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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-01-1497. May 28, 2004]
(Formerly AM-OCA-IPI-00-837-P)

HORACIO B. APUYAN, JR. and ALEXANDER O. EUGENIO, *complainants, vs.* **ALFREDO G. STA. ISABEL, Sheriff IV, Regional Trial Court (Branch 161), Pasig City,** *respondent*.

SYNOPSIS

Respondent was found guilty of Grave Misconduct, Dishonesty and Conduct Grossly Prejudicial to the Best Interest of the Service. As this was the first time he was administratively charged, the Court opted to suspend him for one year instead of dismissing him from office. The Court ruled that the evidence sufficiently established the fact that respondent demanded ₱50,000 payment in assisting complainants in the implementation of a writ of attachment; and respondent got angry when he was thereafter given only ₱2,000 as monetary goodwill. Moreover, respondent subjected complainant Apuyan, Jr. and his lawyer to physical and verbal abuse in the courtroom premises. Thus, respondent not only utterly failed to live up to the high ethical standards required of a sheriff, but also, he totally ignored Section 9, Rule 141 of the Rules of Court on the regulation relating to serving processes.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DUTY TO DEMONSTRATE CIVILITY IN THEIR OFFICIAL ACTUATIONS TO THE PUBLIC AT ALL TIMES; VIOLATED WHEN SHERIFF COLLARED COMPLAINANT AND ENGAGED IN HEATED VERBAL ALTERCATION WITH COMPLAINANT'S COUNSEL.— The evidence on record, especially the testimony of respondent's own officemate, Court Stenographer Vega, confirms the fact that indeed, respondent collared complainant Apuyan while the latter was inside the court staffroom on February 9, 2000. The fact that respondent engaged in a heated verbal altercation with Atty. Perez on February 14, 2000 is also established by complainants' testimonial evidence and the testimony of respondent's own witness, Court Process Server Bautista, who said that he had to caution respondent and Atty. Perez against talking in a loud voice because the court was then in session. Such actuation, even assuming that complainant Apuyan and Atty. Perez did something to anger respondent, is highly unbecoming of a public servant who is called upon to demonstrate courtesy, civility and self-restraint in their official actuations to the public at all times even when confronted with rudeness and insulting behavior. We definitely cannot tolerate respondent's misconduct.

2. ID.; ID.; ID.; GROSS MISCONDUCT; VIOLATION OF RULE ON SERVING PROCESSES. – Respondent's bare denials of complainants' claim that he was demanding ₱50,000.00 for the implementation of the writ of attachment is insufficient to overcome complainants' straightforward, positive and unwavering testimony against him. Clearly then, respondent not only utterly failed to live up to the high ethical standards required of a sheriff, but also, he totally ignored Section 9, Rule 141 of the Rules of Court. Respondent failed to demonstrate that he followed the procedure laid down by Rule 141. The OCA's recommendation that respondent be found guilty of grave misconduct, dishonesty and conduct grossly prejudicial to the best interest of the service is firmly supported by the records of this case.

3. ID.; ID.; ID.; GRAVE OFFENSES; PENALTY; SUSPENSION OF ONE YEAR INSTEAD OF DISMISSAL IMPOSED ON SHERIFF ADMINISTRATIVELY CHARGED FOR THE

FIRST TIME. – Section 23 (a), (c), & (t), Rule XIV of the Omnibus Rules implementing Book V of Executive Order No. 292, provides: x x x The following are grave offenses with its corresponding penalties: (a) Dishonesty 1st offense – Dismissal . . . (c) Grave Misconduct 1st offense – Dismissal . . . (t) Conduct grossly prejudicial to the best interest of the service 1st offense – Suspension for six (6) months and one day to one (1) year. 2nd offense – Dismissal.... However, we shall apply Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. Per report of the OCA, this is the first time that respondent has ever been charged administratively. Thus, instead of imposing the penalty of dismissal which is the imposable penalty for commission of the first offense of grave misconduct and dishonesty, respondent should be suspended for a period of one year without pay with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

APPEARANCES OF COUNSEL

Perez Law Firm for complainant.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a complaint for Gross Misconduct, Conduct Unbecoming of a Public Official and Graft and Corruption filed by Horacio B. Apuyan, Jr. and Alexander O. Eugenio against Alfredo Sta. Isabel, Sheriff IV, Regional Trial Court, Branch 161, Pasig City (RTC for brevity).

The complaint against Sheriff Sta. Isabel was filed before the Office of the Court Administrator (OCA) on February 22, 2000. In compliance with the 1st Indorsement dated March 29, 2000 of the OCA, the respondent filed his Comment on May 4, 2000. Complainants filed their Reply Affidavit on October 27, 2000. Respondent submitted a Rejoinder dated December 3, 2000 denying complainants' allegations in the Reply-Affidavit.

In our Resolution dated August 20, 2001,[1] we referred the administrative matter to Executive Judge Edwin A. Villasor of the Regional Trial Court, Pasig City, for investigation, report and recommendation. The Executive Judge then conducted several hearings where both parties presented their respective evidence.

Witnesses for the complainants were Horacio B. Apuyan, Jr., Alexander O. Eugenio, Atty. Norberto Ortiz Perez, Mario Pangilinan; and Court Stenographer Ramona Teresita Vega, as rebuttal witness.

At the hearing held on January 3, 2002, complainant Apuyan, Jr., through counsel, manifested that he is adopting the Joint-Affidavit Complaint[2] as his direct testimony wherein it is averred that: complainants are employees of plaintiff corporation in a civil case[3] pending before the RTC, docketed as Civil Case No. 67654; that in connection with said case, a writ of attachment was issued by the RTC against the monies and properties of defendants; on February 8, 2000, complainants fetched respondent in his office and together with Process Server Julio Bautista and a certain Rey de Leon, they proceeded to the Western Police District to fetch some police officers to assist them in the implementation of the writ of attachment; respondent started to dictate to complainants that the police officers should receive no less than ₱1,000.00 each and another ₱1,000.00 for each mobile car used; they proceeded to the office of defendant corporation and while in said office, respondent told them that he was able to gather information relative to defendant's bank account that can be the subject of garnishment; respondent started hinting that the ongoing sheriff's rate in Manila is 5% while it is 3% in Pasig but he is willing to settle for a 0.05% share based on the total amount of ₱10,000,000.00, that was the subject of attachment; complainant Apuyan called their counsel, Atty. Norberto Ortiz Perez, who requested respondent

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[1] *Rollo*, p. 40.

[2] *Rollo*, p. 3.

[3] Entitled, *"Doctors of New Millennium Holdings, Inc. vs. People's Trans-East Asia Insurance Corporation, et al."*

to immediately garnish said account; respondent replied that he could not do so for he failed to bring with him the necessary papers; Atty. Perez then told respondent to effect garnishment the following morning and assured respondent that he will instruct his client to prepare monetary goodwill for respondent; after levying some properties of defendant, they and the group of respondent proceeded to their (complainants') office where complainant Apuyan handed respondent an envelope containing ₱2,000.00; when respondent saw the amount, he threw the envelope and cursed them, saying that the amount of ₱2,000.00 is a big insult to his person; complainant Eugenio tried to pacify respondent who then demanded to see the company president; complainants told respondent that their president is out of the country and explained to him that Atty. Perez promised to give respondent some goodwill money when the garnishment is effected the next day; respondent blurted out that from then on, he would no longer effect the garnishment; the next day, or on February 9, 2000, while complainant Apuyan was waiting for their case to be called in court relative to a hearing of a Motion to Discharge Attachment filed by the defendant, respondent grabbed his collar, uttering, *"O, ano ang gusto mong mangyari ngayon*?"; [4] respondent's officemates intervened to avoid further harm and embarrassment to complainant Apuyan; on February 10 and 11, 2000, respondent did not report for work to avoid proceeding with the garnishment; on February 14, 2000, complainant Apuyan and Atty. Perez went to court to file a Motion to Assign a Special Sheriff; while they were waiting along the court's corridor, respondent came out of the staff room and started cursing them and vehemently denying the allegations in their motion; respondent uttered to Atty. Perez, *"Ikaw, abogado ka lang, baka hindi mo ako kakilala, hindi ako basta bastang sheriff. Ididimanda kita ng libel, gago. Puwede ako sa physical, puwede ako sa mental. Hindi ko palalagpasin and ginawa ninyo sa aking ito;"* thereafter, complainant Apuyan and Atty. Perez obtained a copy of the court's Order granting the assignment of a special sheriff, and

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[4] Joint Affidavit-Complaint, *Rollo*, p. 3.

pursuant thereto, Sheriff Mario Pangilinan was assigned to their case; on February 15, 2000, however, respondent submitted his Sheriff's Report stating that the writ of attachment was duly satisfied.

During cross-examination, complainant Apuyan further testified thus:

Q: After surrendering the equipment here in the Justice Hall in Kapitolyo, where did you go if any?

A: Sheriff Sta. Isabel demanded for Fifty Thousand (₱50,000.00) Pesos service fee and I told Sheriff Sta. Isabel that we have no money but since you are very persistent on that may we just go to our Office and have a snack and then we could endorse the same with the former Chief Operating Officer.

Q: Can you tell this Honorable Court if this demand is made in writing?

A: It was not actually made in writing because I think nobody will do it in writing. Actually the very first time that he insisted for Fifty Thousand (₱50,000.00) Pesos was before our lunch during the time that the process of attachment was made where Alex approached me together with Sheriff Sta. Isabel informing me that Sheriff Sta. Isabel was able to chance upon an account number, Metro Bank account number of People's Trans-East Asia Insurance, Corp. and the money worth Fifty Thousand (₱50,000.00) Pesos so while inside the lobby they approached me and so I asked him if it is really true and he said yes, *"hawak ko na ang alas alam ko na and bank account number ng People's Trans-East but first you have to give me at least .5% of the Ten Million (₱10,000,000.00) Pesos so I told him "siguro igarnish muna natin" in a dialect.*

. . . . . .

Q: And is it also true that one of the reasons as stated to you by the Respondent for refusing to issue a notice of garnishment is the possibility of over levy?

A: No sir.

Q: He did not tell you that?

A: No, the very word that he told us is that he will not push through with the garnishment if we will not able to bring out the Fifty Thousand (₱50,000.00) Pesos that he demanded from us.

Q: Did you pay the Respondent any amount for his services?

A: He demanded for the amount and we gave him Two Thousand (₱2,000.00) Pesos to make his initial demand from us but instead of taking it, I was insulted, berated and he threw the money on my face.[5]

Complainant Alexander Eugenio also adopted the aforementioned Joint Affidavit-Complaint as his direct testimony. On cross-examination, he further testified as follows:

A: Actually when this particular incident happened I was standing outside the building when Sheriff Sta. Isabel approached me and told me that he has chanced to see the account no. of People's Trans-East Asia Insurance Corporation with the Metrobank. As a matter of fact, he showed me the inside cover of the folder he was holding and he told me this is the account number and he told me in vernacular that *"hawak ko na and alas, alam ko na and account number ng People's Trans-East Asia sa Metro Bank"* and we can garnish the account of Metro Bank with the condition that we should give him the half percent (1/2%) of what we have (sic) claiming after People's Trans-East Asia Insurance Corporation which is equivalent to Fifty Thousand (₱50,000.00) Pesos and then I told him that I am not in a position to decide on that matter and I suggested to open this up to Mr. Apuyan who is in-charge of that activity as far as our company's concerned.

. . . . . .

Q: Who handed the envelope to Sheriff Sta. Isabel pursuant to this statement?

A: It was Mr. Horacio Apuyan who handed the envelope.

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[5] TSN of January 3, 2002, pp. 91-93, 107-108.

Q: And it also states here that he threw the envelope, where did he throw the envelope?

A: He threw it to Mr. Apuyan, to his face.[6]

Another witness for complainants, Atty. Norberto Perez, testified as follows: He first came to know respondent when they talked over the phone on February 8, 2000 during the time that the writ of preliminary attachment was being implemented. He had to talk to respondent over the phone because the latter was insinuating that he would not serve the notice of garnishment if he is not paid ₱50,000.00. He was only able to talk personally to respondent on February 14, 2000 when he was at the corridor in front of Branch 161, RTC, Pasig City and respondent confronted him, shouting at the top of his voice cursing him (Atty. Perez) and complainant Apuyan. Respondent only stopped shouting and cursing when he was pacified by some BJMP people, police officers and other court personnel who told him to keep quiet because there was a hearing going on.[7]

Sheriff Mario Pangilinan testified that he was appointed as the special sheriff and proceeded to serve the notice of garnishment of the accounts of defendant corporation on several banks. For his efforts, he received ₱5,000.00 goodwill money from plaintiff corporation.[8]

For respondent's defense, the testimonies of respondent Alfredo Sta. Isabel himself, Process Server Julio S. Bautista and Atty. Emmanuel R. Jabla were presented.

Respondent adopted his Comment dated May 2, 2000 as part of his direct testimony. In his Comment, he contends as follows: The complaint was brought about by a personal grudge between him and complainant Apuyan. He implemented the writ of attachment on February 8, 2000. While in the course of effecting the writ, he talked to Atty. Perez on the phone because

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[6] TSN of January 4, 2002, pp. 34-35, 38-39.

[7] TSN of January 8, 2002, pp. 9-20.

[8] TSN of January 9, 2002, pp. 12-35, 61.

the latter wanted him to garnish defendant's bank account. He made the excuse that he was not prepared to do so for he did not have a notice of garnishment. He never made mention of any monetary consideration during their phone conversation. He believes that Atty. Perez was not pleased with his response. Thereafter, he and his co-employees proceeded to complainants' office upon the latter's invitation for snacks. At said office, no snacks were offered, but complainant Apuyan handed him an envelope. His co-employee opened the envelope and showed him that it contained two pieces of ₱1,000.00 bills. He refused to take the envelope and complainant Apuyan made an outburst, saying "Why do you have to ask me to give you so much money? That is illegal. I know the same fact (*sic*) because I am a law student! You are very corrupt!."[9] The next day, February 9, 2000, he prepared a notice of garnishment but complainants did not come to see him or even call him. On February 10, 2000, complainants went to court but he was then on sick leave. On February 14, 2000, when complainants went to court for the hearing of their Motion for Appointment of Special Sheriff, he confronted Atty. Perez regarding the allegations made in said motion. Atty. Perez said, *"Hoy, huwag mo akong question-in, sheriff ka lang at malapit na ang katapusan mo!*"[10] and a verbal tussle ensued between him and Atty. Perez.

At the hearing held on January 18, 2002 before the Executive Judge, respondent denied that he ever touched any of the complainants or their counsel. He insists that only a verbal altercation transpired between them. On cross-examination, however, respondent admitted that on February 9, 2000, complainant Apuyan was there at the staff room of Branch 161, RTC Pasig City, and he even told said complainant to get out of the staff room, contradicting his statement in his Comment that on said date of February 9, 2000, he prepared a notice of garnishment but complainants did not come to see him or even call him.[11]

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[9] Comment, *Rollo*, p. 17.

[10] *Id*., p. 18.

[11] TSN of February 1, 2002, pp. 11-17, 21-23.

Respondent also recounted that at the time they went to complainants' office, there was already animosity between him and Mr. Apuyan, but he still acceded to the latter's invitation for snacks at their office, with the intention to see Dr. Cenon Alfonso, the company president, supposedly to complain about Apuyan's arrogant demeanor. Respondent also admitted that there is a contradiction between his statement in paragraph 22 of his Rejoinder that he was not able to memorize the numerals contained in the account number of defendant corporation and his testimony where he stated that he did, in fact, see and note down the account number and told complainants about it.[12]

The next witness for respondent, Process Server Bautista, adopted his Joint Affidavit[13] dated May 3, 2000 as his direct testimony wherein he stated that: he proceeded with respondent and complainants to the office of defendant corporation to effect the writ of attachment; respondent was able to see some checks issued by defendant corporation but respondent stated that he was not able to memorize the account number; complainants wanted respondent to immediately garnish said bank account, and Atty. Norberto Perez even talked to respondent over the phone, but respondent said he could not proceed with the garnishment as he did not have the necessary papers with him; they went to complainants' office for snacks and there, complainant Apuyan placed an envelope on top of the table; thereafter, Apuyan returned to where he, respondent, and a certain de Leon were seated and Apuyan started yelling at respondent, calling the latter corrupt; respondent was angered by the accusation; Apuyan then told respondent that if the latter did not want to take it, "Thank You, anyway," then placed the envelope into the pocket of his polo-shirt; respondent never made any demand for money from complainants; that when complainants and Atty. Norberto Perez filed a Motion for the Appointment of Special Sheriff, a verbal tussle occurred between Atty. Perez and respondent; and when they learned that an

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[12] TSN of January 18, 2002, pp. 8, 34-55.

[13] Executed with one Reynaldo de Leon, *Rollo*, pp. 20-23.

administrative case had been filed against respondent, he executed the affidavit of his own free will to help respondent.

On cross-examination, Process Server Bautista stated that they went to complainants' office not mainly because they were invited for snacks but rather, *"Hindi ko alam kung kasama na ang snack pero ang alam ko doon mayroong ibang trabahong pag-uusapan kaya nagyaya sila."*[14] With regard to the confrontation between complainant Apuyan and Atty. Perez on the one hand and respondent on the other, witness Bautista testified thus:

Q: Were you present during the altercation between Atty. Perez, Mr. Apuyan and Sheriff Sta. Isabel?

A: I was not there sir.

. . . . . .

Q: You did not see any of the events where there was an altercation among them?

A: I was at the Office sir at the session hall because we were having a hearing sir.

. . . . . .

Q: If you were inside the courtroom at the time that there was an altercation among Sheriff Sta. Isabel, Atty. Perez and Horacio Apuyan how would you able to quote and unquote what was uttered by Atty. Perez?

A: *"Kasi nasa may pintuan lang ako ng session hall sa tabi ng staff room narinig ko lang parang may malakas na nag-uusap kaya sumilip ako, narinig ko na yung pag-uusap nila yung pangyayari na yun."*

xxx xxx xxx

Q: How long were you peeping at the corridor at the time that there was an altercation among them?

A: *Noong narinig ko na may malakas na nag-uusap sumilip lang ako tapos pumasok na ako sa staffroom hindi na*

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[14] TSN of February 6, 2002, p. 40.

maganda yung tono ng pag-uusap nila sabi ko tama na yan, alam nyo naman yan Atty.

Q: What do you mean by *"alam nyo naman yan Atty."?*

A: *"Nandoon po kayo nandoon din po ako sabi ko tama na yan para lang tumigil na dahil naghehearing si Judge Alicia Mariño-Co."*[15]

The last witness for respondent, Atty. Emmanuel Jabla, merely stated that he is a retained lawyer of defendant corporation and he knows for a fact that respondent sheriff was actually able to levy on the building and land and some equipment of said defendant; that he warned respondent to refrain from further levying on other properties of defendant because it would be a case of over-levy.[16]

On rebuttal, complainants presented Court Stenographer Vega who testified that she remembers an incident when respondent grabbed complainant Apuyan, holding the latter by the collar.[17]

After the parties presented their respective evidence, Executive Judge Villasor submitted his Report dated March 13, 2002, finding that the details of what transpired at the complainants' office on February 8, 2000 and of the incident that happened in the court premises on February 14, 2000 are only based on the self-serving versions of the complainants and respondent sheriff;[18] that only the reprehensible conduct of respondent in collaring complainant Apuyan had been established; and recommending that respondent sheriff be fined the amount of ₱10,000.00 therefor.

The Office of the Court Administrator (OCA) disagrees with the findings and recommendation of Executive Judge Villasor. Based on the evidence presented, it found that respondent really made the demand of 0.05% of the amount to be garnished from the bank account of defendant corporation; that there was a

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[15] TSN of February 6, 2002, pp. 58-62.

[16] TSN of February 13, 2002, pp. 12-19.

[17] TSN of March 11, 2002, pp. 34-36.

[18] Report, *Rollo*, p. 59.

verbal altercation that transpired between respondent and Atty. Perez within the court premises; and that respondent collared complainant Apuyan, on which bases, it recommends the suspension of respondent for one year without pay.

After a careful examination of the records, we agree with the findings and recommendation of the OCA, the same being in accord with the evidence presented and the law. We find no cogent reason to disregard the same, except that what is clear on the basis of the testimonies of complainants are that respondent demanded for the payment of ₱50,000.00, not 0.05% of the ₱10,000,000.00, subject of the writ of preliminary attachment, or ₱500,000.00 mentioned by the OCA.

We agree with the finding of the OCA that respondent's explanations do not inspire belief due to the inconsistencies in his allegations in his pleadings and his testimony and that of his witness, Court Process Server Bautista. We quote and adopt the OCA's dissertation on this matter, to wit:

> On the other hand, respondent testified that after effecting the writ on February 8, 2002[19] (sic), they went to complainant's office upon the latter's invitation to have some snacks. However, upon arrival at the office premises, complainant Apuyan left them at the garden and went inside the office. No snacks were offered. Apuyan later came out of the office and placed an envelope on top of a garden table in front of respondent sheriff and went back inside the office. *Respondent never touched the envelope*. About 20 minutes later, Process Server Bautista opened the envelope despite respondent's warning not to touch it, and showed the latter its contents of two ₱1,000.00 bills then returned it back on the table. *Fifteen (15) minutes thereafter, Apuyan came out of the office, went straight at him, hurling invectives and blurting out*, "*Why do you have to ask me to give you so much money*? *That is illegal. I know the same act (sic) because I am a law student*! *You are very corrupt*."

However, in the Manifestation with Motion dated 14[20] (*sic*) February 2000 (marked as Exh. A for complainants and Exh. 1 for respondent) filed by respondent, he stated therein:

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[19] Should be "2000."

[20] Should be "15."

. . . . . .

6. That there was no occasion that he had *thrown the envelope* containing the ₱2,000.00 as *the undersigned place (sic) the same neatly on top of the table and gently pushed it with his fingers towards Mr. Apuyan* who in turn placed the same envelope towards the pocket of his polo shirt and said, "THANK YOU, ANYWAY."

It is also worthy to note that upon further cross-examination, respondent mentioned, for the first time, that when Apuyan laid down the ₱2,000.00, he conveyed that said amount was for respondent to defray the expenses on the garnishment of People's account to be effected the following day (tsn, p. 22, 01 February 2002). However, upon cross-examination, Court Process Server Bautista testified, thus:

Q: So it was you who opened the envelope?

A: *"Noong initcha ni Mr. Apuyan ang envelope sabi niya, Ito para sa inyo ni Sheriff, tapos tumalikod na si Mr. Apuyan sabi ni Sheriff, "Huwag ninyong gagalawin yan hindi natin alam kung ano yan". Ngayon ang ginawa ko sa envelope sinilip ko lang ang laman kung may laman ba o kung anuman yun nakita ko may pera tapos nalingunan ako ni Sheriff Sta. Isabel sabi niya, Sinabi ng huwag ninyong gagalawin yan eh! kaya nilapag ko na po yung envelope."* (italics supplied)

tsn, p. 50, 06 February 2002

Respondent's conflicting versions, thus appear too contrived to inspire belief. The tenor of his allegation sought to establish that Apuyan was angered when respondent refused to accept the offer of ₱2,000.00. We, however, cannot believe that complainant would strongly react and make such an outburst because of a mere refusal of respondent to accept the goodwill money. Human nature dictates that a person would not be easily infuriated unless provoked. Complainant may have been angered not by the refusal of respondent to accept the envelope but by respondent's own outburst upon discovering that the envelope contained only ₱2,000.00 and his subsequent act of throwing it back at him. At any rate, what is clearly established is the fact that respondent flared up and felt insulted when given the measly sum of ₱2,000.00 as monetary consideration

for the implementation of the writ of attachment on 08 February 2000.[21] (Emphasis ours)

Respondent's claim that complainant Apuyan suddenly made a hostile outburst, accusing him of corruption for expecting more monetary consideration only because he (respondent) refused to accept the goodwill money of ₱2,000.00, defies all logical explanation. Human experience tells us that if respondent's version of what transpired were correct, then the reaction of the person making such monetary offer to a public official who refused the same would be respect for the latter, instead of derision. We just could not summon ourselves to believe that a sane person would be driven to anger and to making accusations of corruption had there not been any provocation or actuation from respondent that made complainants believe that he is demanding a bigger amount of money.

Respondent's testimony that his relations with complainant Apuyan had already been strained earlier when they were at defendant corporation's office, makes us wonder why respondent still agreed to proceed to complainants' office, allegedly for snacks, after having served the writ on defendant. It also puzzles us why respondent and his companions did not just leave complainants' office when they were just left by complainants waiting in a garden and no snacks were ever served. In the first place, it is not proper for court employees to go to the office of a litigant to have snacks, even if invited.

Respondent testified that after complainant Apuyan presented the envelope to him, some twenty minutes have elapsed before Process Server Bautista peeked into the envelope and only sometime thereafter did complainant Apuyan emerge from the office angrily asking him why he refused to take the money.[22] Such scenario immediately presents to us the nagging questions: why did respondent and his co-employees continue to wait at said office, if indeed they were only invited for a snack? Was respondent expecting something more than the promised snacks

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[21] Memorandum submitted by DCA Christopher O. Lock, *Rollo*, pp. 67-68.

[22] TSN of January 18, 2002, pp. 34-49.

from complainants? Why would complainant Apuyan go back to respondent after several minutes asking him angrily why he refused to take the money? All these remained unexplained by respondent. His evidence failed to support his defense of denial. Evidently, respondent went to complainants' office expecting remuneration for the implementation of the writ of attachment as he demanded from them. The fact that respondent made demands upon complainants to pay him ₱50,000.00 on subject of the writ of preliminary attachment, remained unrefuted.

In addition to the foregoing, respondent himself admitted his propensity to be inaccurate with his statements. He testified, thus:

> ATTY. PEREZ:
>
> > Mr. witness I just would like to inquire from you whether your Comment that you submitted in this case which is now marked as Exhibit "N" is the factual statements of all that had transpired relative to the accusations filed against you by the Complainants?
>
> WITNESS:
>
> > *Some were true facts, however, some sort of my answer I was forming a defense so some may not be that accurate*.[23] (Italics supplied)

Thus, the OCA did not commit any error in not giving credence to his testimony. Respondent's bare denials of complainants' claim that he was demanding ₱50,000.00 for the implementation of the writ of attachment is insufficient to overcome complainants' straightforward, positive and unwavering testimony against him.

Moreover, respondent subjected complainant Apuyan and Atty. Perez to physical and verbal abuse in the courtroom premises.

Respondent's denial in grabbing the collar of complainant Apuyan and in the occurrence of the verbal altercation between him and Atty. Perez are implausible.

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[23] TSN of January 23, 2002, pp. 3-4.

The evidence on record, especially the testimony of respondent's own officemate, Court Stenographer Vega, confirms the fact that indeed, respondent collared complainant Apuyan while the latter was inside the court staffroom on February 9, 2000.[24]

The fact that respondent engaged in a heated verbal altercation with Atty. Perez on February 14, 2000 is also established by complainants' testimonial evidence and the testimony of respondent's own witness, Court Process Server Bautista, who said that he had to caution respondent and Atty. Perez against talking in a loud voice because the court was then in session.[25] Such actuation, even assuming that complainant Apuyan and Atty. Perez did something to anger respondent, is highly unbecoming of a public servant who is called upon to demonstrate courtesy, civility and self-restraint in their official actuations to the public at all times even when confronted with rudeness and insulting behavior. [26] We definitely cannot tolerate respondent's misconduct. We have consistently emphasized that:

> Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should therefore be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[27]

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[24] TSN, March 11, 2002, pp. 35-36.

[25] TSN of Feb. 6, 2002, pp. 60-62.

[26] *Policarpio vs. Fortus*, 248 SCRA 272, 275 (1995).

[27] *Gutierrez vs. Quitalig*, A.M. No. P-02-1545, April 2, 2003.

In *Alvarez, Jr. vs. Martin*,[28] which is analogous to the present case, we laid out the conduct demanded from a sheriff, thus:

> Respondent sheriff should have exerted every effort and indeed considered it his bounden duty to see to it that the final stage in the litigation process, i.e., the execution of the judgment is carried out in order to ensure a speedy and efficient administration of justice . . .
>
> Furthermore, respondent's act of demanding money and receiving ₱1,500.00 from the complainant for the lunch and *merienda* of the policemen who will accompany him in executing the decision of the Court is a clear violation of section 9, Rule 141. *The Rules require the sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount to the Clerk of Court who will disburse the amount to the sheriff, subject to liquidation. Any unspent amount will have to be returned to the prevailing party. In this case, no estimate of sheriff's expenses was submitted to the court by respondent. In fact, the money which respondent deputy sheriff had demanded and received from complainant was not among those prescribed and authorized by the Rules of Court. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty*. (Italics supplied).

Finally, the procedure for execution of a final judgment is the same as that in carrying out a writ of preliminary attachment, as set forth in Rule 141 of the Rules of Court, the pertinent provisions of which are as follows:

> Section 3. *Persons authorized to collect legal fees*. — Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more. All fees so collected shall be forthwith remitted to the Supreme Court. The fees collected shall accrue to the general fund.
>
> . . . .

[28] A.M. No. P-03-1724, September 18, 2003.

Section 9. *Sheriff, and other persons serving processes*. —

. . . . . .

(l) For money collected by him by order, execution, attachment, or any other processes, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (₱4,000.00) pesos, five (5%) per centum.

2. On all sums in excess of four thousand (₱4,000.00) pesos, two and one-half (2.5%) per centum.

In addition to the fees hereinabove fixed, *the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses* in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage, for each kilometer of travel, guard's fees, warehousing and similar charges, *in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-oficio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor*. (Italics supplied)

Clearly, in this case, respondent not only utterly failed to live up to the high ethical standards required of a sheriff, but also, he totally ignored Section 9, Rule 141 of the Rules of Court. Respondent failed to demonstrate that he followed the procedure laid down by Rule 141.

The OCA's recommendation that respondent be found guilty of grave misconduct, dishonesty and conduct grossly prejudicial to the best interest of the service is firmly supported by the records of this case.

Section 23(a), (c), & (t), Rule XIV of the Omnibus Rules implementing Book V of Executive Order No. 292, provides:

Sec. 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending

on the gravity of its nature and effects of said acts on the government service.

The following are grave offenses with its corresponding penalties:

(a) Dishonesty
1st offense — *Dismissal*

. . . . . .

(c) Grave Misconduct
1st offense — *Dismissal*

. . . . . .

(t) Conduct grossly prejudicial to the best interest of the service
1st offense — *Suspension for six (6) months and one day to one (1) year.*
2nd offense — *Dismissal*

. . . . . .

However, as correctly recommended by the OCA, we shall apply Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. Per report of the OCA, this is the first time that respondent has ever been charged administratively. Thus, instead of imposing the penalty of dismissal which is the imposable penalty for commission of the first offense of grave misconduct and dishonesty, respondent, as appropriately recommended by the OCA, should be suspended for a period of one year without pay with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

WHEREFORE, respondent is found *GUILTY* of Grave Misconduct, Dishonesty and Conduct Grossly Prejudicial to the Best Interest of the Service. He is *SUSPENDED* for a period of one (1) year without pay with a *STERN WARNING* that a repetition of the same or similar acts in the future will be dealt with more severely.

Let copy of herein Resolution be attached to the personal records of respondent in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

Quisumbing, Callejo, Sr., and *Tinga, JJ.,* concur.

Puno, J. (Chairman), is on official leave.

SECOND DIVISION

[A.M. No. P-03-1720. May 28, 2004]
(Formerly OCA-IPI-01-1127-P)

JACINTO R. FERNANDEZ, JR., *complainant, vs.* **MARIETTA M. GATAN, Clerk III, RTC, Br. 23, Roxas, Isabela,** *respondent*.

SYNOPSIS

Respondent court employee issued a court clearance to complainant's mother, Mrs. Fernandez, and demanded ₱150.00 as payment without issuing an official receipt. Later, when Mrs. Fernandez returned to respondent to ask for a receipt, respondent only shouted at her, returning the money by dumping it on the table.

Respondent found herself in a situation wherein she could not admit receiving the money because she did not issue a receipt therefor, nor deny receiving the money because she could not have released the court clearance without payment of the fee. Thus, the Court ruled that respondent must have demanded payment of the fee and Mrs. Fernandez must have paid the same as she was given the court clearance. Respondent, however, was guilty of grave misconduct which the Court cannot countenance and hence, suspends respondent in office for six months with warning against repetition of the same.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; GRAVE MISCONDUCT; ELUCIDATED. — Grave misconduct is a malevolent transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer or employee which threatens the very existence of the system of administration of justice. An act that manifests the serious lack of integrity, uprightness and honesty demanded of an employee in the judiciary, and for which a respondent, in such a case, does not deserve to stay a minute longer.

2. ID.; ID.; ID.; ID.; PROPER PENALTY FOR FIRST OFFENSE. — The Supreme Court cannot countenance any conduct, act or omission, which diminishes or even just tends to diminish the faith of the people in the judiciary. The Court has reiterated time and again the rule that the conduct of every employee of the judiciary must be at all times characterized with propriety and decorum, and above all else, it must be above and beyond suspicion. The conduct and behavior of every official and employee of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility. This being the first offense of the respondent, suspension from office for six (6) months appears to be the proper penalty.

D E C I S I O N

TINGA, *J.*:

Public office is a public trust.[1] All public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, and act with patriotism and justice, and lead modest lives.[2] Regrettably, this did not happen in this case.

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[1] 1987 Constitution; *Joseph Angeles v. Remedios C. Base*, A.M. No. P-03-1670, 22 January 2004, 395 SCRA 600.

[2] *Antonio C. Sy v. Marleo J. Academia,* A.M. No. P-87-72, 3 July 1991, 198 SCRA 705.

On November 6, 2000, the Office of the Chief Justice of the Supreme Court received the *Letter-Complaint* of Mr. Jacinto R. Fernandez dated October 27, 2000 accusing Marietta M. Gatan, Clerk III, Regional Trial Court, Branch 23, Roxas, Isabela, of violating Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), for discourtesy and failure to issue official receipts for payments received in behalf of the court.[3]

According to complainant's mother, Mrs. Angeles R. Fernandez (Mrs. Fernandez), on October 25, 2000, she went to the Regional Trial Court, Branch 23, Roxas, Isabela to secure her court clearance. Thereat, respondent Marietta Gatan assisted her, handing over the clearance. Respondent demanded one hundred fifty (₱150.00) pesos as payment. After paying the amount, Mrs. Fernandez asked for an official receipt to prove payment of the clearance fee. Respondent, however, told her that the receipt would no longer be necessary.[4]

Upon her return to her residence, Mrs. Fernandez further narrated, complainant advised her to return and obtain from the respondent a receipt for the clearance fee. She heeded the advice. Unfortunately, however, instead of respondent issuing a receipt, she yelled at her saying *"Ang kulit mo. Sa dinami-dami ng kumukuha ng certification ikaw pa lang ang bumalik dito. Yan ang pera mo kunin mo, kunin mo."*[5]

After a while, Mrs. Fernandez added, respondent went to her table, brought out money from her drawer and angrily dumped it on the table, addressing her in Tagalog, *"Yan ang pera mo, kunin mo."* She did not take the money back.[6]

Later on, respondent made amends to Mrs. Fernandez, the latter added.[7]

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[3] *Rollo*, pp. 2-3; 8-9.

[4] *Id.* at 11.

[5] *Id.* at 12.

[6] *Ibid.*

[7] *Id.* at 13.

Feeling that her mother was humiliated and aggrieved on account of the incident, complainant conducted his own investigation. According to him, he got confirmation even from the officemates of the respondent that she has been collecting ₱150.00 from every person who seeks court clearance through her. He pointed to a certain Mr. Conrad Pua who paid the amount for a clearance but was not issued an official receipt by the respondent. He added there are some well-known persons in their community who also had the same experience.[8]

On December 21, 2000, then Court Administrator Alfredo L. Benipayo referred the complaint of Jacinto Fernandez, Jr. to Hon. Teodulo E. Mirasol (Judge Mirasol), then Presiding Judge, Regional Trial Court, Branch 23, Roxas, Isabela, for investigation and report.[9] Judge Mirasol took the statements of the complainant[10] and Mrs. Fernandez.[11] He also took the statement of Mr. Pua who confirmed having been charged by the respondent without issuing a receipt for a court clearance.[12] Respondent submitted her counter-affidavit in which she disputed almost all the allegations of Mrs. Fernandez.[13]

In his report dated March 6, 2001, Judge Mirasol recommended that respondent be merely warned and directed to exercise more prudence and caution in the future.[14]

On April 17, 2001, then Deputy Court Administrator Bernardo T. Ponferrada referred the complaint to respondent Marietta M. Gatan for comment.[15]

Respondent, in her *Comment* dated June 11, 2001, practically repeated what she stated in her counter-affidavit. She denied

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[8] *Supra*, note 3.

[9] *Rollo*, p. 4.

[10] *Id*. at 14.

[11] *Id*. at 11-13.

[12] *Id*. at 14.

[13] *Id*. at 25.

[14] *Id*. at 18-20; 26-28.

