleaded in the

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[26] *Id*. at 4.

[27] *Id*. at 3.

[28] *People v. Agustin*, 365 SCRA 667, 674 (2001); *People v. Blazo*, 352 SCRA 94, 103 (2001); *People v. Dichoson*, 352 SCRA 56, 67-68 (2001); *People v. Adajio*, 343 SCRA 316, 332 (2000).

[29] *People v. Gutierrez*, G.R. Nos. 147656-58, May 9, 2003.

[30] "Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death."

information consistent with the constitutional right of the accused to be informed of the charges against him.[31] Thus, when the use of a deadly weapon in the commission of a rape was not alleged in the information, the penalty would be that prescribed for simple rape only, which is *reclusion perpetua*, to be imposed regardless of the presence of any mitigating or aggravating circumstances, pursuant to Art. 63 of the Revised Penal Code.[32]

Since the use of a knife was not alleged in the information in Crim. Case No. 2523, accused-appellant may be held liable for simple rape only and accordingly sentenced to *reclusion perpetua*. His conviction and sentence in Crim. Case No. 2522 are affirmed. The civil indemnity of ₱75,000.00 awarded by the trial court must likewise be reduced to ₱50,000.00, consistent with jurisprudence.[33]

IN VIEW WHEREOF, the decision under review is *MODIFIED* in that accused-appellant is held guilty of simple rape only in Crim. Case No. 2523, and accordingly sentenced to suffer the penalty of *reclusion perpetua*. The civil indemnity awarded by the trial court in both Crim. Case Nos. 2522 and 2523 are reduced to ₱50,000.00. The decision is *AFFIRMED* in all other respects.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Vitug, J., on official leave.

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[31] *People v. Bernaldez*, 322 SCRA 462, 574 (2000).

[32] *People v. Caniezo*, 354 SCRA 298, 309 (2001); *People v. Siao*, 327 SCRA 231, 261 (2000).

[33] *People v. Manallo*, G.R. No. 143704, March 28, 2003; *People v. Iluis*, G.R. No. 145995, March 20, 2003.

FIRST DIVISION

[G.R. No. 159218. March 30, 2004]

SALVADOR S. ABUNADO and ZENAIDA BIÑAS ABUNADO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYNOPSIS

Petitioner Salvador S. Abunado was convicted by the trial court of the crime of bigamy which was also affirmed by the Court of Appeals. Dissatisfied, Abunado interposed this petition for review. He argued, among others, that the consent of his first wife Narcisa Arceño, to his second marriage with Zenaida Biñas has the effect of absolving him of any criminal liability, and that the filing of petition for annulment/declaration of nullity of his first marriage is a prejudicial question, hence, the proceedings in the bigamy case should have been suspended during the pendency of the annulment case.

The Court agreed with the Court of Appeals when it ruled that while he claims that there was condonation on the part of complainant when he entered into a bigamous marriage, the same was not established by clear and convincing evidence. But then, a pardon by the offended party does not extinguish criminal action considering that a crime is committed against the State and the crime of bigamy is a public offense which can be denounced not only by the person affected thereby but even by a civic-spirited who may come to know the same.

Likewise, the subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Accordingly, the decision of the Court of Appeals was affirmed.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; EVERY ELEMENT OF WHICH THE OFFENSE IS COMPRISED MUST BE ALLEGED IN THE

INFORMATION. — Indeed, an accused has the right to be informed of the nature and cause of the accusation against him. It is required that the acts and omissions complained of as constituting the offense must be alleged in the Information. The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information. It is fundamental that every element of which the offense is comprised must be alleged in the Information. What facts and circumstances are necessary to be alleged in the Information must be determined by reference to the definition and essential elements of the specific crimes.

2. ID.; ID.; ID.; DEFECTIVE INFORMATION CANNOT SUPPORT A JUDGMENT OF CONVICTION UNLESS THE DEFECT WAS CURED BY EVIDENCE DURING TRIAL AND NO OBJECTION APPEARS TO HAVE BEEN RAISED. — The general rule is that a defective information cannot support a judgment of conviction unless the defect was cured by evidence during the trial and no objection appears to have been raised. It should be remembered that bigamy can be successfully prosecuted provided all its elements concur – two of which are a previous marriage and a subsequent marriage which possesses all the requisites for validity. All of these have been sufficiently established by the prosecution during the trial. Notably, petitioner failed to object to the alleged defect in the Information during the trial and only raised the same for the first time on appeal before the Court of Appeals.

3. CRIMINAL LAW; BIGAMY; NOT EXTINGUISHED BY THE PARDON OF THE OFFENDED PARTY. — [W]e agree with the Court of Appeals when it ruled, thus: x x x, while he claims that there was condonation on the part of complainant when he entered into a bigamous marriage, the same was likewise not established by clear and convincing evidence. But then, a pardon by the offended party does not extinguish criminal action considering that a crime is committed against the State and the crime of Bigamy is a public offense which can be denounced not only by the person affected thereby but even by a civic-spirited citizen who may come to know the same.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; DEFINED. — A prejudicial question has been

defined as one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. The rationale behind the principle of suspending a criminal case in view of a prejudicial question is to avoid two conflicting decisions.

5. CRIMINAL LAW; BIGAMY; SUBSEQUENT JUDICIAL DECLARATION OF NULLITY OF THE FIRST MARRIAGE WAS IMMATERIAL. — The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that. The outcome of the civil case for annulment of petitioner's marriage to Narcisa had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted. Thus, under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding. In this case, even if petitioner eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.

6. ID.; INDETERMINATE SENTENCE LAW; INDETERMINATE PENALTY; EXPLAINED. — Article 349 of the Revised Penal Code imposes the penalty of *prision mayor* for bigamy. Under the Indeterminate Sentence Law, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum term of which shall be within the range of the

penalty next lower to that prescribed by the Code for the offense. The penalty next lower would be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

7. ID.; BIGAMY; PROPER PENALTY. — In light of the fact that petitioner is more than 70 years of age, which is a mitigating circumstance under Article 13, paragraph 2 of the Revised Penal Code, the maximum term of the indeterminate sentence should be taken from *prision mayor* in its minimum period which ranges from six (6) years and one (1) day to eight (8) years, while the minimum term should be taken from *prision correccional* in any of its periods which ranges from six (6) months and one (1) day to six (6) years. Therefore, the penalty imposed by the Court of Appeals, *i.e.*, two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, is proper.

CARPIO, *J., concurring*:

1. CIVIL LAW; FAMILY CODE; MARRIAGE; ONE MUST FIRST SECURE A FINAL JUDGMENT DECLARING THE FIRST MARRIAGE VOID BEFORE HE CAN CONTRACT A SECOND MARRIAGE. — Under the Family Code, before one can contract a second marriage on the ground of nullity of the first marriage, one must first secure a final judgment declaring the first marriage void. x x x Prior to Family Code, one could contract a subsequent marriage on the ground of nullity of the previous marriage without first securing a judicial annulment of the previous marriage. If subsequently the previous marriage were judicially declared void, the subsequent marriage would not be deemed bigamous. The nullity of the previous marriage could even be judicially declared in the criminal case for bigamy, although the person remarrying "assume(d) the risk of being prosecuted for bigamy" should the court uphold the validity

of the first marriage. Article 40 of the Family Code has changed this. Now, one must first secure a final judicial declaration of nullity of the previous marriage before he is freed from the marital bond or *vinculum* of the previous marriage. If he fails to secure a judicial declaration of nullity and contracts a second marriage, then the second marriage becomes bigamous. As the Court stated in ***Domingo v. Court of Appeals*** in explaining Article 40 of the Family Code: In fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy.

2. ID.; ID.; ID.; ID.; MARITAL *VINCULUM* OF A PREVIOUS MARRIAGE THAT IS VOID *AB INITIO* SUBSISTS ONLY FOR PURPOSES OF REMARRIAGE. — Article 40 of the Family Code considers the marital *vinculum* of the previous marriage ***to subsist for purposes of remarriage,*** unless the previous marriage is judicially declared void by final judgment. Thus, if the marital *vinculum* of the previous marriage subsists because of the absence of judicial declaration of its nullity, the second marriage is contracted during the existence of the first marriage resulting in the crime of bigamy. Under Article 40 of the Family Code, the marital *vinculum* of a previous marriage that is void *ab initio* subsists only for purposes of remarriage. For purposes ***other than*** remarriage, marriages that are void *ab initio*, such as those falling under Articles 35 and 36 of the Family Code, are void even without a judicial declaration of nullity. As the Court held in ***Cariño vs. Cariño*****:** "Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. Meaning, where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void. *However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity.* x x x" Thus, the general rule is if the marriage is void *ab initio*, it is *ipso facto* without need of any judicial declaration of nullity. The only recognized

exception under existing law is Article 40 of the Family Code where a marriage void *ab initio* is deemed valid for purposes of remarriage, hence necessitating a judicial declaration of nullity before one can contract a subsequent marriage.

3. ID.; ID.; ID.; ARTICLE 40 DOES NOT APPLY TO A SITUATION WHERE THE FIRST MARRIAGE DOES NOT SUFFER FROM ANY DEFECT WHILE THE SECOND MARRIAGE IS VOID. — Article 40 of the Family Code applies only to a situation where the ***previous*** marriage suffers from nullity while the second marriage does not. Under Article 40, what requires a judicial declaration of nullity is the previous marriage, not the subsequent marriage. Article 40 does not apply to a situation where the first marriage does not suffer from any defect while the second is void.

APPEARANCES OF COUNSEL

David B. Agoncillo for petitioners.
The Solicitor General for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the decision[1] of the Court of Appeals in CA-G.R. No. 26135 which affirmed with modification the decision of the Regional Trial Court, Branch 77, San Mateo, Rizal in Criminal Case No. 2803 convicting petitioner Salvador S. Abunado of bigamy.

The records show that on September 18, 1967, Salvador married Narcisa Arceño at the Manila City Hall before Rev. Pedro Tiangco.[2] In 1988 Narcisa left for Japan to work but returned to the Philippines in 1992, when she learned that her

[1] Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Marina L. Buzon and Danilo B. Pine.

[2] Exhibit "C", Records, p. 68.

husband was having an extra-marital affair and has left their conjugal home.

After earnest efforts, Narcisa found Salvador in Quezon City cohabiting with Fe Corazon Plato. She also discovered that on January 10, 1989, Salvador contracted a second marriage with a certain Zenaida Biñas before Judge Lilian Dinulos Panontongan in San Mateo, Rizal.[3]

On January 19, 1995, an annulment case was filed by Salvador against Narcisa.[4] On May 18, 1995, a case for bigamy was filed by Narcisa against Salvador and Zenaida.[5]

Salvador admitted that he first married Zenaida on December 24, 1955 before a municipal trial court judge in Concepcion, Iloilo and has four children with her prior to their separation in 1966. It appeared however that there was no evidence of their 1955 marriage so he and Zenaida remarried on January 10, 1989, upon the request of their son for the purpose of complying with the requirements for his commission in the military.

On May 18, 2001, the trial court convicted petitioner Salvador Abunado of bigamy and sentenced him to suffer imprisonment of six (6) years and one (1) day, as minimum, to eight (8) years and one (1) day, as maximum. Petitioner Zenaida Biñas was acquitted for insufficiency of evidence.[6]

On appeal, the Court of Appeals affirmed with modification the decision of the trial court, as follows:

> WHEREFORE, the Decision appealed from is hereby MODIFIED as to the penalty imposed but AFFIRMED in all other respects. Appreciating the mitigating circumstance that accused is 76 years of age and applying the provisions of the Indeterminate Sentence Law, the appellant is hereby sentenced to suffer an indeterminate prison term of two (2) years, four (4) months and one (1) day of

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[3] Exhibit "J", Records, p. 81.

[4] Records, p. 202.

[5] Records, p. 1.

[6] Penned by Judge Francisco C. Rodriguez; *Rollo*, pp. 33-42.

prision correccional as Minimum to six (6) years and one (1) day of *prision mayor* as Maximum. No costs.

SO ORDERED.[7]

Petitioner is now before us on petition for review.

First, he argues that the Information was defective as it stated that the bigamous marriage was contracted in 1995 when in fact it should have been 1989.

Indeed, an accused has the right to be informed of the nature and cause of the accusation against him.[8] It is required that the acts and omissions complained of as constituting the offense must be alleged in the Information.[9]

The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information. It is fundamental that every element of which the offense is comprised must be alleged in the Information. What facts and circumstances are necessary to be alleged in the Information must be determined by reference to the definition and essential elements of the specific crimes.[10]

The question, therefore, is whether petitioner has been sufficiently informed of the nature and cause of the accusation against him, namely, that he contracted a subsequent marriage with another woman while his first marriage was subsisting.

The information against petitioner alleges:

That in or about and sometime in the month of January, 1995 at the Municipality of San Mateo, Rizal place (*sic*) within the jurisdiction of this Honorable Court, the above-named accused, having been legally married to complainant Narcisa Abunado on September 16,

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[7] *Rollo*, p. 53.

[8] Constitution, Art. III, Sec. 14(2).

[9] Revised Rules on Criminal Procedure, Rule 110, Sec. 6.

[10] *Garcia v. People*, G.R. No. 144785, 11 September 2003.

1967 which has not been legally dissolved, did then and there *willfully, unlawfully and feloniously contract a subsequent marriage to Zenaida Biñas Abunado on January 10, 1989* which has all the essential requisites of a valid marriage.

CONTRARY TO LAW.[11]

The statement in the information that the crime was committed "in or about and sometime in the month of January, 1995," was an obvious typographical error, for the same information clearly states that petitioner contracted a subsequent marriage to Zenaida Biñas Abunado on January 10, 1989. Petitioner's submission, therefore, that the information was defective is untenable.

The general rule is that a defective information cannot support a judgment of conviction unless the defect was cured by evidence during the trial and no objection appears to have been raised.[12] It should be remembered that bigamy can be successfully prosecuted provided all its elements concur — two of which are a previous marriage and a subsequent marriage which possesses all the requisites for validity.[13] All of these have been sufficiently established by the prosecution during the trial. Notably, petitioner failed to object to the alleged defect in the Information during the trial and only raised the same for the first time on appeal before the Court of Appeals.

Second, petitioner argues that Narcisa consented to his marriage to Zenaida, which had the effect of absolving him of criminal liability.

In this regard, we agree with the Court of Appeals when it ruled, thus:

x x x, while he claims that there was condonation on the part of complainant when he entered into a bigamous marriage, the same

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[11] *Rollo*, p. 30; italics ours.

[12] *People v. Villamor*, G.R. No. 124441, 7 October 1998, 297 SCRA 262, 270.

[13] *Marbella-Bobis v. Bobis*, G.R. No. 138509, 31 July 2000, 336 SCRA 747, 752-753.

was likewise not established by clear and convincing evidence. But then, a pardon by the offended party does not extinguish criminal action considering that a crime is committed against the State and the crime of Bigamy is a public offense which can be denounced not only by the person affected thereby but even by a civic-spirited citizen who may come to know the same.[14]

Third, petitioner claims that his petition for annulment/ declaration of nullity of marriage was a prejudicial question, hence, the proceedings in the bigamy case should have been suspended during the pendency of the annulment case. Petitioner, in fact, eventually obtained a judicial declaration of nullity of his marriage to Narcisa on October 29, 1999.[15]

A prejudicial question has been defined as one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. The rationale behind the principle of suspending a criminal case in view of a prejudicial question is to avoid two conflicting decisions.[16]

The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.[17]

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[14] *Rollo*, p. 51.

[15] Annex "1", Records, p. 208.

[16] *Te v. Court of Appeals*, G.R. No. 126746, 29 November 2000, 346 SCRA 327, 335.

[17] *Mercado v. Tan*, G.R. No. 137110, 1 August 2000, 337 SCRA 122, 133.

The outcome of the civil case for annulment of petitioner's marriage to Narcisa had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.[18]

Thus, under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.[19] In this case, even if petitioner eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.

Finally, petitioner claims that the penalty imposed on him was improper.

Article 349 of the Revised Penal Code imposes the penalty of *prision mayor* for bigamy. Under the Indeterminate Sentence Law, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. The penalty next lower would be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[20]

In light of the fact that petitioner is more than 70 years of age,[21] which is a mitigating circumstance under Article 13,

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[18] *Te v. Court of Appeals, supra.*

[19] *Supra.*

[20] *Garcia v. People, supra.*

[21] Exhibit "J", Records, p. 81.

paragraph 2 of the Revised Penal Code, the maximum term of the indeterminate sentence should be taken from *prision mayor* in its minimum period which ranges from six (6) years and one (1) day to eight (8) years, while the minimum term should be taken from *prision correccional* in any of its periods which ranges from six (6) months and one (1) day to six (6) years.

Therefore, the penalty imposed by the Court of Appeals, *i.e.*, two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, is proper.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals in CA-G.R. CR No. 26135, finding petitioner Salvador S. Abunado guilty beyond reasonable doubt of the crime of bigamy, and sentencing him to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, is *AFFIRMED*.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban and *Azcuna, JJ.,* concur.

Carpio, J., see concurring opinion.

CONCURRING OPINION

CARPIO, *J.*:

I concur in the result of the *ponencia* of Justice Consuelo Ynares-Santiago finding appellant Salvador S. Abunado guilty of bigamy.

The material facts are not in dispute. On 18 September 1967, Abunado married Narcisa Arceno. While his marriage with Arceno remained unannulled, Abunado married Zenaida

Biñas on 10 January 1989. Subsequently, on 29 October 1999, Abunado obtained from the Regional Trial Court of Makati City a judicial declaration of nullity of his marriage with Arceno. On 18 May 2001, the Regional Trial Court of San Mateo, Rizal rendered a decision convicting Abunado of bigamy.

The sole issue is whether the second marriage of Abunado to Biñas on 10 January 1989 constitutes the crime of bigamy under Article 349[1] of the Revised Penal Code. More precisely, the issue turns on whether Abunado's first marriage to Arceno was still subsisting at the time Abunado married Biñas.

Under the Family Code, before one can contract a second marriage on the ground of nullity of the first marriage, one must first secure a final judgment declaring the first marriage void. Article 40 of the Family Code provides:

> Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

The Family Code took effect on 3 August 1988, before the second marriage of Abunado on 10 January 1989.

Prior to the Family Code, one could contract a subsequent marriage on the ground of nullity of the previous marriage without first securing a judicial annulment of the previous marriage. If subsequently the previous marriage were judicially declared void, the subsequent marriage would not be deemed bigamous. The nullity of the previous marriage could even be judicially declared in the criminal case for bigamy,[2] although the person remarrying "assume(d) the risk of being prosecuted for bigamy"[3] should

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[1] Article 349 of the Revised Penal Code provides as follows: "*Bigamy* — The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings."

[2] *People v. Mendoza*, 95 Phil. 845 (1954); *People v. Aragon*, 100 Phil. 1033 (1957).

[3] *Landicho v. Relova, et al.,* 130 Phil. 745 (1968).

the court uphold the validity of the first marriage. Article 40 of the Family Code has changed this.

Now, one must first secure a final judicial declaration of nullity of the previous marriage before he is freed from the marital bond or *vinculum* of the previous marriage. If he fails to secure a judicial declaration of nullity and contracts a second marriage, then the second marriage becomes bigamous. As the Court stated in ***Domingo v. Court of Appeals***[4] in explaining Article 40 of the Family Code:

> In fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy.

Conversely, if the person remarries without securing a judicial declaration of nullity of his previous marriage, he is liable for bigamy.

Article 40 of the Family Code considers the marital *vinculum* of the previous marriage ***to subsist for purposes of remarriage***, unless the previous marriage is judicially declared void by final judgment. Thus, if the marital *vinculum* of the previous marriage subsists because of the absence of judicial declaration of its nullity, the second marriage is contracted during the existence of the first marriage resulting in the crime of bigamy.

Under Article 40 of the Family Code, the marital *vinculum* of a previous marriage that is void *ab initio* subsists only for purposes of remarriage. For purposes ***other than*** remarriage, marriages that are void *ab initio*, such as those falling under Articles 35 and 36 of the Family Code, are void even without a judicial declaration of nullity. As the Court held in ***Cariño v. Cariño*:**[5]

> Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. Meaning,

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[4] G.R. No. 104818, 17 September 1993, 226 SCRA 572.

[5] G.R. No. 132529, 2 February 2001, 351 SCRA 127.

where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void. *However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity*. x x x (Italics supplied)

Cariño, penned by Justice Consuelo Ynares-Santiago herself, contradicts the statement in her present *ponencia* that "under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding." I believe the ruling in ***Cariño*** is correct and should not be disturbed. As Justice Jose C. Vitug explained in his recent textbook on Civil Law (Volume I):

> The phrase "for purposes of remarriage" is not at all insignificant. *Void marriages, like void contracts, are inexistent from the very beginning. It is only by way of* **exception** *that the Family Code requires a judicial declaration of nullity of the previous marriage before a subsequent marriage is contracted;* x x x[6] (Italics supplied)

Thus, the general rule is if the marriage is void *ab initio*, it is *ipso facto* void without need of any judicial declaration of nullity. The only recognized exception[7] under existing law is Article 40 of the Family Code where a marriage void *ab initio* is deemed valid for purposes of remarriage, hence necessitating a judicial declaration of nullity before one can contract a subsequent marriage.

Article 40 of the Family Code applies only to a situation where the ***previous*** marriage suffers from nullity while the second marriage does not. Under Article 40, what requires a judicial declaration of nullity is the previous marriage, not the subsequent marriage. Article 40 does not apply to a situation where the first marriage does not suffer from any defect while the second is void.

Accordingly, I vote to deny the petition and affirm the decision of the Court of Appeals finding appellant Salvador S. Abunado guilty of the crime of bigamy.

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[6] Civil Law, *Persons and Family Relations*, Vol. I, (2003 Ed.)

[7] See also note 4.

EN BANC

[A.M. No. CA-04-38. March 31, 2004]
(OCA IPI No. 02-57-CA-J)

FRANCISCO GALMAN CRUZ, *appellee, vs.* **JUSTICE PORTIA ALIÑO-HORMACHUELOS, JUDGE VICTORIA FERNANDEZ-BERNARDO, JUDGE CAESAR A. CASANOVA, JUDGE RENATO C. FRANCISCO, JUDGE MANUEL D.J. SYCIANGCO and JUDGE ESTER R. CHUA-YU,** *appellants*.

SYNOPSIS

In the ejectment case filed by the Province of Bulacan against herein complainant Francisco Galman Cruz, the latter was ordered ejected from the land owned by the former. Complainant then administratively charged Judge Manuel D. Syciangco who filed the ejectment case when he was the Provincial Attorney, and all judges and the justice of the Court of Appeals who unfavorably ruled on complainant's cause with Grave Misconduct and Gross Ignorance of the Law. When this case was referred to the Office of the Court Administrator, the latter recommended the dismissal of the complaint for lack of merit inasmuch as complainant questioned the correctness of the decisions or orders issued by respondents which is not within the province of an administrative case. It further recommended that complainant be required to show cause why he should not be held in contempt of court. In his compliance, complainant strongly reiterated that, with all honesty and belief, his complaint contained "full of proof of pieces of evidentiary facts" that would show a *prima facie* case against respondents which the Court should investigate. Thereafter, the Court Administrator recommended that complainant be cited for contempt of court for filing an unfounded or baseless complaint.

The Court ruled that the administrative case against respondents was utterly devoid of factual and legal basis. It was frivolous, calculated merely to harass, annoy, and cast a groundless aspersion on respondents' integrity and reputation.

Complainant's unfounded imputations against respondents were malicious and offended the dignity of the entire judiciary. For this, complainant was guilty of contempt of court and must be sentenced to pay a fine of ₱20,000.00.

SYLLABUS

1. **JUDICIAL ETHICS; ADMINISTRATIVE CHARGES AGAINST JUDGES; JUDGES WILL NOT BE HELD ADMINISTRATIVELY LIABLE FOR MERE ERRORS OF JUDGMENT. —** The Court has consistently held that judges will not be held administratively liable for mere errors of judgment in their rulings or decisions absent a showing of malice or gross ignorance on their part. Bad faith or malice cannot be inferred simply because the judgment is adverse to a party. To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and would make his position unbearable. Much less can a judge be so held accountable where to all indications, as in this case, the judgment complained of is far from erroneous. The judgment in the ejectment case has gone through all the levels of review, it is high time that any doubts on the validity of the decision be laid to rest.

2. **ID.; ID.; COURT CAN NOT GIVE CREDENCE TO CHARGES BASED ON MERE SUSPICION OR SPECULATION. —** [T]here is no cogent reason to delve into the allegations of connivance, fraud and deception between Governor Pagdanganan and the judges of Bulacan as they are not sustained by an iota of evidence but are only based on the unfounded perception of complainant. Familiarity between Governor Pagdanganan and the judges of Bulacan is insufficient proof, as connivance or conspiracy transcends companionship. This Court can not give credence to charges based on mere suspicion or speculation. It is well settled that in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. In the absence of contrary evidence, what will prevail is the presumption that the respondents have regularly performed their official duties, as in this case.

3. ID.; ID.; COURT WILL NOT HESITATE TO SHIELD THOSE UNDER ITS EMPLOY FROM UNFOUNDED SUITS. — Complainant may strongly disagree with the decisions of the respondents but unsubstantiated allegations of grave misconduct and gross ignorance of the law serve no purpose other than to harass judges and cast doubt on the integrity of the entire judiciary. As a member of the bar for half a century, complainant should know better than to file an unfounded administrative complaint. Verily, this Court is once again called upon to reiterate that, although the Court will never tolerate or condone any act, conduct or omission that would violate the norm of public accountability or diminish the peoples' faith in the judiciary, neither will it hesitate to shield those under its employ from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; COMPLAINANT'S UNFOUNDED IMPUTATIONS AGAINST RESPONDENT JUDGES AND JUSTICE IS MALICIOUS AND OFFENDS THE DIGNITY OF THE ENTIRE JUDICIARY. — [T]he administrative case against respondents is utterly devoid of factual and legal basis. It is frivolous, calculated merely to harass, annoy, and cast a groundless aspersion on respondents' integrity and reputation. Complainant's unfounded imputations against respondents is malicious and offends the dignity of the entire judiciary. For this, complainant is guilty of contempt of court and must be sentenced to pay a fine of ₱20,000.00.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

In a verified Complaint-Affidavit dated September 29, 2002, Francisco Galman Cruz charged Court of Appeals Justice Portia Aliño-Hormachuelos of the Court of Appeals, four presiding Judges of the Regional Trial Court (RTC) of Malolos, Bulacan, namely: Judge Victoria Fernandez-Bernardo (Branch 18), Judge Caesar A. Casanova (Branch 80), Judge Renato C. Francisco (Branch 19) and Judge Manuel D.J. Syciangco (Branch 6); and Judge Ester R. Chua-Yu of the Municipal Trial Court (MTC)

of Bulacan, Bulacan (Branch 1) with Grave Misconduct and Gross Ignorance of the Law.

It appears that complainant was the defendant in Civil Case No. 94-98 for ejectment before the MTC of Malolos, Bulacan involving a parcel of land owned by the Province of Bulacan.[1] The complaint was filed by the then "provincial attorney," now respondent RTC Judge Syciangco, under a special power of attorney executed by then Governor Roberto Pagdanganan in favor of the Provincial General Services Officer, Engr. Romeo S. Castro.[2] Initially, the case was assigned to Branch 2 but when the presiding judge of said court was transferred to another court, respondent, then MTC, Judge Syciangco was appointed in his stead. Respondent Judge Syciangco immediately recused himself because he was the former counsel for the plaintiff. Civil Case No. 94-98 was then assigned to Branch 1, presided by Judge Mario Capellan who also inhibited himself on motion of the complainant. In view thereof, Executive Judge Natividad Dizon of the RTC of Malolos, Bulacan, designated respondent Judge Chua-Yu of the MTC of Bulacan, Bulacan, to try and decide said ejectment case.[3] On September 5, 1997, respondent Judge Chua-Yu rendered judgment ordering the ejectment of complainant.[4]

Complainant filed an appeal with the RTC of Malolos, Bulacan, docketed as RTC Case No. 884-M-97. The case was assigned to Branch 80 presided by respondent Judge Casanova. On March 3, 1999, respondent Judge Casanova affirmed the decision rendered by respondent Judge Chua Yu.[5]

Dissatisfied, complainant filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 52309.[6] On February

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[1] *Rollo*, p. 17.

[2] *Id*., p. 16.

[3] *Id*., p. 29.

[4] *Id*., p. 30.

[5] *Id*., p. 40.

[6] *Id*., p. 45.

28, 2000, respondent Justice Portia Aliñio-Hormachuelos, as *ponente* affirmed the judgment of the lower court.[7]

Undaunted, complainant further appealed to this Court but the same was dismissed for having been filed out of time.

On October 15, 2001, complainant filed a petition for annulment of judgment with the RTC of Malolos, Bulacan, docketed as Civil Case No. 689-M-2001.[8] The case was raffled to Branch 19 presided by respondent Judge Francisco. On October 22, 2001, respondent Judge Francisco denied the prayer for temporary restraining order (TRO) and preliminary injunction.[9]

On October 29, 2001, complainant filed a motion for inhibition of respondent Judge Francisco.[10] He also filed a motion for reconsideration of the denial of the prayer for TRO. On November 5, 2001, respondent Judge Francisco voluntarily inhibited himself from the case. The case was transferred to Branch 18 presided by respondent Judge Fernandez-Bernardo. On January 3, 2002, respondent Judge Fernandez-Bernardo denied the motion for reconsideration.[11] On September 10, 2002, complainant filed a motion for voluntary inhibition of respondent Judge Fernandez-Bernardo. On October 1, 2002, respondent Judge Fernandez-Bernardo denied the motion for inhibition.[12]

On September 30, 2002, complainant filed the complaint-affidavit against the above-named respondents[13] with the following allegations:

Respondent Judge Syciangco, as the then "provincial attorney," acted in connivance with then Governor Pagdanganan in filing the complaint for ejectment which did not have the sanction of the

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[7] Concurred in by Justices Corona Ibay-Somera and Elvi John S. Asuncion, *id.,* p. 65.

[8] *Id.,* p. 73.

[9] *Id.,* p. 99.

[10] *Id.,* p. 101.

[11] *Id.,* p. 136.

[12] *Id.,* p. 142.

[13] *Id.,* p. 3.

Provincial Board. Respondent Judge Chua-Yu tried and decided the ejectment case although she did not have jurisdiction considering she was a not a judge of Malolos, Bulacan where the property was located. Respondent Judge Casanova affirmed the judgment of respondent Judge Chua-Yu. Respondent Justice Aliño-Hormachuelos affirmed the judgment of respondent Judge Casanova. Respondent Judge Francisco refused to grant a temporary restraining order (TRO). Respondent Judge Fernandez-Bernardo refused to issue a TRO based on his motion for reconsideration. All the respondents committed "misconduct and corruption, inefficient (sic) and gross inexcusable negligence; and simple violation of law on jurisdiction and fraud on administrative law; and knowingly rendering unjust judgment — void judgment."[14]

Required to comment, each of the respondents filed separate comments denying the allegations leveled against them. Respondent Judge Syciangco alleges that he is being charged for acts he performed when he was the Provincial Legal Officer of Bulacan. The other respondents aver that they acted in accordance with law and jurisprudence in deciding the case before them. All the respondents submit that the complaint is baseless and complainant should be sanctioned for filing an unfounded complaint which robbed respondents of precious time which could otherwise have been devoted to the cases in court.

In its Evaluation Report dated January 29, 2003, the Office of the Court Administrator (OCA) recommended the dismissal of the complaint for lack of merit inasmuch as complainant questions the correctness of the decisions or orders issued by respondents which is not within the province of an administrative case. The OCA further recommended that complainant be required to show cause why he should not be held in contempt of court.[15]

Approving the recommendation of the OCA, the Court, in a Resolution dated February 24, 2003, dismissed the complaint

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[14] *Id.*, p. 4.

[15] *Id.*, p. 230.

for lack of merit and required complainant to show cause why he should not be held in contempt of court.[16]

On March 21, 2003, complainant filed a motion for reconsideration of the dismissal of the complaint.[17] The Court denied the same in a Resolution dated July 8, 2003 and reiterated the Resolution dated February 24, 2003 requiring complainant to show cause why he should not be held in contempt of court.[18]

On August 4, 2003, complainant filed his compliance. He strongly reiterates that, with all honesty and belief, his complaint contains "full of proof of pieces of evidentiary facts" that would show a *prima facie* case against respondents which the Court should investigate. Complainant points out that it was former Governor Roberto Pagdanganan who ordered the filing of ejectment case against him in the sala of Judge Syciangco who used to be the Legal Counsel of the Province of Bulacan. Complainant submits that this fact proves connivance, fraud and deception between Governor Pagdanganan and the judges of Bulacan which he made as one of his basis in filing the administrative case.[19]

In his Memorandum Report dated February 12, 2004, Court Administrator Presbitero J. Velasco, Jr. recommends that complainant be cited for contempt of court for filing an unfounded or baseless complaint. He opines:

> Complainant's explanation is lacking in substance, and his theory of conspiracy is based on mere suspicion and speculation. The connection which complainant seeks to establish from the order to file ejectment case against him and the decision reached in said case is tenuous, and that the conclusion he seeks to draw that there was conspiracy is without any basis.
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> x x x x x x x x x

[16] *Id.*, p. 247.

[17] *Id.*, p. 249.

[18] *Id.*, p. 343.

[19] *Id.*, p. 344.

Unfounded accusations or allegations or words tending to obstruct, embarrass or influence the court in administering justice or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose and on the contrary constitutes direct contempt of court or contempt in *facie curiae* and a violation of the lawyer's oath and a transgression of the canons of professional ethics, for which a lawyer like complainant may be administratively disciplined.

It is therefore appropriate to enjoin herein complainant and other members of the bar who file administrative complaints against members of the bench that they should do so after proper circumspection so as not to unduly burden the Court in the discharge of its function of administrative supervision over judges and court personnel.

The Court has meted the corresponding disciplinary measures against erring judges, including dismissal and suspension where warranted, and welcomes the honest efforts of the Bar to assist it in the task. But lawyers like complainant should also bear in mind that they owe fidelity to courts as well as to their clients and that the filing of unfounded or frivolous charges against judges such as the one at hand as a means of harassing them whose decisions have not been to their liking will subject them to appropriate disciplinary action as officers of the court.

The Court finds the recommendation of the Court Administrator to be well taken.

The Court has consistently held that judges will not be held administratively liable for mere errors of judgment in their rulings or decisions absent a showing of malice or gross ignorance on their part. Bad faith or malice cannot be inferred simply because the judgment is adverse to a party. To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and would make his position unbearable.[20] Much less can a judge be so held accountable where to all indications, as in this case, the judgment complained of is far from erroneous. The judgment in the ejectment case has gone through all the levels

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[20] *Bacar vs. De Guzman, Jr.*, 271 SCRA 328, 338 (1997).

of review, it is high time that any doubt on the validity of the decision be laid to rest.

Furthermore, there is no cogent reason to delve into the allegations of connivance, fraud and deception between Governor Pagdanganan and the judges of Bulacan as they are not sustained by an iota of evidence but are only based on the unfounded perception of complainant. Familiarity between Governor Pagdanganan and the judges of Bulacan is insufficient proof, as connivance or conspiracy transcends companionship. This Court can not give credence to charges based on mere suspicion or speculation.[21] It is well settled that in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint[22] In the absence of contrary evidence, what will prevail is the presumption that the respondents have regularly performed their official duties,[23] as in this case.

A thorough review of the record also reveals that complainant has the penchant for calling for the inhibition of judges when he perceives the judge is partial or when he receives an unfavorable order or decision from a judge. In fact, the ejectment case passed through more than five different judges due to complainant's proclivity to file motions for inhibition. In doing so, complainant has shown that he was avidly shopping for judges favorable to his cause. His actuations caused needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned.

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[21] *Ang vs. Asis*, 373 SCRA 91, 99 (2002); *Daracan vs. Natividad*, 341 SCRA 161, 177 (2000); *Lambino vs. De Vera*, 275 SCRA 60, 64 (1997).

[22] *Licudine vs. Saquilayan*, 396 SCRA 650, 656 (2003); *Montes vs. Bugtas*, 356 SCRA 539, 545 (2001); *Barbers vs. Laguio, Jr.*, 351 SCRA 606, 634 (2001); *Sarmiento vs. Salamat*, 364 SCRA 301, 308 (2001); *Lorena vs. Encomienda*, 302 SCRA 632, 641 (1999); *Cortes vs. Agcaoili*, 294 SCRA 423, 456 (1998).

[23] *Licudine vs. Saquilayan, supra; Sarmiento vs. Salamat, supra; Onquit vs. Binamira-Parcia*, 297 SCRA 354, 364 (1998).

Complainant may strongly disagree with the decisions of the respondents but unsubstantiated allegations of grave misconduct and gross ignorance of the law serve no purpose other than to harass judges and cast doubt on the integrity of the entire judiciary. As a member of the bar for half a century,[24] complainant should know better than to file an unfounded administrative complaint.

Verily, this Court is once again called upon to reiterate that, although the Court will never tolerate or condone any act, conduct or omission that would violate the norm of public accountability or diminish the peoples' faith in the judiciary, neither will it hesitate to shield those under its employ from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.[25]

The eloquent words of the late Justice Conrado V. Sanchez in *Rheem of the Philippines vs. Ferrer*[26] are enlightening:

> By now, a lawyer's duties to the Court have become commonplace. Really, there could hardly be any valid excuse for lapses in the observance thereof. *Section 20(b), Rule 138 of the Rules of Court, in categorical terms, spells out one such duty: 'To observe and maintain the respect due to the courts of justice and judicial officers.'* As explicit is the first canon of legal ethics which pronounces that *'[i]t is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.'* That same canon, as a corollary, makes it peculiarly incumbent upon lawyers to support the courts against 'unjust criticism and clamor.' And more. The attorney's oath solemnly binds him to a conduct that should be 'with all good fidelity . . . to the courts.' Worth remembering is that *the duty of an attorney to the courts 'can only be maintained by rendering no service involving any disrespect to the judicial office which he is bound to uphold.'*

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[24] Complainant was admitted to the Philippine Bar on January 18, 1954.

[25] *Ang vs. Quilala*, 396 SCRA 645, 649 (2003): *Sarmiento vs. Salamat, supra*.

[26] 20 SCRA 441 (1967).

We concede that a lawyer may think highly of his intellectual endowment. That is his privilege. And, he may suffer frustration at what he feels is other's lack of it. That is his misfortune. Some such frame of mind, however, should not be allowed to harden into a belief that he may attack a court's decision in words calculated to jettison the time-honored aphorism that courts are the temples of right. He should give due allowance to the fact that judges are but men; and men are encompassed by error, fettered by fallibility.[27]

In *Surigao Mineral Reservation Board vs. Cloribel*, [28] Justice Sanchez further elucidated:

A lawyer is an officer of the courts; he is, "like the court itself, an instrument or agency to advance the ends of justice." His duty is to uphold the dignity and authority of the courts to which he owes fidelity, "not to promote distrust in the administration of justice." Faith in the courts a lawyer should seek to preserve. For, to undermine the judicial edifice "is disastrous to the continuity of government and to the attainment of the liberties of the people." Thus has it been said of a lawyer that "[a]s an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice."

It ill behooves Santiago to justify his language with the statement that it was necessary for the defense of his client. A client's cause does not permit an attorney to cross the line between liberty and license. Lawyers must always keep in perspective the thought that "[s]ince lawyers are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice; to this, their clients' success is wholly subordinate; and their conduct ought to and must be scrupulously observant of law and ethics." As rightly observed by Mr. Justice Malcolm in his well-known treatise, a judge from the very nature of his position, lacks the power to defend himself and it is the attorney, and no other, who can better or more appropriately support the judiciary and the incumbent of the judicial position. From this, Mr. Justice Malcolm continued to say: "It will of course be a trying ordeal for attorneys under certain conditions to maintain

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[27] *Id.*, p. 444.

[28] 31 SCRA 1 (1970).

respectful obedience to the court. It may happen that counsel possesses greater knowledge of the law than the justice of the peace or judge who presides over the court. It may also happen that since no court claims infallibility, judges may grossly err in their decisions. Nevertheless, discipline and self-restraint on the part of the bar even under adverse conditions are necessary for the orderly administration of justice."

The precepts, the teachings, the injunctions just recited are not unfamiliar to lawyers. And yet, this Court finds in the language of Atty. Santiago a style that undermines and degrades the administration of justice. The stricture in Section 3(d) of Rule 71 of the Rules — against improper conduct tending to degrade the administration of justice — is thus transgressed. Atty. Santiago is guilty of contempt of court.[29] (Citations omitted)

In fine, the administrative case against respondents is utterly devoid of factual and legal basis. It is frivolous, calculated merely to harass, annoy, and cast a groundless aspersion on respondents' integrity and reputation. Complainant's unfounded imputations against respondents is malicious and offends the dignity of the entire judiciary. For this, complainant is guilty of contempt of court and must be sentenced to pay a fine of ₱20,000.00.

WHEREFORE, complainant lawyer Francisco Galman Cruz is found guilty of Contempt of Court and is *FINED* in the amount of Twenty Thousand Pesos (₱20,000.00) with a warning that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Guitierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Vitug, J., on official leave.

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[29] *Id*., pp. 16-18.

SECOND DIVISION

[A.M. No. MTJ-03-1489. March 31, 2004]
(Formerly AM-OCA IPI No. 02-1265-MTJ)

DR. FRANCISCA T. YOINGCO and ATTY. NESCITO C. HILARIO, *complainants, vs.* **HON. CONCEPCION V. GONZAGA, Presiding Judge, Municipal Trial Court of Sto. Tomas, Batangas,** *respondent.*

SYNOPSIS

Dr. Francisca T. Yoingco was charged before the Municipal Trial Court (MTC) of Sto. Tomas, Batangas presided by respondent Judge Concepcion V. Gonzaga of four counts of violation of Batas Pambansa Blg. 22. Relative thereto, Dr. Yoingco and Atty. Nescito C. Hilario charged the respondent with grave abuse of authority and/or oppression for violating the constitutional right of Dr. Yoingco to speedy trial and gross ignorance of the law, jurisdiction and rules for denying complainants' motion to quash on the ground that improper venue is only procedural, not jurisdictional and can be waived by failure to raise it at the proper time. In her comment, respondent alleged that the delay in the arraignment was due to the unavailability of the public prosecutor and litigated motions filed and intervening incidents caused by the accused and counsel. The Office of the Court Administrator recommended then that respondent be held administratively liable for acting on the criminal cases over which the court has no jurisdiction.

The Court ruled that respondent's denial of the motion to quash was patently erroneous. It is an exception to the hornbook doctrine that when the subject of the complaint may be subject to judicial review, the administrative complaint shall be dismissed. In criminal proceedings, improper venue is lack of jurisdiction. Venue in criminal cases is an essential element of jurisdiction. Respondent's irresponsible convolution of the concept of venue in a civil case and in a criminal case exhibits ignorance of the law that caused undue confusion to the herein complainants. When a judge displays an utter lack of familiarity with the Rules of Criminal Procedure, he erodes the public confidence in the competence of our courts. Such is ignorance of the law. Accordingly, respondent was reprimanded.

SYLLABUS

1. JUDICIAL ETHICS; ADMINISTRATIVE CHARGES AGAINST JUDGES; WITHDRAWAL OF THE COMPLAINT BY THE COMPLAINANT DOES NOT NECESSARILY ENSURE THE DISMISSAL THEREOF. — [A]s stated by the OCA, the withdrawal of a complaint by the complainant does not necessarily ensure the dismissal of the administrative case. As a general rule, the Court does not dismiss administrative cases against members of the bench merely on the basis of withdrawal of charges even as the notice of withdrawal of the complaints filed by herein complainants is only a provisional withdrawal due to their assertion that they need time to verify the reasons given by Judge Gonzaga for the delay in the disposition of the criminal cases.

2. ID.; ID.; GRAVE ABUSE OF AUTHORITY AND OPPRESSION; NOT APPRECIATED SINCE THE DELAY OF ARRAIGNMENT WAS DUE TO THE LACK OF A PUBLIC PROSECUTOR AND THE POSTPONEMENTS AT THE INSTANCE OF THE ACCUSED. — [T]he Court agrees with the finding of the OCA that the charge of delay in the arraignment of Dr. Yoingco cannot be considered against Judge Gonzaga in view of the lack of public prosecutor assigned to her court and the postponements at the instance of Dr. Yoingco. Thus, respondent should be exonerated from the charge of grave abuse of authority and oppression.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; IMPROPER VENUE IS LACK OF JURISDICTION. — In criminal proceedings, improper venue is lack of jurisdiction. Venue in criminal cases is an essential element of jurisdiction. Unlike in a civil case where venue may be waived, this could not be done in a criminal case because it is an element of jurisdiction. It is basic that one can not be held to answer for any crime committed by him except in the jurisdiction where it was committed.

4. JUDICIAL ETHICS; ADMINISTRATIVE CHARGES AGAINST JUDGES; IGNORANCE OF THE LAW; IRRESPONSIBLE CONVOLUTION OF THE CONCEPT OF VENUE IN A CIVIL CASE AND IN A CRIMINAL CASE. — Respondent's irresponsible convolution of the concept of venue in a civil case and in a criminal case exhibits ignorance of the law that caused undue confusion to the herein complainants. When a judge displays an utter lack of familiarity with the Rules of Criminal Procedure,

he erodes the public confidence in the competence of our courts. Such is ignorance of the law.

5. ID.; ID.; ID.; ID.; ERRING JUDGE WAS REPRIMANDED. — Considering that this is her first offense and considering further that there is no allegation or proof that the same was committed with malice or with bad faith or for monetary consideration, and the same did not cause undue damage or injury to complainants as the motion to quash was denied, although for the wrong reason, the Court deems it just to reprimand respondent.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

In a verified complaint received by the Office of the Court Administrator (OCA) on June 20, 2002, Dr. Francisca T. Yoingco and Atty. Nescito C. Hilario charged respondent Judge Concepcion V. Gonzaga of the Municipal Trial Court of Sto. Tomas, Batangas, with "Grave Abuse of Authority and/or Oppression and Gross Ignorance of the Law, Jurisprudence and Rules" relative to Criminal Cases Nos. 2000-185 to 2000-188, entitled "*People of the Philippines vs. Dr. Francisca T. Yoingco*" for Violation of BP 22.

Complainant Dr. Yoingco is the accused while Atty. Hilario is her counsel in the said criminal cases. Before arraignment could be set, Dr. Yoingco filed a Motion to Quash on the ground that the MTC of Batangas has no jurisdiction because the subject checks were made, drawn and issued at the office of complainant in Makati, Metro Manila.

After hearing, respondent Judge Gonzaga issued an Order dated February 19, 2002 denying the Motion to Quash, ratiocinating, thus:

The ground of the Motion to Quash is improper venue. Considering that it is basic in law, as held in the case of *Dacoycoy vs. Intermediate Appellate Court* 195 SCRA 641 (1991) that trial court may not *motu proprio* dismiss a complaint on the ground of improper venue, the court deemed it wise and prudent, to schedule the Motion for hearing, in order that it may be said that all efforts were exerted, to insure

compliance with due process, to which every party is entitled, towards an ideal and impartial administration of justice.

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Unlike jurisdiction over the subject matter, in these particular cases, the four checks issued by accused Dra. Yoingco to private complainant Norberto Carandang, which is conferred only by law, within the exclusive jurisdiction of Municipal Trial Courts, and may not be conferred by consent or waiver upon a court, which otherwise would have no jurisdiction, the venue of an action as fixed by statute, may be changed by consent of the parties and an objection on improper venue may be waived by the failure of the accused to raise it at the proper time. This was what actually happened in the instant cases for Violation of BP 22, when accused failed to raise the question of improper venue at the first instance that the cases were filed in court, more than a year ago.

Rules as to jurisdiction can never be left to the consent or agreement of the parties. Venue is procedural, not jurisdictional and hence may be waived. It is meant to provide convenience to the parties rather than restrict their access to the court, as it relates to the place of trial. In such an event, the court may still render a valid judgment.[1]

In the same Order, respondent set the arraignment of Dr. Yoingco on April 2, 2002. The arraignment was reset to June 10, 2002 but no arraignment was held on the said date up to the filing of the present administrative case.

Complainants charge respondent with:

I. Grave Abuse of Authority and/or Oppression:

a. that Judge Gonzaga violated the Constitutional right of Dr. Yoingco to speedy trial as provided for under the enabling law, R.A. 8493, and as implemented by Supreme Court Circular No. 38-98 dated August 11, 1998 which provides:

"The arraignment, and the pre-trial if the accused pleads not guilty to the crime charged, shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. . . ."

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[1] *Rollo,* pp. 17-19.

II. Gross Ignorance of the Law, Jurisprudence, and Rules:

a. The ground raised in the Motion to Quash was that the MTC of Sto. Tomas, Batangas has no territorial jurisdiction over the case and the person of Dr. Yoingco because the alleged transaction took place in Makati City, including the issuance of the checks, the presentment to the bank of the said checks, and dishonor of the same and this was duly proven thru testimonial and documentary evidence during the hearing of her Motion to Quash; however, such findings were not included in the subject Order of February 19, 2002 in utter violation of Section 1 of Rule 36 of the 1997 Rules of Civil Procedure;

b. Judge Gonzaga declared that the ground of the said Motion to Quash is VENUE, and NOT territorial jurisdiction over the case and person of the accused which clearly shows her incompetence and gross ignorance of the law and rules;

c. It is gross ignorance of jurisprudence for the respondent Judge to equate the issue of territorial jurisdiction with venue, as she cited the case of *Dacoycoy vs. Intermediate Appellate Court* (195 SCRA 641); and

d. It is falsification of judicial records or sheer gross ignorance on the part of Judge Gonzaga when she ruled that Dr. Yoingco "failed to raise the question of improper venue at the first instance that the cases were filed in court, more than a year ago" because Dr. Yoingco is NOT questioning 'IMPROPER VENUE' as claimed by the respondent Judge, but the territorial jurisdiction of the MTC of Sto. Tomas, Batangas to try and decide the subject criminal cases since the transaction involving the issuance, presentment, and dishonor of the subject checks were all done and had transpired in Makati City.[2]

On July 4, 2002, complainants filed a Notice of Withdrawal of Complaints with the OCA stating that respondent had explained

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[2] *Rollo,* pp. 3-5.

to them the reasons for her action/inaction that justify the delay of the disposition of the criminal cases and that it would take time for them to verify the reasons given by Judge Gonzaga; and praying that their complaints be considered withdrawn without prejudice.[3]

On July 25, 2002, the OCA referred the complaint to respondent for her Comment.

In her Comment, respondent alleges, as follows:

1. Four (4) criminal cases for violation of B.P. 22 were filed against complainant Dr. Francisca T. Yoingco who never appeared in court and that it was her daughter-in-law who negotiated an amicable settlement in her behalf but which ended in futility. Hence, proceedings as mandated began on June 13, 2001 when the court acquired jurisdiction over the person of the accused;

2. When the accused appeared for the first time, the court, seeing her advanced age, was moved to renew the efforts for settlement which her daughter-in-law had initiated. This was the reason the Court cited the Dacoycoy case even if it was civil in nature to support the stand that the court could *motu proprio* dismiss the case and resolve the motion; and

3. It is not true that the delay in the arraignment of the accused was attributable to her. She points out that criminal cases were scheduled for trial once a week due to the unavailability of the public prosecutor. The trial of the case had been set but was deferred and postponed due to litigated motions filed and intervening incidents caused by the accused and counsel.[4]

In a Memorandum dated March 13, 2003,[5] the OCA recommends that the complaints be re-docketed as a regular administrative case and that respondent be held administratively liable for acting on the criminal cases over which her court has no jurisdiction and fined in the amount of ₱10,000.00 with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

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[3] *Rollo*, p. 24.

[4] *Rollo*, pp. 26-28.

[5] *Rollo*, pp. 34-36.

In a Resolution dated April 21, 2003,[6] the Court noted the report of the OCA and directed that the case be re-docketed as a regular administrative matter. In another Resolution[7] of even date, the Court required the parties to manifest whether or not they were submitting the case for resolution based on the pleadings filed. Complainants responded in the affirmative.[8] In her letter dated May 29, 2003, respondent likewise manifested her willingness to submit the case for resolution based on the pleadings filed but points out that despite the pleadings filed and the notice of withdrawal of complaints, she cannot understand why this became an administrative matter.

In compliance with the Court's Resolution dated March 8, 2004, the Clerk of Court of the Municipal Trial Court of Sto. Tomas, Batangas, furnished us with certified true copies of the four criminal complaints adverted to in the present administrative case.

After going over the records of the case, the Court agrees with the findings of the OCA, except for the recommended penalty.

First, as stated by the OCA, the withdrawal of a complaint by the complainant does not necessarily ensure the dismissal of the administrative case. As a general rule, the Court does not dismiss administrative cases against members of the bench merely on the basis of withdrawal of charges[9] even as the notice of withdrawal of the complaints filed by herein complainants is only a provisional withdrawal due to their assertion that they need time to verify the reasons given by Judge Gonzaga for the delay in the disposition of the criminal cases.

Secondly, the Court agrees with the finding of the OCA that the charge of delay in the arraignment of Dr. Yoingco cannot be considered against Judge Gonzaga in view of the lack of

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[6] *Rollo*, p. 37.

[7] *Rollo*, p. 38.

[8] *Rollo*, p. 40.

[9] *Enojas, Jr. vs. Gacott, Jr.*, 322 SCRA 272, 278-279 (2000).

public prosecutor assigned to her court and the postponements at the instance of Dr. Yoingco. Thus, respondent should be exonerated from the charge of grave abuse of authority and oppression.

Thirdly, the Court agrees with the recommendation of the OCA that respondent be found guilty of gross ignorance of the law, jurisprudence and the rules.

The Motion to Quash is primarily anchored on lack of jurisdiction considering that the subject checks were not made, drawn and issued at Sto. Tomas, Batangas but in Makati City; that the MTC of Sto. Tomas, Batangas has no jurisdiction over the criminal complaints as the elements of the offense of violation of Bouncing Checks Law occurred in Makati City which is outside of the territorial jurisdiction of the MTC of Sto. Tomas, Batangas.

However, a close scrutiny of the allegations in the four criminal complaints show that all the subject checks were made, drawn and issued at Barangay San Vicente, Sto. Tomas, Batangas, all within the territorial jurisdiction of the court presided over by respondent.

Unfortunately, respondent denied complainants' Motion to Quash for the wrong reasons: that the ground relied upon by Dr. Yoingco is improper venue which is only procedural, not jurisdictional and can be waived by failure to raise it at the proper time; that Dr. Yoingco failed to raise the ground of improper venue at the first instance that the cases were filed in court more than a year ago; and that by virtue of the ruling of the Court in a civil case, entitled, *Dacoycoy vs. IAC*,[10] that when the ground is improper venue, the court cannot *motu proprio* dismiss it but has to conduct hearing to ensure compliance with due process.

Respondent's denial of the motion to quash is patently erroneous. It is an exception to the hornbook doctrine that when the subject of the complaint may be subject to judicial review, the administrative complaint shall be dismissed.[11] In criminal

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[10] 195 SCRA 641.

[11] *Calleja vs. Santelices*, 328 SCRA 61, 67 (2000); *Vda. De Danao vs. Ginete* 395 SCRA 542, 547 (2003).

proceedings, improper venue is lack of jurisdiction.[12] Venue in criminal cases is an essential element of jurisdiction.[13] Unlike in a civil case where venue may be waived, this could not be done in a criminal case because it is an element of jurisdiction. It is basic that one can not be held to answer for any crime committed by him except in the jurisdiction where it was committed.[14]

Respondent's irresponsible convolution of the concept of venue in a civil case and in a criminal case exhibits ignorance of the law that caused undue confusion to the herein complainants. When a judge displays an utter lack of familiarity with the Rules of Criminal Procedure, he erodes the public confidence in the competence of our courts. Such is ignorance of the law.[15]

Considering that this is her first offense and considering further that there is no allegation or proof that the same was committed with malice or with bad faith or for monetary consideration,[16] and the same did not cause undue damage or injury to complainants as the motion to quash was denied, although for the wrong reason, the Court deems it just to reprimand respondent.

WHEREFORE, respondent Judge Concepcion V. Gonzaga is hereby *REPRIMANDED* with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

SO ORDERED.

Quisumbing (Acting Chairman), Callejo, Sr., and *Tinga, JJ.,* concur.

Puno, J., on official leave.

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[12] *Ganchero vs. Bellosillo,* 28 SCRA 673, 676 (1969).

[13] *Lopez vs. City Judge*, 18 SCRA 616, 619 (1966).

[14] *Hernandez vs. Albano,* 19 SCRA 95, 100 (1967).

[15] *Oporto, Jr. vs. Judge Monserate*, 356 SCRA 443, 450 (2001).

[16] *Lu vs. Siapno,* 335 SCRA 181, 187 (2000).

SECOND DIVISION

[A.M. No. P-04-1799. March 31, 2004]
(Formerly A.M. OCA IPI No. 02-1476-P)

RENATO M. DAGUMAN, *complainant, vs.* **MELVIN T. BAGABALDO, Sheriff IV, Regional Trial Court-Office of the Clerk of Court, Muntinlupa City,** *respondent*.

SYNOPSIS

Renato M. Daguman claimed that he was the special assistant of spouses Oscar Martin and Mercedes Yvette Lopez and was authorized to represent and attend the auction sale of their property to be conducted on August 28, 2002 at 10:00 a.m. at the Muntinlupa City Hall Quadrangle. On the said date, respondent Melvin T. Bagabaldo, as the sheriff in charge thereof, arrived at his office at about 11:40 a.m. He was then advised by respondent to have lunch first and to come back at 1:00 p.m. When he returned to the respondent's office at 1:05 p.m., the latter informed him that the auction sale had already been conducted at 12:20 p.m. Hence, Daguman filed the instant administrative complaint against respondent for dereliction of duty. In his comment, the respondent averred that the questioned auction proceedings were executed in accordance with law. When this case was referred to the Executive Judge of the Regional Trial Court of Quezon City, the latter recommended that the respondent be suspended from the service without pay for a period of two (2) months for simple neglect of duty.

The Court agreed. By his actuations, the respondent displayed conduct short of the stringent standards required of court employees. He was guilty of simple neglect of duty, which had been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Civil Service Commission (CSC) Memorandum Circular No. 19 classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense. The respondent should have known that it was upon him to have conducted the auction sale as scheduled, at 10:00 a.m. of August

28, 2002. He should have exerted diligent efforts to look for Mr. Bagabaldo before conducting the auction sale, or, at the very least, noted such efforts and the latter's absence in the minutes of the auction sale.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES; IN NOT CONDUCTING AN AUCTION SALE AS SCHEDULED, A SHERIFF BECOMES LIABLE FOR SIMPLE NEGLECT OF DUTY.** — By his actuations, the respondent displayed conduct short of the stringent standards required of court employees. He is guilty of simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Civil Service Commission (CSC) Memorandum Circular No. 19 classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense. The respondent should have known that it was incumbent upon him to have conducted the auction sale as scheduled, at 10:00 a.m. of August 28, 2002. He should have exerted diligent efforts to look for Mr. Bagabaldo before conducting the auction sale, or, at the very least, noted such efforts and the latter's absence in the minutes of the auction sale.

2. **ID.; ID.; COURT PERSONNEL; SHERIFFS; SHOULD AT ALL TIMES SHOW A HIGH DEGREE OF PROFESSIONALISM IN THE PERFORMANCE OF HIS DUTIES. —** Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. The respondent is reminded that as an officer of the court, he should at all times show a high degree of professionalism in the performance of his duties. The imperative and sacred duty of each and everyone in the court is to maintain its good name and standing as a temple of justice. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish *or even just tend to diminish* the faith of the people in the judiciary.

D E C I S I O N

CALLEJO, SR., *J.*:

The instant administrative complaint arose when Renato M. Daguman filed an Affidavit-Complaint[1] dated September 20, 2002 against Melvin T. Bagabaldo, Sheriff IV, Regional Trial Court, Muntinlupa City, for dereliction of duty.

The complainant averred that he was a special assistant of the Spouses Oscar Martin and Mercedes Yvette Lopez and was authorized to represent and attend the auction sale of their property covered by Transfer Certificate of Title No. 175895, relative to Foreclosure Proceeding Case No. E-02-086. The auction was to be held at 10:00 a.m. on August 28, 2002, at the Muntinlupa City Hall Quadrangle, National Road, Putatan, City of Muntinlupa. According to the complainant, he reported to the Office of the Clerk of Court of the RTC of Muntinlupa City, while the respondent arrived at his office at about 11:40 a.m. The respondent, as the sheriff in charge of the auction sale, advised him to have lunch first and to come back at 1:00 p.m. He assured the complainant that the auction sale would be conducted after the lunch break, upon the arrival of the mortgagee's representative.

The complainant then returned to the respondent's office at 1:05 p.m., and, to his surprise, the latter informed him that the auction sale had already been conducted at 12:20 p.m. The respondent showed him the minutes of the auction sale indicating that the subject property was "sold" to DBS Bank of the Philippines, Inc.[2]

According to the complainant, he was certain that no public auction took place because from 10:00 a.m. to 1:05 p.m., he stayed at the ground floor lobby of the Muntinlupa City Hall, facing the quadrangle where the supposed auction sale was to be held. The respondent never went out of his office from the time he arrived at 11:40 a.m. until 1:05 p.m. According to the complainant, the respondent even took his lunch together with his officemates inside

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[1] *Rollo*, pp. 1-3.

[2] Now BPI Family Saving Bank, Inc.

his office. Finally, as can be gleaned from the Minutes of Auction[3] duly certified by the respondent, the auction sale was held at 10:00 a.m. of August 28, 2002 "in front of the City Hall of Muntinlupa located at the Quadrangle of the City Hall of Muntinlupa," and closed at 12:20 p.m.

In his Comment, the respondent averred that the questioned auction proceedings were executed in accordance with law. Before reporting to the office on the scheduled date of the auction sale, he posted other notices of auction sales at the Alabang Post Office of other similar cases filed in their *sala*. Because of the unexpected traffic in Alabang, he informed the office by phone that he would be late, but made the assurance that the scheduled auction sale would be conducted at 12:00 noon. The respondent admitted that the complainant arrived at his office at around 11:00 a.m. and claimed to be the Special Assistant of the mortgagors Spouses Lopez. The respondent averred that although the complainant did not present any valid identification card or a special power of attorney as evidence of his authority, he explained all the matters relating to the subject auction sale, and answered all the complainant's queries in a nice and orderly manner. The respondent then instructed the complainant to have lunch first and to come back afterwards, as the representative of the bank stepped out for a while. According to the respondent:

> The mortgagee's representative came back at the office a minute after Mr. Renato M. Daguman left for lunch. After receiving the Affidavit of Publication and the formal bid of the said bank, the undersigned together with the bank's representative proceeded on a "stage" located at the Quadrangle of the City Hall of Muntinlupa to conduct the scheduled auction sale, and while we were on our way to the place of auction sale as stated in the notice, we earnestly and painstakingly looked for Mr. Daguman at the hallway and at the canteen so he can witness the sale, though according to him, he is not interested. The auction sale proceeded and terminated at 12:20 in the afternoon, and that was the only time we had our lunch inside the office. If Mr. Daguman was indeed at the lobby of the ground floor of the City Hall of Muntinlupa, as he alleged in the Complaint which is just a stone['s throw] away from the place where the auction sale took place, he would probably saw [*sic*] us conducting

[3] *Rollo*, p. 6.

the auction sale and immediately rush to the place so he could observe the same, if that was his intention. Likewise, if indeed he was within the place of the sale or is so proximate thereat, the undersigned could have easily noticed him, thus he will be invited to observed [*sic*] the conduct of the sale.[4]

The respondent prayed that the complaint be dismissed for being baseless, malicious, fabricated and was filed only to harass a public officials.[5]

On February 11, 2003, the complainant filed a Motion to Withdraw the Affidavit-Complaint[6] dated September 20, 2002. He explained that the said affidavit-complaint was made in compliance to a stern directive of Dionisio Llamas, Jr. who sought leverage against their opponent, BPI Family Savings Bank, Inc. According to the complainant, this was made as the basis for the plan to file a petition for the annulment of the questioned auction sale. He concluded that he personally never intended to file the said complaint against the respondent as he found nothing irregular in the conduct of the said officer.

Thereafter, in a Letter dated May 22, 2003, Angelo E. Base, as the representative of the registered owners of the parcel of land subject of the auction sale, requested that he be furnished copies of the records of the case, as well as all court notices and/or correspondences regarding the complaint. Thus:

We wish to emphasize that the said complaint of Mr. Daguman was filed on his official capacity as an employee of California Bus Lines, Inc. and upon the instructions and authority of the registered owners of the said real estate property namely Spouses Oscar Martin R. Lopez, Jr. & Mercedes Yvette Llamas Lopez, and Mr. Dionisio O. Llamas, Jr., President of California Bus Lines, Inc. For which reason, we would like to inform this Honorable Court that whether or not Mr. Daguman has expressed his disinterest to prosecute the administrative case against the sheriff who conducted the auction sale, the registered owners thereof shall have the right to proceed further with the complaint since they are the actual persons duly affected by the foreclosure being the registered

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[4] *Id*. at 10-11.

[5] *Id*. at 12.

[6] *Id*. at 16-17.

owners thereof. It is interesting to note herein that he having no participation on the execution of the mortgaged contracts neither a privy to the case, shall also have no rights whatsoever to withdraw his complaint against the said sheriff.[7]

Upon the Court Administrator's recommendation,[8] the Court, in a Resolution[9] dated July 21, 2003, resolved to deny the complainant's motion to withdraw the affidavit-complaint, and to refer the matter to Executive Judge Juanita Tomas Guerrero, Regional Trial Court, Muntinlupa City, for investigation, report and recommendation.

In his supplemental complaint-affidavit,[10] Mr. Base made the following averments: (1) despite the fact that the auction sale was scheduled to take place at 10:00 a.m. of August 28, 2002, the respondent chose to arrive in his office at 11:00 a.m.; (2) the respondent, in proceeding with the auction sale despite the absence of the mortgagor's representative, deprived the mortgagors the right and the opportunity to witness the auction sale; (3) the respondent sheriff's act of advising Mr. Daguman to take his lunch first and assuring the latter that the auction sale would be conducted at 1:00 p.m. was highly improper, considering that he conducted the sale at 12:20 in the afternoon; (4) the respondent failed to submit sworn statements of his officemates to substantiate his claim that he really went out of his office and conducted the sale at the Muntinlupa City Hall; and, (5) the minutes of the auction sale duly certified by the respondent is a misrepresented document and could be used as a basis for falsification of public document considering the latter's admission that he arrived at around 11:00 a.m.

On November 3, 2003, the Executive Judge made a Partial Report, worded as follows:

On September 23, 2003, only Mr. Angelo Base and Melvin Bagabaldo appeared. There was no return showing that Mr. Daguman was notified, so the Process Server or Deputy Sheriff of the Court was directed to serve the subpoena under pain of contempt, to Mr. Daguman at his

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[7] *Id*. at 21.

[8] *Id*. at 20.

[9] *Id*. at 22-23.

[10] *Id*. at 43-45.

given address. Mr. Base submitted his Supplemental Affidavit on October 3, 2003. In the meantime, the Return of the notice sent to Mr. Daguman shows that the latter is now based in Samar, hence, the failure of notice to him.

On October 10, 2003, Mr. Base submitted his manifestation to the effect that Mr. Bagabaldo uttered threatening remarks against him in the presence of court personnel on October 7, 2003. Mr. Bagabaldo allegedly told him, "*Namemersonal ka na, babalikan kita*." Instead of appearing on October 28, 2003, for further investigation, Mr. Base filed a Motion for Waiver of Appearance reiterating his earlier manifestation of threatening remarks by Mr. Bagabaldo, heretofore stated and requested that he is waiving his appearance in court. Further, he requested that Mr. Bagabaldo be directed to file his Rejoinder to the Supplemental Affidavit.

On October 28, 2003, Mr. Bagabaldo was directed to comment on the Manifestation and Waiver of Appearance by Mr. Angelo Base and the case was again set for hearing on November 11, 2003. . . .[11]

At the hearing of November 25, 2003, Fernanda G. Perez, Acting Branch Clerk of Court, Branch 204, was asked regarding the respondent's "threatening attitude" towards the complainant during the October 7, 2003 incident. The Executive Judge, thereafter, submitted the case for resolution, considering Mr. Base's waiver of appearance and the non-appearance of the original complainant Renato Daguman.[12]

In her Final Report dated December 23, 2003, the Executive Judge recommended that the respondent be suspended from the service without pay for a period of two (2) months for simple neglect of duty.

We agree. By his actuations, the respondent displayed conduct short of the stringent standards required of court employees. He is guilty of simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[13] Civil Service Commission (CSC) Memorandum

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[11] *Id*. at 72.

[12] *Id*. at 87.

[13] *Philippine Retirement Authority v. Rupa*, 363 SCRA 480 (2001).

Circular No. 19 classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense.[14]

The respondent should have known that it was incumbent upon him to have conducted the auction sale as scheduled, at 10:00 a.m. of August 28, 2002. He should have exerted diligent efforts to look for Mr. Bagabaldo before conducting the auction sale, or, at the very least, noted such efforts and the latter's absence in the minutes of the auction sale. As found by Executive Judge Guerrero:

1. While he knew that the subject auction sale would take place at 10:00 o'clock in the morning of August 28, 2002, he chose to come late because he attended to some other chores like posting of notices of another auction sale. His duty to timely attend to the scheduled auction sale on the aforementioned date takes precedence over his duty of posting of notices of another auction sale which was scheduled on a much later date of September 27, 2002.

2. Likewise, although he had notice[d] that Mr. Renato Daguman, a representative of the mortgagors, was present and was just taking his lunch, he could have waited up to 1:00 in the afternoon before he proceeded with the auction sale. Ordinary human experience dictates that lunchtime is from 12 o'clock to 1:00 in the afternoon. Moreover, one cannot help but wonder why the respondent proceeded with the auction at 12:20 p.m., when he himself advised Mr. Daguman to have lunch already. The most prudent thing to do was to have lunch himself, considering that it was in the middle of the day, when the sun was at its hottest (especially in the month of August), and the auction was to be conducted in the City Hall Quadrangle, which was outdoors. The undue haste by which the respondent conducted the auction is proof of his failure to give due attention to the proper performance of his task at hand;

3. Furthermore, since the respondent was aware of Mr. Daguman's presence before the latter left for lunch, he should have noted said fact, or Mr. Daguman's non-appearance later on as the case maybe [*sic*], in the Minutes of the Public Auction Sale, if only to show transparency in the conduct of the auction.[15]

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[14] *Acting Presiding Judge Leopoldo Cañete v. Nelson Manlosa, etc.*, A.M. P-02-1547, October 3, 2003.

[15] Final Report, pp. 5-6.

Anent the allegation that the respondent uttered threatening remarks against Mr. Base, the same is not substantiated by the evidence on record. As found by the Executive Judge, such allegation is baseless and unreasonable. The charge of falsification of public documents is, likewise, unsubstantiated, as there is no showing that the false entry in the minutes of the auction sale was made with the wrongful intent of injuring a third person.[16]

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them.[17] The respondent is reminded that as an officer of the court, he should at all times show a high degree of professionalism in the performance of his duties. The imperative and sacred duty of each and everyone in the court is to maintain its good name and standing as a temple of justice.[18] The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish *or even just tend to diminish* the faith of the people in the judiciary.[19]

WHEREFORE, for his failure to exercise reasonable diligence in the performance of his duties as an officer of the court,[20] the Court finds respondent Sheriff Melvin T. Bagabaldo guilty of simple neglect of duty. Considering that this is his first offense, the respondent is hereby *SUSPENDED* for a period of two (2) months without pay. He is *STERNLY WARNED* that any repetition of the same act in the future will be dealt with more severely. Let a copy of this decision be entered in the respondent's personal record.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.,* concur.

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[16] *Id*. at 7.

[17] *Ignacio v. Payumo*, 344 SCRA 169 (2000).

[18] *Ma. Corazon M. Andal v. Nicolas A. Tonga*, A.M. No. P-02-1581, October 28, 2003.

[19] *Judge Fe Albano Madrid v. Antonio T . Quebral, etc.*, A.M. P-03-1744-45, October 7, 2003.

[20] *Bilag-Rivera v. Flora*, 245 SCRA 603 (1995).

SECOND DIVISION

[A.M. No. RTJ-04-1834. March 31, 2004]
(Formerly OCA-IPI-02-1591-RTJ)

CHI CHAN LIEU @ "CHAN QUE," and HUI LAO CHUNG @ "LEOFE SENGLAO," *complainants, vs.* **HON. INOCENCIO M. JAURIGUE in his capacity as Presiding Judge, RTC, Branch 44, Mamburao, Occidental Mindoro,** *respondent*.

SYNOPSIS

Chi Chan Lieu and Hui Lao Chung are Chinese nationals charged with violation of Republic Act No. 6425 pending before the sala of respondent Judge Inocencio M. Jaurigue. Relative to the said case, they filed an administrative complaint against Judge Jaurigue by claiming that he was guilty of gross negligence for issuing an Order stating that "the witness to be presented has manifested his willingness and ability to testify in this Court by the two (2) telegrams he sent" where in fact it was not sent by the supposed witness, Brgy. Capt. Maximino Torreliza, but by the former mayor of Looc, Occidental Mindoro. They also asserted that Judge Jaurigue committed gross inefficiency for his failure to resolve within the required period the omnibus motion and motion for deposition filed by complainants and that he has shown abuse of authority, bias and partiality, and pre-judgment of the case as evidenced by his acts and use of intemperate language during the hearing of their motion for deposition. In his comment, the respondent judge denied the charges against him and claimed that the instant complaint were filed for the purpose of delaying the resolution of the case and pressuring him to inhibit.

The Court ruled that the respondent Judge himself admitted having overlooked this piece of information despite the fact that the telegrams were the bases for his Order denying the complainants' motion for deposition. The Court is of the view that Judge Jaurigue's negligence is a serious lapse that must not go unsanctioned.

Judge Jaurigue also averred that the Orders resolving the omnibus motion and motion for deposition filed by the complainants had been resolved in open court during the hearing on December 19, 2000 a motion filed only on January 17, 2001 or 29 days later? Resorting to the plain pretext smacks of dishonesty which is a serious charge or offense under Section 8, Rule 140 of the Rules of Court. It is also violative of Canon 3 of the Code of Judicial Conduct which commands judges to perform official duties honestly.

Judge Jaurigue should have known and prevented the anomalous situation in which his Orders supposedly dated January 16 and February 15, 2001 were served on the defendants only on June 13, 2001. Thus, it is difficult to dispel the impression that the Orders were ante-dated to cover-up the respondent Judge's contravention of the ninety-day requirement for rendering decisions and resolving motions. Hence, we found him guilty of gross incompetence and inefficiency.

Accordingly, Judge Inocencio M. Juarigue was severely reprimanded for Gross Incompetence, Inefficiency and Negligence and ordered to pay a FINE in the amount of Two Thousand Pesos (₱2,000.00) for dishonesty.

SYLLABUS

1. **JUDICIAL ETHICS; ADMINISTRATIVE CHARGES AGAINST JUDGES; NEGLIGENCE IS A SERIOUS LAPSE THAT MUST NOT GO UNSANCTIONED. —** To begin with, the complainants' contention that Judge Jaurigue was negligent in failing to ascertain from the records that the telegrams manifesting Torreliza's willingness and ability to testify in court were in fact sent, not by Torreliza himself, but by Mayor Felesteo Telebrico is uncontroverted. Verily, the respondent Judge himself admitted having overlooked this piece of information despite the fact that the telegrams were the bases for his *Order* denying the complainants' motion for deposition. The Court is of the view that Judge Jaurigue's negligence is a serious lapse that must not go unsanctioned.

2. **ID.; CODE OF JUDICIAL CONDUCT; COMMANDS JUDGES TO PERFORM THEIR OFFICIAL DUTIES HONESTLY; VIOLATED IN CASE AT BAR. —** What is more, Judge

Jaurigue avers that the *Orders* resolving the omnibus motion and motion for deposition filed by the complainants on December 11, 2000 and January 17, 2001, respectively, had been resolved in open court during the hearing on December 19, 2000. This explanation is obviously contrived. Indeed, how could he have resolved on December 19, 2000 a motion filed only on January 17, 2001, or 29 days later? Resorting to the plain pretext smacks of dishonesty which is a serious charge or offense under Section 8, Rule 140 of the Rules of Court. It is also violative of Canon 3 of the Code of Judicial Conduct which commands judges to perform official duties honestly.

3. ID.; ADMINISTRATIVE CHARGES AGAINST JUDGES; GROSS INCOMPETENCE AND INEFFICIENCY; JUDGE'S FAILURE TO OBSERVE THE NINETY-DAY REQUIREMENT FOR RENDERING DECISIONS AND RESOLVING MOTIONS, A CASE OF. — Judge Jaurigue should have known and prevented the anomalous situation in which his *Orders* supposedly dated January 16 and February 15, 2001 were served on the defendants only on June 13, 2001. In order to keep track of the court's business, he should have adopted a system of checklisting all matters submitted for resolution, including the dates when these were resolved and served on the parties. Failing this, it is difficult to dispel the impression that the *Orders* were ante-dated to cover-up the respondent Judge's contravention of the ninety-day requirement for rendering decisions and resolving motions. Hence, we find him guilty of gross incompetence and inefficiency.

4. ID.; CODE OF JUDICIAL CONDUCT; MEMBERS OF THE JUDICIARY MUST BE PROMPT AND EXPEDITIOUS IN THE DISPOSITION OF CASES. — Indeed, members of the judiciary must always strive to strictly observe the provisions of Section 15, Article VIII of the Constitution on the prompt and expeditious disposition of cases submitted for decision or resolution.

APPEARANCES OF COUNSEL

Emiliano N. Belmi for complainants.

R E S O L U T I O N

TINGA, *J.*:

For the Court's resolution is an *Administrative Complaint* dated July 25, 2002 against Regional Trial Court Judge, Hon. Inocencio M. Jaurigue (Jaurigue), for ignorance of the law, gross negligence and gross inefficiency, abuse of authority, bias, partiality, and pre-judgment in relation to the latter's disposition of several motions filed by the accused, Chi Chan Lieu and Hui Lao Chung, in Criminal Case No. Z-1058. The accused, complainants herein, are Chinese nationals charged with violating Republic Act No. 6425[1] in the said criminal case pending before the *sala*[2] of the respondent Judge.

According to the complainants, Judge Jaurigue failed to live up to the judicial standard of knowledge of the law in his unfounded denial of their motion to take the deposition of Barangay Captain Maximino Torreliza (Torreliza). The respondent Judge allegedly denied the motion on the grounds that there were other available witnesses whose testimonies would corroborate that of Torreliza and that unnecessary delay would result in conducting a session in Looc, Occidental Mindoro, which could be avoided if the testimony of other defense witnesses would instead be taken.[3] The complainants further claim that Judge Jaurigue made a sweeping misstatement of Rule 137 of the Rules of Court when he denied their motion for inhibition on the ground that "[T]here is nothing in the Rules of Court that direct the Presiding Judge to inhibit (himself) except *delicadeza* . . . "[4]

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[1] Sec. 14, Art. III in relation to Sec. 21(a), Art. IV of R.A. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended.

[2] Regional Trial Court, Branch 44, Mamburao, Occidental Mindoro.

[3] *Rollo*, pp. 12-13, Order dated May 9, 2000, Annex A of the Administrative Complaint.

[4] *Id*. at 3 and 14, Order dated July 18, 2001, Annex B of the Administrative Complaint.

Moreover, they question the basis for Judge Jaurigue's *Order* of July 18, 2001[5] compelling the appearance of a certain Dr. Vicente Caisip, Jr. (Dr. Caisip) to testify on Torreliza's capacity or incapacity to appear in court in spite of the respondent Judge's declaration, in the same *Order*, that the court cannot reconsider its denial of the motion to take Torreliza's deposition until certain preconditions, according to the respondent Judge, are met. These are: the examination of Torreliza's physical condition to be conducted by a medico-legal officer of the National Bureau of Investigation (NBI) and the determination by said officer that Torreliza is indeed incapable of testifying in court due to old age or infirmity.

They aver that Judge Jaurigue is guilty of gross negligence for issuing the *Order* dated February 15, 2001 where he stated that "the witness to be presented has manifested his willingness and ability to testify in this Court by the two (2) telegrams he sent."[6] According to them, had the respondent Judge consulted the records, he would have discovered that the telegrams were sent, not by Torreliza, but by the former mayor of Looc, Occidental Mindoro.

The complainants also assert that Judge Jaurigue committed gross inefficiency for his failure to resolve within the required period the omnibus motion and motion for deposition filed by the complainants on December 11, 2000 and January 17, 2001, respectively. Allegedly, in March and again on June 12, 2001, they inquired on the status of the pending motions, but were told that the motions have not yet been resolved. On June 13, 2001, the collaborating counsel for the complainants went to court with the intention of filing a motion for early resolution of the pending motions. He was told, however, that the *Orders* disposing of the motions were mailed to the parties on the same day. As it turned out, the *Order*s dated January 16, 2001 and February 15, 2001 denying the omnibus motion and motion for deposition, respectively, were both postmarked on June 13,

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[5] *Id*. at 15, Annex C of the Administrative Complaint.

[6] *Id*. at 6.

2001. The complainants claim that the circumstances surrounding the issuance of these *Orders* are questionable and highly irregular.

Furthermore, they aver that Judge Jaurigue has shown abuse of authority, bias and partiality, and pre-judgment of the case as evidenced by his acts and use of intemperate language during the hearing of their motion for deposition.

In his letter-comment[7] dated November 20, 2002, the respondent Judge vehemently denies the charges against him and claims that the instant complaint, as well as the petition for *certiorari* earlier filed by the complainants, were filed for the purpose of delaying the resolution of the case and pressuring him to inhibit himself.

According to Judge Jaurigue, he denied the motion for deposition filed by the complainants because he was not convinced that the intended witness, Torreliza, was indeed infirm. While Torreliza's testimony was material to the complainants' defense, he thought it wise to ascertain the true state of Torreliza's health in view of the objection interposed by the government prosecutor against the taking of Torreliza's deposition. This was also the reason why he required the appearance of Dr. Caisip and directed the NBI medico-legal officer to examine Torreliza's physical condition. He avers that Torreliza passed away on January 26, 2001; hence, the issue has become moot and academic.

As regards the motion for inhibition, he concedes that there are many grounds for the inhibition of a judge. However, he finds no cogent reason to justify his inhibition. He also admits having overlooked the fact that the two (2) telegrams which he relied upon in denying the motion for deposition were sent by Mayor Felesteo Telebrico and not by Torreliza himself. The mistake was, however, unintentional, so he explains.

With respect to his alleged failure to dispose of the omnibus motion and motion for deposition within the reglementary period, Judge Jaurigue claims that the motions were resolved in open court on December 19, 2000. According to him, the *Order*s resolving the motions were not yet attached to the records of

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[7] *Id*. at 65-68.

the case when the counsel for the complainants went to court to verify the status of the pending motions. He concedes, however, that the written *Order*s were mailed only on June 13, 2001.

The respondent Judge further asserts that the fact that he has issued orders unfavorable to the herein complainants does not necessarily mean that he acted with partiality, bias, abuse of authority and pre-judgment. The Transcript of Stenographic Notes taken during the hearing on July 18, 2001, which the complainants attached to the instant complaint as evidence of bias and partiality, does not bear out the complainants' allegations.

In his report[8] dated October 6, 2003, the Court Administrator finds that Judge Jaurigue's actions were not attended by fraud, dishonesty, corruption or malice. However, because of his unreasonable delay in resolving the complainants' pending motions, the Court Administrator recommends that the respondent Judge be admonished and directed to promptly dispose of all matters submitted to him for resolution with warning that the commission of the same or similar acts in the future would be dealt with more severely.

We find this recommendation too generous considering the circumstances.

To begin with, the complainants' contention that Judge Jaurigue was negligent in failing to ascertain from the records that the telegrams manifesting Torreliza's willingness and ability to testify in court were in fact sent, not by Torreliza himself, but by Mayor Felesteo Telebrico is uncontroverted. Verily, the respondent Judge himself admitted having overlooked this piece of information despite the fact that the telegrams were the bases for his *Order* denying the complainants' motion for deposition. The Court is of the view that Judge Jaurigue's negligence is a serious lapse that must not go unsanctioned.

What is more, Judge Jaurigue avers that the *Order*s resolving the omnibus motion and motion for deposition filed by the complainants on December 11, 2000 and January 17, 2001, respectively, had been resolved in open court during the hearing on December 19, 2000. This explanation is obviously contrived.

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[8] *Id*. at 78-84, Report of Court Administrator Presbitero J. Velasco, Jr.

Indeed, how could he have resolved on December 19, 2000 a motion filed only on January 17, 2001, or 29 days later? Resorting to the plain pretext smacks of dishonesty which is a serious charge or offense under Section 8, Rule 140 of the Rules of Court. It is also violative of Canon 3 of the Code of Judicial Conduct which commands judges to perform official duties honestly.

Furthermore, Judge Jaurigue should have known and prevented the anomalous situation in which his *Order*s supposedly dated January 16 and February 15, 2001 were served on the defendants only on June 13, 2001. In order to keep track of the court's business, he should have adopted a system of checklisting all matters submitted for resolution, including the dates when these were resolved and served on the parties.[9] Failing this, it is difficult to dispel the impression that the *Order*s were ante-dated to cover-up the respondent Judge's contravention of the ninety-day requirement for rendering decisions and resolving motions. Hence, we find him guilty of gross incompetence and inefficiency.

Indeed, members of the judiciary must always strive to strictly observe the provisions of Section 15, Article VIII of the Constitution on the prompt and expeditious disposition of cases submitted for decision or resolution.[10]

ACCORDINGLY, Judge Inocencio M. Jaurigue is severely REPRIMANDED for Gross Incompetence, Inefficiency and Negligence and ordered to pay a FINE in the amount of Two Thousand Pesos (₱2,000.00) for Dishonesty. He is also WARNED that a more drastic disciplinary action will be taken against him for the commission of similar irregularities. A copy of this *Resolution* should be attached to his personal record.

SO ORDERED.

Quisumbing (Acting Chairman), Austria Martinez, and *Callejo, Sr., JJ.,* concur.

Puno, J. (Chairman), on leave.

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[9] *De Leon v. Judge Castro*, 191 Phil. 556 (1981).

[10] *Perez v. Judge Andaya*, 349 Phil. 714 (1998).

THIRD DIVISION

[G.R. Nos. 132127-29. March 31, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RONIE GABELINIO,** *appellant.*

SYNOPSIS

For the three counts of rape charged against appellant Ronie Gabelinio, the trial court rejected his sweetheart defense, convicted him of the crimes charged and sentenced him to suffer the penalty of *reclusion perpetua* in each count. Hence, this appeal.

In affirming the decision of the trial court, the Court ruled that it is doctrinally settled that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the victim through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath.

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS. — The elements of rape under [Article 335 of the Revised Penal Code, as amended by R.A. 7659] are: (1) *the offender had carnal knowledge of the victim;* and (2) *such act was accomplished through the use of force or intimidation;* or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN THE PROSECUTION FOR RAPE, AN ACCUSED MAY BE CONVICTED BASED SOLELY ON THE TESTIMONY OF THE VICTIM. — In a prosecution for

rape, the victim's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof.

3. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED GREAT WEIGHT AND RESPECT. — It is doctrinally settled that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the victim through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath.

4. ID.; ID.; ALIBI; TO PROSPER, IT MUST BE SHOWN THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO HAVE BEEN AT THE CRIME SCENE AT THE TIME IT WAS COMMITTED. — For this defense to stand, it must be shown that not only was appellant somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.

5. ID.; ID.; SWEETHEART DEFENSE; TO BE CREDIBLE, MUST BE SUBSTANTIATED BY SOME DOCUMENTARY OR OTHER EVIDENCE OF THE RELATIONSHIP; NOT PRESENT IN CASE AT BAR. — We are not persuaded by appellant's claim that he and AAA are sweethearts and that what transpired between them was a consensual sex. A "sweetheart defense," to be credible, should be substantiated by some documentary or other evidence of the relationship – like mementos, love letters, notes, pictures and the like. Here, appellant categorically admitted that no such evidence exists. Clearly, his alleged romantic relation with AAA is just a figment of his imagination.

6. CRIMINAL LAW; RAPE; SWEETHEART CANNOT BE FORCED TO ENGAGE IN SEXUAL INTERCOURSE AGAINST HER WILL. — Assuming that appellant and AAA were sweethearts, it does not mean that he could not rape her. Such a relationship is not a guaranty that he will not assault and tarnish that which she holds so dearly and trample upon her honor and dignity. Indeed,

a sweetheart cannot be forced to engage in sexual intercourse against her will.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO ADVERSE INFERENCE CAN BE DRAWN FROM COMPLAINANT'S HESITATION OR FAILURE TO IMMEDIATELY EXPOSE HER TRAGIC EXPERIENCES. — Appellant also submits that AAA's disturbing silence and failure to report to their employer the rape incidents evince that the charges are mere fabrications. On this point, the Solicitor General aptly observed that appellant's "real threat that he would kill her family if she would report the incident to anyone proved disastrous and paralyzed her from taking immediate action against appellant." Indeed, no adverse inference can be drawn from complainant's hesitation or failure to immediately expose her tragic experiences. Fear of reprisal, social humiliation, family considerations, and economic reasons are sufficient explanations.

8. CRIMINAL LAW; RAPE; PROPER PENALTY. — Considering that appellant committed the crimes (in Criminal Cases Nos. 97-18209 and 97-18211) with the use of a firearm, a deadly weapon, the penalty imposable upon him is *reclusion perpetua* to death, pursuant to Article 335 of the Revised Penal Code[.] x x x In *People vs. Eduardo Limos*, we held: "Where no aggravating circumstance is alleged in the information and proven during the trial, the crime of rape through the use of a deadly weapon may be penalized only with *reclusion perpetua*, not death." In the present case, there is neither aggravating nor mitigating circumstance that attended the commission of the crimes. Thus, the trial court correctly imposed upon appellant the lesser penalty of *reclusion perpetua* in each count of rape committed with the use of a firearm. Likewise, the imposition of the penalty of *reclusion perpetua* for the rape committed through force and intimidation (Criminal Case No. 97-18210) is in order, following the provision of Article 335 of the Revised Penal Code, as amended[.]

9. ID.; ID.; CIVIL LIABILITY; ₱50,000 AS CIVIL INDEMNITY, ₱50,000 AS MORAL DAMAGES AND ₱25,000 AS EXEMPLARY DAMAGES AWARDED FOR EACH CASE. — With respect to appellant's civil liability, aside from the award of civil indemnity of ₱50,000.00 in each case, the trial court should have awarded the victim moral damages fixed at ₱50,000.00 (in each case) without need of pleading or proof of basis thereof. This is so because

the anguish and the pain she endured are evident. In our culture, which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator. We likewise award the victim exemplary damages of ₱25,000.00 in each case (Criminal Cases Nos. 97-18209 and 97-18211). Here, the use of a deadly weapon was alleged in both Informations and proved during the trial.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Appeal from the Decision[1] dated November 7, 1997 of the Regional Trial Court, Branch 50, Bacolod City, in Criminal Cases Nos. 97-18209, 97-18210 and 97-18211 convicting Ronie Gabelinio of three (3) counts of rape and sentencing him to *reclusion perpetua* in each count. He was ordered to pay the victim, AAA, ₱50,000.00 as civil indemnity, also in each count.

The Informations in Criminal Cases Nos. 97-18209, 97-18210 and 97-18211 read:

Criminal Case No. 97-18209:

"That on or about the 1st day of November, 1996, in the City of x x x, Philippines, and within the jurisdiction of this Honorable Court, the herein accused Ronie Gabelinio, armed with a revolver, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein complainant, AAA, a woman 21 years old, against the latter's will.

"Act contrary to law."

Criminal Case No. 97-18210:

"That on or about the 20th day of November, 1996, in the City of x x x, Philippines, and within the jurisdiction of this Honorable Court,

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[1] Penned by Judge Roberto S. Chiongson, *Rollo* at 23-46.

the herein accused Ronie Gabelinio, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein complainant, GGG, a woman 21 years old, against the latter's will.

"Act contrary to law."

Criminal Case No. 97-18211:

"That on or about the 31st day of October, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused Ronie Gabelinio, armed with a revolver, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein complainant, AAA, a woman 21 years old, against the latter's will.

"Act contrary to law."

Upon arraignment, appellant Ronie Gabelinio, assisted by counsel, pleaded not guilty to the crimes charged.

The evidence for the prosecution shows that on October 31, 1996 at around 7:00 o'clock in the morning, private complainant AAA, a 21-year old lass, reported for work at Jet's Lechon Manok Eatery, Burgos Street, Villamonte, Bacolod City. Dr. Celeste Lim-Treyes, the owner, instructed her to open the store at around 9:00 o'clock that morning. After Dr. Treyes left, AAA proceeded to the kitchen to wash her hands. Instantly, appellant sneaked from the door and pointed his .38 revolver to her, saying in his dialect, "something will happen today." He dragged her and forced her to lie down on the floor. Then he kissed her lips and neck, touched her breasts and sucked her nipple. He then proceeded to undress her. She shouted for help and struggled by kicking him. But he subdued her, placed himself on top of her and inserted his penis inside her vagina, making push-and-pull movements. When he withdrew his penis, she saw a whitish fluid coming out from her vagina. Afterwards, he threatened to kill her family should she reveal the incident to anyone. Nonetheless, when her co-workers Criselda Bonza and Honeylyn Jimena arrived, she revealed to them what happened. But they advised her not to report the matter to their employer.

The next day or on November 1, 1996, she arrived in the eatery around 7:00 o'clock in the morning and immediately proceeded to the kitchen to defrost the chicken. Suddenly, appellant grabbed her, kissed her lips and neck and caressed her breasts. She shouted for help but nobody came. He then went on top of her and forcibly inserted his penis into her vagina and made push-and-pull movements. Again, he warned her not to tell anybody what transpired or else he would kill her family.

On November 20, 1996 at around 7:00 o'clock in the morning, AAA arrived at the eatery. Appellant suddenly dragged her to a cemented floor surrounded by plants. There he strangled her and pushed her to the floor causing her to feel dizzy. Taking advantage of her condition, appellant kissed her lips, cheeks and neck. He then undressed her and once more, he sexually ravished her.

On November 22, 1996, AAA mustered enough courage and revealed her traumatic ordeal to her mother Nenita. They then reported the incidents to the Women's Desk of the Bacolod City Police Station where she executed and signed a sworn statement.

On the same day, Dr. Joy Ann C. Jocson examined Susan and issued a Medical Certificate[2] with the following findings:

"1) Whitish vaginal discharge noted at the introitus;

2) Inflamed vulvar area with abrasion noted at the left *labia minora;*

3) New lacerations noted around the hymenal ring: one at the 3 o'clock position another at the 7 o'clock position and another at the 10 o'clock position;

4) Vaginal introitus admits 2 fingers with ease."

Dr. Jocson confirmed on the witness stand that the inflammation, abrasion and lacerations at AAA's hymen were caused by the insertion of a penis in her vagina.

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[2] Exhibit "B", Records at 64.

Dr. Ester Regina Baron-Servando, a psychiatrist at the Bacolod City Health Department, testified that on November 26, 1996 and December 4, 1996, she examined AAA and found that she was suffering from a major depression.

Appellant vehemently denied the charges. He testified that he initially courted AAA when they were schoolmates at Ramon Torres High School at Bago City. He was then a senior student, while she was a sophomore. After graduation, he was employed as a security guard by Tirad Pass Security Agency at Bacolod City and eventually assigned at the Jet's Lechon Manok Eatery where AAA worked as a waitress. There he again courted her and finally they became sweethearts. From then on, he accompanied her whenever she visited her parents in E.B. Magalona, Tabigui, Negros Occidental. He was surprised when her mother, during his and AAA's visit on November 20, 1996, demanded ₱20,000.00, with threat that she will file rape charges against him should he fail to comply with her demand.

According to appellant, what transpired between him and AAA were sexual trysts, they being sweethearts. He explained that he could not have committed the crimes considering that his twelve (12) hour shift at the eatery was from 6:00 o'clock in the evening to 6:00 o'clock in the morning, and that he applied for leave of absence from October 30, 1996 to November 3, 1996 to attend an in-service re-training course conducted by the NEMA Agency in Barangay Villamonte, Bacolod City.

During her rebuttal testimony, AAA denied appellant's claim that they were sweethearts; and that her mother demanded ₱20,000.00 from him.

BBB, complainant's mother, testified denying that she threatened to file rape charges against him should he refuse to give her ₱20,000.00 for her husband's medical treatment.

Criselda Bonza and Honeylyn Jimena, cashiers at Jet's Lechon Manok Eatery, testified that AAA confided to them that appellant was indeed her sweetheart and that they planned to get married.

Gloria Villalobos, secretary of Tirad Pass Security and Investigation Agency, appellant's employer, confirmed that from October 30, 1996 to November 3, 1996, appellant did not report for duty in Jet's Lechon Manok Eatery as he was on leave.

On November 7, 1997, the trial court rendered a Decision, the dispositive portion of which reads:

"After a very careful evaluation of the evidence, the Court finds that the guilt of the accused for the offenses he is charged has been proven beyond reasonable doubt. The Court therefore, declares the accused guilty as charged in all the Informations and there being no extenuating circumstances, condemns him to suffer the following penalties and civil liabilities:

	Penalty	*Civil Liability*
1. CC No. 97-18209	*Reclusion Perpetua*	₱50,000.00
2. CC No. 97-18210	*Reclusion Perpetua*	₱50,000.00
3. CC No. 97-18211	*Reclusion Perpetua*	₱50,000.00

"The civil liability shall inure in favor of the complainant AAA Precioso and shall earn interest at the rate of six (6) percent per annum from date of this judgment.

"The accused shall be credited the full term of his preventive detention."

Appellant, in his brief, submits the following assignments of error:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF COMPLAINANT AAA WHEN HER BEHAVIOR SHOWS THAT THERE WAS NO RAPE AT ALL.

"II

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD COERCED COMPLAINANT INTO HAVING SEX WITH HIM THRICE.

"III

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS BEEN ABLE TO PROVE THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE ON THREE (3) COUNTS."

The basic issue for our resolution is whether the prosecution has established appellant's guilt beyond reasonable doubt.

The law applicable to the cases at bar is Article 335 of the Revised Penal Code, as amended by R.A. 7659, which provides:

"Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by *reclusion perpetua*.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be ***reclusion perpetua*** *to death.*

x x x x x x x x x."

The elements of rape under the above provision are: (1) *the offender had carnal knowledge of the victim;* and (2) *such act was accomplished through the use of force or intimidation;* or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

An extract from AAA's testimony, quoted hereunder, indubitably shows that appellant had carnal knowledge of her by using force and intimidation, thus:

For Criminal Case No. 97-18211:

"x x x x x x x x x

"FISCAL EDUARDO B. ESQUILLA:

x x x x x x x x x

Q Do you know the accused in this case, Ronie Gabelinio?

A Yes, sir.

Q If he is inside this courtroom, will you be able to identify him?

A Yes, sir. The witness pointed crying.

Q So, while washing your hand what happened?

A While I was washing my hands at the kitchen I noticed that there was somebody opening the door, when I turned around I saw Ronie holding a .38 revolver pointed at me.

Q So, that on October 31, 1996 at about 7:00 o'clock in the morning, were you able to report to Jet's Lechon Manok?

A Yes, sir.

x x x x x x x x x

Q So, while you were opening the store what happened?

A When I opened the store, nothing happened.

Q After Dr. Treyes left Jet's Lechon Manok, what happened?

A I washed my hands at the kitchen.

Q So, while washing your hand what happened?

A While I was washing my hands at the kitchen I noticed that there was somebody opening the door, when I turned around I saw Ronie holding a .38 revolver pointed at me.

Q And what happened next after Ronie Gabelinio, the accused in this case, pointed a revolver at you?

A He told me that something will happen today.

Q Was there a particular incident in that particular morning as have told you?

A Yes, sir.

Q Please tell us.

A He dragged me.

Q After he dragged you, what happened?

A He let me lie on the floor of the kitchen.

Q Did he succeed in dragging you, letting you lie on the kitchen floor?

A Yes, sir.

Q And after that, what happened?

A He held my hand.

Q And after the accused held your hands, what happened?

A He kissed me.

Q Where?

A My lips.

Q What else?

A My neck and then he mashed my breast, and then he lifted my t-shirt and then he sucked my nipple.

Q After that what happened?

A He placed his revolver at the table and then he put himself on top of me.

Q When the accused put himself on top of you, what did he do?

A He pulled down my pants.

Q After he pulled down your pants, what happened?

A He again lie on top of me.

Q When he was already on your top, what happened?

A He pulled my pants down. I struggled and kicked him.

Q And you said you kicked the accused after that, what happened?

A I shouted for help but nobody came.

Q Because, nobody came, what happened next?

A I was asking him not to rape me.

x x x x x x x x x

Q What happened next?

A His penis was inserted to my vagina and having a push and pull motion.

Q While the accused was doing a push and pull then, what happened?

A He kept moving, a push and pull motion.

Q What happened next?

A After that he stood up and I notice that my vagina was wet.

Q What do you mean that your vagina was wet, will you please explain to this Honorable Court that wetness you felt at that time?

A I felt that there was a white fluid at my vagina flowing.

Q Can you identify what fluid?

A It was a whitish fluid.

Q So, you said after that the accused stood up?

A Yes, sir.

Q So what happened next?

A He warned me.

Q What did he tell you?

A That if I will tell anybody, he will kill my family.

x x x x x x x x x"[3]

For Criminal Case No. 97-18209:

"x x x x x x x x x

"FISCAL EDUARDO B. ESQUILLA:

Q So, after October 31, 1996, how about November 1, 1996 at about 7:00 o'clock where were you?

A I was at Jet's Lechon Manok.

x x x x x x x x x

Q So, when you arrived at Jet's Lechon Manok at 7:00 o'clock in the morning, what did you do?

A I opened the kitchen.

Q Was there any unusual incident that happened on that particular date in the morning of November 1, 1996?

A Yes, sir.

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[3] Transcript of Stenographic Notes (TSN), May 15, 1997 at 7-17.

Q Please tell us what was that unusual incident?
A Ronie closed the gate while I was inside the kitchen, and then he went inside.

Q And when the accused was inside the kitchen, what happened?
A When I took the chicken at the freezer, he grabbed me.

Q So, after that what happened?
A He kissed me and made romance.

Q Where did he kiss you?
A He kissed me at my lips, cheeks, neck and he mashed my breasts and he lifted my blouse.

Q And when he lifted your blouse, what happened next?
A He sucked my nipples after he lifted my blouse.

Q And then while the accused was sucking your nipples, what did you do?
A I was shouting.

Q And what else did you do aside from shouting?
A He sucked my nipples and pulled down my pants.

FISCAL ESQUILLA:

I would like to make it of record that the witness is crying.

Q So, after that what happened next?
A He put himself on top of me, and at the same time he inserted his penis in my vagina.

Q After his penis was inserted to your vagina, what happened next?
A A gesture of push and pull and after that there was a white fluid flowing out from my vagina.

Q While the accused Ronie Gabelinio was having carnal knowledge with you, what did you do?
A I was asking for help not to have intercourse with me.

Q Did somebody came to help you?
A Nobody helped me.

Q At that time were there other persons inside the Jet's Lechon Manok?

A Nobody.

Q You want to impress this Honorable Court that there were only the two (2) of you inside the Jet's Lechon Manok?

A I was the first one to arrive every morning.

Q After the accused Ronie Gabelinio finished his desire, what happened next?

A He stood up and then he put on his pants.

Q How about you?

A I sat for a while and after that I stood up.

x x x x x x x x x

Q Was he armed?

x x x x x x x x x

A Yes, sir.

Q After the accused got dressed and you were sitting on the floor, did he tell you something?

A Yes, sir.

Q What did he tell you?

A That he will kill my family.

Q Why will the accused kill your family?

A I do not know. We have not done anything against him.

x x x x x x x x x."[4]

For Criminal Case No. 97-18210:

"x x x x x x x x x

"FISCAL EDUARDO B. ESQUILLA:

Q After this November 1, 1996 incident, was there a next incident that happened to you?

A Yes, sir.

Q That was on what date?

A November 20, 1996.

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[4] *Ibid*. at 20-27.

Q Why, on November 20, 1996 in the morning where were you?
A I was at Jet's Lechon Manok at 7:00 o'clock in the morning.

Q What were you doing there?
A I was at the gate standing, pleading for Ronie not to rape me again.

Q After that what happened next?
A I asked for the key.

Q Then what happened next?
A He dragged me by the shoulders.

Q When the accused dragged you by your shoulders, what happened next?
A He brought me to a cemented floor with many plants.

Q And then when he brought you to the cemented floor with many plants, what happened?
A He strangled me and then threw me to the cemented floor where my head hit the floor.

Q What happened next?
A He kissed me at the lips, cheeks, neck and lifted my blouse and then sucked my nipples.

Q And after he sucked your nipples, what happened next?
A He pulled down my pants and my panty, and then I felt pain, dizzy and lost my strength.

Q So, what happened next?
A After he pulled down his pants and panty, he inserted his fingers in my vagina.

Q After that what happened?
A He inserted his finger in my vagina and I felt pain.

Q So after he inserted his finger in your vagina, what happened?
A I shouted aloud but nobody came for help.

Q Miss Witness, in short he succeeded in having carnal knowledge of you?
A Yes, sir.

Q That same incident happened last October 31 and November 1, 1996?

A But at that time my vagina bled because of the insertion.

x x x x x x x x x."[5]

In a prosecution for rape, the victim's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof.[6]

Here, AAA's direct and straightforward account reveals every relevant detail of the three (3) rape incidents. Even during the cross-examination, she never wavered in her assertion that it was appellant who raped her through force and intimidation and with the use of a firearm.

The trial court, in giving full credence to AAA's testimony, held:

"x x x It is difficult to believe that AAA would charge the accused for rape when there was no rape. It is more difficult to believe that AAA and her mother would file a case for rape as a method of extortion. It has been held that an unmarried Filipina would not publicly admit that she had been raped, voluntarily allow herself to be medically probed, and endure the humiliating and delicate questions in the course of the trial, if her accusations were merely malicious concoctions (*People vs. Bautista*, 236 SCRA 102 [1994]).

"AAA was very categorical that she was threatened by the accused before and after the rapes. As observed by the Court, AAA appears weak and frail and could readily be subdued, especially by a guard who must have learned the rudiments of physical combat. x x x"

It is doctrinally settled that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the victim

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[5] *Ibid*. at 27-30.

[6] *People vs. Sergio Abon*, G.R. No. 130662, October 15, 2003 at 8, citing *People vs. Dalisay*, G.R. No. 133926, August 6, 2003; *People vs. Agustin*, 365 SCRA 667 (2001).

through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath.[7]

Appellant, to exculpate himself, interposed the defense of *alibi*. He maintained that it was physically impossible for him to have been at Jet's Lechon Manok on the dates the crimes were allegedly committed because he was then on official leave attending an in-service re-training course conducted by the NEMA Agency in Barangay Villamonte.

We find appellant's defense of alibi unavailing. For this defense to stand, it must be shown that not only was appellant somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[8]

On this point, the trial court held:

"One defense raised by the accused is the defense of alibi as he alleged to be undergoing a Re-Training course when the rapes on October 31 and November 1, 1996 happened. It has been shown, however, that the alleged Re-Training course was held in Brgy. Villamonte in Bacolod City which is only about two (2) to three (3) kilometers from Jet. Even if it were true that the accused went home to Ma-ao, Bago City, this fact would not have precluded the accused from being at Bacolod City, specifically at Jet's, in the morning of the day when the rape was committed as Bago could be traversed by public transportation in less than two (2) hours."

We sustain the trial court's finding that it was physically possible for appellant to have been in the crime scene at the time the rape incidents were committed considering that it was "only about two (2) to three (3) kilometers" away from Barangay Villamonte where he was undergoing a re-training course.

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[7] *People vs. Eduardo Limos*, G.R. No. 122114-17, January 20, 2004 at 26-27, citing *People vs. Ayuda*, G.R. No. 128882, October 2, 2003.

[8] *People vs. Almoguerra and Aton*, G.R. No. 121177, November 12, 2003 at 20, citing *People vs. Visaya*, 352 SCRA 713 (2001).

We are not persuaded by appellant's claim that he and AAA are sweethearts and that what transpired between them was a consensual sex. A "sweetheart defense," to be credible, should be substantiated by some documentary or other evidence of the relationship — like mementos, love letters, notes, pictures and the like.[9] Here, appellant categorically admitted that no such evidence exists. Clearly, his alleged romantic relation with AAA is just a figment of his imagination.

Assuming that appellant and AAA were sweethearts, it does not mean that he could not rape her. Such a relationship is not a guaranty that he will not assault and tarnish that which she holds so dearly and trample upon her honor and dignity. Indeed, a sweetheart cannot be forced to engage in sexual intercourse against her will.[10]

Appellant also submits that AAA's disturbing silence and failure to report to their employer the rape incidents evince that the charges are mere fabrications. On this point, the Solicitor General aptly observed that appellant's "real threat that he would kill her family if she would report the incident to anyone proved disastrous and paralyzed her from taking immediate action against appellant." Indeed, no adverse inference can be drawn from complainant's hesitation or failure to immediately expose her tragic experiences. Fear of reprisal, social humiliation, family considerations, and economic reasons are sufficient explanations.[11]

Considering that appellant committed the crimes (in Criminal Cases Nos. 97-18209 and 97-18211) with the use of a firearm, a deadly weapon, the penalty imposable upon him is *reclusion perpetua* to death, pursuant to Article 335 of the Revised Penal Code, quoted earlier. Corollarily, Article 63 of the same Code provides:

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[9] *People vs. Limos, ibid.* at 28, citing *People vs. Ayuda*, G.R. No. 128882, October 2, 2003; *People vs. Flores*, 372 SCRA 421 (2001); *People vs. Sale*, 345 SCRA 490 (2000).

[10] *People vs. Ayuda, supra*. at 12, citing *People vs. Francisco Sorongon*, G.R. No. 142416, February 11, 2003.

[11] See *People vs. Blazo*, G.R. No. 127111, February 19, 2001, 352 SCRA 94, 102, citing *People vs. Manggasin*, 306 SCRA 228 (1999); *People vs. Accion*, 312 SCRA 250 (1999).

"Art. 63. *Rules for the application of indivisible penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

"In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. *When there are neither mitigating nor aggravating circumstances in the commission of the deed, the* **lesser penalty** *shall be applied.*

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation." (Underscoring ours)

In *People vs. Eduardo Limos*,[12] we held: "Where no aggravating circumstance is alleged in the information and proven during the trial, the crime of rape through the use of a deadly weapon may be penalized only with *reclusion perpetua*, not death."

In the present case, there is neither aggravating nor mitigating circumstance that attended the commission of the crimes. Thus, the trial court correctly imposed upon appellant the lesser penalty of *reclusion perpetua* in each count of rape committed with the use of a firearm. Likewise, the imposition of the penalty of *reclusion perpetua* for the rape committed through force and intimidation (Criminal Case No. 97-18210) is in order, following the provision of Article 335 of the Revised Penal Code, as amended, earlier quoted.

With respect to appellant's civil liability, aside from the award

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[12] *Supra*, at 30-31, citing *People vs. Joel Ayuda*, G.R. No. 128882, October 2, 2003; *People vs. Baroy*, 382 SCRA 52 (2002).

of civil indemnity of ₱50,000.00 in each case, the trial court should have awarded the victim moral damages fixed at ₱50,000.00 (in each case) without need of pleading or proof of basis thereof.[13] This is so because the anguish and the pain she endured are evident. In our culture, which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator.[14]

We likewise award the victim exemplary damages of ₱25,000.00 in each case (Criminal Cases Nos. 97-18209 and 97-18211). Here, the use of a deadly weapon was alleged in both Informations and proved during the trial. In *People vs. Ayuda*,[15] we held:

"Likewise, the award of exemplary damages is justified. The circumstance of use of a deadly weapon was duly alleged in the information and proven at the trial. In *People vs. Edem* (G.R. No. 130970, February 27, 2002), we awarded exemplary damages in the amount of ₱25,000.00 in a case of rape committed with the use of a deadly weapon."

WHEREFORE, the appealed Decision dated November 7, 1997 of the Regional Trial Court, Branch 50, Bacolod City, in Criminal Cases Nos. 97-18209, 97-18210 and 97-18211 is hereby *AFFIRMED* with *MODIFICATION* in the sense that in addition to the award of ₱50,000.00 as civil indemnity in each case to herein victim, Susan Precioso, appellant *RONIE GABELINIO* is also ordered to pay her ₱50,000.00 as moral damages in each case, and ₱25,000.00 as exemplary damages in Criminal Cases Nos. 97-18209 and 97-18211.

With costs *de oficio*.

SO ORDERED.

Corona and *Carpio Morales, JJ.*, concur.

Vitug, J. (Chairman), on official leave.

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[13] *People vs. Ayuda, supra*, at 14, citing *People vs. Baroy, supra; People vs. Salalima*, 363 SCRA 192 (2001).

[14] See *Ibid*. citing *People vs. Baway*, 350 SCRA 29 (2001); *People vs. Banela*, 301 SCRA 84 (1999).

[15] *Supra*, citing *People vs. Sorsogon*, 397 SCRA 264 (2003).

EN BANC

[G.R. No. 141087. March 31, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ABRAHAM AGSALOG @ PANTO and JOVITO SIBLAS *y* OBAÑA @ BITONG,** *appellants*.

SYNOPSIS

The Regional Trial Court of Urdaneta City convicted appellants Abraham Agsalog and Jovito Siblas of the crime of murder and sentenced them to suffer the penalty of death for the untimely demise of Eduardo Marzan who suffered two stab wounds. In this automatic review, appellants argued that the lower court gravely erred in concluding that they conspired in killing the victim as well as in appreciating against them the qualifying circumstances of treachery and evident premeditation.