[15] *Id*. at 21.

anew having collected ₱150.00 from Mrs. Fernandez for a court clearance and engaging in an altercation with her in connection with her alleged demand for an official receipt. Once again, she admitted processing the court clearance requested by Mrs. Fernandez and releasing it immediately after the Clerk of Court signed it. However, for the first time, she declared that she saw Mrs. Fernandez leave something on the table before the latter left.[16]

On June 2, 2003, the Office of the Court Administrator (OCA) submitted its recommendation that respondent be suspended for six (6) months, with a warning that a repetition of the same in the future shall be dealt with more severely.[17] The OCA found, among others, that respondent collected ₱150.00 from Mrs. Fernandez for a clearance without issuing the corresponding receipt.[18]

The crucial factual issues are whether Mrs. Fernandez paid ₱150.00 to the respondent and whether she was issued the corresponding receipt by the respondent for the court clearance. We resolve both issues in the affirmative.

To begin with, the amount of ₱150.00 which according to Mrs. Fernandez the respondent had collected from her for the court clearance she secured corresponds to the fee prescribed by this Court for such a service. Under A.M. No. 00-02-01-SC[19] which took effect on March 1, 2000 and therefore, was still applicable when the incident subject of this case took place, the prescribed fee for any service that may be required by the Clerk of Court that is not specifically prescribed therein is ₱150.00. Consequently, respondent must have demanded the payment of the fee before she handed the court clearance, duly signed by the Clerk of Court, from Mrs. Fernandez. As the collection

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[16] *Id*. at 29.

[17] *Id*. at 43-51.

[18] *Id*. at 50.

[19] Rule 141, Sec. 7 (d), as amended by SC Resolution in A.M. No. 99-8-01 dated September 14, 1999, and further amended by A.M. No. 00-02-01-SC.

of the clearance fee is standard procedure, Mrs. Fernandez must have paid the fee. If she did not, she could not have secured the court clearance.

In a significant way, respondent herself confirmed the fact of payment of the clearance fee. She declared that Mrs. Fernandez left something on the table after she secured the clearance and before she left the office of the respondent. Moreover, a witness in the person of Mr. Conrad Pua stated that he had a similar experience with the respondent. He secured a court clearance from the respondent for which he paid ₱150.00 but he was not given a receipt.

Basically, respondent found herself in a quandary as to what position or defense she would take in relation to the charge. On one hand, she could not make an out-and-out denial of the fact of payment of the clearance fee. If she did, she would have to explain why he released the clearance to Mrs. Fernandez. That is why she said Mrs. Fernandez left something on her table. On the other hand, she could not explicitly admit that she did receive the payment. If she did, her case is irretrievably doomed. Indeed, she was caught in a bind. But she had nobody to blame but herself.

Clearly, therefore, the respondent is guilty of grave misconduct.

Grave misconduct is a malevolent transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer or employee which threatens the very existence of the system of administration of justice. An act that manifests the serious lack of integrity, uprightness and honesty demanded of an employee in the judiciary, and for which a respondent, in such a case, does not deserve to stay a minute longer.[20]

The Supreme Court cannot countenance any conduct, act or omission, which diminishes or even just tends to diminish the

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[20] *Imperial v. Santiago, Jr.,* A.M. No. P-01-1449, 24 February 2003, 398 SCRA 75.

faith of the people in the judiciary.[21] The Court has reiterated time and again the rule that the conduct of every employee of the judiciary must be at all times characterized with propriety and decorum, and above all else, it must be above and beyond suspicion.[22] The conduct and behavior of every official and employee of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility.[23]

This being the first offense of the respondent, suspension from office for six (6) months appears to be the proper penalty.[24]

WHEREFORE, this Court finds respondent Marietta Gatan *GUILTY* of grave misconduct, and hereby suspends her for six (6) months,[25] with a warning that a repetition of the same in the future shall be dealt with more severely.

SO ORDERED.

Quisumbing, Austria-Martinez and *Callejo, Sr., JJ.*, concur.

Puno, J. (Chairman), is on official leave.

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[21] *Supra*, note 1.

[22] *Bilag-Rivera v. Flora*, A.M. P-94-1008, 315 Phil. 668 (1995).

[23] *Apaga v. Ponce*, A.M. No. P-95-1119, 315 Phil. 226 (1995); *Policarpio v. Fortus*, A.M. No. P-95-1114, 18 September 1995, 248 SCRA 272.

[24] Similarly, in the recent case of *Biscocho, et al. v. Marero*, A.M. No. P-01-1527, 22 April 2002, 381 SCRA 430, penned by Justice Puno, where the respondent was found guilty of grave misconduct, the Court imposed the penalty of six (6) months without pay.

[25] Rules XIV Section 23 (b), (c) Implementing Book V of Executive Order No. 292 and other pertinent Civil Service Laws provides:

The following are grave offenses with its corresponding penalties:

xxx xxx xxx

(b) Gross neglect of duty (1st Offense, Dismissal)

(c) Grave misconduct (1st Offense, Dismissal)

xxx xxx xxx

SECOND DIVISION

[A.M. No. P-04-1812. May 28, 2004]
(Formerly OCA-IPI-03-1724-P)

RELIWAYS, INC. represented by: AURELIO P. VENDIVEL, JR., *complainant, vs.* **LAMBERTO P. GRANTOZA, Process Server, MeTC, Br. 62, Makati City,** *respondent*.

SYNOPSIS

Respondent is process server of MeTC, Br. 62 of Makati City. Allegedly, he obtained a loan from complainant and refused to pay the same despite demand. Under the Revised Administrative Code of 1987, willful failure to pay just debts is a ground for disciplinary action. The term "just debts" applies to claims the existence and justness of which are admitted by the debtor. Here, respondent did not deny his indebtness to complainant. Hence, his administrative liability was undisputed. The penalty therefore, however, was not directed at his private life but at his actuations unbecoming a public official. The implementing Omnibus Rules classifies willful failure to pay just debts as a light offense and the proper penalty is reprimand for the first offense.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; REVISED ADMINISTRATIVE CODE OF 1987; GROUNDS FOR DISCIPLINARY ACTION; WILLFUL FAILURE TO PAY JUST DEBTS; PROPER PENALTY IN CASE AT BAR.— The Revised Administrative Code of 1987, which covers Grantoza being a court employee, provides: "Sec. 46. *Discipline: General Provisions*. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process. (b) The following shall be grounds for disciplinary action: x x x (22) Willful failure to pay just debts or willful failure to pay taxes due to the government; x x x." The term "just debts" applies to claims the existence and justness of which are admitted by the debtor. Grantoza does not deny his indebtedness to Reliways. He even claims that he has made partial payments on his obligation.

However, his claim is not supported by any evidence. Thus, while we commiserate with his unfortunate situation, we cannot condone his failure to pay his just debt which stands at ₱19,427.05 as of May 30, 2003. His administrative liability under the foregoing provision of the Revised Administrative Code is undisputed. The penalty therefore is not directed at his private life but at his actuations unbecoming a public official. The Omnibus Rules implementing the provisions on the Civil Service of the Revised Administrative Code of 1987 classifies willful failure to pay just debts as a light offense and prescribes the penalty of reprimand for the first offense. Given that this is Grantoza's first offense since his employment in 1979, he should be reprimanded, although not severely as recommended by the OCA, considering his position as a Process Server.

R E S O L U T I O N

TINGA, *J.*:

On July 29, 2003, Aurelio P. Vendivel, Jr. (Vendivel) filed on behalf of Reliways, Inc. (Reliways) a *Complaint-Affidavit*[1] dated July 25, 2003 charging the respondent, Lamberto P. Grantoza (Grantoza), with conduct unbecoming a court employee for the latter's failure to pay his just debts. Allegedly, on April 27, 2001 and again on May 24, 2001, Grantoza obtained from Reliways two (2) loans with the principal amount of ₱7,000.00 and ₱4,500.00, respectively, or a total of ₱11,500.00, for which Grantoza executed the corresponding Promissory Notes and an Irrevocable Special Power of Attorney in favor of Reliways and Vendivel.

According to Vendivel, oral and written demands[2] have been made upon Grantoza but the latter refused and continues to refuse to pay his debt which, as of May 30, 2003, already totals ₱19,427.05 inclusive of interest. Moreover, Vendivel avers that Reliways was forced to lend money to Grantoza because

[1] *Rollo*, pp. 1-9, with Annexes.

[2] A demand letter dated June 17, 2003 is attached to the *Complaint-Affidavit* as Annex F.

Reliways then had a pending criminal case with the Metropolitan Trial Court (MeTC), Branch 62, Makati City, where Grantoza is stationed as a Process Server.[3]

In his *Comment* [4] dated September 5, 2003, Grantoza admits having borrowed money from Reliways but denies any intention not to pay the same. He claims that he has partially paid his obligation. He also admits having received the demand letter dated June 17, 2003 but contends that Vendivel did not make an oral demand upon him. Further, Grantoza denies knowledge of Reliways' pending criminal case with the court where he is stationed. He claims that he has never dealt personally with Vendivel. In fact, it was the Clerk of Court of the MeTC who approached him on behalf of Reliways and offered to extend him a loan. Moreover, his loan application was processed by the personnel of the Office of the Clerk of Court of the MeTC. Grantoza apologizes to Vendivel for giving the impression that he is evading a lawful obligation and assures the latter that he is trying to settle his loan.[5]

Vendivel filed a *Reply-Affidavit* [6] dated September 26, 2003, denying that Grantoza has made partial payments on his loan. Vendivel rebuts Grantoza's denial that an oral demand was made upon him and contends that before he filed criminal cases against Grantoza and other defaulting borrowers, he personally went to their respective offices, reminded them of their obligations and collected payments from them. He also refutes Grantoza's allegation that it was the personnel of the MeTC who approached Grantoza and offered to extend him a loan on behalf of Reliways. He claims that he and Grantoza know each other because of Reliways' criminal case pending with the MeTC.[7]

The Office of the Court Administrator (OCA) evaluated the complaint and found it meritorious. Accordingly, the OCA

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[3] *Supra,* note 1 at 2.

[4] *Id*. at 11-12.

[5] *Ibid*.

[6] *Supra*, note 1 at 13-14.

[7] *Id*. at 13.

recommended that Grantoza be severely reprimanded for his willful failure to pay his just debts, which amounts to conduct unbecoming a court employee.[8]

The Revised Administrative Code of 1987, which covers Grantoza being a court employee, provides:

"Sec. 46. *Discipline: General Provisions*. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

xxx xxx xxx

(22) Willful failure to pay just debts or willful failure to pay taxes due to the government;

xxx xxx xxx."[9]

The term "just debts" applies to claims the existence and justness of which are admitted by the debtor.[10]

Grantoza does not deny his indebtedness to Reliways. He even claims that he has made partial payments on his obligation.

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[8] *Id*. at 16-17.

[9] Section 46 (b) (22), Chapter 7, Subtitle A (Civil Service Commission), Title I, Book V, Revised Administrative Code of 1987.

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

xxx xxx xxx

The following are light offenses with their corresponding penalties:

xxx xxx xxx

(i) Willful failure to pay just debts <1st Offense, Reprimand; 2nd Offense, Suspension for one (1) to thirty (30) days; 3rd Offense, Dismissal.>

The term 'just debts' shall apply only to:

1. claims adjudicated by a court of law, or

2. claims the existence and justness of which are admitted by the debtor.

. . .." Sec. 23, Rule XIV of the Omnibus Rules implementing Book V of the Revised Administrative Code.

However, his claim is not supported by any evidence. Thus, while we commiserate with his unfortunate situation, we cannot condone his failure to pay his just debt which stands at ₱19,427.05 as of May 30, 2003. His administrative liability under the foregoing provision of the Revised Administrative Code is undisputed. The penalty therefore is not directed at his private life but at his actuations unbecoming a public official.[11]

The Omnibus Rules implementing the provisions on the Civil Service of the Revised Administrative Code of 1987[12] classifies willful failure to pay just debts as a light offense and prescribes the penalty of reprimand for the first offense. Given that this is Grantoza's first offense since his employment in 1979, he should be reprimanded, although not severely as recommended by the OCA, considering his position as a Process Server.

Finally, Vendivel's contention that Reliways was "forced" to lend money to Grantoza because of its criminal case pending in the court where Grantoza is stationed deserves no sympathy. Between the two of them, Reliways had the upper-hand. What manner of enticement could Grantoza, a mere process server, have dangled to "force" Reliways to extend him a loan? Other than his bare allegation, Vendivel does not elaborate. We certainly cannot give credence to his unsubstantiated claim.

WHEREFORE, premises considered, respondent Lamberto P. Grantoza, Process Server, Metropolitan Trial Court, Branch 62, Makati City, is hereby *REPRIMANDED* for his willful failure to pay his just debts, which amounts to conduct unbecoming a court employee. The commission of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

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

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

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[11] *Martinez v. Muñoz,* A.M. No. P-94-1006, October 6, 1995, 249 SCRA 14, citing *Flores v. Tatad*, 96 SCRA 676.

[12] *Ibid*.

FIRST DIVISION

[A.M. No. RTJ-02-1717. May 28, 2004]
(formerly A.M. OCA IPI No. 00-1107-RTJ)

FERMA PORTIC, *complainant, vs.* **JUDGE VICTORIA VILLALON-PORNILLOS, as Presiding Judge, Regional Trial Court, Branch 10, Malolos, Bulacan,** *respondent*.

SYNOPSIS

Complainant was defendant in a Criminal Case No. 05-M-97 for estafa then pending in respondent judge's sala with one Anasatacia Cristobal as private complainant. During trial thereof, the National Bureau of Investigation (NBI) found Cristobal's signature in the petty cash voucher authentic. For re-examination of the same by the Philippine National Police (PNP), the documents were returned to the trial court but released by court employees Lopez and Umali to Cristobal's cousin who allegedly undertook to transmit them to Camp Olivas. When Lopez testified that respondent judge approved the release of the documents complainant filed this administrative case.

Complainant's sole evidence that respondent judge ordered the unauthorized release of documents in question was the testimony of Lopez. This, however, proved incredible. In the latter part of his testimony, Lopez no longer claimed that respondent judge authorized him to release the documents. Instead, he testified that what he did was based on common practice in the court. On further questioning, Lopez later admitted he erred in releasing the documents.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ADMINISTRATIVE CHARGES AGAINST MEMBERS OF THE JUDICIARY MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE AND RESORTED TO ONLY AFTER OTHER AVAILABLE REMEDIES ARE EXHAUSTED. — Administrative charges against members of the judiciary must be supported at least by substantial evidence. Failure to do so will result in the dismissal of the complaint for lack of merit.

> Moreover, respondent Judge enjoys the presumption that she is innocent of the charge against her and that she has preformed her duties regularly and in good faith. At any rate, the rule is that disciplinary proceedings do not complement, supplement, or substitute judicial remedies. An inquiry into the administrative liability of a judge may be resorted to only after the available remedies have been exhausted and decided with finality. There is nothing on record to suggest that complainant first availed of such remedies before filing this administrative case.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a complaint for Abuse of Authority and Neglect of Duty filed by complainant Ferma Portic ("complainant") against respondent Judge Victoria Villalon-Pornillos ("respondent Judge") of the Regional Trial Court, Branch 10, Malolos, Bulacan ("Branch 10").

The Facts

Complainant is the defendant in Criminal Case No. 05-M-97 ("Case No. 05-M-97") for estafa pending in respondent Judge's sala with one Anastacia Cristobal ("Cristobal") as private complainant. During the trial, the National Bureau of Investigation ("NBI") examined a petty cash voucher[1] bearing Cristobal's signature to determine its authenticity. The NBI compared the signature with Cristobal's specimen signatures in other documents.[2]

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[1] Marked as Exh. 1.

[2] Certificate of Income Tax Withheld on Compensation received by the BIR on 27 February 1989; Certification of Deposit No. 91/19 dated 29 April 1991; Prudential Bank Check No. 380567 dated 15 September 1992; Bank of the Philippine Islands Check Nos. 009572 dated 4 February 1994, 009573 dated 25 March 1994, 009576 dated 24 June 1994, 009694 dated 28 April 1995, 009696 dated 5 May 1995, 009697 dated 12 May 1995, 009699 dated 15 May 1995, 105033 dated 22 May 1995, 105055 dated 23 May 1995; Letter dated 13 October 1995 addressed to Mr. Manolo Tingson; and Receipts marked as Exh. 1-J, Exh. 1-I, Exh. 1-G, and Exh. 1-H, all dated 24 May 1997.

The NBI found Cristobal's signature in the voucher authentic but the prosecution, wanting a second opinion, moved for its examination by the Philippine National Police ("PNP") in Camp Olivas, San Fernando, Pampanga. Respondent Judge granted the prosecution's motion in the Order of 5 October 1998[3] ("5 October 1998 Order") requiring one Elladora Constantino, NBI Examiner III, to return to Branch 10 all the documents in the NBI's possession. Respondent Judge amended her Order by issuing the Order of 9 November 1998 ("9 November 1998 Order"). This amended Order required one Eliodoro M. Constantino of the NBI Questioned Documents Division to bring the documents to Branch 10, testify on his findings on the documents' examination, and afterwards deliver the documents to Camp Olivas.[4]

Branch 10 received the documents on 22 November 1998. However, Mario B. Lopez ("Lopez") and Glenn B. Umali ("Umali"), Acting Clerk of Court and Clerk, respectively, of Branch 10, released the original documents to Cristobal's cousin[5] who allegedly undertook to transmit them to Camp Olivas. The release of the original documents to Cristobal's cousin violated respondent Judge's 9 November 1998 Order. This prompted complainant to file administrative charges against Lopez and Umali,[6] which this Court referred to Executive Judge Danilo A. Manalastas ("Executive Judge Manalastas") of the Regional Trial Court, Malolos, Bulacan for investigation, report, and recommendation. During the investigation, Lopez testified that respondent Judge approved the release of the documents.

Because of Lopez's testimony, complainant filed this case. Complainant alleges that respondent Judge had denied her motions for reinvestigation, reduction of bail, dismissal of Case No. 05-

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[3] Exh. 4.

[4] Exh. 5.

[5] Max Cristobal.

[6] Docketed as A.M. No. P-01-1452. In the Decision dated 11 July 2001, the Court dismissed the complaint against Umali for lack of merit but found Lopez guilty of grave misconduct and fined him ₱10,000, with warning that a repetition of a similar act will be dealt with more severely.

M-97 (demurrer to evidence) and voluntary inhibition. Complainant adds that she sought reconsideration of the Order dated 31 July 2000 ("31 July 2000 Order") denying her demurrer to evidence and that she also filed a supplementary motion for inhibition but respondent Judge failed to resolve these motions. Complainant also alleges that respondent Judge has unduly delayed the disposition of Case No. 05-M-97.

In her Comment dated 24 November 2000, respondent Judge denied complainant's allegations. Respondent Judge asserted that she never ordered Lopez or Umali to release the documents to any unauthorized party. Respondent Judge denied orally amending the 5 October 1998 and 9 November 1998 Orders. Respondent Judge disclosed that Lopez has a history of usurping her judicial functions[7] and his malfeasance in an election protest case prompted her to revoke his designation as Acting Clerk of Court of her sala.[8]

On the 31 July 2000 Order, respondent Judge stated that her finding of *prima facie* case against complainant was based on the facts and the applicable law. Respondent Judge explained that contrary to complainant's claim, she had acted on

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[7] In the hearing of 7 March 1996 in Civil Case No. 35-M-92 ("*Julian Francisco v. Spouses Pelagio and Gregoria Francisco*"), Lopez, at the instance of one of the parties, entered into the minutes of the proceedings matters which had not been brought to the attention of respondent Judge for which Lopez was chastised in open court.

[8] Respondent Judge revoked Lopez's designation in the Memorandum of 15 November 1999 in EPC No. 11-M-98 ("*Lorna Silverio v. Jaime Viceo*") for "attempt[ing] to blackmail [respondent Judge by] pressur[ing] her [to] delay xxx the promulgation of the Judgment in EPC No. 11-M-98 xxx [;] hoodwinking the other staff members into signing prepared Affidavits, the contents of which are wrongfully premised on false rumors that your Presiding Judge received money from a litigant [which Affidavits were] xxx attached to a Motion for Inhibition [filed in this case] xxx [;] refus[ing] to read the Decision dated November 11, 1999, rendered that day, xxx and making a 'thumbs down sign', [and] vigorous[ly] shaking [his]head, xxx [;] fail[ing] to return with the records of this case [the draft copy of the Judgment which was] apparently made available to a party xxx [and] using the Judge's chamber as site of a closed-door conference [i]n November 1999 with a party and representative/s in violation of office memoranda."

complainant's motion for reconsideration to the 31 July 2000 Order and on the supplemental motion for inhibition, which the Order of 13 November 2000 denied.

On complainant's allegation that she had unduly delayed the proceedings in Case No. 05-M-97, respondent Judge attributes any delay to complainant's numerous motions on which the prosecution had to be heard. Complainant also refused without justification to present her evidence after the prosecution had rested its case. In addition, the case was re-assigned four times to different prosecutors.[9]

In the Resolution of 5 August 2002, we referred this case to Associate Justice Rebecca De Guia-Salvador ("Justice Salvador") of the Court of Appeals for investigation, report and recommendation.

The Investigating Justice's Findings

In her Report ("Report") dated 4 March 2003, Justice Salvador recommended the dismissal of the complaint for lack of merit. The Report reads in pertinent parts:

> Anent the charge of abuse of authority which purportedly underlied the denial of complainant's motions for reinvestigation, reduction of bail and demurrer to evidence, respondent Judge acted clearly within the judicial capacity inherent in her position. Long and well-settled is the rule that, when required to exercise his judgment or discretion, a judicial officer is not liable as long as he acts in good faith; bad faith is, therefore, the source of liability. In the absence of any showing of fraud, dishonesty or corruption as in the case at bench, the acts of a judge in his official capacity does not amount to misconduct even if such acts are erroneous. Moreover, the law provides ample judicial remedies against errors or irregularities committed by a trial court in the exercise of its jurisdiction. The ordinary remedies include a motion for reconsideration and appeal, while the extraordinary remedies are, *inter alia*, the special civil actions of *certiorari*, prohibition or mandamus, a motion for inhibition, or a petition for change of venue, as the case may be.

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[9] *Rollo*, pp. 98-118.

With her resolution of complainant's motion for reconsideration and voluntary inhibition on November 13, 2000, there is, on the other hand, no more cause to hold respondent Judge liable for the charge of neglect of duty and/or delaying the trial of Criminal Case No. 05-M-97. Significantly, whatever exceptions complainant harbored against said order had already been effectively rendered moot and academic when respondent Judge issued the Order dated June 6, 2000, voluntarily inhibiting herself from further hearing and resolving the case. By refusing to present her evidence and repeatedly moving for deferment of the scheduled trial in the case, complainant was, moreover, partly responsible for the delay she now gratuitously imputes against respondent Judge.

Neither can respondent Judge be held liable for partiality in supposedly allowing the documents questioned in the case to be entrusted to Max Cristobal, a relative of the private complainant in Criminal Case No. 05-M-97. As admitted by complainant in her affidavit dated December 5, 2002 and during the hearing of January 7, 2003, she had no personal knowledge of the truth or falsity of the charge except thru xxx testimony elicited from Mario Lopez during the hearing conducted on August 31, 2000 in Adm. Matter No. [P-01-1452] xxx

As the sole evidence relied upon on so grave a charge against respondent Judge, however, [Lopez's] testimony hardly inspires credence. Aside from the fact that the declaration was not even corroborated by Glenn Umali, the witness' co-respondent in Adm. Matter No. [P-01-1452] who, contrariwise, named him as the one who turned over the questioned documents to Max Cristobal, Mario Lopez also contradicted himself [during the investigation] xxx

Viewed in the light of the October 29, 2002 affidavit executed by his co-employees to the effect that respondent Judge has never amended any previously issued Order except in writing and the latter's categorical denial of knowledge and approval [of the documents' release], the ineluctable conclusion which could be drawn in the premises is that, in excess of the directive contained in respondent Judge's Order dated October 5, 1998, Mario Lopez unilaterally decided to entrust the questioned documents to Max Cristobal. As former Acting Branch Clerk of Court of respondent Judge's sala, Mario Lopez's propensity therefore has been more than amply demonstrated in similar incidents in at least two cases pending before Branch 10 of the Regional Trial Court of Malolos, Bulacan, *viz*: (a) Civil Case No. 35-M-92, entitled "*Julian Francisco vs. Sps. Pelagio*

and Gregoria Francisco"; and, (b) EPC No. 11-M-98, entitled "*Lorna Silverio vs. Jaime Viceo*." That Mario Lopez's attempt at self-exculpation by implicating respondent Judge could also be retaliatory is indicated by the open censure he was subjected in the aforesaid cases as well as the latter's revocation of his appointment as Acting Branch Clerk of Court of her sala.[10]

The Ruling of the Court

The Report is well-taken.

Administrative charges against members of the judiciary must be supported at least by substantial evidence.[11] Failure to do so will result in the dismissal of the complaint for lack of merit.[12]

Here, complainant has presented no credible proof to support her charges against respondent Judge. On her claim that respondent Judge ordered the unauthorized release of the documents in question, complainant's sole evidence is the following testimony of Lopez in A.M. No. P-01-1452:

COURT [EXECUTIVE JUDGE DANILO A. MANALASTAS]

> xxx [D]espite your knowledge that Max Cristobal was interested in the outcome of the action and most likely, a sympathizer of Anastacia Cristobal, you entrusted to him the original copies of the questioned documents?
>
> xxx xxx xxx

MARIO LOPEZ

> Yes, Your Honor.

COURT

> Why?

MARIO LOPEZ

> Considering that it was the prosecution that was requesting for that second opinion, considering that it was the prosecution that was requesting for the said documents to

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[10] Report, pp. 4-5, 10.

[11] *Lachica v. Judge Flordeliza*, 324 Phil. 534 (1996).

[12] *Castro v. Bullecer*, Adm. Matter No. 145 CFI, 11 June 1975, 64 SCRA 289.

be further re-examined, we entrusted the documents to Max Cristobal with his own undertaking indicated at the dorsal side of the xerox copies of the documents transmitted by the NBI, Your Honor.

COURT

Nevertheless and because of your knowledge of the interest of Max Cristobal in the outcome of this action, you knew very well and it could not have escaped your cognizance of the fact that by entrusting these questioned documents to him, that will give him an opportunity to either switch these with other documents or do something that may adversely affect the interest of the accused, Mrs. Portic considering that there was already a prior finding by the NBI regarding these questioned documents favorable to Mrs. Portic?

MARIO LOPEZ

After all, Your Honor, the documents that were brought by Mr. Cristobal were the documents being presented by the prosecution, Your Honor.

COURT

Nevertheless, that gave him an opportunity to either tamper with it or switch it with other documents or do other things that could adversely affect the interest of the private complainant herein?

MARIO LOPEZ

What we did was with the cognizance of the Court itself, Your Honor.

COURT

What do you mean? Was there a particular order on the part of the presiding judge of Branch 10 authorizing Max Cristobal to himself hand carry these questioned documents?

MARIO LOPEZ

Although there was no written order, Your Honor . . .

COURT

Was there an order?

MARIO LOPEZ

There was a verbal order, Your Honor.

COURT

There was a verbal order by whom?

MARIO LOPEZ
By the Presiding Judge, Your Honor.

COURT
And is that contained in the minutes of the proceedings?

MARIO LOPEZ
That is not contained, Your Honor, but the act of allowing or authorizing or entrusting those documents to Max Cristobal was brought to the attention of the presiding judge herself.[13]

As found by Justice Salvador, however, Lopez's testimony is not credible. In the latter part of his testimony, Lopez no longer claimed that respondent Judge authorized him to release the documents. Instead, Lopez testified that what he did was based on "common practice" in Branch 10. However, on further questioning by Executive Judge Manalastas, Lopez later admitted that he erred in releasing the documents, thus:

COURT
Nevertheless, despite your knowledge that he was interested in overturning the early or initial finding of the NBI you entrusted these documents to Max Cristobal?

MARIO LOPEZ
Based on common practice, Your Honor.

COURT
What common practice? Was it the practice to entrust to a party or sympathizer of a party original copies of the documents that could enable that party to either destroy the evidence, switch the evidence or impair its value? Is it common practice to allow a party to handle documents that will give him opportunity to discredit its value? Is there a practice to that effect?

MARIO LOPEZ
None, Your Honor.

COURT
So what practice are you talking about?

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[13] Exh. B-3 to B-6 (TSN, 31 August 2000, pp. 12-15).

MARIO LOPEZ
The practice of just entrusting a person who will make an undertaking before the court, Your Honor.

COURT
But if the party has an interest in the outcome of the litigation, is there such a practice? If that will give him opportunity to tamper with the evidence, is there such a practice?

MARIO LOPEZ
It may not be a practice, Your Honor, but it may be an error on the part of your humble servant.

COURT
So, you admit that you committed an error in entrusting these documents to Max Cristobal?

MARIO LOPEZ
It may be a human error for that matter, Your Honor.[14] (Italics added)

In their counter-affidavit in A.M. No. P-01-1452, Lopez and Umali did not mention that respondent Judge orally ordered the release of the documents to a relative of Cristobal. They merely relied on the so-called "ordinary practice" claimed by Lopez in his testimony, thus:

We allowed the prosecution through Max Cristobal to handcarry the documents to Camp Olivas, San Fernando, Pampanga, considering that it was the prosecution [which] requested xxx the second opinion from Camp Olivas, San Fernando, Pampanga xxx [;]

We exercise[d] utmost diligence in allowing the prosecution to handcarry the subject documents by making him sign with his undertaking that the documents [would] actually reach intact the addressee as borne out by the records showing that he (Max Cristobal) received the original documents to be brought to Camp Olivas;

It has been an ordinary practice in our court that parties may be allowed to handcarry notices, documents or other processes of the court for purposes of expediency and early disposition of the case.[15] (Italics added)

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[14] Exh. B (TSN, 31 August 2000, pp. 31-32).

[15] *Portic v. Lopez*, 413 Phil. 310 (2001).

In contrast, respondent Judge presented in her favor the joint affidavit[16] of all the members of her staff (including Umali) attesting that "never had there been any instance in any case raffled to Branch 10 that [respondent Judge] ever gave any verbal Order amending any previous xxx Order."

Based on the evidence, the Court gives credence to respondent Judge's claim that she gave no order for the release of the documents other than in the manner stated in her 9 November 1998 Order. Moreover, respondent Judge enjoys the presumption that she is innocent of the charge against her[17] and that she has performed her duties regularly and in good faith.[18] During the investigation of this case, complainant, apart from manifesting that she was no longer interested in pursuing this case, admitted that "she has no personal knowledge on the truthfulness" of Lopez's claim against respondent Judge.[19] There is reason to believe, as Justice Salvador noted, that Lopez wanted to retaliate against respondent Judge for revoking his designation as Acting Clerk of Court of Branch 10 by falsely testifying that she authorized him to release the documents.

Neither did complainant present any proof to support her claim that respondent Judge unreasonably delayed the proceedings in Case No. 05-M-97. On the contrary, the records show that respondent Judge attended to the various incidents of the case with reasonable dispatch. Respondent Judge did this even in the face of complainant's numerous motions, the requirement to hear the prosecution on these motions, and the successive transfer of Case No. 05-M-97 to four different prosecutors. Complainant herself needlessly prolonged the proceedings by unjustifiably refusing to present her evidence, prompting respondent Judge to warn her that her continued refusal would be deemed a waiver of her right to do so.[20]

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[16] Exh. 13.

[17] See *Atty. Geocadin v. Hon. Peña*, 195 Phil. 344 (1981).

[18] *Martin v. Vallarta*, A.M. No. MTJ-90-495, 12 August 1991, 200 SCRA 469.

[19] Exh. A.

[20] Order dated 27 November 2000 (Exh. 9).

Complainant has not cited any ground to hold respondent Judge administratively liable for denying her motions for reinvestigation, reduction of bail, dismissal, and voluntary inhibition. At any rate, the rule is that disciplinary proceedings do not complement, supplement, or substitute judicial remedies. An inquiry into the administrative liability of a judge may be resorted to only after the available remedies have been exhausted and decided with finality.[21] There is nothing on record to suggest that complainant first availed of such remedies before filing this administrative case.

WHEREFORE, we *DISMISS* the complaint against respondent Victoria Villalon-Pornillos, Presiding Judge of the Regional Trial Court, Branch 10, Malolos, Bulacan, for lack of merit.

SO ORDERED.

Panganiban (Acting Chairman)*, Ynares-Santiago* and *Azcuna, JJ*., concur.

Davide, Jr., C. J. (Chairman), on official leave.

FIRST DIVISION

[G.R. No. 118912. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **QUINTIN CASTILLO *y* MASANGKAY and RICARDO CASTILLO *y* ARCE**, *appellants*.

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[21] *Caguioa v. Laviña*, A.M. No. RTJ-00-1553, 20 November 2000, 345 SCRA 49; *Atty. Flores v. Hon. Abesamis*, 341 Phil. 299 (1997).

SYNOPSIS

Accused Quintin and Ricardo were found guilty of murder and sentenced to suffer the penalty of *Reclusion Temporal*. On appeal to the Court of Appeals, they were released on bail for health reasons. Thereafter, the appellate court affirmed the conviction but increased the penalty to *Reclusion Perpetua*. The case was certified to the Court for reviewing Ricardo's liability while partial entry of judgment was entered with respect to Quintin who did not file an appeal. It appears, however that appellant jumped bail. Whether this appeal should be dismissed for abandonment or failure to prosecute, the Court deemed it proper to proceed with the case so as to avoid the absurdity of rewarding appellant for jumping bail. It ruled that dismissing the appeal would render the decision of the trial court final despite the finding by the appellate court that appellant should be meted a higher penalty. Consequently, the Court found no reason to reverse the ruling of the trial court as affirmed by the Court of Appeals and it confirmed the penalty of *reclusion perpetua* with civil liability of ₱25,000 exemplary damages, ₱50,000 moral damages, ₱25,000 temperate damages and ₱50,000 civil indemnity.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DISMISSAL OF APPEAL IN THE SUPREME COURT FOR ABANDONMENT OR FAILURE TO PROSECUTE; NOT APPLIED AS APPELLANT SENTENCED TO LOWER PENALTY BY THE TRIAL COURT AND TO HEAVIER PENALTY BY THE APPELLATE COURT. — It appearing that appellant has jumped bail, this Court shall first determine whether to entertain the present appeal. Pursuant to Rule 125, Section 1, in relation to Rule 124, Section 8 of the Revised Rules of Court, in the event that the appellant escapes from custody or jumps bail, the Court has the discretion to dismiss the appeal. In *People v. Araneta*, where the appellant therein likewise jumped bail after the case was certified to the Court for review, the Court ruled that it is unwise to dismiss the appeal if such will result to an injustice. In said case, dismissal of the appeal would have rendered the trial court judgment sentencing appellant to a lower penalty final, notwithstanding the appellate court's finding that a heavier penalty should be

imposed. Thus, to avoid a mockery of justice, whereby an appellant would benefit from his act of jumping bail, the Court therein resolved to continue exercising jurisdiction over the case. In the present case, were this Court to dismiss the appeal at this stage, the decision of the trial court sentencing appellant to a prison term within the range of *reclusion temporal* would become final, despite the finding of the Court of Appeals that appellant should instead be meted the penalty of *reclusion perpetua.* To avoid the absurdity of rewarding appellant for his act of jumping bail, this Court deems it proper to proceed exercising jurisdiction and consider the instant appeal.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY ALLEGED UNUSUAL REACTION AT THE TIME OF CRIME.— Appellant's conviction depends on the credibility of the lone eyewitness, Romeo Hernandez, whose testimony, appellant maintained, is unnatural and improbable. He regarded Romeo's failure to aid the victim while being attacked and to report the crime immediately as suspicious and contrary to human experience, considering that they were brothers. Romeo cannot be faulted for not helping his brother even as the latter was being stabbed and struck to death. No standard form of behavioral response can be expected from anyone when confronted with a startling or frightful occurrence. Moreover, this Court does not find anything unnatural in Romeo's failure to help his brother as he was only thirteen years old when the crime happened. Furthermore, as also observed by the Court of Appeals, Romeo did plead with appellants to stop beating his brother. He simply had to flee when appellants turned to him.

3. ID.; ID.; ID.; NOT AFFECTED BY DELAY IN REPORTING THE CRIME.— Neither can appellant cast suspicion on Romeo's failure to report immediately the crime and the identities of his brother's assailants. As correctly pointed out by the Court of Appeals, Romeo in his testimony attributed his silence to his confusion upon seeing his mother cry hysterically and afterwards faint. He also feared that if he disclosed the identities of the assailants right away, his father might look for them and figure into more trouble. It was for these reasons that he waited until after the interment of the victim before issuing a statement to the authorities. Delay in revealing the identity of the perpetrator of a crime, when

sufficiently explained, does not impair the credibility of a witness. Furthermore, in this case, the eyewitness reported the matter to the authorities three days after the crime.