The Court ruled that on the assailed finding that there was conspiracy between appellants, anchored on appellant Siblas' holding, at the time appellant Agsalog attacked the victim, of the right elbow and wrist of the victim who admittedly was very much bigger than them. The holding of the victim's right wrist and elbow by appellant Siblas could have been done in the course of the removal from Siblas' shoulder. At any rate, there is no showing that had not appellant Siblas held the victim's wrist and elbow, appellant Agsalog would not have succeeded in stabbing the victim. Thus, conspiracy which requires the same quantum of proof to prove the guilt of an accused was not clearly established.

Further, while the victim slapped appellant Siblas hours before the stabbing and it is thus not improbable for appellants to have hatched a plan to avenge the same, still, the circumstances as presented by the prosecution failed to show evident premeditation, which must be based upon external acts and not presumed from mere lapse of time.

Also, the testimony of prosecution eyewitness Edwin Opiña that when appellants arrived at his yard and called for the victim, appellant Agsalog "sounded like he was mad," must surely have

put the victim on guard, given the fact that a few hours before he slapped appellant Siblas. There is thus reasonable doubt on whether treachery attended the commission of the crime.

Accordingly, appellant Abraham Agsalog was found guilty of homicide while appellant Jovito Siblas was acquitted of the charge.

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. —** For the justifying circumstance of self-defense to be appreciated, the following circumstances must concur. 1. Unlawful aggression 2. Reasonable necessity of the means employed to prevent or repel it. 3. Lack of sufficient provocation on the part of the person defending himself.

2. **ID.; ID.; ID.; UNLAWFUL AGGRESSION; HOLDING OF SHOULDER DOES NOT CONSTITUTE ACTUAL OR IMMINENT PERIL TO ONE'S LIFE, LIMB OR RIGHT; CASE AT BAR. —** Unlawful aggression is present when peril to one's life, limb or right is either actual or imminent. x x x Even assuming, however, that the victim indeed held the shoulder of appellant Agsalog, albeit the prosecution claimed it was appellant Siblas' right shoulder which the victim held, that could not have constituted actual or imminent peril to appellant Agsalog's life, limb or right, especially in light of appellant Siblas testimony that after that stage of the incident, the victim and appellant Agsalog pushed each other. It is unthinkable for appellant Siblas to have missed witnessing the alleged attempt of the victim to stab appellant Agsalog if indeed there was such an attempt. Absent thus any corroboration by independent and competent evidence of appellant Agsalog's claim of unlawful aggression on the part of the victim, it is extremely doubtful, hence, it cannot prosper. There being no unlawful aggression, there is no self-defense, complete or incomplete.

3. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF WITNESSES; NON-PRESENTATION OF THE DOCTOR AND ANOTHER WITNESS WAS THE PREROGATIVE OF THE PROSECUTION. —** The non-presentation by the prosecution of the doctor and Aquino as witnesses during the trial was the prerogative of the prosecution. If appellants wanted to

question the two, nothing prevented them from presenting them as their own witnesses, but they did not.

4. CRIMINAL LAW; CIRCUMSTANCES THAT AFFECT CRIMINAL LIABILITY OF THE ACCUSED; CONSPIRACY; NOT ESTABLISHED IN CASE AT BAR. — On the assailed finding that there was conspiracy between appellants, anchored on appellant Siblas' holding, at the time appellant Agsalog attacked the victim, of the right elbow and wrist of the victim who admittedly was very much bigger than them: As the prosecution claims that the victim placed his right hand on the left shoulder of appellant *Siblas* (the defense claims it was the shoulder of appellant *Agsalog* which the victim held), and the stabbing was sudden and swift, appellant Siblas' holding of the victim's elbow and wrist may not necessarily have meant to restrain the victim in order to insure that he would not put up a fight or defense. The holding of the victim's right wrist and elbow by appellant Siblas could have been done in the course of the removal thereof from Siblas' shoulder. At any rate, there is no showing that had not appellant Siblas held the victim's wrist and elbow, appellant Agsalog would not have succeeded in stabbing the victim. Conspiracy, which requires the same quantum of proof to prove the guilt of an accused, was thus not clearly established.

5. ID.; MURDER; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES. — As for the qualifying circumstance of evident premeditation, for it to be appreciated, the following requisites should be proven: (1) the time when the offender determined to commit the crime, (2) an overt act manifestly indicating that the culprit had clung to his determination, and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act.

6. ID.; ID.; ID.; ID.; MUST BE BASED ON EXTERNAL ACTS AND NOT PRESUMED FROM MERE LAPSE OF TIME. — While the victim slapped appellant Siblas hours before the stabbing and it is thus not improbable for appellants to have hatched a plan to avenge the same, still, the circumstances *as presented by the prosecution* fail to show *evident* premeditation, which must be based upon external acts and not presumed from mere lapse of time.

7. ID.; ID.; ID.; TREACHERY; ELUCIDATED. — In the case of *People v. Peralta*: The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. The elements of treachery are: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted. It does not follow that a sudden and unexpected attack is tainted with treachery for it could have been that the same was done on impulse, as a reaction to an actual or imagined provocation offered by the victim. Provocation of the appellant by the victim negates the presence of treachery even if the attack may have been sudden and unexpected.

8. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — The testimony of prosecution eyewitness Edwin that when appellants arrived at his yard and called for the victim, appellant Agsalog "sounded like he was mad," must surely have put the victim on guard, given the fact that a few hours before he slapped appellant Siblas.

9. ID.; ID.; CIVIL LIABILITY; ACTUAL DAMAGES DISALLOWED FOR NOT BEING SUBSTANTIATED BY RECEIPTS. — Jurisprudence dictates that the award of actual damages must, however, be duly substantiated by receipts. An examination of the records shows that the alleged burial expenses was not duly receipted. It must thus be disallowed.

10. ID.; ID.; ID.; ₱50,000 AS CIVIL INDEMNITY AND ₱50,000 AS MORAL DAMAGES AWARDED TO THE HEIRS OF THE VICTIM. — The heirs of the victim are, however, entitled to an award of civil indemnity in the amount of ₱50,000.00 which needs no proof other than the victim's death. As to the award by the trial court of ₱75,000.00 as moral damages, consistent with prevailing jurisprudence, the crime committed being homicide, the amount must be reduced to ₱50,000.00.

11. ID.; ID.; ID.; ATTORNEY'S FEES DELETED FOR LACK OF LEGAL BASIS. — Finally, the award of ₱10,000.00 as attorney's

fees must be deleted in view of the failure of the trial court to explicitly state in the body of its decision the legal basis therefor. The power of courts to grant damages and attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.

YNARES-SANTIAGO, *J., dissenting*:

1. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; HAS REFERENCE TO THE MEANS AND WAYS EMPLOYED IN THE COMMISSION OF THE CRIME. — The essence of treachery is that the attack comes without warning, done in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. The test of treachery may thus be expressed as follows: Did the assailant consciously or deliberately employ means, methods or forms in the execution of the criminal act which tended directly and especially to ensure the execution thereof without risk to the assailant himself arising from the defense which the victim might make? If in the affirmative, treachery can be appreciated to qualify the crime to *murder*. x x x The basis for treachery has reference to the means and ways employed in the commission of the crime. This aggravating circumstance is applicable only to crimes against persons, where the mode of attack was consciously adopted. Treachery should be taken into account even if the deceased was face to face with his assailant at the time the blow was delivered, where it appears that the attack was not preceded by a dispute and the offended party was unable to prepare himself for his defense.

2. ID.; ID.; ID.; ID.; TWO CONDITIONS TO CONCUR TO BE APPRECIATED. — Two conditions must concur in order for *alevosia* to be appreciated: (a) the assailant employed means, methods or forms in the execution of the criminal act which gives the person attacked no opportunity to defend himself or retaliate; and (b) the said means, methods or forms of execution were deliberately or consciously adopted by the assailant.

3. ID.; ID.; ID.; ID.; CAN BE APPRECIATED WHEN THE SHOOTING WAS SUDDEN AND UNEXPECTED. — Treachery, whenever present and alleged in the information, qualifies the killing of the victim and raises it to the category of murder. The killing

of the victims is qualified with treachery, when the shooting was sudden and unexpected, and the victims were not in a position to defend themselves.

4. ID.; ID.; ID.; ID.; SHOULD BE APPRECIATED SINCE THE VICTIM DID NOT POSSESS A RETALIATORY DISPOSITION BUT RATHER A CONCILIATORY MOOD; CASE AT BAR. — In the case at bar, treachery should be appreciated to qualify the crime to *murder* against appellant Abraham Agsalog. It may be gleaned from the records that at or about 4:30 p.m. on October 4, 1997, appellant Agsalog, while walking on the left side of the victim, Eduardo Marzan, towards the front of the gate of the victim's house, suddenly moved one step forward, raised his shirt and drew a *beinte nueve* knife, executed a turn around and stabbed the victim twice, hitting the latter in the abdomen and chest. Co-appellant Jovito Siblas was walking on the right side of the victim. It should be noted that the previous altercation which occurred at or around 2:00 p.m. in *Jessica Videoke* at San Quintin Public Market, San Quintin, Pangasinan was between the victim and co-appellant Siblas, *and not involving appellant Agsalog.* While walking towards his front gate, the victim, Eduardo Marzan, even apologized for the incident *to co-appellant Siblas* when he said, *"Pasensiya ka na Pare"* to manifest his desire to reconcile differences. From this fact alone, it may be observed that the victim did not even possess a retaliatory disposition, but rather a conciliatory mood. Not even the slightest provocation on the part of the victim may be manifested, moments before his untimely death. The victim was not in a position to defend himself against the swift, sudden and unexpected aggression of appellant Agsalog, who took out his knife and stabbed the victim to death. The unsuspecting victim was unarmed and defenseless against two persons. He had no idea whatsoever of the impending assault on his person as shown by his casual and conciliatory behavior while talking to appellants. More importantly, the victim did not foresee the fatal stabbing. Appellant Agsalog's surprise attack did not afford the opportunity for the unarmed victim to defend himself. He consciously or deliberately adopted the means of attack to accomplish the execution of the criminal act, thus establishing moral certainty that *alevosia* was present to qualify the killing of Eduardo Marzan to *murder*.

5. ID.; ID.; ID.; ID.; CAN BE APPRECIATED SINCE THERE WAS A LAPSE OF TIME BETWEEN THE ALTERCATION AND THE ATTACK. — Granting *arguendo*, that a previous altercation involved assailant and victim, treachery can still be appreciated, provided there is a lapse of time between the altercation and the attack. x x x The altercation between the victim and co-appellant Siblas at *Jessica Videoke* transpired at 2:00 p.m. while the fatal stabbing involving appellants occurred at about 4:30 p.m. at the foot of the gate of the victim's house. There was a lapse of time between the altercation and the assault of approximately two and a half hours. In other words, the time interval between the altercation and the assault was sufficient to lower the victim's defenses and set the stage for the unexpected attack by appellant Agsalog. *Alevosia* was present in this case as the assailant launched a surprise attack, suddenly taking his knife from under his shirt. The unprovoked and unsuspecting victim was afforded no real chance to defend himself.

6. ID.; ID.; ID.; ID.; NOT PRECLUDED BY THE BARE FACT THAT THE ACCUSED WAS FACING THE VICTIM WHEN THE LATTER WAS STABBED. — Even if the assailant frontally attacked the victim, treachery can be appreciated. The case of *People v. Prieto* is illustrative: "Treachery was attendant because the appellant suddenly and without provocation, stabbed Geraldo twice on the chest and abdomen when the unarmed victim opened the door to his house. The bare fact that the appellant was facing the victim when the latter was stabbed does not preclude treachery." In *People v. Perez*, the Court held: "That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the latter to defend or to retaliate."

7. CRIMINAL LAW; CIRCUMSTANCES THAT AFFECT CRIMINAL LIABILITY; CONSPIRACY; ELUCIDATED. — Conspiracy exists

when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, *expressly or impliedly*, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime actually committed by any one of them. Conspiracy may be proved by direct or circumstantial evidence. Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. In the absence of direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest. It need not matter who inflicted the mortal wound, as the act of one is the act of all, and each of the actors incurs the same criminal liability. There is collective criminal responsibility in conspiratorial acts.

8. ID.; ID.; ID.; DOCTRINE OF IMPLIED CONSPIRACY; THE ACCUSED HAD A COMMON PURPOSE AND WERE UNITED IN THEIR EXECUTION. — Conspiracy is *implied* when the accused had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility. It is manifested in the coordinated acts of the assailants, of one of them holding the hand of the victim while another was stabbing him and a third delivering fist blows on different parts of the body of the victim, and, when the victim was able to escape, of giving chase and the first accused shooting the deceased five (5) times.

9. ID.; ID.; ID.; ID.; APPLICABLE IN CASE AT BAR. — In the present case, the *doctrine of implied conspiracy* should be applied against co-appellant Jovito Siblas. The records reflect that co-appellant Siblas, while nearing the gate of the victim's house, and *simultaneously with the forward, lunging movement of appellant Agsalog,* **unexpectedly held the right hand of the victim with his two hands; one hand on the wrist, and the other hand holding the left hand just above the elbow of the victim.** The act of suddenly holding the victim's hand simultaneously or contemporaneously to the stabbing of the victim by appellant Agsalog, rendered the victim immobile, vulnerable and prone

to attack. This act of Siblas **evinces a common design, concerted action and unity of purpose with Agsalog's thrusting of the knife.** It exhibited a closeness and coordination in the manner of execution of Agsalog's criminal act against the victim who was utterly defenseless.

10. ID.; ID.; ID.; IMMATERIAL WHO INFLICTED THE FATAL WOUNDS. — In conspiracy, it is immaterial who inflicted the fatal wounds. Conspirators have collective criminal responsibility. In this case, both appellants are collectively liable for the crime as they **acted in unison;** by their very actions, appellants conspired with each other to kill the victim. **The acts of both appellant Agsalog and his co-appellant, Siblas, show a closeness and coordination in the manner of execution as to undoubtedly indicate a commonality of design and unity of purpose in killing the victim, Eduardo Marzan.** The acts of appellants ***show unanimity in design, intent and execution*** of the attack on the victim, making Siblas criminally liable as co-conspirator and co-principal of the fatal stabbing of Eduardo Marzan. Verily, the act of Agsalog by legal contemplation is the act of Siblas.

11. ID.; ID.; ID.; ACT OF EACH CONSPIRATOR IN FURTHERANCE OF THE COMMON DESIGN IS THE ACT OF ALL. — In *People v. Ramil Gutierrez, et al.*, we ruled that in conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim, since the act of each conspirator in furtherance of the common objective is the act of all: "What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. The act of each conspirator in furtherance of the common purpose in contemplation of law is the act of all." The act of co-appellant in holding the victim's right hand and elbow showed that he concurred in the criminal design of the actual assailant, Abraham Agsalog. Having joined in the criminal conspiracy, co-appellant Jovito Siblas in effect adopted as his own criminal design of co-conspirator, appellant Agsalog. Chief Justice Hilario G. Davide, Jr., writing for the Court in *People v. Manalo*, made this succinct observation: "Indeed, the act of the appellant of holding the victim's right hand while the victim was being stabbed by Dennis shows that he concurred in the criminal

design of the actual killer. If such act were separate from the stabbing, appellant's natural reaction should have been to immediately let go of the victim and flee as soon as the first stab was inflicted. But appellant continued to restrain the deceased until Dennis completed his attack. Conspiracy was evident from the acts of the four accused, with two of them seizing the victim's arms and holding him immobile, one holding his back, and another thrusting a knife on the victim. These acts indubitably point to a joint purpose, concerted action and community of interest. Having joined in the criminal conspiracy, appellant in effect adopted as his own the criminal design of his co-conspirators. Hence, as a co-conspirator whose participation emboldened the actual killer and contributed to the success of the common design, appellant is liable as a co-principal in the killing of Rodrigo." When there is conspiracy, treachery attends against all conspirators, although only one did the actual stabbing of the victim.

12. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT ARE ACCORDED GREAT WEIGHT AND RESPECT. — Lastly, it is a well-settled principle that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great weight and respect, even finality, on appeal unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. Since no reversible error was committed by the court *a quo* in its evidentiary findings on treachery and conspiracy, the lower court's appreciation of the foregoing in sustaining a *murder* conviction for both appellants must be upheld.

13. CRIMINAL LAW; MURDER; PROPER PENALTY. — The penalty for *murder* is *reclusion perpetua* to *death.* In view of the fact that no mitigating or aggravating circumstances attended the commission of the crime, the proper penalty to be meted under the *Revised Penal Code* is *reclusion perpetua.*

14. ID.; ID.; CIVIL LIABILITY; ₱50,000 AS CIVIL INDEMNITY AND ₱50,000 AS MORAL DAMAGES AWARDED IN CASE AT BAR. — Appellants should pay the heirs of the victim Eduardo Marzan civil indemnity *ex delicto* in the amount of ₱50,000.00 and ₱50,000.00 as moral damages, all in conformity with prevailing case law.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

CARPIO MORALES, *J.*:

On automatic review is the decision of the Regional Trial Court of Urdaneta City, Branch 46, finding appellants Abraham Agsalog and Jovito Siblas guilty beyond reasonable doubt of murder for killing Eduardo Marzan *y* Teñoso (the victim) and sentencing them to death.

The following facts are not disputed.

At about 2:00 p.m. of October 4, 1997, while the victim and his uncle Tony Opiña (Tony) were drinking at the Jessica Mae Videoke located at the San Quintin public market, San Quintin, Pangasinan, a misunderstanding arose between the victim and appellant Siblas who was occupying a table outside the videoke, adjacent to the stall of appellant Agsalog who was then inside.[1] The misunderstanding resulted in the victim slapping appellant Siblas. The escalation of the misunderstanding was prevented, however, when Tony pacified the two. The victim and Tony soon left the premises.

Also on the same day, October 4, 1997, at about 4:30 p.m., as the victim and his distant cousin-neighbor Edwin Opiña (Edwin) were conversing at the terrace of the latter's house in Calomboyan, San Quintin, appellants, on board a tricycle[2] driven by Francisco Aquino, Jr. (Aquino) arrived. Upon entering the gate of the house, appellants summoned the victim[3] who obliged. An exchange of words later ensued between the victim and

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[1] TSN, July 15, 1998 at 7.

[2] TSN, February 16, 1998 at 7-8.

[3] TSN, February 24, 1998 at 5.

appellants which resulted in appellant Agsalog stabbing the victim who died as a result thereof.

The postmortem examination conducted by Dr. Rosalina O. Victorio of the Office of the Municipal Health Officer showed that the victim sustained two stab wounds — one at the upper middle portion of his abdomen, and the other at the upper portion of his chest which penetrated the right auricle of his heart.[4] It also showed that the victim had abrasions on the forehead, left eyelid and left cheek[5] which Dr. Victorio surmised came about as a result of the victim's fall after the stabbing.[6] The doctor concluded that the cause of the victim's death was acute hemorrhage due to a stab wound on the right auricle of the heart.[7]

The records show that the day after the stabbing of the victim or on October 6, 1997, Ulyses Soto (Soto),[8] Edwin[9] and Aquino[10] gave their respective sworn statements before the local police authorities on what they witnessed, the substance of which statements Soto and Edwin were later to echo at the witness stand.

Hence, appellants' indictment for murder under an Information[11] alleging:

x x x x x x x x x

That on or about the 4th day of October 1997, in the afternoon, at Brgy. Calomboyan, municipality of San Quintin, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable

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[4] Exhibits "G"-"G-2", Records at 6-8.

[5] Exhibit "G", Records at 8.

[6] TSN, February 9, 1998 at 6.

[7] Exhibit "G", Records at 8; TSN, February 9, 1998 at 8-9.

[8] Exhibit "D", Records at 10.

[9] Exhibit "E," Records at 13.

[10] Exhibit "F", Records at 14-15.

[11] Records at 2.

Court, the above-named accused, with intent to kill, armed with a bladed weapon (*balisong*), with treachery and evident premeditation, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab one EDUARDO MARZAN *y* TEÑOSO twice on his body which caused his immediate death, to the damage and prejudice of the heirs of said EDUARDO MARZAN *y* TEÑOSO.

x x x x x x x x x

From the account of prosecution witnesses including eyewitness Edwin, and another eyewitness Soto who was across the road where the stabbing occurred, the following are gathered:

After the victim heeded the call of appellants to talk with them outside the gate of the house, the three walked towards the gate, with the victim sandwiched by appellant Siblas who was at the victim's right side and appellant Agsalog who was at the victim's left side. As Edwin sensed that there was "something unusual,"[12] he followed the three, he trailing behind by about 3 meters.

While appellants and the victim were conversing as they walked, the victim placed his right[13] hand on the left shoulder of appellant Siblas and uttered *"Pasensiya kan pare."*[14] At that instant appellant Agsalog took a step forward, "tapped" the hand of the victim as he faced him, uttered *"Di na kami met la [ka]babainen"*[15] and simultaneously drew an already open "*balisong*" and stabbed the victim at his belly and then at his chest while appellant Siblas, with both hands, held the right wrist and right elbow of the victim.

Realizing what had befallen the victim, Edwin picked up a stone upon which appellant Agsalog warned "You will be next if you do that,"[16] drawing the former to throw the stone away.

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[12] TSN, February 24, 1998 at 7.

[13] *Id*. at 9.

[14] *Ibid*.

[15] *Id.* at 31, which was therein translated as "You have no respect for us."

[16] TSN, February 24, 1998 at 11.

Appellant Agsalog invoked self defense. Appellant Siblas denied the existence of a conspiracy.

As related in their brief, appellants gave the following version, quoted *verbatim*:

[O]n or about 1:00 o'clock in the afternoon of October 4, 1997, Agsalog was in his stall with Siblas infront of the Jessica Mae Videoke. Agsalog heard loud noise coming from the Jessica Mae Videoke. When he went out of his stall, he saw Nola Matsumoto [owner of the videoke-bar] in-between Siblas and [the victim] trying to prevent further troubles from erupting. After that incident, Tony Opiña stood up and told [the victim] ***"Vulva of your mother, you just slapped people, let us go home."*** After the lapse of 10 minutes, [the victim] with his brother, Jun Marzan returned to the Jessica Mae Videoke. Jun Marzan asked Nola who was at fault and she replied, ***"your brother is at fault."*** Then the two (2) brothers left the place. But before leaving, [the victim] told Siblas that he would return, which he did after about 3 minutes. *[The victim], on his return, shook his hands with Siblas, to settle their differences, and as a gesture of reconciliation, [the victim] invited both Siblas and Agsalog to their house for drinks as he is butchering a goat. Agsalog and Siblas accepted the invitation to go there after school hours. Then Agsalog and Siblas, after a few minutes, proceeded to the San Quintin National High School to resume their duties as teachers. At about 4:30 in the afternoon of the same day, Agsalog and Siblas riding in a tricycle driven by one Aquino arrived at the house of Ex-Brgy. Chairman Juan Opiña [father of Edwin Opiña]* at Brgy. Calonboyan, San Quintin, Pangasinan. Agsalog saw [the victim] sitting alone at the terrace of the house of Opiña. Agsalog, then asked [the victim] ***"Bok where is the pulutan? I will get the drinks."*** [The victim] stood up and retorted ***"Vulva of your mother, you could easily be baited."*** Agsalog thought that [the victim] is only joking, so he said to [the victim], ***"Bring the pulutan out and we will get the drinks."*** [The victim] instead replied, ***"Vulva of you mother, you look like pulutan."*** Agsalog said, ***"Bok, you do not even respect us."*** *Then [the victim] came down from the terrace and tried to grab Agsalog which the latter warded off. Both Agsalog and Siblas went out of the yard towards the tricycle to leave but '[the victim] followed them. Then, [the victim] pushed Siblas and Agsalog, saying, "Vulva of your mother, are you going to fight me?" At this stage, [the victim] was drawing a balisong from his waist and when he was about to thrust*

his balisong into Agsalog's body, Agsalog also drew a knife and swung his arm, hitting [the victim's] body once. But still [the victim] grabbed Agsalog by the shoulder but Agsalog pushed him with his left arm. [The victim], then turned and went into the yard of Opiña. Agsalog saw Edwin Opiña came out of the house and picked some stones, going near them, Agsalog told Edwin, ***"Don't go near-Don't go near*** (warning to us) x x x (Emphasis and italics in the original; emphasis supplied)

Brushing aside appellants' version, the trial court, by Decision of October 7, 1999, found them guilty beyond reasonable doubt of murder, the dispositive portion of which is *quoted verbatim:*

WHEREFORE, JUDGMENT of CONVICTION beyond reasonable doubt is hereby rendered against Abraham Agsalog and Jovito Siblas of the crime of *aggravated Murder* and the Court sentences AGSALOG and SIBLAS to suffer the *penalty of DEATH* to be implemented in the manner as provided for by law; to pay the heirs of the victim, jointly and solidarily, the amount of ₱200,000.00 as actual damages; ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages and attorney's fees in the amount of ₱10,000.00 and all accessory penalties of the law.

The Branch Clerk of Court is hereby ordered to prepare the mittimus and to transmit the entire records of this case to the Hon. Supreme Court of the Philippines for automatic review fifteen days from date of promulgation.

The Jail Warden, BJMP, is hereby ordered to transmit the living body of accused Agsalog and Siblas to the National Bilibid Prisons, Muntinlupa City, fifteen (15) days from receipt of this Decision.[17] (Italics supplied)

Hence, this automatic review, appellants ascribing to the trial court the following assignment of errors:

I

GRANTING WITHOUT ADMITTING THAT THE PROSECUTION'S CASE IS CREDIBLE, THE LOWER COURT GRAVELY ERRED IN CONCLUDING THAT ACCUSED-APPELLANTS CONSPIRED IN KILLING THE VICTIM AS WELL AS IN APPRECIATING AGAINST THEM THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

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[17] Records at 299-300.

II

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE AUTOPSY REPORT AND SWORN STATEMENT OF ANOTHER ALLEGED EYEWITNESS WHICH, IF CONSIDERED, WOULD HAVE BEEN FAVORABLE TO ACCUSED-APPELLANTS.

III

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING IN FAVOR OF ACCUSED-APPELLANTS THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.[18]

Appellant Agsalog having admitted stabbing the victim, the third assignment of error shall first be considered.

For the justifying circumstance of self-defense to be appreciated, the following circumstances must concur.

1. Unlawful aggression
2. Reasonable necessity of the means employed to prevent or repel it.
3. Lack of sufficient provocation on the part of the person defending himself.[19]

Unlawful aggression is present when peril to one's life, limb or right is either actual or imminent.[20]

Appellant Agsalog claims that as reflected in their above-quoted version in their brief, there was unlawful aggression on the part of the victim — that as appellants "were out of the yard towards the tricycle to leave," the victim followed and pushed them, challenged them to a fight, after saying "vulva of your mother," and thereafter drew a *balisong* which he was "about to thrust" at him (appellant Agsalog). Appellant Siblas' following testimony, *quoted verbatim*, does not corroborate such claim of aggression on the victim's

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[18] *Rollo* at 73-74.

[19] Article 11, par. 1, Revised Penal Code.

[20] *People v. Recto*, 367 SCRA 390 (2001) citing *People v. Crisostomo*, 108 SCRA 288 (1981).

part, however, he (appellant Siblas) having merely witnessed the victim holding the shoulder of appellant Agsalog which the latter warded off, followed by the two *pushing each other*.

ATTY. SANSANO, JR. (counsel for both appellants):

x x x x x x x x x

Q When your co-accused Abraham Agsalog entered the yard, what happened next?

A Eduardo Marzan met him. (Siblas answering)

Q What [did] Abraham Agsalog do when he went there?

A *He told us, "Vulva of your mother. You could easily be baited."*

Q *What prompted Marzan said those words?*

A *I do not know why he said that, sir.*

Q What did Abraham Agsalog answer, if any?

A "How come, Bok."

Q What was the reply of Marzan, if any, to what Agsalog said?

A "When it comes to cocktails ("*pulutan*") you are so fast."

Q What did Agsalog answer, if any?

A "How come, Bok, you get it and we eat now."

Q After the reply of Agsalog, what did Marzan do?

A "Vulva of your mother," he said.

Q What did you do with that Marzan told you and Agsalog?

A After a while, Agsalog made an invitation.

Q What was that invitation?

A He said, "If that is the thing, let's go home."

Q What did Marzan do when you were invited by Agsalog to go home?

A *When Agsalog turn, Marzan held the right shoulder of Agsalog.*

Q *What [did] Marzan do when he held that shoulder of Agsalog?*

A *"When I am talking to you, do not turn your back."*

Q What did Agsalog do?
A *Agsalog warded his hand, sir.*

Q When Agsalog warded the hand of Marzan, what did Marzan do?
A *He continued to hold, sir.*

Q What did Agsalog told with what Marzan did to him?
A *He warded it, sir.*

Q *What happened next?*
A *I went out first and then Agsalog followed, sir.*

Q What happened between Agsalog and Marzan when you went ahead?
A *On the street they pushed each other, sir.*

Q What happened when they pushed each other?
A *Marzan told him, "You are liar."*

Q To whom he addressed that?
A To Agsalog, sir.

Q What did Agsalog do?
A *Marzan pushed Agsalog and they pushed each other.*

Q *And what did Agsalog do when he was pushed by Marzan?*
A *Things happened fast, sir.* **When I walk, I did not see the other things and the last thing that I saw when I look back, I saw Marzan going back.**

Q *How about Agsalog, where was he when you saw Marzan?*
A *He was on the street, sir.*

Q *Did you come to know what happened to Marzan?*
A *About his stabbing, sir.*

Q **Where were you anyway when Agsalog, your co-accused, stabbed Marzan?**
A **Maybe 3 to 4 meters away from them.**

Q **In relation to Marzan, where were you at the time of the stabbing?**
A **The same distance, sir.**

Q *At what particular direction to the place of Marzan?*

A *From right side of Eduardo Marzan, sir.*

Q **How about this witness Edwin Opiña, do you know where he was at that time?**

A **Yes, sir.**

Q **Where was he at the time?**

A **Maybe he was 2 to 3 meters to the left, sir.**

Q What was he doing there at the time?

A *He was in possession of a stone, sir.*

Q What did he do when he was in possession of a stone?

A He was holding two stones, sir.

Q He did nothing on those two stones?

A *He was only in possession of those stones, sir.*

Q This witness Edwin Opiña testified in court that when your co-accused Agsalog stabbed the victim you were holding the right hand of Marzan. What can you say about this?

A That is not true, sir.

x x x x x x x x x[21] (Emphasis and underscoring supplied)

Even assuming, however, that the victim indeed held the shoulder of appellant Agsalog, albeit the prosecution claimed it was appellant Siblas' right shoulder which the victim held, that could not have constituted actual or imminent peril to appellant Agsalog's life, limb or right, especially in light of appellant Siblas testimony that after that stage of the incident, the victim and appellant Agsalog pushed each other. It is unthinkable for appellant Siblas to have missed witnessing the alleged attempt of the victim to stab appellant Agsalog if indeed there was such an attempt.

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[21] TSN, September 24, 1998 at 4-7.

Absent thus any corroboration by independent and competent evidence of appellant Agsalog's claim of unlawful aggression on the part of the victim, it is extremely doubtful, hence, it cannot prosper.[22]

There being no unlawful aggression, there is no self-defense, complete or incomplete.[23]

That the stabbing could not have been carried out in self-defense draws reinforcement from the failure of appellant Agsalog, a high school teacher at that, to report the incident to police authorities. In fact, when he was arrested on October 6, 1997, at 9:00 p.m., he "refused to sign."[24]

In their second assignment of error, appellants fault the trial court for failure to consider the implications of the findings in the autopsy report, and the sworn statement of Aquino wherein he stated, as follows, quoted *verbatim*:

x x x x x x x x x

No. 67 Q: What other things happened if any?

A: Abraham Agsalog and Mr. Siblas *entered the yard of Mr. Juan Opiña wherein Eduardo Marzan is sitting threat* (sic) and Abraham Agsalog and Mr. Siblas called Eduardo Marzan and they talked to each other. Not long after, they traded words at the top of their voice and I notice that they were fighting. Then I saw Abraham Agsalog and Mr. Siblas ran towards the East direction being chased by Edwin Opiña and Ronald Opiña but Abraham Agsalog who was holding a fan knife (*balisong*) aimed to Ronald Opiña and caution[ed] them not to intervene.

x x x x x x x x x (Emphasis supplied)

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[22] *People v. Cabical*, G.R. No. 148519, May 29, 2003.

[23] *People v. Samson*, 189 SCRA 700 (1990).

[24] *Vide* Records at 26.

With respect to the autopsy report, appellants contend that the fatal (second) stab wound which hit the right auricle of the victim's heart was not inflicted by appellant Agsalog. Thus they explain:

> The Autopsy Report (Exh. "G", "G-1" and "G-2") indicated that there were two (2) stab wounds, one which was inflicted medially on the upper middle portion of the abdomen, just above the navel that pierced the upper lobe of the lung, The other was directed downwards at the upper portion of the chest penetrating the right auricle of the heart and is the cause of death. The thrust through the abdomen, which is medially inflicted, is assumed that the knife is held level with the hand. On the other hand, the knife thrust through the chest, as it is on the downward stroke is assumed that the knife is held perpendicular to the hand. At the heat of the moment, it is not conceivable that the wielder of the knife changed the stance and grasp of the knife of the second thrust. *The knife thrust inflicted on the abdomen is admitted by the accused Agsalog, but he claimed only one thrust. As for the knife thrust through the chest, Agsalog denied ever inflicting it.* The deceased is taller by 4–5 inches than Agsalog, the knife thrust medially on the abdomen with the knife held level to the hand is expected for a smaller person. *But a knife thrust on a downward stroke on the upper portion of a taller person is impossible* to be inflicted by a smaller assailant. *The fatal stab is not done by Agsalog*.[25] (Italics supplied)

The claim that appellant Agsalog inflicted only the wound on the victim's abdomen does not persuade, given Edwin's and Soto's positive claims in their respective sworn statements and at the witness stand that said appellant *twice* stabbed the victim. That the wound of the victim on his chest was "on a downward stroke" need not rule out its infliction by a smaller person facing him. It is possible that that wound on the chest was inflicted while the victim stooped in pain after being stabbed in the abdomen, or that appellant Agsalog raised his hand to insure that he would reach and stab the chest of the already wounded taller victim. Whatever it was, the fact remains that Edwin and Soto categorically declared that appellant Agsalog twice stabbed the victim.

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[25] *Rollo* at 84-85.

With respect to the sworn statement of Aquino,[26] appellants contend that the same shows that the "incident [which] was preceded by a fight" and culminated in a spur of the moment stabbing was an act of self-defense and "negates and likewise belies the testimony of Edwin Opiña [that he (Edwin) was with the deceased at the terrace when appellants arrived] and provides a doubtful ground to convict accused-appellants of murder."

There is nothing in Aquino's statement, however, from which to infer that there was unlawful aggression on the victim's part such that self defense may be considered. Neither is there a declaration that the victim was alone at the terrace when appellants arrived.

At all events, appellants bewail the non-presentation by the prosecution of the doctor (who prepared the Autopsy Report) and of Aquino, thus denying them, so they claim, the opportunity to propound questions upon them.

The non-presentation by the prosecution of the doctor and Aquino as witnesses during the trial was the prerogative of the prosecution. If appellants wanted to question the two, nothing prevented them from presenting them as their own witnesses, but they did not.

In denying that conspiracy existed and that treachery and evident premeditation attended the stabbing, appellants proffer as follows, *quoted verbatim*:

> Assuming *sans* admitting that Edwin Opiña's testimony is credible, Siblas, while holding Marzan's hands, could not have expected Agsalog to stab Marzan. *It bears to stress that barely three (3) hours before the incident, at the Jessica Mae Karaoke Bar, Marzan slapped Siblas in the face. Siblas could only have thought that Marzan would do the same thing again to him when without warning, Marzan put his right hand on his shoulder.* Marzan was very much taller and stouter than either of the two (2) accused-appellants. As such, *under the circumstances, it was but natural for Siblas react and to hold Marzan's right hand to prevent impending harm.* When Agsalog saw

[26] Exhibit "F", Records at 14-15.

them, he could have perceived that Marzan *intended to harm his friend such that he went on his way to stab Marzan.* But on all indications, Siblas never knew nor acquiesced to Agsalog's design.

It can thus be said that accused-appellants never consciously adopted the 'means,' 'methods' or 'forms' by which Agsalog killed the victim. The stabbing of the victim cannot be considered as sudden and unexpected to the point of incapacitating him to repel or escape it. In fact, *the victim sustained only two (2) stab wounds.* Had accused-appellants indeed have a preconceived plan to kill Marzan, the latter would have suffered more stab wounds. The crime was impulsively done at the spur of the moment. It should be borne in mind that the prosecution miserably failed to prove that accused-appellants hatched a conspiracy beforehand to kill Marzan. Their meeting was only casual and at the very least, the attack was done impulsively. Such being the case, the killing of the victim is not at all treacherous . . .[27]

On the assailed finding that there was conspiracy between appellants, anchored on appellant Siblas' holding, at the time appellant Agsalog attacked the victim, of the right elbow and wrist of the victim who admittedly was very much bigger than them: As the prosecution claims that the victim placed his right hand on the left shoulder of appellant *Siblas* (the defense claims it was the shoulder of appellant *Agsalog* which the victim held), and the stabbing was sudden and swift, appellant Siblas' holding of the victim's elbow and wrist may not necessarily have meant to restrain the victim in order to insure that he would not put up a fight or defense. The holding of the victim's right wrist and elbow by appellant Siblas could have been done in the course of the removal thereof from Siblas' shoulder. At any rate, there is no showing that had not appellant Siblas held the victim's wrist and elbow, appellant Agsalog would not have succeeded in stabbing the victim.

Conspiracy, which requires the same quantum of proof to prove the guilt of an accused, was thus not clearly established.

That conspiracy was not proven to have existed does not of course necessarily free appellant Siblas from liability. If appellant

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[27] *Rollo* at 79-80.

Siblas' holding of the victim's elbow and wrist constituted a crime in and by itself, then he should be held criminally liable. Appellant Siblas' aforesaid act, *under the proven circumstance*, did not, however, amount to criminal offense giving rise to his individual culpability therefor.

As for the qualifying circumstance of *evident premeditation*, for it to be appreciated, the following requisites should be proven: (1) the time when the offender determined to commit the crime, (2) an overt act manifestly indicating that the culprit had clung to his determination, and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act.[28]

While the victim slapped appellant Siblas hours before the stabbing and it is thus not improbable for appellants to have hatched a plan to avenge the same, still, the circumstances *as presented by the prosecution* fail to show *evident* premeditation, which must be based upon external acts and not presumed from mere lapse of time.[29]

In the case of *People v. Peralta*:[30]

> The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. The elements of treachery are: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted. It does not follow that a sudden and unexpected attack is tainted with treachery for it could have been that the same was done on impulse, as a reaction to an actual or imagined provocation offered by the victim. Provocation of the appellant by the victim negates the presence of treachery even if the attack may have been sudden and unexpected. (Citations omitted)

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[28] *People v. Peralta*, 350 SCRA 198 (2001).

[29] *U.S. v. Ricafor*, 1 Phil. 173 (1902).

[30] *Supra* at 210-211.

The testimony of prosecution eyewitness Edwin that when appellants arrived at his yard and called for the victim, appellant Agsalog "sounded like he was mad," must surely have put the victim on guard, given the fact that a few hours before he slapped appellant Siblas.

There is thus reasonable doubt on whether treachery and evident premeditation attended the commission of the crime.

The crime committed was then only homicide.

As regards the damages awarded by the trial court, the amount of ₱200,000.00 for actual damages appears to have been partly based on the claim of Virgilio Padilla,[31] the victim's brother-in-law, that the total amount of ₱157,000.00 was incurred for burial expenses.

Jurisprudence dictates that the award of actual damages must, however, be duly substantiated by receipts.[32] An examination of the records shows that the alleged burial expenses was not duly receipted. It must thus be disallowed.

The heirs of the victim are, however, entitled to an award of civil indemnity in the amount of ₱50,000.00 which needs no proof other than the victim's death.[33]

As to the award by the trial court of ₱75,000.00 as moral damages, consistent with prevailing jurisprudence,[34] the crime committed being homicide, the amount must be reduced to ₱50,000.00.

Finally, the award of ₱10,000.00 as attorney's fees must be deleted in view of the failure of the trial court to explicitly

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[31] TSN, May 22, 1998 at 3.

[32] *Tomas Hugo v. Hon. Court of Appeals and the People of the Philippines*, G.R. No. 126752, September 6, 2002.

[33] *People v. Delim*, G.R. No. 142773, January 28, 2003.

[34] *People v. Sayaboc*, G.R. No. 147201, January 15, 2004 citing *People v. Bajar*, G.R. No. 143817, October 27, 2003.

state in the body of its decision the legal basis therefor. The power of courts to grant damages and attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[35]

WHEREFORE, the appealed decision of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 46 is hereby *MODIFIED*.

Appellant Abraham Agsalog is found *GUILTY* beyond reasonable doubt of *HOMICIDE* as defined under Article 249 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of Six (6) Years and One (1) Day of *prision mayor* as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *reclusion temporal* as maximum, with the accessory penalties provided by law; and he is ordered to pay the heirs of the victim, Eduardo Marzan, the amount of ₱50,000.00 civil indemnity and another ₱50,000.00 as moral damages.

Appellant Jovito Siblas *Y* Obaña @ Bitong is hereby *ACQUITTED* of the charge and is hereby ordered immediately *RELEASED* from confinement, unless he is being lawfully held in custody for another cause.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Ynares-Santiago, J., see dissenting opinion.

Sandoval-Gutierrez, J., maintains there was conspiracy between the appellants. (Joins *J.* Ynares-Santiago in her Dissenting Opinion.)

Vitug, J., on official leave.

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[35] *Ranola v. Court of Appeals,* 322 SCRA 1 (2000).

DISSENTING OPINION

YNARES-SANTIAGO, *J.*:

I would like to express my reservations on the majority opinion's ruling that the attendant circumstance of treachery is not present in the slaying of the victim Eduardo Marzan in order to qualify the crime to *murder*, and that no conspiracy existed between Agsalog and Siblas in the stabbing of the victim on October 4, 1997.

I am constrained to register my dissent on two grounds: first, the presence of the attendant circumstance of treachery (*alevosia*) in the case at bar as inferred from the acts of appellant Abraham Agsalog to qualify the crime to *murder*; and second, the applicability of the *doctrine of implied conspiracy* to implicate co-appellant Jovito Sablas to the killing of Eduardo Marzan.

The essence of treachery is that the attack comes without warning, done in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[1] The test of treachery may thus be expressed as follows: Did the assailant consciously or deliberately employ means, methods or forms in the execution of the criminal act which tended directly and especially to ensure the execution thereof without risk to the assailant himself arising from the defense which the victim might make? If in the affirmative, treachery can be appreciated to qualify the crime to *murder*.

Two conditions must concur in order for *alevosia* to be appreciated: (a) the assailant employed means, methods or forms in the execution of the criminal act which gives the person attacked no opportunity to defend himself or retaliate; and (b) the said means, methods or forms of execution were deliberately or consciously adopted by the assailant.

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[1] *People v. Grefaldia*, G.R. Nos. 121631-36, 30 October 1998, 298 SCRA 337.

The basis for treachery has reference to the means and ways employed in the commission of the crime.[2] This aggravating circumstance is applicable only to crimes against persons, where the mode of attack was consciously adopted.[3] Treachery should be taken into account even if the deceased was face to face with his assailant at the time the blow was delivered, where it appears that the attack was not preceded by a dispute and the offended party was unable to prepare himself for his defense.[4]

Treachery, whenever present and alleged in the information, qualifies the killing of the victim and raises it to the category of murder.[5] The killing of the victims is qualified with treachery, when the shooting was sudden and unexpected, and the victims were not in a position to defend themselves.[6]

In the case at bar, treachery should be appreciated to qualify the crime to *murder* against appellant Abraham Agsalog. It may be gleaned from the records that at or about 4:30 p.m. on October 4, 1997, appellant Agsalog, while walking on the left side of the victim, Eduardo Marzan, towards the front of the gate of the victim's house, suddenly moved one step forward, raised his shirt and drew a *beinte nueve* knife, executed a turn around and stabbed the victim twice, hitting the latter in the abdomen and chest.[7] Co-appellant Jovito Siblas was walking on the right side of the victim. It should be noted that the previous altercation which occurred at or around 2:00 p.m. in *Jessica Videoke* at San Quintin Public Market, San Quintin, Pangasinan was between the victim and co-appellant Siblas, *and not involving appellant Agsalog.* While walking towards his front gate, the victim,

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[2] L.B. Reyes, *Revised Penal Code,* Book One (15th Ed., 2001), p. 409.

[3] *Id.* at 410.

[4] *U.S. v. Cornejo,* 28 Phil. 457, 461 (1914).

[5] *People v. Limaco,* 88 Phil. 35 (1951).

[6] *People v. Aguillar,* 88 Phil. 693 (1951).

[7] TSN, Direct Testimony of Ulyses Sotto, 16 February 1998, p. 13.

Eduardo Marzan, even apologized for the incident *to co-appellant Siblas* when he said, *"Pasensiya ka na Pare"* to manifest his desire to reconcile differences. From this fact alone, it may be observed that the victim did not possess a retaliatory disposition, but rather a conciliatory mood. Not even the slightest provocation on the part of the victim may be manifested, moments before his untimely death.

The victim was not in a position to defend himself against the swift, sudden and unexpected aggression of appellant Agsalog, who took out his knife and stabbed the victim to death. The unsuspecting victim was unarmed and defenseless against two persons. He had no idea whatsoever of the impending assault on his person as shown by his casual and conciliatory behavior while talking to appellants. More importantly, the victim did not foresee the fatal stabbing.

Appellant Agsalog's surprise attack did not afford the opportunity for the unarmed victim to defend himself. He consciously or deliberately adopted the means of attack to accomplish the execution of the criminal act, thus establishing moral certainty that *alevosia* was present to qualify the killing of Eduardo Marzan to *murder*.

Granting *arguendo*, that a previous altercation involved assailant and victim, treachery can still be appreciated, provided there is a lapse of time between the altercation and the attack. In *People v. Montemayor*, a unanimous Court, speaking through Justice Romeo J. Callejo, Sr., held:[8]

> There may be still be treachery even if before the assault, the assailant and the victim had an altercation and a fisticuffs where, after the lapse of some time from the said altercation, the assailant attacked the unsuspecting victim without affording him of any real chance to defend himself. In this case, the appellant, armed with a gun, shot the victim as the latter was conversing with his wife and Beverly's other guests in front of the gate of the latter's house. The victim was unarmed. The attack of the appellant was

[8] G.R. No. 125305, 18 June 2003.

sudden. The victim had no inkling that the appellant had returned, armed with a gun.

The altercation between the victim and co-appellant Siblas at *Jessica Videoke* transpired at 2:00 p.m. while the fatal stabbing involving appellants occurred at about 4:30 p.m. at the foot of the gate of the victim's house. There was a lapse of time between the altercation and the assault of approximately two and a half hours. In other words, the time interval between the altercation and the assault was sufficient to lower the victim's defenses and set the stage for the unexpected attack by appellant Agsalog.

Alevosia was present in this case as the assailant launched a surprise attack, suddenly taking his knife from under his shirt. The unprovoked and unsuspecting victim was afforded no real chance to defend himself.

Even if the assailant frontally attacked the victim, treachery can be appreciated. The case of *People v. Prieto*[9] is illustrative:

> Treachery was attendant because the appellant suddenly and without provocation, stabbed Geraldo twice on the chest and abdomen when the unarmed victim opened the door to his house. The bare fact that the appellant was facing the victim when the latter was stabbed does not preclude treachery.

In *People v. Perez*,[10] the Court held:

> That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the latter to defend himself or to retaliate.

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[9] G.R. No. 141259, 18 July 2003.

[10] G.R. No. 134485, 23 October 2003.

In resolving whether there was a conspiracy between the two appellants, a brief discussion on the principle is appropriate at this point.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[11] It arises on the very instant the plotters agree, *expressly or impliedly,* to commit the felony and forthwith decide to pursue it. Once this assent is established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them.[12] Conspiracy may be proved by direct or circumstantial evidence. Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. In the absence of direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest.[13] It need not matter who inflicted the mortal wound, as the act of one is the act of all, and each of the actors incurs the same criminal liability. There is collective criminal responsibility in conspiratorial acts.

Conspiracy is *implied* when the accused had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[14] It is manifested in the coordinated acts of the assailants, of one of them holding the hand of the victim while another was stabbing him and a third delivering fist blows on different parts of the body of the victim, and,

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[11] Art. 8, Par. 2, Revised Penal Code.

[12] *People v. Talla,* G.R. No. 44414, 18 January 1990, 181 SCRA 133, 148; *People v. Monroy,* 104 Phil. 759, 764 (1958), citing *People v. Abrina,* 102 Phil. 695 (1957).

[13] *People v. Pelopero,* G.R. No. 126119, 15 October 2003.

[14] *Supra* note 2 at 498.

when the victim was able to escape, of giving chase and the first accused shooting the deceased five (5) times.[15]

In the present case, the *doctrine of implied conspiracy* should be applied against co-appellant Jovito Siblas. The records reflect that co-appellant Siblas, while nearing the gate of the victim's house, and **simultaneously** *with the forward, lunging movement of appellant Agsalog, unexpectedly held the right hand of the victim with his two hands; one hand on the wrist, and the other hand holding the left hand just above the elbow of the victim.*[16] The act of suddenly holding the victim's hand, simultaneously or contemporaneously to the stabbing of the victim by appellant Agsalog, rendered the victim immobile, vulnerable and prone to attack. This act of Siblas *evinces a common design, concerted action and unity of purpose with Agsalog's thrusting of the knife.* It exhibited a closeness and coordination in the manner of execution of Agsalog's criminal act against the victim who was utterly defenseless.

In conspiracy, it is immaterial who inflicted the fatal wounds. Conspirators have collective criminal responsibility. In this case, both appellants are collectively liable for the crime as they **acted in unison;** by their very actions, appellants conspired with each other to kill the victim. *The acts of both appellant Agsalog and his co-appellant, Siblas, show a closeness and coordination in the manner of execution as to undoubtedly indicate a commonality of design and unity of purpose in killing the victim, Eduardo Marzan.* The acts of appellants show *unanimity in design, intent and execution* of the attack on the victim, making Siblas criminally liable as co-conspirator and co-principal of the fatal stabbing of Eduardo Marzan. Verily, the act of Agsalog by legal contemplation is the act of Siblas.

In *People v. Ramil Gutierrez, et al.,*[17] we ruled that in conspiracy, it is not necessary to show that all the conspirators

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[15] *People v. Carpio,* G.R. Nos. 82815-16, 31 October 1990, 191 SCRA 108, 118.

[16] *Supra* note 8 at 11.

[17] G.R. No. 142905, 18 March 2002.

actually hit and killed the victim, since the act of each conspirator in furtherance of the common objective is the act of all:

> What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. The act of each conspirator in furtherance of the common purpose in contemplation of law is the act of all.

The act of co-appellant in holding the victim's right hand and elbow showed that he concurred in the criminal design of the actual assailant, Abraham Agsalog. Having joined in the criminal conspiracy, co-appellant Jovito Siblas in effect adopted as his own the criminal design of co-conspirator, appellant Agsalog. Chief Justice Hilario G. Davide, Jr., writing for the Court in *People v. Manalo*,[18] made this succinct observation:

> Indeed, the act of the appellant of holding the victim's right hand while the victim was being stabbed by Dennis shows that he concurred in the criminal design of the actual killer. If such act were separate from the stabbing, appellant's natural reaction should have been to immediately let go of the victim and flee as soon as the first stab was inflicted. But appellant continued to restrain the deceased until Dennis completed his attack.
>
> Conspiracy was evident from the acts of the four accused, with two of them seizing the victim's arms and holding him immobile, one holding his back, and another thrusting a knife on the victim. These acts indubitably point to a joint purpose, concerted action and community of interest. Having joined in the criminal conspiracy, appellant in effect adopted as his own the criminal design of his co-conspirators. Hence, as a co-conspirator whose participation emboldened the actual killer and contributed to the success of the common design, appellant is liable as a co-principal in the killing of Rodrigo.

When there is conspiracy, treachery attends against all conspirators, although only one did the actual stabbing of the victim.[19]

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[18] G.R. No. 144734, 7 March 2002.

[19] *People v. Ong*, G.R. No. L-34497, 30 January 1975, 62 SCRA 174, 211.

Lastly, it is a well-settled principle that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great weight and respect, even finality, on appeal unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case.[20] Since no reversible error was committed by the court *a quo* in its evidentiary findings on treachery and conspiracy, the lower court's appreciation of the foregoing in sustaining a *murder* conviction for both appellants must be upheld.

The penalty for *murder* is *reclusion perpetua* to *death*.[21] In view of the fact that no mitigating or aggravating circumstances attended the commission of the crime, the proper penalty to be meted under the *Revised Penal Code* is *reclusion perpetua*.[22]

Appellants should pay the heirs of the victim Eduardo Marzan civil indemnity *ex delicto* in the amount of ₱50,000.00[23] and ₱50,000.00 as moral damages,[24] all in conformity with prevailing case law.

ACCORDINGLY, I vote to *AFFIRM* the decision of the Regional Trial Court of Urdaneta City, Branch 46, finding appellants Abraham Agsalog @ Panto and Jovito Siblas *y* Obaña @ Bitong guilty beyond reasonable doubt of the crime of *murder* with the *MODIFICATION* that their sentence be reduced to *reclusion perpetua* and order them to pay the heirs of Eduardo Marzan ₱50,000.00 as civil indemnity *ex delicto* and ₱50,000.00 as moral damages.

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[20] *People v. Romero*, G.R. No. 145166, 8 October 2003; *People v. Inggo*, G.R. No. 140872, 23 June 2003, citing *People v. Galam*, G.R. No. 114740, 15 February 2000, 325 SCRA 489, 496-497. See *supra* note 18.

[21] Art. 248, No. 1, Revised Penal Code.

[22] Art. 63, No. 2, Revised Penal Code.

[23] *People v. Garcia*, G.R. No. 145505, 14 March 2003.

[24] *People v. Matore*, G.R. No. 131874, 22 August 2002.

EN BANC

[G.R. No. 142899. March 31, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CESAR GLORIOSO LAGRONIO PADILLA, *a.k.a.* Erick Padilla,** *appellant*.

SYNOPSIS

The penalty of death was imposed upon herein appellant after the trial court found him guilty beyond reasonable doubt of the crime of rape committed against eight-year old AAA, daughter of his live-in partner. Hence, this automatic review. Appellant sought a reversal of his conviction contending that the prosecution's evidence were insufficient to prove his guilt beyond reasonable doubt.

The Supreme Court held that the trial court correctly found that appellant committed the crime charged beyond reasonable doubt. According to the Court, the victim's testimony positively identifying the appellant as the one who had carnal knowledge of her by using force and intimidation on April 18, 1999 bears the hallmark of truth. She testified in a straightforward, candid and convincing manner, leaving no room for doubt that, on the day in question, she was indeed ravished by appellant. At a tender age of nine, living in remote *barrio* and absolutely inexperienced in the ways of the world, she could not have narrated in a spontaneous manner the sordid details of her horrifying ordeal in the hands of appellant had it not really happened to her. Appellant, by wielding his *balisong* and threatening her with death just before and after he deflowered her, clearly employed force and intimidation in consummating his bestial act. Thus, appellant's defense of denial was inherently weak in the face of the positive identification by the victim of the appellant as the violator of her honor. Likewise, the Court sustained the imposition of death penalty upon appellant. The qualifying circumstances of minority of the victim and her relationship to the appellant have been specifically alleged in the Amended Information and duly proved during trial with equal certainty as the crime itself. The Court therefore affirmed the decision of the trial court with modification as to award of damages.

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS; WHEN CONSIDERED QUALIFIED; ELEMENTS. —** The Amended Information alleges that the crime was committed on April 18, 1999. Thus, the law applicable to the case at bar is Republic Act No. 8353 (otherwise known as "The Anti-Rape Law of 1997"), Section 2 of which provides: x x x The elements of rape under the above-quoted provisions are: (1) the offender is a man who had carnal knowledge of a woman; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or by means of fraudulent machination or grave abuse of authority; or when the victim is under twelve (12) years of age or is demented. The same provisions likewise categorized rape as either simple or qualified. It is qualified only when any of the qualifying/aggravating circumstances which attended the commission of the crime is alleged in the Information and proven during trial, as for instance the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

2. **ID.; ID.; NOT NEGATED BY ABSENCE OF HYMENAL LACERATIONS IN THE VICTIM'S GENITALIA. —** We find unmeritorious appellant's contention that the prosecution failed to indubitably establish that he raped AAA on April 18, 1999, simply because Dr. Benedicto, when he examined her two days after, had found healed/old (not fresh) laceration in the victim's hymen and he could not determine the date when such laceration was inflicted. It should not surprise appellant that the laceration in AAA's hymen is no longer fresh. It could be explained by the fact that, as testified by her, he sexually assaulted her when she was in Grades 1 and 2, the last time of which was on April 18, 1999. In any event, it bears stressing that the medical findings of injuries or hymenal lacerations in the victim's genitalia are not essential elements of rape. To be sure, even the absence of such injuries does not negate rape. What is indispensable is that there was penetration of the penis, however slight, into the *labia* or lips of the female organ. In the case at bar, AAA convincingly testified that appellant, through force and intimidation, inserted his penis into her vagina on April 18, 1999.