4. ID.; ID.; ID.; FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED. – It is settled that when a conviction hinges on the credibility of witnesses, the assessment of the trial court is accorded the highest degree of respect. Time and again, this Court has held that the testimony of a sole eyewitness, which is clear, straightforward and worthy of credence by the trial court, is sufficient to support a conviction. This Court thus finds no cogent reason to depart from the findings of the lower court, as affirmed by the Court of Appeals. When the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon the Court.

5. ID.; ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES IN THE ABSENCE OF ILL-MOTIVE AND CORROBORATION BY OTHER EVIDENCE.— This Court also notes that there is no showing that Romeo harbored any ill-motive falsely to impute upon Quintin and appellant the killing of his brother, especially considering that the accused are his mother's cousins, and are, therefore, his uncles. Moreover, Romeo's declarations as to the manner by which the victim was attacked were supported by the physical evidence, thereby bolstering the veracity of his testimony. Appellant's defense of denial pales when viewed against the strong testimonial evidence of the prosecution. As concurred by the Court of Appeals, the trial court considered the testimonial evidence of the defense to be "fabricated" and "without sufficient weight and credence." Aside from the testimony of Romulo, which the lower court evaluated to be "replete with inconsistencies," appellant's version was unsubstantiated by any independent evidence. To merit credibility, denial must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters. Furthermore, there is the well-entrenched doctrine that unexplained flight is a clear and positive evidence of guilt.

6. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT IN CASE AT BAR.— The Court of Appeals and the trial court were correct in convicting Quintin and appellant of murder. Treachery was clearly demonstrated by the manner by which appellant, while astride the victim, struck the latter's head with a piece of stone. The victim, who was proven to be then lying on his belly with his face down on the ground, was rendered defenseless, as the other assailant stabbed him. It was, therefore, clear that Quintin and appellant employed means to insure the commission of the crime without risk to themselves. The appellate court, however, correctly disregarded abuse of superior strength as this circumstance is already absorbed by treachery.

7. ID.; ID.; PROPER PENALTIES.— At the time the crime was committed, the appropriate penalty for murder under Article 248 of the Revised Penal Code prior to its amendment was *reclusion temporal* in its maximum period to death. Considering that there is neither aggravating nor mitigating circumstance in this case, the penalty should be *reclusion perpetua.* The penalty of *reclusion perpetua* is indivisible. Thus, the Indeterminate Sentence Law does not apply. Finally, on appellant's civil liability, this Court finds it appropriate to impose additional damages in line with prevailing doctrine: exemplary damages in the amount of ₱25,000, moral damages in the amount of ₱50,000, and temperate damages in the amount of ₱25,000 for funeral expenses. The ₱50,000 indemnity fixed by the Court of Appeals should be sustained.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Del Prado Diaz & Associates Law Offices for respondents.

D E C I S I O N

AZCUNA, *J.*:

Quintin Castillo *y* Masangkay (Quintin) and Ricardo Castillo *y* Arce (appellant) were charged with murder for the death of Manolito Hernandez in an information which states, as follows:

That on or about the 8th day of April, 1982, at about 10:45 o'clock in the evening, in Barangay Malakim Pook, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and a big stone, with intent to kill, conspiring and confederating together, acting in common accord, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault, stab and hit with said deadly weapons, suddenly and without warning, one Manolito Hernandez, thereby inflicting upon the latter sixteen (16) different wounds on different parts of his body, which directly caused his death.[1]

On December 9, 1982, Quintin and appellant, with the assistance of counsel, pleaded not guilty to the charge of murder.[2] Trial on the merits thereafter ensued.

The records show that Dr. Johnny Ilustre, [3] Francisco Castor,[4] Francisco Bonado,[5] Buenaventura Hernandez,[6] Cosme Hernandez,[7] Romeo Hernandez,[8] and Donata Hernandez[9] testified for the prosecution. Their testimonies established that on April 8, 1982, at around 10:00 p.m., the seventeen-year-old victim was having a drinking spree inside his father's passenger jeepney parked in front of his house with Quintin, appellant, and Cosme Hernandez. Buenaventura Hernandez, the victim's father, approached his son, asking him why he was drinking. The victim replied that he was only socializing, and assured Buenaventura

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[1] Records, pp. 1-2.

[2] Certificate of Arraignment, CA *Rollo*, p. 17.

[3] TSN, February 22, 1983, pp. 2-26; TSN, June 21, 1984, pp. 3-53.

[4] TSN, July 1, 1983, pp. 4-14; TSN, July 27, 1983, pp. 3-22.

[5] TSN, September 8, 1983, pp. 4-18; TSN, October 19, 1983, pp. 3-42.

[6] TSN, December 14, 1983, pp. 5-22; TSN, January 13, 1984, pp. 4-54; TSN, July 30, 1987, pp. 21-29.

[7] TSN, February 8, 1984, pp. 2-33; TSN, March 22, 1984, pp. 3-26; TSN, August 15, 1984, pp. 4-26.

[8] TSN, August 15, 1984, pp. 27-43; TSN, September 14, 1984, pp. 6-49.

[9] TSN, December 14, 1984, pp. 2-13.

that Quintin and appellant were his friends. He later asked permission to spend the night at his uncle's house. His father refused, and this apparently annoyed the victim. Deciding to go to his uncle's house against his father's will, he bade goodbye to his companions and ran towards the north. Seeing this, Buenaventura drove his jeepney to follow the victim. Aboard the jeepney were his son Dante Hernandez, his nephew Cosme Hernandez, Quintin, and appellant.

Buenaventura eventually caught up with the victim walking northwards along the road in Barangay Malaking Pook. Coming from the opposite direction were Juanito Cusi and his nephew Manuel Cusi. An altercation ensued between Juanito and the victim, which resulted into a fight. Buenaventura and his passengers alighted and tried to pacify Juanito and the victim, but before the two could be separated, the victim managed to strike Juanito at the head with a stone. Buenaventura then offered to bring Juanito to the hospital. On the way to the hospital, Buenaventura saw Quintin and appellant taking the victim home with the latter's waist being held by appellant and right arm being clutched by Quintin. Fearing for his son's safety following the incident with Juanito, while passing by his residence, he called out to his other son Romeo Hernandez to fetch the victim and instructed Cosme Hernandez to alight from the jeepney and accompany the victim.

Romeo Hernandez, who was then 13 years old, did as he was told. He took a flashlight and walked towards the north to look for the victim. At around 10:45 p.m., from a distance of six meters and with the aid of his flashlight, he saw the victim lying prostrate, being ganged up by Quintin and appellant. He witnessed Quintin stabbing the body of the motionless victim with a shiny object while appellant was astride the victim, beating the latter's head with a stone. Fearfully, he shouted "*Tama na iyan, maawa kayo sa kapatid ko*," prompting the two assailants to turn to him. He thus ran back home. On the way he met his cousin Cosme, who, upon being told of the incident, rushed to the crime scene.

When Cosme arrived at the spot where the victim was attacked, he saw the victim all bloodied and lying on the ground. Quintin and appellant were nowhere to be found. Police Officer Francisco Castor of the Integrated National Police (INP) later arrived, followed by members of the victim's family, Dr. Johnny Ilustre of the INP, police officer Francisco Bonado and other policemen. They recovered a stone[10] near the victim, which eyewitness Romeo identified during the trial as the same stone used by appellant in attacking the victim.

Dr. Johnny Ilustre, Municipal Health Officer of San Pascual, Batangas, conducted the post-mortem examination on the body of the victim. He prepared the Post-Mortem Examination Report[11] and the victim's Death Certificate,[12] which the prosecution submitted as evidence. He testified that the victim died of severe cerebral hemorrhage due to fractures on the skull and mandible, and other injuries which appeared to have been caused by a sharp-pointed instrument and a hard and blunt object. The victim sustained fourteen injuries in all, four of which Dr. Ilustre declared to be fatal.

The victim's mother, Donata Hernandez, also testified on the expenses she incurred due to the death of his son, totaling to ₱29,353. Not all of these, however, were substantiated by official receipts.

Testifying for the defense, on the other hand, were Pastor de Castro,[13] Romulo Cusi,[14] Quintin,[15] and appellant.[16]

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[10] Exhibit "E".

[11] Records, pp. 7-8, Exhibit "A".

[12] *Id*., at 6, Exhibit "B".

[13] TSN, July 30, 1985, pp. 4-28.

[14] TSN, September 19, 1985, pp. 3-49; TSN, November 14, 1985, pp. 2-28.

[15] TSN, January 27, 1987, pp. 2-23; TSN, June 4, 1987, pp. 2-36; TSN, July 30, 1987, pp. 3-20.

[16] TSN, May 20, 1986, pp. 2-32; TSN, July 7, 1986, 3-29; TSN, July 16, 1986, pp. 3-43.

Quintin and appellant, who happen to be first cousins, were one in denying the prosecution's narration of the events that transpired after Buenaventura left for the hospital. They thus presented their own version of the incident.

Quintin and appellant testified that before the victim's father left for the hospital, the latter requested them to take the victim home. The victim, however, later insisted that they not accompany him, as he might be scolded by his mother. Quintin and appellant therefore left the victim and walked home towards the opposite direction. While walking home, they heard the victim shout, *"Labas dito ang barako!"* Ignoring this, they kept walking and on the way met three men, who appeared to be drunk. The men then asked, "*Kayo baga ang nagpapalabas ng barako diyan?*" Quintin and appellant answered in the negative and pointed southwards, to the direction of the victim. They then headed home and went to sleep.

Romulo Cusi, nephew of Juanito and second cousin of the accused, testified that contrary to the prosecution's claim, it was he, and not Manuel Cusi, who was walking with Juanito that evening. He substantially corroborated Buenaventura's narration of the stoning of Juanito. He, however, asserted that Romeo could not have witnessed the alleged killing of the victim as Romeo rode with them, along with Cosme, in Buenaventura's jeepney all the way to the hospital.

Finding the evidence for the prosecution "clear, convincing, and sufficient" and that of the defense merely fabricated, the Regional Trial Court of Batangas City, Branch 3, convicted Quintin and appellant of murder, qualified by treachery and aggravated by abuse of superior strength. It thus sentenced the accused, as follows:

Applying the Indeterminate Sentence Law, accused QUINTIN CASTILLO AND RICARDO CASTILLO are hereby sentenced to suffer the penalty of FOURTEEN (14) YEARS and EIGHT (8) MONTHS, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS, as maximum, both of *RECLUSION TEMPORAL*, to jointly indemnify the heirs of Manolito Hernandez in the sum of

₱30,000, to pay jointly the sum of ₱50,000 for actual, moral and exemplary damages and to pay the costs.[17]

It likewise ordered the cancellation of the bail bonds posted by the accused for their provisional liberty.

Both the accused, who were then committed to the Batangas Provincial Jail, appealed their conviction before the Court of Appeals.[18] They thereafter filed a petition for bail pending appeal grounded on health reasons,[19] which the appellate court granted on February 6, 1992.[20] On February 17, 1992, they were accordingly released from confinement upon filing of bail bonds in the amount of ₱30,000 each.[21]

On November 19, 1993, the Court of Appeals rendered its decision affirming the findings of the trial court, with modifications.[22] It ruled that the trial court erred in considering abuse of superior strength as an aggravating circumstance as this is already absorbed by treachery. It, moreover, considered the mitigating circumstance of Quintin's voluntary surrender and sentenced the latter to an indeterminate prison term the minimum of which is within the range of *prision mayor* maximum, and the maximum of which is within *reclusion temporal* maximum. On the other hand, it said that appellant's penalty should be *reclusion perpetua*. [23] Consequently, the appellate court certified the case to this Court for the purpose of reviewing appellant's criminal liability, in accordance with Rule 124, Section 13 of the Revised Rules of Court. A partial entry of judgment in the meantime was entered with respect to Quintin, who did not file an appeal.[24]

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[17] CA *Rollo*, p. 84.

[18] *Id*., at 107.

[19] *Id*., at 112-114.

[20] *Id*., at 140.

[21] *Id*., at 150-154.

[22] *Id*., at 253-274; Penned by Retired Supreme Court Associate Justice Vicente V. Mendoza.

[23] CA Decision, p. 21, CA *Rollo*, p. 279 *et seq*.

[24] CA *Rollo*, p. 279.

On March 15, 1995, this Court ordered the bondsmen to surrender appellant within 10 days from notice and the trial court judge to order the commitment of appellant to the Bureau of Corrections within 5 days from the latter's surrender. [25] Upon receiving report that the bonding company had transferred to an unknown address, this Court, on June 17, 1998, directed the trial court judge to forfeit the bond and to issue a warrant of arrest.[26] Despite this, appellant remained at large. Although *alias* warrants of arrest were issued by this Court on February 24, 1999 and June 21, 1999, appellant has not been apprehended to date.[27]

It appearing that appellant has jumped bail, this Court shall first determine whether to entertain the present appeal. Pursuant to Rule 125, Section 1, in relation to Rule 124, Section 8 of the Revised Rules of Court, in the event that the appellant escapes from custody or jumps bail, the Court has the discretion to dismiss the appeal. Section 8 of Rule 124 provides:

Sec. 8. *Dismissal of appeal for abandonment or failure to prosecute —*

xxx xxx xxx

The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal.

In *People v. Araneta*,[28] where the appellant therein likewise jumped bail after the case was certified to the Court for review, the Court ruled that it is unwise to dismiss the appeal if such will result to an injustice. In said case, dismissal of the appeal would have rendered the trial court judgment sentencing appellant to a lower penalty final, notwithstanding the appellate court's

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[25] *Rollo*, p. 2.

[26] *Id*., at 9-10.

[27] *Id*., at 74-77, & 84-86.

[28] 300 SCRA 80 (1998).

finding that a heavier penalty should be imposed. Thus, to avoid a mockery of justice, whereby an appellant would benefit from his act of jumping bail, the Court therein resolved to continue exercising jurisdiction over the case.

In the present case, were this Court to dismiss the appeal at this stage, the decision of the trial court sentencing appellant to a prison term within the range of *reclusion temporal* would become final, despite the finding of the Court of Appeals that appellant should instead be meted the penalty of *reclusion perpetua*. To avoid the absurdity of rewarding appellant for his act of jumping bail, this Court deems it proper to proceed exercising jurisdiction and consider the instant appeal.

Appellant did not file a brief before this Court. Nevertheless, this Court has reviewed the records of the case, including the assignment of errors raised before the Court of Appeals, namely:

ASSIGNMENT OF ERRORS

I.

THAT THE TRIAL COURT GRAVELY ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONY OF THE SUPPOSED LONE EYEWITNESS TO THE CRIME.

II.

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE RULE THAT CONVICTION MUST REST ON THE STRENGTH OF THE PROSECUTION AND NOT ON THE WEAKNESS OF THE DEFENSE.

III.

THE TRIAL COURT ERRED IN GIVING DUE CREDENCE TO THE PROSECUTION'S EVIDENCE AND IN COMPLETELY REJECTING THE THEORY OF THE DEFENSE.[29]

Appellant questioned the sufficiency of the uncorroborated testimony of the supposed sole eyewitness as evidence to sustain his conviction and reject his defense of denial.

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[29] CA *Rollo*, p. 163.

Appellant's conviction depends on the credibility of the lone eyewitness, Romeo Hernandez, whose testimony, appellant maintained, is unnatural and improbable. He regarded Romeo's failure to aid the victim while being attacked and to report the crime immediately as suspicious and contrary to human experience, considering that they were brothers.

Romeo cannot be faulted for not helping his brother even as the latter was being stabbed and struck to death. No standard form of behavioral response can be expected from anyone when confronted with a startling or frightful occurrence.[30] Moreover, this Court does not find anything unnatural in Romeo's failure to help his brother as he was only thirteen years old when the crime happened. Furthermore, as also observed by the Court of Appeals, Romeo did plead with appellants to stop beating his brother. He simply had to flee when appellants turned to him.

Neither can appellant cast suspicion on Romeo's failure to report immediately the crime and the identities of his brother's assailants. As correctly pointed out by the Court of Appeals, Romeo in his testimony attributed his silence to his confusion upon seeing his mother cry hysterically and afterwards faint. He also feared that if he disclosed the identities of the assailants right away, his father might look for them and figure into more trouble. It was for these reasons that he waited until after the interment of the victim before issuing a statement to the authorities. Delay in revealing the identity of the perpetrator of a crime, when sufficiently explained, does not impair the credibility of a witness.[31] Furthermore, in this case, the eyewitness reported the matter to the authorities three days after the crime.

It is settled that when a conviction hinges on the credibility of witnesses, the assessment of the trial court is accorded the highest degree of respect.[32] In the present case, the trial court observed that:

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[30] *People v. Lachica*, G.R. No. 131915, September 3, 2003.

[31] *People v. Espina*, 261 SCRA 701 (2001).

[32] *Sarabia v. People*, 361 SCRA 652 (2001).

. . . [P]rosecution witness Romeo Hernandez is a credible young man and his statement stated in court is likewise credible and worthy of belief. Said witness is, from the observation of the court, a refined person and the same testified in [a] clear and straightforward manner.[33]

Time and again, this Court has held that the testimony of a sole eyewitness, which is clear, straightforward and worthy of credence by the trial court, is sufficient to support a conviction.[34]

This Court also notes that there is no showing that Romeo harbored any ill-motive falsely to impute upon Quintin and appellant the killing of his brother, especially considering that the accused are his mother's cousins, and are, therefore, his uncles. Moreover, Romeo's declarations as to the manner by which the victim was attacked were supported by the physical evidence, thereby bolstering the veracity of his testimony.

Appellant's defense of denial pales when viewed against the strong testimonial evidence of the prosecution. As concurred by the Court of Appeals, the trial court considered the testimonial evidence of the defense to be "fabricated" and "without sufficient weight and credence."[35] Aside from the testimony of Romulo, which the lower court evaluated to be "replete with inconsistencies," appellant's version was unsubstantiated by any independent evidence.[36] To merit credibility, denial must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.[37]

This Court thus finds no cogent reason to depart from the findings of the lower court, as affirmed by the Court of Appeals. When the trial court's factual findings have been affirmed by

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[33] CA *Rollo*, p. 82.

[34] *People v. Rivera*, G.R. No. 139185, September 29, 2003.

[35] CA *Rollo*, p. 83.

[36] *Id*., at 83 & 268.

[37] *People v. Alfon*, 399 SCRA 64 (2003).

the appellate court, said findings are generally conclusive and binding upon the Court.[38]

Furthermore, there is the well-entrenched doctrine that unexplained flight is a clear and positive evidence of guilt.[39]

The Court of Appeals and the trial court were correct in convicting Quintin and appellant of murder. Treachery was clearly demonstrated by the manner by which appellant, while astride the victim, struck the latter's head with a piece of stone. The victim, who was proven to be then lying on his belly with his face down on the ground, was rendered defenseless, as the other assailant stabbed him. It was, therefore, clear that Quintin and appellant employed means to insure the commission of the crime without risk to themselves. The appellate court, however, correctly disregarded abuse of superior strength as this circumstance is already absorbed by treachery.

At the time the crime was committed, the appropriate penalty for murder under Article 248 of the Revised Penal Code prior to its amendment was *reclusion temporal* in its maximum period to death.[40] Considering that there is neither aggravating nor mitigating circumstance in this case, the penalty should be *reclusion perpetua*.[41] The penalty of *reclusion perpetua* is indivisible.[42] Thus, the Indeterminate Sentence Law does not apply.

Finally, on appellant's civil liability, this Court finds it appropriate to impose additional damages in line with prevailing doctrine: exemplary damages in the amount of ₱25,000,[43] moral damages in the amount of ₱50,000,[44] and temperate damages in the amount

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[38] *Danofrata v. People*, G.R. No. 143010, September 30, 2003.

[39] *People v. Pascua, Jr.,* 370 SCRA 599 (2001).

[40] *People v. Pelopero*, G.R. No. 126119, October 15, 2003.

[41] *People v. Muñoz*, 170 SCRA 107 (1989).

[42] *People v. Gumayao*, G.R. No. 138933, October 28, 2003.

[43] *People v. Catubig*, 363 SCRA 621 (2001).

[44] *People v. Baltazar*, G.R. No. 143126, July 31, 2003.

of ₱25,000 for funeral expenses.[45] The ₱50,000 indemnity fixed by the Court of Appeals should be sustained.

WHEREFORE, this Court finds appellant Ricardo Castillo *y* Arce guilty of murder in Criminal Case No. CCC-VIII-1073 (82) of the Regional Trial Court of Batangas City, Branch 3, and sentences him to *reclusion perpetua* and orders him to pay the heirs of the victim the sum of ₱50,000 as indemnity, ₱25,000 as exemplary damages, ₱50,000 as moral damages, and ₱25,000 as temperate damages. Costs *de oficio*.

Let copies of this Decision be furnished to the Secretary of Interior and Local Government and the Secretary of Justice so that appellant may be brought to justice.

SO ORDERED.

Panganiban, Ynares-Santiago, and *Carpio, JJ.*, concur.

Davide, Jr., C.J. (Chairman), on official leave.

SECOND DIVISION

[G.R. No. 123939. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DOMINGO VASQUEZ *y* PACHECO and RAMON VASQUEZ *y* PACHECO**, *accused*. **DOMINGO VASQUEZ *y* PACHECO**, *appellant*.

SYNOPSIS

Luis Luable and Geronimo Espinosa were walking side by side on the street with their cousins when a passenger jeep

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[45] *People v. Latasa*, G.R. No. 144331, May 9, 2003.

with both appellants Domingo and Ramon inside sped towards Luis and Geronimo. Thereafter, appellants armed with a bolo with five others alighted from the jeepney and walked towards Luis and Geronimo. The two ran to different directions as they were chased. Later, Geronimo was found dead with hack wounds.

In Criminal Case No. 48935(95), Domingo was found guilty of murder by conspiracy committed against Geronimo. In Criminal Case No. 48936(95), Ramon was found guilty of attempted murder committed against Luis. While the Court found no reason to reverse the conclusion reached by the trial court, it ruled that Domingo was guilty only of homicide and Ramon, of attempted homicide. The alleged qualifying circumstance of treachery was not sufficiently established.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF TRIAL COURT, GENERALLY RESPECTED; EXCEPTION. — The general rule is that the findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on the said findings, are accorded by the appellate court high respect, if not conclusive effect, because of the unique advantage of the trial court in observing at close range the conduct and deportment of the said witnesses. However, the appellate court may set aside the findings of the trial court and its conclusions based on the said findings if it overlooked, ignored, misconstrued and misinterpreted cogent facts and circumstances which, if considered, would alter the outcome of the case.

2. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES BETWEEN TESTIMONY AND SWORN STATEMENT. — We hold that the trial court erred in rejecting the testimonies of Luable and Dorado. The credibility and probative weight of the testimony of Dorado cannot be assailed by her failure to state the name of the appellant in her sworn statement to the police investigator as among those who ran after Geronimo and Luis. The well-entrenched principle is that sworn statements being *ex parte* are almost always incomplete and often inaccurate but do not really detract from the credibility of the affiants. The failure

of a witness to disclose the name of the culprit does not necessarily impair the credibility of Dorado.

3. CRIMINAL LAW; CONSPIRACY; PRESENT IN CASE AT BAR.— Even if there is no evidence that the appellant stabbed or hacked the victim, he is, nonetheless, criminally liable for the victim's death because he conspired with the principals by direct participation in the commission of the crime. The appellant drove the passenger jeepney with his cohorts on board looking for Luable and Geronimo. When the appellant saw the two going in the opposite direction, the appellant drove the vehicle and sideswiped Geronimo. And when Geronimo fled, the appellant, armed with a bolo, pursued him. When the appellant failed to overtake the victim, he returned to the passenger jeepney and drove it to where his cohorts ganged up on the victim. The appellant urged them on to kill Geronimo. Thereafter, he left the scene along with his cohorts, leaving the hapless Geronimo mortally wounded. All the foregoing constitutes evidence beyond cavil of conspiracy between the appellant and the principals by direct participation. The appellant is, thus, criminally liable for the death of the victim, although there is no evidence that he did not actually stab the latter.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IDENTIFICATION OF ACCUSED; UPHELD IN THE ABSENCE OF ILL-MOTIVE. — There is no evidence on record that Luable, Dorado and Abellanosa nurtured any ill-motive to point to the appellant and falsely implicate him in the killing of Geronimo. Luable, for one thing, did not know the appellant before the killing. Case law has it that in the absence of any improper motive, the testimonies of the witnesses are worthy of full faith and credit.

5. CRIMINAL LAW; MURDER; ELEMENTS; MOTIVE; NOT INCLUDED.— The bare claim of the appellant that he has no motive to kill Geronimo is not a valid defense to the crime charged. Motive to commit a felony is not an element of the said crime; hence, the prosecution is not burned to prove the same.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY.— The bare denial and alibi of the appellant cannot prevail over the collective testimonies of the witnesses of the prosecution

corroborated by the physical evidence that the appellant conspired with the principals by direct participation to kill the victim. Denial and alibi are weak defenses. To merit approbation of his defense of alibi, the appellant is burdened to prove, with clear and convincing evidence that he was in a place other than the *situs* of the crime, such that it was physically impossible for him to be at the scene of the crime when it was committed. The appellant failed to do so. He relied merely on his bare testimony which is dubious in the first place.

7. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT APPRECIATED. —The trial court convicted the appellant of murder qualified by treachery. However, the trial court failed to state in its decision the factual basis for such a finding. From all indications, the cohorts of the appellant managed to overtake Geronimo along Sumakwel Street, as he ran for dear life after being hit earlier by Ramil Gonzales on the head. Geronimo was, thus, aware of the peril to his life.

8. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; NOT APPRECIATED WHEN NOT ALLEGED IN THE INFORMATION.— The assailants of Geronimo took advantage of their superior strength when they ganged up on him, armed with bolos and hacked him to death. However, the qualifying circumstance of abuse of superior strength is not alleged in the Information; hence, cannot qualify the crime to murder. The appellant is guilty only of homicide under Article 249 of the Revised Penal Code, punishable by *reclusion temporal*. We, likewise, agree with the conviction of the appellant of attempted homicide in Criminal Case No. 48936(95). But we do not agree with the penalty meted on the appellant, six (6) months and one (1) day to six (6) years of *prision correccional*.

9. ID.; ATTEMPTED HOMICIDE; PROPER PENALTY.— The imposable penalty for attempted homicide is *prision correccional* which is two degress lower than *reclusion temporal.* The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional,* taking into account the modifying circumstances, if any. To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor*. Hence,

the appellant may be sentenced to an indeterminate penalty from four (4) months of *arresto mayor* in its medium period, as minimum, to three (3) years of *prision correccional,* in its medium period, as maximum.

10. ID.; AGGRAVATING CIRCUMSTANCES; USE OF VEHICLE; NOT APPRECIATED WHEN NOT ALLEGED IN THE INFORMATION.— Although the appellant used a vehicle to commit attempted homicide, the said circumstance was not alleged in the Information, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. The said Rule should be applied retroactively although the crime was committed before the effectivity of the same.

11. ID.; HOMICIDE AND ATTEMPTED HOMICIDE; PROPER CIVIL PENALTY.— The heirs of the victim are entitled to ₱25,000.00 by way of temperate damages, conformably to current jurisprudence. The amount of ₱1,500,000.00 unearned income is deleted for failure of the prosecution to adduce any documentary and oral evidence to prove the factual basis of such amount. The award of moral damages should be increased to ₱50,000.00 to conform to current jurisprudence. Luis Luable, as victim of attempted homicide, is entitled to ₱25,000.00 exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public attorney's Office for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us on appeal is the Decision[1] of the Regional Trial Court of Kalookan City, Branch 121, convicting the appellant Domingo Vasquez *y* Pacheco of murder for the death of Geronimo Espinosa and sentencing him to suffer *reclusion perpetua*; and,

[1] Penned by Judge Adoracion G. Angeles.

of attempted homicide for which the appellant was sentenced to suffer an indeterminate penalty.

The appellant and his brother Ramon Vasquez were charged with murder and attempted murder under two Informations. The accusatory portion of each Information reads as follows:

CRIMINAL CASE NO. 48935(95)
(For Murder)

That on or about the 18th day of June 1995, Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously hack with a bolo one GERONIMO ESPINOSA, hitting him on the vital parts of the body, thereby inflicting upon the latter serious physical injuries, which injuries caused his instantaneous death.

CONTRARY TO LAW.[2]

. . . . . .

CRIMINAL CASE NO. 48936(95)
(For Attempted Murder)

That on or about the 18th day of June 1995 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, hit and bump by (sic) a motor vehicle one LUIS LUABLE *y* DESCA, thus, commencing directly by overt acts of the commission of the crime of Murder, however, said accused was not able to perform all the acts of execution which would produce said felony as a consequence, by reason of causes independent of the will of the herein accused, that is, the said complainant was able to evade the vehicle.

CONTRARY TO LAW.[3]

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[2] *Rollo*, p. 109.

[3] *Id*. at 110.

When arraigned, assisted by counsel, both accused entered their pleas of not guilty.

The Case for the Prosecution

Luis Luable, a twenty-seven-year-old employee of the Selecta Farms, testified that at 6:00 p.m. on June 18, 1995, he was conversing with his brother-in-law, Antonio Cortez, in front of his house at Ramvil 5, Robes Subdivision, Kalookan City. Roel Pacheco, who lived only about seven meters away from their house, arrived and told Maria Theresa (Luis' wife) that his father, Pedro Pacheco, was stoning him. Before long, Pedro and his other son, Marlon, arrived. Marlon was armed with a two-foot long bolo. Luis intervened and asked Pedro, "*Ano ba iyan?*" Pedro resented this question and told him, "*Bakit ka nakikialam sa away ng pamilya namin?*" Luis told Pedro that if he and his son Roel were bent on stoning each other, they should do so in their house and not in the streets because there were plenty of children playing. Roel then grabbed the bolo from his brother Marlon and suddenly hacked Luis. Luis was able to parry the blow with his arm, but his index finger was hit. Luis moved backwards, but Roel picked up a stone about the size of a fist, and threw it at Luis, hitting the latter on the forehead. Luis then fled towards the direction of the Selecta Farms where the house of his half-brother, Geronimo Espinosa, was located, with Pedro and the latter's two sons in hot pursuit. The house was more than a kilometer away.

Luis arrived at the house of his brother, Geronimo, and told the latter that he was being chased and stoned by Pedro and his two sons. He asked to be accompanied back to his house. Geronimo agreed. Luis got home with Geronimo at about 7:00 p.m. After about five minutes, policemen arrived at his house and brought him and Geronimo to the Vicas police precinct. Pedro and Marlon were also brought to the police station so that their differences could be settled. Roel, however, was nowhere to be found. Policemen advised Luis to have his wound treated first and to return to the station later. As he did not bring any money for doctor's fees and medicine, he decided to go back home with Geronimo to get money.

Luis and Geronimo walked side by side on the right side of Lapu-Lapu Street at Urduja Village. With them were their cousins, Raymund Luable, Angelo Luable and Orlando Desca. As they were nearing a Meralco lamp post at the corner of Lapu-Lapu and Magat Salamat Streets,[4] he saw a blue-colored passenger jeep with a white-colored rear door and with its front lights on, driven by Roel's uncle, Domingo Vasquez, who was with Roel's brother, Ramon, and five others. The jeep, which was coming from the opposite direction, going towards the Vicas supermarket, sped towards them. They dived to the ground near a grassy area, to avoid being hit. The vehicle sped past Luis and Geronimo and stopped in front of the lamp post on the left side of the street. Domingo and Ramon Vasquez, each armed with a bolo, with five others, alighted from the jeepney and proceeded to where Luis and Geronimo were. Afraid for their lives, the two fled towards the direction of Mary Homes at North Olympus Street. Luis ran ahead, and when he looked back towards Geronimo, he saw the latter fleeing towards the direction of Sumakwel Street[5] with three persons, including Domingo and Ramon, in hot pursuit. By the time he reached Datu Puti Street, only one man was pursuing him. Luis finally arrived at their house. He then mounted his bicycle and pedaled to the police station to report the incident, only to learn that his half-brother, Geronimo, was already dead. He and some policemen proceeded to Bagong Silang Funeral Parlor where they saw Geronimo's body.

Debbie Dorado, a twenty-seven-year-old housewife, testified that between 10:00 p.m. and 11:00 p.m. on June 18, 1995, she and her cousins, Raymund, Orlando and Angelo, were walking along Lapu-Lapu Street, Urduja Village, Kalookan City. They were on their way home. Angelo and his cousins Luis and Geronimo were walking ahead of her, while Orlando and Raymund strolled behind. Suddenly, a passenger jeepney sped towards where her cousins Luis and Geronimo were walking. The two dived into the grassy portion of the road to avoid being hit.[6]

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[4] Exhibits "D", "D-6" & "D-8".

[5] Exhibit "D-4".

[6] Exhibits "D", "D-6" & "D-8".

They were near a Meralco lamp post at the corner of Lapu-Lapu and Sumakwel Streets, about ten to fifteen meters away from her. Three male persons alighted from the jeepney. One of them, who was armed with a fan knife, placed his left hand on her right shoulder and was about to stab her. Debbie shouted, "I am a woman!" Nonetheless, he held her by the neck and pushed her. The man then went back to the passenger jeepney.

Raymund and Orlando approached Debbie and inquired what the commotion was all about, "*Manang, manang, ano yon?*" Debbie replied, "*Tayo yata ang hinahabol ng jeep, sige tumakbo na kayo.*" She hurriedly left the place, but looked back towards the jeepney and saw that Luis and Geronimo were still in the grassy area. Instead of walking towards Lapu-Lapu Street, she walked towards Sumakwel Street because she saw a male person armed with a bolo who had alighted from the jeepney. She looked back at her cousins, Luis and Geronimo. She saw Luis fleeing towards Mary Homes at North Olympus Street. A man was chasing him. She also saw Geronimo walking slowly, going towards the direction of Lakandula Street,[7] and was being chased by three male persons, one of whom had a big stomach. The other man chasing Geronimo was Domingo Vasquez, who was short, had a moustache and short hair. The third man was Ramon Vasquez who had a jutting jaw ("*babalu*"). Domingo and Ramon were armed with bolos. She shouted to her cousins Orlando, Angelo and Raymund not to leave their cousin Geronimo alone. When she reached the corner of Lakandula Street, a tricycle arrived. She boarded the tricycle and told the driver to bring her to the Vicas police station.

At the station, Debbie told the policemen that men armed with bolos were chasing her cousins Luis and Geronimo. The policemen told her that they were going to the Tala hospital. She insisted that they investigate the matter, but the policemen ignored her. They even told her, "Mrs., why are you complaining, it's just a simple matter, and you're not telling the truth."

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[7] Exhibit "D-7".

Maria Luisa Abellanosa, a thirty-two-year-old housewife, testified that between 9:30 and 10:30 p.m. on June 18, 1995, she was walking with Debbie Dorado at the corner of Magat Salamat and Lapu-Lapu Streets, Kalookan City, coming from the Vicas police station. She saw Luis and Geronimo walking ahead of her. Suddenly, a blue-colored jeepney driven by Domingo Vasquez arrived and bumped Geronimo. The jeepney stopped at the corner of Magat Salamat Street, even as Geronimo fell to the ground. Ramil Gonzales alighted from the jeepney, poked his knife at Debbie and went towards Geronimo. Fearing for her life, she hid near the concrete wall underneath a nearby bush. Meanwhile, Geronimo stood up and fled towards the direction of Kalantiao Street, through Sumakwel Street. Ramil ran after Geronimo and hacked him on the back part of the head. Geronimo then fled for dear life. She saw her neighbors Marlon Pacheco, his brother Danny Pacheco, each armed with bolos. The two of them, along with Roel Pacheco, Ramil Bartonico, Dodoy Bartonico and the appellant, were running to where Geronimo was. The appellant returned to the jeepney and drove it towards where his companions were. The men had ganged up on Geronimo and stabbed the latter. She heard the appellant say to his companions, "*Sige patayin niyo na, patayin niyo na, at huwag niyong iwanang buhay!*" The appellant forthwith drove the jeepney away. When Maria Luisa Abellanosa arrived home, she saw the Pacheco brothers and asked them how they were, and they replied, "*Ayos na po*." She saw the front part of Dario Pacheco's bloodied body.

Maria Teresa Luable, the wife of Luis, testified that between 6:00 and 7:00 p.m. on June 18, 1995, she was in front of their house. Roel Pacheco arrived and asked for her help. When she asked what had happened, he replied that his father had stoned him and that he was wounded. Luis asked his wife what was going on, and when apprised of Roel's purpose, Luis told Roel that he and his father should stone each other in their house and not in the street because children might be hit. Roel got mad and hacked Luis, hitting the latter's index finger. She ordered Luis to flee, but Roel picked up a stone and hit Luis with it. Roel even warned him, "*Baka ikaw pa ang ipasok sa kabaong*."

Luis then left his house and later returned in the company of Geronimo. At about 9:00 p.m., policemen arrived and brought Pedro Pacheco, Luis and Geronimo to the police station. She followed but failed to find them there. When told that Luis had himself treated for his wound, she proceeded to the San Lazaro Hospital but failed to locate him there. She went to the Vicas police precinct where she was told that a man had arrived and informed the policemen that he saw a person lying prostrate on Sumakwel Street. She then boarded a tricycle, returned to that street and saw Geronimo sprawled on the ground. She looked for her husband at the Tala Hospital, and went home when she failed to find him there.

PO3 Celerino del Rosario testified that at 8:00 p.m. on June 18, 1995, SPO4 Marvin Lardizabal informed him of a stabbing incident in Sumakwel Street, Urduja Village, Kalookan City. He and three other policemen arrived at the scene to conduct an on-the-spot investigation, and saw Geronimo along Sumakwel Street sprawled on the ground near a Meralco lamp post with multiple stab wounds.[8] The policemen brought the cadaver to the funeral parlor for autopsy. Per police report, Domingo and Ramon Vasquez, and Pedro and Marlon Pacheco were identified as Geronimo's assailants.

Dr. Rosaline Cosidon, Medico-Legal Officer, performed an autopsy on the cadaver of Geronimo and submitted her report thereon which contained her findings, *viz*:

1. A wound appearing and starting at the right portion of the forehead extending just above the ear up to the neck portion of the head. This type of wound could be caused by a heavy instrument like a bolo, saver (sic) or an axe. This wound was fatal;

2. Injury located beside the left eye caused by friction with a rough surface. This injury was not fatal.

3. The third injury was a hacked wound found below the left eye extending across the left ear to the back portion of the leftside (sic) of the head. This injury could be caused by a heavy cutting instrument like that in number 1. Said injury was, likewise, fatal.

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[8] Exhibits "D-1", "D-3", "D-9" & "D-10".

4. The fourth injury was an incised wound located below the left cheek which could have been caused by the sharp edge of a cutting instrument. This is not fatal.

5. Multiple abrasions located at the back portion of the left shoulder above the scapular caused by friction with a hard, blunt object.

6. An incised wound at the back of the body at the right side just above the waistline probably caused by the sharp edge of a cutting instrument.

7. A hacked wound located at the right shoulder just above the right arm caused by a heavy cutting instrument. The wound was not fatal.

8. An incised wound measuring 11.5 by 0.4 cms. found below the right elbow caused by a sharp-edged cutting instrument. And,

9. A hacked wound measuring 11 by 2.5 cms. at the right arm at the back of the wrist probably caused by a heavy sharp linear-edged instrument.[9]

The Case for the Appellant

Domingo Vasquez denied killing Geronimo and attempting to kill Luis. He testified that Ramon Vasquez was his brother, while Roel and Marlon were his first cousins. On June 18, 1995, a Sunday, he was in his house at Lot 8-E, Block 8, Frontville-V, Kalookan City, repairing the windows.

At 11:00 p.m., his wife awakened him as his brother Ramon had arrived in his house with a policeman. The policeman and his companions brought Domingo to the Vicas police station where he was detained. He saw Pedro and Marlon Pacheco, who were also detained. When he asked why they were there, Pedro and Marlon replied that they arrived in the police station to report the incident and found themselves inside the detention cell. He saw two women seated on a bench near the cell with Luis, who turned out to be Debbie Dorado and Gemma Espinosa. A policeman asked Debbie, "*Ito ba?"* But Debbie replied, "*Hindi po*." When asked again, Debbie fell silent. When asked for the

[9] *Rollo*, p. 89.

third time, Debbie replied, "*Hindi po*." Debbie was also asked to identify Ramon, Pedro and Marlon, but she refused to do so. Policemen also asked Luis to identify the appellant, but Luis replied, "No." A teenaged boy also arrived and was asked to identify him along with Ramon, Pedro and Marlon, and the boy replied, "No." The policemen brought the boy out of the police station, and when they returned, the boy pointed to him, Ramon, Pedro and Marlon, as the culprits. The Vasquez brothers, Pedro and his son Marlon were then brought to the office of the station commander where Luis finally identified the four of them as the culprits.

The policemen told Ramon and the appellant that they would be detained at the Hilcost police station to protect them from their enemies. The appellant's wife confirmed that many people were waiting outside the police station.

Meanwhile, a policeman brought him on board a police car to his house, where he was asked to drive the blue-colored jeepney of his brother Ramon. He drove the jeepney to the police station. He had not driven any jeepney for the last three months or so.

Ramon Vasquez also denied killing Geronimo and attempting to kill Luis. He testified that his house was only 800 meters away from Urduja Village. He did not know Luis Luable and Geronimo Espinosa. On June 18, 1995, a Sunday, he was at home fixing the jalousy window of a blue, seven-seater jeepney owned by Jessie Gomez, which he used as a service jeep to bring children to and from school. He later used the jeep until 6:00 p.m. At 7:00 p.m., he went to sleep. Josefina Pacheco, Pedro's wife, and the latter's children, Roel and Dario, arrived to borrow the jeepney. Dario had apparently sustained a gunshot wound on the face. He agreed, provided that someone would drive the vehicle. Josefina replied that the jeepney would be driven by Roel. He gave the keys of the vehicle to Josefina and returned to bed.

At 11:00 p.m., *Kagawad* Ed Santos arrived with a policeman and told him that he and the appellant would be brought to the Vicas police station. He was told to sit on a bench while Ed, the

policeman and the appellant, went out of the station. He and the appellant were then detained. A policeman asked a man and two women to identify him and the appellant, "*Sila ba?"* But the three replied, "*Hindi po*." The two of them were then brought to the police station at Hilcost, followed by the three witnesses. A policeman then asked the witnesses if he and the appellant were the assailants, and the witnesses replied that they were not the ones.

Vaselisa Vasquez, the appellant's wife, corroborated his testimony.

After trial, the court rendered judgment acquitting Ramon, but convicting the appellant of murder for the killing of Geronimo, and attempted homicide for attempting to kill Luis. The decretal portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, the accused RAMON VASQUEZ is hereby ACQUITTED on reasonable doubt of the crimes of MURDER and ATTEMPTED MURDER. Accused DOMINGO VASQUEZ is hereby found by this Court to be guilty beyond reasonable doubt of the crimes of MURDER and ATTEMPTED HOMICIDE and is accordingly sentenced to suffer the penalty of *RECLUSION PERPETUA* for Murder; to suffer an imprisonment of SIX (6) MONTHS and ONE (1) DAY TO SIX (6) YEARS OF *PRISION CORRECCIONAL* for ATTEMPTED HOMICIDE; and to pay the heirs of the deceased Geronimo Espinosa ₱18,000.00 for funeral expenses; ₱1,500,000.00 by way of unrealized earnings; ₱50,000.00 by way of indemnity; ₱20,000.00 by way of moral damages; and to pay the costs of the suit.
>
> SO ORDERED.[10]

The trial court gave credence to the testimony of Maria Luisa Abellanosa and concluded that the prosecution failed to prove the guilt of Ramon Vasquez beyond reasonable doubt of the crimes charged, *viz*:

> On the other hand, another prosecution witness, Maria Luisa Abellanosa, identified the pursuers as Roel and Dario Pacheco and

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[10] *Rollo*, pp. 36-37.

Ramil and Dodoy Bartonico. Due to the glaring flaws in Debbie Dorado's testimony and considering further that Luis Luable's testimony is mainly self-serving, the Court gives more faith to Abellanosa's version of facts. This is especially so because there is nothing to show that Abellanosa's testimony was tainted with impure motives. Indeed, it behooves the Court to point out that the prosecution's witnesses gave conflicting testimonies on points which are of utmost importance.

In the light of such conflicting testimonies, the Court firmly believes that the accused Ramon Vasquez was nowhere near the scene of the crimes on the night of June 18, 1995. The prosecution's eyewitnesses do not concur with respect to the presence of said accused on the scene of the crime. Evidently, the prosecution failed to establish with certainty the accused Ramon Vasquez's involvement in the two crimes described in the information. The only fact that was clearly established is that Ramon Vasquez drives the jeepney involved in this case when bringing children to and from school. The mere fact that he had the jeepney in his possession is not sufficient to connect him with the unlawful acts.

Domingo Vasquez, now the appellant, appealed the Decision contending that:

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH SUFFICIENT MOTIVE ON HIS PART TO COMMIT THE CRIMES CHARGED.

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES IN THE IDENTIFICATION OF THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIMES CHARGED.

THE TRIAL COURT ERRED IN NOT APPRECIATING THE DEFENSE OF ALIBI POSED BY THE HEREIN ACCUSED-APPELLANT CONSIDERING THE FACT THAT THE EVIDENCE FOR THE PROSECUTION IS WEAK.

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT WAS INDEED POSITIVELY IDENTIFIED TO BE THE DRIVER OF THE BLUE-COLORED JEEPNEY DURING THE INCIDENT IN QUESTION, THE TRIAL COURT, NONETHELESS ERRED IN

FINDING HIM TO BE A CONSPIRATOR AND NOT A MERE ACCOMPLICE IN THE MURDER OF THE VICTIM GERONIMO ESPINOSA.[11]

As the assigned errors are interrelated, the Court shall delve into and resolve the same simultaneously.

The appellant avers that he and his brother Ramon were not involved in the quarrel between Luis Luable and Geronimo Espinosa, on the one hand, and Roel Pacheco, Marlon Pacheco and their father Pedro Pacheco, on the other. He and his brother Ramon, thus, had no motive to kill Geronimo. The appellant contends that the witnesses for the prosecution were not in agreement as to who killed Geronimo. While Luis Luable and Debbie Dorado testified that they saw the appellant stab Geronimo, Maria Luisa Abellanosa testified that Ramil Gonzales, Marlon Pacheco, Dario Pacheco, Roel Pacheco, Ramil Bartonico and Dodoy Bartonico were the ones who stabbed and killed the victim. The appellant noted that according to the testimony of Abellanosa, the appellant stayed in the jeepney and merely yelled to his companions who ganged up on Geronimo, "*Sige patayin ninyo, patayin ninyo na, at huwag ninyong iwanang buhay!*"

The appellant further posits that the prosecution witnesses were not even in accord as to where Geronimo was stabbed to death. He pointed out that Luis Luable testified that Geronimo was hacked to death at the corner of Lapu-Lapu and Sumakwel Streets, while Maria Luisa Abellanosa testified that Geronimo was killed at the corner of Lapu-Lapu and Magat Salamat Streets. Furthermore, Debbie Dorado was not certain where Geronimo was killed. The appellant asserts that the location of the killing is important because the Meralco lamp post which illuminated the place of the incident is located at the corner of Lapu-Lapu and Magat Salamat Streets, and not at the corner of Lapu-Lapu and Sumakwel Streets. The appellant argues that because of the inconsistencies in the testimonies of the witnesses of the prosecution, it failed to prove his guilt beyond reasonable doubt

[11] *Rollo*, pp. 54-55.

of the crimes charged. Hence, he should be acquitted of the said charges.

The Office of the Solicitor General, for its part, argues that there is no incongruence between the testimony of Abellanosa, on the one hand, and those of Domingo and Luable, on the other, as to the *situs* where Geronimo was killed. Moreover, whether the appellant is a principal by direct participation or a principal by inducement is immaterial. In conspiracy, all the conspirators are criminally liable for the death of the victim regardless of the degree of their participation in the crime. The inconsistencies in the testimonies of the witnesses of the prosecution are trivial. They do not affect the credibility of the said witnesses and the veracity of the substance of their testimonies.

The appeal has no merit.

Prefatorily, we will no longer delve into and revisit the factual and legal basis for the acquittal of Ramon Vasquez of the crimes charged. The decision of the trial court acquitting the said accused and its basis for the said acquittal can no longer be altered without placing the said accused in double jeopardy. Nonetheless, we are not precluded from delving into and reviewing the findings of facts of the trial court in resolving the issues involved in this case relating to the appellant's appeal from its decision.

The general rule is that the findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on the said findings, are accorded by the appellate court high respect, if not conclusive effect, because of the unique advantage of the trial court in observing at close range the conduct and deportment of the said witnesses. However, the appellate court may set aside the findings of the trial court and its conclusions based on the said findings if it overlooked, ignored, misconstrued and misinterpreted cogent facts and circumstances which, if considered, would alter the outcome of the case.

The trial court rejected the testimonies of Luis Luable, Debbie Dorado and gave credence to the testimony of Maria Luisa Abellanosa, *viz*:

Luis Luable and Debbie Dorado testified that two of the three pursuers of the deceased, Geronimo Espinosa, were herein accused Domingo and Ramon Vasquez. Moreover, they have been pinpointed as the ones who wielded bolos. However, Debbie Dorado's credibility is seriously doubted by the Court on account of her failure to give the identities of the pursuers in her sworn statement and her failure to issue a supplemental statement later when she finally made her identification upon seeing the two accused. Additionally, it must be observed that she gave a detailed physical description of the deceased's pursuers despite the fact that during that time she was running away from the scene of ambush. Hence, even if she looked back from time to time, it could have been impossible for her to see the facial features of the pursuers because of two reasons, to wit: (1) the pursuers were running towards the opposite direction and necessarily only their backs could have been exposed to the witness, and (2) the surrounding darkness of night and the increasing distance between the witness and the deceased's pursuers could have made it very difficult if not impossible for the witness to pay attention to tiny details such as the moustache the former sported as well as the bone structure of the chin of accused Ramon Vasquez.

On the other hand, another prosecution witness, Maria Luisa Abellanosa, identified the pursuers as Roel and Dario Pacheco and Ramil and Dodoy Bartonico. Due to the glaring flaws in Debbie Dorado's testimony and considering further that Luis Luable's testimony is merely self-serving, the Court gives more faith to Abellanosa's version of facts. This is especially so because there is nothing to show that Abellanosa's testimony was tainted with impure motives. Indeed, it behooves the Court to point out that the prosecution's witnesses gave conflicting testimonies on points which are of utmost importance.[12]

We hold that the trial court erred in rejecting the testimonies of Luable and Dorado. The credibility and probative weight of the testimony of Dorado cannot be assailed by her failure to state the name of the appellant in her sworn statement to the police investigator[13] as among those who ran after Geronimo and Luis. The well-entrenched principle is that sworn statements

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[12] *Rollo*, pp. 93-94.

[13] Exhibit "2".

being *ex parte* are almost always incomplete and often inaccurate but do not really detract from the credibility of the affiants.[14]

The failure of a witness to disclose the name of the culprit does not necessarily impair the credibility of Dorado.[15] Moreover, as contended by the Office of the Solicitor General:

> Debbie Dorado was recalled as witness, on a separate date. During the additional cross-examination, it was admitted by both parties that the pictures presented by the defendants were taken during daytime. She reiterated that there were three (3) persons chasing her cousin Geronimo. She identified two (2) of the three (3) as the Vasqueses. When confronted as to her failure to identify the accused when presented to her for identification as proven by the sworn statement she gave to the police investigator, she averred that her statement had already been taken, typewritten, and signed by her when she saw the accused and that it was only Luis Luable who was brought to the detention cell to identify the accused . . .[16]

The affiants may give the names of the culprits subsequent to the submission of their affidavits and even during the trial. It bears stressing that even in her sworn statement, Dorado declared that three persons pursued Luis and Geronimo when they fled from the place, where they were almost sideswiped by the appellant's jeepney. Dorado's declaration to the police investigator jibes with her testimony before the trial court.

The culprit may be identified not only by his name or nickname but also by his physical appearance, by his voice or by his gait.

The evidence on record shows that it was near Magat-Salamat Street corner Lapu-Lapu Street where Luis and Geronimo were sideswiped by the jeepney driven by the appellant. The place was lighted by a Meralco lamp post.[17] The appellant alighted from the jeepney along with other men. Luable and Geronimo were near the jeepney. Dorado was barely fifteen meters away

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[14] *People vs. Silvano*, 350 SCRA 650 (2001).

[15] *People vs. Herbieto*, 269 SCRA 472 (1997).

[16] *Rollo*, pp. 138-139.

[17] Exhibits "D" and "D-1".

from the place. Considering the lighting condition therein and the proximity of Luable, Dorado and Abellanosa to the place where the incident occurred, they saw and recognized the appellant and could, thus, identify him. When she testified, Dorado declared that the appellant was one of those who pursued Luis and Geronimo after the appellant had alighted from the jeepney:

Q Would you again describe the other man who was armed with a bolo and who was chasing the victim?
A The other man is short with a moustache and stout with short hair.

Q Will you please look around the courtroom and if this person you have just described is presently inside the courtroom, will you please point him to the Honorable Court?
A Yes, he is here, Sir.

(At this juncture, the witness is pointing to a male person sitted (sic) inside the courtroom who gave his name as Domingo Vasquez)

ATTY. COPE:

The man just pointed by the witness is sporting a moustache and sporting a short hair.[18]

For his part, Luis Luable testified that the appellant was among those who pursued him and Geronimo, who, armed with a bolo, alighted from the jeepney.

Q Now, after you jumped to the right side of the road, what did the jeep do, if any, Mr. Witness?
A The jeep stopped in front of the post.

Q Where was this post, Mr. Witness?
A Is (sic) located at the left side of Lapu-Lapu St.

Q And after the jeep stopped near the post Mr. Witness, what happened next?
A The driver alighted from the jeep together with his companion.

Q Were you able to recognize this driver Mr. Witness and his companion who went down on the jeep?

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[18] TSN, 1 August 1995, pp. 8-9.

A Yes, Sir.

Q And if you see them, would you be able to identify them?
A Yes, Sir.

Q Now, are those people inside the courtroom right now, Mr. Witness?
A Yes, Sir.

Q Now, can you point to them, Mr. Witness?
A Yes, Sir.

MS. DEL ROSARIO:
At this juncture, witness is pointing to a male person sitted (sic) inside the courtroom who gave their names as Domingo Vasquez and Ramon Vasquez.

ATTY. PAGUITON:
Q Now, of the two (2) people whom you are (sic) identified in court just right now, who was driving the jeep?

MS. DEL ROSARIO: Witness pointing to Domingo Vasquez.

ATTY. PAGUITON:
Q And what about Mr. Ramon Vasquez, where was he sitted (sic) in the jeep, Mr. Witness?
A Ramon Vasquez was sitted (sic) beside the driver.

Q Now, did you notice if there were other people who were inside the jeep, if any, Mr. Witness?
A Yes, Sir.

Q Would you be able to say to this court how many people were there inside the jeep including the driver and the passenger who was sitted (sic) in front?
A Yes, Sir.

Q And how many people are these, Mr. Witness?
A More than seven (7) persons.

Q Now, you mentioned earlier that when the jeep stopped... did you notice if they were carrying anything, if any, Mr. Witness?

ATTY. SAMPAGA: Leading, Your Honor.

COURT: Sustained.

ATTY. PAGUITON:
Q When Domingo and Ramon Vasquez went down the jeep, what happened next?
A Domingo and Ramon chased me and my brother while they were holding a bolo.

Q Now, what were the other people who were inside the jeep doing when Ramon and Domingo chased you?
A They also alighted from the jeep and they also chased us.

Q Were these other people also armed, Mr. Witness?

ATTY. SAMPAGA: Leading, Your Honor.

COURT: Sustained.

ATTY. PAGUITON:
Q Now, you mentioned earlier that you saw bolos, who were holding the bolos, Mr. Witness?
A Ramon Vasquez and Domingo Vasquez were the ones holding bolos.

Q What about the other people who alighted from the jeep, Mr. Witness?
A I did not notice whether they were armed because we already ran.

Q Towards what direction did you run, Mr. Witness?
A We ran towards the direction of North Olympus Street.[19]

In his sworn statement to the police investigator, Luable declared that the place where he and Geronimo were sideswiped was lighted:

30.T: *Dati mo na bang kakilala itong si Domingo Vasquez at Ramon Vasquez?*
S: *Hindi po.*

31.T: *Papaano mo silang* (sic) *nakilala?*
S: *Nakilala ko sila dahil sa maliwanag sa lugar na iyon.*

32.T: *Saan nanggagaling ang liwanag ng iyong sinasabi?*
S: *Sa ilaw ng poste.*[20]

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[19] TSN, 26 July 1995, pp. 10-11.

Luable and Dorado admitted that they did not see the appellant hack the victim. Neither did Abellanosa. The latter testified that after failing to overtake Geronimo, the appellant returned to the passenger jeepney and drove it to where Geronimo was hacked. The appellant, while still in the jeepney ordered his cohorts, "*Sige patayin niyo na, patayin niyo na, huwag niyong iwanang buhay*." She identified and pointed to the appellant in open court.

Q Who was this person who was bumped by this jeep on that date and time?
A Geronimo Espinosa, Sir.

Q What happened after Geronimo Espinosa was being (sic) bumped by the jeep?
A Geronimo Espinosa fell down, Sir.

Q Where did Geronimo Espinosa fall?
A At the corner of Magat Salamat, Sir.

Q What happened after that?
A And then I saw a male persons (sic) by the name of Ramil Gonzales alighted (sic) from the jeep, Sir.

Q What happened next?
A Then Ramil Gonzales poked 29 knife on the body of a female person, Sir.

Q Do you know this female person?
A Yes, Sir, I know.

Q What is her name?
A Her name is Debbie, Sir.

Q Do you know the family name of Debbie?
A I don't know her family name, Sir.

Q What happened after that?
A And then Ramil Gonzales approached the person who fell down by the name of Geronimo and then when Geronimo stood up Ramil (sic) chased Geronimo, Sir.

Q What happened when Ramil chased Geronimo?
A Ramil hacked Geronimo, Sir.

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[20] Exhibit "C".

Q What part of the body of Geronimo who (sic) was hacked?
A The back part of the head of Geronimo, Sir.

Q What happened after that?
A Geronimo run (sic) and then Ramil chased Geronimo, Sir.

Q Where did Geronimo go when he was (sic) chased?
A Geronimo was proceeding to the direction of Kalantiao Street, Sir.

Q Is this Kalantiao Street near Sumakwel Street?

ATTY. SAMPAGA:
Leading, Your Honor.

COURT:
Sustained.

ATTY. COPE:
Q What particular street did Geronimo passed (sic) while he was [being] chased?

ATTY. SAMPAGA:
Objection, Your Honor, already answered. He proceeded to Kalantiao Street.

ATTY. COPE:
Yes, Your Honor, proceeded to but this time the particular street he used when he was being chased.

COURT:
At the corner of Magat Salamat.

ATTY. COPE:
Q When he was running away, what street did Geronimo use when he was running away when he was being chased?

ATTY. SAMPAGA:
Objection, Your Honor, Geronimo proceeded to Kalantiao Street.

COURT:
Sustained.

ATTY. COPE:
I think, Your Honor, it is different, the incident happened at Magat Salamat and then when he was chased he run (sic)

towards the direction of Kalantiao Street, now, we are asking the question on what particular street where he was . . .

COURT:

He was at Magat Salamat, towards the direction of Kalantiao Street.

ATTY. COPE:

We submit, Your Honor.

Q What happened after Geronimo was chased?
A And the four (4) persons followed Ramil, and the persons who followed Ramil are two Pachecos and two Bartoneco (sic), Sir.

COURT:

Q Are they brothers?
A Yes, Your Honor.

ATTY. COPE:

Q Do you know the names of the Pachecos brothers (sic)?
A . . .

Q What are their names?
A Luis Pacheco, Danny Pacheco and Dario Pacheco, Roel Pacheco, Sir.

Q How about the Bartonico brothers, do you know their names?
A Yes, Sir.

Q What are their names?
A Darwin Bartonico and Dodoy Bartonico, Sir.

Q What happened after that?
A They gunned (sic) up Geronimo Espinosa, Sir.

Q Who was the driver of the jeep you saw?
A Jun Vasquez, Sir.

Q What is the real name of June?
A Domingo Vasquez, Sir.

Q Where was this Domingo Vasquez when the person you mentioned was hacking Geronimo Espinosa?
A He was inside the jeep, Sir.

Q What was he doing?
A He was driving the jeep, Sir.

Q What did he say when he was inside the jeep?
A I heard Domingo Vasquez uttered the following words — "*Sige patayin niyo na, patayin niyo na, huwag niyong iwanang buhay*."

COURT:
Q How far where (sic) you from Domingo Vasquez when you heard the words uttered by him "*sige patayin niyo na, patayin niyo na, huwag niyong iwanang buhay*."
A I am (sic) just near, Your Honor, about five arms' length.

ATTY. COPE:
Q Where were you when Domingo Vasquez uttered those statements?
A I was at the concrete wall underneath the plants, Sir.

Q How far was the jeep driven by accused Domingo Vasquez from where the persons you mentioned, the Bartonico brothers and Pacheco brothers who were hacking Geronimo Espinosa?
A Just near, Sir, just less than 10 arms' length.

Q Ms. Abellanosa, to whom was the accused Domingo Vasquez saying those statement "*sige patayin niyo na, patayin niyo na, huwag niyong iwanang buhay?*"

ATTY. SAMPAGA:
Objection, Your Honor, she is incompetent to answer.

COURT:
Overruled, witness may answer.
A He was not mentioning any names, he was just shouting Ma'am, and uttering those words.

ATTY. COPE:
Q Will you please repeat [the name of] the person who hacked Geronimo Espinosa?

ATTY. SAMPAGA:
Objection, Your Honor, already answered.

COURT:
Sustained.

ATTY. COPE:
Q Why do you know these persons Roel Pacheco, Dario Pacheco, Ramil Bartonico, Dodoy Bartonico, Ramon Vasquez, Ramil Gonzales and Domingo Vasquez?

A Because they are my neighbors, Sir.

Q For how long have you been neighbors?
A For four (4) years, Sir.

Q What happened Ms. Abellanosa after the person you mentioned hacked Geronimo Espinosa and Domingo Vasquez shouted "*sige patayin niyo na, patayin niyo na, huwag niyong iwanang buhay.*"
A They already boarded the jeep and they proceeded in (sic) their house, Sir.[21]

The testimony of Abellanosa is corroborated by the autopsy report of Dr. Rosalyn Cosidon showing that the victim sustained multiple incised hacked wounds and abrasions. Even if there is no evidence that the appellant stabbed or hacked the victim, he is, nonetheless, criminally liable for the victim's death because he conspired with the principals by direct participation in the commission of the crime. As the trial court ruled:

Whether Domingo Vasquez chased the deceased with a bolo was averred by Luis Luable or whether the accused merely incited his companions in the jeepney to kill the deceased as averred by Luisa Abellanosa, is immaterial in the determination of his liability because a conspiracy among the occupants of the jeepney has been established.

In the case of *People v. Cortez*, 57 SCRA 308 cited in Luis B. Reyes Revised Penal Code with Annotations, Book I, 12th edition, 1981, p. 493, it was clarified, "In order to hold an accused guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy, either by actively participating in [the] actual commission of the crime, or *by lending moral assistance to his co-conspirators by being present at the scene of the crime*, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy." (Emphasis supplied).

The Supreme Court, likewise, stressed in the case of *People vs. Bernardo*, 222 SCRA 502, "where there are several accused and conspiracy has been established, the prosecution need not pinpoint who among the accused inflicted the fatal wound."

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[21] TSN, 7 August 1995, pp. 25-30.

And in the case of *People vs. Magalang*, 217 SCRA 571, it was held, "where conspiracy has been established, evidence as to who among the accused rendered the fatal blow is not necessary. All the conspirators are liable as co-principals regardless of the intent and character of their participation because the act of one is the act of all."

Hence, accused Domingo Vasquez is found by the Court to be a co-principal in the attempted killing of Luis Luable as well as in the fatal hacking of Geronimo Espinosa.[22]

In *People vs. Bisda*,[23] we held that:

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more person agree to commit a felony and decide to commit it. In *People vs. Pagalasan*, this Court held that conspiracy need not be proven by direct evidence. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicting a closeness of personal association and a concurrence of sentiment. Conspiracy once found, continues until the object of it has been accomplished and unless abandoned or broken up. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.

We further ruled in the said case that:

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular

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[22] *Rollo*, pp. 95-96.

[23] G.R. No. 140895, July 17, 2003.

purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit. As Judge Learned Hand put it in *United States vs. Andolscheck*, "when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them."

In the case at bar, the appellant drove the passenger jeepney with his cohorts on board looking for Luable and Geronimo. When the appellant saw the two going in the opposite direction, the appellant drove the vehicle and sideswiped Geronimo. And when Geronimo fled, the appellant, armed with a bolo, pursued him. When the appellant failed to overtake the victim, he returned to the passenger jeepney and drove it to where his cohorts ganged up on the victim. The appellant urged them on to kill Geronimo. Thereafter, he left the scene along with his cohorts, leaving the hapless Geronimo mortally wounded. All the foregoing constitutes evidence beyond cavil of conspiracy between the appellant and the principals by direct participation. The appellant is, thus, criminally liable for the death of the victim, although there is no evidence that he did not actually stab the latter.

There is no evidence on record that Luable, Dorado and Abellanosa nurtured any ill-motive to point to the appellant and falsely implicate him in the killing of Geronimo. Luable, for one thing, did not know the appellant before the killing. Case law has it that in the absence of any improper motive, the testimonies of the witnesses are worthy of full faith and credit.[24]

The bare claim of the appellant that he has no motive to kill Geronimo is not a valid defense to the crime charged. Motive

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[24] *People vs. Lagarto*, 326 SCRA 693 (2000).

to commit a felony is not an element of the said crime; hence, the prosecution is not burdened to prove the same. As we held in *People vs. Delim*:[25]

> In murder, the specific intent is to kill the victim. In kidnapping, the specific intent is to deprive the victim of his/her liberty. If there is no motive for the crime, the accused cannot be convicted for kidnapping. In kidnapping for ransom, the motive is ransom. Where accused kills the victim to avenge the death of a loved one, the motive is revenge.
>
> In this case, it is evident on the fact of the Information that the specific intent of the malefactors in barging into the house of Modesto was to kill him and that he was seized precisely to kill him with the attendant modifying circumstances. The act of the malefactors of abducting Modesto was merely incidental to their primary purpose of killing him. *Moreover, there is no specific allegation in the information that the primary intent of the malefactors was to deprive Modesto of his freedom or liberty and that killing him was merely incidental to kidnapping*. Irrefragably then, the crime charged in the Information is Murder under Article 248 of the Revised Penal Code and not Kidnapping under Article 268 thereof.

The threshold issue that now comes to fore is whether or not the prosecution mustered the requisite quantum of evidence to prove that Marlon, Ronald and Leon are guilty of murder.

In criminal prosecutions, the prosecution is burdened to prove the guilt of the accused beyond cavil of doubt. The prosecution must rely on the strength of its own evidence and not on the weakness of the evidence of the accused. The proof against the accused must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.

In the case at bar, the prosecution was burdened to prove the *corpus delicti* which consists of two things: first, the criminal act and second, the defendant's agency in the commission of the act. Wharton says that *corpus delicti* includes two things: first, the objective; second, the subjective element of crimes. In homicide (by *dolo*) and in murder cases, the prosecution is burdened to prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident,

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[25] 396 SCRA 386 (2003).

natural cause or suicide; and (c) that the defendant committed the criminal act or was in some way criminally responsible for the act which produced the death. To prove the felony of homicide or murder, there must be incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice); in other words, that there was intent to kill. Such evidence may consist *inter alia* in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactor, intent to kill is conclusively presumed.

The prosecution is burdened to prove *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence.

In the case at bar, the prosecution adduced the requisite quantum of proof of *corpus delicti*. Modesto sustained five (5) gunshot wounds. He also sustained seven (7) stab wounds, defensive in nature. The use by the malefactors of deadly weapons, more specifically handguns and knives, in the killing of the victim, as well as the nature, number and location of the wounds sustained by said victim are evidence of the intent by the malefactors to kill the victim with all the consequences flowing therefrom. As the State Supreme Court of Wisconsin held in *Cupps v. State*:

> "This rule, that every person is presumed to contemplate the ordinary and natural consequences of his own acts, is applied even in capital cases. Because men generally act deliberately and by the determination of their own will, and not from the impulse of blind passion, the law presumes that every man always thus acts, until the contrary appears. Therefore, when one man is found to have killed another, if the circumstances of the homicide do not themselves show that it was not intended, but was accidental, it is presumed that the death of the deceased was designed by the slayer; and the burden of proof is on him to show that it was otherwise."

The prosecution did not present direct evidence to prove the authors of the killing of Modesto. It relied on circumstantial evidence to discharge its burden of proving the guilt of the accused-appellants of murder.[26]

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[26] *Ibid*.

On the other hand, we are inclined to believe that the appellant joined cause with his cousins, Roel Pacheco, Marlon Pacheco and Danny Pacheco in venting their ire on Geronimo and Luis for the altercation which earlier transpired between Roel and Marlon, on the one hand, and Luis Luable on the other. Geronimo was not involved in the altercation, but he was killed simply because he was with his half-brother, Luis Luable, when the appellant and his cohorts caught up with them.

The bare denial and alibi of the appellant cannot prevail over the collective testimonies of the witnesses of the prosecution corroborated by the physical evidence that the appellant conspired with the principals by direct participation to kill the victim. Denial and alibi are weak defenses. To merit approbation of his defense of alibi, the appellant is burdened to prove, with clear and convincing evidence that he was in a place other than the *situs* of the crime, such that it was physically impossible for him to be at the scene of the crime when it was committed. The appellant failed to do so. He relied merely on his bare testimony which is dubious in the first place.

The trial court convicted the appellant of murder qualified by treachery. However, the trial court failed to state in its decision the factual basis for such a finding. From all indications, the cohorts of the appellant managed to overtake Geronimo along Sumakwel Street, as he ran for dear life after being hit earlier by Ramil Gonzales on the head. Geronimo was, thus, aware of the peril to his life.[27] The assailants of Geronimo took advantage of their superior strength when they ganged up on him, armed with bolos and hacked him to death. However, the qualifying circumstance of abuse of superior strength is not alleged in the Information; hence, cannot qualify the crime to murder. The appellant is guilty only of homicide under Article 249 of the Revised Penal Code, punishable by *reclusion temporal*.

We, likewise, agree with the conviction of the appellant of attempted homicide in Criminal Case No. 48936(95). But we do not agree with the penalty meted on the appellant, six (6)

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[27] *People vs. Ereño*, 326 SCRA 157 (2000).

months and one (1) day to six (6) years of *prision correccional*. The imposable penalty for attempted homicide is *prision correccional* which is two degrees lower than *reclusion temporal*. The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any. To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayo*r. Hence, the appellant may be sentenced to an indeterminate penalty from four (4) months of *arresto mayor* in its medium period, as minimum, to three (3) years of *prision correccional*, in its medium period, as maximum. Although the appellant used a vehicle to commit attempted homicide, the said circumstance was not alleged in the Information, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. The said Rule should be applied retroactively although the crime was committed before the effectivity of the same.

The trial court awarded ₱18,000 as actual damages for funeral expenses, ₱1,500 as unearned income of the victim and ₱20,000 as moral damages. The trial court did not award exemplary damages to Luis Luable. The decision of the trial court shall, thus, be modified.

In lieu of actual damages in the amount of ₱18,000.00, the heirs of the victim are entitled to ₱25,000.00 by way of temperate damages, conformably to current jurisprudence. The amount of ₱1,500,000.00 is deleted for failure of the prosecution to adduce any documentary and oral evidence to prove the factual basis of such amount.[28] The award of moral damages should be increased to ₱50,000.00 to conform to current jurisprudence. Luis Luable is entitled to ₱25,000.00 exemplary damages.[29]

IN LIGHT OF ALL THE FOREGOING, the decision of the Regional Trial Court of Kaloocan City, Branch 121, is *AFFIRMED* with *MODIFICATIONS*.

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[28] *People vs. Maderas*, 350 SCRA 504 (2001).

[29] *People vs. Delos Santos*, G.R. No. 135919, May 9, 2003.

1. In Criminal Case No. 48935(95), appellant Domingo Vasquez *y* Pacheco is found *GUILTY* beyond reasonable doubt of homicide under Article 249 of the Revised Penal Code, as amended, and there being no modifying circumstance in the commission of the crime, is hereby sentenced to suffer an indeterminate penalty from nine (9) years and four (4) months of *prision mayor*, in its medium period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, in its medium period, as maximum. The said appellant is *ORDERED* to pay to the heirs of the victim Geronimo Espinosa ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as temperate damages;

2. In Criminal Case No. 48936(95), the appellant is found *GUILTY* of attempted homicide under Article 249 in relation to Article 6 of the Revised Penal Code and there being no modifying circumstances in the commission of the crime, is hereby sentenced to suffer an indeterminate penalty from four (4) months of *arresto mayor*, in its medium period, as minimum, to three (3) years of *prision correccional* in its medium period, as maximum. The said appellant is *ORDERED* to pay ₱25,000.00 to Luis Luable by way of exemplary damages. No costs.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 127491. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JULIAN BAÑARES *y* BESMONTE,** *appellant*.

SYNOPSIS

Appellant was found guilty of rape committed with the use of force and intimidation against the victim. The Court, however, was convinced that the charge was motivated by some factors other than the truth.