3. ID.; ID.; DEATH PENALTY; PROPER WHERE THE QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP HAVE BEEN SPECIFICALLY ALLEGED AND PROVED. — We likewise sustain the trial court's imposition of the death penalty upon appellant being in accordance with Article 266-B of the Revised Penal Code, as amended by R.A. 8353, quoted earlier. The qualifying circumstances of *minority* of the victim and her *relationship* to the appellant have been specifically alleged in the Amended Information and duly proved during trial with equal certainty as the crime itself. AAA's Certificate of Live Birth shows that she was born on February 23, 1990. She was thus nine years old when she was raped by appellant on April 18, 1999. Also, appellant himself admitted in open court that he is the live-in partner or common-law spouse of AAA's mother, BBB.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LONE, UNCORROBORATED TESTIMONY OF RAPE VICTIM SUFFICIENT TO CONVICT IF CLEAR, POSITIVE, CONVINCING AND CONSISTENT WITH HUMAN NATURE. — In determining the guilt or innocence of the accused in cases of rape, the victim's testimony is crucial in view of the intrinsic nature of the crime in which only two persons are normally involved. He may be convicted on the basis of her lone, uncorroborated testimony provided it is clear, positive, convincing, and consistent with human nature. Thus, her testimony must be scrutinized with extreme caution. We have assiduously reviewed the records and found that AAA categorically and positively identified the appellant as the one who *had carnal knowledge of her by using force and intimidation on April 18, 1999.*

5. ID.; ID.; ID.; TESTIMONY OF A CHILD-VICTIM GIVEN FULL WEIGHT AND CREDENCE. — AAA's testimony bears the hallmark of truth. She testified in a straightforward, candid and convincing manner, leaving no room for doubt that, on the day in question, she was indeed ravished by appellant, her mother's live-in partner or common-law husband. Not even the information given her by appellant's counsel that appellant could be meted the penalty of death because of her testimony, could change her account. At a tender age of 9, living in a remote *barrio* and absolutely inexperienced in the ways of the world, she could not have narrated in a spontaneous manner the sordid details of her horrifying ordeal in the hands of appellant had it not really happened to her. Appellant,

by wielding his *balisong* and threatening her with death just before and after he deflowered her, clearly employed force and intimidation in consummating his bestial act. It is settled jurisprudence that the testimony of a child-victim is given full weight and credence, considering that when a woman, specially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity

6. ID.; ID.; ID.; NO MOTHER WOULD POSSIBLY WISH TO STAMP HER CHILD WITH THE STIGMA THAT FOLLOWS A DESPICABLE CRIME OF RAPE WERE IT NOT TO SEEK JUSTICE. — Appellant, nonetheless, imputes ill-motive on AAA and her mother BBB in charging him with rape contending that the latter was jealous when she found that he was courting a woman in their place.Again, appellant's excuse is simply too frail to cause resentment and ill will on the part of AAA and her mother against him. Though one may be consumed with much hatred and revenge, it takes nothing less than psychological depravity for a mother to concoct a story too damaging to the welfare and well-being of her own daughter. Certainly, no mother in her right mind would possibly wish to stamp her child with the stigma that follows a despicable crime of rape. We are convinced that the victim and her mother boldly initiated the present case to seek justice for the abominable act committed by appellant.

7. ID.; ID.; DEFENSE OF DENIAL; BECOMES WEAKER IN THE FACE OF RAPE VICTIM'S POSITIVE IDENTIFICATION OF ACCUSED AS VIOLATOR OF HER HONOR. — As against the positive and categorical testimony of AAA, appellant could only proffer the defense of denial by narrating a totally different version of what actually happened in the morning of April 18, 1999 in their house. He merely speculated that AAA's hymen may have been ruptured not because he raped her but because it was accidentally hit by his hand when he tried to hold her while falling down. Such defense burdens the imagination, to say the least. It is utterly preposterous, if not incredible. Dr. Benedicto, his own witness, contradicted appellant's theory as he found no sign of infection on AAA's vagina. He even declared that she submitted herself to a physical examination because she complained of being raped, not on account of any alleged accidental injury. We have consistently held that the defense of denial, as in the instant case,

is inherently weak, and it becomes even weaker in the face of the positive identification by the victim of the appellant as the violator of her honor.

8. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; CANNOT BE AWARDED ABSENT PROOF TO JUSTIFY AWARD THEREOF. — With respect to appellant's civil liability, the trial court erroneously awarded the victim "₱75,000.00 *as actual or compensatory damages* x x x." No proof was introduced by the victim to justify such an award. Article 2179 of the Civil Code provides: "Except as provided by law or by stipulation, one is entitled to an adequate compensation *only for such pecuniary loss suffered by him as he has duly proven.* Such compensation is referred to as actual or compensatory damages."

9. ID.; ID.; AWARD OF CIVIL INDEMNITY *EX DELICTO*, MORAL AND EXEMPLARY DAMAGES IN CASE AT BAR. — We have held that where, as here, the rape is perpetrated with any of the qualifying/aggravating circumstances that require the imposition of the death penalty, the victim shall be awarded the following: ₱75,000.00 as civil indemnity *ex delicto* — which is mandatory upon the finding of the fact of rape; ₱75,000.00 as moral damages, even without need of proof since it is assumed that the victim has suffered moral injuries; and ₱25,000.00 as exemplary damages to curb this disturbing trend of incestuous rape and to set as an example for the public good.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

***PER CURIAM*:**

Before us on automatic review is the Decision[1] dated March 9, 2000 of the Regional Trial Court, Branch 81, Romblon, Romblon, in Criminal Case No. 2156 finding Cesar Glorioso Lagronio Padilla (*a.k.a.* "Erick Padilla"), appellant, guilty of rape and sentencing

[1] Penned by Judge Placido C. Marquez; RTC Records at 90-103.

him to suffer the supreme penalty of death and to pay the victim ₱75,000.00 "as actual or compensatory."

The Amended Information[2] filed against appellant reads:

"The undersigned (prosecutor) accuses CESAR GLORIOSO LAGRONIO PADILLA, a.k.a. Erick Padilla, of the crime of rape as penalized under Republic Act No. 7659, in relation to Republic Act No. 8353, committed as follows:

"That on or about the 18th day of April 1999, in barangay x x x, municipality of x x x, province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the *live-in partner of her mother*, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, an 8 year-old girl, and against her will.

"Contrary to law."

Upon arraignment, appellant, duly assisted by counsel *de oficio*, Atty. Cesar M. Madrona of the Public Defender's Office, pleaded "not guilty" to the charge.[3]

During the pre-trial, the parties entered into a stipulation of facts, among which are the following: (1) AAA, the victim was born out of wedlock to CCC and BBB at Barangay x x x, x x x, x x x; (2) in 1993, CCC and BBB separated; (3) in August 1996, BBB and appellant started living together as common-law husband and wife at barangay x x x, x x x, x x x continuously until April 18, 1999 when the instant crime was committed; and (4) during the live-in relationship of BBB and appellant, AAA was under their care and custody.[4]

Upon termination of the pre-trial proceedings, trial ensued.

The evidence for the prosecution reveals that in the morning of April 18, 1999, AAA, a 9-year old Grade 3 pupil, was left alone with appellant in their house at barangay x x x, x x x,

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[2] Dated June 4, 1999; RTC Records at 10.

[3] RTC Records at 12.

[4] Pre-Trial Order dated October 7, 1999, RTC Records at 45-49.

x x x. At that time, her mother BBB was away looking for coconut to be used for making *bukayo*.[5] AAA was then washing the plates in the kitchen located outside their house when appellant commanded her to go inside. She did not readily obey him because she was scared that he would rape her again just what he did to her several times when she was in Grades 1 and 2.[6] He reacted violently, drawing his *balisong* as he repeated his command. This time she nervously went inside the house.[7] He followed her. Once inside, he ordered her to lie down. He then removed her underwear.[8] When he held her vagina, she felt pain and struggled to free herself, but again, he drew his *balisong*. He went on top of her and inserted his penis into her vagina. She shouted for help as she felt excruciating pain.[9] But no one heard her desperate cries since they have no neighbors. Feeling helpless, she just cried. After sometime, he stood and she noticed a sticky substance coming out of his penis. Before he left, he threatened to kill her and her clan if she would reveal the incident to anyone. She just sat down crying as she noticed her vagina bleeding. Then she put on her underwear.[10]

Due to extreme pain of her vagina, AAA mustered enough courage to report this harrowing incident to her mother. Without delay, they went to the police and filed a complaint against appellant. AAA also submitted herself to a medical examination.[11] During the trial, she positively identified appellant as the one who raped her on April 18, 1999.[12] She declared that he is a wicked person, a rapist,[13] and that he should be punished with death.

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[5] Transcript of Stenographic Notes (TSN), November 15, 1999 at 7.

[6] TSN, November 16, 1999 at 10-11.

[7] *Id. a*t 3-6.

[8] TSN, November 15, 1999 at 9.

[9] *Id*. at 7-8, 10.

[10] *Id*. at 11.

[11] *Id*. at 13-14; TSN, November 16, 1999 at 14-15.

[12] TSN, November 15, 1999 at 5-6.

[13] TSN, November 16, 1999 at 16.

On April 20, 1999, Dr. Victorino F. Benedicto, Municipal Health Officer of Romblon, examined AAA[14] and issued a Medico-Legal Certificate[15] stating that her hymen was already ruptured with a healed laceration at 2:00 o'clock position. The laceration may have been caused by the penetration of an erect penis.[16] He noticed that the laceration was not fresh. He could not determine with certainty the exact date the laceration was inflicted.

Manuela R. Musa, Assistant Registration Officer of the Municipal Registrar of Romblon, presented to the trial court AAA's Certificate of Live Birth[17] showing that she was born to BBB and CCC on February 23, 1990 at barangay x x x, x x x, x x x.[18]

Appellant, on the other hand, had a different story to tell. According to him, when he woke up in the morning of April 18, 1999, he was watching AAA, his common-law wife, while washing clothes. Beside him was AAA playing with her toys. Suddenly, AAA climbed on his back with her right thigh on his right shoulder and her left thigh on his left shoulder. She was holding his head. When he stood, she lost her balance, but he quickly caught her with his hand which accidentally hit her vagina. This caused injury to her sex organ. BBB immediately approached them and checked AAA's condition. She removed AAA's underwear and bathed her despite his objection since the injury in her vagina might get infected. Two days after, or on April 20, 1999, AAA had fever due to infection. Thus, he instructed BBB to bring AAA to a doctor, Dr. Victorino F. Benedicto attended to AAA.[19]

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[14] TSN, November 17, 1999 at 15.

[15] Exhibit "D", RTC Records at 69.

[16] TSN, November 17, 1999 at 23.

[17] Exhibit "F", RTC Records at 71; TSN, November 22, 1999 at 2.

[18] TSN, November 18, 1999 at 3.

[19] TSN, November 23, 1999 at 4-7.

Appellant further testified that on April 23, 1999, while working at the construction site, he was arrested by the police on account of AAA's complaint that he raped her[20] which he denied.[21] He claimed that BBB and AAA had ill-motive in filing the rape charge because she (BBB) found that he was courting a lady in their place.[22]

The defense also presented Dr. Victorio F. Benedicto as its witness to prove that AAA had infection on her vagina when he examined her on April 20, 1999. Dr. Benedicto, however, testified that on such date, AAA and a companion went to his clinic for consultation because of her (AAA's) complaint that she was raped and not because her vagina got infected. He was not even informed that AAA was accidentally injured. When he examined AAA, he did not notice any infection in her vagina.[23]

On March 9, 2000, the trial court rendered its Decision convicting the appellant of rape, thus:

"WHEREFORE, this Court finds the accused CESAR GLORIOSO LAGRONIO PADILLA, a.k.a. "ERICK PADILLA," GUILTY beyond reasonable doubt of the crime of rape and sentences him to suffer the extreme penalty of death, as well as to pay the victim AAA the sum of ₱75,000.00 as actual or compensatory, not moral, damages.

x x x x x x x x x

"SO ORDERED."[24]

Appellant, in his Brief, assails the Decision of the court *a quo*, contending that:

"THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[25]

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[20] *Id*. at 17.

[21] *Id*. at 11-12.

[22] *Id*. at 27.

[23] TSN, November 24, 1999 at 3-4.

[24] RTC Records at 103.

[25] Appellant's Brief, *Rollo* at 59.

The Amended Information alleges that the crime was committed on April 18, 1999. Thus, the law applicable to the case at bar is Republic Act No. 8353 (otherwise known as "The Anti-Rape Law of 1997"), Section 2 of which provides:

"Sec. 2. *Rape as a Crime Against Persons*. — The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

"Art. 266-A. *Rape; When and How Committed. – Rape is committed —*

1) By a *man* who shall *have carnal knowledge of a woman* under *any of the following circumstances*:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

"Art. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x x x x x x

The *death penalty* shall also be imposed if the crime of rape is committed with *any of the following aggravating/qualifying circumstances*:

1) When the *victim* is *under eighteen (18) years of age* and the *offender* is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or *the common-law spouse of the parent of the victim*;

x x x x x x x x x." (italics supplied)

The elements of rape under the above-quoted provisions are: (1) the offender is a man who had carnal knowledge of a woman; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or by means of fraudulent machination or grave abuse of authority; or when the victim is under twelve (12) years of age or is demented.

The same provisions likewise categorized rape as either simple or qualified. It is qualified only when any of the qualifying/aggravating circumstances which attended the commission of the crime is alleged in the Information and proven during trial, as for instance the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[26]

Appellant's lone assignment of error is anchored on Dr. Benedicto's testimony that when he examined AAA on April 20, 1999, or two days after the incident, he found that the laceration in her hymen was *not fresh*, and that he could *not* determine with certainty the *exact date it was inflicted.* According to appellant, "the prosecution failed to indubitably prove" that AAA was raped on April 18, 1999, and that he was the author of the crime.[27]

The Solicitor General, in his Brief, counters that appellant's contention is devoid of merit since the absence of fresh hymenal laceration is not indispensable in the prosecution for rape. It is AAA's testimony that she was sexually molested by appellant that is essential.[28]

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[26] *People vs. Pancho*, G.R. Nos. 136592-93, November 27, 2003, citing *People vs. Bartolome*, 323 SCRA 836 (2000).

[27] Appellant's Brief, *Rollo* at 68.

[28] Appellee's Brief, *Rollo* at 110-111.

We agree with the Solicitor General.

In determining the guilt or innocence of the accused in cases of rape, the victim's testimony is crucial in view of the intrinsic nature of the crime in which only two persons are normally involved. He may be convicted on the basis of her lone, uncorroborated testimony provided it is clear, positive, convincing, and consistent with human nature.[29] Thus, her testimony must be scrutinized with extreme caution.[30]

We have assiduously reviewed the records and found that AAA categorically and positively identified the appellant as the one who *had carnal knowledge of her by using force and intimidation on April 18, 1999.* An extract from AAA's testimony, quoted hereunder, indubitably shows such fact:

"PROSECUTOR BENEDICTO:

x x x x x x x x x

Q You are testifying in a case of rape today, do you know that?

A Yes, sir.

Q And the accused is Cesar Glorioso Lagronio Padilla *alias* Erick Padilla, do you know that?

A Yes, sir.

Q If he is in the courtroom, will you stand and point to us the accused?

A Yes, sir.

Q Will you go down from the witness stand and point to us the accused?

INTERPRETER:

Witness was asked to step down from the witness stand and asked to point the accused inside the courtroom and

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[29] *People vs. Belga*, 349 SCRA 678 (2001).

[30] *People vs. Orquina*, G.R. No. 143383, October 8, 2002, 390 SCRA 510; *People vs. Carlito Marahay*, G.R. Nos. 120625-29, January 28, 2003, citing *People vs. Amante*, G.R. Nos. 149414-15, November 18, 2002.

she pointed to the accused in the courtroom, and when asked his name answered 'Erick Padilla.'

x x x x x x x x x

Q Do you remember where you were on April 18, 1999?
A Inside the house.

Q In what *barangay*?
A x x x.

Q Where was your mother on April 18, 1999 while you were in your house at x x x?
A Looking for coconut to be used for making *bukayo*.

Q How about the accused Erick?
A In the house.

Q In whose house?
A Our house.

Q What were you doing at that time?

ATTY. MADRONA:

May we know what time, what is the time?

PROSECUTOR BENEDICTO:

Q Morning of April 18, 1999?
A Yes, sir.

Q What?
A Washing dishes.

Q What happened while you were washing dishes?
A He called me and told me to get inside.

Q Who called you?
A Erick.

Q Is Erick the husband of your mother?
A Yes, sir.

Q How about CCC?
A They separated.

Q Separated with your mother?
A Yes, sir.

Q Erick asked you to get inside where?
A Inside the house.[31]

x x x x x x x x x

Q While you were washing dishes and when Erick told you to go inside the house, did you immediately go inside?
A No, sir.

Q Why?
A Because I know that he will rape me again.

Q So, what did Erick do when you did not follow his instruction?
A He drew his *balisong*.

x x x x x x x x x

Q Can you remember how long was that *balisong* x x x?
A (Witness putting her right hand on the graduation of six (6) inches.)

Q So, what did you do, if any, when Erick brought out or drew his *balisong*?
A I obeyed and entered the house.[32]

x x x x x x x x x

Q After entering the house, what happened?
A He also entered the house.

Q Does the house in x x x have bedroom?
A We were only sleeping on the floor.

Q What happened when you were inside the house and Erick also got inside the house?
A He told me to lie down.

Q What did you do when he told you to lie down?
A I laid down.

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[31] TSN, November 15, 1999 at 5-8.

[32] TSN, November 16, 1999 at 5-6.

Q What happened after you laid down x x x?
A He removed my panty.

Q Aside from the panty, what were you wearing at that time?
A Shirt.

Q After removing your panty, what happened next?
A He held my vagina.

Q What did he use in holding your vagina?
A His hand.

Q What did you do when he held your vagina with his hand?
A I struggled (*nagkayupog*).

Q What did you feel when the accused held your vagina with his hand?
A Painful.

Q After struggling, what happened next?
A He held his penis and inserted it into my vagina.

Q Did you see his penis?
A Yes, sir.

Q What did you feel when he inserted his penis into your vagina?
A Painful.

Q What did you do when he inserted his penis into your vagina?
A I shouted.

Q For what?
A I shouted. I said, 'help'! (*Nagsinggit ako. Naghambay, 'tabang'*!)

Q How may times did you shout for help?
A Once.

Q Was there any help that came to you?
A None.

Q Why, if you know?
A Because we don't have neighbors, sir.

Q So, what happened to you after that?
A I cried.

x x x x x x x x x

Q Did you notice anything from the penis of Erick?
A Yes, sir.

Q What?
A Something sticky (*ang malapot*).

Q After noticing something sticky, what happened next?
A I cried.

Q What was the position of Erick while he inserted his penis through your vagina?
A Doing like this (witness demonstrating by stooping forward and extending her both hands) and said he was laughing [*ngilit*]).

Q While Erick is in that position when you demonstrated, where were you?
A Lying (*gahigda*).

Q While you were lying, where was Erick?
A On top of me (*gatumbaw sa akon*).

Q How long was Erick on top of you?
A Quite long.

Q And after sometime that Erick was on top of you, what did he do next?
A He stood up.

Q How about you?
A I sat down.

Q What happened to your panty, did you wear it again?
A Yes, sir.

Q Before putting on your panty, did you notice anything in your vagina?
A Yes, sir.

Q What?
A It's a little bit bleeding.

Q How about the sticky substance, where did you see it?
A On his penis.

Q After standing up, what did Erick do?
A Went out.

x x x x x x x x x

Q How may times did Erick Padilla went on top of you, no reference as to time, and inserted his penis into your vagina?
A Many (*madamo*).

Q When you were Grade 1, did he do the same to you?
A Yes, sir.

Q How many times?
A Many times.

Q Where was your mother when he did this to you many times while you were in Grade 1?
A Looking for coconut.

Q When Erick did this to you while you were in Grade 1, did you tell your mother?
A No, sir.

Q Why?
A Because he threatened me."[33]

During cross-examination, AAA remained steadfast in her testimony, thus:

"ATTY. MADRONA:

Q Can you tell us how long or how short then the penetration go?
A Just a little bit of it, may be.

Q May be it did not actually enter your vagina?
A He inserted it.

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[33] TSN, November 15, 1999 at 8-13.

Q But was it able to enter?
A Yes, sir.

x x x x x x x x x

Q And this has been done by the accused even when you were in Grade 1?
A Yes, sir.
Q When you were in Grade 1, how many times did he do this to you?
A Many times.

x x x x x x x x x

Q And this was done to you by the accused when you were in Grade 2?
A Yes, sir.
Q Now, when you were in Grade 1, you said that this was done to you twice or thrice a week, why did you not complain to your mother?
A Because he was threatening me.
Q How did he threaten you?
A He said, if I would tell my mother about it he is going to kill all of us.
Q When he did that to you, it was the first time?
A Yes, sir.
Q How about the second time, were you also threatened?
A Yes, sir.

x x x x x x x x x

Q So, what you are sure is, everytime he rapes you he threatens you?
A Yes, sir.

x x x x x x x x x

Q Now, everytime it happened in Grade 1, there was a bleeding?
A Yes, sir.

Q Also when it happened in Grade 2?
A Yes, sir.

x x x x x x x x x

Q Now, we go to the Grade 3. Now, in Grade 3, how many times he did this to you?

PROS. BENEDICTO:

Your Honor, he was only Grade 3 since June.

ATTY. MADRONA Continuing:

Q So, when you were in Grade 3, this was not done to you anymore?
A No more.
Q But when this was done to you on April 18, 1999 this year, that was the only time that you complained to your mother?
A Yes, sir.
Q This time you were no longer threatened?
A I was still threatened.
Q Why did you complain to your mother when you were threatened this time?
A Because it was more painful.

x x x x x x x x x

Q So, this time there is a little bit of bleeding?
A Yes, sir.
Q While you were in Grade 3 when this was done to you by the accused, there was no bleeding, was there?
A There was.

x x x x x x x x x

Q Do you realize that if the accused is convicted in this case he may be sentenced to die?
A Yes, sir.
Q Do you want the accused to die?
A Yes, sir.

Q Why do you want him to die?
A Because he is a wicked person (*malain na tao*).

Q Why do you say that he is a wicked person?
A Because he is a rapist.

Q Who told you that a rapist is a wicked person?
A Nobody.

Q So, you realized that what the accused did to you all these years were wrong?
A Yes, sir."[34]

AAA's foregoing testimony bears the hallmark of truth. She testified in a straightforward, candid and convincing manner, leaving no room for doubt that, on the day in question, she was indeed ravished by appellant, her mother's live-in partner or common-law husband. Not even the information given her by appellant's counsel that appellant could be meted the penalty of death because of her testimony, could change her account. At a tender age of 9, living in a remote *barrio* and absolutely inexperienced in the ways of the world, she could not have narrated in a spontaneous manner the sordid details of her horrifying ordeal in the hands of appellant had it not really happened to her. Appellant, by wielding his *balisong* and threatening her with death just before and after he deflowered her, clearly employed force and intimidation in consummating his bestial act.

It is settled jurisprudence that the testimony of a child-victim is given full weight and credence,[35] considering that when a woman, specially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[36] Youth and immaturity are generally badges of truth and sincerity.[37]

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[34] TSN, November 16, 1999 at 9-14, 16.

[35] *People vs. Rosario*, G.R. No. 144428, August 6, 2003, citing *People vs. Panganiban*, 359 SCRA 509 (2001).

[36] *Id*. citing *People vs. Mariño*, 352 SCRA 127 (2001).

[37] *Id*. citing *People vs. Nardo*, 353 SCRA 339 (2001).

We find unmeritorious appellant's contention that the prosecution failed to indubitably establish that he raped AAA on April 18, 1999, simply because Dr. Benedicto, when he examined her two days after, had found healed/old (not fresh) laceration in the victim's hymen and he could not determine the date when such laceration was inflicted.

It should not surprise appellant that the laceration in AAA's hymen is no longer fresh. It could be explained by the fact that, as testified by her, he sexually assaulted her when she was in Grades 1 and 2, the last time of which was on April 18, 1999.

In any event, it bears stressing that the medical findings of injuries or hymenal lacerations in the victim's genitalia are not essential elements of rape.[38] To be sure, even the absence of such injuries does not negate rape. What is indispensable is that there was penetration of the penis, however slight, into the *labia* or lips of the female organ.[39] In the case at bar, AAA convincingly testified that appellant, through force and intimidation, inserted his penis into her vagina on April 18, 1999.

As against the positive and categorical testimony of AAA, appellant could only proffer the defense of denial by narrating a totally different version of what actually happened in the morning of April 18, 1999 in their house. He merely speculated that AAA's hymen may have been ruptured not because he raped her but because it was accidentally hit by his hand when he tried to hold her while falling down.

Such defense burdens the imagination, to say the least. It is utterly preposterous, if not incredible. Dr. Benedicto, his own witness, contradicted appellant's theory as he found no sign of infection on AAA's vagina. He even declared that she submitted herself to a physical examination because she complained of

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[38] *People vs. De Taza*, G.R. Nos. 136286-89, September 11, 2003, citing *People vs. Villadares*, 354 SCRA 86 (2001).

[39] *Id.*, citing *People vs. Vidal*, 353 SCRA 194 (2001); *People vs. Libo-on*, 358 SCRA 152 (2001); *People vs. Osing*, 349 SCRA 310 (2001); *People vs.*

being raped, not on account of any alleged accidental injury. We have consistently held that the defense of denial, as in the instant case, is inherently weak, and it becomes even weaker in the face of the positive identification by the victim of the appellant as the violator of her honor.[40]

Appellant, nonetheless, imputes ill-motive on AAA and her mother BBB in charging him with rape contending that the latter was jealous when she found that he was courting a woman in their place.

Again, appellant's excuse is simply too frail to cause resentment and ill will on the part of AAA and her mother against him. Though one may be consumed with much hatred and revenge, it takes nothing less than psychological depravity for a mother to concoct a story too damaging to the welfare and well-being of her own daughter.[41] Certainly, no mother in her right mind would possibly wish to stamp her child with the stigma that follows a despicable crime of rape.[42] We are convinced that the victim and her mother boldly initiated the present case to seek justice for the abominable act committed by appellant.

In sum, the trial court correctly found that appellant committed the crime charged beyond reasonable doubt.

We likewise sustain the trial court's imposition of the death penalty upon appellant being in accordance with Article 266-B of the Revised Penal Code, as amended by R.A. 8353, quoted earlier. The qualifying circumstances of *minority* of the victim and her *relationship* to the appellant have been specifically alleged in the Amended Information and duly proved during

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Sambrabo, G.R. No. 143708, February 24, 2003, 398 SCRA 106, citing *People vs. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 270, 282.

[40] *People vs. Losano*, G.R. No. 127122, July 20, 1999, 310 SCRA 707.

[41] *People vs. Salazar*, 258 SCRA 55 (1996).

[42] *People vs. Savelrina*, 238 SCRA 492 (1994).

trial with equal certainty as the crime itself.[43] AAA's Certificate of Live Birth shows that she was born on February 23, 1990. She was thus nine years old when she was raped by appellant on April 18, 1999. Also, appellant himself admitted in open court that he is the live-in partner or common-law spouse of AAA's mother, BBB.[44]

With respect to appellant's civil liability, the trial court erroneously awarded the victim "₱75,000.00 as *actual or compensatory damages* x x x." No proof was introduced by the victim to justify such an award.[45] Article 2179 of the Civil Code provides: "Except as provided by law or by stipulation, one is entitled to an adequate compensation *only for such pecuniary loss suffered by him as he has duly proven*. Such compensation is referred to as actual or compensatory damages."

We have held that where, as here, the rape is perpetrated with any of the qualifying/aggravating circumstances that require the imposition of the death penalty, the victim shall be awarded the following: ₱75,000.00 as civil indemnity *ex delicto* — which is mandatory upon the finding of the fact of rape;[46] ₱75,000.00 as moral damages, even without need of proof since it is assumed that the victim has suffered moral injuries;[47] and ₱25,000.00 as exemplary damages to

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[43] *People vs. Alfaro*, G.R. Nos. 136742-43, September 30, 2003, citing *People vs. Padilla*, 355 SCRA 741 (2001).

[44] TSN, November 23, 1999 at 2-5.

[45] *People vs. Ereno*, 326 SCRA 157 (2000).

[46] *People vs. Junas*, G.R. Nos. 144972-73, September 12, 2003, citing *People vs. Reyes*, 386 SCRA 559 (2002); *People vs. Rodavia*, G.R. No. 133008, February 6, 2002, 376 SCRA, 320.

[47] *People vs. Soriano*, G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140; *People vs. Sambrabo*, *supra*; *People vs. Santiago*, 319 SCRA 653; *People vs. Fuertes*, 296 SCRA 602.

curb this disturbing trend of incestuous rape and to set as an example for the public good.[48]

Three (3) members of this Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray* that R.A. No. 7659, insofar as it prescribes the penalty of death is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the appealed Decision dated March 9, 2000 of the Regional Trial Court, Branch 81, Romblon, Romblon, in Criminal Case No. 2156, finding that appellant CESAR GLORIOSO LAGRONIO PADILLA, *a.k.a.* Erick Padilla guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the extreme penalty of *DEATH* is hereby *AFFIRMED* with *MODIFICATION* in the sense that he is ordered to pay the victim, AAA, ₱75,000.00 as civil indemnity *ex delicto*; ₱75,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

Upon finality of this Decision, let the records of this case be forwarded to the Office of the President for the possible exercise of its pardoning power pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of RA 7659.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Vitug, J., on official leave.

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[48] *People vs. Montemayor*, G.R. No. 124474 and G.R. Nos. 139972-78, January 28, 2003; *People vs. Belonghilot vs. RTC of Zamboanga City*, G.R. No. 128512, April 30, 2003.

EN BANC

[G.R. No. 151286. March 31, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CATALINO DUEÑAS, JR.,** *appellant.*

SYNOPSIS

Relying principally on the extrajudicial confession of appellant, the trial court found him guilty of the crime of murder for the killing of Elva Jacob. Appellant was sentenced to death. Hence, this automatic appeal where appellant alleged that the extrajudicial confession which the trial court relied on for his conviction was infirm because the confession was secured through force and intimidation.

The Supreme Court found that appellant had already been in detention for five days before he came to be assisted by a lawyer, just before he was about to put his confession in writing. The Court entertained no doubt that the extrajudicial confession of appellant was given in violation of the safeguards in Article III, Section 12 of the Constitution. Thus, the Court ruled that the appellant's extrajudicial confession was inadmissible as evidence.

The purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting a confession, even through the slightest coercion which might lead the accused to admit something untrue. What is sought to be avoided is the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him. These constitutional guarantees are meant to protect a person from inherently coercive psychological, if not physical, atmosphere of such investigation.

Consequently, the Court acquitted appellant of the crime of murder.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; CUSTODIAL INVESTIGATION; DEFINED.—**Custodial investigation refers to the critical pre-trial stage when the investigation ceases to be a general inquiry into an unsolved crime but has begun to focus on a particular person as a suspect. According to PO3 Palmero, right after appellant's arrest, the latter already insinuated to him that he would confess his participation in the killing.

2. **ID.; ID.; ID.; PURPOSE OF PROVIDING COUNSEL TO PERSON UNDER CUSTODIAL INVESTIGATION.—**Well-settled is the doctrine that the purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting a confession, even through the slightest coercion which might lead the accused to admit something untrue. What is sought to be avoided is the "evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him." These constitutional guarantees are meant to protect a person from the inherently coercive psychological, if not physical, atmosphere of such investigation.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CORONA, *J.*:

Before us on automatic review is the decision,[1] dated October 26, 2001, of the Regional Trial Court (RTC) of Baler, Aurora, Branch 96, in Criminal Case No. 2220 finding the appellant, Catalino Dueñas, Jr., guilty beyond reasonable doubt of the crime of murder qualified by evident premeditation and attended

[1] Penned by Acting Presiding Judge Armando A. Yanga; *Rollo*, pp. 21-30.

by the aggravating circumstance of recidivism. Appellant was sentenced to death.

On April 1, 1997, Provincial Prosecutor Charlaw W. Ronquillo filed with the RTC Baler, Aurora an information charging appellant with the crime of murder:

> That at about 8:00 o'clock in the morning on November 29, 1996 at Gabgab Buhangin, Baler, Aurora and within the jurisdiction of this Honorable Court the said accused who was convicted of Murder on October 2, 1990, with intent to kill, evident premeditation, treachery and use of an unlicensed firearm, did then and there, attack, assault and use personal violence upon Elva Ramos-Jacob, also known as Elving Jacob, by shooting her at the head with a .38 caliber revolver that caused her death not long thereafter.
>
> CONTRARY TO LAW.[2]

Upon arraignment, appellant entered a plea of not guilty.[3]

The following facts are uncontroverted.

Appellant was a convicted felon for the crime of homicide[4] in Criminal Case No. 1414 in the Regional Trial Court, Branch 66, Baler, Aurora. He was serving sentence in the Iwahig Prison Farm, Puerto Princesa City, Palawan, when he escaped from confinement on July 11, 1995.

On November 29, 1996, at around 8:00 a.m., Cesar Friginal was cutting grass in his rice field in Sitio Gabgab, Brgy. Buhangin, Baler, Aurora, when he heard two gunshots. He instinctively turned to the direction where he heard the shots and, from about a hundred meters away, saw a short man wearing green clothes running away. At first, he ignored the occurrence but

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[2] Records, p. 1.

[3] Records, p. 30.

[4] There is a variance in the designation of the crime for which appellant was said to be previously convicted. The certification issued by the Bureau of Corrections specified that appellant escaped while serving sentence for homicide. However, in open court, appellant failed to object to the manifestation of the prosecution that he was previously convicted of the crime of murder.

when he saw people trooping to the vicinity, he joined the crowd and there saw a dead woman on the ground. The woman was later identified as his cousin and neighbor, Elva "Ka Elving" Ramos-Jacob.[5]

On December 6, 1996, Dr. Nenita S. Hernandez, municipal health officer of Baler, Aurora, conducted a *post mortem* examination on the victim. Her autopsy report showed the following:

I — Head:

1. wound, gunshot, entrance, circular in shape about 1 cm. diameter at the right parieto-temporal area.
2. wound, gunshot, exit, stollate in shape, edges everted about 1.5 cm. diameter with an exposed brain matter and fractured bone fragment located at the temporal area, right side.
3. wound lacerated about 1.5 cm. long at the right parietal area.

II — Arm:

1. wound lacerated 4 cm. long, lateral aspect, right wrist.

CAUSE OF DEATH:

> The most probable cause of death was brain damage and hypovolemic shock due to gunshot wounds of the brain.[6]

In a manifestation, the Office of the Solicitor General (OSG) narrated what it viewed as the factual antecedents of the case:

> On December 18, 1996, appellant tried to enter the house of one Benny Poblete in Brgy. Buhangin, Baler, Aurora, without permission. Benny and his father Harold Poblete tied appellant's hands until the police arrived. Police Officer Noel C. Palmero then apprehended and detained appellant at the Baler Police Station.
>
> The next day, or on December 19, 1996, appellant sought voluntary confinement for "safekeeping" because there were threats upon his life brought about by his involvement in the aforementioned incident of theft against the Pobletes.

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[5] TSN, December 2, 1999, Records, pp. 250-263.

[6] Exhibit "A",

Right after his apprehension, appellant intimated to Police Officer Palmero that he has information regarding the death of *Ka* Elving. Police Officer Palmero then instructed appellant to think about it over (*sic*) first.

Four days after or on December 23, 1996, Police Officer Palmero asked the still detained appellant if he was ready to divulge the information regarding *Ka* Elving's death, to which appellant answered yes. Appellant was then informed of his constitutional rights, including the right to secure the services of a lawyer of his own choice. Police Officer Palmero told appellant that if he cannot afford the services of counsel, he would even be provided with one for free.

By eleven o'clock that same morning, Atty. Josefina S. Angara, upon the police's invitation, arrived at the Baler Police Station to talk to appellant. Atty. Angara spoke with appellant in private for about thirty (30) minutes. Appellant blamed Benny for kicking him and causing him to suffer chest pains. Atty. Angara asked appellant what really happened. Before long, appellant admitted that he was commissioned by Benny to kill the victim. Atty. Angara warned him of the seriousness of his implications but appellant was adamant in confessing to the murder of *Ka* Elving. The lawyer-client conference was briefly interrupted by lunchtime. By one-thirty in the afternoon, however, the inquisition resumed. Between the hours of three thirty and four o'clock in the afternoon, appellant completed his *Sinumpaang Salaysay* where he confessed to the killing of *Ka* Elving. The statement of appellant was initially written on pad paper, thereafter it was typewritten. However, by the time the *Sinumpaang Salaysay* was finalized, it was already past office hours such that the attestation before the municipal mayor was postponed until the following morning.

Afterwards, because of persistent chest pains, appellant was then brought to the Aurora Memorial Hospital to be medically examined. However, Police Officer Palmero did not inquire as to the results of the medical examination. The results of the medical examination were not offered in evidence.

The following morning, December 24, 1996, appellant, who was escorted by the police, was brought before the then Municipal Mayor of Baler, Aurora, Arturo S. Angara. Mayor Angara read the signed *Sinumpaang Salaysay* before administering the oath. He probed appellant if the signature appearing in the *Sinumpaang Salaysay* was his and whether

he understood the contents of the said document. Subsequently, Mayor Angara affixed his signature on appellant's *Sinumpaang Salaysay*.

In substance, the contested *Sinumpaang Salaysay* states that Benny Poblete commissioned one Cesar to kill Ka Elving. Cesar, in turn, contacted appellant for the hit. For more than a week, appellant and Cesar, together with a certain Manny Gonzales, stalked the victim. On November 29, 1996, appellant acted as a lookout while his companions shot the victim.[7]

On the other hand, appellant testified that, before noon on December 14, 1996,[8] he went to the house of one Benny Poblete to see his brother-in-law, Erwin Bernardo, who was working for the Pobletes. Since his brother-in-law was not around, Harold, son of Benny Poblete, invited him to a drinking spree. While they were drinking, police officers Alfredo Miel and Amoranto Aquino arrived and arrested him. He was brought to the municipal hall where he was *forced to admit the killing* of Elving Jacob. For three consecutive nights, he was mauled. As a result, his eyes became swollen and his chest ached. Unable to endure the pain any longer, he owned up to the crime.[9]

On December 23, 1996, PO3 Noel C. Palmero, in the presence of Atty. Josefina Angara, took appellant's statement. Appellant claimed that *neither investigating officer Palmero nor Atty. Josefina Angara apprised him of his constitutional rights during the custodial investigation.* The following day, he was

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[7] *Rollo*, pp. 78-82.

[8] There appeared to be a confusion on the actual date of arrest. Appellant testified that he was arrested on December 14, 1996. On the other hand, the prosecution witnesses said that appellant was arrested on December 18, 1996. Nonetheless, as the OSG observed "But even with the conflicting versions of the parties that appellant was arrested since either December 19, 1996 or December 14, 1996, it remains clear that appellant was in police custody pending investigation for at least four (4) days before his counsel-assisted confession."

[9] TSN, October 4, 2000, pp. 1-9, Records pp. 291-298.

brought to Mayor Arturo Angara before whom he swore to his affidavit containing his confession.[10]

Dr. Roberto A. Correa of the Aurora Memorial Hospital testified that he conducted a medical examination of the appellant at around 2:00 p.m. on December 23, 1996. During the examination, he found a three-inch lacerated wound on appellant's right arm and a biositis tenderness (inflammation of the muscle) in his right scapular area. He further testified that the lesions were caused by a sharp instrument. Aside from these lesions, Dr. Correo did not notice any other injuries on the body of the appellant.[11]

On rebuttal, Atty. Angara belied the accusation of Dueñas. She testified that at past 10:00 a.m. on December 23, 1996, policemen came to her office and requested her to assist the appellant who was then under custodial investigation. She arrived at the police station at past 11:00 a.m. and was introduced to the appellant. During her private conversation with the appellant, she apprised him of his constitutional rights and told him that whatever he said could be used against him. She discouraged him from giving his confession but appellant was determined to do so. The questioning resumed at about 1:30 p.m. and lasted up to 4:00 p.m. While the investigation was going on, appellant complained of chest pains so she requested that appellant be brought to the hospital for medical attention.

PO3 Palmero was also presented as rebuttal witness. He disclaimed mauling the appellant. He admitted that appellant was indeed complaining of chest pains but it was allegedly the result of the kick by Harold Poblete. In contrast with his previous declaration that he fetched Atty. Angara at around 3:30 p.m. to assist appellant during the investigation, PO3 Palmero now claimed that the interrogation lasted about three hours, that is, from 1:00 p.m. up to about 4:00 p.m. on December 23, 1996.

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[10] TSN, October 4, 2000, Records, pp. 290-298; TSN, November 23, 2000, Records, pp. 299-311.

[11] TSN, August 22, 2001, Records pp. 323-328.

He also declared that appellant was given medical attention after the interrogation.[12]

Relying principally on the extrajudicial confession of the appellant on December 23, 1996 (which was later repudiated), the trial court rendered its decision convicting appellant of the crime charged:

> WHEREFORE, premises considered, the Court finds accused Catalino Dueñas, Jr. GUILTY BEYOND REASONABLE DOUBT of the crime of Murder qualified by evident premeditation, and considering the presence of the aggravating circumstance of recidivism and in the absence of any mitigating circumstance, hereby sentences him to suffer the extreme penalty of DEATH and further orders him to indemnify the heirs of the victims in the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages and to pay the costs.
>
> SO ORDERED.[13]

Hence, this automatic appeal.

According to appellant, the extrajudicial confession which the trial court relied on heavily for his conviction was infirm because the confession was secured through force and intimidation, a violation of his constitutional rights.

For the State, the OSG filed a manifestation and motion in lieu of appellee's brief, seeking the reversal of the challenged decision and the acquittal of Dueñas on the ground of involuntariness of his extrajudicial confession. The OSG underscored the fact that it was forced out of appellant by means of threats, violence and intimidation, thus violating his rights.

The appeal is meritorious.

In convicting the appellant, the court *a quo* reasoned as follows:

> The extrajudicial confession of accused Dueñas, Jr. was freely and voluntarily given and that his retraction and claims of violence

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[12] TSN, January 19, 2001, Records, pp. 317-321.

[13] *Rollo*, pp. 54-63.

and coercion were merely belated contrivances and efforts of exculpation.

The statement (Exh. B-Stip.) itself reveals that there was compliance with the constitutional requirement on pre-interrogation advisories, thus:

PASUBALI: *Ikaw Catalino Dueñas, Jr., ipinagbibigay alam ko sa iyo, na ikaw ay inuusig sa isang kasalanan, pinapaalala ko sa iyo na sa ilalim ng ating Saligang Batas ay karapatan mo ang manahimik at hindi sumagot sa mga tanong ko sa iyo at magkaroon ng Abogado ng sarili mong pili, ito ba ay nauunawaan mo?*

SAGOT: *Opo.*

TANONG: *Alam mo ba at naipaliwanag ng iyong abogado na anumang salaysay mo sa pagsisiyasat na ito ay maaring gamitin laban sa iyo?*

SAGOT: *Opo.*

The Court finds no merit in the insinuation of the defense that Atty. Josefina Angara was not Dueñas' own choice as counsel for the interrogation (TSN, October 4, 2001, p. 4).

x x x x x x x x x

In the present case, accused even admitted that he trusted Atty. Angara when he signed his sworn statement in the presence of the said counsel (TSN, November 23, 2000, p. 9).

Absent any showing that the lawyer who assisted the accused was remissed (*sic*) in her duties, it can be safely concluded that the custodial investigation of Dueñas was regularly conducted.

As could be observed, the confession is replete with details that could not have been concocted by the police authorities. According to Dueñas, he is one of those who killed Elva Jacob; that his companions were Manny Gonzales and one Cesar; that Benny Poblete contacted Cesar who in turn contacted him (accused) for the purpose of killing Elving Jacob because his (Benny Poblete's) daughter Rhea who died in September, 1996 might still be alive were it not for the witchcraft of Elving Jacob and her siblings; that he (accused) was contacted by Cesar in November, 1996 at the market near the terminal of Baliwag Transit in Cabanatuan City; that he and Cesar were together

when they went to Baler, Aurora and they just fetched Manny Gonzales at the gasoline station in Maria Aurora, Aurora; that they hatched the plan of executing Elving Jacob in the middle of November, 1996 at the house of Benny Poblete; that at that place and time, Cesar was given three thousand pesos (₱3,000.00); that he (accused) did not know Cesar well but could describe the latter's distinctive features; that Cesar and Manny Gonzales were armed with a .38 cal. revolver; that they conducted a surveillance on Elving Jacob for more than a week to determine her movement in going to and from the ricefield she is working on at Sitio Gabgab, Brgy. Buhangin, Baler, Aurora; that on November 29, 1996, at about eight o'clock in the morning, they positioned themselves under a canal, feigning to be catching fish, until Elving Jacob passed by; that his two companions followed Elving Jacob, while he remained on top of the canal and acted as a look out; that, not long thereafter, he heard two gunshots; that they left the scene and reunited at Santiago's house in Brgy. Suklayin, Baler, Aurora; that on December 18, 1996, at around one o'clock in the afternoon, he was instructed by Cesar to go to the house of Benny Poblete to collect the balance of five thousand pesos (₱5,000.00); and that he was arrested there by the police. "The confession is replete with details that only the confessant could have known and which, therefore, show that the confession was executed voluntarily (*People vs. Jimenez*, 105 SCRA 721)."

Also, the confession of the accused is exonerative in nature as it points to other member of the group as the triggerman. "The exculpatory tone of admission of the crime and the abundance of details negate violence and maltreatment in obtaining a confession. A guilty person seldom admits his guilt fully and completely. He has a tendency to explain away his conduct or minimize his fault or crime or shift the blame to others."

x x x x x x x x x

The defense tried to impress to the Court that the policemen subjected the accused to cruel and painful punishment to extract his confession, thus:

ATTY. NOVERAS TO THE ACCUSED

Q During the third time they mauled you and told you to admit responsibility for the death of Elving Jacob, what happened?

A I already admit (*sic*) because I could not bear the pain anymore, Sir.

x x x x x x x x x

Q What else, if there are any?

A They could (*sic*) not allow me to sleep. They just throw water on me so I could not sleep or rest. (TSN, October 4, 2000, pp. 3-4).

But,

Q You said you were forced and intimidated to give the confession in connection with the death of Mrs. Jacob, did you tell Atty. Angara about the fact?

A I did not.

Q Why?

A HOW COULD I TELL THAT WHEN THE POLICE OFFICERS WERE THERE SURROUNDING ME? (Emphasis ours) (*Ibid.*, p. 6)

x x x x x x x x x

PROS. RONQUILLO TO THE ACCUSED

Q Did you file any charge to (*sic*) the policemen who mauled you?

A No, sir.

Q Why?

A BECAUSE I HAVE NO ONE TO TELL ON AND I AM AFRAID FOR THEM, SIR (*sic*). (TSN, November 23, 2000, p. 11)

A review of appellant's extrajudicial confession discloses certain facts and circumstances which put his culpability in doubt.

Under Article III, Section 12 of the 1987 Constitution, persons under custodial investigation have the following rights:

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel, preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) x x x x x x x x x

There are two kinds of involuntary or coerced confessions covered by this constitutional provision: (1) those resulting from third degree methods like torture, force, violence, threat and intimidation, and (2) those given without the benefit of the Miranda warnings.[14]

Viewed against this backdrop, certain circumstances in this case need to be carefully reviewed and considered.

On December 18, 1996,[15] appellant was arrested for theft on the request of a certain Benny Poblete. PO3 Palmero admitted that at the time of the arrest, appellant was not committing any crime. He was detained overnight without any charges. The following day, PO3 Palmero claimed that appellant supposedly sought "voluntary confinement for his own protection." The police blotter entry, however, was not offered in evidence. Only a certification of such entry was presented, which certification was not even signed by appellant. Under the circumstances, the "voluntary confinement" tale appears to be an afterthought to cover up the appellant's illegal arrest and detention. No person in his right mind, already behind bars, will still seek "voluntary confinement" when there are no charges against him.

Appellant executed his sworn statement on his alleged involvement in the killing of *Ka* Elving on December 23, 1996 or five days after his arrest. Immediately after accomplishing the affidavit, appellant sought medical attention, during which

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[14] *People vs. Obrero*, 332 SCRA 190, 200 [2000].

[15] TSN, May 17, 2000, pp. 2-16, Records, pp. 265-279.

Dr. Correa found positive marks of violence on the latter's body, an indication that physical coercion occurred at one point from the time of his arrest up to the execution of his extrajudicial confession. The only purpose of the maltreatment could have been to force him to admit guilt against his will. When confronted on this matter, rebuttal witness PO3 Palmero had nothing but evasive and unresponsive answers:

Q Did you personally bring Dueñas to the hospital?
A I could not remember, anymore, Sir. But he was brought to the hospital.
Q Are you sure of that?
A Yes, sir.
Q If you could not remember anymore if you were the one who bring (*sic*) him to the hospital, do you know who was the police officer who brought him?
A I do not know the jailer at the time.
Q Were you still in the police station when he was brought back?
A Maybe I was not there.
Q Did you try to inquire what was the result of the examination being conducted upon Catalino Dueñas?
A Not anymore, sir.
Q Why?
A Because I could not remember anymore the person who accompanied him.[16]

The trial court considered appellant's claim of maltreatment as but a lame excuse. It stated that the failure of the accused to complain to the swearing officer or to file charges against the person(s) who allegedly maltreated him, although he had the opportunity to do so, meant that the confession was voluntary. But appellant adequately explained why he did not tell anybody about the police brutality he had suffered. He testified:

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[16] TSN, January 19, 2001, Records, p. 318.

Q You said you were forced and intimidated to give the confession in connection with the death of Mrs. Jacob, did you tell Atty. Angara about that fact?

A I did not.

Q Why?

A How could I tell that when the police officers were there surrounding me.[17]

On cross-examination, appellant made the following declaration:

PROS. RONQUILLO

Q Did you file any charge to (*sic*) the policemen who mauled you?

A No, sir.

Q Why?

A Because I have no one to tell on and I am afraid for them, sir. (*sic*)[18]

Furthermore, the trial court misapplied the rule that a confession is presumed voluntary where the same contains details and facts unknown to the investigator which could have been supplied only by the perpetrator of the crime. In *People vs. Abayon*,[19] we held:

It is a settled rule that where an alleged confession contains details and is replete with facts which could have possibly been supplied only by the perpetrator of the crime, and could not have been known to or invented by the investigators, the confession is considered to have been voluntarily given. This rule, however, was erroneously applied by the trial court in the case at bar.

The facts and details contained in at least three of the confessions, those of Reynaldo Abayon, Mariano Aragon and Jose Juarez, were already known to the PC investigators at the time the statements

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[17] TSN, October 4, 2000, Records, p. 295.

[18] TSN, November 23, 2000, Records, p. 309.

[19] 114 SCRA 197, 219-220 [1982].

were allegedly signed by the said accused-appellants. The three confessions referred to all appear to have been executed *after* the body of the deceased Pedro Eslamado had been exhumed by the PC team on July 15, 1971. Abayon's statement is dated July 16, Aragon's statement, July 22, and Juarez' statement, July 23, 1971. On those dates, the PC would have known details and facts such as, that Pedro Eslamado was abducted and killed, where his remains were buried, that he was tied around the mouth by towels, that his hands were tied with shoe strings, all of which were stated in the confessions.

In this case, the police authorities already knew of the murder of *Ka* Elving. As succinctly pointed out by the Office of the Solicitor General:

> x x x at the time of the execution of the extrajudicial confession, and even before appellant's arrest, the post mortem examination was already available to the police. Data regarding the murder weapon, the wounds sustained by the victim, the whereabouts of the cadaver were properly within the knowledge of the investigating officers. The latter, then, could have easily filled up the details of the crime in the extrajudicial confession. It must be emphasized that the presumption of voluntariness of an extrajudicial confession arises only when the replete details could have been supplied by no other person but the perpetrator himself [*People vs. Base*, 105 SCRA 721 (1981)], which is not the case here.

Also worth mentioning is the belated appearance of Atty. Angara, incidentally not of appellant's choice, who assisted him in the execution of his extrajudicial confession. This fell terribly short of the standards demanded by the Constitution and Section 2 of RA 7438.[20] Appellant was arrested before noon on December 18, 1996. The extrajudicial confession was taken five days later, on December 23, 1996. Atty. Angara testified that policemen came to her office at past 10:00 a.m. on December 23, 1996 requesting her to assist a suspect under custodial investigation. She arrived at the police station at around 11:00 a.m. and conferred with the appellant for about 30 minutes. The interrogation resumed after lunch and lasted till 4:00 p.m.

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[20] Sec. 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.

From the foregoing, it is evident that appellant had already been in detention for five days before he came to be assisted by a lawyer, just before he was about to put his confession in writing. We entertain no doubt that the constitutional requirement was violated. In *People vs. Bolanos*,[21] we held that:

> An accused who is on board the police vehicle on the way to the police station is already under custodial investigation and should therefore be accorded his rights under the Constitution.

Custodial investigation refers to the critical pre-trial stage when the investigation ceases to be a general inquiry into an unsolved crime but has begun to focus on a particular person as a suspect. According to PO3 Palmero, right after appellant's arrest, the latter already insinuated to him that he would confess his participation in the killing. As he testified on cross-examination:

Q On December 18, 1996, when you arrested him what did he actually told (*sic*) you?

A Before we put him in jail at the Baler Police Station he told us that he has (*sic*) to reveal something about the death of Elvira Jacob.

Q So you already know that on December 18, 1996 that whatever Catalino Dueñas will reveal to you will give you lead in solving the investigation in connection with the death of Elvira Jacob, isn't it?

A Yes, sir.

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a. Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

b. Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

[21] 211 SCRA 262-265 [1992] cited in the case of *People vs. Rodriguez*, 341 SCRA 645, 653 [2000].

Q So, you still waited until December 23, 1996 for that revelation, isn't it?

A Yes, sir. That's all, your honor.[22]

Well-settled is the doctrine that the purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting a confession, even through the slightest coercion which might lead the accused to admit something untrue.[23] What is sought to be avoided is the "evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him."[24] These constitutional guarantees are meant to protect a person from the inherently coercive psychological, if not physical, atmosphere of such investigation.[25]

Finally, the court notes the material discrepancy between the testimony of PO3 Palmero and that of Atty. Angara. When PO3 Palmero was first put on the witness stand, he testified that he fetched Atty. Angara to assist appellant at about 3:30 p.m. on December 23, 1996. The interrogation lasted more or less an hour. However, on rebuttal, PO3 Palmero changed his story and declared that the interrogation of appellant lasted about three hours from about 1:00 p.m. to 4:00 p.m. The adjustment in the time cited may have been made to conform to the earlier testimony of rebuttal witness Atty. Angara who said that the interrogation of appellant lasted from about 1:30 p.m. up to about 4:00 p.m. But how could the interrogation of appellant have taken place within

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[22] TSN, May 17, 2000, Records, pp. 273.

[23] *People vs. Olivares, Jr.*, 299 SCRA 635, 650 [1998]; *People vs. Paulo*, 330 Phil. 373 [1996]; *People vs. Andal*, 279 SCRA 474 [1997] citing *People vs. Layusa*, 175 SCRA 47 [1989].

[24] *People vs. Bonola*, 274 SCRA 238 [1997] citing *Galman vs. Pamaran*, G.R. Nos. 71208-09, 138 SCRA 294 [1985]; *People vs. Sandiganbayan*, G.R. Nos. 71212-13, 138 SCRA 294 [1985].

[25] *Miranda vs. Arizona*, 384 US 436, 16 L ed 694, 10 A.L.R. 3d, 1974.

that time-frame when, according to Dr. Correo and the appellant's medical record, the doctor conducted his medical examination of the appellant at around 2:00 p.m. on December 23, 1996?[26]

In view of the foregoing, since the extrajudicial confession of appellant was given in violation of the safeguards in Article III, Section 12 of the Constitution, we hold that the appellant's extrajudicial confession dated December 23, 1996 was inadmissible as evidence. And with the exclusion thereof, the record is bereft of any substantial evidence to sustain the judgment of conviction. While it is true that one Cesar Friginal was presented as a witness by the prosecution, his testimony did not implicate the appellant in the murder of Elving Jacob, the witness having said only that he saw a short man in green clothes running away from the vicinity of the crime.

WHEREFORE, the decision of the Regional Trial Court of Baler, Aurora, Branch 96, in Criminal Case No. 2220, convicting appellant Catalino Dueñas, Jr., is hereby *REVERSED* and *SET ASIDE*. Appellant is *ACQUITTED* of the crime of murder and his immediate release is ordered unless there is reason to return him for confinement at the Iwahig Prison Farm in Puerto Princesa City or to detain him for some other valid cause. The Director of Prisons is directed to inform this Court of his compliance within ten days from receipt of this decision.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Vitug, J., on official leave.