Allegedly, complainant was pulled down by appellant from a guava tree then dragged towards the area planted with *caragamoy* where she was thereafter raped. Her only resistance, though, was only a single kick against appellant. That the victim was allegedly threatened with death if she tells anyone what happened was ignored when she immediately told appellant's brother of the incident. Her father was also informed of the alleged rape but she was instead sent to Sorsogon to live with her aunt. Further, the delay in the filing of the rape case was without sufficient reason other than that the victim's family was busy with a wedding. Thus, the Court ruled that the prosecution failed to overcome the presumption of innocence and hence, appellant's acquittal was called for.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY RESPECTED.— Generally, this Court respects the factual findings of the trial court unless there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the trial court.

2. CRIMINAL LAW; RAPE; FORCE AS ELEMENT MUST BE SUFFICIENTLY ESTABLISHED.— In construing the word *force* as an element of the crime of rape, this Court has held that it is imperative for the prosecution to prove that force or intimidation was actually employed by the accused-appellant upon his victim to achieve his end. Failure to do so is fatal to its cause.

3. ID.; ID.; VALUE OF MEDICAL CERTIFICATE.— It must be pointed out that a medical certificate or the testimony of the physician is presented not to prove that the complaint was raped but to show that the latter had lost her virginity. Consequently, standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence regarding

the circumstances of the carnal knowledge that rape may be deemed to have been established.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM; IMPORTANCE THEREOF.— It is true that in rape cases, the accused may be convicted solely on the testimony of the complaining witness. However, because of the unique nature of the crime of rape, where only two persons are usually involved, the testimony of the complaint must be scrutinized with extreme caution. Hence, in this case, as in many others before it, the credibility of the complainant's testimony is determinative of the outcome. This Court notes that complainant's testimony was replete with details that inject doubt as to appellant's guilt.

5. ID.; ID.; ID.; AFFECTED BY DELAY IN REPORTING THE CRIME IN CASE AT BAR.— It is true that the silence of the complainant in a case of rape or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue, and fabricated. However, in this case, upon being asked about the delay in the filing of the complaint, the complainant answered: "It was because the family was so busy in the preparation for the wedding of my brother, Jimmy. So, the [filing] of the case was quite delayed." This explanation is not satisfactory. Supposedly, complainant's family, as early as July, 1992, already knew about the alleged rape. They would have acted with promptness if it were true that one of their own was the unwilling victim of a grievous outrage.

6. ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT, NOT ESTABLISHED.— This Court will not hesitate to reverse a judgment of conviction and acquit the accused where there are strong indications pointing to the possibility that the rape charge was motivated by some factors other than the truth. Also, it must be borne in mind that an accusation of rape may easily be made and is hard to prove. It is harder, however, upon the accused to defend, although he may be innocent. The evidence, therefore, for conviction must not only be clear and convincing, but be beyond reasonable doubt to overcome the constitutional presumption of innocence. In this case, this Court finds that the prosecution

failed to overcome the constitutional presumption of innocence and, hence, appellant's acquittal is called for.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

AZCUNA, *J.*:

This Court is once again called upon to apply the guiding principles in the review of a conviction for rape in this appeal from the Decision dated May 16, 1996 of the Regional Trial Court (RTC) of Tabaco, Albay, Branch 16, in Criminal Case No. T-2397.

In an Information dated May 6, 1993, appellant herein Julian Bañares *y* Besmonte was charged with the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code. The accusatory portion reads:

That on or about the 25th, day of April, 1992 at Barangay xxx, Municipality of xxx, Province of xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law and with lewd design, by means of force and intimidation and without the consent and against the will of xxx, a 15-year old girl, did then and there wilfully, unlawfully and feloniously have sexual intercourse and succeeded in having carnal knowledge with the latter, to her damage and prejudice.

ACTS CONTRARY TO LAW.[1]

Upon arraignment, the appellant pleaded not guilty. Trial ensued thereafter.

The evidence of the prosecution relied mainly on the testimonies of the complainant, Susan Barcelo, her father, Domingo Barcelo, and the Municipal Health Officer of Bacacay, Albay, Dr. Evelyn

[1] *Rollo*, p. 6.

Amador, who examined complainant some months after the alleged rape occurred.

Complainant AAA, then a fifteen-year old girl, testified that sometime after lunch on April 25, 1992, she was climbing up the guava trees and picking their fruits near their house in xxx, xxx, xxx. All of a sudden, appellant Julian Bañares called up to her and asked her what she was doing there. Complainant did not answer him and instead continued gathering fruits. Appellant then pulled her down and dragged her towards the area planted with *caragomoy*, about twenty-two (22) to twenty-five (25) meters away from complainant's house. Complainant tried to kick her attacker, but instead wounded herself in the process. Appellant then forced her to lie down, removed her shorts and panties, and her white t-shirt. All the while, appellant kept on kissing her and pressing her vagina. Then, appellant removed his pants and immediately inserted his penis into complainant's vagina. Complainant thereafter noticed that her vagina was bleeding. His lust having been satisfied, appellant then dressed himself and threatened complainant that should she reveal what occurred, he would kill her and her parents. He left her and complainant went to the well near their house to clean herself.[2]

Complainant positively identified appellant as her attacker in open court. According to her, appellant lived with them and was considered a part of their family since she was five (5) years old. At the time the alleged rape occurred, complainant's parents were in a ricefield a kilometer away from their house, where they were supervising the harvest of *palay*.

During cross-examination, complainant revealed that on the same day, she reported the incident to appellant's brother, Benjamin, who in turn, told her father. She alleged that her father had appellant summoned but he never answered the said summons. She was allegedly advised by appellant's brother that she should not get married to appellant since he is a "tough guy."[3]

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[2] Testimony of Susan Barcelo, January 24, 1994.

[3] Cross Examination of Susan Barcelo, January 28, 1994, p. 14.

Also during cross-examination, she revealed that her brother's house was only around five (5) meters away from the place where the alleged rape occurred. At that time, her brother's mother-in-law, Eleuteria, was weaving a mat inside the house. Complainant testified that Eleuteria could not have heard her scream for help since the said woman was a little hard of hearing.[4]

The second witness testifying for the prosecution was complainant's father, BBB, fifty-eight (58) years old and a farmer. He revealed that his daughter initially did not tell him anything about the incident which occurred on April 25, 1992. On May 5, 1992, he brought his daughter to Irosin, Sorsogon so that she could live with an aunt who promised to send her to school. His daughter started the school year in Irosin. Sometime around July, 1992, he visited his daughter and as he was about to leave, his daughter suddenly did not want to part with him. That was when complainant revealed to him that she was already pregnant. His daughter also related to him that she was raped by appellant Bañares earlier that year. He then brought his daughter home to Bacacay, Albay.[5]

The third prosecution witness, Dr. Evelyn Amador, Municipal Health Officer of Bacacay, Albay, identified the Medical Certificate[6] she issued. She conducted an external and internal examination on complainant AAA on November 5, 1992. Complainant was already seven (7) months pregnant during the examination, which led her to conclude that the time of conception would be around April, 1992. This, she testified, is consistent with the allegation by complainant that she had sexual intercourse with appellant on April 25, 1992.[7]

The defense, on the other hand, also presented three witnesses: Salvador Nuñez, Benjamin Bañares, and appellant himself.

Salvador Nuñez, fifty-three (53) years old, is a farmer and a resident of Upper Bonga, Bacacay, Albay. He claimed that

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[4] *Ibid*, pp. 10-12.

[5] Testimony of Domingo Barcelo, September 28, 1994.

[6] Exhibit "E"; Records, p. 4.

[7] Testimony of Dr. Evelyn Amador, December 13, 1994.

he knows appellant because the latter worked in his ricefield. He also knows the complainant's family because they live near his ricefield and the complainant herself goes to the same school as his daughter. He testified that he would sometimes rest in the house of the CCC's while he was working in his ricefield. Sometime around April 10, 1992, during one of those occasions while he was resting in the house of the CCC's, BBB mentioned to him that he had sent his daughter to Irosin, Sorsogon to live with her aunt. The witness also testified that he knew that appellant had been living with the Barcelos for a long time. One day, however, he saw appellant and complainant sitting close to each other and picking lice from each other's heads.[8]

The second witness for the defense was Benjamin Bañares, forty-four (44) years of age and a farmer. He is the brother of appellant. During his testimony, he said that there could not have been any rape on April 25, 1992 since complainant was sent to Irosin by her father on April 10, 1992. On their way to Irosin, they even dropped by his house and there, BBB told him, that he was bringing his daughter to live with her aunt in order to avoid a scandal and to put a stop to his daughter's relationship with appellant. The witness also revealed that he has long known about this romantic relationship between complainant and appellant. He started noticing this when he observed that complainant would often throw a tantrum whenever her mother would attempt to pick lice from her hair, but would willingly submit if it was the appellant who would do the job. Also, on April 9, 1992, he chanced upon the appellant and complainant having sexual intercourse among the tall *caragomoy* plants. He later confronted the two about what he saw and they merely told him that there was nothing wrong about what they did because both of them were single. The witness further testified that he reported what he saw to BBB, but the latter merely accused him of being jealous.[9]

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[8] Testimony of Salvador Nuñez, January 31, 1995.

[9] Testimony of Benjamin Bañares, February 22, 1995 and April 19, 1995.

Appellant Julian Bañares, for himself, testified that he had been living intermittently with the CCC family ever since complainant was five (5) years old. He was already twenty-seven (27) years old when the alleged rape occurred. He developed a romantic relationship with complainant as the latter grew older. This romantic relationship started in 1991. In the morning of April 9, 1992, complainant asked if they could talk around noon. They met again that noon, as arranged, beside the house of complainant. There, complainant informed him that she did not have her menstrual period for that month. He then told her that they should inform her parents and she answered that they should wait for a while since her parents are still harvesting *palay*. They conversed for around thirty (30) minutes and then complainant started embracing him. He embraced her back and felt aroused. They then had sexual intercourse, which according to him, was consensual. Afterwards, his brother, Benjamin Bañares, arrived and asked them why they had sexual intercourse. Allegedly, complainant answered that nothing can hinder them from doing so since they were both single. Appellant, on the other hand, claimed that he had answered that he already wanted to get married and settle down. Thereafter, he saw his brother walk towards the *nipa* hut where the parents of complainant were staying. Seeing this, complainant immediately went home and appellant proceeded with his harvesting of *palay*.

Appellant also testified that he and complainant engaged in sexual intercourse several times prior to the incident on April 9, 1992. In open court, he specifically enumerated the dates when and the places where they had sexual intercourse. According to his testimony, they had sexual intercourse around twenty (20) times. Complainant also allegedly gave her picture to him so that he could remember her in Manila. The said picture, however, was never presented in court.[10]

As rebuttal witnesses, the prosecution presented BBB and complainant AAA. The former testified that he did not bring his daughter to Irosin, Sorsogon on April 10, 1992, but he brought

[10] Testimony of Julian Bañares, June 6, 1995.

her there on May 5, 1992. His daughter only returned to Bonga, Albay on July 1, 1992.[11] Complainant, on the other hand, testified that she never had any kind of romantic relationship with appellant Bañares and the sexual intercourse on April 25, 1992 was without her consent. She was forced by appellant to have sex with him on that day.[12]

On May 16, 1996, the Regional Trial Court (RTC) of Tabaco, Albay, Branch 16, rendered the herein assailed Decision finding appellant Julian Bañares *y* Besmonte guilty of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code. The dispositive portion of the assailed Decision states:

> WHEREFORE, in the light of the foregoing, the Court finds the accused JULIAN BAÑARES *y* BESMONTE of Upper Bonga, Bacacay, Albay, guilty beyond reasonable doubt of the crime of rape as defined and punished under Article 335 of the Revised Penal Code and hereby imposes the following, to wit:
>
> 1. To suffer the penalty of *Reclusion Perpetua*, with all the accessory penalties provided by law;
> 2. To pay the offended party AAA and complainant-father BBB the sum of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages; TWENTY THOUSAND PESOS (₱20,000.00) as exemplary damages;
> 3. To pay the costs; and
> 4. To give support to the said child in the amount of ONE THOUSAND PESOS (₱1,000.00) a month.
>
> It appearing from the records that accused has been detained for his failure to post a ₱30,000.00 bond for his provisional liberty from December 2, 1992 when he was incarcerated by virtue of a warrant of arrest issued against him, up to the promulgation of the judgment, this 16th day of May, 1996 or a period of THREE (3) YEARS, FIVE (5) MONTHS and FOURTEEN (14) DAYS, he shall be credited in the service of this judgment with the whole period of time during which he has undergone preventive imprisonment.

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[11] Rebuttal Testimony of Domingo Barcelo, August 3, 1995.

[12] Rebuttal Testimony of Susan Barcelo, August 3, 1995.

SO ORDERED.[13]

Hence, this appeal on the following assigned errors:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH A PRINCIPAL ELEMENT OF THE CRIME OF RAPE, *I.E.*, THE USE OF FORCE OR INTIMIDATION BY THE FORMER

THE TRIAL COURT GRAVELY ERRED IN LENDING UNDUE CREDENCE TO [THE] PROSECUTION'S EVIDENCE DESPITE THE INHERENT AND APPARENT IMPROBABILITIES AND CONTRADICTIONS THEREIN ON MATERIAL POINTS AND DESPITE ITS BEING REPLETE WITH ASSERTIONS WHICH ARE GROSSLY CONTRARY TO NORMAL HUMAN EXPERIENCE.[14]

Generally, this Court respects the factual findings of the trial court unless there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the trial court.[15]

Appellant's counsel argues that the prosecution failed to establish that appellant employed force and intimidation to succeed in having sexual intercourse with complainant.

In construing the word force as an element of the crime of rape, this Court has held that it is imperative for the prosecution to prove that force or intimidation was actually employed by the accused-appellant upon his victim to achieve his end. Failure to do so is fatal to its cause.[16]

To prove that force and intimidation was involved, the prosecution merely reproduced in its brief that portion of complainant's direct examination where she described how appellant succeeded in having sexual intercourse with her. There,

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[13] RTC Decision, pp. 7-8; *Rollo*, pp. 26-27.

[14] Appellant's Brief; p. 1; *Rollo*, p. 59.

[15] *People v. Fernandez*, 351 SCRA 80 (2001).

[16] *People v. Subido, supra,* note 6.

complainant claimed that she was pulled down from the guava tree by appellant and dragged towards the area planted with *caragomoy* and then raped. She also claimed that she kicked appellant and suffered a wound just above her inner ankle.

COURT:

Q After you were scared, what happened next?

A He pulled me towards to the *caragomoy* planted area.

Q What part of your body did he hold when he pulled you [to] that place?

INTERPRETER:

At this juncture witness pointed to her right hand.

COURT:

Proceed.

PROS. PIFAÑO:

Q What happened after the accused pulled you towards the place where the *caragomoy* were planted?

A I kicked him.

Q And were you able to hit him?

A No, Sir.

Q What happened?

A Because the accused moved backward.

Q So what happened after you kicked him?

A I was wounded.

COURT:

Q Where?

A Here, Your Honor.

INTERPRETER:

At this juncture witness pointed to her left leg just above the inner ankle.

PROS. PIFAÑO:

Q So, what happened after the accused pulled you and you kicked him and you suffered injury?

A He forced me to lie down, Sir.

Q And after you were forced to lie down, what happened?

A He removed my shorts.

Q You have any panty at that time?

A Yes, Sir.

ATTY. HERNANDEZ:

May we request to please avoid asking leading question[s].

PROS. PIFAÑO:

I will reform the question.

Q Aside from the shorts he removed, what else if any?

A He also removed my white t-shirt.

Q What else aside from your t-shirt?

A No more, Sir.

COURT:

Q So he only removed your shorts and t-shirt and nothing more?

WITNESS:

A And also my panty, Your Honor.

PROS. PIFAÑO:

Q So, what happened after the accused removed your panty as well as your shorts and t-shirt?

A He kept on kissing me.

COURT:

Witness at the same time indicating her face.

PROS. PIFAÑO:

Q Aside from kissing your face, what did the accused do if any?

A He kept on pressing my vagina.

Q What else did the accused do to you aside from kissing and pressing your vagina?

A He exposed his organ.

COURT:

Q In what manner did the accused expose his organ?

A At first, he removed his pants.

PROS. PIFAÑO:

Q What happened after the accused exposed his organ by removing his pants, what happened next?

A Immediately he inserted his organ into mine.

COURT:

Q What do you mean by "*sakuya*"?

A In my vagina.

COURT:

Proceed.

PROS. PIFAÑO:

Q After he inserted his organ to your vagina, what did he do to you if any?

A After he inserted his organ [into] my vagina it bled.

Q If the accused whom you mentioned as Julian, if he is in Court, will you be able to recognize him?

A Yes, Sir.

INTERPRETER:

At this juncture the witness points to the man wearing poloshirt and when asked his name answered as Julian Bañares.

xxx xxx xxx

PROS. PIFAÑO:

Q Aside from kissing you and inserting his organ upon you, what else did he do if any?

A I kept on crying because I felt pain. It was a painful and I felt that there was a whitish liquid coming out.

Q Where [did] that [come] from?

A From his penis.

PROS. PIFAÑO:

Q After the accused inserted his penis to your vagina, what did you see in your vagina?

A It bled. My organ [bled].

Q What else did [you] see if any?

A There was a whitish liquid.

Q After the accused have done these to you, what happened next?

A He put on his clothes.

Q After he put on his clothes, what happened?

A He threatened me.

Q What are those utterances that were made upon you?

ATTY. HERNANDEZ:

That is leading, Your Honor.

COURT:

Objection overruled, because the question was, what did he do? Her answer then, he threatened me. What are those utterances?

She can answer that question.

WITNESS:

A That if I would reveal what happened, I would be killed including my parents.

PROS. PIFAÑO:

Q After he uttered those threats, what did he do?

A Then he left.

Q How about you, what did you do?

A I also dressed myself.

Q From there, where did you go?

A I went to the well to clean my vagina.[17]

This Court notes, however, that when complainant took to the witness stand, the said wound she allegedly suffered was no longer discernible, nor was it put on record that complainant bore a scar on that part of her body. This Court also notes that the only form of resistance showed by complainant in her testimony is that single kick and nothing else. Complainant also claimed that after appellant raped her, he made a threat of killing her and her parents if she told anyone what happened, a threat which she promptly ignored by allegedly telling appellant's brother what had happened soon after the act:

xxx xxx xxx

Q What happened after you cleaned your vagina?

A After that my father had him summoned to go to our house but he did not obey.

COURT:

Q What caused your father to have him summoned?

A To have a conversation [with] each other.

COURT:

That is not the answer to the question.

Q How come that your father wanted to summon Julian?

A About the incident that happened, Your Honor.

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[17] TSN, January 24, 1994.

COURT:

Q How did he know the incident?

A Because the brother of Julian told my father about the incident.

Q How old is that brother?

A Grown up because he was already married.

Q How did the brother of Julian know about the incident?

A Because I reported the incident to his brother.

Q What is the name?

A Benjamin.

COURT:

Proceed.

PROS. PIFAÑO:

Q Where did you see Benjamin when you reported the incident to him?

A When he sharpened his bolo in our house.

COURT:

Q When?

A On April 25.

Q What time?

A It is already in the afternoon.

Q But before supper?

A Yes, Your Honor.

xxx xxx xxx

The prosecution also alleged in its brief that the employment of force and intimidation by appellant upon private complainant is likewise evident from the medical findings of the doctor who categorically testified that the complainant sustained several lacerations on her vagina as a result of sexual intercourse.

It must be pointed out that a medical certificate or the testimony of the physician is presented not to prove that the complainant was raped but to show that the latter had lost her virginity. Consequently, standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence regarding the circumstances of the carnal knowledge that rape may be deemed to have been established.[18]

It is true that in rape cases, the accused may be convicted solely on the testimony of the complaining witness.[19] However, because of the unique nature of the crime of rape, where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.[20] Hence, in this case, as in many others before it, the credibility of the complainant's testimony is determinative of the outcome.

This Court notes that complainant's testimony was replete with details that inject doubt as to appellant's guilt.

First, complainant claimed that appellant made a threat of killing her and her parents if she told anyone about what happened. Despite this threat, she nevertheless told appellant's brother, Benjamin, about the alleged rape immediately after it occurred. When appellant's brother relayed to her father what had happened, complainant reportedly refused to say anything about it. It is indeed disturbing that complainant would still balk at vindicating her defiled honor and not tell her father what had actually happened. She had already told appellant's brother that she was raped. In turn, appellant's brother allegedly reported this to her father. Complainant had already ignored appellant's threat. Nothing would have stopped her from pursuing her defiler and seeking redress for the crime committed against her.

Second, complainant testified that her father, on the very same day that the alleged rape happened, had appellant summoned to ask him whether he had indeed defiled his daughter. Allegedly,

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[18] *People v. Domantay*, 307 SCRA 1 (1999).

[19] *People v. Dado*, 244 SCRA 655 (1995).

[20] *People v. Gabris*, 258 SCRA 663 (1996).

appellant never answered the summons. Her father immediately thereafter sent complainant away to Irosin, Sorsogon to live with her aunt.

The actions of complainant's father are not consistent with that of a man who just received information that his daughter may have been raped. Instead, his actions are more consistent with that of one who learned that his daughter was having a sexual relationship with a man almost twice her age. He did not have her examined immediately by a physician who may have confirmed that the girl was indeed ravished. Instead, he sent her away ostensibly to live with an aunt who promised to send her to school.

Third, the rape occurred on April 25, 1992 and complainant allegedly reported this to Benjamin Bañares on the very same day. Although Benjamin Bañares reportedly informed her father immediately thereafter about what had happened, her father supposedly only knew for sure that his daughter was raped sometime around July, 1992 when complainant was already living with her aunt in Irosin, Sorsogon. However, complainant's father only filed the complaint for rape against appellant on November 9, 1992.[21] Also, complainant only submitted to a medical examination on November 6, 1992.[22] It is true that the silence of the complainant in a case of rape or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue, and fabricated.[23] However, in this case, upon being asked about the delay in the filing of the complaint, the complainant answered:

> Q And the said complaint was filed by your father only in November, 1992 or after a lapse of seven months, before the Municipal Trial Court, after you were allegedly raped by the accused here.

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[21] Records, p. 1.

[22] Records, p. 4.

[23] *People v. Garcia*, 105 SCRA 6 (1981).

A It was because the family was so busy in the preparation for the wedding of my brother, DDD. So, the [filing] of the case was quite delayed.[24]

This explanation is not satisfactory. Supposedly, complainant's family, as early as July, 1992, already knew about the alleged rape. They would have acted with promptness if it were true that one of their own was the unwilling victim of a grievous outrage.

This Court will not hesitate to reverse a judgment of conviction and acquit the accused where there are strong indications pointing to the possibility that the rape charge was motivated by some factors other than the truth.[25] Also, it must be borne in mind that an accusation of rape may easily be made and is hard to prove. It is harder, however, upon the accused to defend, although he may be innocent.[26] The evidence, therefore, for conviction must not only be clear and convincing, but be beyond reasonable doubt to overcome the constitutional presumption of innocence.[27]

In this case, this Court finds that the prosecution failed to overcome the constitutional presumption of innocence and, hence, appellant's acquittal is called for.

WHEREFORE, the Decision appealed from is hereby *REVERSED* and *SET ASIDE*. Appellant Julian Bañares *y* Besmonte is hereby *ACQUITTED* of the crime of rape in Criminal Case No. T-2397 of the Regional Trial Court of Tabaco, Albay, Branch 16. The Director of Prisons is hereby directed forthwith to cause the release of appellant unless he is being lawfully held for another cause, and to inform the Court accordingly within ten (10) days from notice.

Costs *de oficio*.

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[24] Cross-Examination of Susan Barcelo, August 23, 1994 (afternoon hearing), p. 2.

[25] *People v. Subido, supra,* note 6.

[26] *People v. Barbo*, 56 SCRA 459 (1974).

[27] *People v. Bihasa*, 130 SCRA 62 (1984).

SO ORDERED.

Panganiban, Ynares-Santiago, and *Carpio, JJ.,* concur.

Davide, Jr., C.J., on official leave.

SECOND DIVISION

[G.R. No. 128686. May 28, 2004]

HONORATO ESPINOSA, *petitioner, vs.* **COURT OF APPEALS, HON. PRESIDING JUDGE, Branch 23, RTC Iloilo City and Sps. RODOLFO and VIOLETA ALCANTARA**, *respondents*.

SYNOPSIS

The spouses Alcantara charged Espinosa of encroachment of property. While the trial court ruled in favor of Espinosa, the Regional Trial Court (RTC) ruled in favor of the Alcantaras. The sketch plan of the relocation survey submitted by the Bureau of Lands to the RTC indicated that Espinosa encroached on 68 sq. m. of the Alcantaras lot. Initially, Espinosa agreed to buy the encroached area. Later, however, he rejected the proffered settlement. Espinosa appealed to the Court of Appeals (CA) but the same was denied. He elevated the CA decision to the Court and the same was also denied. Thereafter, Espinosa filed a petition for annulment of judgment with the CA alleging extrinsic fraud and denial of due process. He did not mention the petitions filed earlier with the CA and the Court. The CA dismissed the petition and declared Espinosa and counsel in contempt of Court for forum-shopping.

Whether the RTC decision may be annulled on the ground of extrinsic fraud and denial of due process, the Court ruled in the negative. The Alcantaras alleged irregularity of the relocation survey conducted while the case was on appeal. The

Court ruled, however, that the survey was upon lawful order of the RTC, consented to by all the parties for the purpose of conclusively ascertaining a factual issue. Further, Espinosa was not prevented from challenging the findings before the RTC and the appellate courts. And while Espinosa also blamed his counsel for the same, the Court ruled that the latter represented Espinosa well. On the issue of forum-shopping, the Court directed the CA to initiate indirect contempt proceedings against Espinosa and counsel in accordance with the Rules.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; GROUNDS; EXTRINSIC FRAUD; ELUCIDATED.— Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Extrinsic fraud, the ground upon which Espinosa relies upon, is one of the recognized grounds for annulment of judgment. However, the mere allegation of extrinsic fraud does not instantly warrant the annulment of a final judgment, as the same has to be definitively established by the claimant. Extrinsic fraud exists when there is a fraudulent act of prevailing party committed outside of the trial of the case, whereby the defeated party was prevented from exhibiting fully his side of the case by fraud or deception practiced on him by the prevailing party.

2. ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — Espinosa has failed to prove extrinsic fraud. The extrinsic fraud complained of by Espinosa refers to the act of conducting the relocation survey while the case was on appeal to the RTC. Espinosa suggests that it was highly questionable on the part of the RTC to have ordered such a survey since the case was being heard on appeal, and given the nature of an ejectment action, only the submission of memoranda by the parties are required. The conduct of the relocation survey, however, was not occasioned at the instigation of the prevailing party (the Alcantaras), but upon lawful order by the RTC. Moreover, the procedure was consented to by all of the parties and their lawyers. The relocation survey was ordered for the purpose of conclusively ascertaining a factual issue, *i.e.,* the exact location of the structure belonging to Espinosa in relation to the lot of

the Alcantaras. This is a proper question for the RTC to have inquired into, and well within its competence as it is a trier of facts. Every court has the inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction. Even assuming that the order for the relocation survey is irregular on the premise that RTC may decide the appealed case based only on the records and pleadings before it, such lapse is procedural in character only. The findings would not be *ipso facto* binding on the parties who consented to the survey, but would only form part of the proofs on which the trial court would base its decision upon. Despite such relocation survey, Espinosa was not prevented from challenging the findings before the RTC. Nor was Espinosa prevented from arguing against the adoption of such findings before the Court of Appeals and the Supreme Court, considering that he had availed of the proper appellate processes before these higher courts. Further, the *Petition for Annulment of Judgment* is silent as to when Espinosa received a copy of the impugned decision, or when he discovered the alleged extrinsic fraud. An action based on extrinsic fraud must be filed within four (4) years from its discovery. Since the timeliness of the *Petition* could not be ascertained, it could have very well been dismissed on that ground alone.

3. LEGAL ETHICS; ATTORNEYS; CLIENTS BOUND BY THE MISTAKES OF THEIR COUNSEL.— Espinosa claims that he was deprived of due process and blames his former counsel, Atty. Castillon, for having consented to the relocation survey, implicitly suggesting that the lawyer too had an active hand in denying him due process. Indubitably, Espinosa and his former counsel agreed to the relocation survey, were present during the survey and are thus estopped from questioning its very conduct in the first place. When a party retains the services of a lawyer, he is bound by his counsel's decisions regarding the conduct of the case. The general rule is that the client is bound by the mistakes of his counsel, save when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. There is nothing in the record that would tend to establish that Atty. Castillon performed less than ably in representing Espinosa. On the contrary, as noted by the Alcantaras in their *Comment*, Atty. Castillon is a law professor on Property and a distinguished practitioner in the City of Iloilo. Moreover, Atty. Castillon served as Espinosa's

counsel for more than ten years. Espinosa's defeat is attributable not to the purported incompetence of his former lawyer but to the untenability of his legal position. And even if Atty. Castillon committed a tactical error in consenting to the relocation survey, this was done out of the honest belief that the survey would benefit his client's cause. Just because it did not, Espinosa and his new counsel could not just turn about and pin the blame on the patsy of their convenient choice.

4. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; RULE VIOLATED WHEN PARTY FAILED TO MENTION RELATED PETITIONS FILED EARLIER.— Anent the issue of forum-shopping, the Court agrees with the Court of Appeals' finding that Espinosa and his present counsel, Atty. Laguilles, Jr., violated the rules on non-forum shopping. Revised Circular No. 28-91 (as amended) was already in force when the petition in CA-G.R. SP No. 39206 was filed on October 11, 1996. Under the Circular, which has since been incorporated into the 1997 Rules of Civil Procedure, the petitioner has to attest that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency. If such an action or proceeding has been instituted, the petitioner is obliged to state the status of the same. In his *Verification, Certification* and *Affidavit of Merit,* which contains the certificate of non-forum shopping in the petition in CA-G.R. SP No. 39206, Espinosa and his new counsel did not mention the petitions in CA G.R. SP No. 22398 and G.R. No. 111752 and the decisions or resolutions thereon. In his present petition before this Court, Espinosa does mention the existence of the previous cases in his *Verification with Affidavit of Non-Forum Shopping,* though with the disclaimer that those cases involved different issues than those addressed in the current petition. The belated compliance, however, is of no moment, as his failure to assert the same before the Court of Appeals is sufficient to warrant liability.

5. ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; PROPER PROCEDURE.— Under Revised Circular No. 28-91, the submission of a false certification constitutes indirect contempt of court, without prejudice to the filing of criminal action against the guilty party and the institution of disciplinary proceedings against the counsel. Unlike in cases of direct

contempt, which can be summarily adjudged and punished by a fine, a finding of guilt for indirect contempt must be preceded by a charge in writing, an opportunity given to the respondent to comment thereon and to be heard by himself or by counsel in a hearing.

APPEARANCES OF COUNSEL

Rolando Albano and Arce and *Laguilles Law Office* for petitioner.

Guillermo Alcantara for private respondent.

D E C I S I O N

TINGA, *J.*:

This is a petition for review of the *Decision*[1] dated October 11, 1996 of the Court of Appeals in CA-G.R. SP No. 39206, dismissing the petition for the annulment of the *Decision*[2] dated May 15, 1990 of the Regional Trial Court of Iloilo City (RTC) in Civil Case No. 18622.

The antecedents are recited below.

After finding through a relocation survey that a portion of their Lot 933-A-1-A, covered by Transfer Certificate of Title No. T-69242 (Iloilo), was occupied by the petitioner Honorato Espinosa's ("Espinosa") restaurant, known as "Tatoy's Manokan and Seafoods Restaurant", the private respondents Rodolfo and Violeta Alcantara ("Alcantaras") filed an action for ejectment against Espinosa before the Municipal Trial Court in Cities, Iloilo City (MTC), on November 4, 1985.[3]

Espinosa denied the encroachment. Also through his counsel then, Atty. Rex Castillon, Espinosa succeeded in having the

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[1] Penned by Justice, now Presiding Justice Cancio C. Garcia, concurred in by Justices Eugenio S. Labitoria and Artemio G. Tuquero.

[2] Rendered by Hon. Tito G. Gustilo.

[3] *Rollo*, p. 10. Docketed as Civil Case No. 15288.

case tried as in a regular case, instead of a hearing under the Rules on Summary Procedure.[4]

After trial, the MTC rendered judgment on February 6, 1989 in favor of Espinosa, dismissing the complaint and ordering the Alcantara spouses to pay moral damages, exemplary damages, attorney's fees, litigation expenses, and costs of suit. It found that Espinosa did not encroach on the lot of the Alcantaras as his restaurant was situated on Lot 933-A-18 which he owns.[5]

The Alcantaras appealed the decision to the RTC.[6] Its Presiding Judge, Hon. Tito G. Gustilo, noted that the lot of the Alcantaras and the adjoining lots, including those of Espinosa and the city street, are all titled properties. On that basis and with the concurrence of the parties and their respective lawyers, the Judge issued an *Order* on October 2, 1989, commissioning the Bureau of Lands to conduct a relocation survey for the purpose of determining whether Espinosa's restaurant has indeed encroached on the Alcantaras' lot.[7]

Judge Gustilo presided over the ocular inspection and relocation survey on October 2, 1989. Present were the parties and their lawyers.[8]

In due time, the Bureau of Lands through its authorized representative submitted to the RTC the result of the relocation survey with the corresponding sketch plan.[9] The sketch plan indicates that Espinosa's restaurant encroaches on eighty-nine (89) square meters of the Alcantaras' Lot 933-A-1-A and also on a portion of the city street known as Melo Boulevard and designated as Lot 933-A-1-B.[10] Said street lot used to be a part of

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[4] *Id*. at 11.

[5] *Id*. at 27.

[6] *Id*. at 28.

[7] *Id*. at 30.

[8] *Id*. at 29.

[9] *Ibid*.

[10] *Ibid*.

the bigger property owned by the Alcantaras' predecessor-in-interest from whom the City of Iloilo purchased the street lot.[11]

During the relocation survey, Judge Gustilo proposed a compromise settlement to the parties and their lawyers whereby should the relocation survey attest to the encroachment on the Alcantaras' lot Espinosa would buy the encroached area at ₱250.00 per square meter from the Alcantaras. Espinosa agreed to the proposal at the time. However, when the Judge invited the parties and their counsels to his chambers to explore or pursue the proposed compromise agreement on three (3) occasions, namely: on December 27, 1989, April 2, 1990 and April 5, 1990, Espinosa rejected the proffered settlement.[12]

On May 15, 1990, the RTC rendered its decision in favor of the Alcantaras, reversing the MTC decision and ordering Espinosa to vacate the lot in question and to pay the Alcantaras moral damages, attorney's fees, litigation expenses and costs of suit.[13]

Espinosa elevated the RTC decision to the Court of Appeals through a *Petition For Review* which was docketed as CA-G.R. SP No. 22398.[14]

On September 6, 1993, the Court of Appeals promulgated its Decision in the case, denying Espinosa's *Petition For Review*.[15]

Unfazed, Espinosa elevated the CA *Decision* to this Court and his *Petition* was docketed as G.R. No. 111752. This Court denied the *Petition* in a *Resolution* dated February 27, 1995 for which the corresponding *Entry of Judgment* was made on August 18, 1995.[16]

Less than three (3) months later, on December 6, 1995, Espinosa, this time through his present counsel, Atty. Honorio

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[11] *Rollo*, p. 84.

[12] *Id*. at. 30.

[13] *Ibid*.

[14] *Id*. at 31.

[15] *Id*. at 31-32.

[16] *Id*. at 32.

S. Laguilles, Jr., filed a petition for annulment of judgment with the Court of Appeals. He alleged that the promulgation of the RTC decision was attended with extrinsic fraud and denial of due process.[17] In his verification and certification of non-forum shopping, however, Espinosa was silent on the petitions he earlier filed with the Court of Appeals (CA-G.R. SP No. 22398) and this Court (G.R. No. 111752) and the decision or resolution on the petitions.[18]

In the challenged *Decision*, the Court of Appeals dismissed the petition for annulment of judgment.[19] It also declared Espinosa and his present counsel in contempt of court and fined each of them One Thousand Pesos (₱1,000.00) for forum-shopping.

Consequently, the issues before this Court are (a) whether the RTC *Decision* may be annulled on the ground of extrinsic fraud and denial of due process, and (b) whether Espinosa and his present counsel are guilty of forum-shopping.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy.[20] Extrinsic fraud, the ground upon which Espinosa relies upon, is one of the recognized grounds for annulment of judgment.[21] However, the mere allegation of extrinsic fraud does not instantly warrant the annulment of a final judgment, as the same has to be definitively established by the claimant. Espinosa has failed to prove extrinsic fraud.

Extrinsic fraud exists when there is a fraudulent act of prevailing party committed outside of the trial of the case, whereby the defeated party was prevented from exhibiting fully his side of the case by fraud or deception practiced on him by the prevailing

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[17] *Id*. at 31.

[18] *Id*. at 32.

[19] *Id*. at 26-35.

[20] *Barco v. Court of Appeals*, G.R. No. 120587, 20 January 2004.

[21] See Section 2, Rule 47, 1997 RULES OF CIVIL PROCEDURE.

party.[22] The extrinsic fraud complained of by Espinosa refers to the act of conducting the relocation survey while the case was on appeal to the RTC. Espinosa suggests that it was highly questionable on the part of the RTC to have ordered such a survey since the case was being heard on appeal, and given the nature of an ejectment action, only the submission of memoranda by the parties are required.[23]

Clearly, the conduct of the relocation survey was not occasioned at the instigation of the prevailing party (the Alcantaras), but upon lawful order by the RTC. Moreover, the procedure was consented to by all of the parties and their lawyers. The relocation survey was ordered for the purpose of conclusively ascertaining a factual issue, *i.e.*, the exact location of the structure belonging to Espinosa in relation to the lot of the Alcantaras. This is a proper question for the RTC to have inquired into, and well within its competence as it is a trier of facts. Every court has the inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.[24]

Even assuming that the order for the relocation survey is irregular on the premise that RTC may decide the appealed case based only on the records and pleadings before it, such lapse is procedural in character only. The findings would not be *ipso facto* binding on the parties who consented to the survey, but would only form part of the proofs on which the trial court would base its decision upon. Despite such relocation survey, Espinosa was not prevented from challenging the findings before the RTC. Nor was Espinosa prevented from arguing against the adoption of such findings before the Court of Appeals and

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[22] *Heirs of Pael v. Court of Appeals*, 382 Phil. 222, 242 (2000), citing *Cosmic Lumber Corporation v. Court of Appeals*, 265 SCRA 168, 179 (1996).

[23] *Rollo*, p. 16.

[24] *Shioji v. Harvey*, 43 Phil. 333, 344 (1922). Moreover, the Rules of Court recognize that every court has the power to amend and control its process and orders so as to make them conformable to law and justice. Section 5(g), Rule 135, Revised Rules of Court.

the Supreme Court, considering that he had availed of the proper appellate processes before these higher courts.

Indeed, Espinosa raised the same issue concerning the alleged impropriety of the relocation survey ordered by the RTC before the CA in CA-G.R. SP No. 22398. It was rejected by the appellate court in its decision in the said case. The same issue was raised again in G.R. No. 111752 before this Court, albeit unsuccessfully. A claim of extrinsic fraud would presuppose that the claimant was prevented exhibiting fully his side of the case. On the contrary, Espinosa has had multiple opportunities to raise the same issue on the impropriety of the relocation survey before the courts. His claim has acquired the veneer of a scratchy vinyl record that repeats its hoary tune *ad nauseum* to the general effect of irritation.

Espinosa claims that he was deprived of due process and blames his former counsel, Atty. Castillon, for having consented to the relocation survey, implicitly suggesting that the lawyer too had an active hand in denying him due process. Indubitably, Espinosa and his former counsel agreed to the relocation survey, were present during the survey and are thus estopped from questioning its very conduct in the first place. When a party retains the services of a lawyer, he is bound by his counsel's decisions regarding the conduct of the case. The general rule is that the client is bound by the mistakes of his counsel, save when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[25]

Citing the cases of *Legarda v. Court of Appeals*[26] and *Alabanzas v. IAC,*[27] Espinosa invokes the exception to the general rule that a client need not be bound by the actions of counsel who is grossly and palpably negligent. These very cases cited demonstrate why Atty. Castillon's acts hardly constitute

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[25] *Alarcon v. Court of Appeals*, 380 Phil. 678, 688-689 (2000), citing *Tenebro v. Court of Appeals*, 275 SCRA 81 (1997) and *Legarda v. Court of Appeals*, 280 SCRA 642 (1997).

[26] G.R. No. 94457, 18 March 1991, 195 SCRA 418.

[27] G.R. No. 74697, 29 November 1991, 204 SCRA 304.

gross or palpable negligence. *Legarda* provides a textbook example of gross negligence on the part of the counsel. The Court therein noted the following negligent acts of lawyer Antonio Coronel:

> Petitioner's counsel is a well-known practicing lawyer and dean of a law school. It is to be expected that he would extend the highest quality of service as a lawyer to the petitioner. Unfortunately, counsel appears to have abandoned the cause of petitioner. After agreeing to defend the petitioner in the civil case filed against her by private respondent, said counsel did nothing more than enter his appearance and seek for an extension of time to file the answer. Nevertheless, he failed to file the answer. Hence, petitioner was declared in default on motion of private respondent's counsel. After the evidence of private respondent was received *ex-parte*, a judgment, was rendered by the trial court.
>
> Said counsel for petitioner received a copy of the judgment but took no steps to have the same set aside or to appeal therefrom. Thus, the judgment became final and executory.[28]

Gross negligence on the part of the counsel in *Legarda* is clearly established, characterized by a series of negligent omissions that led to a final executory judgment against the client, who never once got her side aired before the court of law before finality of judgment set in. The actions of Atty. Castillon hardly measure up to this standard of gross negligence exhibited in the *Legarda* case.

On the other hand, in *Alabanzas* counsel failed to file an appellant's brief, thereby causing the dismissal of the appeal before the Court of Appeals.[29] Despite such inexcusable and fatal lapse, the Court ruled that it was not sufficient to establish such gross or palpable negligence that justified a deviation from the rule that clients should be bound by the acts and mistakes of their counsel.[30] It strikes as odd that Espinosa should cite

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[28] *Legarda v. Court of Appeals,* G.R. No. 94457, 18 March 1991, 195 SCRA 418, 424-425.

[29] *Alabanzas v. IAC,* G.R. No. 74697, 29 November 1991, 204 SCRA 304, 306.

[30] *Id*. at 309.

Alabanzas in the first place, considering that the lapse of the counsel therein was far worse than that imputed to Atty. Castillon, yet the Court anyway still refused to apply the exception to the general rule.

Besides, there is nothing in the record that would tend to establish that Atty. Castillon performed less than ably in representing Espinosa. On the contrary, as noted by the Alcantaras in their *Comment*, Atty. Castillon is a law professor on Property and a distinguished practitioner in the City of Iloilo.[31] Moreover, Atty. Castillon served as Espinosa's counsel for more than ten years.[32] Espinosa's defeat is attributable not to the purported incompetence of his former lawyer but to the untenability of his legal position. And even if Atty. Castillon committed a tactical error in consenting to the relocation survey, this was done out of the honest belief that the survey would benefit his client's cause. Just because it did not, Espinosa and his new counsel could not just turn about and pin the blame on the patsy of their convenient choice.

Another matter cited by the Court of Appeals is also worth noting. The *Petition for Annulment of Judgment* is silent as to when Espinosa received a copy of the impugned decision, or when he discovered the alleged extrinsic fraud.[33] An action based on extrinsic fraud must be filed within four (4) years from its discovery.[34] Since the timeliness of the *Petition* could not be ascertained, it could have very well been dismissed on that ground alone.

Anent the issue of forum-shopping, the Court agrees with the Court of Appeals' finding that Espinosa and his present counsel, Atty. Laguilles, Jr., violated the rules on non-forum shopping. Revised Circular No. 28-91 (as amended) was already in force when the petition in CA-G.R. SP No. 39206 was filed

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[31] *Rollo*, p. 100. Espinosa does not refute Atty. Castillon's apparent credentials, merely noting without effect that "even the high and mighty commit mistakes". See *Rollo*, p. 126.

[32] *Ibid*.

[33] *Rollo*, p. 42.

[34] See Section 3, Rule 47, 1997 RULES OF CIVIL PROCEDURE.

on October 11, 1996. Under the Circular, which has since been incorporated into the 1997 Rules of Civil Procedure,[35] the petitioner has to attest that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency. If such an action or proceeding has been instituted, the petitioner is obliged to state the status of the same.[36]

In his *Verification*, *Certification* and *Affidavit of Merit*, which contains the certificate of non-forum shopping in the petition in CA G.R. SP No. 39206, Espinosa and his new counsel did not mention the petitions in CA-G.R. SP No. 22398 and G.R. No. 111752 and the decisions or resolutions thereon. In his present petition before this Court, Espinosa does mention the existence of the previous cases in his *Verification With Affidavit of Non-Forum Shopping*, though with the disclaimer that those cases involved different issues than those addressed in the current petition. The belated compliance, however, is of no moment, as his failure to assert the same before the Court of Appeals is sufficient to warrant liability.

Espinosa argues against this finding by noting that the issues of "denial of due process" and "fraud" were raised for the first time in the *Petition for Annulment of Judgment*. Yet, the proof of such fraud is the alleged improper allowance of the relocation survey. As the Court of Appeals noted, that same question of impropriety was already passed upon by the Court of Appeals and the Supreme Court in two previous petitions filed by Espinosa. The Court of Appeals noted that: "A reading of the petition filed [in CA-G.R. SP No. 22398] *vis-a-vis* the one filed in this case would readily reveal that not much difference exists between the two except that the first is a petition for review while the present is one for annulment of judgment." [37] In the pithy words of the Court of Appeals, "same dog, but with a different collar."[38]

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[35] F. Regalado, *I REMEDIAL LAW COMPENDIUM 147 (1997)*. See also Section 5, Rule 7, 1997 RULES OF CIVIL PROCEDURE.

[36] Par. 1, Revised Circular No. 28-91.

[37] *Rollo*, p. 34.

[38] *Ibid*.

However, this Court is unable to sustain the Court of Appeals' declaration that Espinosa and his counsel are in contempt of court and the corresponding fine of One Thousand Pesos (₱1,000.00) imposed upon them. Under Revised Circular No. 28-91, the submission of a false certification constitutes indirect contempt of court, without prejudice to the filing of criminal action against the guilty party and the institution of disciplinary proceedings against the counsel. Unlike in cases of direct contempt, which can be summarily adjudged and punished by a fine,[39] a finding of guilt for indirect contempt must be preceded by a charge in writing, an opportunity given to the respondent to comment thereon and to be heard by himself or by counsel in a hearing.[40] The Court of Appeals erred in summarily punishing Espinosa and his counsel, considering that the charge against them only constitutes indirect contempt. In cases of indirect contempt, no matter how palpable the errant's bad faith might appear to the court, due process as laid down in the rules of procedure must be observed before the penalty is imposed.

Finally, the ejectment case against Espinosa was filed way back in 1985, and the judgment therein attained finality in 1995. If the pendency of this case has prevented the Alcantaras from enforcing the long-final judgment in their favor, then such delay is understandably egregious. The immediate execution of this judgment is declared exigent to enable the Alcantaras deservedly to rest secure in the vindication of their rights and the enjoyment of their property.

WHEREFORE, the *Petition* is *DENIED* for lack of merit. The assailed *Decision* of the Court of Appeals Sixteenth Division is *AFFIRMED*, *EXCEPT* insofar as it imposes a fine of One Thousand Pesos (₱1,000.00) on petitioner Honorato Espinosa and Atty. Honorio S. Laguilles, Jr. Instead, the Court of Appeals is *DIRECTED* to initiate indirect contempt proceedings against

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[39] Section 1, Rule 71, REVISED RULES OF COURT.

[40] See Section 3, Rule 71, REVISED RULES OF COURT. "[T]here must be a hearing of the indirect contempt charge after notice thereof is validly served on the person charged with indirect contempt." *Balasabas v. Hon. Aquilisan*, 193 Phil. 639, 650 (1981).

Espinosa and Atty. Laguilles, Jr., and *RESOLVE* the same in conformity with Rule 71 of the 1997 Rules of Civil Procedure.

SO ORDERED.

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

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

SECOND DIVISION

[G.R. No. 134433. May 28, 2004]

SPS. WILFREDO DEL ROSARIO and FE LUMOTAN DEL ROSARIO, *petitioners, vs.* **VIRGILIO MONTAÑA and GENEROSO CARLOBOS**, *respondents*.

SYNOPSIS

Pursuant to PD No. 293, petitioner was awarded the parcel of land in issue. Later, however, in the case of *Tuason vs. Register of Deeds*, Caloocan City, PD 293 was declared unconstitutional. Petitioner's title to the land was therefore invalidated and respondent took possession of the land and constructed a house thereon. Allegedly, respondent was the true and lawful owner of the property as his father bought the property from the Bureau of Lands and petitioner's title to the land had already been invalidated.

Torrens system was not a means of acquiring titles to lands; it was merely a system of registration of titles to lands. As the Register of Deeds of Caloocan City had already invalidated petitioner's title over the property pursuant to the declaration of unconstitutionality of PD 293, petitioners were thus holders of a canceled transfer certificate of title. That while petitioners were paying the real estate taxes due on the property, they were not in actual physical possession thereof. These

circumstances work against petitioner's interest and confirm their lack of cause of action.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; PROPER REMEDY WHERE DECISION ASSAILED IS A FINAL ORDER.— What is being assailed in the present petition is the decision of the Regional Trial Court dismissing their complaint for Quieting of Title with Recovery of Possession *de jure*, which is a final order. An order is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the lower court (*Mejia v. Alimorong*, 4 Phil. 572; *Insular Government v. Roman Catholic Bishop of Nueva Segovia*, 17 Phil. 487; *People v. Macaraig*, 54 Phil. 904). In other words, a final order is that which gives an end to the litigation (*Olsen & Co. v. Olsen*, 48 Phil. 238). The test to ascertain whether an order is interlocutory or final is; does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final (Moran, Comments on the Rules of Court, Vol. 1, 3rd ed. Pp. 806-807). A final order is that which disposes of the whole subject-matter or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined (2 Am. Jur., Section 22, pp. 861-862). (*Reyes v. De Leon*, G.R. No. L-3720, June 24, 1952). Therefore, the proper mode of appeal should be a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, and not a special civil action for *certiorari* under Rule 65. As such, it should have been filed within the 15-day reglementary period.

2. ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS.— Petitioners clearly disregarded the doctrine of *hierarchy of courts* which serves as a general determinant of the proper forum for the availment of the extraordinary remedies of *certiorari,* prohibition, *mandamus, quo warranto*, and *habeas corpus*. As held in *People vs. Court of Appeals*: There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance

of extraordinary writs against first level ("inferior") courts should be filled with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. While the doctrine admits of certain exceptions, *i.e.,* special and important reasons or for exceptional and compelling circumstances, the circumstances of this case do not permit the application of such exceptions. Considering, therefore, that the present special civil action of *certiorari* under Rule 65 is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, the petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts. However, the Court may brush aside the procedural barrier and take cognizance of the petition as it raises an issue of paramount importance and constitutional significance.

3. CIVIL LAW; LAND TITLES; P.D. NO. 239 GRANTING TORRENS TITLES TO BENEFICIARIES, RENDERED UNCONSTITUTIONAL; EFFECT THEREOF IN CASE AT BAR.— In the *Tuason* Case, the Court declared P.D. No. 239 as unconstitutional and void *ab initio* in all its parts. It becomes imperative to determine the effect of such declaration on Torrens titles that have been issued to persons who in good faith, had availed of the benefits under P.D. No. 239 before it was declared void *ab initio* for being unconstitutional. We have consistently held that the Torrens system is not a means of acquiring titles to lands; it is merely a system of registration of titles to lands. Certain factors must likewise be taken into account in case at bar. One is that the Register of Deeds of Caloocan City has already invalidated petitioner's title over the property, TCT No. 120788, pursuant to the decree of this Court in *Tuason vs. Register of Deeds, Caloocan City,* and as it stands now, petitioners are holders of a canceled transfer certificate of title. Another is that petitioners, while paying the real estate taxes due on the property, are not in actual physical possession thereof. These circumstances work against petitioners' interest

and confirm their lack of cause of action. The court *a quo*, therefore, did not err in dismissing petitioner's complaint.

APPEARANCES OF COUNSEL

The Law Firm of Ross B. Bautista for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the decision dated February 9, 1998 rendered by the Regional Trial Court of Caloocan City (Branch 121) dismissing petitioners' complaint for quieting of title with recovery of possession *de jure*.

The facts of this case are undisputed.

On September 14, 1973, then President Ferdinand E. Marcos issued Presidential Decree No. 293, canceling certain sales certificates and/or transfer certificates of title in the name of Carmel Farms, Inc. which cover the Tala Estate in Caloocan City, and declaring these properties open for disposition to the Malacañang Homeowners Association, Inc. (MHAI). Consequently, on October 25, 1983, petitioner Fe Lumotan***, a member of the MHAI, filed an application to purchase Lot No. 18, Blk-19, Pangarap Village, Caloocan City, which is part of the Tala Estate. [1] Meanwhile, respondent Virgilio Montaña's father, Margarito Montaña, filed a claim against the application of petitioner but was rejected by the Bureau of Lands in its Order dated November 2, 1983.[2] Eventually, the property was awarded to petitioner per Bureau of Lands Decision dated December 10, 1984[3] and TCT No. 120788 was issued in the

*** Also referred to as Fe Lomutan or Fe Lumutan in the records of this case.

[1] RTC Records, Folder of Exhibits, Exhibit "M".

[2] RTC Records, Exhibit "G".

[3] RTC Records, Exhibit "J".

name of petitioner.[4] Although not in actual possession of the disputed property, petitioner has been paying the taxes thereon.[5]

Four years after, or on January 29, 1988, this Court in *Tuason vs. Register of Deeds, Caloocan City*,[6] declared P.D. No. 293 unconstitutional. The decretal portion of the decision reads:

> WHEREFORE, Presidential Decree No. 293 is declared to be unconstitutional and void *ab initio* in all its parts. The public respondents are commanded to cancel the inscription on the titles of the petitioners and the petitioners in intervention of the memorandum declaring their titles null and void and declaring the property therein respectively described "open for disposition and sale to the members of the Malacañang Homeowners Association, Inc.;" to do whatever else is needful to restore the titles to full effect and efficacy; and henceforth to refrain, cease and desist from implementing any provision or part of said Presidential Decree No. 293. No pronouncement as to costs.[7]

Thus, on September 23, 1988, the Register of Deeds of Caloocan City inscribed Entry No. 218192 on petitioner's title, invalidating the certificate of title pursuant to the pronouncement of the Court in the above-entitled case.[8]

Petitioner then visited the property some time in 1995 and discovered that respondent Montaña had already constructed a house thereon. Respondent claimed that petitioner Fe had already lost her rights over the property. Consequently, on January 17, 1997, petitioner, joined by her husband Wilfredo del Rosario, filed a complaint for Quieting of Title with Recovery of Possession *de jure*.[9]

Respondent filed his Answer alleging that he is the true and lawful owner of the property as his father bought the property

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[4] RTC Records, Exhibit "B".

[5] RTC Records, Exhibits "C" to "E-13".

[6] 157 SCRA 613 (1988).

[7] *Ibid*., at p. 623.

[8] RTC Records, p. 18.

[9] Entitled, *"Sps. Wilfredo del Rosario & Fe Lumotan del Rosario vs. Virgilio Montana and John Doe"*.

from the Bureau of Lands, and TCT No. T-120788 in the name of petitioner had already been invalidated.[10]

During pre-trial, the parties agreed on the following stipulation of facts:

> 2. Both parties admit that the defendants are in actual possession of the property in question;
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> . . . .
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> 5. Both parties admit that the annotation at the dorsal portion of TCT No. 127088 was the result of the declaration of the Supreme Court citing PD 293 as unconstitutional.[11]

Thereafter, the trial court, in its decision dated February 9, 1998, dismissed the complaint finding that, inasmuch as petitioner's title to the property was included in those covered by P.D. No. 293, she cannot assert any right thereon because her title "springs from a null and void source."[12]

Hence, the petition for *certiorari* filed by spouses del Rosario.

Petitioners believe that their title to the property is indefeasible for the reason that prior to the declaration of nullity of P.D. No. 293, its actual existence was an operative fact that may have consequences that cannot be ignored. Petitioners also cite *Clarita Aben vs. Sps. Wilfredo Abella, et al.* (CA-G.R. CV No. 31544) decided by the Court of Appeals in February 19, 1993 upholding Aben's ownership of Lot 21, Block 80 of the Tala Estate which was awarded to her by the Bureau of Lands pursuant to P.D. No. 293, to wit:

> While it is true that P.D. 293 had been declared null and void by the Supreme Court, it did not declare herein plaintiff-appellee's title null and void. Instead, said court commanded the Register of Deeds, Kalookan City, the then Ministry of Justice and the National Treasurer 'to do whatever else is needful to restore the titles to full effect

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[10] RTC Records, Answer with Counterclaim, pp. 37-41.

[11] RTC Records, Pre-trial Order, pp. 52-55.

[12] RTC Records, RTC Decision, p. 110.

and efficacy' of the Tuasons and the members of the 'Consuelo Homeowners Association' who were also divested of their lands by the same P.D. 293. But as the evidence reveal, plaintiff-appellee's title has not yet been cancelled (Exhibit "L").[13]

On the other hand, respondents contend that the petition was filed out of time as petitioners received a copy of the RTC's Decision on May 25, 1998, and the petition was filed only on July 22, 1998 which is beyond the 15-day reglementary period provided for in Section 2, Rule 45 of the Rules of Court.

Thus, the Court is now confronted with two issues: First, the procedural issue of whether or not the instant petition was timely filed; and Second, whether or not petitioner's title to the property is deemed invalidated when this Court declared P.D. No. 293 unconstitutional in *Tuason vs. Register of Deeds, Caloocan City*.

As regards the procedural issue, petitioners refute respondent's allegation that the petition was filed out of time, asserting that the present action is one for under Rule 65 of the Rules of Court, hence, the sixty-day reglementary period is applicable.[14]

What is being assailed in the present petition is the decision of the Regional Trial Court dismissing their complaint for Quieting of Title with Recovery of Possession *de jure,* which is a final order.

An order is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the lower court (*Mejia v. Alimorong*, 4 Phil. 572; *Insular Government v. Roman Catholic Bishop of Nueva Segovia*, 17 Phil. 487; *People v. Macaraig,* 54 Phil. 904). In other words, a final order is that which gives an end to the litigation (*Olsen & Co. v. Olsen*, 48 Phil. 238). The test to ascertain whether an order is interlocutory or final is: does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final (Moran, *Comments on the Rules of Court, Vol. 1, 3rd ed*.

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[13] Petition, p. 5; *Rollo*, p. 7.

[14] *Rollo*, p. 33; Reply, p. 1.

pp. 806-807). A final order is that which disposes of the whole subject-matter or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined (2 Am. Jur., Section 22, pp. 861-862). (*Reyes v. De Leon*, G.R. No. L-3720, June 24, 1952).[15]

Therefore, the proper mode of appeal should be a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, and not a special civil action for *certiorari* under Rule 65. As such, it should have been filed within the 15-day reglementary period.[16] Clearly, on the basis of such ground alone, the petition should be dismissed.

Moreover, petitioners clearly disregarded the doctrine of *hierarchy of courts* which serves as a general determinant of the proper forum for the availment of the extraordinary remedies of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.[17] As held in *People vs. Court of Appeals*:

> There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filled with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[18]

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[15] *Diesel Construction Co., Inc. vs. Jollibee Foods Corp.*, G.R. No. 136805, January 28, 2000.

[16] Rule 45, Section 2 of the 1997 Rules of Civil Procedure, as amended.

[17] *People vs. Court of Appeals*, 301 SCRA 566, 569.

[18] *Ibid.*, citing *People vs. Cuaresma*, 172 SCRA 415, 424.

While the doctrine admits of certain exceptions, *i.e.,* special and important reasons or for exceptional and compelling circumstances,[19] the circumstances of this case do not permit the application of such exceptions.

Considering, therefore, that the present special civil action of *certiorari* under Rule 65 is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, the petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts.

However, the Court may brush aside the procedural barrier and take cognizance of the petition as it raises an issue of paramount importance and constitutional significance.[20] Thus, in order to set matters at rest, the Court shall resolve the second issue or the merits for future guidance of the bench and bar.

In the *Tuason* case, the Court declared P.D. No. 239 as unconstitutional and void *ab initio* in all its parts.[21] It becomes imperative to determine the effect of such declaration on Torrens titles that have been issued to persons who in good faith, had availed of the benefits under P.D. No. 239 before it was declared void *ab initio* for being unconstitutional. We have consistently held that the Torrens system is not a means of acquiring titles to lands; it is merely a system of registration of titles to lands.[22]

At this point, a brief discourse on the decision of the Court in *Tuason vs. Register of Deeds, Caloocan City* is in order.

In 1965, petitioners Tuason spouses bought from Carmel Farms, Inc. (Carmel for brevity) a parcel of land in the subdivision of Carmel by virtue of which Carmel's Torrens title over said lot was cancelled and a new title issued in the name of the Tuason spouses. Eight years thereafter, or in September 14,

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[19] *Santiago vs. Guingona, Jr.,* G.R. No. 134577, November 18, 1998, 298 SCRA 756.

[20] *Bayan (Bagong Alyansang Makabayan) vs. Zamora*, 342 SCRA 449.

[21] *Supra*, Tuason case, note 6.

[22] *Republic vs. Court of Appeals*, 301 SCRA 366.

1973, the then President Ferdinand E. Marcos issued Presidential Decree No. 293, portions of which read as follows:

> . . . according to the records of the Bureau of Lands, neither the original purchasers nor their subsequent transferees have made full payment of all installments of the purchase money and interest on the lots claimed by the Carmel Farms, Inc., including those *on which the dwellings of the members of said Association* stand. Hence, title to said land has remained with the Government, and the land *now occupied by the members of said association* has never ceased to form part of the property of the Republic of the Philippines, any and all acts affecting said land and purporting to segregate it from the said property of the Republic of the Philippines being therefore null and void *ab initio* as against the law and public policy.
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> . . . .
>
> NOW THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-chief of all the Armed Forces of the Philippines, and pursuant to Proclamation 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, do hereby order and decree that any and all sales contracts between the government and the original purchasers, are hereby cancelled, and those between the latter and the subsequent transferees, and any and all transfers thereafter, covering lots 979, 981, 982, 985, 988, 989, 990, 991-new, 1226, 1228, 1230, and 980-C-2 (LRC PSD-1730), all of Tala Estate, Caloocan City, are hereby declared invalid and null and void *ab initio* as against the Government; that Transfer Certificates of Title Nos. 62603, 62604, 62605, covering lots 1, 2 and 3, PCS-4383, all in the name of Carmel Farms, Inc., which are a consolidation and subdivision survey of the lots hereinbefore enumerated, are declared invalid and considered cancelled as against the Government; and that said lots are declared open for disposition and sale to the members of the Malacañang Homeowners Association, Inc., the present *bona fide* occupants thereof, pursuant to Commonwealth Act No. 32, as amended.[23]

Thereupon, the Register of Deeds of Caloocan City inscribed the following in TCT No. 8314 of the Tuason spouses:

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[23] *Supra*, Tuason case, note 6, pp. 617-618.

MEMORANDUM. — Pursuant to Presidential Decree No. 293, this certificate of title is declared invalid and null and void *ab initio* and considered cancelled as against the Government and the property described herein is declared open for disposition and sale to the members of the Malacañang Homeowners Association, Inc.[24]

Aggrieved, the Tuason spouses filed with this Court a petition for *certiorari* assailing P.D. No. 293 as arbitrary, depriving them of their property in favor of a selected group and violating constitutional provisions on due process and eminent domain as well as the Land Registration Act on the indefeasibility of Torrens titles. The Solicitor General opposed the petition. The Court en banc resolved:

The procedural issue is quite easily disposed of. It is true that the extraordinary writ of *certiorari* may properly issue to nullify only *judicial or quasi-judicial acts*, unlike the writ of prohibition which may be directed against *acts either judicial or ministerial*. Section 1, Rule 65 of the Rules of Court deals with the writ of *certiorari* in relation to "any tribunal, board or officer exercising judicial functions, while Section 2 of the same Rule treats of the writ of prohibition in relation to "proceedings of any tribunal, corporation, board, or person xxx exercising functions judicial or ministerial." But the petition will be shown upon analysis to be in reality directed against an unlawful exercise of judicial power.

The decree reveals that Mr. Marcos exercised an obviously judicial function. He made a determination of facts, and applied the law to those facts, declaring what the legal rights of the parties were in the premises. These acts essentially constitute *a judicial function*, or an *exercise of jurisdiction* — which is the power and authority to hear or try and decide or determine a cause. He adjudged it to be an established fact that "neither the original purchasers nor their subsequent transferees have made full payment of all installments of the purchase money and interest on the lots claimed by Carmel Farms, Inc., including those on which the dwellings of the members of xxx (the) Association (of homeowners) stand." And applying the law to that situation, he made the adjudication that "title of said land has remained with the Government, and the land now occupied by the members of said association has never ceased to form part of

[24] *Ibid*., p. 618.

the property of the Republic of the Philippines," and that "any and all acts affecting said land and purporting to segregate it from the said property of the Republic xxx (were) null and void *ab initio* as against the law and public policy."

These acts may thus be properly struck down by the writ of *certiorari*, because done by an officer in the performance of what in essence is a judicial function, if it be shown that the acts were done without or in excess of jurisdiction, or with grave abuse of discretion. Since Mr. Marcos was never vested with judicial power — such power, as everyone knows, being vested in the Supreme Court and such inferior courts as may be established by law — the judicial acts done by him were in the circumstances indisputably perpetrated without jurisdiction. The acts were completely alien to his office as chief executive, and utterly beyond the permissible scope of the legislative power that he had assumed as head of the martial law regime.

Moreover, he had assumed to exercise power — i.e., determined the relevant facts and applied the law thereto — without a trial at which all interested parties were accorded the opportunity to adduce evidence to furnish the basis for a determination of the facts material to the controversy. He made the finding ostensibly on the basis of "the records of the Bureau of Lands." Prescinding from the fact that there is no indication whatever the nature and reliability of these records and that they are in no sense conclusive, it is undeniable that the petitioners Tuasons (and the petitioners in intervention) were never confronted with those records and afforded a chance to dispute their trustworthiness and present countervailing evidence. This is yet another fatal defect. The adjudication was patently and grossly violative of the right to due process to which the petitioners are entitled in virtue of the Constitution. Mr. Marcos, in other words, not only arrogated unto himself a power never granted to him by the Constitution or the laws but had in addition exercised it unconstitutionally.

In any event, this Court has it in its power to treat the petition for *certiorari* as one for prohibition if the averments of the former sufficiently made out a case for the latter. Considered in this wise, it will also appear that an executive officer had acted without jurisdiction — exercised judicial power not granted to him by the Constitution or the laws — and had furthermore performed the act in violation of the constitutional rights of the parties thereby affected. The Court will grant such relief as may be proper and efficacious

in the premises even if not specifically sought or set out in the prayer of the appropriate pleading, the permissible relief being determined after all not by the prayer but by the basic averments of the parties' pleadings.

There is no dispute about the fact that title to the land purchased by Carmel was actually issued to it by the Government. This of course gives rise to the strong presumption that official duty has been regularly performed, that official duty being in this case the ascertainment by the Chief of the Bureau of Public Lands of the fulfillment of the condition prescribed by law for such issuance, i.e., the payment in full of the price, together with all accrued interest. Against this presumption there is no evidence. It must hence be accorded full sway in these proceedings. Furthermore, the title having been duly issued to Carmel, it became "effective in the manner provided in section one hundred and twenty-two of the Land Registration Act."

It may well be the fact that Carmel really did fail to make full payment of the price of the land purchased by it from the Government pursuant to the provisions of Act 1120. This is a possibility that cannot be totally discounted. If this be the fact, the Government may bring suit to recover the unpaid installments and interest, invalidate any sale or encumbrance involving the land subject of the sale, and enforce the lien of the Government against the land by selling the same in the manner provided by Act Numbered One Hundred and Ninety for the foreclosure of mortgages. This it can do despite the lapse of considerable period of time. Prescription does not lie against the Government. But until and unless such a suit is brought and results in a judgment favorable to the Government, the acquisition of title by Carmel and the purchases by the petitioners and the petitioners-intervenors from it of portions of the land covered by its original title must be respected. At any rate, the eventuation of that contingency will not and cannot in any manner affect this Court's conclusion, herein affirmed, of the unconstitutionality and invalidity of Presidential Decree No. 293, and the absolute lack of any right to the land or any portion thereof on the part of the members of the so-called "Malacañang Homeowners Association, Inc." The decree was not as claimed a licit instance of the application of social justice principles or the exercise of police power. It was in truth a disguised, vile stratagem deliberately resorted to favor a few individuals, in callous and disdainful disregard of the rights of others. It was in reality a taking of private property without due process and without compensation whatever, from persons relying on the indefeasibility

of their titles in accordance with and as explicitly guaranteed by law.[25]

Nevertheless, certain factors must likewise be taken into account. One is that the Register of Deeds of Caloocan City has already invalidated petitioner's title over the property, TCT No. 120788,[26] pursuant to the decree of this Court in *Tuason vs. Register of Deeds, Caloocan City*, and as it stands now, petitioners are holders of a canceled transfer certificate of title. Another is that petitioners, while paying the real estate taxes due on the property, are not in actual physical possession thereof.[27] These circumstances work against petitioners' interest and confirm their lack of cause of action. The court *a quo*, therefore, did not err in dismissing petitioner's complaint.

Petitioners cannot rely on the ruling of the Court of Appeals in the *Aben* case. Unlike in the present case, the certificate of title of the plaintiff in the *Aben* case was not canceled by the Register of Deeds.[28] Also, the defendants therein admitted that the plaintiff was in actual possession of the property even prior to the issuance of the certificate of title.[29]

In fine, the Court finds the petition to be without merit.

WHEREFORE, the petition is dismissed for lack of merit and the decision of the Regional Trial Court of Caloocan City (Branch 121) in Civil Case No. C-489 is *AFFIRMED*.

SO ORDERED.

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

Puno, J.(Chairman), is on official leave.

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[25] *Ibid*., pp. 619-623.

[26] RTC Records, p. 18.

[27] *Supra*., Pre-trial Order, pp. 52-55.

[28] CA Decision, p. 5.

[29] *Ibid*.

SECOND DIVISION

[G.R. No. 136264. May 28, 2004]

ATTY. REYNALDO P. DIMAYACYAC, *petitioner, vs.* **HON. COURT OF APPEALS, HON. VICENTE Q. ROXAS, IRENE AGBADA-CRUZ, SIXTO AGBADA CRUZ, MERCEDES ARISTORENAS and ROMEO GOMEZ and PEOPLE OF THE PHILIPPINES**, *respondents*.

SYNOPSIS

Petitioner herein was among those charged in information for falsification of public documents. He filed a motion to quash the information on two grounds; 1) that the officer who filed information had no legal authority to do so, and 2) that more than one offense was charged in the information. The trial court granted the motion based on the second ground. Two years later another information was filed against the same accused for the same offense as was filed before. Petitioner then filed another motion to quash this time on the ground of double jeopardy. The trial court denied the motion and thus, petitioner filed a petition for *certiorari* before the Court of Appeals. The CA denied his motion stating that he was not placed in double jeopardy when the trial court quashed the first information filed. Hence, this petition for *certiorari* before the Supreme Court.

The Supreme Court ruled that since the dismissal of the previous criminal case against petitioner was by reason of his motion for the quashal of the information, petitioner thus deemed to have expressly given his consent to such dismissal. There could be no double jeopardy in this case since one of the requisite therefore, that the dismissal be without accused consent, was not present.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; DOUBLE JEOPARDY; ELEMENTS.— In *People vs. Tac-An*, we enumerated the elements that must exist for double jeopardy to be invoked, to wit: Thus, apparently, to raise

the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first. Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*People vs, Ylagan*, 58 Phil. 851).

2. ID. ID.; FILING OF DUPLICITOUS INFORMATION; OBJECTION MAY BE WAIVED BY THE ACCUSED.— In *People vs. Bugayong*, we ruled that when an appellant fails to file a motion to quash within the time prescribed under Section 1, Rule 117 of the Rules of Court, he is thus deemed to have waived the defect in the Information. In *People vs. Manalili*, we held that an accused, who fails to object prior to arraignment to a duplicitous information, may be found guilty of any or all of the crimes alleged therein and duly proven during the trial, for the allegation of the elements of such component crimes in the said information has satisfied the constitutional guarantee that an accused be informed of the nature of the offense with which he or she is being charged. Verily, a duplicitous information is valid since such defect may be waived and the accused, because of such waiver, could be convicted of as many offenses as those charged in the information and proved during trial.

3. ID.; ID.; DOUBLE JEOPARDY; NOT PRESENT WHEN THE DISMISSAL OF THE ORIGINAL INFORMATION HAD BEEN EFFECTED AT THE ACCUSED'S OWN INSTANCE.— In *Sta. Rita vs. Court of Appeals*, we held that the reinstatement of criminal cases against the accused did not violate his right against double jeopardy since the dismissal of the information by the trial court had been effected at his own instance when the accused filed a motion to dismiss on the grounds that the facts charged do not constitute an offense and that the RTC had no jurisdiction over the case. In this case, considering that since the dismissal of the previous criminal case against petitioner was by reason of his motion for the quashal of the information, petitioner is thus deemed to have expressly given his consent to such dismissal. There could then be no double jeopardy in this case since one of the requisites

therefore, *i.e.,* that the dismissal be without accused's express consent, is not present.

4. **ID.; ID.; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY DISPOSITION OF CASES; FACTORS CONSIDERED IN VIOLATION THEREOF.—** The right to a speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable motive, a long period of time is allowed to elapse without the party having his case tried. In the determination of whether or not that right has been violated, the factors that may be considered and balanced are: the length of the delay the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay. A mere mathematical reckoning of the time involved, therefore, would not be sufficient. In the application of the constitutional guarantee of the right to speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case.