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[26] *Supra,* footnote 9.

SECOND DIVISION

[G.R. No. 155311. March 31, 2004]

DOY MERCANTILE, INC., *petitioner, vs.* **AMA COMPUTER COLLEGE and ERNESTO RIOVEROS,** *respondents*.

SYNOPSIS

Petitioner Doy Mercantile, Inc. (DOY), through its counsel, Atty. Eduardo P. Gabriel, Jr., filed a case for annulment of contract with damages against respondents AMA Computer College, Inc. (AMA) and Ernesto Rioveros. AMA proposed a compromise agreement with DOY, which proposal the parties later agreed to adopt. A judgment based on compromise agreement was rendered by the RTC. DOY, however, refused to satisfy Atty. Gabriel's attorney's fees prompting the lawyer to file a motion to allow commensurate fees and to annotate attorney's lien on the Transfer Certificate of Title (TCT) of the subject properties owned by DOY. The RTC fixed the attorney's fees at ₱200,000.00 and ordered that a lien be annotated on the said TCT's. Upon Atty. Gabriel's motion for reconsideration, the RTC increased his fees to ₱500,000.00 but denied the motion to annotate the award at the back of the TCT's. DOY filed several petitions with the Court of Appeals to set aside the RTC orders and eventually, the Court of Appeals rendered a decision fixing the attorney's fees at ₱ 200,000.00 and affirmed the decision of RTC not to annotate such award on the TCT's. Hence, this petition before the Supreme Court.

The Supreme Court resolved to deny the petition and affirm the decision of the Court of Appeals. The Court found no reversible error in the arguments of the Court of Appeals. Petitioner's contention that the appellate court should have taken into account the importance of the subject matter in controversy and the professional standing of the counsel in determining the latter's fees is untenable. The Courts are not bound to consider all these factors in fixing attorney's

fees. While a lawyer should charge only fair and reasonable fees, no hard and fast rule maybe set in the determination of what a reasonable fee is, or what is not. That must be established from the facts in each case.

SYLLABUS

LEGAL ETHICS; ATTORNEY'S FEES; LAWYERS SHOULD CHARGE ONLY FAIR AND REASONABLE FEES THAT MUST BE ESTABLISHED FROM THE FACTS OF EACH CASE.— Although Rule 138 of the Rules of Court and Rule 20.01 of the Code of Professional Responsibility list several other factors in setting such fees, these are mere guides in ascertaining the real value of the lawyer's service. Courts are not bound to consider all these factors in fixing attorney's fees. While a lawyer should charge only fair and reasonable fees, no hard and fast rule maybe set in the determination of what a reasonable fee is, or what is not. That must be established from the facts in each case. As the Court of Appeals is the final adjudicator of facts, this Court is bound by the former's findings on the propriety of the amount of attorney's fees.

APPEARANCES OF COUNSEL

Jose F. Racela IV for petitioner.
Eduardo P. Gabriel, Jr. for respondents.

R E S O L U T I O N

TINGA, *J.*:

On June 1, 1990, petitioner Doy Mercantile, Inc. (DOY) through its then counsel, respondent Atty. Eduardo P. Gabriel, Jr., filed before the Regional Trial Court (RTC) of Cebu City a *Complaint for Annulment of Contract, Damages with Preliminary Injunction* against AMA Computer College, Inc. (AMA) and one Ernesto Rioveros.

Petitioner alleged that it owns Lots 2-A and 2-B, and the improvements thereon, located at No. 640 Osmeña Boulevard,

Cebu City, covered by Transfer Certificate of Title (TCT) Nos. 68951 and 68952. DOY assailed the *Deed of Conditional Sale* supposedly executed by one of DOY's directors, Dionisio O. Yap, in favor of AMA. Dionisio allegedly sold the properties to AMA without proper authorization from DOY's Board of Directors. DOY also questioned the Secretary's Certificate which was executed by DOY Corporate Secretary Francisco P. Yap, authorizing Dionisio to sell the properties and to sign the contract in behalf of DOY.

Through Atty. Gabriel, Jr., DOY filed an *Urgent Ex Parte Motion for the Issuance of a Restraining Order*, which was granted by the RTC on June 14, 1990. On June 23, 1990, Atty. Gabriel also filed an *Answer to Defendant's Counterclaim*. On July 2, 1990, he filed DOY's *Formal Rejoinder to AMA's Opposition for Issuance of Writ of Preliminary Injunction*. He also filed on July 24, 1990, an *Omnibus Motion* seeking (1) the reconsideration of the order denying DOY's application for a writ of preliminary injunction, (2) the setting of the case for pre-trial and trial on the merits, and (3) the imposition of disciplinary sanctions to Atty. Winston Garcia, who notarized the *Deed of Conditional Sale* and the *Secretary's Certificate*. On August 31, 1990, Atty. Gabriel also filed a *Rejoinder to AMA's Opposition to Motion for Reconsideration, etc.*

During this period, that is, before pre-trial, DOY filed a *Petition for Certiorari, Prohibition with a Prayer for a Writ of Preliminary Injunction* (CA-G.R. S.P. No. 22727) with the Court of Appeals. It questioned the *Order* of the RTC dated July 5, 1990, denying DOY's prayer for the issuance of a writ of preliminary injunction and dissolving the temporary restraining order previously issued. DOY also assailed the *Order* dated August 10, 1990, which denied DOY's *Omnibus Motion*. Atty. Gabriel, Jr., signed the petition together with Atty. Enrique C. Andres of the law firm of Salonga, Andres, Hernandez and Allado.

During pre-trial, AMA proposed to enter into a compromise agreement with DOY, which proposal the parties later agreed

to adopt. The agreement was signed by Fernando Yap in behalf of DOY, with the assistance of Atty. Gabriel, Jr. and Atty. Andres. On November 29, 1990, a *Judgment* based on the compromise agreement was rendered by the RTC. In light of said compromise, the Court of Appeals dismissed CA-G.R. S.P. No. 22727 for mootness.

DOY, however, refused to satisfy Atty. Gabriel, Jr.'s attorney's fees, prompting the lawyer to file with the RTC a *Motion to Allow Commensurate Fees and to Annotate Attorney's Lien on T.C.T. Nos. 68951 and 68952*. At this point, DOY had already obtained the services of a new counsel to attend to the enforcement of the *Judgment* of the RTC.

On December 27, 1991, the RTC fixed Atty. Gabriel, Jr.'s fees at ₱200,000.00 and ordered that a lien be annotated on the TCTs. A *Writ of Execution* was later issued by the trial court in Atty. Gabriel, Jr.'s favor.

Upon Atty. Gabriel Jr.'s motion for reconsideration, the RTC increased his fees to ₱500,000.00. It then issued another *Writ of Execution* to enforce the new award but denied the *Motion to Annotate the Award* at the back of the TCTs.

DOY, for its part, filed several petitions with the Court of Appeals to set aside the RTC *Orders* involving the award of attorney's fees. Eventually, the Court of Appeals rendered a *Decision*,[1] fixing Atty. Gabriel, Jr.'s fees at ₱200,000.00 and affirming the subsequent *Order* of the RTC not to annotate such award on the TCTs.

This *Decision* is now the subject of the present petition.

DOY contends that the *Decision* is not consistent with the guidelines prescribed by Section 24, Rule 138[2] of the Rules of

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[1] In CA-G.R. CV No. 43958.

[2] SEC. 24. *Compensation of attorneys; agreement as to fees.* — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered,

Court and Rule 20.01[3] of the Code of Professional Responsibility. DOY avers that except for the statement that the compromise agreement benefited DOY and that Atty. Gabriel, Jr., was a competent lawyer, the Court of Appeals made no pronouncement as to the importance of the subject matter in controversy, the extent of services rendered and the professional standing of Atty. Gabriel, Jr., DOY also submits that the Court of Appeals should not have merely relied on the value of the properties involved as the basis for its award. Furthermore, while Atty. Gabriel admitted that he already received Eighty Two Thousand Nine Hundred Fifty Pesos (₱82,950.00) from DOY for incidental and partial attorney's fees, a fact affirmed by the Court of Appeals, the latter still awarded ₱200,000.00 to him.

Atty. Gabriel, Jr., comments, however, that the attorney's fees awarded by the appellate court were commensurate and,

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and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such tetstimony and base its testimony such conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefore unless found by the court to be unconscionable or unreasonable.

[3] Rule 20.01 — A lawyer shall be guided by the following factors in determining his fees:

a) The time spent and the extent of the services rendered or required;

b) The novelty and difficulty of the questions involved;

c) The importance of the subject matter;

d) The skill demanded;

e) The probability of losing other employment as a result of acceptance of the proffered case;

f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;

g) The amount involved in the controversy and the benefits resulting to the client from the service;

h) The contingency or certainty of compensation;

i) The character of the employment, whether occasional or established; and

j) The professional standing of the lawyer.

perhaps, even less than, the value of the services he rendered. He then enumerates the pleadings he drafted and the appearances he made to dispose of the main case.

Atty. Gabriel, Jr., also alleges that he handled interrelated cases for DOY. He purportedly prepared and filed with the Metropolitan Trial Court of Cebu City the following: a case for *Illegal Detainer with Damages*, *an Opposition to Motion to Dismiss*, *an Opposition to Defendant's Motion for Reconsideration*, and a *Motion to Dismiss.*

Atty. Gabriel, Jr., also draws attention to the criminal case filed by Rolando Piedad, director of AMA, before the Office of the Cebu City Prosecutor charging Dionisio Yap and Francisco Yap with estafa through falsification of public document. He claims that it was he who prepared and filed with said Office the *Joint Affidavit of Messrs. Dionisio and Francisco Yap against Rolando Piedad for Perjury*, as well as the Yaps' *Counter-Affidavit* in the criminal case. The case was eventually dismissed by the fiscal.

Finally, Atty. Gabriel, Jr., stresses that, through his efforts and resourcefulness, AMA had no choice but to concede to the compromise agreement resulting in the cancellation of the *Deed of Conditional Sale* between DOY and AMA. According to him, AMA was operating a school on the property, which did not have an area of at least 1,000 square meters as required of a school campus, in violation of the directives of the Department of Education, Culture and Sports (DECS). AMA also did not have a business permit from the city government. Atty. Gabriel thus made formal representations with the DECS and the City of Cebu, which ordered AMA to cease operations. Atty. Gabriel, Jr., also verified from the Philippine National Bank whether AMA applied for a loan with which to pay DOY as stipulated in the *Deed of Conditional Sale*, and was informed that AMA's application was held in abeyance due to its poor credit reputation.

The petition has no merit. It is not accurate for petitioner to state that the Court of Appeals did not take into account the

time spent and the extent of the services rendered by Atty. Gabriel Jr. The Court of Appeals found that:

> That Atty. Gabriel, Jr. was the counsel of DMI [DOY] up to the time the compromise agreement was confirmed by the trial court. He only withdrew his appearance as counsel for co-plaintiffs Fred and Felipe Yap, who were eventually dropped as parties to the case, along with the other individual defendants, as it was held that only DMI was the real-party-in-interest.
>
> It is evident that Atty. Gabriel, Jr. served as co-counsel together with Atty. Enrique C. Andres. DMI was assisted by the former. Evidence of which was the service of a copy of the Judgment Based on Compromise Agreement, including the Decision dated January 30, 1991, which dismissed C.A.-G.R. S.P. No. 22727, on Atty. Gabriel, Jr.
>
> A perusal of the pleadings enumerated by the plaintiff-appellant reveals the competence of Atty. Gabriel, Jr. in handling the case. The degree and extent of service rendered by an attorney for a client is best measured in terms other than the mere number of sheets of paper.[4]

Indeed, the assailed *Decision* even contains an enumeration of the pleadings filed by counsel in behalf of his client.[5]

In fixing the award of attorney's fees, the Court of Appeals also considered the amount involved in the controversy and the benefits resulting to the client from the service in fixing Atty. Gabriel, Jr.'s fees, thus:

> . . . While it is true that Civil Case No. CEB 9043 was terminated by virtue of a compromise agreement by the parties, this is still to be taken as beneficial to DMI as the dispute was finally resolved without having to resort to a full-blown trial on the merits which often would take time before the light at the end of the tunnel may be seen.
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[4] *Rollo*, pp. 31-32.

[5] *Id*. at 30.

DMI also assails the use of the value of the property involved in the litigation to serve as a basis or standard in computing and awarding attorney's fees. A simple perusal of the provisions of Section 24, Rule 138 of the Revised Rules of Court, as well as Canon 20, Rule 20.01 of the Code of Professional Responsibility, would show that "the value of the property" was not enumerated as one of the factors but instead they used "the importance of the subject matter" as a determinant of the amount of award of attorney's fees. Nevertheless, the Supreme Court has included as one of the determinants for the reasonableness of the award of attorney's fees "the value of the property affected by the controversy." . . .

x x x x x x x x x

The issue of the reasonableness of attorney's fees based on *quantum meruit* is a question of fact and well-settled is the rule that conclusions and findings of fact by the lower courts are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons.

The trial court's initial award of ₱200,000.00 as attorney's fees of Atty. Gabriel, Jr. is reasonable. On the other hand, the increased award of ₱500,000.00 cannot be justified, taking into account the recognized parameters of *quantum meruit*.[6]

The Court of Appeals then ended on this note:

Lastly, we take this occasion to reiterate the fact that while the practice of law is not a business, the attorney plays a vital role in the administration of justice and, hence, the need to secure to him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession. A lawyer is as much entitled to judicial protection against injustice or imposition on the part of his client just as the client can claim protection against abuse on the part of his counsel. The duty of the court is not alone to see that a lawyer acts in a proper and lawful manner, it is also its duty to see that a lawyer is paid his just fees. With his capital consisting only of his brains and with his skill acquired at tremendous cost not only in money but in expenditure of time

[6] *Id.* at 31-34.

and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of his client to escape payment of his just compensation. It would be ironic if, after putting forth the best in him to secure justice for his client, he himself would not get his due.[7]

This Court finds no reversible error in the above disquisition.

Petitioner's contention that the appellate court should also have taken into account the importance of the subject matter in controversy and the professional standing of counsel in determining the latter's fees is untenable. Although Rule 138 of the Rules of Court and Rule 20.01 of the Code of Professional Responsibility list several other factors in setting such fees, these are mere guides in ascertaining the real value of the lawyer's service.[8] Courts are not bound to consider all these factors in fixing attorney's fees.

While a lawyer should charge only fair and reasonable fees,[9] no hard and fast rule maybe set in the determination of what a reasonable fee is, or what is not. That must be established from the facts in each case.[10] As the Court of Appeals is the final adjudicator of facts, this Court is bound by the former's findings on the propriety of the amount of attorney's fees.

ACCORDINGLY, the Court Resolved to *DENY* the *Petition* and *AFFIRM* the *Decision* of the Court of Appeals.

SO ORDERED.

Quisumbing, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

Puno, J. (Chairman), on leave.

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[7] *Id.* at 35.

[8] Code of Professional Ethics, §12.

[9] Code of Professional Responsibility, Canon 20.

[10] *De Guzman v. Visayan Rapid Transit, Co., Inc., et al.,* 68 Phil. 643.

THIRD DIVISION

[G.R. No. 156200. March 31, 2004]

MEGAWORLD PROPERTIES AND HOLDINGS, INC., *petitioner, vs.* **HON. JUDGE BENEDICTO G. COBARDE, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 53, Lapu-Lapu City; JUAN GATO, in his capacity as the Sheriff of the Regional Trial Court, Branch 53, Lapu-Lapu City; SERECIO MATTHEW B. JO and IDA HENARES,** *respondents*.

SYNOPSIS

Sometime in July 1995, Mary Cielo Leisure Resort, Inc. (MYC) secured the services of private respondents Matthew Jo and Ida Henares to broker a joint venture between MYC and petitioner Megaworld Properties and Holdings, Inc., for the latter to develop MYC's prime parcels of land in Lapu-lapu City. However, before the development agreement could be implemented, private respondents filed a civil complaint against petitioner Megaworld, MYC, the Zamora family, among others, for allegedly resorting to deceitful conduct to avoid payment of the 3% brokers'/consultants' fee. To avert a full-blown trial, the parties entered into a compromise agreement wherein MYC and Zamora family committed themselves to pay private respondents ₱29 million as a settlement amount, the ₱3.9 will be paid upon the signing of the compromise agreement, and the ₱25.1 million will be paid from the proceeds of the joint venture project under the development agreement. But after the lapse of three years, petitioner Megaworld, MYC and the Zamora family did not pay private respondents the balance of ₱25.1 million broker's fee. Thus, private respondents filed a motion for execution of the judgment by compromise agreement which the court *a quo* granted. It likewise issued a notice of garnishment against petitioner's deposit in Manila Banking Corporation, among other banks. On appeal, the Court of Appeals ordered the implementation of the writ of execution

of the judgment on the compromise agreement. Hence, this appeal.

The Court ruled that if the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall control. It is evident from Section 6 of the compromise agreement that petitioner's obligation to advance the balance of respondents' commission was dependent on the success – meaning, the earnings — of the joint venture project. This is clear from the stipulation of the parties under the said agreement that whatever amount petitioner advanced to respondents was to be deducted from the share of MYC and/or Zamora family in the proceeds of the joint venture agreement. Consequently, when MYC and the Zamora family unilaterally cancelled the development agreement, petitioner was effectively deprived of its source of payment to respondents since it was left without recourse to reimbursement. To hold petitioner liable under the circumstances will result in the unjust enrichment of MYC, the Zamora family and the respondents. This we cannot countenance.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; REVIEW OF FACTUAL FINDINGS MAY BE MADE WHEN THE JUDGMENT OF THE COURT OF APPEALS IS PREMISED ON A MISAPPREHENSION OF FACTS. — As a rule, the findings of fact of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon the Supreme Court. However, when the judgment of the Court of Appeals is premised on a misapprehension of facts or a failure to consider certain relevant facts that would lead to a completely different conclusion, a review of its factual findings may be made.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; WHEN THE TERMS OF CONTRACT ARE CLEAR AND LEAVE NO DOUBT AS TO THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATION SHALL CONTROL. — If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal

meaning of its stipulation shall control. It is evident from Section 6 of the compromise agreement that *petitioner's obligation to advance the balance of respondents' commission was dependent on the success — meaning, the earnings — of the joint venture project*. This is clear from the stipulation of the parties under the said agreement that whatever amount petitioner advanced to respondents was to be deducted from the share of MYC and/or the Zamora family in the proceeds of the joint venture agreement. Consequently, when MYC and the Zamora family unilaterally cancelled the development agreement, petitioner was effectively deprived of its source of payment to respondents since it was left without recourse to reimbursement. To hold petitioner liable under the circumstances will result in the unjust enrichment of MYC, the Zamora family and the respondents. This we cannot countenance.

3. ID.; ID.; AGENCY; UNREASONABLE FOR AN AGENT TO EXACT ITS BROKER'S FEE FROM A PARTY WHICH IS NOT EVEN ITS PRINCIPAL. — We find it totally unreasonable, oppressive even, for respondents to exact its broker's fee from a party which is not even its principal or the entity that engaged its services. Even on the premise that petitioner obligated itself under the compromise agreement to pay respondents the ₱25.1 million commission, that assumption of liability – if needed it was – was *conditioned on the presence of earnings due MYC and the Zamora family*. But how could there have accrued any earnings for MYC and the Zamora family when the latter unilaterally cancelled the project from which petitioner could draw the payment? To insist on holding petitioner liable for the ₱25.1 million, under the circumstances, is like Shylock's insistence on his "pound of flesh."

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MAY BE MODIFIED OR ALTERED EVEN AFTER THE SAME HAS BECOME EXECUTORY WHENEVER CIRCUMSTANCES MAKE ITS EXECUTION UNJUST AND INEQUITABLE. — We agree that the judgment on the compromise agreement where petitioner obligated itself to pay the balance of respondents' commission of ₱25.1 million has become final and executory. The same was in fact partially performed when MYC and the Zamora family gave respondents ₱3.9 million as partial payment of their brokers' fee. However, under the law, the Court may

modify or alter a judgment even after the same has become executory whenever circumstances make its execution unjust and inequitable, as where certain facts and circumstances justifying or requiring such modification or alteration transpire after the judgment becomes final and executory. We have likewise held in a long line of cases that the Court has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it becomes imperative in the higher interest of justice or when supervening events warrant it.

5. ID.; ID.; ID.; ID.; APPLIED IN CASE AT BAR. — *In the case at bar, the critical factor was the unilateral cancellation by MYC and the Zamora family of the development agreement* ***after*** *the compromise agreement became final and partially executed. This fact was overlooked by the Court of Appeals.* This was extremely important because, without the development agreement, the joint venture project could not push through. And without the joint venture project, there could have been no earnings from which the ₱25.1 million could be advanced. Thus, on account of the cancellation of the development agreement — and the consequent abrogation of the entire joint venture project — petitioner's obligation to advance the balance of respondents' commission ceased. To rule otherwise would be contrary to law and the principles of justice and fair play.

APPEARANCES OF COUNSEL

Jefferson M. Marquez & Joseph Randi C. Torregosa for petitioners.

Jo & Pintor Law Offices for private respondents.

D E C I S I O N

CORONA, *J.*:

This is a case involving the failure to pay the balance of a real estate broker's commission.

The antecedents show that sometime in July 1995, Mary Cielo Leisure Resort, Inc. (MYC) secured the services of private

respondents, Matthew Jo and Ida Henares, to broker a joint venture between MYC and petitioner Megaworld Properties and Holdings, Inc. for the latter to develop MYC's prime parcels of land with vast beach fronts located in Lapu-Lapu City, Cebu[1] into a world-class residential/commercial condominium complex. It was agreed that private respondents would be paid a 3% brokers' fee based on the total consideration to be received by MYC from petitioner in the joint venture. A development agreement was then drawn up by petitioner Megaworld, AEV Properties, Inc. and Acoland, Inc. as developers, and MYC, through its owners Manuel, Virginia, Mariano and Richard all surnamed Zamora (Zamora family). Petitioner Megaworld was designated the exclusive marketing agent for the project.

However, before the development agreement could be implemented, or in March 1996, private respondents filed a civil complaint against petitioner Megaworld, MYC, the Zamora family, among others, for allegedly resorting to deceitful conduct to avoid payment of their 3% brokers'/consultants' fee. Private respondents alleged that MYC entered into simulated deeds of conveyance with certain individual members of the Zamora family to make it appear that MYC was not the owner of the properties subject of the development agreement.

To avert a full-blown trial and to save the joint venture project, the parties entered into a compromise agreement. Under the said agreement, MYC and the Zamora family committed themselves to pay private respondents a settlement amount of ₱29 million.[2] As agreed, ₱3.9 million of the total amount was paid by MYC and the Zamora family to private respondents upon the signing of the compromise agreement, *with the balance of ₱25.1 million to be paid out of the share of MYC and/*

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[1] These prime lands are located beside the Shangrila Mactan Resort Hotel, Lapu-Lapu City, Cebu and consist of 11,502 square meters.

[2] Private respondents agreed to reduce their 3% commission of ₱60 million to ₱29 million provided they would be paid the entire amount within 3 years from the execution of the compromise agreement.

or the Zamora family from the proceeds of the joint venture project under the development agreement. The pertinent portions of the compromise agreement stated that:

x x x x x x x x x

4. MYC and the ZAMORA FAMILY agree to pay the FIRST PARTY a settlement amount of TWENTY NINE MILLION PESOS (29,000,000.00) Philippine Currency. Thus, upon signing of this Compromise Agreement, MYC and the ZAMORA FAMILY shall pay the FIRST PARTY ₱3.9 Million, plus interests earned therefrom from January 1996 up to the signing hereof. *The balance of ₱25.1 Million shall be paid as follows:*

a. Thirty Percent (30%) of whatever amount or consideration MYC and/or the ZAMORA FAMILY will receive from the Joint Venture Agreement shall be applied against the ₱25.1 Million liability through payment by the DEVELOPERS directly to the FIRST PARTY. x x x

x x x x x x x x x

6. The DEVELOPERS undertake to withhold, pay and immediately deliver directly to the FIRST PARTY the latter's 30% share until the ₱25.1 Million Pesos is fully paid in accordance with the conditions set forth (*sic*) in paragraph 4 but in no case shall the full payment be more than three (3) years from the execution of this Agreement. However, in the event the Thirty Percent (30%) of the amount or consideration MYC and/or the ZAMORA FAMILY will receive from the Joint Venture Agreement within the three-year period fails to reach ₱25.1 Million or the development has been delayed and MYC and the ZAMORA FAMILY have not received any proceeds from the Joint Venture Agreement, the DEVELOPERS shall advance the balance thereof due to the FIRST PARTY, which amount shall be deducted, without interest, from the share of MYC and/or the ZAMORA FAMILY under the Joint Venture Agreement.[3] (*emphasis ours*)

On January 24, 1997, judgment[4] was rendered based on the above compromise agreement. However, more than three years

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[3] Compromise Agreement, Annex "F", pp. 3-5.

[4] Penned by Benedicto G. Cobarde, Presiding Judge, Civil Case No. 4411-L, RTC Branch 53, Lapu-Lapu City, Cebu.

passed and petitioner Megaworld, MYC and the Zamora family still had not paid private respondents the balance of ₱25.1 million brokers' fee. Consequently, private respondents filed a motion for execution of the judgment by compromise agreement which the court *a quo* granted. It likewise issued a notice of garnishment against petitioner's deposits in Manila Banking Corporation,[5] among other banks. Aggrieved, petitioner appealed to the Court of Appeals which, however, denied its petition and ordered the implementation of the writ of execution of the judgment on the compromise agreement.[6] The appellate court further held that:

x x x x x x x x x

x x x The July 27, 1997 Judgment based on a Compromise Agreement had already been partially fulfilled when the private respondents were paid ₱3.9 Million under paragraph (4) of the compromise agreement. Petitioner cannot now question the legality of a partially-performed compromise judgment after more than three (3) years from its promulgation without violating the principles of *res judicata*.[7]

Petitioner moved for a reconsideration of the CA's decision but the same was denied.[8] Hence, this appeal.

Petitioner contends that its obligation under the compromise agreement to advance the balance of respondents' commission of ₱25.1 million was premised on its being reimbursed from the share of MYC and the Zamora family in the proceeds of the joint venture project.[9] However, the joint venture project

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[5] Notice of Garnishment, Civil Case No. 4411-L, RTC, 7th Judicial Region, Lapu-Lapu City, Branch 53, December 2, 2002.

[6] Penned by Associate Justice Eubolo G. Verzola and concurred in by Associate Justices Bernardo P. Abesamis and Josefina Guevara-Salonga of the Third Division; *Rollo*, pp. 45-55.

[7] *Ibid.* p. 54.

[8] Resolution, CA-G.R. SP No. 65489, November 20, 2002; *Rollo*, pp. 56-57.

[9] Petition, *Rollo*, p. 21.

was totally aborted due to causes beyond its control,[10] among them the unilateral cancellation by MYC and the Zamora family of the development agreement which effectively revoked petitioner's obligation under the compromise agreement to pay the balance of private respondents' brokers' commission.

In their comment, private respondents counter that the judgment based on the compromise agreement has long become final and executory, and was in fact partially executed when MYC and the Zamora family paid private respondents ₱3.9 million as initial payment of the ₱29 million settlement amount. They accuse petitioner of bad faith for allegedly delaying the start

(a) It was only sometime in 1998 that MYC and/or the Zamora family were able to resolve the case involving the ownership of one of the lots located in Phase I of the proposed Master Plan. Even then, it was not yet clear to the petitioner if the Notice of *Lis Pendens* which was annotated on the title of the subject property had already been lifted.

(b) As developer, herein petitioner had submitted to MYC and/or the Zamora family for approval the Master Plan and the Development Timetable as early as 1996. Yet, despite repeated follow-ups, MYC and/or the Zamora family did not act on it. In the meantime, the (Asian) economic crisis took place.

(c) Since no Master Plan and Development Timetable had yet been agreed upon, and due to the onslaught of the economic crisis, petitioner was constrained to propose changes on Phase I of the submitted Master Plan in order to meet the changes in the property market demand. Again, however, despite repeated follow-ups, MYC and/or the Zamora family did not act on the proposed changes.

(d) Worse, the Joint Venture Agreement between MYC and/or the Zamora family and the developers was unilaterally terminated by MYC and/or the Zamora family themselves. In fact, they filed a case for a specific performance entitled *Manuel Zamora, et al. vs. Megaworld Properties and Holdings, Inc., AEV Properties, Inc. and Acoland Inc.* before the Regional Trial Court of Makati City.

[10] In its reply to private respondents' comment, petitioner Megaworld avers that the joint venture project was totally aborted due to causes beyond its control, to wit:

of the joint venture project and reneging on its obligation under the compromise agreement to advance the balance of private respondents' commission.

The only issue to be resolved is whether petitioner is liable for the balance of private respondents' brokers' commission amounting to ₱25.1 million as held by the court *a quo* and the appellate court.

We hold that petitioner is not liable.

As a rule, the findings of fact of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon the Supreme Court.[11] However, when the judgment of the Court of Appeals is premised on a misapprehension of facts or a failure to consider certain relevant facts that would lead to a completely different conclusion, a review of its factual findings may be made.[12] In the case at bar, the Court of Appeals failed to take into account that on February 1, 2000, more than two years after the judgment on the compromise agreement was rendered and partially executed, *MYC and the Zamora family unilaterally cancelled the development agreement.* Thru counsel, they notified petitioner of said termination in their letter which stated that:

x x x x x x x x x

Pursuant to Section 12 1(b) of the Agreement, we hereby put you on notice that *our clients are terminating the agreement, effective sixty (60) days from receipt of this letter.*

(e) MYC and/or the Zamora family have taken possession and regained full physical control of the development site as in fact they already replaced with their own security men the security guards those who herein petitioner had detailed at the vicinity.

Rollo p. 203.

[11] *C & S Fishfarm Corporation vs. Court of Appeals, et al.,* 394 SCRA 82 [2002]; *Peñalosa vs. Santos,* 363 SCRA 545 [2001]; *Marvin Mercado vs. People of the Philippines,* 392 SCRA 687 [2002].

[12] *Santos vs. Reyes,* 368 SCRA 261 [2002].

On our client's behalf, we also demand that you pay them the amount of ₱8,000.00 everyday starting June 15, 1996 as liquidated damages in accordance with Section 11.4 Article XI of the agreement, plus the amount conservatively fixed at ₱128,000,000.00 (₱258,000,000.00 less ₱130,000,000.00 as guaranty deposit) and ₱20,000,000.00 as loss of goodwill, representing the damages they sustained as a result of your failure to commence with the project or comply with your obligation under the agreement and destruction of an on-going resort business.[13] (*emphasis ours*)

We hold that the unilateral rescission of the joint venture agreement by MYC and the Zamora family, pursuant to Section 12.1(b)[14] of the development agreement, effectively discharged petitioner from its obligation under the compromise agreement to advance the balance of respondents' brokers' fee in the amount of ₱25.1 million. *The terms of the compromise agreement were clear that petitioner's undertaking to advance said amount was subject to reimbursement from the share of MYC and the Zamora family in the proceeds of the joint venture project.* Thus, Section 6 of the compromise agreement stated:

6. x x x the DEVELOPERS shall advance the balance thereof due to the FIRST PARTY, *which amount shall be deducted, without interest, from the share of MYC and/or ZAMORA FAMILY at the rate of Thirty Percent (30%) of whatever proceeds payable to MYC and/or the ZAMORA FAMILY under the Joint Venture Agreement.*[15] *(italics ours)*

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[13] Annex "H", *Rollo*, p. 122.

[14] Section 12.1. Default/Remedies in Case of Default

x x x x x x x x x

(a) x x x x x x x x x

(b) If the Defaulting Party fails to remedy or cure said default or breach within the stipulated or extended period, as the case may be, the Non-Defaulting Party shall have the right to terminate this Agreement by giving sixty (60) days written notice to the Defaulting Party. The consequences of such default are set forth in Section 12.2.

Development Agreement, *Rollo*, p. 79.

[15] *op cit*. at note 2.

If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall control.[16] It is evident from Section 6 of the compromise agreement, *supra*, that *petitioner's obligation to advance the balance of respondents' commission was dependent on the success — meaning, the earnings — of the joint venture project.* This is clear from the stipulation of the parties under the said agreement that whatever amount petitioner advanced to respondents was to be deducted from the share of MYC and/or the Zamora family in the proceeds of the joint venture agreement. Consequently, when MYC and the Zamora family unilaterally cancelled the development agreement, petitioner was effectively deprived of its source of payment to respondents since it was left without recourse to reimbursement. To hold petitioner liable under the circumstances will result in the unjust enrichment of MYC, the Zamora family and the respondents. This we cannot countenance.

We likewise note that it was MYC and the Zamora family that gave respondents the authority[17] to broker a joint venture agreement between them and petitioner for the development of MYC's prime parcels of land into a world-class residential/commercial condominium complex, in consideration of "three percent (3%) broker's/consultant's fee based on the total consideration the Corporation may receive from Megaworld Properties and Holdings, Inc." In short, respondents were the agents or brokers of MYC and the Zamora family, not the petitioner, and the obligation to pay the brokers' fee therefore rested on MYC and the Zamora family.

We find it totally unreasonable, oppressive even, for respondents to exact its broker's fee from a party which is not even its principal or the entity that engaged its services. Even on the premise that petitioner obligated itself under the compromise agreement to pay respondents the ₱25.1 million commission,

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[16] Article 130, New Civil Code.

[17] Authority, Annex "C", *Rollo*, p. 58.

that assumption of liability — if needed it was — was *conditioned on the presence of earnings due MYC and the Zamora family*. But how could there have accrued any earnings for MYC and the Zamora family when the latter unilaterally cancelled the project from which petitioner could draw the payment? To insist on holding petitioner liable for the ₱25.1 million, under the circumstances, is like Shylock's insistence on his "pound of flesh."

Indeed it appears to be respondents' theory that the compromise agreement in effect made the petitioner-developer a surety or solidary co-obligor of MYC and the Zamora family, absolutely and unconditionally liable for the ₱25.1 million broker's commission due the respondents — with or without any possibility of reimbursement from the landowners MYC and Zamora family, and regardless of whether the joint venture project materializes or not. This is absurd and reads too much into the compromise agreement.

We agree that the judgment on the compromise agreement where petitioner obligated itself to pay the balance of respondents' commission of ₱25.1 million has become final and executory. The same was in fact partially performed when MYC and the Zamora family gave respondents ₱3.9 million as partial payment of their brokers' fee. However, under the law, the Court may modify or alter a judgment even after the same has become executory whenever circumstances make its execution unjust and inequitable, as where certain facts and circumstances justifying or requiring such modification or alteration transpire after the judgment becomes final and executory.[18] We have likewise held in a long line of cases[19] that the Court

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[18] *David vs. Court of Appeals*, 316 SCRA 710 [1999].

[19] *People vs. Gallo*, 315 SCRA 461 [1999] citing *Echegaray vs. Secretary of Justice*, 301 SCRA 96 [1999]; *Bachrach Corporation vs. Court of Appeals*, 296 SCRA 487 [1998]; *Lee vs. de Guzman*, 187 SCRA 276 [1990]; *Philippine Veterans Bank vs. Intermediate Appellate Court*, 178 SCRA 645 [1989]; *Lipana vs. Development Bank of Rizal*, 154 SCRA 257 [1987], *Candelaria vs. Canizares*, 4 SCRA 738 [1962].

has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it becomes imperative in the higher interest of justice or when supervening events warrant it. *In the case at bar, the critical factor was the unilateral cancellation by MYC and the Zamora family of the development agreement* ***after*** *the compromise agreement became final and partially executed. This fact was overlooked by the Court of Appeals.* This was extremely important because, without the development agreement, the joint venture project could not push through. And without the joint venture project, there could have been no earnings from which the ₱25.1 million could be advanced. Thus, on account of the cancellation of the development agreement — and the consequent abrogation of the entire joint venture project — petitioner's obligation to advance the balance of respondents' commission ceased. To rule otherwise would be contrary to law and the principles of justice and fair play.

WHEREFORE, premises considered, the instant petition is hereby *GRANTED*. The decision of the Court of Appeals dated August 28, 2002 and its resolution of November 20, 2002 are hereby *SET ASIDE*. The order of public respondent judge dated June 29, 2001 executing the compromise agreement as well as the writ of execution and notices of garnishment are hereby declared *NULL AND VOID*.

No costs.

SO ORDERED.

Sandoval-Gutierrez and *Carpio Morales, JJ.,* concur.

Vitug, J. (Chairman), on official leave.

EN BANC

[G.R. No. 159713. March 31, 2004]

ARIEL G. DE GUZMAN, *petitioner, vs.* **COMMISSION ON ELECTIONS and NESTOR B. PULIDO,** *respondents*.

SYNOPSIS

Petitioner De Guzman was proclaimed winner of the second of two Provincial Board seats allocated for the First District of Pangasinan with 40,441 votes. Respondent Pulido, a candidate for the same position, garnered 40,383 votes or 58 votes less than De Guzman. When Pulido filed with the COMELEC an election protest against De Guzman, however, the COMELEC First Division annulled the proclamation of De Guzman and declared Pulido duly elected; that Pulido garnered a total of 40,336 votes while De Guzman garnered 40,263 votes. De Guzman filed a motion for reconsideration but the COMELEC *en banc* denied the same. Hence, this petition.

The Court ruled in favor of De Guzman and found the COMELEC *en banc* acted capriciously in upholding the factual findings of the First Division which disregarded the manifest errors in tabulation of votes. That De Guzman failed to present competent evidence to support his allegations is erroneous estimation of evidence as De Guzman formally offered certified true copies of documents. The cardinal objective of ballot appreciation is to discover and give effect to the intention of the voters. Thus, the presumption is on the validity of every ballot unless good reasons justify its rejection.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COMELEC ON ELECTION MATTERS, GENERALLY RESPECTED; EXCEPTION IS WHEN THERE IS ABUSE OF DISCRETION. — Well recognized is the rule that the appreciation of the contested ballots and election documents involves a question of fact best left to the determination of

the COMELEC. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. By reason of the special knowledge and expertise of an administrative agency like the COMELEC over matters falling under their jurisdiction, they are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts. Nonetheless, it must be emphasized that even decisions of administrative agencies which are declared "final" by law are not exempt from judicial review when so warranted. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. Otherwise stated, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court. Thus, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court will not hesitate to reverse their factual findings.

2. POLITICAL LAW; ELECTION LAWS; WHERE CORRECTNESS OF THE NUMBER OF VOTES IS INVOLVED, THE BEST AND MOST CONCLUSIVE EVIDENCE ARE THE BALLOTS, OTHERWISE, THE ELECTION RETURNS. — The Court notes that the COMELEC *en banc* itself noted that it "can, and should, only consider the documents formally offered in evidence" but it entirely glossed over the formally certified true copies of the Election Returns and Statement of Votes by Precinct, as well as the COMELEC's own Minutes of the Proceedings in the Revision and the Revision Reports of the contested precincts which confirms the manifest errors committed in the counting of votes. Needless to stress, in an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the election returns would be the best evidence.

3. ID.; ID.; BALLOTS; PRESUMPTION OF VALIDITY. — It is well to remember the basic principle that the cardinal objective of ballot appreciation is to discover and give effect to, rather than frustrate the intention of the voters, thus, every ballot shall be presumed valid unless clear and good reasons justify its rejection. Extreme caution should be observed before any ballot is invalidated and doubts in the appreciation of ballots are resolved in favor of their validity. Thus, it is a well-founded rule ensconced in our jurisprudence that laws and statutes governing election contest especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.

APPEARANCES OF COUNSEL

De Lima & Menez Law Offices for petitioner.

Alioden D. Dalaig for public respondent.

Francisco B. Sibayan and *Florante Miano* for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Resolution, dated September 11, 2003 of the Commission on Elections (COMELEC) *en banc*[1] in EPC No. 2001-11 which affirmed the Resolution, dated April 2, 2003, of the COMELEC First Division[2] declaring respondent Nestor B. Pulido as the duly elected Number 2 Provincial Board Member of the First District of Pangasinan.

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[1] Composed of Chairman Benjamin S. Abalos and Commissioners Luzviminda G. Tancangco, Rufino S.B. Javier, Ralph C. Lantion, Mehol K. Sadain, Resurreccion Z. Borra and Florentino A. Tuason, Jr.

[2] Composed of Commissioners Rufino S.B. Javier, Luzviminda G. Tancangco and Resurreccion Z. Borra.

The facts are as follows:

On May 19, 2001, petitioner Ariel G. De Guzman was proclaimed winner of the second of two Provincial Board seats allocated for the First District of Pangasinan with 40,441 votes. Respondent Nestor B. Pulido, a candidate for the same position, garnered 40,383 votes or 58 votes less than De Guzman.[3]

On May 28, 2001, Pulido filed with the COMELEC an election protest against De Guzman, docketed as EPC No. 2001-11.[4] He alleged that:

7. In the Municipality of Mabini, Province of Pangasinan, where the PROTESTEE is the incumbent Mayor, more than one thousand (1,000) votes were padded in his favor. On the other hand, more than one hundred (100) votes of the PROTESTANT were deliberately not read and counted;

8. The PROTESTEE obviously orchestrated the tempo in the canvassing of votes in the Municipality of Mabini, Province of Pangasinan. He has the power and clout to do so being the immediate past third termer Mayor of that town. It must be told with regrets that the Municipal Board of Canvassers of Mabini, Pangasinan, without justifiable reasons, deliberately suspended the canvassing of votes for more than eight hours, from five o'clock in the afternoon of May 15, 2001 to 2:00 o'clock in the early morning of May 16, 2001, without proper notice to the watchers and to the public. The idea behind the suspension of canvassing for more than eight hours was to give the PROTESTEE enough time to know the results of the elections in the other municipalities and in case he loses in the quick count, he would still have time to pad his votes. Indeed, when he knew he was losing, the PROTESTEE padded more than one thousand votes to his name in order to win;

9. Thus, a recount of the votes cast in the various[5] precincts in the Municipality of Mabini, Province of Pangasinan, is necessary

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[3] *Rollo*, p. 110.

[4] *Id.*, p. 92.

[5] In the copy of the Election Protest attached to the Petition, the word "various" was stricken-out and replaced with the word "all," while the copy of the Amended Protest contains the word "all," *id.*, pp. 95, 103.

to ascertain the number of votes the PROTESTEE and the PROTESTANT actually garnered.[6]

The following day, Pulido amended his protest by also claiming that in the town of Mabini 500 ballots cast in his favor were misappreciated in favor of De Guzman.[7]

On June 18, 2001, De Guzman filed his Amended Answer with Counter Protest denying Pulido's allegations.[8] As counter-protest, he alleged misappreciation of ballots cast in all the precincts in the town of Anda.[9] In addition, he alleged that:

13. In precinct 10A1 in Barangay Gais-Guipe, Dasol, Pangasinan, in CE Form No. 9 Sheet No. 67180016, the PROTESTEE garnered seventy (70) votes; that apparently when the result was transferred in CE Form No. 20-A, Sheet No. 2113885, the PROTESTEE was credited with only seventeen (17) votes, thus depriving the PROTESTEE of fifty three (53) votes. A photocopy from the copy for the Majority Party each of CE Form No. 9 Sheet 67180016 and CE Form No. 20-A, Sheet No. 2113885 are hereto attached as Annexes "A" and "B" respectively, and made parts hereof; A recount of the votes in said precinct No. 10A1 of Barangay Gais-Guipe, Dasol, Pangasinan is therefore, necessary to ascertain the correct numbers of votes of the PROTESTANT and PROTESTEE in said precinct;

14. In precinct No. 27A1 and 27A2, Barangay Bued, Alaminos, Pangasinan, it is made to appear in CE Form 9, Sheet 67030051, that the PROTESTANT obtained twenty four (24) votes when per the tally he received only nineteen (19) votes thereby adding five (5) votes for the PROTESTANT which should be deducted from his total votes. A copy of CE Form 9, Sheet 67030051 is hereto attached as Annex "C" and made a part hereto. A recount of the votes in said precincts 27A1 and 27A2 is therefore, necessary to ascertain the correct number of votes of the PROTESTANT and the PROTESTEE in said precincts;

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[6] *Id*., pp. 94-95.

[7] *Id*., pp. 101, 103.

[8] *Id*., p. 111.

[9] *Id*., p. 118.

15. In precinct No. 22A2 of Bamban, Infanta, Pangasinan, it is made to appear in CE Form No. 9, Sheet No. 67190050, that the PROTESTEE obtained twenty eight (28) votes when per tally he received thirty three (33) votes thus five (5) votes should be added to the total votes of the PROTESTEE. A photocopy of CE Form No. 9, Sheet No. 67190050 is hereto attached as Annex "D" and made a part hereof;

16. In the Statement of Votes By Precinct, CE Form 20A, Sheet Nos. 2113889, 2113890 and 2113891 there is an error in the addition of the number of votes for the PROTESTEE, more particularly in Sheet No. 2113891 where it is made to appear in the sub-total that the PROTESTEE received three hundred forty two (342) votes instead of the correct one which is three hundred eighty nine (389) thus from this erroneous addition he was deprived of 47 votes. This 47 votes should be added to the PROTESTEE's total votes in Infanta, Pangasinan. A copy each of the Statement of Votes By Precinct, CE Form No. 20-A, Sheet Nos. 2113889, 2113890 and 2113891 are hereto attached as Annexes "E", "F" and "G" respectively, and made parts hereof.[10]

On July 31, 2001, the COMELEC First Division directed the parties to deposit money to defray the expenses to be incurred in the revision of the ballots.

On September 10, 2001, the revision of the contested ballots commenced. Thereafter, both parties presented their evidence. After both parties formally offered their respective evidence, the case was submitted for decision.

Meanwhile, on March 20, 2002, the COMELEC *en banc* received three letter-petitions separately filed by the Municipal Board of Canvassers of the towns of Infanta and Dasol and the Board of Election Inspectors of Precincts 27A1 and 27A2 of Alaminos City. The letter-petitions, docketed as SPC Nos. 02-001, 02-002 and 02-003, requested authority to correct mistakes or errors in tabulation reflected in the Election Returns and Statement of Votes by Precinct which were also the subject of De Guzman's counter-protest.

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[10] *Id.*, pp. 113-114.

On September 19, 2002, the COMELEC *en banc* jointly dismissed the letter-petitions in SPC Nos. 02-002 and 02-003 of the Municipal Board of Canvassers of Infanta and the Board of Election Inspectors of Precincts 27A1 and 27A2 of Alaminos City.[11] The COMELEC *en banc* reasoned:

> x x x [A]ll the matters raised in the letters-petitions are included in the issues to be resolved in EPC No. 2001-11 pending before the First Division which was initiated more than 9 months before the instant petitions. The election protest case is more extensive and appropriate in closely looking into the parties' allegations and supporting documents. Such proceedings are in fact consistent with Mr. De Guzman's call for a recount of votes in the subject clustered precincts, which we cannot undertake in a petition for correction of mistake. Hence, the First Division is in a better position to rule upon the issues and make the necessary conclusions especially on the allegations of fact that we find insufficient herein.[12]

Subsequently, on April 2, 2003, the COMELEC First Division issued a Resolution in EPC No. 2001-11 annulling the proclamation of De Guzman. It declared Pulido as the duly elected Number 2 Provincial Board Member of the First District of Pangasinan having garnered a total of 40,336 votes as against De Guzman who obtained 40,263 votes or a plurality of 73 votes.[13]

Dissatisfied, De Guzman sought reconsideration with the COMELEC *en banc*.[14]

De Guzman alleged that the base figures adopted by the COMELEC First Division, that is, 40,441 votes cast for De Guzman and 40,383 votes cast for Pulido, are the original figures as provided in the original canvass or statements of votes. He

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[11] *Id.*, p. 116. De Guzman claims that the COMELEC *en banc* did not act on the letter-petition on the error in the recording in the Statement of Votes in Precinct 10A1 of Dasol which is the subject of SPC No. 02-001, *id.*, p. 15.

[12] *Id.*, p. 120.

[13] *Id.*, p. 56.

[14] *Id.*, p. 191.

assailed that the use thereof as base figures, before imputing the rejected and admitted votes on appreciation, is erroneous because the manifest errors of tabulation complained of by De Guzman in his counter-protest were not considered. He claimed that the original statement of total votes for the candidates should have been first rectified to reflect the manifest errors of computation or tabulation, citing that the COMELEC *en banc* itself declared that the alleged errors in tabulation, which were also subject of the letter-petitions in SPC Nos. 02-002 and 02-003, are best reviewed in the election protest proper. De Guzman argued further that the COMELEC First Division misappreciated 7 ballots for De Guzman as written-by-one in Precinct 47A, Mabini, with recorded data and evidence of assistory voting and 37 more ballots for De Guzman as marked ballots with noted pattern marks.

Following hearing on the motion for reconsideration[15] and submission of memoranda,[16] the COMELEC *en banc*[17] issued a Resolution dated September 11, 2003 denying De Guzman's motion for reconsideration. The COMELEC *en banc* ratiocinated:

> Admittedly, however, the First Division has not addressed the subject in its 02 April 2003 Resolution. Thus it is now incumbent upon us to pass upon the same to finally settle the matter.
>
> Even a cursory reading of De Guzman's counter-protest reveals that *only photocopies of the involved election returns and Statements of Votes by Precinct were submitted in evidence*, with the exception of the Statement of Votes to support the mistake in addition of De Guzman's total number of Votes in Infanta, Pangasinan, which was a certified true copy. *Being mere photocopies, the same does not have any probative value.* These would not warrant a recount of the votes in precinct numbers 101A of Brgy. Gais-Gaipe, Dasol, 27A1 and 27A2 of Brgy. Bued, Alaminos and 22A2 of Brgy. Bamban, Infanta, all in the province of Pangasinan.

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[15] *Id.*, p. 226.

[16] Copy of De Guzman's Memorandum, *id.*, p. 227.

[17] Chairman Benjamin S. Abalos did not participate in the deliberations on the questioned Resolution, *id.*, p. 55.

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Moreover, the photocopy of the Statement of Votes by Precinct from Brgy. Gais-Gaipe, Dasol does not clearly show that only seventeen (17) votes, instead of seventy, were credited to protestee De Guzman, thereby depriving him of fifty three (53) votes. Aside from the fact that the figures in said photocopy did not clearly show the votes credited, *the entries under the column for sub/grand total votes received were not legible at all.*

During the pendency of this case, protestee had every opportunity to offer competent evidence to support his contentions. He, however, failed to do the same.

Though a certified true copy of the Statement of Votes for Infanta, Pangasinan was submitted in evidence, such, on its own, is not sufficient to effect a correction. Protestee De Guzman did not even offer in evidence the election returns for the votes reflected in the Statement of Votes where error in addition has been alleged. Not even after careful perusal of the subject Statement of Votes by Precinct can this Commission ascertain the individual entries therein. Naturally, the Commission can, and should, only consider the documents formally offered in evidence pursuant to Section 34 of the Rules of Court, finding suppletory application in this case.

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With respect to the alleged misappreciation of ballots, the First Division already painstakingly examined the ballots and ruled upon their validity. Guided by pertinent rules and Supreme Court doctrines, the Division found that protestant Nestor Pulido won over protestee Ariel De Guzman with a margin of seventy (70) votes. Such finding by the First Division must be accorded great weight in the absence of substantial showing that it was made from an erroneous estimation of the evidence presented. (Italics supplied)[18]

On September 18, 2003, De Guzman filed the present petition with prayer for the issuance of a temporary restraining and/or writ of preliminary injunction.[19] The present petition is anchored on the following grounds:

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[18] *Id.*, pp. 52-54.

[19] *Id.*, p. 3.

THE COMELEC *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT FAILED AND REFUSED TO CORRECT THE PLAIN AND MANIFEST ERRORS OF TABULATION, DULY PROVEN BY COMPETENT EVIDENCE AND CONFIRMED ON (SIC) PHYSICAL COUNT, AND, CONSEQUENTLY FAILED AND REFUSED TO CORRECT THE WRONG BASE FIGURES USED IN THE COMPUTATION OF THE FINAL VOTES. THE COMELEC'S JUDGMENT UNSEATING DE GUZMAN WAS THE DIRECT AND NECESSARY CONSEQUENCE OF THE PATENTLY ERRONEOUS FIGURES IN THE FIRST DIVISION'S RESOLUTION.

THE COMELEC *EN BANC* LIKEWISE ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT SUSTAINED *IN TOTO* THE FIRST DIVISION'S APPRECIATION FINDINGS WITHOUT RECTIFYING OR REVERSING THE MANIFESTLY ERRONEOUS INVALIDATION OF 7 BALLOTS FOR DE GUZMAN AS WRITTEN-BY-ONE IN PREC. 47A, MABINI, WITH RECORDED DATA AND EVIDENCE OF ASSISTORY VOTING AND 37 MORE BALLOTS FOR DE GUZMAN AS MARKED BALLOTS WITH NOTED PATTERN MARKS SANS ANY EVIDENCE *ALIUNDE* OF THE VOTER'S DESIGN TO MARK.[20]

De Guzman claims that the COMELEC *en banc* gravely abused its discretion when it sustained the factual findings of the First Division notwithstanding that the base figures adopted by the latter was erroneous because it did not consider the manifest errors of tabulation challenged in his counter-protest. He submits that the COMELEC *en banc* erred grievously when it declared that "only photocopies of the involved Election Returns and Statements of Votes by Precinct were submitted in evidence" since he formally offered in evidence certified true copies of the documents involved.

As regards the appreciation of ballots, De Guzman claims the patent failure of the COMELEC *en banc* to consider the existence of assistory voting and the absence of evidence on the alleged pattern marking constitutes grave abuse of discretion.

On September 30, 2003, this Court required the COMELEC and Pulido to comment on the petition and, upon the posting of

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[20] *Id.*, pp. 22-23.

a bond by De Guzman in the amount of ₱25,000.00, issued a temporary restraining order enjoining the COMELEC from implementing its resolutions of April 2, 2003 and September 11, 2003.[21]

In his Urgent Motion to Lift the TRO/Comment, Pulido points out that the issues raised in the petition are factual and cannot be subject of a petition for *certiorari*. He maintains that the rulings of the COMELEC are amply justified and the alleged errors were already corrected on physical count and reviewed or considered by the COMELEC.[22]

On January 7, 2004, the Office of the Solicitor General (OSG) filed a Manifestation In Lieu of Comment, essentially recommending that this Court grant the present petition. It contends that the COMELEC gravely abused its discretion by totally ignoring not only competent and relevant documents but obviously material pieces of evidence earlier presented before it by De Guzman; consequently, its assailed Resolution becomes grossly not in accord with the facts and the law.[23]

In view of the OSG's manifestation, the COMELEC filed its Comment. The COMELEC submits that the setting aside of the alleged correct base figures, having been unsubstantiated by De Guzman despite extensive time the protest case lasted, was in order and deserves credence. With regards to the appreciation of ballots, it contends that the COMELEC's appreciation of ballots must be accorded great weight and presumption of regularity, in the absence of substantial showing that it was made from an erroneous estimation of the evidence presented.[24]

In his Consolidated Reply, De Guzman staunchly insists that the base figures utilized by the COMELEC are the original unrectified

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[21] *Id.*, p. 287.

[22] *Id.*, p. 294.

[23] *Id.*, p. 339.

[24] *Id.*, p. 360.

statement of votes without regard to the physical count results in the protested and counter-protested precincts. He vigorously maintains that he presented competent evidence, all certified true copies and not mere photocopies of the documents involved, which proved the clear and manifest tabulation errors. Anent the appreciation errors, he emphatically argues that the COMELEC's patent failure to apply the very fundamental rules of appreciation in respect of the 7 ballots rejected as written-by-one in Precinct 47A, Mabini and 37 ballots rejected as marked in seven other revised precincts, constitutes grave abuse of discretion correctible by the present petition for *certiorari*.

Well recognized is the rule that the appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials.[25] By reason of the special knowledge and expertise of an administrative agency like the COMELEC over matters falling under their jurisdiction, they are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts.[26]

Nonetheless, it must be emphasized that even decisions of administrative agencies which are declared "final" by law are not exempt from judicial review when so warranted.[27] Factual findings of administrative agencies are not infallible and will be

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[25] *Punzalan vs. COMELEC*, 289 SCRA 702, 716 (1998).

[26] *Malabaguio vs. COMELEC*, 346 SCRA 699, 706 (2000) citing *PMMI vs. Court of Appeals*, 244 SCRA 770 (1995); *Casa Filipina Realty Corp. vs. Office of the President*, 241 SCRA 165 (1995); and, *COCOFED vs. Trajano*, 241 SCRA 363 (1995).

[27] *Malabaguio vs. COMELEC, supra* at 706-707, citing *Cosep vs. NLRC*, 290 SCRA 704 (1998); *Food Mine, Inc. vs. NLRC*, 188 SCRA 748 (1990); *Artex Development Co., Inc. vs. NLRC*, 187 SCRA 611 (1990); *Tiu vs. NLRC*, 215 SCRA 469 (1992).

set aside when they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law.[28] Otherwise stated, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court.[29] Thus, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court will not hesitate to reverse their factual findings.

In this case, the Court finds that the COMELEC *en banc* acted whimsically, capriciously and without any rational basis in upholding the factual findings of the First Division which disregarded manifest errors in tabulation. It was remiss in its duties to properly resolve the Motion for Reconsideration before it and it should have given a close scrutiny of the evidence on hand. Its conclusion that only photocopies of the documents involved are in evidence is contradicted by the records. Its observation that De Guzman failed to present competent evidence to support his allegations is a glaringly erroneous estimation of the evidence presented. Admittedly, De Guzman attached only photocopies of documents in his counter-protest, but he formally offered certified true copies thereof in the presentation of his evidence.[30] As such, the COMELEC should have delved into the alleged manifest errors of tabulation.

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[28] *Malabaguio vs. COMELEC, supra* citing *PAL vs. NLRC,* 279 SCRA 445 (1997), *Zarate vs. Olegario*, 263 SCRA 1 (1996); *Itogon-Suyoc Mines, Inc. vs. Office of the President*, 270 SCRA 63 (1997); *Apex Mining Co. vs. Garcia*, 199 SCRA 278 (1991); and, *Assistant Executive Secretary vs. Court of Appeals*, 169 SCRA 27 (1989).

[29] *Punzalan vs. COMELEC, supra; Mastura vs. COMELEC*, 285 SCRA 493, 499 (1998); *Bulaong vs. COMELEC*, 241 SCRA 180 (1995); *Navarro vs. COMELEC*, 228 SCRA 596 (1993); *Lozano vs. Yorac*, 203 SCRA 256 (1991); *Pimping vs. COMELEC*, 140 SCRA 192 (1985).

[30] *Rollo,* pp. 122-184.

The Court notes that the COMELEC *en banc* itself noted that it "can, and should, only consider the documents formally offered in evidence" but it entirely glossed over the formally offered certified true copies of the Election Returns and Statement of Votes by Precinct, as well as the COMELEC's own Minutes of the Proceedings in the Revision and the Revision Reports of the contested precincts which confirms the manifest errors committed in the counting of votes. Needless to stress, in an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the election returns would be the best evidence.[31]

For Precinct No. 10A1 of Brgy. Gais-Guipe, Dasol, the Election Returns shows that De Guzman obtained 70 votes, while Pulido got 36 votes,[32] but the Statement of Votes by Precinct indicates only 17 votes credited to De Guzman as against the 36 votes of Pulido.[33] The Revision Report for Precinct No. 10A1 of Brgy. Gais-Guipe, Dasol confirms that De Guzman obtained 70 votes, to wit:

DATA PER ELECTION RETURN:		
Total Number of Registered Voters		199
Total Number of Voters who Actually Voted		185
Votes obtained by Protestant		36
Votes obtained by Protestee		*70*
Others		150
PER PHYSICAL COUNT:		
Votes for Protestant	25 + 11 =	36
Votes for Protestee	*59 + 11 =*	*70*
Others		62
Blank		28

[31] *Maruhom vs. COMELEC*, 331 SCRA 473, 490 (2000); *Lerias vs. HRET* , 202 SCRA 808 (1991).

[32] *Rollo*, p. 178.

[33] *Id.*, p. 179.

Stray	0
TOTAL	196 (-11 = 185)[34]

Thus, 53 votes were not credited to De Guzman.

For Precinct No. 27A1/27A2 of Brgy. Bued, Alaminos, the Election Returns shows that Pulido obtained 24 votes in figures but the taras count only 19.[35] The Revision Report for Precinct No. 27A1/27A2 of Brgy. Bued, Alaminos disclosed the following discrepancy:

DATA PER ELECTION RETURN:

Total Number of Registered Voters	218
Total Number of Voters who Actually Voted	164
Votes obtained by Protestant word & fig.	*24 & taras – 19*
Votes obtained by Protestee	*25*
Others	188

PER PHYSICAL COUNT:

Votes for Protestant	*20*
Votes for Protestee	*25*
Others	107
Blank	12
Stray	1
TOTAL	165[36]

Per physical count of the ballots, 4 votes should be deducted from Pulido.

For Precinct No. 14A1 of Infanta, the Election Returns shows that De Guzman obtained 47 votes,[37] but the Statement of Votes by Precinct clearly discloses that a manifest error in computation was made since the total figure reads only 342 for De Guzman

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[34] *Id.*, p. 170.

[35] *Id.*, p. 190.

[36] *Id.*, p. 163.

[37] *Id.*, p. 183.

when it should be 389.[38] Thus, 47 votes should be credited to De Guzman.

For Precinct No. 22A-2 of Bamban, Infanta, the Revision Report shows the following data:

DATA PER ELECTION RETURN:

Total Number of Registered Voters	198
Total Number of Voters who Actually Voted	159
Votes obtained by Protestant	**81 in taras & figure**
Votes obtained by Protestee	**28 in figure**
Others	33 taras

PER PHYSICAL COUNT:

Votes for Protestant	**70 + 10 =**	**80**
Votes for Protestee	**24 + 10 =**	**34**
Others		8
Blank		41
Stray		6
Common Ballots		10
TOTAL		159[39]

Per physical count of the ballots, 6 votes should be credited to De Guzman, while 1 vote should be deducted from Pulido.

The original figures as provided in the original canvass or statements of votes, that is, 40,441 votes cast for De Guzman and 40,383 votes cast for Pulido, should be rectified to reflect the correct tabulation based on the foregoing. As corrected, De Guzman has 40,547 votes as against 40,378 votes for Pulido. From these figures shall be deducted the invalidated ballots and valid claimed ballots for each, thus:

	DE GUZMAN	PULIDO
Rectified Base Figures	40,547	40,378
Less: Total Number of		

[38] *Id.*, p. 182.
[39] *Id.*, p. 156.

	Invalidated Ballots	183	71
Add:	Total No. of Valid Claim	5	24
TOTAL		40,369	40,331

Based on the foregoing, De Guzman has 40,369 votes as against Pulido's 40,331 votes or a plurality of 38 votes.

As regards the 7 ballots cast in favor of De Guzman which were rejected as written-by-one in Precinct 27A Mabini,[40] the COMELEC should have considered the data reflected in the Minutes of Voting Precinct No. 47A Mabini.[41] It shows the existence of 24 illiterate or physically disabled voters which necessitated voting by assistors pursuant to Section 196 of B.P. Blg. 881[42] which does not allow an assistor to assist more than three times except the non-party members of the board of election inspectors. There is no showing that the 7 rejected ballots as having been written-by-one falls under the exception. The handwriting of the assistor in the 7 rejected ballots is the same as that appearing in the Minutes of Voting. All of the 7 assailed ballots were cast in favor of De Guzman. Consequently, four

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[40] *Id*., p. 68.

[41] *Id*., pp. 188-189.

[42] SEC. 196. Preparation of ballots for illiterate and disabled persons. — A voter who is illiterate or physically unable to prepare the ballot by himself may be assisted in the preparation of his ballot by a relative, by affinity or consanguinity within the fourth civil degree or if he has none, by any person of his confidence who belong to the same household or any member of the board of election inspectors, except the two party members: Provided, That no voter shall be allowed to vote as illiterate or physically disabled unless it is so indicated in his registration record: *Provided, further, That in no case shall an assistor assist more than three times except the non-party members of the board of election inspectors*. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense. (italics supplied)

ballots should be appreciated in his favor it being reasonably presumed that the identically written ballots were prepared by the assistor, not only for three illiterate or physically disabled voters but also for himself. Hence, added to the 38 votes, de Guzman won the election by 42 votes.

It is well to remember the basic principle that the cardinal objective of ballot appreciation is to discover and give effect to, rather than frustrate the intention of the voters, thus, every ballot shall be presumed valid unless clear and good reasons justify its rejection.[43] Extreme caution should be observed before any ballot is invalidated and doubts in the appreciation of ballots are resolved in favor of their validity.[44] Thus, it is a well-founded rule ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.[45]

With respect to the 37 ballots rejected as marked in seven other revised precincts, we find that petitioner has offered insufficient justification to reverse the COMELEC's appreciation of the same.

All told, we rule in favor of petitioner De Guzman. Consequently, petitioner De Guzman is the rightful winner of the second seat for the Provincial Board Member of the First

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[43] Section 211 of B.P. Blg. 881; *Torres vs. HRET* , 351 SCRA 312, 327 (2001).

[44] *Bautista vs. COMELEC*, 298 SCRA 480, 490 (1998); *Silverio vs. Castro*, 19 SCRA 521 (1967).

[45] *Bince, Jr. vs. COMELEC*, 242 SCRA 273 (1995); *Benito vs. COMELEC*, 235 SCRA 436 (1994); *Pahilan vs. Tabalba*, 230 SCRA 205 (1994); *Aruelo, Jr. vs. Court of Appeals*, 227 SCRA 311 (1993); *Tatlonghari vs. COMELEC*, 199 SCRA 849 (1991); *Unda vs. COMELEC*, 190 SCRA 827 (1990); and, *De Leon vs. Guadiz, Jr.*, 104 SCRA 591 (1981).

District of Pangasinan, with a plurality of 42 votes over respondent Pulido.

In closing, the Court finds it worthy to echo our emphatic statement in *Pangandaman vs. COMELEC*,[46] thus:

> [U]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all. Well done is always better than well said. Corollarily, laws and statutes governing election contests especially the appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.

WHEREFORE, the petition is *GRANTED* and the assailed Resolution of the COMELEC *en banc*, dated September 11, 2003, in EPC No. 2001-11 affirming the Resolution of the COMELEC First Division, dated April 2, 2003, which annulled the proclamation of petitioner Ariel G. De Guzman and declared respondent Nestor B. Pulido as the duly elected Number 2 Provincial Board Member of the First District of Pangasinan is *ANNULLED* and *SET ASIDE*. The temporary restraining order heretofore issued is made *PERMANENT*.

SO ORDERED.

Davide, Jr., C .J ., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Vitug, J., on official leave.

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[46] *Pangandaman vs. COMELEC*, 319 SCRA 287, 288 (1999); *Loong vs. COMELEC*, 305 SCRA 832, 871 (1999); and *Punzalan vs. COMELEC*, 289 SCRA 702 (1998).

SECOND DIVISION

[A.M. No. P-03-1761. April 2, 2004]
(Formerly OCA-IPI No. 03-1717-P)

ATTY. RAUL A. MUYCO, *complainant, vs.* **EVA B. SARATAN, Branch Clerk of Court, Branch 32, RTC, Iloilo City,** *respondent.*

SYNOPSIS

Complainant, the counsel for plaintiff in an unlawful detainer case, charges the respondent clerk of court of RTC Branch 32 of Iloilo City of neglect of duty, refusal to perform official duty and conduct unbecoming a court personnel.

After securing a favorable judgment for his client, he filed motions for execution of the judgment but said motions were denied by the trial court because an appeal had been taken from the judgment. Complainant discovered that no supersedeas bond had been posted and no monthly rentals had been deposited. Complainant requested from respondent clerk of court, a certification that based on the records, the defendant has not posted a supersedeas bond to stay the execution and that the defendant has not made the monthly deposit of rents awarded in the decision of the court of origin. Respondent clerk of court refused to issue the certification. She issued the requested certification more than a month from the time complainant requested it. Thus, complainant instituted administrative charges against her.

Considering that this is respondent's first offense, the Supreme Court reprimanded her. Sec. 5 (a) and (d) of Rep. Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that as a public employee, it is respondent's duty to act on the letters and requests of the public within 15 working days from the time she receives them. In this case, even if she was at a loss on what action to take on complainant's request, respondent should have communicated to complainant her dilemma to avoid giving the impression that she ignored the same.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (REP. ACT NO. 6713); DUTY TO ACT PROMPTLY ON LETTERS AND REQUESTS VIOLATED IN CASE AT BAR. —** Section 5 (a) and (d) of Rep. Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides: . . . [that], as a public employee, it is respondent's duty to act on the letters and requests of the public within 15 working days from the time she receives them and to attend promptly and expeditiously to anyone who wants to avail of the services of her office. In this case, however, respondent issued the requested certifications only on July 23, 2003, more than a month from the time complainant requested it on [June 16, 2003]. Respondent is reminded of her sacred duty as an officer of the court to attend to the public's query. Even if she were truly at a loss on what action to take on complainant's request, as she claims, respondent should have communicated to complainant her alleged dilemma instead of sitting on the letter, thus giving the impression that she ignored the same.

2. **ID.; ID.; ID.; ID.; REPRIMAND, A PROPER PENALTY. —** Under Section 52(C)(15), Rule IV of CSC Memorandum Circular No. 19, Series of 1999 or the Revised Uniform Rules on Administrative Cases in the Civil Service, respondent's infraction is classified as a light offense. Considering that this is respondent's first offense, the penalty of reprimand is warranted.

R E S O L U T I O N

QUISUMBING, *J.*:

In his verified complaint[1] dated July 14, 2003, complainant Atty. Raul A. Muyco charges respondent Eva B. Saratan, Clerk of Court, Branch 32 of the Regional Trial Court (RTC) of Iloilo City, with violation of Section 5 (a) of Republic Act No. 6713,[2]

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[1] *Rollo*, pp. 1-4.

[2] Code of Conduct and Ethical Standards for Public Officials and Employees.

neglect of duty, refusal to perform official duty, and conduct unbecoming a court personnel.

Complainant is the counsel for the plaintiff-appellee in an unlawful detainer case entitled "*F & C Lending Investor/ Marcelino Florete, Jr. v. Rexie Protasio*" originally docketed as Civil Case No. 2000(459) before Branch 3 of the MTCC of Iloilo City. He alleges that he secured a favorable judgment for his client, and immediately filed a motion for execution. Unfortunately, the court *a quo* did not resolve the motion because the defendant had appealed the judgment to the RTC of Iloilo City and the records had been transmitted to Branch 32, where the appeal had been raffled.

Even with the appeal having been taken, however, complainant discovered that no supersedeas bond had been posted and no monthly rentals had been deposited. He again sought to execute the judgment in a motion for execution pending appeal, but the motion was likewise denied on May 30, 2003. The presiding judge justified his denial on considerations of equity and the existence of a prejudicial question.

Complainant considered the denial a palpable violation and disregard of Section 19,[3] Rule 70 of the Rules of Court, and thought of seeking a *writ of mandamus* from the Court of

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[3] SEC. 19. *Immediate execution of judgment; how to stay same.* —

If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

Appeals.[4] To prepare his petition, complainant requested on June 16, 2003, a certification from respondent that based on the records (1) the defendant-appellant has not posted a supersedeas bond to stay the execution and (2) that the defendant-appellant has likewise not made the monthly deposit of rents awarded in the decision of the court of origin.[5] Respondent ignored the request so he reiterated it in a letter[6] dated July 4, 2003. He reminded respondent of her duties under Rep. Act No. 6713 and advised her that her continued refusal to issue the requested certification would constrain him to institute administrative charges against her. Undaunted, respondent continued to ignore the request. Hence, on July 15, 2003, complainant filed the instant complaint.

In her comment[7] dated August 25, 2003, respondent explains that while she had the ministerial duty to issue the certification she hesitated to issue it immediately. According to her, the parties to the appeal were still arguing on the appellant's failure to post the supersedeas bond and to make the monthly deposits. Since the certification requested of her also concern facts related to these litigated matters, she became confused whether she was indeed required to issue the certification. She adds that

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All amounts so paid to the appellate court shall be deposited with said court or authorized government depositary bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

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[4] *Rollo*, pp. 2-3, 9.

[5] *Id*. at 5.

[6] *Id*. at 6-7.

[7] *Id.* at 12.

she was also fearful that her issuance of the certification might expose her to liability.

In perhaps an attempt to cite a possible mitigating, if not absolving, circumstance, respondent further cites that complainant sought a reconsideration of the order denying the motion for execution pending appeal. Subsequently, however, complainant moved for the inhibition of the presiding judge before the latter could resolve the motion for reconsideration.

On December 10, 2003, the Court resolved to have the case redocketed as a regular administrative matter.

The facts of this case make out a clear case of simple neglect of duty.

Section 5 (a) and (d) of Rep. Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides:

Sec. 5. *Duties of Public Officials and Employees.* — In the performance of their duties, all public officials and employees are under obligation to:

(a) *Act promptly on letters and requests.* — All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

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(d) *Act immediately on the public's personal transactions.* — All public officials and employees must attend to anyone who wants to avail himself of the services of their offices and must, at all times, act promptly and expeditiously.

In Administrative Circular No. 08-99 dated July 2, 1999, we emphasized the importance of complying with these provisions. The Circular reads:

TO: ALL OFFICIALS AND PERSONNEL OF THE JUDICIARY

RE: PROMPT ACTION ON LETTERS AND REQUESTS AND PUBLIC'S PERSONAL TRANSACTION

It has been observed by, and brought to the attention of, the Chief Justice that in some instances complaints, letters or requests from the public addressed to the officials of the Judiciary are belatedly answered or not answered at all.

All concerned are reminded of paragraphs (a) and (d) of Section 5 of R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which explicitly mandate as follows:

x x x x x x x x x

The Presiding Justices of the Court of Appeals and the Sandiganbayan, the Court Administrator, the Deputy Court Administrators, the Assistant Court Administrators, the Clerk of Court of the Supreme Court, the Presiding Judge of the Court of Tax Appeals, and all Executive Judges and clerks of court of all other courts shall see to it that this Circular is immediately disseminated and strictly observed.

This Circular shall take effect immediately.

City of Manila, 02 July 1999.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice

Thus, as a public employee, it is respondent's duty to act on the letters and requests of the public within 15 working days from the time she receives them and to attend promptly and expeditiously to anyone who wants to avail of the services of her office. In this case, however, respondent issued the requested certifications only on July 23, 2003,[8] more than a month the time complainant requested it.

Respondent is reminded of her sacred duty as an officer of the court to attend to the public's query. As we held in *Reyes-Domingo v. Morales*:[9]

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[8] *Rollo*, p. 12.

[9] A.M. No. P-99-1285, 4 October 2000, 342 SCRA 6, 15.

A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice. A Clerk of Court's office is the nucleus of activities both adjudicative and administrative, performing, among others, the functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records.

Even if she were truly at a loss on what action to take on complainant's request, as she claims, respondent should have communicated to complainant her alleged dilemma instead of sitting on the letter, thus giving the impression that she ignored the same. Repeatedly, we have emphasized the heavy burden and responsibility which the court officials and employees are mandated to observe, in view of their exalted positions as keepers of the public faith.[10] They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided.[11] We will never countenance any conduct, act or omission on the part of all those involved in the administration of justice that would violate the norm of public accountability and diminish the faith of the people in the judiciary.[12]

Under Section 52(C)(15), Rule IV of CSC Memorandum Circular No. 19, Series of 1999 or the Revised Uniform Rules on Administrative Cases in the Civil Service, respondent's infraction is classified as a light offense punishable as follows:

> Section 15. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and the effect on the government service.
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> x x x x x x x x x
>
> C. The following are Light Offenses with corresponding penalties:

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[10] *Reyes-Macabeo v. Valle*, A.M. No. P-02-1650, 3 April 2003, p. 4.

[11] *Chupungco v. Cabusao*, A.M. No. P-03-1758, 10 December 2003, p. 6.

[12] *Madrid v. Quebral*, A.M. No. P-03-1744, 7 October 2003, p. 12.

x x x x x x x x x

15. Failure to attend to anyone who wants to avail himself of the services of the office, or act promptly and expeditiously on public transaction —

1st Offense — Reprimand
2nd Offense — Suspension 1–30 days
3rd Offense — Dismissal

Considering that this is respondent's first offense, the penalty of reprimand is warranted.[13]

WHEREFORE, respondent EVA B. SARATAN, Branch Clerk of Court in Branch 32 of the Regional Trial Court of Iloilo City, is *REPRIMANDED* and *STERNLY WARNED* that commission of similar acts would be dealt with more severely.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and *Tinga, JJ.*, concur.

Puno, J. (Chairman), on official leave.

SECOND DIVISION

[A.M. No. P-04-1801. April 2, 2004]
(Formerly A.M. OCA IPI No. 00-832-P)

JUDGE JOSE C. REYES, JR. Executive Judge, Regional Trial Court — San Mateo, Rizal, *complainant, vs.* **RICARDO CRISTI, Cash Clerk II, Office of the Clerk of Court, Regional Trial Court — San Mateo, Rizal,** *respondent.*

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[13] See *Angeles v. Eduarte*, A.M. No. P-03-1710, 28 August 2003, p. 9.

SYNOPSIS

An administrative complaint was filed against respondent Cash Clerk II charging him for habitual absenteeism and dishonesty in making untruthful statements in the logbook. The case was referred to an Investigating Judge, who thereafter found the respondent guilty of habitual absenteeism but considered the administrative case moot and academic because the respondent had resigned from office before the proper charges could be filed against him. The OCA submitted to the Court its Memorandum stating that respondent's resignation does not render the case moot and academic nor deprive the Court of the authority to investigate the charges against him. The OCA recommended that a fine equivalent to 3 months salary be imposed on the respondent.

The Supreme Court held that jurisdiction has already attached at the time of the filing of the letter-complaint and was not lost by respondent's resignation from office during the pendency of the case. Respondent was found guilty of habitual absenteeism. He was fined an amount equivalent to three (3) months salary to be deducted from whatever benefits due him. The conduct of everyone in the judiciary should be circumscribed with the heavy burden of responsibility.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; ADMINISTRATIVE COMPLAINT; RESIGNATION FROM OFFICE DURING PENDENCY OF CASE DOES NOT RENDER THE COMPLAINT MOOT AND ACADEMIC; CASE AT BAR. — It must be noted that Atty. Ofilas' Letter-Complaint dated December 23, 1999 was forwarded to the OCA by way of Executive Judge Reyes' 1st Indorsement on February 7, 2000. The respondent resigned only on March 3, 2000. The jurisdiction over the respondent has already attached at the time of the filing of the letter-complaint, and was not lost by the mere fact that he resigned from his office during the pendency of the case against him.

2. ID.; ID.; ID.; HABITUAL ABSENTEEISM AS A GROUND FOR DISCIPLINARY ACTION; PROPER PENALTY; CASE AT BAR. — It cannot be gainsaid that the respondent is guilty of habitual absenteeism. Civil Service Memorandum Circular No. 23, Series of 1998, provides that "[a]n officer or employee in the Civil Service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable two and one-half (2 ½) days monthly leave credits under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year. . ." As shown earlier, the respondent incurred a total of fifty-seven (57) days unauthorized absences from the period of June up to November 1999, clearly exceeding the allowable 2.5 days monthly leave. Although, as found by the Investigating Judge, there was no evidence that he falsified his DTRs, the respondent admitted that he incurred such number of absences. Section 52-A, Rule lV of Memorandum Circular No. 19, Series of 1999, classifies habitual absenteeism as a grave offense with the following corresponding penalties: for the first offense – suspension for six (6) months and one (1) day to one (1) year; and for the second offense – dismissal. As pointed out by the OCA, this is the respondent's first offense and the penalty imposable on him would have been that of suspension. However, since he had already resigned and the penalty of suspension obviously can no longer be imposed on him, a fine equivalent to three (3) months salary is, thus, warranted.

D E C I S I O N

CALLEJO, SR., *J.*:

A Letter-Complaint dated December 23, 1999 was filed against Ricardo F. Cristi, Cash Clerk II, Office of the Clerk of Court, Regional Trial Court (RTC), San Mateo, Rizal, for habitual absenteeism and dishonesty.

The letter-complaint was written by Atty. Fermin M. Ofilas, Clerk of Court of the said RTC and addressed to Executive Judge Jose C. Reyes, Jr.[1] Atty. Ofilas averred that he purposely

[1] Now Associate Justice of the Court of Appeals.

did not sign the daily time record (DTR) of the respondent corresponding to the period of June up to November 1999, as it might be construed as a condonation of the acts of the latter, which are valid subject of serious disciplinary action.

It appears that over the said six-month period, the respondent reported to work for only seventy-five (75) days and was absent for fifty-seven (57) days, as follows:[2]

	No. of Days Present	No. of Days Absent
June	9	13
July	15	7
August	13	9
September	8	14
October	13	8
November	13	6

When his attention was called to his habitual absenteeism, the respondent promised to mend his ways. But after showing up for work a few times thereafter, he reverted to his old conduct. Verification with the Leave Section of the Supreme Court revealed that as of April 1999, the respondent's leave credits had already been exhausted. Nonetheless, he continued to receive his salaries without deductions.

According to Atty. Ofilas, the respondent likewise committed acts of dishonesty when he repeatedly superimposed his signature on the lines drawn at the last column or space of the attendance sheet/logbook during certain days. The lines were drawn to indicate the close of office hours on those days. By superimposing his signature thereon, the respondent made it appear that he was present on those days when in fact he was absent. He committed this act at least four (4) times in June, four (4) times in July and once in September 1999.

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[2] As shown by respondent's application for leave; *Rollo*, pp. 12-27.

In his 1st Indorsement dated February 7, 2000, Judge Reyes forwarded the letter-complaint to the Office of the Court Administrator (OCA). The respondent was then directed to file his comment thereon.

In his Comment dated November 30, 2002, the respondent admitted his absences during the period of June to November 1999, but averred that he filed the corresponding applications for leave. For reasons not known to the respondent, Atty. Ofilas did not act upon these applications. The respondent denied making any untruthful statements in the logbook. He pointed out that the clerk-in-charge, Ms. Aranzazu Baltazar, had affixed her initials on his DTRs indicating that the entries therein had been verified by her.

The respondent further stated that he had already resigned from his position as of March 3, 2000 and that his resignation had been duly accepted by the OCA.

In this Court's Resolution dated July 9, 2003, the matter was referred to Hon. Elizabeth Balquin-Reyes, Acting Executive Judge, RTC, San Mateo, Rizal, for investigation, report and recommendation.

After conducting the investigation, the Investigating Judge submitted her Report dated October 3, 2003 and made the following findings:

> Mr. Ricardo Cristi was guilty of Habitual Absenteeism having incurred unauthorized absences exceeding the allowable days prescribed by CSC Memoranda Circular. However, as to his Dishonesty, the same was not proven by the mere allegation that he was not really present on those days he signed the logbook. It would appear that he was only late on those days. A careful scrutiny of the logbook would show that respondent signed the logbook on the day he was alleged to have been absent. The succeeding days when there are no more employees to sign, there are no spaces left, while the days when respondent was allegedly only late, there are spaces. An example is Annex "D" under date of July 22, 1999. No. 6 is a space, then a line after which Cristi signed on the line. This was followed by July 23, 1999, where the last number again was 6 and

the name Ricardo Cristi was absent as indicated. There was no space after that and followed immediately by July 26 and also on July 28. This practice could be seen in the pages of the logbook.

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1. Mr. Ricardo Cristi although appointed Cash Clerk II or Clerk III was not given the duties of his office.
2. The allegations that he had problems on those months he committed the unauthorized absences could be true, as there were no deficiency reports against him prior to those dates.
3. The dishonesty alleged in the report was not proved but a mere allegation.[3]

The Investigating Judge opined that although the respondent was guilty of habitual absenteeism as provided for in CSC Memorandum Circular No. 4, the instant case has become moot and academic. Considering that the respondent's resignation had been accepted by the OCA before the proper charges could be filed against him, the Court no longer has jurisdiction over his person and all claims against him can no longer be enforced.[4]

On January 13, 2004, the OCA submitted to the Court its Memorandum of even date stating that while it subscribes to the factual findings of the Investigating Judge, it takes exception to her recommendation that no administrative sanction can be imposed on the respondent since he had already resigned. According to the OCA, the respondent's resignation does not render the case moot and academic, nor deprive the Court of the authority to investigate the charges against him. The OCA recommends that a fine equivalent to three (3) months salary be imposed on the respondent.[5]

The Court agrees with the recommendation of the OCA.

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[3] Report, pp. 3-5.

[4] *Id*. at 5.

[5] Memorandum of the OCA, p. 4.

Indeed, the fact that the respondent had already resigned from his position does not render the complaint against him moot and academic. It must be noted that Atty. Ofilas' Letter-Complaint dated December 23, 1999 was forwarded to the OCA by way of Executive Judge Reyes' 1st Indorsement on February 7, 2000. The respondent resigned only on March 3, 2000. The jurisdiction over the respondent has already attached at the time of the filing of the letter-complaint, and was not lost by the mere fact that he resigned from his office during the pendency of the case against him.[6] As this Court has pronounced:

> . . . Nonetheless, these facts do not render the complaint against him moot and academic since our jurisdiction over him has attached at the time of the filing of the *Letter-Complaint* and his verified *Comment* thereto and is not lost by the mere fact that he had left the office during the pendency of his case. To deprive this Court of authority to pronounce his innocence or guilt of the charges against is undoubtedly fraught with injustices and pregnant with dreadful and dangerous implications. For, what remedy would the people have against a civil servant who resorts to wrongful and illegal conduct during his last days in office? What would prevent a corrupt and unscrupulous government employee from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? As we held in *Perez v. Abiera, "[i]f only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.*[7]

It cannot be gainsaid that the respondent is guilty of habitual absenteeism.[8] Civil Service Memorandum Circular No. 23, Series

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[6] *Villanueva v. Milan*, 390 SCRA 17 (2002).

[7] *Ibid*. (Emphases in the original.)

[8] Administrative Circular No. 2-99 reads in part:

of 1998, provides that "[a]n officer or employee in the Civil Service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable two and one-half (2½) days monthly leave credits under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year . . ."

As shown earlier, the respondent incurred a total of fifty-seven (57) days unauthorized absences from the period of June up to November 1999, clearly exceeding the allowable 2.5 days monthly leave. Although, as found by the Investigating Judge, there was no evidence that he falsified his DTRs, the respondent admitted that he incurred such number of absences.

Section 52-A, Rule IV of Memorandum Circular No. 19, Series of 1999, classifies habitual absenteeism as a grave offense with the following corresponding penalties: for the first offense — suspension for six (6) months and one (1) day to one (1) year; and for the second offense — dismissal.

As pointed out by the OCA, this is the respondent's first offense and the penalty imposable on him would have been that of suspension. However, since he had already resigned and the penalty of suspension obviously can no longer be imposed on him, a fine equivalent to three (3) months salary is, thus, warranted.

Times without number, this Court has stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, like the courts below, from the presiding judge to the lowest clerk, should be circumscribed with the heavy burden of responsibility.[9] As enshrined in the

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II. Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and any falsification of daily time records to cover-up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct.

[9] *Re: Absence Without Official Leave (AWOL) of Ms. Lilian B. Bantog, Court Stenographer III, RTC, Branch 168, Pasig City*, 359 SCRA 20 (2001).

Constitution, "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[10] It must be emphasized that the Court cannot countenance any act or omission which diminish or tend to diminish the faith of the people in the Judiciary.[11]

WHEREFORE, respondent Ricardo F. Cristi is found guilty of habitual absenteeism and ordered to pay a *FINE* equivalent to three (3) months' salary, to be deducted from whatever benefits and/or leave credits may be due him.

SO ORDERED.

Quisumbing (Acting Chairman), Austria-Martinez, and *Tinga, JJ.,* concur.

Puno, J. (Chairman), on official leave.

THIRD DIVISION

[G.R. No. 145225. April 2, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SALVADOR GOLIMLIM @ "BADONG,"** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a woman who is a mental retardate. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal where appellant assailed the credibility of the testimony of the victim.

In affirming the conviction of the appellant, the Supreme Court ruled that a mental retardate can be a witness, depending on

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[10] SECTION 1, ARTICLE XI, 1987 CONSTITUTION.

[11] *Supra* at note 8.

his or her ability to relate what he or she knows. If his or her testimony is coherent, the same is admissible in court. That the victim is a mental retardate does not disqualify her as a witness nor render her testimony bereft of truth. In this case, the Court found no reason to doubt the victim's credibility. To be sure, her testimony was not without discrepancies, given her feeblemindedness.

Moreover, the trial judge's assessment of the credibility of witnesses' testimonies is accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. In the present case, the Court found no cogent reason to warrant a departure from the finding of the trial court with respect to the assessment of the victim's testimony.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY TRIAL JUDGE, ACCORDED RESPECT ON APPEAL; CASE AT BAR.— The trial judge's assessment of the credibility of witnesses' testimonies is, as has repeatedly been held by this Court, accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. In the present case, no cogent reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of Evelyn's testimony.

2. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; A MENTAL RETARDATE CAN BE A WITNESS DEPENDING ON HIS ABILITY TO RELATE WHAT HE KNOWS.— That Evelyn is a mental retardate does not disqualify her as a witness nor render her testimony bereft of truth. x x x It can not then be gainsaid that a mental retardate can be a witness, depending on his or her ability to relate what he or she knows. If his or her testimony is coherent, the same is admissible in court. x x x Thus, in a long line of cases, this Court has upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate. From a meticulous

scrutiny of the records of this case, there is no reason to doubt AAA's credibility. To be sure, her testimony is not without discrepancies, given of course her feeblemindedness.

3. CRIMINAL LAW; RAPE; SEXUAL INTERCOURSE WITH A WOMAN WHO IS A MENTAL RETARDATE CONSTITUTES STATUTORY RAPE.— It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.

4. ID.; ID.; FORCE; A QUANTUM OF FORCE WHICH MAY NOT SUFFICE WHEN THE VICTIM IS A NORMAL PERSON MAY BE MORE THAN ENOUGH WHEN EMPLOYED AGAINST AN IMBECILE.— The fact of AAA's mental retardation was not, however, alleged in the Information and, therefore, cannot be the basis for conviction. Such notwithstanding, that force and intimidation attended the commission of the crime, the mode of commission alleged in the Information, was adequately proven. It bears stating herein that the mental faculties of a retardate being different from those of a normal person, the degree of force needed to overwhelm him or her is less. Hence, a quantum of force which may not suffice when the victim is a normal person, may be more than enough when employed against an imbecile.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the Decision[1] of June 9, 2000 of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65 in Criminal Case No. 241, finding appellant Salvador Golimlim *alias* "Badong" guilty beyond reasonable doubt of rape, imposing on him the penalty

[1] *Rollo* at 31-45.

of *reclusion perpetua*, and holding him civilly liable in the amount of ₱50,000.00 as indemnity, and ₱50,000.00 as moral damages.

The Information dated April 16, 1997 filed against appellant reads as follows:

> That sometime in the month of August, 1996, at Barangay x x x, Municipality of x x x, Province of x x x, Philippines and within the jurisdiction of this Honorable Court the above-named accused, armed with a bladed weapon, by means of violence and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one AAA against her will and without her consent, to her damage and prejudice.
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> Contrary to law.[2]

Upon arraignment on December 15, 1997,[3] appellant, duly assisted by counsel, pleaded not guilty to the offense charged.

The facts established by the prosecution are as follows:

Private complainant AAA, is a mental retardate. When her mother, BBB, left for Singapore on May 2, 1996 to work as a domestic helper, she entrusted AAA to the care and custody of her (BBB's) sister Jovita Guban and her husband Salvador Golimlim, herein appellant, at Barangay x x x, x x x , x x x.[4]

Sometime in August 1996, Jovita left the conjugal residence to meet a certain Rosing,[5] leaving AAA with appellant. Taking advantage of the situation, appellant instructed private complainant to sleep, [6] and soon after she had laid down, he kissed her and took off her clothes.[7] As he poked at her an

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[2] *Id*. at 10.

[3] Records at 29.

[4] TSN, August 12, 1998 at 12.

[5] TSN, October 14, 1998 at 6.

[6] TSN, January 27, 1999 at 9.

[7] *Id*. at 6.

object which to AAA felt like a knife,[8] he proceeded to insert his penis into her vagina.[9] His lust satisfied, appellant fell asleep.

When Jovita arrived, AAA told her about what appellant did to her. Jovita, however, did not believe her and in fact she scolded her.[10]

Sometime in December of the same year, CCC, AAA's half-sister, received a letter from their mother BBB instructing her to fetch AAA from Sorsogon and allow her to stay in Novaliches, Quezon City where she (CCC) resided. Dutifully, CCC immediately repaired to appellant's home in Bical, and brought AAA with her to Manila.

A week after she brought AAA to stay with her, CCC suspected that her sister was pregnant as she noticed her growing belly. She thereupon brought her to a doctor at the Pascual General Hospital at Baeza, Novaliches, Quezon City for check-up and ultrasound examination.

CCC's suspicions were confirmed as the examinations revealed that AAA was indeed pregnant.[11] She thus asked her sister how she became pregnant, to which AAA replied that appellant had sexual intercourse with her while holding a knife.[12]

In February of 1997, the sisters left for Bulan, Sorsogon for the purpose of filing a criminal complaint against appellant. The police in Bulan, however, advised them to first have AAA examined. Obliging, the two repaired on February 24, 1997 to the Municipal Health Office of Bulan, Sorsogon where AAA was examined by Dr. Estrella Payoyo.[13] The Medico-legal Report revealed the following findings, quoted *verbatim*:

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[8] *Id*. at 8.

[9] *Id*. at 10 and 13.

[10] *Id*. at 10.

[11] TSN, June 2, 1998 at 7.

[12] *Id*. at 8.

[13] TSN, August 12, 1998 at 3.

FINDINGS: LMP [last menstrual period]: Aug. 96?
Abd [abdomen]: 7 months AOG [age of gestation]
FHT [fetal heart tone]: 148/min
Presentation: Cephalic
Hymen: old laceration at 3, 5, 7, & 11 o'clock position[14]

On the same day, the sisters went back to the Investigation Section of the Bulan Municipal Police Station before which they executed their sworn statements.[15]

On February 27, 1997, AAA, assisted by CCC, filed a criminal complaint for rape[16] against appellant before the Municipal Trial Court of Bulan, Sorsogon, docketed as Criminal Case No. 6272.

In the meantime or on May 7, 1997, AAA gave birth to a girl, DDD, at Guruyan, Juban, Sorsogon.[17]

Appellant, on being confronted with the accusation, simply said that it is not true "[b]ecause her mind is not normal,"[18] she having "mentioned many other names of men who ha[d] sexual intercourse with her."[19]

Finding for the prosecution, the trial court, by the present appealed Decision, convicted appellant as charged. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused Salvador Golimlim having been found guilty of the crime of RAPE (Art. 335 R.P.C. as amended by RA 7659) beyond reasonable doubt is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*, and to indemnify the offended party AAA in the amount of ₱50,000.00 as indemnity and another ₱50,000.00 as moral damage[s], and to pay the costs.

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[14] Exhibit "E", Records at 16.

[15] Exhibit "B", Records at 12.

[16] Records at 7.

[17] Exhibit "D", Records at 127.

[18] TSN, September 20, 1999 at 4.

[19] *Ibid*.

SO ORDERED.[20]

Hence, the present appeal, appellant assigning to the trial court the following errors:

I. THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONTRADICTORY AND IMPLAUSIBLE TESTIMONY OF EVELYN CANCHELA, A MENTAL RETARDATE, [AND]

II. THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[21]

Appellant argues that AAA's testimony is not categorical and is replete with contradictions, thus engendering grave doubts as to his criminal culpability.

In giving credence to AAA's testimony and finding against appellant, the trial court made the following observations, quoted *verbatim*:

1) Despite her weak and dull mental state the victim was consistent in her claim that her Papay Badong (accused Salvador Golimlim) had carnal knowledge of her and was the author of her pregnancy, and nobody else (See: For comparison her Sworn Statement on p. 3/Record; her narration in the Psychiatric Report on pp. 47 & 48/Record; the TSNs of her testimony in open court);

2) She remains consistent that her Papay Badong raped her only once;

3) That the contradictory statements she made in open court relative to the details of how she was raped, although would seem derogatory to her credibility and reliability as a witness under normal conditions, were amply explained by the psychiatrist who examined her and supported by her findings (See: Exhibits F to F-2);

4) Despite her claim that several persons laid on top of her (which is still subject to question considering that the victim could

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[20] *Rollo* at 45.

[21] *Id*. at 80.

> not elaborate on its meaning), the lucid fact remains that she never pointed to anybody else as the author of her pregnancy, but her Papay Badong. Which only shows that the trauma that was created in her mind by the incident has remained printed in her memory despite her weak mental state. Furthermore, granting for the sake of argument that other men also laid on top of her, this does not deviate from the fact that her Papay Badong (the accused) had sexual intercourse with her.[22]

The trial judge's assessment of the credibility of witnesses' testimonies is, as has repeatedly been held by this Court, accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses.[23]

In the present case, no cogent reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of AAA's testimony.

That AAA is a mental retardate does not disqualify her as a witness nor render her testimony bereft of truth.

Sections 20 and 21 of Rule 130 of the Revised Rules of Court provide:

> SEC. 20. *Witnesses; their qualifications.* — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.
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> x x x x x x x x x
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> SEC. 21. *Disqualification by reason of mental incapacity or immaturity.* — The following persons cannot be witnesses:
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> (a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

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[22] *Id*. at 38-39.

[23] *People v. De Guzman*, 372 SCRA 95, 101 (2001), *People v. Balisnomo*, 265 SCRA 98, 104 (1996) (citations omitted).

> (b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In *People v. Trelles*,[24] where the trial court relied heavily on the therein mentally retarded private complainant's testimony irregardless of her "monosyllabic responses and vacillations between lucidity and ambiguity," this Court held:

> A mental retardate or a feebleminded person is not, *per se*, disqualified from being a witness, her mental condition not being a vitiation of her credibility. It is now universally accepted that intellectual weakness, no matter what form it assumes, is not a valid objection to the competency of a witness so long as the latter can still give a fairly intelligent and reasonable narrative of the matter testified to.[25]

It can not then be gainsaid that a mental retardate can be a witness, depending on his or her ability to relate what he or she knows.[26] If his or her testimony is coherent, the same is admissible in court.[27]

> To be sure, modern rules on evidence have downgraded mental incapacity as a ground to disqualify a witness. As observed by McCormick, the remedy of excluding such a witness who may be the only person available who knows the facts, seems inept and primitive. Our rules follow the modern trend of evidence.[28]

Thus, in a long line of cases,[29] this Court has upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

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[24] 340 SCRA 652 (2000).

[25] *Id*. at 658 (citations omitted).

[26] *People v. Delos Santos*, 364 SCRA 142, 156 (2001).

[27] *People v. Lubong*, 332 SCRA 672, 690 (2000) (citation omitted).

[28] *People v. Espanola*, 271 SCRA 689, 709 (1997) (citations omitted).

[29] *People v. Agravante*, 338 SCRA 13 (2000), *People v. Padilla*, 301 SCRA 265 (1999), *People v. Malapo*, 294 SCRA 579 (1998), *People v. Balisnomo*, 265 SCRA 98 (1996), *People v. Gerones*, 193 SCRA 263 (1991).

From a meticulous scrutiny of the records of this case, there is no reason to doubt AAA's credibility. To be sure, her testimony is not without discrepancies, given of course her feeblemindedness.

By the account of Dr. Chona Cuyos-Belmonte, Medical Specialist II at the Psychiatric Department of the Bicol Medical Center, who examined AAA, although AAA was suffering from moderate mental retardation with an IQ of 46,[30] she is capable of perceiving and relating events which happened to her. Thus the doctor testified:

Q: So do you try to impress that although she answers in general terms it does not necessarily mean that she might be inventing answers — only that she could not go to the specific details because of dullness?

A: I don't think she was inventing her answer because I conducted mental status examination for three (3) times and I tried to see the consistency in the narration but very poor (sic) in giving details.

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Q: May we know what she related to you?

A: She related to me that she was raped by her uncle '*Tatay* Badong.' What she mentioned was that, and I quote: '*hinila ang panty ko, pinasok ang pisot at bayag niya sa pipi ko.*' She would laugh inappropriately after telling me that particular incident. I also tried to ask her regarding the dates, the time of the incident, but she could not really.... I tried to elicit those important things, but the patient had a hard time remembering those dates.

Q: But considering that you have evaluated her mentally, gave her I.Q. test, in your honest opinion, do you believe that this narration by the patient to you about the rape is reliable?

A: Yes, sir.

Q: Why do you consider that reliable?

A: *Being a (sic) moderately retarded, I have noticed the spontaneity of her answers during the time of the testing.*

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[30] TSN, December 21, 1998 at 10.

She was not even hesitating when she told me she was raped once at home by her *Tatay* Badong; and she was laughing when she told me about how it was done on (sic) her. So, *although she may be inappropriate but (*sic*) she was spontaneous, she was consistent.*

Q: Now, I would like to relate to you an incident that happened in this Court for you to give us your expert opinion. I tried to present the victim in this case to testify. While she testified that she was raped by her uncle Badong, when asked about the details, thereof, she would not make (sic) the detail. She only answered '*wala*' (no). I ask this question because somehow this seems related to your previous evaluation that while she gave an answer, she gave no detail. Now, I was thinking because I am a man and I was the one asking and the Judge is a man also. And while the mother would say that she would relate to her and she related to you, can you explain to us why when she was presented in court that occurrence, that event happened?

A: There are a lot of possible answers to that question; *one, is the court's atmosphere itself. This may have brought a little anxiety on the part of the patient and this inhibits her from relating* some of the details relative to the incident-in-question. When I conducted my interview with the patient, there were only two (2) of us in the room. I normally do not ask this question during the first session with the patient because these are emotionally leading questions, and I do not expect the patient to be very trusting. So, I usually ask this type of questions during the later part of my examination to make her relax during my evaluation. So in this way, she will be more cooperative with me. I don't think that this kind of atmosphere within the courtroom with some people around, this could have inhibited the patient from answering questions.

x x x x x x x x x

Q: *What if the victim is being coached or led by someone else, will she be able to answer the questions*?

A: *Yes,* she may be able to answer the questions, *but you would notice the inconsistency of the answers because what we normally do is that we present the questions in different ways, and we expect the same answer. This is how we try*

to evaluate the patient. If the person, especially a retarded, is being coached by somebody, the answers will no longer be consistent.

Q: You also mentioned a while ago that *the answers given by the patient, taken all in all, were consistent?*

A: *Yes, sir*.[31] (Italics supplied)

As noted in the above-quoted testimony of Dr. Belmonte, AAA could give spontaneous and consistent answers to the same but differently framed questions under conditions which do not inhibit her from answering. It could have been in this light that AAA was able to relate in court, upon examination by a female government prosecutor and the exclusion of the public from the proceedings, on Dr. Belmonte's suggestion,[32] how, as quoted below, she was raped and that it was appellant who did it:

Q: CCC testified before this Court that you gave birth to a baby girl named DDD, is this true?

A: (The witness nods, yes.)

x x x x x x x x x

Q: Who is the father of DDD?

A: *Papay* Badong

Q: Who is this *Papay* Badong that you are referring to?

A: The husband of *Mamay* Bita.

Q: Is he here in court?

A: He is here.

Q: Please look around and point him to us.

A: (The witness pointing to the lone man sitting in the first row of the gallery wearing a regular prison orange t-shirt who gave his name as Salvador Golimlim when asked.)

Q: Why were you able to say that it is *Papay* Badong who is the father of your child DDD?

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[31] *Id*. at 9-21.

[32] *Id*. at 13-14.

A: Because then I was left at *Mamay* Bita's house, although I am not there now.

Q: And that house where you were left is also the house of your *Papay* Badong?

A: Yes ma'am.

Q: What did Salvador Golimlim or your Papay Badong do to you that's why you were able to say that he is the father of your child?

A: *I was undressed by him.*

x x x x x x x x x

Q: What did you do after you were undressed?

A: I was scolded by the wife, *Mamay* Bita.

Q: I am referring to that very moment when you were undressed. Immediately after your *Papay* Badong undressed you, what did you do?

x x x x x x x x x

A: *He laid on top of me.*

Q: What was your position when he laid on top of you?

A: I was lying down.

Q: Then after he went on top of you, what did he do there?

A: He made (sic) sexual intercourse with me.

Q: *When you said he had a (sic) sexual intercourse with you, what did he do exactly?*

A: *He kissed me*.

Q: *Where*?

A: *On the cheeks* (witness motioning indicating her cheeks).

Q: *What else did he do*? Please describe before this Honorable Court the sexual intercourse which you are referring to which the accused did to you.

A: *'Initoy' and he slept after that.*

(to Court)

Nevertheless, may we request that *the local term for sexual intercourse, the word 'Initoy'* which was used by the witness

be put on the record, and we request judicial notice of the fact that '*initoy*' is the local term for sexual intercourse.

x x x x x x x x x

Q: What did you feel when your *Papay* Badong had sexual intercourse with you?

A: *I felt a knife;* it was like a knife.

Q: Where did you feel that knife?

A: I forgot.

Q: Why did you allow your *Papay* Badong to have sexual intercourse with you?

A: *I will not consent to it.*

x x x x x x x x x

Q: *Did you like what he did to you?*

A: *I do not want it.*

Q: *But why did it happen*?

A: *I was forced to*.

x x x x x x x x x

Q: Did you feel anything when he inserted into your vagina when your *Papay* Badong laid on top of you?

A: His sexual organ/penis.

Q: How did you know that it was the penis of your *Papay* Badong that was entered into your vagina?

A: It was put on top of me.

Q: Did it enter your vagina?

A: Yes, Your Honor.

x x x x x x x x x

Q: Madam Witness, is it true that your *Papay* Badong inserted his penis into your vagina or sexual organ during that time that he was on top of you?

A: (The witness nods, yes.)[33] (Italics supplied)

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[33] TSN, January 27, 1999 at 4-13.

Appellant's bare denial is not only an inherently weak defense. It is not supported by clear and convincing evidence. It cannot thus prevail over the positive declaration of AAA who convincingly identified him as her rapist.[34]

In convicting appellant under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 (the law in force when the crime was committed in 1996), the trial court did not specify under which mode the crime was committed. Under the said article, rape is committed thus:

> ART. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua*.
>
> Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetu*a or death.
>
> x x x x x x x x x

It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[35] The fact of AAA's mental retardation was not, however, alleged

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[34] *People v. De Guzman*, 372 SCRA 95, 111 (2001) (citations omitted), *People v. Glabo*, 371 SCRA 567, 573 (2001) (citations omitted), *People v. Lalingjaman*, 364 SCRA 535, 546 (2001) (citations omitted), *People v. Agravante*, 338 SCRA 13, 20 (2000).

[35] *People v. Lubong*, 332 SCRA 672, 692 (2000) (citations omitted), *People v. Padilla*, 301 SCRA 265, 273 (1999) (citation omitted).

in the Information and, therefore, cannot be the basis for conviction. Such notwithstanding, that force and intimidation attended the commission of the crime, the mode of commission alleged in the Information, was adequately proven. It bears stating herein that the mental faculties of a retardate being different from those of a normal person, the degree of force needed to overwhelm him or her is less. Hence, a quantum of force which may not suffice when the victim is a normal person, may be more than enough when employed against an imbecile.[36]

Still under the above-quoted provision of Art. 335 of the Revised Penal Code, when the crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. In the case at bar, however, although there is adequate evidence showing that appellant indeed used force and intimidation, that is not the case with respect to the use of a deadly weapon.

WHEREFORE, the assailed Decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65 in Criminal Case No. 241 finding appellant, Salvador Golimlim *alias* "Badong," *GUILTY* beyond reasonable doubt of rape, which this Court finds to have been committed under paragraph 1, Article 335 of the Revised Penal Code, and holding him civilly liable therefor, is hereby *AFFIRMED*.

Costs against appellant.

SO ORDERED.

Sandoval-Gutierrez (Acting Chairman) and *Corona, JJ.*, concur.

Vitug, J. (Chairman), on official leave.

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[36] *People v. Moreno*, 294 SCRA 728, 739 (1998).

EN BANC

[G.R. No. 153119. April 13, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO REYES *y* MAGANO,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of robbery with homicide for barging into the house of Aurora Lagrada, taking the properties found therein and on the occasion of which killed the latter. Appellant was sentenced to suffer the supreme penalty of death. Hence, this automatic review of the case.

The Supreme Court ruled that the prosecution adduced proof beyond reasonable doubt to establish the guilt of the appellant. To sustain a conviction of the accused for robbery with homicide, the prosecution was burdened to prove the essential elements of the crime, *viz*: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.

The Court, however, reduced the penalty from death to *reclusion perpetua* there being no modifying circumstance to the crime.

SYLLABUS

1. CRIMINAL LAW; FORGERY; MUST BE PROVED BY CLEAR, POSITIVE AND CONVINCING EVIDENCE.— Forgery cannot be presumed; it must be proved by clear, positive and convincing evidence. One who alleges forgery has the burden of proving the same. The appellant failed to discharge his burden. … [T]he fact of forgery cannot be presumed simply because there are dissimilarities between the standard and the questioned signature.

2. ID.; ROBBERY WITH HOMICIDE; ELEMENTS.— To sustain a conviction of the accused for robbery with homicide, the prosecution was burdened to prove the essential elements of the crime, *viz:* "(a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi* and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed."

3. ID.; ID.; THE ACCUSED MUST BE SHOWN TO HAVE THE PRINCIPAL PURPOSE OF COMMITTING ROBBERY, THE HOMICIDE BEING COMMITTED EITHER BY REASON OF OR ON OCCASION OF THE ROBBERY.— The accused must be shown to have the principal purpose of committing robbery, the homicide being committed either by reason of or on occasion of the robbery. The homicide may precede robbery or may occur thereafter. What is essential is that there is a nexus, an intrinsic connection between the robbery and the killing. The latter may be done prior to or subsequent to the former. However, the intent to commit robbery must precede the taking of the victim's life. Furthermore, the constituted crimes of robbery and homicide must be consummated.

4. ID.; ID.; HOMICIDE; WHEN CONSIDERED AS HAVING BEEN COMMITTED ON THE OCCASION OR BY REASON OF THE ROBBERY.— A homicide is considered as having been committed on the occasion or by reason of the robbery when the motive of the offender in killing the victim is to deprive the latter of his property, to eliminate an obstacle to the crime, to protect his possession of the loot, to eliminate witnesses, to prevent his being apprehended or to insure his escape from the scene of the crime.

5. ID.; AGGRAVATING CIRCUMSTANCES; DISREGARD OF THE VICTIM'S AGE; APPRECIATED ONLY IN CRIMES AGAINST PERSONS AND HONOR.— Robbery with homicide is essentially a felony against property. The aggravating circumstance of disregard of the victim's age is applied only to crimes against persons and honor. The bare fact that the victim is a woman does not *per se* constitute disregard of sex. For this circumstance to be properly considered, the prosecution

must adduce evidence that in the commission of the crime, the accused had particularly intended to insult or commit disrespect to the sex of the victim. In this case, the appellant killed the victim because the latter started to shout. There was no intent to insult nor commit disrespect to the victim on account of the latter's sex.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us on automatic appeal is the Decision[1] of the Regional Trial Court of Sta. Cruz, Laguna, Branch 28, convicting the appellant Antonio Reyes *y* Magano of robbery with homicide and sentencing him to suffer the penalty of death.

The Indictment

The appellant was charged with robbery with homicide in an Information, the accusatory portion of which reads:

That on or about June 11, 1998, in the municipality of Lumban, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, and while conveniently armed with a bolo, by means of violence against or intimidation of person, did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) ladies wristwatch marked Rolex; one (1) gold bracelet; one (1) gold ring with birthstone of Jade; one (1) Pass Book in the name of the victim/Aurora Lagrada, in the total amount of ₱80,000.00, all belonging to Aurora Lagrada, to her damage and prejudice, in the aforementioned amount, that by reason or on the occasion of the said robbery accused with intent to kill and while conveniently armed with a bolo, did then and there willfully, unlawfully and feloniously attack, assault and stab one

[1] Penned by Judge Fernando M. Paclibon, Jr.

AURORA LAGRADA several times in the different parts of her body, which directly caused her instantaneous death, to the damage and prejudice of her surviving heirs.

CONTRARY TO LAW.[2]

The appellant was arraigned, assisted by counsel, and entered a plea of not guilty.

The Case for the Prosecution[3]

Dr. Aurora Lagrada, a spinster of about seventy years old, lived alone in her two-storey house located at General Luna Street, Barangay Balimbingan, Lumban, Laguna. The doctor was the sole proprietor of the Neal Construction and Supplies located at No. 90 General Luna Street, Lumban, Laguna.[4] The appellant's house was about four to five meters away from the doctor's house. He lived with his mother and brother.

At around 11:00 p.m. on June 11, 1998, Barangay Captain William Magpantay received a radio report from *barangay kagawad* that someone managed to gain entry into the house of Lagrada, and that she had shouted for help. Magpantay, a *barangay* councilman and a *barangay tanod* responded and proceeded to the house of the doctor. When they knocked on the door, no one responded. The *barangay* captain then proceeded to the Lumban Police Station and reported the matter to the policemen. SPO2 Maximo Gonzales and SPO1 Pedro Nacor, Jr. responded to the report and, accompanied by Magpantay, proceeded to the house of Lagrada.[5]

When they arrived at the house, the policemen passed by the garage and opened the door. They saw the bloodied Lagrada, naked from the waist up, sprawled sidewise on the floor opposite

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[2] Records, p. 2.

[3] The prosecution presented Norma Quetulio, Atty. Wilfredo G. Paraiso, SPO2 Benedicto del Mundo, SPO2 Maximo Gonzales, SPO1 Pedro Nacor, Jr., Dr. Leoncia M. delos Reyes, as witnesses.

[4] Exhibit "L-4".