5. **ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.—** Indeed, there was a delay in the refiling of the proper informations. However, the prosecution was never given the opportunity to explain the circumstances that may have caused such delay precisely because petitioner never raised the issue of the length of time it took the prosecution to revive the case. There is nothing on record to show what happened during the two-year lull before the filing of the proper informations. Hence, it could not be ascertained that peculiar situations existed to prove that the delay was vexatious, capricious and oppressive, and therefore, a violation of petitioner's constitutional right to speedy disposition of cases.

APPEARANCES OF COUNSEL

Dimayacyac & Dimayacyac Law Firm for petitioners.
Anecio R. Guades for I. Cruz and S. Cruz.
Joannes J. Infante for R. Gomez and M. Aristones.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a petition for review on *certiorari* assailing the Decision[1] of the Court of Appeals (CA for brevity) dated November 13, 1998 in CA-G.R. SP No. 43884, denying Atty. Reynaldo P. Dimayacyac's petition for *certiorari* and ruling that the Regional Trial Court (Branch 227) of Quezon City (RTC for brevity) was correct in denying petitioner's motion to quash the information charging petitioner with falsification of public documents, docketed as Criminal Case No. Q-93-49988.

The antecedent facts as borne out by the records of the case are accurately narrated in the CA Decision dated November 13, 1998, thus:

> An information for falsification of public documents docketed as Criminal Case No. Q-91-18037 at the RTC of Quezon City was filed against petitioner along with some others. That information reads:
>
> > The undersigned Assistant City Prosecutor accuses LOURDES ANGELES, ESTRELLA MAPA, ATTY. PONCIANO R. GUPIT, and ATTY. REYNALDO P. DIMAYACYAC of the crime of FALSIFICATION OF PUBLIC DOCUMENT (under Article 172, first and last paragraph in relation to Article 171 paragraph 2 of the Revised Penal Code), committed as follows:
> >
> > That on or about the 5th day of 1986, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all private individuals, conspiring together, confederating with and mutually helping one another, did then and there willfully, unlawfully and feloniously commit the act of falsification of public documents, by then and there falsifying or causing the falsification of the following documents, to wit:

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[1] Penned by then Associate Justice Conchita Carpio Morales (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Jainal Rasul and Bernardo Abesamis.

(a) Certification dated March 10, 1986 purportedly signed by a certain Fernando Dizon, Record Management Analyst of the Bureau of Land, Central Office, Manila;

(b) Report dated May 5, 1986 purportedly signed by a certain Jose Mariano, Chief Record Management Division of Bureau of Land, Central Office, Manila; and

(c) Sales Certificate and Deed of Assignment allegedly issued by the Bureau of Land in favor of Lourdes Angeles; that despite the fact that said accused knew all the time that said documents are fake and spurious used the same in the Petition for Reconstitution of Records of the technical description of Lots Nos. 755, 777, 778 and 783 of the Piedad Estate covered by TCT No. 14, Decree No. 667, GLRO Record No. 5975 and the issuance of Title thereto filed by Estrella Mapa over and involving the aforesaid lots in Land Registration Case docketed as LRC Case No. 3369 (86) before Branch 99, Regional Trial Court, Quezon City and that by virtue of said falsification and the use of the same as evidence in Court Honorable Presiding Judge Godofredo Asuncion issued an order dated June 30, 1986 granting said petition, and pursuant thereto the Register of Deeds of Quezon City issued Transfer Certificates of Titles Nos. 348156, 348291 and 348292 in the name of Estrella Mapa thereby embracing and/or encroaching the portions of the properties belonging to Romeo D. Gomez, Sixto Agbada, Irene Agbada-Cruz and Mercedes Aristorenas whose properties were embraced and included in the said Transfer Certificates of Titles and in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.

Before his arraignment, petitioner moved to quash the information on two (2) grounds. First, that the officer who filed the information had no legal authority to do so, and second, that more than one offense was charged in the information.

Pending resolution of the motion to quash, petitioner was arraigned.

By Order of August 23, 1991, Judge Benigno T. Dayaw of Branch 80 of the Regional Trial Court of Quezon City to whose sala Criminal Case No. Q-91-18037 was raffled, holding that the "grant or denial of Motion to Dismiss whether the accused is arraigned or not is discretionary on the part of the Court," it citing *People vs. IAC*, L-

66939-41, January 10, 1987, granted the petitioner's motion to quash upon the second ground. Accordingly, the information was quashed.

More than two (2) years after the quashal of the information in Criminal Case No. Q-91-18037 or on October 19, 1993, the Quezon City Prosecutor filed against the same accused including petitioner two (2) informations for falsification of public documents docketed at the Quezon City RTC as Criminal Case Nos. Q-93-49988 and 49989. The Informations arose from the questioned acts of falsification subject of the earlier quashed information in Criminal Case No. Q-91-18037.

Petitioner later filed with Branch 103 of the RTC of Quezon City to which the informations were raffled a motion for the quashal thereof on the ground of double jeopardy, citing Section 3(h) of Rule 117 of the Revised Rules of Court.

Petitioner argued at the court *a quo* that he would be placed in double jeopardy as he was indicted before for the same offenses and the case was dismissed or otherwise terminated without his express consent.

By the assailed Order of December 18, 1996, public respondent, Judge Vicente Q. Roxas of Branch 227 of the RTC of Quezon City to which the two (2) informations against petitioner, et al., were eventually lodged, held that the information in Criminal Case No. Q-93-49988 involved a different document as that involved in Criminal Case No. Q-91-18037 which had already been quashed. Resolution of the motion to quash the information in Criminal Case No. Q-93-49989 was stayed pending the submission by petitioner of the documents required by the court *a quo*. Public respondent thus denied the motion to quash the information in Criminal Case No. Q-93-49988 and ordered petitioner's arraignment, he holding that said case did not place petitioner in double jeopardy.[2]

Herein petitioner then filed a petition for *certiorari* before the CA which denied his petition stating in its Decision that since the Information in Criminal Case No. Q-91-18037, on petitioner's motion, was quashed on the ground that more than one offense was charged pursuant to Sec. 3 (e) of Rule 117 of the Revised Rules of Court,[3] he is not placed in double jeopardy

[2] *Rollo*, pp. 130-133.

by the filing of another Information for an offense included in the charge subject of the Information in Criminal Case No. Q-91-18037.[4]

Hence, herein petition for review on *certiorari* assigning the following errors of the CA, to wit:

I. That the Honorable Court of Appeals ERRED in disregarding the legal doctrine that THERE IS DOUBLE JEOPARDY, in the case now pending before Respondent Judge Vicente Q. Roxas;

II. That the Honorable Court of Appeals ERRED in not adhering to the decisions of this Honorable Supreme Court, as well as to applicable jurisprudence on the matter;

III. That the Honorable Court of Appeals ERRED in not taking into account that based on the "Manifestation and Motion (To Grant Petition) In Lieu of Comment" filed by the Office of the Solicitor General, the ORDER of dismissal of Honorable Judge Benigno T. Dayaw in Criminal Case No. Q-91-18037 on August 23, 1991 has become final and executory; and

IV. That the Honorable Respondent Court of Appeals ERRED in concluding that an ORDER sustaining the motion to quash is not a bar to another prosecution for the same offense, as it has no legal basis.[5]

On the other hand, the Office of the Solicitor General (OSG) contends that petitioner, by filing the motion to quash and refusing to withdraw it after he was arraigned, is deemed to have waived his right against double jeopardy, as his motion to quash constituted his express consent for the dismissal of the information. However, the OSG advances the view that the criminal case against herein petitioner may be dismissed for the inordinate delay in the conduct of preliminary investigation for the purpose of filing the proper

[3] Sec. 3. (e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses.

[4] *Rollo*, p. 136.

[5] *Rollo*, pp. 25-26.

information, which is a violation of the accused's constitutional right to due process of law and to speedy disposition of cases.

Private respondent complainant Irene Agbada-Cruz, in turn, submits that the Court of Appeals committed no error since the dismissal or quashal of an information is not a bar to another prosecution except when the motion to quash is based on the ground that (1) the criminal action or liability has been extinguished or that (2) the accused has previously been convicted or in jeopardy of being convicted or acquitted of the offense charged, pursuant to Section 6 in relation to Section 3, Rule 117 of the Rules of Court, to wit:

Section 6. *Order sustaining the motion to quash not a bar to another prosecution; exception.* — An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 3, sub-sections (f) and (h) of this Rule.

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 or the person of the accused;

(c) That the officer who filed the information had no authority to do so;

(d) That it does not conform substantially to the prescribed form;

(e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

(f) That the criminal action or liability has been extinguished;

(g) That it contains averments which, if true, would constitute a legal excuse or justification; and

(h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged. (Emphasis supplied)

Thus, private respondent Cruz argues that since the previous information was quashed on the ground of duplicity of offenses charged, the subsequent filing of a proper information is, therefore, not barred.

In their Memorandum, private respondents-complainants Romeo Gomez and Mercedes Aristorenas contend that (1) jeopardy does not attach where the dismissal of the information was effected at the instance of the accused; and (2) there was no violation of petitioner's right to a speedy disposition of his case since he never raised this issue in the trial court nor in the appellate court, hence, his silence should be interpreted as a waiver of said right to a speedy trial.

The issues boil down to (1) whether or not the prosecution of petitioner under the Information docketed as Criminal Case No. Q-93-49988 would constitute double jeopardy, considering that when the Information in Criminal Case No. Q-91-18037 was previously quashed, he had already been arraigned, and (2) whether or not petitioner's constitutional right to a speedy disposition of his case has been violated.

With regard to the first issue, we are in accord with the ruling of the CA that not all the elements for double jeopardy exist in the case at bench. In *People vs. Tac-An*,[6] we enumerated the elements that must exist for double jeopardy to be invoked, to wit:

> Thus, apparently, to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.
>
> Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*People vs. Ylagan,* 58 Phil. 851).

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[6] 398 SCRA 373, 380 (2003), citing *Saldana vs. Court of Appeals, et al.,* 190 SCRA 396 (1990).

Was the duplicitous information a valid indictment? We answer in the affirmative. In *People vs. Bugayong*,[7] we ruled that when an appellant fails to file a motion to quash within the time prescribed under Section 1, Rule 117 of the Rules of Court, he is thus deemed to have waived the defect in the Information. In *People vs. Manalili*,[8] we held that an accused, who fails to object prior to arraignment to a duplicitous information, may be found guilty of any or all of the crimes alleged therein and duly proven during the trial, for the allegation of the elements of such component crimes in the said information has satisfied the constitutional guarantee that an accused be informed of the nature of the offense with which he or she is being charged. Verily, a duplicitous information is valid since such defect may be waived and the accused, because of such waiver, could be convicted of as many offenses as those charged in the information and proved during trial.

The validity of the information having been established, we go on to examine whether the other requisites for double jeopardy to attach are present. In the present case, although there was a valid indictment before a competent court and petitioner, as the accused, had already been arraigned therein, entering a valid plea of not guilty, the last requisite that the case was dismissed or otherwise terminated without his express consent, is not present.

It should be noted that the termination of Criminal Case No. Q-91-18037 was upon motion of petitioner who, on April 1, 1991, filed with the court an Urgent Motion to Quash which was granted by Resolution dated August 23, 1991. In *Sta. Rita vs. Court of Appeals*,[9] we held that the reinstatement of criminal cases against the accused did not violate his right against double jeopardy since the dismissal of the information by the trial court had been effected at his own instance when the accused filed

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[7] 299 SCRA 528 (1998), citing *People vs. Manalili*, G.R. No. 121671, Aug. 14, 1998; *People vs. Conte*, 247 SCRA 583 (1995); *People vs. Dulay*, 217 SCRA 132 (1993); etc.

[8] 294 SCRA 220, 226 (1998).

[9] 247 SCRA 484 (1995).

a motion to dismiss on the grounds that the facts charged do not constitute an offense and that the RTC had no jurisdiction over the case. In this case, considering that since the dismissal of the previous criminal case against petitioner was by reason of his motion for the quashal of the information, petitioner is thus deemed to have expressly given his consent to such dismissal. There could then be no double jeopardy in this case since one of the requisites therefore, *i.e.*, that the dismissal be without accused's express consent, is not present.

As to whether the subsequent filing of the two informations docketed as Q-93-49988 and Q-93-49989 constitutes a violation of petitioner's constitutional right to a speedy disposition of cases,[10] we rule in the negative. We are not convinced by the OSG's assertion that the cases of *Tatad vs. Sandiganbayan*[11] or *Angchangco, Jr. vs. Ombudsman,*[12] are applicable to the case before us. We see differently. There is no factual similarity between this case before us and the cases of *Tatad* and *Angchangco*.

In the *Tatad* case, there was a hiatus in the proceedings between the termination of the proceedings before the investigating fiscal on October 25, 1982 and its resolution on April 17, 1985. The Court found that "political motivations played a vital role in activating and propelling the prosecutorial process"[13] against then Secretary Francisco S. Tatad. In the *Angchangco* case, the criminal complaints remained pending in the Office of the Ombudsman for more than six years despite the respondent's numerous motions for early resolution and the respondent, who had been retired, was being unreasonably deprived of the fruits of his retirement because of the still unresolved criminal complaints against him. In both cases, we ruled that the period of time that

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[10] Section 16, Article III of the 1987 Constitution of the Philippines states that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

[11] 159 SCRA 70 (1988).

[12] 268 SCRA 301 (1997).

[13] *Tatad vs. Sandiganbayan,* 159 SCRA 70, 81 (1988).

elapsed for the resolution of the cases against the petitioners therein was deemed a violation of the accused's right to a speedy disposition of cases against them.

In the present case, no proof was presented to show any persecution of the accused, political or otherwise, unlike in the *Tatad* case. There is no showing that petitioner was made to endure any vexatious process during the two-year period before the filing of the proper informations, unlike in the *Angchangco* case where petitioner therein was deprived of his retirement benefits for an unreasonably long time. Thus, the circumstances present in the *Tatad* and *Angchangco* cases justifying the "radical relief" granted by us in said cases are not existent in the present case.

We emphasize our ruling in *Ty-Dazo vs. Sandiganbayan*[14] where we held that:

> The right to a speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable motive, a long period of time is allowed to elapse without the party having his case tried. In the determination of whether or not that right has been violated, the factors that may be considered and balanced are: the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.
>
> A mere mathematical reckoning of the time involved, therefore, would not be sufficient. In the application of the constitutional guarantee of the right to speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case. (Emphasis supplied)

Thus, we shall examine how such aforementioned factors affected herein petitioner's right.

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[14] 424 Phil. 945, 950–951 (2002), citing *Binay vs. Sandiganbayan*, 316 SCRA 65 (1999); *Gonzales vs. Sandiganbayan*, 199 SCRA 298 (1991); and *Blanco vs. Sandiganbayan,* 346 SCRA 108 (2000).

As to the length of delay, it is established that the prosecution did not take any action on petitioner's case for two years. From the time that Criminal Case No. Q-91-18037 was dismissed on August 23, 1991, the prosecution failed to effect the very simple remedy of filing two separate informations against petitioner until October of 1993. Indeed, there was a delay in the refiling of the proper informations. However, the prosecution was never given the opportunity to explain the circumstances that may have caused such delay precisely because petitioner never raised the issue of the length of time it took the prosecution to revive the case. There is nothing on record to show what happened during the two-year lull before the filing of the proper informations. Hence, it could not be ascertained that peculiar situations existed to prove that the delay was vexatious, capricious and oppressive, and therefore, a violation of petitioner's constitutional right to speedy disposition of cases.

What the records clearly show is that petitioner never asserted his right to a speedy disposition of his case. The only ground he raised in assailing the subsequent filing of the two informations is that he will be subjected to double jeopardy. It was only the OSG that brought to light the issue on petitioner's right to a speedy disposition of his case, and only when the case was brought to the appellate court on *certiorari*. Even in this petition before us, petitioner did not raise the issue of his right to a speedy disposition of his case. Again, it was only the OSG that presented such issue to us in the Brief for the State which was only then adopted by petitioner through a Manifestation dated August 3, 1999. We are not convinced that the filing of the informations against petitioner after two years was an unreasonable delay. Petitioner himself did not really believe that there was any violation of his right to a speedy disposition of the case against him.

The case which is more in point with the present one before us is *Dela Peña vs. Sandiganbayan*[15] where we ruled that petitioner

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[15] 360 SCRA 478 (2001) citing *Alvizo vs. Sandiganbayan*, 220 SCRA 55, 63 (1993); *Dansal vs. Fernandez*, 327 SCRA 145, 153 (2000); *Blanco vs. Sandiganbayan*, 346 SCRA 108 (2000).

therein, for failing to assert their right to a speedy disposition of their cases, was deemed to have waived such right and thus, not entitled to the "radical relief" granted by the Court in the cases of *Tatad* and *Angchangco*. The factual circumstances surrounding herein petitioner's case do not demonstrate that there was any violation of petitioner's right to a speedy disposition of his case.

WHEREFORE, the petition is hereby *DENIED* for lack of merit. The temporary restraining order issued pursuant to our Resolution dated January 17, 2000 is hereby *LIFTED* and the Regional Trial Court of Quezon City (Branch 227) is hereby *ORDERED* to proceed with dispatch with petitioner's arraignment in Criminal Case No. Q-93-49988.

SO ORDERED.

Quisumbing, Callejo, Sr., and *Tinga, JJ.,* concur.

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

EN BANC

[G.R. No. 139615. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AMADEO TIRA and CONNIE TIRA**, *appellants*.

SYNOPSIS

Appellants herein were charged with illegal possession of marijuana and shabu penalized under Article III, Section 16 and 20, Republic Act No. 6425, known as Dangerous Drugs Act of 1972, as amended. The trial court rendered judgment, which found them guilty beyond reasonable doubt of the crime charged and sentenced each of them to suffer the penalty of *reclusion perpetua* and fine of ₱ 1,000,000.00. In this appeal

before the Supreme Court the appellants contended that the search conducted by the policemen in the room where the articles and substances were found was made in their absence. Thus, the search was made in violation of Sec. 7, Rule 126 of the Rules on Criminal Procedure. Hence, they should be acquitted of the crime charged. They further asserted that the prosecution failed to prove that they owned the prohibited drugs, and that the same were in their possession and control when found by the policemen.

The Court agreed with the finding of the trial court that the only occupants of the house when the policemen conducted their search were the appellants and their young children, and that the appellant had no borders therein. Conviction need not be predicated upon the exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. In this case, the prohibited and regulated drugs were found under the bed in the inner room of the appellants' house where they also resided and the appellants had actual and exclusive possession and control and dominion over the house, including the room where the policemen found the drugs. The Court, however, found the information to be defective for charging herein appellants with two crimes. But since the appellants failed to object to such defect before trial, the appellant maybe correctly convicted of the crimes charge. The Court meted upon the appellants of the proper penalty for each of the crimes committed.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 6425 (DANGEROUS DRUGS ACT OF 1972), AS AMENDED; VIOLATION OF SECTION 8 THEREOF; ELEMENTS.—** Before the accused may be convicted of violating Section 8 of Republic Act. No. 6425, as amended by Rep. Act No. 7659, the prosecution is burdened to prove beyond reasonable doubt the essential elements of the crime, *viz*: (1) the actual possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely or consciously possessed the said drug.

2. ID.; ID.; POSSESSION OF REGULATED DRUGS; ELEMENTS.— The essential elements of the crime of possession of regulated drugs are the following: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and, (c) the accused has knowledge that the said drug is a regulated drug. This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

3. ID.; ID.; ID.; PROOF OF POSSESSION, REQUIRED; APPLICATION IN CASE AT BAR.— Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation. In this case, the prohibited and regulated drugs were found under the bed in the inner room of the house of the appellants where they also resided. The appellants had actual and exclusive possession and control and dominion over the house, including the room where the drugs were found by the policemen. The appellant Connie Tira cannot escape criminal liability for the crime charged simply and merely on her barefaced testimony

that she was a plain housewife, had no involvement in the criminal actuations of her husband, and had no knowledge of the existence of the drugs in the inner room of the house. She had full access to the room, including the space under the bed. She failed to adduce any credible evidence that she was prohibited by her husband, the appellant Amadeo Tira, from entering the room, cleaning it, or even sleeping on the bed.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; TWO CRIMES CHARGED; EFFECT.— The Information is defective because it charges two crimes. The appellants should have filed a motion to quash the Information under Section 3, Rule 117 of the Revised Rules of Court before their arraignment. They failed to do so. Hence, under Rule 120, Section 3 of the said rule, the appellants may be convicted of the crimes charged. The said Rule provides: SEC. 3. *Judgment for two or more offenses*.— When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

5. CRIMINAL LAW; REPUBLIC ACT NO. 6425, AS AMENDED, ARTICLE III, SECTION 16; PENALTIES.— Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, shabu, is *prision correccional* to *reclusion perpetua*. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows: QUANTITY Less than one (1) gram to 49.25 grams, 49.26 grams to 98.50 grams, 98.51 grams to 147.75 grams. 147.76 grams to 199 grams, IMPOSABLE PENALTY *prision correccional, prision mayor, reclusion temporal, reclusion perpetua.*

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CALLEJO, SR., *J.*:

This is an appeal of the Decision[1] of the Regional Trial Court of Pangasinan, Branch 46, finding appellants Amadeo Tira and Connie Tira guilty beyond reasonable doubt of violating Section 16, in relation to Section 20, Article III of Republic Act No. 6425, known as the Dangerous Drugs Act of 1972, as amended by Rep. Act No. 7659, sentencing each of them to suffer the penalty of *reclusion perpetua* and ordering each of them to pay a fine of ₱1,000.000.[2]

The Indictment

The appellants Amadeo Tira and Connie Tira were charged in an Information which reads:

That on or about March 9, 1998, in the Municipality of Urdaneta, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, did then and there willfully, unlawfully and feloniously have in their possession, control and custody the following:

— Three (3) (*sic*) sachets of shabu

— Six (6) pieces opened sachets of shabu residue

— One (1) brick of dried marijuana leaves weighing 721 grams

— Six disposable lighter

— One (1) roll Aluminum Foil

— Several empty plastics (tea bag)

— Cash money amounting to ₱12,536.00 in different denominations believed to be proceeds of the contraband.

without first securing the necessary permit/license to possess the same.

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[1] Penned by Honorable Judge Modesto C. Juanson.

[2] *Rollo*, pp. 17, 66.

CONTRARY to SEC. 8 in relation to Sec. 20 of RA 6425, as amended.[3]

The Case for the Prosecution[4]

In the evening of February 24, 1998, SPO3 Asidelio Manibog received a verbal instruction from the Chief of Police Superintendent Wilson R. Victorio to conduct surveillance operations on the house of Amadeo Tira and Connie Tira at Perez Extension Street because of reported rampant drug activities in the said area. Manibog formed a team composed of SPO1 Renato Cresencia, PO3 Reynaldo Javonilla, Jr. and PO3 Efren Abad de Vera to conduct the ordered surveillance.

At around 8:00 p.m., the group, clad in civilian clothes, arrived at Perez Extension Street. As they stationed themselves in the periphery of a store, they observed that more than twenty persons had gone in and out of the Tira residence. They confronted one of them, and asked what was going on inside the house. The person revealed that Amadeo Tira sold shabu, and that he was a regular customer. The group went closer to the house and started planning their next move. They wanted to pose as buyers, but hesitated, for fear of being identified as PNP members. Instead, they stayed there up to 12:00 midnight and continued observing the place. Convinced that illegal activities were going on in the house, the policemen returned to the station and reported to P/Supt. Wilson R. Victorio. After hearing their report, P/Supt. Victorio instructed his men to make an affidavit of surveillance preliminary to an application for a search warrant.[5]

On March 6, 1998, SPO3 Asidelio Manibog, PO3 Efren Abad de Vera, SPO1 Renato Cresencia and PO2 Reynaldo Soliven Javonilla, Jr. executed an Affidavit of Surveillance, alleging, *inter alia*, that they were members of the Drug Enforcement

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[3] Records, p. 1.

[4] The prosecution presented the following witnesses: Celestino B. Corpuz, SPO3 Asedilio Manibog, SPO1 Asterio Dismaya, Police Inspector Panfilo M. Regis and Police Superintendent Theresa Ann B. Cid.

[5] TSN, 15 June 1998, pp. 6-9.

Unit of Urdaneta, Pangasinan, and that in the evening of February 24, 1998, they confirmed reports of illegal drug-related activities in the house of the spouses Amadeo and Connie Tira.[6] On March 6, 1998[7] Police Chief Inspector Danilo Bumatay Datu filed an Application for a Search Warrant in the Municipal Trial Court of Urdaneta, Pangasinan, attaching thereto the affidavit of surveillance executed by his men and a sketch of the place to be searched.[8]

Satisfied with the testimonies of SPO3 Manibog, PO3 de Vera, SPO1 Cresencia and PO2 Javonilla, Jr., Judge Aurora A. Gayapa issued a search warrant commanding the applicants to make an immediate search of the Tira residence at anytime of the day or night, particularly the first room on the right side, and the two rooms located at Perez south, and forthwith seize and take possession of the following items:

1. Poor Man's Cocaine known as Shabu;
2. Drug-Usage Paraphernalia; and
3. Weighing scale.[9]

P/Sr. Inspector Ludivico Bravo, and as head of the team, with SPO3 Cariaga, PO3 Concepcion, Cariño, Galima, Villaroya, Andaya, SPO1 Mario Tajon, SPO1 Asterio Dismaya, SPO1 Renato Cresencia, and PO3 Reynaldo Javonillo were directed to implement the search warrant.[10] They responded and brought *Barangay Kagawad* Mario Conwi to witness the search.[11] At 2:35 p.m. on March 9, 1998, the team proceeded to the Tira residence. The men found Ernesto Tira, the father of Amadeo, at the porch of the house. They introduced themselves and told Ernesto that they had a warrant authorizing them to search the

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[6] Exhibit "A-3", Records, p. 41

[7] Exhibit "A-2"; *Id*., at 44.

[8] *Id*. at 42.

[9] Exhibit "A", Records, p. 43.

[10] TSN, 15 June 1998, p. 11.

[11] *Ibid*.

premises. Ernesto led them inside. The policemen found the newly awakened Amadeo inside the first room[12] of the house.[13] With *Barangay Kagawad* Conwi and Amadeo Tira, the policemen proceeded to search the first room to the right (an inner room) and found the following under the bed where Amadeo slept:[14]

1. 9 pcs. suspected methamphetamine hydrochloride placed in heat-sealed transparent plastic sachets
2. roll aluminum foil
3. several empty plastic transparent
4. used and unused aluminum foil[15]
5. disposable lighters
6. 1 sachet of shabu confiscated from Nelson Tira[16]

They also found cash money amounting to P12,536 inside a shoulder bag placed on top of the television, in the following denominations:

1 pc	-	₱1,000.00 bill
4 pcs.	-	500.00 bill
52 pcs.	-	100.00 bill
36 pcs.	-	50.00 bill
100 pcs.	-	20.00 bill
53 pcs.	-	10.00 bill
1 pc.	-	5.00 bill
1 pc.	-	1.00 coin[17]

The policemen listed the foregoing items they found in the house. Amadeo's picture was taken while he was signing the said certification.[18] Ernesto (Amadeo's father), also witnessed the certification.

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[12] TSN, 16 June 1998, p. 6.

[13] TSN, 6 January 1999, p. 6.

[14] TSN, 15 June 1998, p. 13.

[15] Exhibit "D", Records, p. 47.

[16] Exhibit "A-6", Records, p. 49.

[17] TSN, 16 June 1998, p. 4; Exhibit "J".

[18] Exhibits "L" and "L-1".

A joint affidavit of arrest was, thereafter, executed by SPO3 Asidelio Manibog, SPO1 Mario C. Tajon, SPO1 Asterio T. Dismaya, SPO1 Renato M. Cresencia and PO3 Reynaldo S. Javonilla, Jr. for the apprehension of Amadeo Tira and Nelson Tira who were brought to the police station for custodial investigation. The articles seized were turned over to the PNP Crime Laboratory, Urdaneta Sub-Office, for examination.[19] In turn, a laboratory examination request was made to the Chief of the Philippine National Police Service-1, Sub-Office, Urdaneta, Pangasinan for the following:

a. Three (3) sachets of suspected methamphetamine hydrochloride approximately 0.5 grams;

b. Six (6) opened sachets of suspected methamphetamine hydrochloride (SHABU) residue;

c. Twenty-four (4) pieces of dried marijuana leaves sachet; and

d. One (1) heat-sealed plastic sachet of suspected methamphetamine hydrochloride confiscated from the possession of Nelson Tira.[20]

On March 10, 1998, P/Supt. Wilson R. Victorio executed a Compliance/Return of Search Warrant.[21]

On March 17, 1998, the PNP Crime Laboratory Group in Physical Science Report No. DT-057-98 reported that the test conducted by Police Superintendent/Chemist Theresa Ann Bugayong-Cid,[22] yielded positive for methamphetamine hydrochloride (shabu) and marijuana. The report contained the following findings:

"A1 to A3", "B1 to B6", "E" — POSITIVE to the test for methamphetamine hydrochloride (shabu), a regulated drug.

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[19] Exhibit "E", TSN, 15 June 1998, p. 18.

[20] Exhibit "B", Records, p. 45.

[21] Exhibit "A-7", Records, p. 50.

[22] Exhibit "C-1", Records, p. 46.

"C" and "D1 to D4" — POSITIVE to the test for marijuana, a prohibited drug.

CONCLUSION:

Specimens A1 to A3, B1 to B6 and E contain methamphetamine hydrochloride (Shabu) and specimens C and D1 to D24 contain marijuana.[23]

A criminal complaint was filed by P/Supt. Wilson R. Victorio against Amadeo Tira and Connie Tira on March 10, 1998 for violation of Rep. Act No. 6425, as amended.[24] After finding probable cause, Assistant Provincial Prosecutor Rufino A. Moreno filed an Information against the Tira Spouses for illegal possession of shabu and marijuana, in violation of Section 8, in relation to Section 20 of Rep. Act No. 6425.[25] A warrant of arrest was issued against Connie Tira on May 13, 1998. However, when the policemen tried to serve the said warrant, she could not be found in the given address. [26] She was arrested only on October 6, 1998.[27]

During the trial, the court conducted an ocular inspection of the Tira residence.[28]

The Case for Accused Amadeo Tira[29]

Amadeo Tira denied the charge. He testified that he was a furniture delivery boy[30] who owned a one-storey bungalow house with two bedrooms and one master's bedroom. There was also another room which was divided into an outer and inner room;

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[23] Exhibit "C", *Id*. at 46.

[24] Records, p. 7.

[25] *Id*. at 1.

[26] *Id*. at 36.

[27] *Id*. at 219.

[28] *Id*. at 82.

[29] Appellant Amadeo Tira presented the following: Alfonso Gallardo, Mario Conwi and Amadeo Tira.

[30] TSN, 5 August 1998, p. 2.

the latter room had no windows or ventilation. The house stood twenty meters away from Perez Extension Street in Urdaneta, Pangasinan, and could be reached only by foot.[31] He leased the room located at the western portion to his nephew Chris Tira[32] and the latter's live-in-partner Gemma Lim for four hundred pesos a month.[33] Chris and Gemma were engaged in the buying and selling of bananas. He denied that there were young men coming in and out of his house.[34]

In the afternoon of March 6, 1998, he was in his house sleeping when the policemen barged into his house. He heard a commotion and went out of the room to see what it was all about, and saw police officers Cresencia, Javonilla and Bergonia, searching the room of his nephew, Chris Tira. He told them to stop searching so that he could contact his father, Ernesto, who in turn, would call the barangay captain. The policemen continued with their search. He was then pulled inside the room and the policemen showed him the items they allegedly found.[35]

Barangay Kagawad Mario Conwi testified that on March 9, 1998, while he was at Calle Perez, Urdaneta, Pangasinan, Capt. Ludivico Bravo asked to be accompanied to the Tira residence. Capt. Bravo was with at least ten other policemen. As they parked the car at Calle Perez, the policemen saw a man running towards the direction of the ricefields. Kagawad Conwi and some of the policemen chased the man, who turned out to be Nelson Tira. One of the policemen pointed to a sachet of shabu which fell to the ground near Nelson. The policemen arrested him and proceeded to the house of Amadeo Tira to serve the warrant.[36] When they reached the house, the other policemen were waiting. He saw Amadeo and Connie Tira sitting by the

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[31] *Id*. at 6.

[32] TSN, 10 August 1998, p. 4.

[33] TSN, 5 August 1998, p. 5.

[34] *Id*. at 11.

[35] *Id*. at 8-10.

[36] TSN, 11 August 1998, pp. 3-5.

door of the house in the sala. Thereafter, he and the policemen started the search.[37] They searched the first room located at the right side (if facing south),[38] and found marijuana, shabu, money and some paraphernalia.[39] An inventory of the items seized was made afterwards, which was signed by Capt. Bravo and Ernesto Tira.[40]

Alfonso Gallardo, Amadeo's neighbor, testified that he was the one who constructed the Tira residence and that the house initially had two rooms. The first room was rented out, while the second room was occupied by the Spouses Amadeo and Connie Tira.[41] Subsequently, a divider was placed inside the first room.[42] He also testified that his house was only three (3) meters away from that of the Tiras, and that only a toilet separated their houses.[43] He denied that there were many people going in and out of the Tira residence.[44]

The Ruling of the Trial Court

The trial court rendered judgment on September 24, 1998, finding Amadeo Tira guilty beyond reasonable doubt of illegal possession of 807.3 grams of marijuana and 1.001 gram of shabu. The decretal portion of its decision is herein quoted:

WHEREFORE, JUDGMENT is hereby rendered CONVICTING beyond reasonable doubt accused AMADEO TIRA for Illegal Possession of Marijuana weighing 807.3 grams and shabu weighing 1.001 gram penalized under Article III, Sections 16 and 20, of Republic Act 6425, known as [the] Dangerous Drugs Act of 1972, as amended by Republic Act 7659. The Court sentences Amadeo Tira to suffer the penalty of *Reclusion Perpetua* and a fine of ₱1,000,000.00.

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[37] *Id*. at 6.

[38] *Id*.

[39] *Id*. at 9.

[40] *Id*. at 9-10.

[41] TSN, 18 August 1998, pp. 5-6.

[42] *Id*. at 12.

[43] *Id*. at 3-4.

[44] *Id*. at 7.

The amount of ₱12,536.00 is hereby forfeited in favor of the government which forms part of the fine; the marijuana weighing 807.3 grams and shabu weighing 1.001 gram are hereby forfeited in favor of the government; the disposable lighter and the aluminum foil are likewise forfeited in favor of the government.

The Branch Clerk of Court of this Court is hereby ordered to prepare the *mittimus*.

The Warden, Bureau of Jail Management and Penology (BJMP) is hereby ordered to transmit the person of Amadeo Tira to the National Bilibid Prison with proper escort within fifteen (15) days upon receipt of this Order.[45]

The trial court upheld the validity of Search Warrant No. 3 issued by Judge Aurora Gayapa. It found Amadeo's defense, that the room where the items were seized was rented out to the couple Cris Tira and Gemma Lim, unsubstantiated. It held that Amadeo, as owner of the house, had control over the room as well as the things found therein and that the inner room was a secret and practical place to keep marijuana, shabu and related paraphernalia.[46]

Amadeo appealed the decision.[47]

The Case Against Connie Tira

After her arrest, Connie filed a motion to quash search warrant,[48] alleging that the police officers who applied for the said warrant did not have any personal knowledge of the reported illegal activities. She contended that the same was issued in violation of Section 4, Rule 126 of the Rules of Court, as the judge issued the search warrant without conducting searching questions and answers, and without attaching the records of the proceedings. Moreover, the search warrant issued was in the nature of a general warrant, to justify the "fishing expedition" conducted on the premises.

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[45] Records, p. 107.

[46] *Id*. at 104-106.

[47] *Id*., at 122.

[48] *Id*., at 116-121.

On October 26, 1998, the presiding judge ordered Judge Aurora A. Gayapa to forward the stenographic notes of the applicant and the witnesses.[49] Connie was arraigned on November 9, 1998, pending the resolution of the motion. She pleaded not guilty to the charge of illegal possession of shabu and marijuana.[50] The trial court thereafter issued an Order on November 11, 1998, denying the motion to quash.[51] It did not give credence to the allegations of Connie Tira, and found that Judge Gayapa issued the search warrant after conducting searching questions, and in consideration of the affidavit of witness Enrique Milad.

Connie testified that she was engaged in the business of buying and selling of fruits, while her husband was employed at the Glasshouse Trading. One of the rooms in their house was occupied by their three boarders, two male persons and one female.

In the afternoon of March 9, 1998, she and her husband Amadeo were in their house, while their boarders were in their respective rooms. At 2:30 p.m., she was in the kitchen taking care of her one-year-old child. She had other three children, aged eight, four, and three, respectively, who were watching television. Her husband Amadeo was sleeping in one of the rooms. Suddenly, five policemen barged into their house and searched all the rooms. The policemen found and seized articles in the room occupied by one of their boarders. They arrested Amadeo, and her brother-in-law, Nelson Tira, and brought them to the police station. The boarders, however, were not arrested.