[5] TSN, 21 January 1999, pp. 4-5.

the sink near the kitchen.[6] Near the cadaver was a bolo (*itak*). Gonzales took custody of the bolo.[7] Magpantay noticed that Lagrada's neighbors, anxious to know what had happened, were in the vicinity. The appellant, however, was nowhere to be found.[8]

Magpantay and the policemen went to the appellant's house. The appellant's mother and brother informed them that the latter was in Barangay Concepcion.[9] Magpantay, Barangay Chairman Floro Bulderon and the policemen proceeded to the place, but failed to locate the appellant. They then returned to the Lumban Police Station where Noel Saniste (Samonte) told them that the appellant was in the vicinity of the town plaza in Sta. Cruz, Laguna.[10] In a mobile police car, the policemen and Magpantay rushed to the place and saw the appellant in the town plaza on board a tricycle, apparently on his way to the Kapalaran Bus Station in that town. The appellant was handcuffed and boarded in the mobile police car. He was told that he was a suspect in the killing of Lagrada.[11] While the car was on its way to Lumban, Gonzales ordered Magpantay to frisk the appellant. Magpantay did so, and found the following: two watches — a Rolex and Wittnauer in the right pocket of the appellant's pants; bank passbook no. 164764 issued by the Solid Bank under the name of Lagrada; a gold bracelet and a gold ring; and in the appellant's left pocket, the amount of ₱130.00. Magpantay turned over the articles and money to Gonzales.[12]

The policemen proceeded to the house of the appellant where they found a pair of slippers and the green-colored t-shirt which the appellant wore when he broke into Lagrada's house.[13] At

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[6] Exhibits "D", "D-1" to "D-5".

[7] Exhibits "D", to "D-2".

[8] TSN, 21 January 1999, pp. 6-7.

[9] TSN, 22 September 1999, p. 7.

[10] *Id*. at 8-9.

[11] *Id*. at 9.

[12] *Id*. at 9-12.

[13] Exhibits "E" and "E-1".

the police station, Gonzales and Nacor, Jr. turned over the appellant to SPO2 Benedicto del Mundo who was designated as the investigator-on-case.[14] By then, it was about 1:30 a.m. of June 12, 1998. The incident was placed in the police blotter.[15]

In the meantime, the appellant was bothered by his conscience and stated that he wanted to execute an extrajudicial confession.[16] Del Mundo informed the appellant of his right to be assisted by counsel of his own choice. He also asked the appellant if he had any lawyer. The appellant replied that he had none, and asked Del Mundo to procure a lawyer to assist him. Del Mundo managed to locate Atty. Wilfredo Paraiso, a practicing lawyer in Lumban, Laguna, then President of the Integrated Bar of the Philippines, Laguna Chapter, and a member of the Knights of Columbus. At that time, Atty. Paraiso was at the patio of the Catholic church talking with fellow knights after participating in the Independence Day parade.[17] Del Mundo informed Atty. Paraiso that policemen had just arrested and detained the appellant, and that the latter had expressed his desire to execute an extra-judicial confession for which the assistance of counsel was needed. Del Mundo asked Atty. Paraiso to assist the appellant. The lawyer informed the appellant of his constitutional rights, including his right to counsel, and told the appellant that he was volunteering his services to assist him. The appellant agreed to be assisted by Atty. Paraiso.[18]

Atty. Paraiso then explained to the appellant his constitutional right to remain silent; that if he did not want to make any confession, it was his right to do so; and that any admission he made in his confession may be used against him. The appellant told Atty. Paraiso that he would proceed with his confession because his conscience bothered him. Atty. Paraiso inquired from the appellant if he had been forced, coerced and intimidated

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[14] TSN, 17 December 1998, p. 4.

[15] *Id*. at 8-9.

[16] TSN, 25 November 1998, p. 4.

[17] *Id*. at 2-3.

[18] *Id*. at 3-5.

into agreeing to give a confession, or if somebody had offered to give him any reward in consideration of any statement he would give to the investigator. The appellant replied that he was not intimidated, coerced nor forced into giving a confession.[19]

Del Mundo, nevertheless, enumerated and explained to the appellant his constitutional rights before commencing with his investigation in the presence of Atty. Paraiso.[20] After the investigation, Del Mundo showed the sworn statement to Atty. Paraiso and the appellant. Atty. Paraiso explained the contents of the sworn statement to the appellant. The latter then signed on top of his typewritten name on page 1 thereof, on the left margin of page 2, and atop his typewritten name on page 3. Atty. Paraiso followed suit. However, it being a holiday, there was no public officer available in the municipal building before whom the appellant could swear to the truth of his confession. Del Mundo requested Atty. Paraiso, being a notary public, to notarize the sworn statement. Paraiso agreed and affixed his signature above his typewritten name on page 3 thereof, as Notary Public.[21]

Pictures of the articles seized from the appellant were taken, including the bolo, his green t-shirt and the pair of slippers. The appellant was made to stand beside a table on top of which the said articles were placed and photographed.[22]

On June 15, 1998, Dr. Leoncia M. delos Reyes, performed an autopsy on the cadaver of Lagrada and submitted her postmortem report which contained her findings, *viz*:

Autopsy Report — June 12, 1998, 2:30 AM

Subject: Aurora Lagrada *y* Macabuhay, 74 years old, female, single, retired government official who was found dead in her residence at Gen. Luna St., Brgy. Balimbingan, Lumban, Laguna, on June 11, 1998.

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[19] *Id*. at 4-5.

[20] *Id*. at 5; Exhibit "A".

[21] Exhibit "A-3".

[22] Exhibits "E" and "E-0000000000001".

Findings: Cadaver in a state of *rigor mortis*, in right lateral position, both hands and arms clenched towards the chest. Both legs are flexed, tongue bitten and slightly protruding, bleeding from the mouth with clots. Said cadaver wearing bermuda short and blouse almost worn off exposing the upper half of the body. Pool of (sic) around the body and floor.

External Findings:

1. Wound incised. 3x1 cms., superficial, submammary area, 3 cms. from the midline through and through to the back (point of entrance).

2. Wound incised 2 cms. infra-scapular area, right. (point of exit).

3. Wound incised, 3 cms. neck, left, oozing of blood.

4. Hematoma, right neck.

Internal Findings:

No intra-thoracic nor intra-abdominal hemorrhage all internal organs intact.

Pelvic Exam:

Underwear intact, no signs of external violence, perineum intact and dry.

Cause of Death:

Hemorrhagic Shock.[23]

Dr. Delos Reyes also signed Lagrada's Certificate of Death.[24]

Gonzales and Nacor, Jr. executed a Joint Affidavit on the incident.[25] Norma Quetulio executed a sworn statement[26] in which she stated that her sister, Aurora Lagrada, owned the ring, the bracelet, and the two watches which were confiscated from the appellant, and that the said articles were worth ₱80,000.00.[27] She

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[23] Exhibit "F", Records, p. 14.

[24] Exhibit "G", *Id*. at 15.

[25] Exhibit "C".

[26] Exhibit "B".

[27] *Ibid*.

testified that before Lagrada was killed, the latter was employed by the AMA Computer College, Sta. Cruz, Laguna, as Professor 2, with a monthly salary of ₱2,000.00, later increased to ₱5,700.00 a month; and, being a retired public school teacher, she was also receiving a monthly pension of ₱3,000.00 from the Social Security System. The victim was also the sole proprietor of the Neal Construction and Supplies.[28]

The Case for the Appellant

The appellant denied any involvement in the killing of Lagrada and of robbing her of money and pieces of jewelry.

The appellant testified that he was never investigated by Del Mundo. He did not hire Atty. Wilfredo Paraiso as his counsel to assist him while being investigated by the policemen. Del Mundo merely referred the lawyer to him.[29] The appellant claimed that he had no conference with the lawyer before and after his custodial investigation. He merely affixed his signature on a piece of paper with some writings on it when it was presented to him. This was after the policemen threatened him at the station. The signature above the typewritten name, Antonio Reyes, on the third page of the statement[30] was not his signature. Contrary to the extrajudicial confession, he finished third year in high school.

After trial, the court rendered judgment convicting the appellant of the crime charged. The decretal portion of the decision reads:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused ANTONIO REYES *y* MAGANO, GUILTY BEYOND REASONABLE DOUBT, as PRINCIPAL of the offense of ROBBERY WITH HOMICIDE as alleged in the Information and defined and punished under Art. 294, No. 1 of the Revised Penal Code, as amended by the DEATH PENALTY LAW, and further taking into consideration against the accused the aggravating circumstances of his commission of the offense in the dwelling of the offended party without any provocation given by the latter and the complete disregard of the respect due to the offended party on account

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[28] Exhibits "L-2" to "L-4".

[29] TSN, 15 April 1999, p. 7.

[30] Exhibit "A-1".

of her age and sex and without any mitigating circumstance that would offset the same, hereby sentences the accused to suffer the SUPREME PENALTY OF DEATH and to pay the heirs of the deceased AURORA LAGRADA as represented by Maria, Godofredo, Norma, Herminia, Edna and Magdalena, all surnamed LAGRADA the sum of ₱50,000.00 as civil indemnity for the death of Aurora Lagrada and ₱65,000.00 for funeral expenses or a total amount of ₱115,000.00 and to pay the cost of the instant suit.

SO ORDERED.[31]

The appellant assails the decision of the trial court asserting that:

I

THE LOWER COURT ERRED IN NOT APPRECIATING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II

THE LOWER COURT ERRED IN ADMITTING AS EVIDENCE THE STOLEN ITEMS ALLEGEDLY SEIZED FROM THE ACCUSED-APPELLANT WHICH, AS THE RECORDS DISCLOSE, WERE PRODUCTS OF AN ILLEGAL SEARCH.[32]

The Court shall delve into and resolve the assignment of errors jointly, being interrelated.

The appellant asserts that the extrajudicial confession[33] is inadmissible in evidence because the signature above his typewritten name on page 3 thereof is a forgery. He avers that he was forced by SPO2 Benedicto del Mundo and another policeman to sign a blank page at the town plaza in the presence of Atty. Wilfredo Paraiso. According to him, that blank page which he signed is now the first page of the extrajudicial confession. Furthermore, there is a patent and utter dissimilarity between his genuine signature on page 1 of the extrajudicial confession and his purported signature on page 3 thereof.

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[31] Records, pp. 131.

[32] *Rollo*, pp. 58-59.

[33] Exhibit "A".

The appellant claims that SPO2 Benedicto del Mundo and Atty. Wilfredo Paraiso are not even in accord as to the precise time when the appellant signed the said confession. The appellant contends that Barangay Captain William Magpantay, SPO2 Maximo Gonzales and SPO1 Pedro N. Nacor, Jr. seized the money and articles from him in the mobile car and from his house without any search warrant therefor, when he was already arrested by the policemen. As such, the articles are inadmissible in evidence. Given the inadmissibility of the extrajudicial confession and the money and articles seized from him, the prosecutor failed to prove his guilt beyond reasonable doubt for the crime charged.

For its part, the Office of the Solicitor General asserts that the appellant failed to prove that the disputed signature is a forgery. Contrary to the appellant's claim, the signatures atop the typewritten name of the appellant on page 3 of his confession, and on page 1 and 2 thereof, are similar. Furthermore, the warrantless seizure of the money and articles from the appellant made by the *barangay* captain and the policemen was permissible as an incident to the appellant's lawful warrantless arrest.

The Court's Ruling

The Court rejects the appellant's claim that his signature on page 3 of his extrajudicial confession is a forgery and that he affixed his signature on a blank paper, which is now on page 1 of the said confession.

The appellant was required to submit his counter-affidavit during the preliminary investigation before the MTC of Lumban, Laguna, but he failed to do so. Furthermore, in his Comment on the "Formal Offer of Exhibits" filed by the prosecution, the appellant did not claim that he was made to sign a blank paper and that his signature on page 3 of the extrajudicial confession was a forgery. The appellant made this claim for the first time, only when he testified before the trial court. Forgery cannot be presumed; it must be proved by clear, positive and convincing

evidence. One who alleges forgery has the burden of proving the same.[34] The appellant failed to discharge his burden.

The extrajudicial confession of the appellant was notarized by Atty. Wilfredo O. Paraiso who certified that he had personally examined the appellant and that he was satisfied that the latter had voluntarily executed the same. The notary public's certification belies the appellant's claim that he was forced by the police officers to affix his signature on page 1 of his confession. Atty. Paraiso is an officer of the court. He is presumed to have regularly performed his duties as such notary public. The presumption cannot be overcome by the bare and uncorroborated claim of the appellant that the signature on page 3 of his extrajudicial confession is a forgery. It is hard to believe that Atty. Paraiso notarized the confession of the appellant at the town plaza without the appellant first affixing his signatures, not only on the left margin of pages 1 and 2, but also atop his typewritten name on page 3 thereof. We also note that the appellant's counsel cross-examined Atty. Paraiso, but failed to cross-examine the latter on the alleged dissimilarity of the signatures on page 3 of the confession and those on the left margin of pages 1 and 2 thereof. Finally, the appellant himself had initialed the corrections of typographical errors in his confession.[35]

In claiming that the signature atop his typewritten name on page 3 of the confession is a forgery, the appellant relied solely on the alleged dissimilarity between his signatures. In *Causapin vs. Court of Appeals*,[36] this Court held that an accurate examination to determine forgery should dwell on both the similarities and dissimilarities of the standard and questioned signatures. Professor Albert S. Osborn, a noted expert on "questioned documents," stated that in some measure, a forgery will be like the genuine writing, and there is always bound to be some variation in the different samples of genuine signatures of the same writer. He emphasized that the identification of a handwriting, as to its genuineness or lack of genuineness, or of a continued writing

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[34] *Fernandez vs. Fernandez*, 363 SCRA 811 (2001).

[35] Exhibit "A".

[36] 233 SCRA 615 (1994).

as to whether it was written by a certain writer, is based upon the fact that handwriting embodies various qualities and dissimilarities which in combination are sufficiently personal to serve as a basis of identification. These many attributes and qualities are of varying degrees of force and evidence of identity, depending upon just what they are and their nature.[37]

Professor Osborn also points out that one of the principal causes of errors in determining whether the handwriting is genuine or forged, or in deciding whether a particular handwriting was or was not written by a certain writer is the incompetence of the observer who bases his conclusion entirely upon general appearance, or upon "general character" of handwriting as a whole; basing conclusions on forms or designs of letters alone; mistaking general characteristics of writing or individual characteristics and basing conclusions thereon; failure to reason correctly regarding the observed characteristics — he sees the evidence but does not know what it means.[38]

He went on to emphasize, thus:

> The process of identification, therefore, must include the determination of the extent, kind and significance of this resemblance as well as of the variation. It then becomes necessary to determine whether the variation is due to the operation of a different personality, or is only the expected and inevitable variation found in the genuine writing of the same writer. It is also necessary to decide whether the resemblance is the result of a more or less skillful imitation, or is the habitual and characteristic resemblance which naturally appears in a genuine writing. When these two questions are correctly answered the whole problem of identification is solved.
>
> It must also be kept in mind by one who is to identify handwriting correctly, that the attributes and qualities of writing are much more than the mere outline or forms of the letters. Writing becomes a nearly automatic and an almost unconscious act and has many physical and psychological qualities outside of the mere forms of letters. The consideration of a writing by all unskilled observers gives attention only to designs of letters. If the general designs are correct the writing

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[37] Osborn, *Problem of Proof,* 6th ed., pp. 480-481.

[38] *Id*. at 478-479.

is considered genuine, or, on the other hand, if they diverge in any way or any degree, the writing is thought to be a forgery.

One of the most distinctive qualities of writing is that about it which, by its execution as shown in its line quality, indicates whether it was freely and unconsciously written, or whether it was written in a constrained, slow, and unnatural manner. Unconscious writing is not necessarily skillfully written, but is written with a lack of attention to the act. If such unconscious, careless, free writing embodies the significant form habits shown in the genuine writing, this is conclusive proof of genuineness. It should, however, not be overlooked that a forgery by one with more muscular skill than the writer of the writing imitated may fail by showing a higher degree of skill than the genuine writing. As has been said, "One cannot write better than he can."

There often is in handwriting many of these inherent evidences of genuineness, or evidences of lack of genuineness, that can be seen without comparison with any standard writing whatever. Carelessness, freedom, and indications of unconsciousness of the operation of writing, when they embody characteristic forms, are proofs of genuineness in handwriting. The opposite conditions, undue care, attention to detail, hesitation, indicating not lack of muscular control but attention to the process, and especially delicate, unnecessary repairs and overwriting, all point to a lack of genuineness without comparison with any genuine writing. A correct, scientific discussion of these points is necessary in effective testimony and should also form the basis of argument on the subject by the attorney.

In sum, therefore, the fact of forgery cannot be presumed simply because there are dissimilarities between the standard and the questioned signature.

The discordance between the testimonies of Atty. Paraiso and that of SPO2 Benedicto del Mundo as to the exact or precise time when the appellant signed his extrajudicial confession is of minor and inconsequential importance. Both agree that the appellant signed his extrajudicial confession in the morning of June 12, 1998.

The trial court correctly convicted the appellant of robbery with homicide defined and penalized in Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659, which reads:

ART. 294. *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

To sustain a conviction of the accused for robbery with homicide, the prosecution was burdened to prove the essential elements of the crime, *viz*:

(a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi* and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[39]

The accused must be shown to have the principal purpose of committing robbery, the homicide being committed either by reason of or on occasion of the robbery.[40] The homicide may precede robbery or may occur thereafter. What is essential is that there is a nexus, an intrinsic connection between the robbery and the killing. The latter may be done prior to or subsequent to the former. However, the intent to commit robbery must precede the taking of the victim's life.[41] Furthermore, the constituted crimes of robbery and homicide must be consummated.[42]

A homicide is considered as having been committed on the occasion or by reason of the robbery when the motive of the offender in killing the victim is to deprive the latter of his property, to eliminate an obstacle to the crime, to protect his possession of the loot, to eliminate witnesses, to prevent his being apprehended or to insure his escape from the scene of the crime.

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[39] *People vs. Nang*, 289 SCRA 16 (1998).

[40] *People vs. Mendoza*, 284 SCRA 705 (1998).

[41] *People vs. Ponciano*, 204 SCRA 627 (1991).

[42] *People vs. Nang, supra*.

In this case, the prosecution adduced proof beyond reasonable doubt to establish the guilt of the appellant. In his extrajudicial confession, the appellant stated that he barged into the house of the victim to rob her, and that he stabbed the victim when she was about to shout and because he was drunk. Thus:

T (27): May mga ipakikita ako sa iyo ditong mga alahas, dalawang relos na pangkamay at pambabae, ang isa (1) ay may tatak na "Rolex" at ang isa (1) ay tatak "Wittnauer", isang (1) gintong pulseras; isang (1) gintong singsing na may batong kulay-berde at isang (1) libreta de bangko o Passbook na kulay-pula, may Numero 164764 sa pangalan ni Aurora Lagrada na Passbook ng Solid Bank (THIS INVESTIGATOR SHOWING TO THE AFFIANT/ SUSPECT ALL ITEMS MENTIONED PLACED ON THE TOP OF THE INVESTIGATOR'S TABLE), *ano ang masasabi mo dito?*

S: Iyan na nga po ang mga ninakaw ko kina Aurora Lagrada.[43]

The appellant then took the victim's money and personal belongings and fled from the scene of the crime:

*T (30): May ipakikita rin ako sa iyo ditong pera na halagang Isang Daan at Tatlumpung Piso (₱130.00) ang numero ng Isang Daan ay PK-125726; ang Numero ng Beinte Pesos ay DS-554554 at ang Numero ng Sampung Piso ay BQ-936130 (*THIS INVESTIGATOR IS SHOWING TO THE AFFIANT/SUSPECT CASH MONEY WITH THE DENOMINATIONS AND SERIAL NUMBERS STATED HERETO), *ano ang masasabi mo dito?*

S: Iyan na nga po ang perang nakuha ko sa ibabaw ng mesa sa ibaba ng bahay nina Aurora Lagrada.

T(31): Kailan at saan ito nagyari?

S: Mga humigit-kumulang po sa alas 11:20 ng gabi, ika-11 ng Hunyo 1998 sa loob ng bahay nina Aurora Lagrada, sa Gen. Luna St., Barangay Balimbingan, Lumban, Laguna. Ang pagkakapatay ko po sa kanya ay doon sa ibaba ng bahay malapit sa kusina at ang mga alahas naman po ay doon ko ninakaw sa loob ng isang kahong maliit na naroroon naman sa itaas ng bahay ni Aurora Lagrada.[44]

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[43] Records, p. 6.

[44] *Id.* at 7.

The trial court sentenced the appellant to suffer the death penalty on its finding that the crime was aggravated by the fact that it was committed in the victim's dwelling and in complete disregard of the victim's sex and advanced age of seventy years old. According to the Office of the Solicitor General, however, the imposable penalty should be *reclusion perpetua*, because the foregoing aggravating circumstances were not alleged in the Information.

The ruling of the trial court is not correct.

First. Robbery with homicide is essentially a felony against property.[45] The aggravating circumstance of disregard of the victim's age is applied only to crimes against persons and honor.[46] The bare fact that the victim is a woman does not *per se* constitute disregard of sex. For this circumstance to be properly considered, the prosecution must adduce evidence that in the commission of the crime, the accused had particularly intended to insult or commit disrespect to the sex of the victim.[47] In this case, the appellant killed the victim because the latter started to shout. There was no intent to insult nor commit disrespect to the victim on account of the latter's sex.

Second. The fact that the crime was committed in the victim's dwelling, without provocation on the part of the latter, is aggravating in robbery with homicide.[48] However, such circumstance was not alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure.[49] Although the crime was committed before the effectivity of the Revised Rules of

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[45] *People vs. Escote*, G.R. No. 140756, April 4, 2003.

[46] *People vs. Padilla*, 301 SCRA 265 (1999).

[47] *People vs. Braña*, 30 SCRA 307 (1969).

[48] *People vs. Fabon*, 328 SCRA 302 (2000).

[49] SEC. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Criminal Procedure, the said rule should be applied retroactively as it is favorable to the appellant.[50]

The appellant failed to prove that any mitigating circumstance attended the commission of the crime. Although he claimed that he was drunk when he gained entry into the victim's house, killed her and divested her of her properties, the appellant failed to prove that his intoxication was not habitual or subsequent to the plan to commit the felony charged.

There being no modifying circumstance to the crime, the appellant should be sentenced to suffer *reclusion perpetua*, conformably to Article 63 of the Revised Penal Code.

The trial court was correct in not awarding moral damages to the heirs of the victim. The prosecution failed to present any of them to testify on the factual basis for such circumstance. However, the heirs are entitled to exemplary damages of ₱25,000.00,[51] in accordance with current jurisprudence.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Sta. Cruz, Laguna, Branch 25, finding appellant Antonio Reyes *y* Magano guilty beyond reasonable doubt of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659, is *AFFIRMED* with *MODIFICATION* in that the appellant is sentenced to suffer *reclusion perpetua* and is ordered to pay ₱25,000.00 to the heirs of the victim, as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, and *Tinga, JJ.*, concur.

Vitug, J., on official leave.

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[50] *People vs. Escote, supra.*

[51] *People vs. Catubig,* 363 SCRA 621 (2001).

EN BANC

[G.R. No. 159747. April 13, 2004]

GREGORIO B. HONASAN II, *petitioner, vs.* **THE PANEL OF INVESTIGATING PROSECUTORS OF THE DEPARTMENT OF JUSTICE (LEO DACERA, SUSAN F. DACANAY, EDNA A. VALENZUELA and SEBASTIAN F. CAPONONG, JR.), CIDG-PNP-P/ DIRECTOR EDUARDO MATILLANO, and HON. OMBUDSMAN SIMEON V. MARCELO,** *respondents.*

SYNOPSIS

An affidavit-complaint was filed with the Department of Justice (DOJ) charging petitioner and the military personnel who occupied the Oakwood Hotel on July 27, 2003 with *coup d' etat*. The Panel of Investigating Prosecutors of the DOJ (DOJ Panel) sent a subpoena to petitioner for preliminary investigation. Petitioner filed the herein petition for *certiorari* under Rule 65 of the Rules of Court attributing grave abuse of discretion on the part of the DOJ Panel on the ground that, it is the Office of the Ombudsman, and not the DOJ that has jurisdiction to conduct the preliminary investigation.

In dismissing the petition, the Supreme Court ruled that respondent DOJ Panel is not precluded from conducting the preliminary investigation in case at bar because the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees. The authority of the Ombudsman to investigate offenses involving public officers and employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; POWERS.—** Paragraph (1) of Section 13, Article XI of the Constitution, *viz:* SEC. 13. *The Office of the Ombudsman shall have the following powers, functions, and duties*: "1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient," does not exclude other government agencies tasked by law to investigate and prosecute cases involving public officials. If it were the intention of the framers of the 1987 Constitution, they would have expressly declared the exclusive conferment of the power to the Ombudsman. Instead, paragraph (8) of the same Section 13 of the Constitution provides: "(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law."

2. **ID.; ID.; ID.; ID.; POWER TO INVESTIGATE OFFENSES INVOLVING PUBLIC OFFICERS OR EMPLOYEES IS CONCURRENT WITH OTHER GOVERNMENT INVESTIGATING AGENCIES. —** [T]he Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE DEPARTMENT OF JUSTICE PROSECUTORS ARE AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATION OF CRIMINAL COMPLAINTS FILED WITH THEM FOR OFFENSES WHICH COME WITHIN THE ORIGINAL JURISDICTION OF THE SANDIGANBAYAN; QUALIFICATION. —** Sections 2 and 4,

Rule 112 of the Revised Rules on Criminal Procedure on Preliminary Investigation, effective December 1, 2000, … confirm the authority of the DOJ prosecutors to conduct preliminary investigation of criminal complaints filed with them for offenses cognizable by the proper court within their respective territorial jurisdictions, including those offenses which come within the original jurisdiction of the Sandiganbayan; but with the qualification that in offenses falling within the original jurisdiction of the Sandiganbayan, *the prosecutor shall, after their investigation, transmit the records and their resolutions to the Ombudsman or his deputy for appropriate action*. Also, the prosecutor cannot dismiss the complaint without the prior written authority of the Ombudsman or his deputy, nor can the prosecutor file an Information with the Sandiganbayan without being deputized by, and without prior written authority of the Ombudsman or his deputy.

VITUG, *J.*, *separate opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; POWERS.— The Ombudsman is empowered to, among other things, investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may, at any stage, take over from any agency of Government the investigation of such cases. This statutory provision, by and large, is a restatement of the constitutional grant to the Ombudsman of the power to investigate and prosecute "any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal x x x"

2. ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); POWER OF THE OMBUDSMAN TO DESIGNATE ANY FISCAL OR LAWYER IN THE GOVERNMENT SERVICE TO ACT AS SPECIAL INVESTIGATOR TO ASSIST IN THE INVESTIGATION OF CASES; LIMITATIONS.— While Section 31 of Republic Act No. 6770 states that the Ombudsman may "designate or deputize

any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases," the provision cannot be assumed, however, to be an undefined and broad entrustment of authority. If it were otherwise, it would be unable to either withstand the weight of burden to be within constitutional parameters or the proscription against undue delegation of powers. The deputized fiscal, state prosecutor or government lawyer must in each instance be named; the case to which the deputized official is assigned must be specified; and the investigation must be conducted under the supervision and control of the Ombudsman. The Ombudsman remains to have the basic responsibility, direct or incidental, in the investigation and prosecution of such cases.

3. REMEDIAL LAW; COURTS; SANDIGANBAYAN; JURISDICTION; CASE AT BAR.— The Sandiganbayan law grants to the Sandiganbayan exclusive original jurisdiction over offenses or felonies, whether simple or complexed with other crimes, committed by the public officials, including members of Congress, in relation to their office. The crime of *coup d'etat*, with which petitioner, a member of the Senate, has been charged, is said to be closely linked to his "National Recovery Program," a publication which encapsules the bills and resolutions authored or sponsored by him on the senate floor. I see the charge as being then related to and bearing on his official function.

SANDOVAL-GUTIERREZ, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; APPLIED IN CASE AT BAR.— Petitioner, being a Senator, occupies a government position higher than Grade 27 of the Compensation and Position Classification Act of 1989. In fact, he holds the third highest position and rank in the Government. At the apex, the President stand alone. At the second level, we have the Vice-President, Speaker of the House, Senate President and Chief Justice. Clearly, he is embraced in the above provisions. Following the doctrine of "primary jurisdiction," it is the Ombudsman who should conduct the preliminary investigation of the charge of *coup d' etat* against petitioner. The DOJ should refrain from exercising such function.

2. CRIMINAL LAW; *COUP D' ETAT*; COMMITTED IN RELATION TO THE PEFORMANCE OF OFFICIAL DUTY IN CASE AT BAR.— The allegations in the complaint and in the pleadings of the DOJ, the Solicitor General, and the Ombudsman (who is taking their side) charging petitioner with *coup d'etat* show that he was engaged in a discussion of his National Recovery Program (NRP), corruption in government, and the need for reform. The NRP is a summary of what he has introduced and intended to introduce into legislation by Congress. There is no doubt, therefore, that the alleged *coup d'etat* was committed in relation to the performance of his official duty as a Senator.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; DEPARTMENT OF JUSTICE; HAS A BROAD JURISDICTION OVER CRIMES FOUND IN THE REVISED PENAL CODE AND SPECIAL LAWS BUT THIS JURISDICTION IS NOT PLENARY.— While the DOJ has a broad general jurisdiction over crimes found in the Revised Penal Code and special laws, however, this jurisdiction is not plenary or total. Whenever the Constitution or statute vests jurisdiction over the investigation and prosecution of certain crimes in an office, the DOJ has no jurisdiction over those crimes. In election offenses, the Constitution vests the power to investigate and prosecute in the Commission on Elections. In crimes committed by public officers in relation to their office, the Ombudsman is given by both the Constitution and the statute the same power of investigation and prosecution. These powers may not be exercised by the DOJ. The DOJ cannot pretend to have investigatory and prosecutorial powers above those of the Ombudsman. The Ombudsman is a constitutional officer with a rank equivalent to that of an Associate Justice of this Court. The respondent's Prosecution Office investigates and prosecutes all kinds of offenses from petty crimes, like vagrancy or theft, to more serious crimes, such as those found in the Revised Penal Code. The Ombudsman, on the other hand, prosecute offenses in relation to public office committed by public officers with the rank and position classification of Grade 27 or higher. It is a special kind of jurisdiction which excludes general powers of other prosecutory offices.

YNARES-SANTIAGO, *J., dissenting opinion*:

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; HAS JURISDICTION OVER THE CRIME OF *COUP D'ETAT* COMMITTED BY MEMBERS OF CONGRESS OR BY PUBLIC OFFICERS WITH SALARY GRADE 27 OR HIGHER; CASE AT BAR.— The crime of *coup d'etat*, if committed by members of Congress or by a public officer with a salary grade above 27, falls within the exclusive original jurisdiction of the Sandiganbayan. … [T]he Sandiganbayan Law requires that for a felony, *coup d'etat* in this case, to fall under the exclusive jurisdiction of the Sandiganbayan, two requisites must concur, namely: (1) that the public officer or employee occupies the position corresponding to Salary Grade 27 or higher; and (2) that the crime is committed by the public officer or employee in relation to his office. Applying the law to the case at bar, the Majority found that although the first requirement has been met, the second requirement is wanting. I disagree.

2. CRIMINAL LAW; *COUP D' ETAT*; NATURE.— Following its definition, *coup d'etat* can only be committed by members of the military or police or holding any public office or employment, with or without civilian support. … A *coup* consists mainly of the military personnel and public officers and employees seizing the controlling levers of the state, which is then used to displace the government from its control of the remainder. As defined, it is a swift attack directed against the duly constituted authorities or vital facilities and installations to seize state power. It is therefore inherent in *coup d'etat* that the crime be committed "in relation to" the office of a public officer or employee. The violence, intimidation, threat, strategy or stealth which are inherent in the crime can only be accomplished by those who possess a degree of trust reposed on such person in that position by the Republic of the Philippines. It is by exploiting this trust that the swift attack can be made. Since the perpetrators take advantage of their official positions, it follows that *coup d'etat* can be committed only through acts directly or intimately related to the performance of official functions, and the same need not be proved since it inheres in the very nature of the crime itself.

3. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN;

RATIONALE FOR THE CREATION.— The *raison d' etre* for the creation of the Office of the Ombudsman in the 1987 Constitution and for the grant of its broad investigative authority, is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances, and misfeasances committed by public officers.

4. ID.; ID.; ID.; SANDIGANBAYAN; CREATED TO ATTAIN THE HIGHEST NORMS OF OFFICIAL CONDUCT REQUIRED OF PUBLIC OFFICERS AND EMPLOYEES.— [T]he Constitution provides for the creation of the Sandiganbayan to attain the highest norms of official conduct required of public officers and employees. It is a special court that tries cases involving public officers and employees that fall within specific salary levels. Thus, Section 4 of the Sandiganbayan Law makes it a requirement that for offenses to fall under the exclusive jurisdiction of the Sandiganbayan, the public officer involved must occupy a position equivalent to Salary Grade 27 or higher. This salary grade requirement is not a product of whim or an empty expression of fancy, but a way to ensure that offenses which spring from official abuse will be tried by a judicial body insulated from official pressure and unsusceptible to the blandishments, influence and intimidation from those who seek to subvert the ends of justice.

5. ID.; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; WHEN APPLIED.— "Primary Jurisdiction" usually refers to cases involving specialized disputes where the practice is to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. This Court has said that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal before the question is resolved by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is "to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has

determined some question or some aspect of some question arising in the proceeding before the court." It applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.

6. ID.; ID.; ID.; SHOULD OPERATE TO RESTRAIN THE DEPARTMENT OF JUSTICE FROM EXERCISING ITS INVESTIGATIVE AUTHORITY OVER CASES COGNIZABLE BY THE SANDIGANBAYAN WHERE THE CONCURRENT AUTHORITY IS VESTED IN BOTH THE DEPARTMENT OF JUSTICE AND THE OFFICE OF THE OMBUDSMAN.— Where the concurrent authority is vested in *both* the Department of Justice and the Office of the Ombudsman, the doctrine of primary jurisdiction should operate to restrain the Department of Justice from exercising its investigative authority if the case will likely be cognizable by the Sandiganbayan. In such cases, the Office of the Ombudsman should be the proper agency to conduct the preliminary investigation over such an offense, it being vested with the specialized competence and undoubted probity to conduct the investigation.

APPEARANCES OF COUNSEL

Daniel C. Gutierrez for petitioner.

Virgilio T. Pablico for respondent Police Director Eduardo Matillano.

The Solicitor General for DOJ.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

On August 4, 2003, an affidavit-complaint was filed with the Department of Justice (DOJ) by respondent CIDG-PNP/P Director Eduardo Matillano. It reads in part:

x x x x x x x x x

2. After a thorough investigation, I found that a crime of *coup d'etat* was indeed committed by military personnel who occupied Oakwood on the 27th day of July 2003 and Senator Gregorio "Gringo" Honasan, II . . .

3. . . .

4. The said crime was committed as follows:

4.1 On June 4, 2003, at on or about 11 p.m., in a house located in San Juan, Metro Manila, a meeting was held and presided by Senator Honasan. *Attached as Annex "B" is the affidavit of Perfecto Ragil and made an integral part of this complaint.*

x x x x x x x x x

4.8 In the early morning of July 27, 2003, Capt. Gerardo Gambala, for and in behalf of the military rebels occupying Oakwood, made a public statement aired on nation television, stating their withdrawal of support to the chain of command of the AFP and the Government of President Gloria Macapagal Arroyo and they are willing to risk their lives in order to achieve the National Recovery Agenda of Sen. Honasan, which they believe is the only program that would solve the ills of society. . . . (Emphasis supplied).

The Sworn Statement of AFP Major Perfecto Ragil referred to by PNP/P Director Matillano is quoted *verbatim*, to wit:

1. That I am a member of the Communication–Electronics and Information Systems Services, Armed Forces of the Philippines with the rank of Major;

2. That I met a certain Captain Gary Alejano of the Presidential Security Guard (PSG) during our Very Important Person (VIP) Protection Course sometime in last week of March 2003;

3. That sometime in May 2003, Captain Alejano gave me a copy of the pamphlet of the National Recovery Program (NRP) and told me that: *"Kailangan ng Bansa ng taong kagaya mo na walang bahid ng corruption kaya basahin mo ito* (referring to NRP) pamphlet. I took the pamphlet but never had the time to read it;

4. That sometime in the afternoon of June 4, 2003, Captain Alejano invited me to join him in a meeting where the NRP would be discussed and that there would be a special guest;

5. That Capt. Alejano and I arrived at the meeting at past 9 o'clock in the evening of June 4, 2003 in a house located somewhere in San Juan, Metro Manila;

6. That upon arrival we were given a document consisting of about 3-4 pages containing discussion of issues and concerns within the framework of NRP and we were likewise served with dinner;

7. That while we were still having dinner at about past 11 o'clock in the evening, Sen. Gregorio "Gringo" Honasan arrived together with another fellow who was later introduced as Capt. Turingan;

8. That after Sen. Honasan had taken his dinner, the meeting proper started presided by Sen. Honasan;

9. That Sen. Honasan discussed the NRP, the graft and corruption in the government including the military institution, the judiciary, the executive branch and the like;

10. That the discussion concluded that we must use force, violence and armed struggle to achieve the vision of NRP. At this point, I raised the argument that it is my belief that reforms will be achieved through the democratic processes and not thru force and violence and/or armed struggle. Sen. Honasan countered that "we will never achieve reforms through the democratic processes because the people who are in power will not give up their positions as they have their vested interests to protect." After a few more exchanges of views, Sen. Honasan appeared irritated and asked me directly three (3) times: "In *ka ba* o out?" I then asked whether all those present numbering 30 people, more or less, are really committed, Sen. Honasan replied: "*Kung kaya nating pumatay sa ating mga kalaban, kaya din nating pumatay sa mga kasamahang magtataksil*." I decided not to pursue further questions;

11. That in the course of the meeting, he presented the plan of action to achieve the goals of NRP, *i.e.*, overthrow of the government under the present leadership thru armed revolution and after which, a junta will be constituted and that junta will run the new government. He further said that some of us will resign from the military service and occupy civilian positions in the new government. He also said that there is urgency that we implement this plan and that we would be notified of the next activities;

12. That after the discussion and his presentation, he explained the rites that we were to undergo—some sort of "blood compact."

He read a prayer that sounded more like a pledge and we all recited it with raised arms and clenched fists. He then took a knife and demonstrated how to make a cut on the left upper inner arm until it bleeds. The cut was in form of the letter "I" in the old alphabet but was done in a way that it actually looked like letter "H". Then, he pressed his right thumb against the blood and pressed the thumb on the lower middle portion of the copy of the Prayer. He then covered his thumb mark in blood with tape. He then pressed the cut on his left arm against the NRP flag and left mark of letter "I" on it. Everybody else followed;

13. That when my turn came, I slightly made a cut on my upper inner arm and pricked a portion of it to let it bleed and I followed what Senator HONASAN did;

14. That I did not like to participate in the rites but I had the fear for my life with what Senator HONASAN said that "*. . . kaya nating pumatay ng kasamahan";*

15. That after the rites, the meeting was adjourned and we left the place;

16. That I avoided Captain Alejano after that meeting but I was extra cautious that he would not notice it for fear of my life due to the threat made by Senator HONASAN during the meeting on June 4, 2003 and the information relayed to me by Captain Alejano that their group had already deeply established their network inside the intelligence community;

17. That sometime in the first week of July 2003, Captain Alejano came to see me to return the rifle that he borrowed and told me that when the group arrives at the Malacañang Compound for "D-DAY", my task is to switch off the telephone PABX that serves the Malacañang complex. I told him that I could not do it. No further conversation ensued and he left;

18. That on Sunday, July 27, 2003, while watching the television, I saw flashed on the screen Lieutenant Antonio Trillanes, Captain Gerardo Gambala, Captain Alejano and some others who were present during the June 4th meeting that I attended, having a press conference about their occupation of the Oakwood Hotel. I also saw that the letter "I" on the arm bands and the banner is the same letter "I" in the banner which was displayed and on which we pressed our wound to leave the imprint of the letter "I";

19. That this Affidavit is being executed in order to attest the veracity of the foregoing and in order to charge SENATOR GREGORIO "GRINGO" HONASAN, Capt. FELIX TURINGAN, Capt. GARY ALEJANO, Lt. ANTONIO TRILLANES, Capt. GERARDO GAMBALA and others for violation of Article 134-A of the Revised Penal Code for the offense of "*coup d'etat.*" (Emphasis supplied)

The affidavit-complaint is docketed` as I.S. No. 2003-1120 and the Panel of Investigating Prosecutors of the Department of Justice (DOJ Panel for brevity) sent a subpoena to petitioner for preliminary investigation.

On August 27, 2003, petitioner, together with his counsel, appeared at the DOJ. He filed a Motion for Clarification questioning DOJ's jurisdiction over the case, asserting that since the imputed acts were committed in relation to his public office, it is the Office of the Ombudsman, not the DOJ, that has the jurisdiction to conduct the corresponding preliminary investigation; that should the charge be filed in court, it is the Sandiganbayan, not the regular courts, that can legally take cognizance of the case considering that he belongs to the group of public officials with Salary Grade 31; and praying that the proceedings be suspended until final resolution of his motion.

Respondent Matillano submitted his comment/opposition thereto and petitioner filed a reply.

On September 10, 2003, the DOJ Panel issued an Order, to wit:

On August 27, 2003, Senator Gregorio B. Honasan II filed through counsel a "Motion to Clarify Jurisdiction". On September 1, 2003, complainant filed a Comment/Opposition to the said motion.

The motion and comment/opposition are hereby duly noted and shall be passed upon in the resolution of this case.

In the meantime, in view of the submission by complainant of additional affidavits/evidence and to afford respondents ample opportunity to controvert the same, respondents, thru counsel are

hereby directed to file their respective counter-affidavits and controverting evidence on or before September 23, 2003.[1]

Hence, Senator Gregorio B. Honasan II filed the herein petition for *certiorari* under Rule 65 of the Rules of Court against the DOJ Panel and its members, CIDG-PNP-P/Director Eduardo Matillano and Ombudsman Simeon V. Marcelo, attributing grave abuse of discretion on the part of the DOJ Panel in issuing the aforequoted Order of September 10, 2003 on the ground that the DOJ has no jurisdiction to conduct the preliminary investigation.

Respondent Ombudsman, the Office of Solicitor General in representation of respondents DOJ Panel, and Director Matillano submitted their respective comments.

The Court heard the parties in oral arguments on the following issues:

1) Whether respondent Department of Justice Panel of Investigators has jurisdiction to conduct preliminary investigation over the charge of *coup d'etat* against petitioner;

2) Whether Ombudsman-DOJ Circular No. 95-001 violates the Constitution and Republic Act No. 6770 or Ombudsman Act of 1989; and

3) Whether respondent DOJ Panel of Investigators committed grave abuse of discretion in deferring the resolution of the petitioner's motion to clarify jurisdiction considering the claim of the petitioner that the DOJ Panel has no jurisdiction to conduct preliminary investigation.

After the oral arguments, the parties submitted their respective memoranda. The arguments of petitioner are:

1. The Office of the Ombudsman has jurisdiction to conduct the preliminary investigation over all public officials, including petitioner.

2. Respondent DOJ Panel is neither authorized nor deputized under OMB-DOJ Joint Circular No. 95-001 to conduct the preliminary investigation involving Honasan.

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[1] Annex "A", *Rollo*, p. 67.

3. Even if deputized, the respondent DOJ Panel is still without authority since OMB-DOJ Joint Circular No. 95-001 is *ultra vires* for being violative of the Constitution, beyond the powers granted to the Ombudsman by R.A. 6770 and inoperative due to lack of publication, hence null and void.

4. Since petitioner is charged with *coup de'etat* in relation to his office, it is the Office of the Ombudsman which has the jurisdiction to conduct the preliminary investigation.

5. The respondent DOJ Panel gravely erred in deferring the resolution of petitioner's Motion to Clarify Jurisdiction since the issue involved therein is determinative of the validity of the preliminary investigation.

6. Respondent DOJ Panel gravely erred when it resolved petitioner's Motion in the guise of directing him to submit Counter-Affidavit and yet refused and/or failed to perform its duties to resolve petitioner's Motion stating its legal and factual bases.

The arguments of respondent DOJ Panel are:

1. The DOJ has jurisdiction to conduct the preliminary investigation on petitioner pursuant to Section 3, Chapter I, Title III, Book IV of the Revised Administrative Code of 1987 in relation to P.D. No. 1275, as amended by P.D. No. 1513.

2. Petitioner is charged with a crime that is not directly nor intimately related to his public office as a Senator. The factual allegations in the complaint and the supporting affidavits are bereft of the requisite nexus between petitioner's office and the acts complained of.

3. The challenge against the constitutionality of the OMB-DOJ Joint Circular, as a ground to question the jurisdiction of the DOJ over the complaint below, is misplaced. The jurisdiction of the DOJ is a statutory grant under the Revised Administrative Code. It is not derived from any provision of the joint circular which embodies the guidelines governing the authority of both the DOJ and the Office of the Ombudsman to conduct preliminary investigation on offenses charged in relation to public office.

4. Instead of filing his counter-affidavit, petitioner opted to file a motion to clarify jurisdiction which, for all intents and purposes, is actually a motion to dismiss that is a prohibited pleading under

Section 3, Rule 112 of the Revised Rules of Criminal Procedure. The DOJ Panel is not required to act or even recognize it since a preliminary investigation is required solely for the purpose of determining whether there is a sufficient ground to engender a well founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial. The DOJ panel did not outrightly reject the motion of petitioner but ruled to pass upon the same in the determination of the probable cause; thus, it has not violated any law or rule or any norm of discretion.

The arguments of respondent Ombudsman are:

1. The DOJ Panel has full authority and jurisdiction to conduct preliminary investigation over the petitioner for the reason that the crime of *coup d'etat* under Article No. 134-A of the Revised Penal Code (RPC) may fall under the jurisdiction of the Sandiganbayan only if the same is committed "in relation to office" of petitioner, pursuant to Section 4, P.D. No. 1606, as amended by R.A. No. 7975 and R.A. No. 8249.

2. Petitioner's premise that the DOJ Panel derives its authority to conduct preliminary investigation over cases involving public officers solely from the OMB-DOJ Joint Circular No. 95-001 is misplaced because the DOJ's concurrent authority with the OMB to conduct preliminary investigation of cases involving public officials has been recognized in *Sanchez vs. Demetriou (227 SCRA 627 [1993])* and incorporated in Section 4, Rule 112 of the Revised Rules of Criminal Procedure.

3. Petitioner's assertion that the Joint Circular is *ultra vires* and the DOJ cannot be deputized by the Ombudsman *en masse* but must be given in reference to specific cases has no factual or legal basis. There is no rule or law which requires the Ombudsman to write out individualized authorities to deputize prosecutors on a per case basis. The power of the Ombudsman to deputize DOJ prosecutors proceeds from the Constitutional grant of power to request assistance from any government agency necessary to discharge its functions, as well as from the statutory authority to so deputize said DOJ prosecutors under Sec. 31 of RA 6770.

4. The Joint Circular which is an internal arrangement between the DOJ and the Office of the Ombudsman need not be published since it neither contains a penal provision nor does it prescribe a

mandatory act or prohibit any under pain or penalty. It does not regulate the conduct of persons or the public, in general.

The Court finds the petition without merit.

The authority of respondent DOJ Panel is based not on the assailed OMB-DOJ Circular No. 95-001 but on the provisions of the 1987 Administrative Code under Chapter I, Title III, Book IV, governing the DOJ, which provides:

> Sec. 1. Declaration of policy. — It is the declared policy of the State to provide the government with a principal law agency which shall be both its *legal counsel and prosecution arm*; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; . . .
>
> Sec. 3. Powers and Functions. — To accomplish its mandate, the Department shall have the following powers and functions:
>
> x x x x x x x x x
>
> (2) *Investigate the commission of crimes, prosecute offenders and administer the probation and correction system*; (italics supplied)

and Section 1 of P.D. 1275, effective April 11, 1978, to wit:

> SECTION 1. *Creation of the National Prosecution Service; Supervision and Control of the Secretary of Justice.* — There is hereby created and established a National Prosecution Service under the supervision and control of the Secretary of Justice, to be composed of the Prosecution Staff in the Office of the Secretary of Justice and such number of Regional State Prosecution Offices, and Provincial and City Fiscal's Offices as are hereinafter provided, which *shall be primarily responsible for the investigation and prosecution of all cases involving violations of penal laws.* (italics supplied)

Petitioner claims that it is the Ombudsman, not the DOJ, that has the jurisdiction to conduct the preliminary investigation under paragraph (1), Section 13, Article XI of the 1987 Constitution, which confers upon the Office of the Ombudsman the power to *investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be*

illegal, unjust, improper, or inefficient. Petitioner rationalizes that the 1987 Administrative Code and the Ombudsman Act of 1989 cannot prevail over the Constitution, pursuant to Article 7 of the Civil Code, which provides:

> Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.
>
> When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.
>
> Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

and *Mabanag vs. Lopez Vito*.[2]

The Court is not convinced. Paragraph (1) of Section 13, Article XI of the Constitution, *viz*:

> SEC. 13. *The Office of the Ombudsman shall have the following powers, functions, and duties:*
>
> 1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

does not exclude other government agencies tasked by law to investigate and prosecute cases involving public officials. If it were the intention of the framers of the 1987 Constitution, they would have expressly declared the exclusive conferment of the power to the Ombudsman. Instead, paragraph (8) of the same Section 13 of the Constitution provides:

> (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Accordingly, Congress enacted R.A. 6770, otherwise known as "The Ombudsman Act of 1989." Section 15 thereof provides:

> Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

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[2] 78 Phil. 1 (1947).

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. *It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of the government, the investigation of such cases.*

x x x x x x x x x (Italics supplied)

Pursuant to the authority given to the Ombudsman by the Constitution and the Ombudsman Act of 1989 to lay down its own rules and procedure, the Office of the Ombudsman promulgated Administrative Order No. 8, dated November 8, 1990, entitled, *Clarifying and Modifying Certain Rules of Procedure of the Ombudsman, to wit*:

A complaint filed in or taken cognizance of by the Office of the Ombudsman charging any public officer or employee including those in government-owned or controlled corporations, with an act or omission alleged to be illegal, unjust, improper or inefficient is an Ombudsman case. Such a complaint may be the subject of criminal or administrative proceedings, or both.

For purposes of investigation and prosecution, Ombudsman cases involving criminal offenses may be subdivided into two classes, to wit: (1) those cognizable by the Sandiganbayan, and (2) those falling under the jurisdiction of the regular courts. The difference between the two, aside from the category of the courts wherein they are filed, is on the authority to investigate as distinguished from the authority to prosecute, such cases.

The power to investigate or conduct a preliminary investigation on any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistance, either in their regular capacities or as deputized Ombudsman prosecutors.

The prosecution of cases cognizable by the Sandiganbayan shall be under the direct exclusive control and supervision of the Office of the Ombudsman. In cases cognizable by the regular Courts, the control and supervision by the Office of the Ombudsman is only in Ombudsman cases in the sense defined above. The law

recognizes a concurrence of jurisdiction between the Office of the Ombudsman and other investigative agencies of the government in the prosecution of cases cognizable by regular courts. (Italics supplied)

It is noteworthy that as early as 1990, the Ombudsman had properly differentiated the authority to investigate cases from the authority to prosecute cases. It is on this note that the Court will first dwell on the nature or extent of the authority of the Ombudsman to investigate cases. Whence, focus is directed to the second sentence of paragraph (1), Section 15 of the Ombudsman Act which specifically provides that the Ombudsman has primary jurisdiction over cases cognizable by the Sandiganbayan, and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

That the power of the Ombudsman to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government such as the provincial, city and state prosecutors has long been settled in several decisions of the Court.

In *Cojuangco, Jr. vs. Presidential Commission on Good Government*, decided in 1990, the Court expressly declared:

> A reading of the foregoing provision of the Constitution does not show that the power of investigation including preliminary investigation vested on the Ombudsman is exclusive.[3]

Interpreting the primary jurisdiction of the Ombudsman under Section 15(1) of the Ombudsman Act, the Court held in said case:

> Under Section 15(1) of Republic Act No. 6770 aforecited, the Ombudsman has primary jurisdiction over cases cognizable by the Sandiganbayan so that it may take over at any stage from any investigatory agency of the government, the investigation of such cases. *The authority of the Ombudsman to investigate offenses involving public officers or employees is not exclusive but is*

[3] G.R. Nos. 92319-20, October 2, 1990; 190 SCRA 226, 240.

concurrent with other similarly authorized agencies of the government. Such investigatory agencies referred to include the PCGG and the provincial and city prosecutors and their assistants, the state prosecutors and the judges of the municipal trial courts and municipal circuit trial court.

In other words the provision of the law has opened up the authority to conduct preliminary investigation of offenses cognizable by the Sandiganbayan to all investigatory agencies of the government duly authorized to conduct a preliminary investigation under Section 2, Rule 112 of the 1985 Rules of Criminal Procedure with the only qualification that the Ombudsman may take over at any stage of such investigation in the exercise of his primary jurisdiction.[4] (Italics supplied)

A little over a month later, the Court, in *Deloso vs. Domingo*,[5] pronounced that the Ombudsman, under the authority of Section 13(1) of the 1987 Constitution, has jurisdiction to investigate any crime committed by a public official, elucidating thus:

As protector of the people, the office of the Ombudsman has the power, function and duty to "act promptly on complaints filed in any form or manner against public officials" (Sec. 12) and to "investigate x x x any act or omission of any public official x x x when such act or omission appears to be illegal, unjust, improper or inefficient." (Sec. 13[1].) The Ombudsman is also empowered to "direct the officer concerned," in this case the Special Prosecutor, "to take appropriate action against a public official x x x and to recommend his prosecution" (Sec. 13[3]).

The clause "any [illegal] act or omission of any public official" is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from, the performance of official duty. Since the law does not distinguish, neither should we.

The reason for the creation of the Ombudsman in the 1987 Constitution and for the grant to it of broad investigative authority,

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[4] *Id*., p. 241.

[5] G.R. No. 90591, November 21, 1990; 191 SCRA 545, 550-551.

is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers. It was deemed necessary, therefore, to create a special office to investigate *all* criminal complaints against public officers regardless of whether or not the acts or omissions complained of are related to or arise from the performance of the duties of their office. The Ombudsman Act makes perfectly clear that the jurisdiction of the Ombudsman encompasses "*all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee* as mentioned in Section 13 hereof, *during his tenure* of office" (Sec. 16, R.A. 6770).

x x x x x x x x x

Indeed, the labors of the constitutional commission that created the Ombudsman as a special body to investigate erring public officials would be wasted if its jurisdiction were confined to the investigation of minor and less grave offenses arising from, or related to, the duties of public office, but would exclude those grave and terrible crimes that spring from abuses of official powers and prerogatives, for it is the investigation of the latter where the need for an independent, fearless, and honest investigative body, like the Ombudsman, is greatest.[6]

At first blush, there appears to be conflicting views in the rulings of the Court in the *Cojuangco, Jr.* case and the *Deloso* case. However, the contrariety is more apparent than real. In subsequent cases, the Court elucidated on the nature of the powers of the Ombudsman to investigate.

In 1993, the Court held in *Sanchez vs. Demetriou*,[7] that while it may be true that the Ombudsman has jurisdiction to investigate and prosecute any illegal act or omission of any public official, the authority of the Ombudsman to investigate is merely a primary and not an exclusive authority, thus:

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[6] *Id.*, pp. 551-552.

[7] G.R. Nos. 111771-77, November 9, 1993; 227 SCRA 627.

The Ombudsman is indeed empowered under Section 15, paragraph (1) of RA 6770 to investigate and prosecute any illegal act or omission of any public official. However as we held only two years ago in the case of *Aguinaldo vs. Domagas*,[8] this authority "is not an exclusive authority but rather a shared or concurrent authority in respect of the offense charged."

Petitioners finally assert that the information and amended information filed in this case needed the approval of the Ombudsman. It is not disputed that the information and amended information here did not have the approval of the Ombudsman. However, we do not believe that such approval was necessary at all. In *Deloso v. Domingo*, 191 SCRA 545 (1990), the Court held that the Ombudsman has authority to investigate charges of illegal acts or omissions on the part of any public official, *i.e.*, any crime imputed to a public official. *It must, however, be pointed out that the authority of the Ombudsman to investigate "any [illegal] act or omission of any public official" (191 SCRA 550) is not an exclusive authority but rather a shared or concurrent authority in respect of the offense charged, i.e.,* the crime of sedition. Thus, the non-involvement of the office of the Ombudsman in the present case does not have any adverse legal consequence upon the authority of the panel of prosecutors to file and prosecute the information or amended information.

In fact, other investigatory agencies of the government such as the Department of Justice in connection with the charge of sedition, and the Presidential Commission on Good Government, in ill gotten wealth cases, may conduct the investigation.[9] (Italics supplied)

In *Natividad vs. Felix*,[10] a 1994 case, where the petitioner municipal mayor contended that it is the Ombudsman and not the provincial fiscal who has the authority to conduct a preliminary investigation over his case for alleged Murder, the Court held:

The *Deloso* case has already been re-examined in two cases, namely *Aguinaldo vs. Domagas* and *Sanchez vs. Demetriou*. However, by way of amplification, we feel the need for tracing the history of the

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[8] G.R. No. 98452, *En Banc Resolution* dated September 26, 1991.

[9] *Id.* at 637.

[10] G.R. No. 111616, February 4, 1994; 229 SCRA 680.

legislation relative to the jurisdiction of Sandiganbayan since the Ombudsman's primary jurisdiction is dependent on the cases cognizable by the former.

In the process, we shall observe how the policy of the law, with reference to the subject matter, has been in a state of flux.

These laws, in chronological order, are the following: (a) Pres. Decree No. 1486, — the first law on the Sandiganbayan; (b) Pres. Decree No. 1606 which expressly repealed Pres. Decree No. 1486; (c) Section 20 of Batas Pambansa Blg. 129; (d) Pres. Decree No. 1860; and (e) Pres. Decree No. 1861.

The latest law on the Sandiganbayan, Sec. 1 of Pres. Decree No. 1861 reads as follows:

> "SECTION 1. Section 4 of Presidential Decree No. 1606 is hereby amended to read as follows:
>
> "SEC. 4. *Jurisdiction*. — The Sandiganbayan shall exercise:
>
> '(a) Exclusive original jurisdiction in all cases involving:
>
> x x x x x x x x x
>
> (2) Other offenses or felonies committed by public officers and employees *in relation to their office*, including those employed in government-owned or controlled corporation, whether simple or complexed with other crimes, where the penalty prescribed by law is higher that *prision correccional* or imprisonment for six (6) years, or a fine of ₱6,000: PROVIDED, HOWEVER, that offenses or felonies mentioned in this paragraph where the penalty prescribed by law does not exceed *prision correccional* or imprisonment for six (6) years or a fine of ₱6,000 shall be tried by the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court."

A perusal of the aforecited law shows that two requirements must concur under Sec. 4(a)(2) for an offense to fall under the Sandiganbayan's jurisdiction, namely: the offense committed by the public officer must be in relation to his office and the penalty

prescribed be higher than *prision correccional* or imprisonment for six (6) years, or a fine of ₱6,000.00.[11]

Applying the law to the case at bench, we find that although the second requirement has been met, the first requirement is wanting. A review of these Presidential Decrees, except Batas Pambansa Blg. 129, would reveal that the crime committed by public officers or employees must be "in relation to their office" if it is to fall within the jurisdiction of the Sandiganbayan. This phrase which is traceable to Pres. Decree No. 1468, has been retained by Pres. Decree No. 1861 as a requirement before the Ombudsman can acquire primary jurisdiction on its power to investigate.

It cannot be denied that Pres. Decree No. 1861 is in ***pari materia*** *to Article XI, Sections 12 and 13 of the 1987 Constitution and the Ombudsman Act of 1989 because, as earlier mentioned, the Ombudsman's power to investigate is dependent on the cases cognizable by the Sandiganbayan. Statutes are in* ***pari materia*** *when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.*

It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, ***"interpretare et concordare legibus est optimus interpretandi,"*** *or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. Thus, in the application and interpretation of Article XI, Sections 12 and 13 of the 1987 Constitution and the Ombudsman Act of 1989, Pres. Decree No. 1861 must be taken into consideration. It must be assumed that when the 1987 Constitution was written, its framers had in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the 1987 Constitution and the Ombudsman Act of 1989 are deemed in accord with existing statute, specifically, Pres. Decree No. 1861.*[12] (Italics supplied)

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[11] The penalty requirement was deleted by R.A. 8249, amending P.D. 1861.

[12] *Id.*, pp. 685-688.

R.A. No. 8249 which amended Section 4, paragraph (b) of the Sandiganbayan Law (P.D. 1861) likewise provides that for other offenses, aside from those enumerated under paragraphs (a) and (c), to fall under the exclusive jurisdiction of the Sandiganbayan, they must have been committed by public officers or employees in relation to their office.

In summation, the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

In other words, respondent DOJ Panel is not precluded from conducting any investigation of cases against public officers involving violations of penal laws but if the cases fall under the exclusive jurisdiction of the Sandiganbayan, then respondent Ombudsman may, in the exercise of its primary jurisdiction take over at any stage.

Thus, with the jurisprudential declarations that the Ombudsman and the DOJ have concurrent jurisdiction to conduct preliminary investigation, the respective heads of said offices came up with OMB-DOJ Joint Circular No. 95-001 for the proper guidelines of their respective prosecutors in the conduct of their investigations, to wit:

OMB-DOJ JOINT CIRCULAR NO. 95-001
Series of 1995

TO: ALL GRAFT INVESTIGATION/SPECIAL PROSECUTION OFFICERS OF THE OFFICE OF THE OMBUDSMAN

ALL REGIONAL STATE PROSECUTORS AND THEIR ASSISTANTS, PROVINCIAL/CITY PROSECUTORS AND THEIR ASSISTANTS, STATE PROSECUTORS AND PROSECUTING ATTORNEYS OF THE DEPARTMENT OF JUSTICE.

SUBJECT: HANDLING COMPLAINTS FILED AGAINST PUBLIC OFFICERS AND EMPLOYEES, THE CONDUCT OF PRELIMINARY INVESTIGATION, PREPARATION OF RESOLUTIONS AND INFORMATIONS AND PROSECUTION OF CASES BY PROVINCIAL AND CITY PROSECUTORS AND THEIR ASSISTANTS.

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In a recent dialogue between the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, discussion centered around the latest pronouncement of the SUPREME COURT on the extent to which the OMBUDSMAN may call upon the government prosecutors for assistance in the investigation and prosecution of criminal cases cognizable by his office and the conditions under which he may do so. Also discussed was Republic Act No. 7975 otherwise known as "AN ACT TO STRENGTHEN THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED" and its implications on the jurisdiction of the office of the Ombudsman on criminal offenses committed by public officers and employees.

Concerns were expressed on unnecessary delays that could be caused by discussions on jurisdiction between the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, and by procedural conflicts in the filing of complaints against public officers and employees, the conduct of preliminary investigations, the preparation of resolutions and informations, and the prosecution of cases by provincial and city prosecutors and their assistants as DEPUTIZED PROSECUTORS OF THE OMBUDSMAN.

Recognizing the concerns, the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, in a series of consultations, have agreed on the following guidelines to be observed in the investigation and prosecution of cases against public officers and employees:

1. Preliminary investigation and prosecution of offenses committed by public officers and employees IN RELATION TO OFFICE whether cognizable by the SANDIGANBAYAN or the REGULAR COURTS, and whether filed with the OFFICE OF THE OMBUDSMAN or with the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall be under the control and supervision of the office of the OMBUDSMAN.

2. Unless the Ombudsman under its Constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted by the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR, which shall rule thereon with finality.

3. Preparation of criminal information shall be the responsibility of the investigating officer who conducted the preliminary investigation. Resolutions recommending prosecution together with the duly accomplished criminal informations shall be forwarded to the appropriate approving authority.

4. Considering that the OFFICE OF THE OMBUDSMAN has jurisdiction over public officers and employees and for effective monitoring of all investigations and prosecutions of cases involving public officers and employees, the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall submit to the OFFICE OF THE OMBUDSMAN a monthly list of complaints filed with their respective offices against public officers and employees.

Manila, Philippines, October 5, 1995.

(signed)	(signed)
TEOFISTO T. GUINGONA, JR.	ANIANO A. DESIERTO
Secretary	Ombudsman
Department of Justice	Office of the Ombudsman

A close examination of the circular supports the view of the respondent Ombudsman that it is just an internal agreement between the Ombudsman and the DOJ.

Sections 2 and 4, Rule 112 of the Revised Rules on Criminal Procedure on Preliminary Investigation, effective December 1, 2000, to wit:

SEC. 2. Officers authorized to conduct preliminary investigations —

The following may conduct preliminary investigations:

(a) Provincial or City Prosecutors and their assistants;

(b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;

(c) National and Regional State Prosecutors; and

(d) Other officers as may be authorized by law.

Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.

SEC. 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information, He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, *or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction*. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (italics supplied)

confirm the authority of the DOJ prosecutors to conduct preliminary investigation of criminal complaints filed with them for offenses cognizable by the proper court within their respective territorial jurisdictions, including those offenses which come within the original jurisdiction of the Sandiganbayan; but with the qualification that in offenses falling within the original jurisdiction of the Sandiganbayan, *the prosecutor shall, after their investigation, transmit the records and their resolutions to the Ombudsman or his deputy for appropriate action*. Also, the prosecutor cannot dismiss the complaint without the prior written authority of the Ombudsman or his deputy, nor can the prosecutor file an Information with the Sandiganbayan without being deputized by, and without prior written authority of the Ombudsman or his deputy.

Next, petitioner contends that under OMB-Joint Circular No. 95-001, there is no showing that the Office of the Ombudsman has deputized the prosecutors of the DOJ to conduct the preliminary investigation of the charge filed against him.

We find no merit in this argument. As we have lengthily discussed, the Constitution, the Ombudsman Act of 1989, Administrative Order No. 8 of the Office of the Ombudsman, the prevailing jurisprudence and under the Revised Rules on Criminal Procedure, all recognize and uphold the concurrent jurisdiction of the Ombudsman and the DOJ to conduct preliminary investigation on charges filed against public officers and employees.

To reiterate for emphasis, the power to investigate or conduct preliminary investigation on charges against any public officers

or employees may be exercised by an investigator or by any provincial or city prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman prosecutors. The fact that all prosecutors are in effect deputized Ombudsman prosecutors under the OMB-DOJ Circular is a mere superfluity. The DOJ Panel need not be authorized nor deputized by the Ombudsman to conduct the preliminary investigation for complaints filed with it because the DOJ's authority to act as the principal law agency of the government and investigate the commission of crimes under the Revised Penal Code is derived from the Revised Administrative Code which had been held in the *Natividad* case[13] as not being contrary to the Constitution. Thus, there is not even a need to delegate the conduct of the preliminary investigation to an agency which has the jurisdiction to do so in the first place. However, the Ombudsman may assert its primary jurisdiction at any stage of the investigation.

Petitioner's contention that OMB-DOJ Joint Circular No. 95-001 is ineffective on the ground that it was not published is not plausible. We agree with and adopt the Ombudsman's dissertation on the matter, to wit:

> Petitioner appears to be of the belief, although *NOT* founded on a proper reading and application of jurisprudence, that OMB-DOJ Joint Circular No. 95-001, an internal arrangement between the DOJ and the Office of the Ombudsman, has to be published.
>
> As early as 1954, the Honorable Court has already laid down the rule in the case of ***People vs. Que Po Lay,*** 94 Phil. 640 (1954) that only circulars and regulations which prescribe a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provision, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties: said precedent, to date, has not yet been modified or reversed. OMB-DOJ Joint Circular No. 95-001 DOES NOT contain any penal provision or prescribe a mandatory act or prohibit any, under pain or penalty.

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[13] *Supra*, Notes 12 and 13.

What is more, in the case of *Tanada v. Tuvera*, 146 SCRA 453 (1986), the Honorable Court ruled that:

> Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties. (at page 454, italics supplied)

OMB-DOJ Joint Circular No. 95-001 is merely an internal circular between the DOJ and the Office of the Ombudsman, outlining authority and responsibilities among prosecutors of the DOJ and of the Office of the Ombudsman in the conduct of preliminary investigation. OMB-DOJ Joint Circular No. 95-001 DOES NOT regulate the conduct of persons or the public, in general.

Accordingly, there is no merit to petitioner's submission that OMB-DOJ Joint Circular No. 95-001 has to be published.[14]

Petitioner insists that the Ombudsman has jurisdiction to conduct the preliminary investigation because petitioner is a public officer with salary Grade 31 so that the case against him falls exclusively within the jurisdiction of the Sandiganbayan. Considering the Court's finding that the DOJ has concurrent jurisdiction to investigate charges against public officers, the fact that petitioner holds a Salary Grade 31 position does not by itself remove from the DOJ Panel the authority to investigate the charge of *coup d'etat* against him.

The question whether or not the offense allegedly committed by petitioner is one of those enumerated in the Sandiganbayan Law that fall within the exclusive jurisdiction of the Sandiganbayan will not be resolved in the present petition so as not to pre-empt the result of the investigation being conducted by the DOJ Panel as to the questions whether or not probable cause exists to warrant the filing of the information against the petitioner; and to which court should the information be filed considering the presence of other respondents in the subject complaint.

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[14] Memorandum, pp. 35-36.

WHEREFORE, the petition for *certiorari* is *DISMISSED* for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Vitug, J., see separate opinion.

Puno, J., joins *J.* CY Santiago in her dissent.

Quisumbing, J., joins the dissents.

Ynares-Santiago and *Sandoval-Gutierrez, JJ.,* see separate dissenting opinions.

SEPARATE OPINION

VITUG, *J.*:

Preliminary investigation is an initial step in the indictment of an accused; it is a substantive right, not merely a formal or a technical requirement,[1] which an accused can avail himself of in full measure. Thus, an accused is entitled to rightly assail the conduct of an investigation that does not accord with the law. He may also question the jurisdiction or the authority of the person or agency conducting that investigation and, if bereft of such jurisdiction or authority, to demand that it be undertaken strictly in conformity with the legal prescription.[2]

The Ombudsman is empowered[3] to, among other things, investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may, at any stage, take over from any agency of Government the investigation of such cases. This statutory provision,

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[1] *Yusop vs. Sandiganbayan,* 352 SCRA 587.

[2] *Mondia, Jr. vs. Deputy Ombudsman,* 346 SCRA 365.

[3] See Republic Act No. 6770 in relation to Republic Act No. 8249.

by and large, is a restatement of the constitutional grant to the Ombudsman of the power to investigate and prosecute "any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal x x x"[4]

The Panel of Investigating Prosecutors of the Department of Justice, in taking cognizance of the preliminary investigation on charges of *coup d'etat* against petitioner Gregorio Honasan, relies on OMB-DOJ Circular No. 95-001. That joint circular must be understood as being merely a working arrangement between the Office of the Ombudsman (OMB) and the Department of Justice (DOJ) that must not be meant to be such a blanket delegation to the DOJ as to generally allow it to conduct preliminary investigation over any case cognizable by the OMB.

While Section 31 of Republic Act No. 6770 states that the Ombudsman may "designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases," the provision cannot be assumed, however, to be an undefined and broad entrustment of authority. If it were otherwise, it would be unable to either withstand the weight of burden to be within constitutional parameters or the proscription against undue delegation of powers. The deputized fiscal, state prosecutor or government lawyer must in each instance be named; the case to which the deputized official is assigned must be specified; and the investigation must be conducted under the supervision and control of the Ombudsman. The Ombudsman remains to have the basic responsibility, direct or incidental, in the investigation and prosecution of such cases.

The Sandiganbayan law[5] grants to the Sandiganbayan exclusive original jurisdiction over offenses or felonies, whether simple or complexed with other crimes, committed by the public officials, including members of Congress, in relation to their office. The

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[4] Article XI, Section 5.

[5] Republic Act No. 8249.

crime of *coup d'etat*, with which petitioner, a member of the Senate, has been charged, is said to be closely linked to his "National Recovery Program," a publication which encapsules the bills and resolutions authored or sponsored by him on the senate floor. I see the charge as being then related to and bearing on his official function.

On the above score, I vote to grant the petition.

DISSENTING OPINION

YNARES-SANTIAGO, *J.*:

The first question to answer is which court has jurisdiction to try a Senator who is accused of *coup d'etat*. Behind the simple issue is a more salient question — Should this Court allow an all too restrictive and limiting interpretation of the law rather than take a more judicious approach of interpreting the law by the spirit, which vivifies, and not by the letter, which killeth?

The elemental thrust of the Majority view is that the Department of Justice (DOJ), not the Office of the Ombudsman, has the jurisdiction to investigate the petitioner, a Senator, for the crime of *coup d'etat* pursuant to Section 4 of Presidential Decree No. 1606 as amended by Republic Act No. 8249 (Sandiganbayan Law). The Majority maintains that since the crime for which petitioner is charged falls under Section 4, paragraph (b) of the Sandiganbayan Law, it is imperative to show that petitioner committed the offense *in relation to* his office as Senator. It reasoned that since petitioner committed the felonious acts, as alleged in the complaint, not in connection with or in relation to his public office, it is the DOJ, and not the Office of the Ombudsman, which is legally tasked to conduct the preliminary investigation.

In light of the peculiar circumstances prevailing in the instant case and in consideration of the policies relied upon by the Majority, specifically, the Sandiganbayan Law and Republic Act No. 6770 (The Ombudsman Act of 1989), I submit that

the posture taken by the Majority seriously deviates from and renders nugatory the very intent for which the laws were enacted.

The crime of *coup d'etat*, if committed by members of Congress or by a public officer with a salary grade above 27, falls within the exclusive original jurisdiction of the Sandiganbayan. Section 4 of P.D. 1606, as amended, provides:

> Sec. 4. *Jurisdiction*. — The *Sandiganbayan* shall exercise exclusive original jurisdiction in all cases involving:
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> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> x x x x x x x x x
>
> (2) Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;
>
> x x x x x x x x x.

In the case of *Lacson v. Executive Secretary*,[1] we clarified the exclusive original jurisdiction of the Sandiganbayan pursuant to Presidential Decree ("PD") No. 1606, as amended by Republic Act ("RA") Nos. 7975 and 8249, and made the following definitive pronouncements:

> Considering that herein petitioner and intervenors are being charged with murder which is a felony punishable under Title VIII of the Revised Penal Code, the governing provision on the jurisdictional offense is not paragraph a but paragraph b, Section 4 of R.A. 8249. This paragraph b pertains to "other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of [Section 4, R.A. 8249] in relation to their office." The phrase "other offenses or felonies" is too broad as to include the crime of murder, provided it was

[1] G.R. No. 128096, 20 January 1999, 301 SCRA 298.

committed in relation to the accused's official functions. Thus, under said paragraph b, what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender — that is, whether he is one of those public officers or employees enumerated in paragraph a of Section 4. The offenses mentioned in paragraphs a, b and c of the same Section 4 do not make any reference to the criminal participation of the accused public officer as to whether he is charged as a principal, accomplice or accessory. In enacting R.A. 8249, the Congress simply restored the original provisions of P.D. 1606 which does not mention the criminal participation of the public officer as a requisite to determine the jurisdiction of the Sandiganbayan.

As worded, the Sandiganbayan Law requires that for a felony, *coup d'etat* in this case, to fall under the exclusive jurisdiction of the Sandiganbayan, two requisites must concur, namely: (1) that the public officer or employee occupies the position corresponding to Salary Grade 27 or higher; and (2) that the crime is committed by the public officer or employee in relation to his office. Applying the law to the case at bar, the Majority found that although the first requirement has been met, the second requirement is wanting. I disagree.

Following its definition, *coup d'etat* can only be committed by members of the military or police or holding any public office or employment, with or without civilian support. Article 134-A of the Revised Penal Code states:

> Article 134-A. *Coup d'etat*. — How committed. — The crime of *coup d'etat* is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment, with or without civilian support or participation for the purpose of seizing or diminishing state power.

A coup consists mainly of the military personnel and public officers and employees seizing the controlling levers of the state, which is then used to displace the government from its

control of the remainder. As defined, it is a swift attack directed against the duly constituted authorities or vital facilities and installations to seize state power. It is therefore inherent in *coup d'etat* that the crime be committed "in relation to" the office of a public officer or employee. The violence, intimidation, threat, strategy or stealth which are inherent in the crime can only be accomplished by those who possess a degree of trust reposed on such person in that position by the Republic of the Philippines. It is by exploiting this trust that the swift attack can be made. Since the perpetrators take advantage of their official positions, it follows that *coup d'etat* can be committed only through acts directly or intimately related to the performance of official functions, and the same need not be proved since it inheres in the very nature of the crime itself.

It is contended by public respondent that the crime of *coup d'etat* cannot be committed "in relation" to petitioner's office, since the performance of legislative functions does not include its commission as part of the job description. To accommodate this reasoning would be to render erroneous this Court's ruling in *People v. Montejo*[2] that "although public office is not an element of the crime of murder in [the] abstract," the facts in a particular case may show that ". . . the offense therein charged is intimately connected with [the accuseds'] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions." Simply put, *if murder can be committed in the performance of official functions, so can the crime of coup d'etat*.

The Ombudsman is wrong when he says that legislative function is only "to make laws, and to alter and repeal them." The growing complexity of our society and governmental structure has so revolutionized the powers and duties of the legislative body such that its members are no longer confined to making laws. They can perform such other functions, which are, strictly speaking, not within the ambit of the traditional legislative powers, for instance, to canvass presidential elections, give concurrence

[2] 108 Phil. 613 [1960].

to treaties, to propose constitutional amendments as well as oversight functions. As an incident thereto and in pursuance thereof, members of Congress may deliver privilege speeches, interpellations, or simply inform and educate the public in respect to certain proposed legislative measures.

The complaint alleges that the meeting on June 4, 2003 of the alleged coup plotters involved a discussion on the issues and concerns within the framework of the National Recovery Program (NRP), a bill which petitioner authored in the Senate. The act of the petitioner in ventilating the ails of the society and extolling the merits of the NRP is part of his duties as legislator not only to inform the public of his legislative measures but also, as a component of the national leadership, to find answers to the many problems of our society. One can see therefore that Senator Honasan's acts were "in relation to his office."

It is true that not every crime committed by a high-ranking public officer falls within the exclusive original jurisdiction of the Sandiganbayan. It is also true that there is *no* public office or employment that includes the commission of a crime as part of its job description. However, to follow this latter argument would mean that there would be *no* crime falling under Section 4, paragraph (b) PD No. 1606, as amended. This would be an undue truncation of the Sandiganbayan's exclusive original jurisdiction and contrary to the plain language of the provision.

Only by a reasonable interpretation of the scope and breadth of the term "offense committed in relation to [an accused's] office" in light of the broad powers and functions of the office of Senator, can we subserve the very purpose for which the Sandiganbayan and the Office of the Ombudsman were created.

The *raison d' etre* for the creation of the Office of the Ombudsman in the 1987 Constitution and for the grant of its broad investigative authority, is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure

and influence, quash, delay, or dismiss investigations into malfeasances, and misfeasances committed by public officers.[3]

In similar vein, the Constitution provides for the creation of the Sandiganbayan to attain the highest norms of official conduct required of public officers and employees. It is a special court that tries cases involving public officers and employees that fall within specific salary levels. Thus, Section 4 of the Sandiganbayan Law makes it a requirement that for offenses to fall under the exclusive jurisdiction of the Sandiganbayan, the public officer involved must occupy a position equivalent to Salary Grade 27 or higher. This salary grade requirement is not a product of whim or an empty expression of fancy, but a way to ensure that offenses which spring from official abuse will be tried by a judicial body insulated from official pressure and unsusceptible to the blandishments, influence and intimidation from those who seek to subvert the ends of justice.

If we were to give our assent to respondent's restrictive interpretation of the term "in relation to his office," we would be creating an awkward situation wherein a powerful member of Congress will be investigated by the DOJ which is an adjunct of the executive department, and tried by a regular court which is much vulnerable to outside pressure. Contrarily, a more liberal approach would bring the case to be investigated and tried by specialized Constitutional bodies and, thus ensure the integrity of the judicial proceedings.

Second, the "primary jurisdiction" of the Office of the Ombudsman to conduct the preliminary investigation of an offense within the exclusive original jurisdiction of the Sandiganbayan operates as a *mandate* on the Office of the Ombudsman, especially when the person under investigation is a member of Congress. The Ombudsman's refusal to exercise such authority, relegating the conduct of the preliminary investigation of I.S. No. 2003-1120 to the respondent Investigating Panel appointed by the Department of Justice ("DOJ") under DOJ Department

[3] *Deloso vs. Domingo,* G.R. No. 90591, 21 November 1990, 191 SCRA 545, 550-551.

Order No. 279, s. 2003, is a dereliction of a duty imposed by no less than the Constitution.

Insofar as the investigation of said crimes is concerned, I submit that the same belongs to the primary jurisdiction of the Ombudsman. RA No. 6770 or the Ombudsman Act of 1989, empowers the Ombudsman to conduct the investigation of cases involving illegal acts or omissions committed by any public officer or employee. Section 15, paragraph (1) of the Ombudsman Act of 1989 provides:

SECTION 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

1. Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases; x x x[4]

In *Uy v. Sandiganbayan*,[5] the extent and scope of the jurisdiction of the Office of the Ombudsman to conduct investigations was described as:

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. The law does not make a distinction between cases cognizable by the Sandiganbayan and those cognizable by regular courts. It has been held that the clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.

The reference made by RA 6770 to cases cognizable by the Sandiganbayan, particularly in Section 15(1) giving the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan, and Section 11(4) granting the Special Prosecutor the power to conduct preliminary investigation and prosecute criminal cases within the

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[4] Rep. Act No. 6770, Sec. 15, par. (1).

[5] G.R. Nos. 105965-70, *En Banc Resolution on Motion for Further Clarification,* 20 March 2001, 354 SCRA 651.

jurisdiction of the Sandiganbayan, should not be construed as confining the scope of the investigatory and prosecutory power of the Ombudsman to such cases.

The "primary jurisdiction" of the Office of the Ombudsman in cases cognizable by the Sandiganbayan was reiterated in *Laurel v. Desierto*:[6]

> Section 15 of RA 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. The law defines such primary jurisdiction as authorizing the Ombudsman "to take over, at any stage, from any investigatory agency of the government, the investigation of such cases." The grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers and employees cognizable by other courts. The exercise by the Ombudsman of his primary jurisdiction over cases cognizable by the Sandiganbayan is not incompatible with the discharge of his duty to investigate and prosecute other offenses committed by public officers and employees. Indeed, it must be stressed that the powers granted by the legislature to the Ombudsman are very broad and encompass all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office.

"Primary Jurisdiction" usually refers to cases involving specialized disputes where the practice is to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. This Court has said that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal before the question is resolved by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered.[7] The objective of the doctrine

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[6] G.R. No. 145368, 12 April 2002.

[7] *Fabia v. Court of Appeals*, G.R. No. 132684, 11 September 2002, citing *Saavedra v. SEC*, citing *Pambujan Sur United Mine Workers v. Samar Mining Co. Inc.*, 94 Phil. 932 (1954).

of primary jurisdiction is "to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court."[8] It applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.[9]

Where the concurrent authority is vested in *both* the Department of Justice and the Office of the Ombudsman, the doctrine of primary jurisdiction should operate to restrain the Department of Justice from exercising its investigative authority if the case will likely be cognizable by the Sandiganbayan. In such cases, the Office of the Ombudsman should be the proper agency to conduct the preliminary investigation over such an offense, it being vested with the specialized competence and undoubted probity to conduct the investigation.

The urgent need to follow the doctrine is more heightened in this case where the accused is a member of Congress. The DOJ is under the supervision and control of the Office of the President; in effect, therefore, the investigation would be conducted by the Executive over a member of a co-equal branch of government. It is precisely for this reason that the independent constitutional Office of the Ombudsman should conduct the preliminary investigation. Senator Honasan is a member of the political opposition. His right to a preliminary investigation by a fair and uninfluenced body is sacred and should not be denied. As we stated in the *Uy* case:

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[8] *Fabia v. Court of Appeals*, G.R. No. 132684, 11 September 2002, citing *Quintos, Jr. v. National Stud Farm,* No. L-37052, 29 November 1973, 54 SCRA 210.

[9] *Fabia v. Court of Appeals, supra*, citing *Industrial Enterprise v. Court of Appeals*, G.R. No. 88550, 18 April 1990, 184 SCRA 426.

The prosecution of offenses committed by public officers and employees is one of the most important functions of the Ombudsman. In passing RA 6770, the Congress deliberately endowed the Ombudsman with such power to make him a more active and effective agent of the people in ensuring accountability in public office. A review of the development of our Ombudsman laws reveals this intent.

These pronouncements are in harmony with the constitutional mandate of the Office of the Ombudsman, as expressed in Article XI of the Constitution:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, *shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any agency, subdivision or instrumentality thereof,* including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the actions taken and the result thereof. (Italics supplied.)

SECTION 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. x x x.

Coupled with these provisions, Section 13 of the Ombudsman Act of 1989 provides:

SECTION 13. *Mandate*. — The Ombudsman and his Deputies, as *protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof,* including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (Italics supplied)

The Constitution and the Ombudsman Act of 1989 *both* mention, unequivocally, that the Office of the Ombudsman has the *duty and mandate* to act on the complaints filed against officers or employees of the Government. It is imperative that

this duty be exercised in order to make real the role of the Office of the Ombudsman as a defender of the people's interests specially in cases like these which have partisan political taint.

For the foregoing reasons, I vote to *GRANT* the petition.

DISSENTING OPINION

SANDOVAL-GUTIERREZ, *J.*:

I am constrained to dissent from the majority opinion for the following reasons: (1) it evades the consequence of the statutory definition of the crime of *coup d'etat*; (2) it violates the principle of *stare decisis* without a clear explanation why the established doctrine has to be re-examined and reversed; and (3) it trivializes the importance of two constitutional offices — the Ombudsman and the Senate — and in the process, petitioner's right to due process has been impaired.

I

It is an established principle that an act no matter how offensive, destructive, or reprehensible, is not a crime unless it is defined, prohibited, and punished by law. The prosecution and punishment of any criminal offense are necessarily circumscribed by the specific provision of law which defines it.

Article 134-A of the Revised Penal Code defines *coup d'etat*, thus:

"Article 134-A. *Coup d'etat*. — How committed. — The crime of *coup d'etat* is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment with or without civilian support or participation for the purpose of seizing or diminishing state power."

There is no question that Senator Honasan, herein petitioner, holds a high public office. If he is charged with *coup d'etat*, it has to be in his capacity as a public officer committing the alleged offense in relation to his public office.

The complaint filed with the Department of Justice alleges the events supposedly constituting the crime of *coup d'etat*, thus:

1. On 04 June 2003, Senator Honasan presided over a meeting held "somewhere in San Juan, Metro Manila."

2. After dinner, Senator Honasan, as presiding officer, "discussed the NRP (National Recovery Program), the graft and corruption in the government, including the military institutions, the judiciary, the executive department, and the like."

3. "The discussion concluded that we must use force, violence and armed struggle to achieve the vision of NRP x x x Senator Honasan countered that 'we will never achieve reforms through the democratic processes because the people who are in power will not give up their positions as they have their vested interests to protect.' x x x Senator Honasan replied *'kung kaya nating pumatay sa ating mga kalaban, kaya din nating pumatay sa mga kasamahang magtataksil.' x x x"*

4. In the course of the meeting, Senator Honasan presented the plan of action to achieve the goals of the NRP, *i.e.*, overthrow of the government under the present leadership thru armed revolution and after which, a junta will be constituted to run the new government.

5. The crime of *coup d'etat* was committed on 27 July 2003 by military personnel who occupied Oakwood. Senator Honasan and various military officers, one member of his staff, and several John Does and Jane Does were involved in the Oakwood incident.

The above allegations determine whether or not petitioner committed the alleged crime as a public officer "in relation to his office." If it was in relation to his office, the crime falls under the exclusive original jurisdiction of the Sandiganbayan. It is the Ombudsman who has the *primary jurisdiction* to investigate and prosecute the complaint for *coup d'etat*, thus:

Section 4 of P.D. No. 1606, as amended, defines the jurisdiction of the Sandiganbayan as follows:

"SECTION 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

"a. Violations of Republic No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensations and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the Sangguniang Panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;

(b) City mayors, vice-mayors, members of the Sangguniang Panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine Army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

(2) Members of Congress or officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairman and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution;

(5) All other national and local officials classified as Grade '27' or higher under the Compensation and Position Classification Act of 1989.

"b. *Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in Subsection a of this section in relation to their office.*

"c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986."

Section 15 of Republic Act 6770, or the Ombudsman Act of 1989, provides:

"1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has *primary jurisdiction* over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases; x x x" (italics supplied)

Under the above provisions, what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender, that is, whether he is one of those public officers enumerated therein.

Petitioner, being a Senator, occupies a government position higher than Grade 27 of the Compensation and Position Classification Act of 1989. In fact, he holds the third highest position and rank in the Government. At the apex, the President

stands alone. At the second level, we have the Vice-President, Speaker of the House, Senate President and Chief Justice. Clearly, he is embraced in the above provisions.

Following the doctrine of "primary jurisdiction," it is the Ombudsman who should conduct the preliminary investigation of the charge of *coup d'etat* against petitioner. The DOJ should refrain from exercising such function.

The crux of the jurisdiction of the DOJ lies in the meaning of "in relation to their office."

The respondents start their discussion of "in relation to public office" with a peculiar presentation. They contend that the duties of a Senator are to make laws, to appropriate, to tax, to expropriate, to canvass presidential elections, to declare the existence of a state of war, to give concurrence to treaties and amnesties, to propose constitutional amendments, to impeach, to investigate in aid of legislation, and to determine the Senate rules of proceedings and discipline of its members. They maintain that the "alleged acts done to overthrow the incumbent government and authorities by arms and with violence" cannot be qualified as "acts reminiscent of the discharge of petitioner's legislative duties as Senator."[1]

The allegations in the complaint and in the pleadings of the DOJ, the Solicitor General, and the Ombudsman (who is taking their side) charging petitioner with *coup d'etat* show that he was engaged in a discussion of his National Recovery Program (NRP), corruption in government, and the need for reform. The NRP is a summary of what he has introduced and intended to introduce into legislation by Congress. There is no doubt, therefore, that the alleged *coup d'etat* was committed in relation to the performance of his official duty as a Senator.

II

The *ponencia* is a departure or reversion from established doctrine. Under the principle of *stare decisis,* the Court should,

[1] Memorandum of the Ombudsman, pp. 13 to 15; Memorandum of the DOJ Panel, pp. 15 to 18.

for the sake of certainty, apply a conclusion reached in one case to decisions which follow, if the facts are substantially similar. As stated in *Santiago vs. Valenzuela*,[2] *stare decisi et non quieta movere*. Stand by the decisions and disturb not what is settled.

In *Deloso vs. Domingo*,[3] where the Governor of Zambales and his military and police escorts ambushed the victims who were passing by in a car, we held that the multiple murders were committed in relation to public office. In *Cunanan vs. Arceo*,[4] the mayor ordered his co-accused to shoot the victims. We ruled that the murder was in relation to public office. In *Alarilla vs. Sandiganbayan*,[5] the town mayor aimed a gun and threatened to kill a councilor of the municipality during a public hearing. We concluded that the grave threats were in relation to the mayor's office. Following these precedents, I am convinced that petitioner's discourse on his National Recovery Program is in relation to his office.

III

The respondents state that the DOJ is vested with jurisdiction to conduct *all* investigations and prosecution of *all* crimes. They cite PD 1275, as amended by PD 1513, and the Revised Administrative Code of 1987 as the source of this plenary power.

While the DOJ has a broad general jurisdiction over crimes found in the Revised Penal Code and special laws, however, this jurisdiction is not plenary or total. Whenever the Constitution or statute vests jurisdiction over the investigation and prosecution of certain crimes in an office, the DOJ has no jurisdiction over those crimes. In election offenses, the Constitution vests the power to investigate and prosecute in the Commission on

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[2] 78 Phil. 397 (1947).

[3] G.R. No. 90591, November 21, 1990, 191 SCRA 545.

[4] G.R. No. L-11615, March 1, 1995, 242 SCRA 88.

[5] G.R. No. 136806, August 22, 2000, 338 SCRA 485.

Elections.[6] In crimes committed by public officers in relation to their office, the Ombudsman is given by both the Constitution and the statute the same power of investigation and prosecution.[7] These powers may not be exercised by the DOJ.

The DOJ cannot pretend to have investigatory and prosecutorial powers above those of the Ombudsman. The Ombudsman is a constitutional officer with a rank equivalent to that of an Associate Justice of this Court. The respondent's Prosecution Office investigates and prosecutes all kinds of offenses from petty crimes, like vagrancy or theft, to more serious crimes, such as those found in the Revised Penal Code. The Ombudsman, on the other hand, prosecutes offenses in relation to public office committed by public officers with the rank and position classification of Grade 27 or higher. It is a special kind of jurisdiction which excludes general powers of other prosecutory offices.

I agree with the petitioner that a becoming sense of courtesy, respect, and propriety requires that the constitutional officer should conduct the preliminary investigation and prosecution of the complaint against him and not a fifth assistant city prosecutor or even a panel of prosecutors from the DOJ National Prosecution Service.

I do not believe that a mere agreement, such as OMB-DOJ Joint Circular No. 95-001, can fully transfer the prosecutory powers of the Ombudsman to the DOJ without need for *deputization in specific cases.* As stated by the petitioner, the DOJ cannot be given a roving commission or authority to investigate and prosecute cases falling under the Ombudsman's powers anytime the DOJ pleases without any special and explicit deputization. On this point, I agree with Justice Jose C. Vitug that the Joint Circular must be understood as a mere working arrangement between the Office of the Ombudsman and the

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[6] Section 2[6], Art. IX-C, Constitution.

[7] Section 13(1), Art. XI, *id*.; Section 4, PD 1606, as amended; Section 15, R.A. 6770.

DOJ that must not be meant to be such a blanket delegation to the DOJ as to generally allow it to conduct preliminary investigation over any case cognizable by the Ombudsman.

Petitioner further raises a due process question. He accuses the DOJ of bias, partiality, and prejudgment. He states that he has absolutely no chance of being cleared by the respondent DOJ panel because it has already decided, before any presentation of proof, that he must be charged and arrested without bail.

As stated by the petitioner, there are precedents to the effect that where bias exists, jurisdiction has to be assumed by a more objective office. In *Panlilio vs. Sandiganbayan*,[8] we recognized that the PCGG has the authority to investigate the case, yet we ordered the transfer of the case to the Ombudsman because of the PCGG's "marked bias" against the petitioner.

In *Conjuangco vs. PCGG*,[9] we held that there is a denial of due process where the PCGG showed "marked bias" in handling the investigation. In *Salonga vs. Cruz Paño*,[10] where the preliminary investigation was tainted by bias and partiality, we emphasized the right of an accused to be free, not only from arbitrary arrest and punishment but also from unwarranted and biased prosecution.

The petitioner's pleadings show the proofs of alleged bias. They may be summarized as follows:

First, on July 27, 2003 when the Oakwood incident was just starting, DILG Secretary Lina and National Security Adviser Roilo Golez went on a media barrage accusing petitioner of complicity without a shred of evidence.

Second, petitioner was approached by Palace emissaries, Velasco, Defensor, Tiglao, and Afable to help defuse the incident and ask mutineers to surrender. Then the request was distorted to make it appear that he went there to save his own skin.

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[8] G.R. No. 92276, June 26, 1992, 210 SCRA 421.

[9] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

[10] G.R. No. 59524, February 18, 1985, 134 SCRA 438.

Third, even before any charge was filed, officials of the DOJ were on an almost daily media program prematurely proclaiming petitioner's guilt. How can the DOJ conduct an impartial and fair investigation when it has already found him guilty?

Fourth, petitioner was given five days to answer Matillano's complaint but later on, it was shortened to three days.

Fifth, petitioner filed a 30 page Reply but the DOJ Order was issued at once, or only after two days, or on Sept. 10, 2003. The Order did not discuss the Reply, but perfunctorily glossed over and disregarded it.

The petitioner states that the DOJ is constitutionally and factually under the control of the President. He argues that:

"No questionable prosecution of an opposition Senator who has declared himself available for the Presidency would be initiated without the instigation, encouragement or approval of officials at the highest levels of the Administration. Justice requires that the Ombudsman, an independent constitutional office, handle the investigation and prosecution of this case. The DOJ cannot act fairly and independently in this case. In fact, all of the actions the DOJ has taken so far have been marked by bias, hounding and persecution.

And finally, the charges laid against Senator Honasan are unfounded concoctions of fertile imaginations. The petitioner had no role in the Oakwood mutiny except the quell and pacify the angry young men fighting for a just cause. Inspiration perhaps, from his National Recovery Program, but no marching orders whatsoever."

Prosecutors, like Caesar's wife, must be beyond suspicion. Where the test of the cold neutrality required of them cannot be met, they must yield to another office especially where their jurisdiction is under question. The tenacious insistence of respondents in handling the investigation of the case and their unwillingness to transfer it to the Ombudsman in the face of their questionable jurisdiction are indications of marked bias.

WHEREFORE, I vote to *GRANT* the petition and to order the Department of Justice to refrain from conducting preliminary investigation of the complaint for *coup d'etat* against petitioner for lack of jurisdiction.

EN BANC

[G.R. No. 161872. April 13, 2004]

REV. ELLY VELEZ PAMATONG, ESQUIRE, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYNOPSIS

Petitioner filed his Certificate of Candidacy for President, however the respondent refused to give it due course. The respondent denied the petitioner's subsequent motion for reconsideration and declared him a nuisance candidate. Hence, this petition for *certiorari* alleging, among others, that the respondent's resolutions were violative of his right to "equal access to opportunities for public service" under Section 26, Article II of the 1987 Constitution.

The Supreme Court ruled that there is no constitutional right to run for or hold public office and, particularly in this case, to seek the presidency. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows a right nor elevates the privilege to the level of an enforceable right. Like the rest of the policies enumerated in Article II, the "equal access" provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. The disregard of the provision does not give rise to any cause of action before the courts.

The Court likewise held that the rationale behind the prohibition against nuisance candidates and the disqualification of candidates for office is to ensure a rational, objective and orderly electoral exercises.

The question of whether a candidate is a nuisance candidate or not is both legal and factual. Thus, the Court ordered the remand of the case to the Commission on Elections for the reception of further evidence to determine the question on whether petitioner is a nuisance candidate as contemplated in Section 69 of the Omnibus Election Code.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; SECTION 26, ARTICLE II OF THE 1987 CONSTITUTION; THE PROVISION ON EQUAL ACCESS TO OPPORTUNITIES TO PUBLIC OFFICE DOES NOT BESTOW A RIGHT NOR ELEVATE THE PRIVILEGE TO THE LEVEL OF AN ENFORCEABLE RIGHT.— Implicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for public office" is the claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort. The "equal access" provision is a subsumed part of Article II of the Constitution, entitled "Declaration of Principles and State Policies." The provisions under the Article are generally considered not self-executing, and there is no plausible reason for according a different treatment to the "equal access" provision. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. The disregard of the provision does not give rise to any cause of action before the courts. Moreover, the provision as written leaves much to be desired if it is to be regarded as the source of positive rights. It is difficult to interpret the clause as operative in the absence of legislation since its effective means and reach are not properly defined. Broadly written, the myriad of claims that can be subsumed under this rubric appear to be entirely open-ended. Words and phrases such as "equal access," "opportunities," and "public service" are susceptible to countless interpretations owing to their inherent impreciseness. Certainly, it was not the intention of the framers to inflict on the people an operative but amorphous foundation from which innately unenforceable rights may be sourced.

2. ID.; ID.; ID.; THE EQUAL ACCESS CLAUSE IS NOT VIOLATED WHEN LIMITATIONS APPLY TO EVERYBODY EQUALLY

WITHOUT DISCRIMINATION.— [T]he privilege of equal access to opportunities to public office may be subjected to limitations. Some valid limitations specifically on the privilege to seek elective office are found in the provisions of the Omnibus Election Code on "Nuisance Candidates" and COMELEC Resolution No. 6452 dated December 10, 2002 outlining the instances wherein the COMELEC may *motu proprio* refuse to give due course to or cancel a *Certificate of Candidacy*. As long as the limitations apply to everybody equally without discrimination, however, the equal access clause is not violated. Equality is not sacrificed as long as the burdens engendered by the limitations are meant to be borne by any one who is minded to file a certificate of candidacy. In the case at bar, there is no showing that any person is exempt from the limitations or the burdens which they create.

3. ID.; ELECTION LAWS; NUISANCE CANDIDATES; THE DETERMINATION THEREOF INVOLVES BOTH LEGAL AND FACTUAL QUESTIONS. — The question of whether a candidate is a nuisance candidate or not is both legal and factual. The basis of the factual determination is not before this Court. Thus, the remand of this case for the reception of further evidence is in order.

4. ID.; ID.; ID.; PROHIBITION AGAINST NUISANCE CANDIDATES AND THE DISQUALIFICATION OF CANDIDATES WHO HAVE NOT EVINCED A *BONA FIDE* INTENTION TO RUN FOR OFFICE; RATIONALE.— The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook

example of inefficiency, but a rot that erodes faith in our democratic institutions.

5. ID.; ID.; ID.; THE PREPARATION OF BALLOTS IS BUT ONE ASPECT THAT WOULD BE AFFECTED BY ALLOWANCE OF NUISANCE CANDIDATES TO RUN IN THE ELECTIONS.— The preparation of ballots is but one aspect that would be affected by allowance of "nuisance candidates" to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place, watchers in the board of canvassers, or even the receipt of electoral contributions. Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election. Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.

R E S O L U T I O N

TINGA, *J.*:

Petitioner Rev. Elly Velez Pamatong filed his *Certificate of Candidacy* for President on December 17, 2003. Respondent Commission on Elections (COMELEC) refused to give due course to petitioner's *Certificate of Candidacy* in its *Resolution No. 6558* dated January 17, 2004. The decision, however, was not unanimous since Commissioners Luzviminda G. Tancangco and Mehol K. Sadain voted to include petitioner as they believed he had parties or movements to back up his candidacy.

On January 15, 2004, petitioner moved for reconsideration of *Resolution No. 6558.* Petitioner's *Motion for Reconsideration* was docketed as SPP (MP) No. 04-001. The COMELEC, acting

on petitioner's *Motion for Reconsideration* and on similar motions filed by other aspirants for national elective positions, denied the same under the aegis of *Omnibus Resolution No. 6604* dated February 11, 2004. The COMELEC declared petitioner and thirty-five (35) others nuisance candidates who could not wage a nationwide campaign and/or are not nominated by a political party or are not supported by a registered political party with a national constituency. Commissioner Sadain maintained his vote for petitioner. By then, Commissioner Tancangco had retired.

In this *Petition For Writ of Certiorari*, petitioner seeks to reverse the resolutions which were allegedly rendered in violation of his right to "equal access to opportunities for public service" under Section 26, Article II of the 1987 Constitution,[1] by limiting the number of qualified candidates only to those who can afford to wage a nationwide campaign and/or are nominated by political parties. In so doing, petitioner argues that the COMELEC indirectly amended the constitutional provisions on the electoral process and limited the power of the sovereign people to choose their leaders. The COMELEC supposedly erred in disqualifying him since he is the most qualified among all the presidential candidates, *i.e.*, he possesses all the constitutional and legal qualifications for the office of the president, he is capable of waging a national campaign since he has numerous national organizations under his leadership, he also has the capacity to wage an international campaign since he has practiced law in other countries, and he has a platform of government. Petitioner likewise attacks the validity of the form for the *Certificate of Candidacy* prepared by the COMELEC. Petitioner claims that the form does not provide clear and reasonable guidelines for determining the qualifications of candidates since it does not ask for the candidate's bio-data and his program of government.

First, the constitutional and legal dimensions involved.

Implicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for public office" is the

[1] SEC. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort.

The "equal access" provision is a subsumed part of Article II of the Constitution, entitled "Declaration of Principles and State Policies." The provisions under the Article are generally considered not self-executing,[2] and there is no plausible reason for according a different treatment to the "equal access" provision. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action.[3] The disregard of the provision does not give rise to any cause of action before the courts.[4]

An inquiry into the intent of the framers[5] produces the same determination that the provision is not self-executory. The original

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[2] See *Basco v. PAGCOR*, G.R. No. 91649, May 14, 1991, 197 SCRA 52, 68; *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, 246 SCRA 540, 564. "A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing." *Manila Prince Hotel v. GSIS*, G.R. No. 122156, 3 February 1997, 267 SCRA 408, 431. "Accordingly, [the Court has] held that the provisions in Article II of our Constitution entitled "Declaration of Principles and State Policies" should generally be construed as mere statements of principles of the State." Justice Puno, *dissenting*, *Manila Prince Hotel v. GSIS, Id.* at 474.

[3] See *Kilosbayan Inc. v. Morato*, G.R. No. 118910, 16 November 1995, 250 SCRA 130, 138. *Manila Prince Hotel v. GSIS, supra* note 2 at 436.

[4] *Kilosbayan, Inc. v. Morato, supra* note 2.

[5] "A searching inquiry should be made to find out if the provision is intended as a present enactment, complete in itself as a definitive law, or if it needs future legislation for completion and enforcement. The inquiry demands a micro-analysis and the context of the provision in question." *J*. Puno, *dissenting*, *Manila Prince Hotel v. GSIS, supra* note 2.

wording of the present Section 26, Article II had read, "The State shall broaden opportunities to public office and prohibit public dynasties."[6] Commissioner (now Chief Justice) Hilario Davide, Jr. successfully brought forth an amendment that changed the word "broaden" to the phrase "ensure equal access," and the substitution of the word "office" to "service." He explained his proposal in this wise:

> I changed the word "broaden" to "ENSURE EQUAL ACCESS TO" because what is important would be equal access to the opportunity. *If you broaden, it would necessarily mean that the government would be mandated to create as many offices as are possible to accommodate as many people as are also possible.* That is the meaning of broadening opportunities to public service. *So, in order that we should not mandate the State to make the government the number one employer and to limit offices only to what may be necessary and expedient yet offering equal opportunities to access to it, I change the word "broaden."*[7] (italics supplied)

Obviously, the provision is not intended to compel the State to enact positive measures that would accommodate as many people as possible into public office. The approval of the "Davide amendment" indicates the design of the framers to cast the provision as simply enunciatory of a desired policy objective and not reflective of the imposition of a clear State burden.

Moreover, the provision as written leaves much to be desired if it is to be regarded as the source of positive rights. It is difficult to interpret the clause as operative in the absence of legislation since its effective means and reach are not properly defined. Broadly written, the myriad of claims that can be subsumed under this rubric appear to be entirely open-ended.[8] Words

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[6] J. Bernas, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* (1995), p. 148.

[7] IV RECORDS OF PROCEEDINGS AND DEBATES, 1986 CONSTITUTIONAL COMMISSION 945.

[8] See *J. Feliciano,* concurring, *Oposa v. Factoran, Jr.,* G.R. No. 101083, 30 July 1993, 224 SCRA 792, 815.

and phrases such as "equal access," "opportunities," and "public service" are susceptible to countless interpretations owing to their inherent impreciseness. Certainly, it was not the intention of the framers to inflict on the people an operative but amorphous foundation from which innately unenforceable rights may be sourced.

As earlier noted, the privilege of equal access to opportunities to public office may be subjected to limitations. Some valid limitations specifically on the privilege to seek elective office are found in the provisions[9] of the Omnibus Election Code on "Nuisance Candidates" and COMELEC Resolution No. 6452[10] dated December 10, 2002 outlining the instances wherein the COMELEC

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[9] Section 69. *Nuisance Candidates*. — The Commission may, *motu proprio* or upon a verified petition of an interested party, refuse to give due course or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

[10] SEC. 6. *Motu Proprio Cases*. — The Commission may, at any time before the election, *motu proprio* refuse to give due course to or cancel a certificate of candidacy of any candidate for the positions of President, Vice-President, Senator and Party-list:

I. The grounds:

a. Candidates who, on the face of their certificate of candidacy, do not possess the constitutional and legal qualifications of the office to which they aspire to be elected;

b. Candidate who, on the face of said certificate, filed their certificate of candidacy to put the election process in mockery or disrepute;

c. Candidates whose certificate of candidacy could cause confusion among the voters by the similarity of names and surnames with other candidates; and

d. Candidates who have no *bona fide* intention to run for the office for which the certificate of candidacy had been filed or acts that clearly demonstrate the lack of such *bona fide* intention, such as:

may *motu proprio* refuse to give due course to or cancel a *Certificate of Candidacy*.

As long as the limitations apply to everybody equally without discrimination, however, the equal access clause is not violated. Equality is not sacrificed as long as the burdens engendered by the limitations are meant to be borne by any one who is minded to file a certificate of candidacy. In the case at bar, there is no showing that any person is exempt from the limitations or the burdens which they create.

Significantly, petitioner does not challenge the constitutionality or validity of Section 69 of the Omnibus Election Code and COMELEC Resolution No. 6452 dated 10 December 2003. Thus, their presumed validity stands and has to be accorded due weight.

Clearly, therefore, petitioner's reliance on the equal access clause in Section 26, Article II of the Constitution is misplaced.

The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated

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d.1 Candidates who do not belong to or are not nominated by any registered political party of national constituency;

d.2 Presidential, Vice-Presidential [candidates] who do not present running mates for vice-president, respectively, nor senatorial candidates;

d.3 Candidates who do not have a platform of government and are not capable of waging a nationwide campaign.

electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. As the United States Supreme Court held:

> [T]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot — the interest, if no other, in avoiding confusion, deception and even frustration of the democratic [process].[11]

The COMELEC itself recognized these practical considerations when it promulgated *Resolution No. 6558* on 17 January 2004, adopting the study Memorandum of its Law Department dated 11 January 2004. As observed in the COMELEC's *Comment*:

> There is a need to limit the number of candidates especially in the case of candidates for national positions because the election process becomes a mockery even if those who cannot clearly wage a national campaign are allowed to run. Their names would have to be printed in the Certified List of Candidates, Voters Information Sheet and the Official Ballots. These would entail additional costs to the government. For the official ballots in automated counting and canvassing of votes, an additional page would amount to more or less FOUR HUNDRED FIFTY MILLION PESOS (₱450,000,000.00).
>
> x x x [I]t serves no practical purpose to allow those candidates to continue if they cannot wage a decent campaign enough to project the prospect of winning, no matter how slim.[12]

The preparation of ballots is but one aspect that would be affected by allowance of "nuisance candidates" to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place,[13] watchers

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[11] *Jenness v. Fortson*, 403 U.S. 431 (1971).

[12] *Rollo*, p. 469.

[13] See Section 178, Omnibus Election Code, as amended.

in the board of canvassers,[14] or even the receipt of electoral contributions.[15] Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election.

Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.

Owing to the superior interest in ensuring a credible and orderly election, the State could exclude nuisance candidates and need not indulge in, as the song goes, "their trips to the moon on gossamer wings."

The Omnibus Election Code and COMELEC Resolution No. 6452 are cognizant of the compelling State interest to ensure orderly and credible elections by excising impediments thereto, such as nuisance candidacies that distract and detract from the larger purpose. The COMELEC is mandated by the Constitution with the administration of elections[16] and endowed with considerable latitude in adopting means and methods that will ensure the promotion of free, orderly and honest elections.[17] Moreover, the Constitution guarantees that only *bona fide* candidates for public office shall be

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[14] See Section 239, Omnibus Election Code, as amended.

[15] See Article XI, Omnibus Election Code, as amended.

[16] See Section 2(1), Article IX, Constitution.

[17] *Sanchez v. COMELEC*, 199 Phil. 617 (1987), citing *Cauton v. COMELEC*, G.R. No. L-25467, 27 April 1967, 19 SCRA 911.

free from any form of harassment and discrimination.[18] The determination of *bona fide* candidates is governed by the statutes, and the concept, to our mind is, satisfactorily defined in the Omnibus Election Code.

Now, the needed factual premises.

However valid the law and the COMELEC issuance involved are, their proper application in the case of the petitioner cannot be tested and reviewed by this Court on the basis of what is now before it. The assailed resolutions of the COMELEC do not direct the Court to the evidence which it considered in determining that petitioner was a nuisance candidate. This precludes the Court from reviewing at this instance whether the COMELEC committed grave abuse of discretion in disqualifying petitioner, since such a review would necessarily take into account the matters which the COMELEC considered in arriving at its decisions.

Petitioner has submitted to this Court mere photocopies of various documents purportedly evincing his credentials as an eligible candidate for the presidency. Yet this Court, not being a trier of facts, can not properly pass upon the reproductions as evidence at this level. Neither the COMELEC nor the Solicitor General appended any document to their respective *Comments*.

The question of whether a candidate is a nuisance candidate or not is both legal and factual. The basis of the factual determination is not before this Court. Thus, the remand of this case for the reception of further evidence is in order.

A word of caution is in order. What is at stake is petitioner's aspiration and offer to serve in the government. It deserves not a cursory treatment but a hearing which conforms to the requirements of due process.

As to petitioner's attacks on the validity of the form for the certificate of candidacy, suffice it to say that the form

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[18] See Section 9, Article IX, Constitution.

strictly complies with Section 74 of the Omnibus Election Code. This provision specifically enumerates what a certificate of candidacy should contain, with the required information tending to show that the candidate possesses the minimum qualifications for the position aspired for as established by the Constitution and other election laws.

IN VIEW OF THE FOREGOING, COMELEC Case No. SPP (MP) No. 04-001 is hereby remanded to the COMELEC for the reception of further evidence, to determine the question on whether petitioner Elly Velez Lao Pamatong is a nuisance candidate as contemplated in Section 69 of the Omnibus Election Code.

The COMELEC is directed to hold and complete the reception of evidence and report its findings to this Court with deliberate dispatch.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.,* concur.

Vitug, J., on official leave.

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