Joy Fernandez, a neighbor of the Tiras, lived approximately ten meters away from the latter. Since they had no television, she frequently went to her neighbor's house to watch certain programs. In the afternoon of March 9, 1998, she was at the Tira residence watching "Mirasol," while Connie was in the kitchen nursing her baby. Suddenly, about five or ten persons ran inside the house and handcuffed Amadeo Tira.[52]

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[49] *Id*., at 128.

[50] *Id*., at 142.

[51] *Id*., at 150.

[52] TSN, 23 March 1999, pp. 3-7.

The Ruling of the Trial Court

The trial court found Connie Tira guilty beyond reasonable doubt of illegal possession of 807.3 grams of marijuana and 1.001 gram of shabu. The dispositive portion of the decision reads:

> WHEREFORE, JUDGMENT is hereby rendered CONVICTING beyond reasonable doubt accused CONNIE TIRA for Illegal Possession of Marijuana weighing 807.3 grams and shabu weighing 1.001 gram penalized under Article III, Section 16 and 20, of Republic Act 6425, known as [the] Dangerous Drugs Act of 1972, as amended by Republic Act 7659, the Court sentences Connie Tira to suffer the penalty of *Reclusion Perpetua* and a fine of ₱1,000,000.00.
>
> The amount of ₱12,536.00 is hereby forfeited in favor of the government which forms part of the fine; the marijuana weighing 807.3 grams and shabu weighing 1.001 gram are hereby forfeited in favor of the government; the disposable lighter and the aluminum foil are, likewise, forfeited in favor of the government.
>
> The Warden, Bureau of Jail Management and Penology (BJMP) is hereby ordered to transmit the person of Connie Tira to the National Bilibid Prisons with proper escort within fifteen (15) days upon receipt of his Order.[53]

The trial court did not believe that Connie Tira had no knowledge, control and possession of the shabu and marijuana found in the first or inner room of their house. It stressed that Connie and Amadeo Tira jointly controlled and possessed the shabu and marijuana that the policemen found therein. It ratiocinated that it was unusual for a wife not to know the existence of prohibited drugs in the conjugal abode. Thus, as husband and wife, the accused conspired and confederated with each other in keeping custody of the said prohibited articles.[54] The court also held that Connie Tira's flight from their house after the search was an indication of her guilt. Connie, likewise, appealed the decision.[55]

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[53] Records, p. 228.

[54] *Id.*, at *supra*.

[55] Records, p. 229.

The Present Appeal

In their brief, the appellants Amadeo and Connie Tira assigned the following errors committed by the trial court:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANTS DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE SEARCH WAS ILLEGALLY MADE.

III

ASSUMING THAT ACCUSED-APPELLANT AMADEO TIRA IS GUILTY AS CHARGED, THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS A CONSPIRACY BETWEEN HIM AND HIS WIFE CONNIE TIRA.[56]

The Court shall resolve the assigned errors simultaneously as they are interrelated.

The appellants contend that the search conducted by the policemen in the room occupied by Chris and Gemma Lim, where the articles and substances were found by the policemen, was made in their absence. Thus, the search was made in violation of Section 7, Rule 126 of the Rules of Criminal Procedure, which provides:

> SEC. 7. *Search of house, room, or premise, to be made in presence of two witnesses*. — No search of house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of *two witnesses* of sufficient age and discretion residing in the same locality.

The appellants posit that the articles and substances found by the policemen in their house are inadmissible in evidence,

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[56] *Rollo*, p. 95.

being the fruits of a poisonous tree. Hence, they contend, they should have been acquitted of the crime charged. The appellants further assert that the prosecution failed to prove that they owned the prohibited drugs, and that the same were in their possession and control when found by the policemen. They insist that it cannot be presumed that they were in control and possession of the said substances/articles simply because they owned the house where the same were found, considering that the room was occupied by Chris Tira and his live-in partner, Gemma Lim.

The appellant Connie Tira avers that she never fled from their house after the policemen had conducted the search. Neither was she arrested by the policemen when they arrested her husband.

The appeals have no merit.

Contrary to the appellants' claim, appellant Amadeo Tira was present when the policemen searched the inner room of the house. The articles and substances were found under the bed on which the appellant Amadeo Tira slept. The policemen did not find the said articles and substances in any other room in the house:

Q So when you reached the house of Amadeo Tira at the Tira's compound, you saw the father and you told him you are implementing the Search Warrant and your group was allowed to enter and you are allowed to search in the presence of Amadeo Tira?
A Yes, Sir.

PROS. DUMLAO
Q In the course of your search, what did you find?

WITNESS:
A We found out suspected marijuana leaves, Sir.

Q Where, in what particular place did you find?
A Under the bed inside the room of Amadeo Tira, Sir.

Q What else did you find aside from marijuana leaves?
A We also find suspected sachet of shabu, Sir.

Q What else?
A Lighter, Sir.

COURT:
Q If that shabu will be shown to you, could you identify the, same?

WITNESS:
A Yes, Sir.

Q About the marijuana leaves, if shown to you could you identify the same?
A Yes, Sir.

PROS. DUMLAO:
Q What else did you find out aside from the marijuana leaves, shabu and lighter?

. . . . . .

A I have here the list, Sir.
One (1) brick of marijuana
24 pcs. tea bag of marijuana
9 pcs. sachets of suspected "shabu"
6 disposable lighters
1 roll of aluminum foil
several empty plastic; several used and unused aluminum foil
one (1) sachet of shabu confiscated from Nelson Tira; and ₱12,536.00 cash in different denominations proceeds of the contrand (sic).

COURT:
Q Where did you find the money?

. . . . . .

A Near the marijuana at the bag, Sir.

Q About the money, could you still identify if shown to you?
A Yes, Sir.

Q When you found shabu, lighter, marijuana, and money, what did you do?
A We marked them, Sir.

Q All of the items?
A Only the marijuana, Sir.

Q What mark did you place?
A My signature, Sir.[57]

. . . . . .

PROS. TOMBOC:

. . . . . .

Q And when you were allowed to enter the house, did you notice who was present?
A I noticed the presence of Connie Tira, Sir.

Q When you said Connie Tira, is she the same Connie Tira the accused in this case?
A Yes, Sir, she was taking care of the baby.

Q Who else?
A We also noticed the presence of Amadeo Tira, Sir.

Q What was he doing there?
A He was newly awake, Sir.

Q Upon entering the house, what did you do?
A We entered and searched the first room, Sir.

Q What did you find out?
A Shabu and Marijuana and paraphernalia, Sir.

Q Are you one of those who entered the house?
A Yes, Sir.

Q Can you mention to the Honorable Court those items that you searched in the house of Connie Tira and Amadeo Tira?
A As per in (sic) our records, we found three (3) sachets containing suspected Methamphetamine Hydrochloride "Shabu" residue; one (1) brick of suspected dried marijuana leaves weighing more or less 750 grams; twenty-four (24) tea bags containing dried marijuana leaves; six (6) disposable lighter; one (1) roll aluminum foil; several empty plastics (tea bag); several used and unused aluminum foil; and cash money amounting to ₱12,536.00 in different denominations believe[d] to be proceeds of the contraband, Sir.

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[57] TSN, 15 June 1998, pp. 13-14.

Q You said you recovered one (1) brick of marijuana leaves, showing to you a (sic) one (1) brick suspected to be marijuana leaves, is this the one you are referring to?
A Yes, Sir, this is the one.[58]

Appellant Amadeo Tira was not the only witness to the search; Kagawad Mario Conwi and Ernesto Tira, Amadeo's father, were also present. Ernesto Tira even led the policemen inside the house. This is evidenced not only by the testimony of Kagawad Conwi, but also by the certification signed by the appellant himself, along with Kagawad Conwi and Ernesto Tira.[59]

The trial court rejected the testimony of appellant Amadeo Tira that the inner room searched by the policemen was occupied by Chris Tira and his girlfriend Gemma Lim with the following encompassing disquisition:

. . . The defense contention that a couple from Baguio City first occupied the first room, the Court is not persuaded because they did not present said businessmen from Baguio City who were engaged in vegetable business. Secondly, the same room was rented by Chris Tira and Gemma Lim. Chris Tira and Gemma Lim, engaged in banana business, were not presented in Court. If it were true that Chris Tira and Gemma Lim were the supposed lessees of the room, they should have been apprehended by the searching party on March 9, 1998, at about 2:30 p.m. There was no proof showing that Chris Tira and Gemma Lim ever occupied the room, like personal belongings of Chris Tira and Gemma Lim. The defense did not even show proof showing that Chris Tira reside in the first room, like clothings, toothbrush, soap, shoes and other accessories which make them the residents or occupants of the room. There were no kitchen plates, spoons, powder, or soap evidencing that the said room was occupied by Chris Tira and Gemma Lim. Amadeo Tira contended that Chris Tira and Gemma Lim are engaged in banana business. There are no banana stored in the room at the time of the search and both of them were out of the room at the time of the search. And why did not Amadeo Tira supply the police officers of the personal identities and address where they could find Chris Tira and Gemma Lim at the

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[58] TSN, 11 January 1999, pp. 11-12.

[59] Exhibit "8".

time of the search. If they were banana dealers, they must be selling their banana in the market and they could have pointed them in the market.[60] . . .

We are in full accord with the trial court. It bears stressing that the trial court conducted an ocular inspection of the house of the appellants, and thus, had first hand knowledge of the layout of the house. Besides, the testimony of the appellant Amadeo Tira, that the inner room was occupied by Chris Tira and Gemma Lim who were not there when the search was conducted, is belied by the testimony of the appellant Connie Tira that the room was occupied by two male and one female boarders *who were in the room when the policemen searched it*. Thus:

Q You said that while taking care of your baby, several policemen barged [sic] your house?

. . . . . .

A Yes, Sir.

Q And they proceeded to your room where your husband was sleeping at that time?
A Yes, Sir.

Q And it is in that room where your husband was sleeping and where those articles were taken?
A No, Sir.

Q Where are (sic) those things came (sic) from?
A At the room where my boarders occupied, Sir.

Q So, at that time where were those boarders?
A They were inside their room, Sir.

Q How many of them?
A Two (2) male persons and one woman, Sir.

Q And do you know their whereabout[s], Madam Witness?
A No more, Sir.

Q When did they leave, Madam Witness?
A At that time, they left the house, Sir.

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[60] *Rollo*, p. 47.

Q They were not investigated by the police?
A No, Sir.[61]

We agree with the finding of the trial court that the only occupants of the house when the policemen conducted their search were the appellants and their young children, and that the appellants had no boarders therein.

Before the accused may be convicted of violating Section 8 of Republic Act No. 6425, as amended by Rep. Act No. 7659, the prosecution is burdened to prove beyond reasonable doubt the essential elements of the crime, *viz*: (1) the actual possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely or consciously possessed the said drug.[62]

The essential elements of the crime of possession of regulated drugs are the following: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and, (c) the accused has knowledge that the said drug is a regulated drug. This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused.[63] On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[64] Exclusive possession or control is not necessary.[65] The accused cannot avoid conviction if his right to exercise

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[61] TSN, 5 April 1999, pp. 10-11.

[62] *People v. De Guzman*, 315 SCRA 573 (2001).

[63] *People v. Ramos*, 186 SCRA 184 (1990).

[64] *People v. Rice*, 131 Cal. Rptr. 330 (1976); *People v. Francis*, 450 P.2d. 591 (1969).

[65] *People v. Estrada*, 234 44 Cal. Rptr. 165 (1965).

control and dominion over the place where the contraband is located, is shared with another.[66]

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused.[67] Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug.[68] Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.[69]

In this case, the prohibited and regulated drugs were found under the bed in the inner room of the house of the appellants where they also resided. The appellants had actual and exclusive possession and control and dominion over the house, including the room where the drugs were found by the policemen. The appellant Connie Tira cannot escape criminal liability for the crime charged simply and merely on her barefaced testimony that she was a plain housewife, had no involvement in the criminal actuations of her husband, and had no knowledge of the existence of the drugs in the inner room of the house. She had full access to the room, including the space under the bed. She failed to adduce any credible evidence that she was prohibited by her husband, the appellant Amadeo Tira, from entering the room, cleaning it, or even sleeping on the bed. We agree with the findings and disquisition of the trial court, *viz*:

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[66] *People v. Francis, supra; People v. Jackson*, 302 12 Cal. Rptr. 748; *People v. Rice, supra.*

[67] *People v. Tolliver*, 125 Cal. Rptr. 905 (1976).

[68] *People v. Rice, supra.*

[69] *People v. Baluda*, 318 SCRA 503 (1999).

The Court is not persuaded that Connie Tira has no knowledge, control and possession of the shabu and marijuana (Exhibits "M", "N", "O" and "P") found in their room. Connie Tira and Amadeo Tira jointly control and possess the shabu (Exhibits "M" and "N") and marijuana (Exhibits "O" and "P") found in the room of their house. It is unusual for a wife not to know the existence in their conjugal abode, the questioned shabu and marijuana. The husband and wife (Amadeo and Connie) conspired and confederated with each other the keeping and custody of said prohibited articles. Both of them are deemed in possession of said articles in violation of R.A. 6425, Section 8, in relation to Section 20.

The Crimes Committed by the Appellants

The trial court convicted the appellants of violating Section 16, in relation to Section 20, of Rep. Act No. 6425, as amended. The Office of the Solicitor General (OSG) asserts that the appellants should be convicted of violating Section 8 of Rep. Act No. 6425, as amended. We do not agree with the trial court and the OSG. We find and so hold that the appellants are guilty of two separate crimes: (a) possession of regulated drugs under Section 16, in relation to Section 20, of Rep. Act No. 6425, as amended, for their possession of methamphetamine hydrochloride, a regulated drug; and, (b) violation of Section 8, in relation to Section 20 of the law, for their possession of marijuana, a prohibited drug. Although only one Information was filed against the appellants, nevertheless, they could be tried and convicted for the crimes alleged therein and proved by the prosecution. In this case, the appellants were charged for violation of possession of marijuana and shabu in one Information which reads:

That on or about March 9, 1998, in the Municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, did then and there willfully, unlawfully and feloniously have in their possession, control and custody the following:

- Three (3) pieces (*sic*) sachets of shabu
- Six (6) pieces opened sachets of shabu residue
- One (1) brick of dried marijuana leaves weighing 721 grams

- Twenty-four (24) tea bags of dried marijuana leaves weighing 86.3 grams
- Six [6] disposable lighter
- One (1) roll Aluminum foil
- Several empty plastics (tea bag)
- Cash money amounting to ₱12,536.00 in different denominations believed to be proceeds of the contraband.

without first securing the necessary permit/license to posses[s] the same.

CONTRARY TO SEC. 8, in relation to Sec. 20 of R.A. 6425, as amended."[70]

The Information is defective because it charges two crimes. The appellants should have filed a motion to quash the Information under Section 3, Rule 117 of the Revised Rules of Court before their arraignment. They failed to do so. Hence, under Rule 120, Section 3 of the said rule, the appellants may be convicted of the crimes charged. The said Rule provides:

SEC. 3. *Judgment for two or more offenses*. — When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

The Proper Penalties On the Appellants

The crime of violation of Section 8, Article II of Rep. Act No. 6425, as amended, for illegal possession of 807.3 grams of marijuana, a prohibited drug, is punishable by *reclusion perpetua* to death. Considering that there are no qualifying circumstances, the appellants are sentenced to suffer the penalty of *reclusion perpetua*, conformably to Article 63 of the Revised Penal Code and are ordered to pay a fine of ₱500,000.00.

Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, shabu, is *prision correccional* to

[70] *Rollo*, pp. 126-127.

reclusion perpetua. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

QUANTITY	IMPOSABLE PENALTY
Less than one (1) gram to 49.25 grams	*prision correccional*
49.26 grams to 98.50 grams	*prision mayor*
98.51 grams to 147.75 grams	*reclusion temporal*
147.76 grams to 199 grams	*reclusion perpetua*

Considering that the regulated drug found in the possession of the appellants is only 1.001 grams, the imposable penalty for the crime is *prision correccional*. Applying the Indeterminate Sentence Law, the appellants are sentenced to suffer an indeterminate penalty of from four (4) months and one (1) day of *arresto mayor* in its medium period as minimum, to three (3) years of *prision correccional* in its medium period as maximum, for violation of Section 16 of Rep. Act No. 6425, as amended.

IN LIGHT OF ALL THE FOREGOING, appellants Amadeo and Connie Tira are found *GUILTY* beyond reasonable doubt of violating Section 8, Article II of Rep. Act No. 6425, as amended, and are hereby sentenced to suffer the penalty of *reclusion perpetua,* and *ORDERED* to pay a fine of ₱1,000,000.00. The said appellants are, likewise, found *GUILTY* beyond reasonable doubt of violating Section 16, Article III of Rep. Act No. 6425, as amended, and are sentenced to suffer an indeterminate penalty of from Four (4) Months and One (1) Day of *arresto mayor* in its medium period as minimum, to Three (3) years of *prision correccional*, in its medium period, as maximum.

No costs.

SO ORDERED.

Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, and *Tinga, JJ.*, concur.

Davide, Jr., C.J. and *Puno, J.,* on official leave.

THIRD DIVISION

[G.R. No. 140417. May 28, 2004]

AZNAR BROTHERS REALTY COMPANY, *petitioner, vs.* **HEIRS OF ANICETO AUGUSTO & PETRONA CALIPAN, namely: TEODORICA ANDALES, GERONIMO AUGUSTO (deceased) represented by: NICOMEDES AUGUSTO, JOVENCIO AUGUSTO, TELESPORO AUGUSTO, LOLITA IGOT, ROSARIO NEMBRILLO, ALFREDO AUGUSTO, URBANO AUGUSTO, FELIPE AUGUSTO, TOMAS AUGUSTO, ZACARIAS AUGUSTO (deceased) represented by: FELIPE AUGUSTO, EUGENIO AUGUSTO, MANALO AUGUSTO, FELIS AUGUSTO, CERAPINO AUGUSTO, CLARITA AYING, MAURA AUGUSTO, CONCHITA AUGUSTO, ARSENIA OMPAD (deceased) represented by: SARAH AMIT, ANDRES OMPAD, ALBERTO OMPAD, LILY DAGATAN all represented by ALFREDO AUGUSTO,** *respondents*.

SYNOPSIS

Sometime in 1962, relatives of Aniceto Augusto sold a parcel of unregistered land to herein petitioner. In 1963, TCT No. 0070 covering the subject property was issued to petitioner. In 1992, respondent heirs filed a civil case against petitioner and two other relatives of the late Aniceto Augusto. The respondents prayed for: the recovery of the property, the declaration of the deed of sale issued as null and void, the cancellation of the TCT issued to herein petitioner, and for the issuance of a restraining order and/or writ of preliminary injunction. The Court ruled that claims of herein respondents was already barred by prescription. Respondents appealed the dismissal order to the Court of Appeals, which overturned the decision and remanded the case to the court *a quo*. The Court of Appeals found that the claim had not prescribed since the action of respondents was for the declaration of nullity of the Deed of Sale on the ground of absence of consent, which was imprescriptible.

The Court ruled to deny the petition. According to the Court, the alleged owners who sold the land to petitioner Aznar Realty could not have been the true owner of the said land since there was no showing how they acquired the land in the first place. Thus, the trial court should not have dismissed the complaint without looking into the validity of the sale of land to petitioner Aznar. Consequently, respondent heirs could not have been guilty of laches. It was only in November 1991 when they were evicted that they discovered that their land had been sold to Aznar Realty. They filed their complaint in July 1992. Hence, only eight months had passed from the time they were ejected to the time they asserted their rights over their property; hence, they certainly could not be deemed to have slept on their rights. Thus, the Court of Appeals did not err in setting aside the decision of the trial court and ordering that the case be remanded for trial. The Court commiserates with the respondent heirs but it had no choice but to remand the case to the court *a quo* to enable both parties to ventilate their claims in a full blown trial.

SYLLABUS

1. CIVIL LAW; CONTRACTS; DECLARATION OF NULLITY OF DEED OF SALE; PROPER WHEN THE PARTIES WHO SOLD THE LAND COULD NOT HAVE BEEN THE TRUE OWNERS; APPLICATION IN CASE AT BAR.— Respondents sought the declaration of nullity (inexistence) of the Deed of Sale because of the absence of their consent as the true and lawful owners of the land. They argued that the sale to petitioner Aznar was void since the purported "owners" who signed the Deed of Sale as vendors were not even heirs of Aniceto Augusto and Petrona Calipan. They pointed out that the 1945 Tax Declaration in the name of Petrona Calipan indicated that the property was undivided as of the time Aniceto Augusto died in 1932. The land area appearing in said declaration was 5.7 hectares and this fact belied the February 28, 1963 affidavit of Zacarias *et al*. that, at the time of Aniceto's death, he left behind 15 parcels of land to persons who were not even his compulsory heirs. The "owners" who sold the land to petitioner Aznar Realty could not have been the true owners of the land since there was no showing how they acquired the land in the first place. Thus, the trial court should not have dismissed the

complaint without looking into the validity of the sale of land to petitioner Aznar Realty.

2. ID.; PRESCRIPTION OF CASE; LACHES; NOT PRESENT WHEN ONLY EIGHT MONTHS HAD PASSED FROM THE TIME THE HEIRS WERE EJECTED TO THE TIME THEY ASSERTED THEIR RIGHTS OVER THEIR PROPERTY; PRESENT IN CASE AT BAR.— [R]espondent Heirs could not have been guilty of laches. It was only in 1991 when they were evicted that they discovered their land had been sold to Aznar Realty. From the testimony of respondent Heirs, it was apparent that all matters relating to the land had been entrusted to Carlos Auguston by the Heirs, most of whom were unschooled farmers who did not know how to read and write. They never expected him to dupe them of their inheritance. They had no reason to suspect that he had sold the land since they remained in possession thereof until they were ejected in 1991 by petitioner Aznar Realty. Respondents were evicted from their land in November 1991 and they filed their complaint with the trial court on July 28, 1992. Only eight months had passed from the time they were ejected to the time they asserted their rights over their property. They certainly could not be deemed to have slept on their rights.

APPEARANCES OF COUNSEL

Rolindo A. Navarro for petitioner.
Vito J. Minoria for respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition to review the decision[1] of the Court of Appeals in CA-GR CV No. 51279 reversing the decision[2] of Branch 27 of the Regional Trial Court (RTC) of Lapu-Lapu

[1] Penned by Associate Justice Conchita Carpio Morales (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Jainal D. Rasul and Bernardo P. Abesamis of the Sixth Division.

[2] Penned by Judge Teodoro K. Risos.

City. The CA ruled that the claim of herein respondent Heirs of Aniceto Augusto (Heirs) had not yet prescribed. The dispositive portion[3] read:

> WHEREFORE, the appealed Order is hereby *REVERSED* and *SET ASIDE*. The complaint is reinstated to the docket of Branch 27 of the Regional Trial Court of Lapu-Lapu City to which the records of the case is (sic) *ORDERED REMANDED* for appropriate action in line with the disposition of this case.
>
> SO ORDERED.

The facts of the case follow.

The subject matter of this controversy is Lot No. 4397, Opon Cadastre, covered by Decree No. 531070 and situated in Dapdap, Mactan, Lapu-Lapu City, Cebu. It was owned by Aniceto Augusto who was married to Petrona Calipan. When Aniceto died on December 3, 1934, he left behind five children: Geronimo, Zacarias, Teoderica, Arsenia and Irenea. Apparently, the property remained undivided as evidenced by Tax Declaration No. 02679[4] issued to Petrona Calipan in 1945.

Sometime in 1962, Tax Declaration No. 02679 in the name of Calipan was cancelled pursuant to an "*Extrajudicial Partition*"[5] executed before Notary Public Vicente Fanilag. In lieu thereof, tax declaration certificates covering Lot No. 4397 were issued to the following: Filomeno Augusto, Ciriaco Icoy, Felipe Aying, Zacarias Augusto, Abdon Augusto, Teoderica Augusto, Pedro Tampus and Anacleto Augusto.

On February 13, 1962, these persons sold the property to petitioner Aznar Brothers Realty Company (Aznar Realty) through a Deed of Sale of Unregistered Land which was registered on the same date with the Register of Deeds of Lapu-Lapu City.

On September 6, 1962, Carlos Augusto, claiming to be an heir of "his father Aniceto" (when in fact he was the son of

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[3] *Rollo*, p. 42.

[4] "Exhibit E"; Records, p. 14.

[5] Document No. 135, Page 146, Book No. III, series of 1961.

Zacarias and as such was in reality a grandson of Aniceto), filed a Petition for the Reconstitution of Title. He alleged that the original copy and duplicate owner's copy of the title of the property sold to respondent Aznar were lost during the war.

On February 28, 1963, an "*Affidavit of Declaration of Heirs of Aniceto Augusto*" was executed wherein Zacarias, Teoderica, Arsenia and Irenea (Geronimo having died in December 1961) declared that, at the time of their father's death, he had five legitimate children and that he left behind 15 parcels of land covered by various tax declarations. The affidavit was signed by Zacarias and thumbmarked by Teoderica, Arsenia and Irenea, with Carlos Augusto and Filomeno Augusto as witnesses.

On April 15, 1963, TCT No. 0070 covering the property was issued to petitioner Aznar Realty, which then secured Tax Declaration No. 01937.

On July 28, 1992, respondent Heirs filed Civil Case No. 2666-L against petitioner Aznar Realty, and Carlos and Filomeno Augusto in the RTC of Lapu-Lapu City, Branch 27, for (1) recovery of Lot No. 4397; (2) the declaration of the Deed of Sale dated February 13, 1962 as null and void; (3) the recognition of the Heirs; (4) the cancellation of the TCT issued to petitioner Aznar Realty and (5) the issuance of a restraining order and/or writ of preliminary injunction.

Only petitioner Aznar Realty filed an answer interposing the defense of lack of cause of action and prescription. It asked for a preliminary hearing on the affirmative defenses as if a motion to dismiss had been filed. This was granted by the trial court.

After the hearing on the affirmative defenses, the trial court ruled that the claim of respondent Heirs was already barred by prescription:

> On the basis of the foregoing facts and circumstances established by evidence, this Court believes that the action of the plaintiffs is undisputably barred by prescription. Principally, plaintiffs' action is for recovery of a parcel of land. This type of action prescribes after ten (10) years from the date of registration or from discovery of the fraud. As held in the case of *Cañete vs. Benedicto*, *158 SCRA*

575, "an action for recovery of title or possession of real property or an interest therein can only be brought within 10 years after the cause of action accrues which is deemed to have taken place from the registration of the document with the Register of Deeds for registration constitutes a constructive notice to the whole world" (*Gerona vs. de Guzman*, 11 SCRA 153). In the case of *Gicano vs. Gegato*, *157 SCRA 140*, the Supreme Court ruled that "action to recover property which was filed only 23 years from the issuance of the title to the property on the supposedly fraudulent sale, has been extinguished by prescription." Moreover, in *Casipit vs. Court of Appeals*, *204 SCRA 648*, the Supreme Court held that "the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of issuance of the certificate of title."

The Deed of Sale of Unregistered Land dated February 13, 1962 was registered on the same date at the Register of Deeds of Lapu-Lapu City as appearing at the back page thereof. Since that time up to the filing of this case on July 28, 1992, thirty (30) years had elapsed. And since the issuance of Transfer Certificate of Title No. 0070 in the name of Aznar Brothers Realty Co. on April 15, 1963 up to the institution of this action, twenty-nine (29) years had elapsed. The Court therefore believes there is no more way by which plaintiffs' action can rise from its extinct state.

xxx xxx xxx

WHEREFORE, finding merit in defendants' affirmative defense of prescription, this case is, as it is hereby ordered DISMISSED.[6]

Respondents appealed the dismissal order to the Court of Appeals which overturned the decision and remanded the case to the court *a quo*. Citing the case of *Castillo vs. Heirs of Madrigal*,[7] the Court of Appeals found that the claim had not yet prescribed since the action of respondents was for the declaration of nullity of the Deed of Sale on the ground of absence of consent. Such action was imprescriptible. As held by the appellate court:

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[6] *Rollo*, p. 34.

[7] 198 SCRA 556 [1991].

In *Castillo v. Heirs of Madrigal* [198 SCRA 556], the Supreme Court held that an action for the declaration of the inexistence of a deed of sale is imprescriptible because of the absence of the vendors' consent following Article 1410 of the Civil Code which provides:

> The action or defense for the declaration of the inexistence of a contract does not prescribe.

as was an action for reconveyance based on a void document where the property has not yet passed to an innocent purchaser for value, it citing *Armamento v. Guerrero,* 96 SCRA 178; *Baranda, et al. v. Baranda, et al.,* 150 SCRA 59, 1987. In sustaining the dismissal of the complaint in the case, the High Court declared that although the action for annulment of the document and the transfer of title was imprescriptible, the complaint was dismissable for failure to state a cause of action, the property having been sold by the therein defendant *vendee* to its co-defendant subsequent vendee who was not alleged in the complaint to be a purchaser in bad faith.

The present case is for annulment of the deed of sale and the transfer certificate of title issued as a result thereof, and for reconveyance. The complaint alleges that the heirs-owners of the questioned lot never sold it to Aznar Realty *which conspired with its co-defendants in the fraudulent transfer thereof.*

The court *a quo* thus erred in dismissing the complaint at bar on the ground of prescription.[8]

Thus, this petition for review on the following assignments of error:[9]

I

THE COURT OF APPEALS ERRED IN REVERSING THE ORDER DATED OCTOBER 18, 1993 OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH 27, LAPU-LAPU CITY

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ACTION OF THE RESPONDENTS (PLAINTIFFS IN CIVIL CASE NO. 2666-L) IS IMPRESCRIPTIBLE; and

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[8] *Rollo*, pp. 41-42.

[9] *Rollo*, p. 182.

III

THE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THAT THE ACTION OF RESPONDENTS (PLAINTIFFS IN CIVIL CASE NO. 2666-L) IS BARRED BY PRESCRIPTION AND LACHES.

The petition is without merit. The respondents' claim is imprescriptible and not barred by laches.

Respondents anchored their action for reconveyance in the trial court on the nullity of the Deed of Sale between petitioner Aznar and the supposed owners of the property. Respondents impugned the validity of the document because the sellers were not the true owners of the land and, even if one of the real owners (Teoderica Augusto Andales) thumbmarked the document, she was unaware that she was selling the land. Paragraphs 5, 9 and 10 of respondents' complaint[10] filed with the trial court read:

5. That some on September 6, 1962, *Aznar Brothers Realty Co. through its lawyer, Atty. Ramon Igana and Carlos Augusto, one of the defendants, connived and confederated with one another in filing a petition for reconstitution of title of the land of the deceased spouses Aniceto Augusto and Petrona Calipan (Talipan) on September 6, 1962 with the Court of First Instance of Cebu, 4th Judicial District. In such petition Carlos Augusto claimed that he is one of the owners of Lot No. 4397 Opon Cadastre, having inherited the same from his father, the deceased Aniceto Augusto* (see paragraph 2 of the Petition for Reconstitution of Title as stated in the verified xerox copy of the original petition, marked as Annex "B") *when in fact and in truth he is the son of Zacarias Augusto, the son of Aniceto Augusto, true owner of lot no. 4397*;

xxx xxx xxx

9. That *Teoderica Augusto Andales, the only survivor of the five legal and legitimate children of deceased Aniceto Augusto and Petrona Calipan (Talipan), and Ciriaco Icoy, whose names were used as vendors by the above defendants, denied that they sold to Aznar Brothers Realty Co. particularly the land described*

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[10] *Rollo*, pp. 141-142.

on the Tax Declaration Nos. 19281, 19280, 1986 and 19285 as alleged in the Deed of Sale of Unregistered Land (affidavits are hereto attached, marked as Annexes "G" and "H"), duly notarized by Atty. Maximo S. Ylaya with Doc. No. 395; Page No. 19; Book No. V; Series of 1962; the original copy of which cannot be found (attached is a certification from the records management of Archives office, marked as Annex "I");

10. That on February 28, 1963, *an affidavit of Declaration of Hrs. of Aniceto Augusto was allegedly executed and witnessed by Carlos Augusto and Felomino Augusto declaring that deceased Aniceto Augusto at the time of his death (incidentally Aniceto Augusto died in 1933) left properties consisting of fifteen (15) parcels of land distributed to the different persons who are strangers to the family of Sps. Aniceto Augusto and Petrona Calipan (Talipan) and therefore have no rights over the property of the deceased Aniceto Augusto and Petrona Calipan (Talipan) — the Tax Declarations were obviously procured with the appearance that said parcel of lands are distributed accordingly*; that said affidavit of Declaration of Hrs. of Aniceto Augusto was formulated after the Deed of Sale was executed (attached is an affidavit of Declaration of Hrs. of Aniceto Augusto, marked as Annex "J").

Respondents sought the declaration of nullity (inexistence) of the Deed of Sale because of the absence of their consent as the true and lawful owners of the land. They argued that the sale to petitioner Aznar was void since the purported "owners" who signed the Deed of Sale as vendors were not even heirs of Aniceto Augusto and Petrona Calipan. They pointed out that the 1945 Tax Declaration in the name of Petrona Calipan indicated that the property was undivided as of the time Aniceto Augusto died in 1932. The land area appearing in said declaration was 5.7 hectares and this fact belied the February 28, 1963 affidavit of Zacarias *et al*. that, at the time of Aniceto's death, he left behind 15 parcels of land to persons who were not even his compulsory heirs. The "owners" who sold the land to petitioner Aznar Realty could not have been the true owners of the land since there was no showing how they acquired the land in the first place. Thus, the trial court should not have dismissed the complaint without looking into the validity of the sale of land to petitioner Aznar Realty.

In *Heirs of Romana Injug-Tiro vs. Casals*,[11] a case very similar to this, we said that:

> A cursory reading of the complaint, however, reveals that the action filed by petitioners was for partition, recovery of ownership and possession, *declaration of nullity of a deed of sale of unregistered land and extrajudicial settlement and confirmation of sale*. Petitioners' causes of action are premised on their claim that: (a) the *Deed of Sale of Unregistered Land* is void and of no effect since their respective shares in the inheritance were included in the sale without their knowledge and consent, and one of the vendor-signatories therein, Eufemio Ingjug (Eufemio Tiro, husband of Romana Ingjug), was not even a direct and compulsory heir of the decedent; and (b) the Extrajudicial Settlement and Confirmation of Sale is simulated and therefore null and void *ab initio*, as it was purportedly executed in 1967 by, among others, Eufemio Tiro who was not an heir, and by Francisco Ingjug who died in *1963*. Also the prayer in the same complaint expressly asks that all those transactions be declared null and void. *In other words, it is the nullity of the deeds of sale and the extrajudicial settlement and confirmation of the sale which is the basic hypothesis upon which the instant civil action rests. Thus, it appears that we are dealing here not with simple voidable contracts tainted with fraud, but with contracts that are altogether null and void ab initio*. (Italics supplied)

Neither is respondents' claim barred by laches. In the same case of *Injug-Tiro*,[12] we ruled that:

> In actions for reconveyance of property predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be unavailing. The action or defense for the declaration of the inexistence of a contract does not prescribe. Neither could *laches* be invoked in the case at bar. *Laches* is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. *Aequetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil Code conferring imprescriptibility to actions for declaration of the

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[11] 363 SCRA 435, 400-441 [2001].

[12] *Ibid.* at 442-443.

inexistence of a contract should pre-empt and prevail over all abstract arguments based only on equity. Certainly, *laches* cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time.

Consequently, respondent Heirs could not have been guilty of laches. It was only in 1991 when they were evicted that they discovered their land had been sold to Aznar Realty. From the testimony of respondent Heirs, it was apparent that all matters relating to the land had been entrusted to Carlos Augusto by the Heirs, most of whom were unschooled farmers who did not know how to read and write. They never expected him to dupe them of their inheritance. They had no reason to suspect that he had sold the land since they remained in possession thereof until they were ejected in 1991 by petitioner Aznar Realty.

Respondents were evicted from their land in November 1991 and they filed their complaint with the trial court on July 28, 1992. Only eight months had passed from the time they were ejected to the time they asserted their rights over their property. They certainly could not be deemed to have slept on their rights.

Petitioner makes much of the fact that respondents brought suit only after the property had already been developed into an upscale subdivision. Petitioner would have this Court believe that respondents were merely "out to make an easy profit at [its] expense." This is the exact opposite of the Court's impression of respondent Heirs. On the contrary, if the Court were to fault respondents, it would be for being too trusting of their kin Carlos Augusto and certainly not for being opportunistic.

Thus, the Court of Appeals did not err in setting aside the decision of the trial court and ordering that the case be remanded for trial. Respondents ask this Court to rule on the merits of the case and not to send it back to the trial court. Respondents herein are destitute farmers who do not have the resources to vindicate their rights to their inheritance in a long, protracted trial. The Court commiserates with them but it has no choice but to remand the case to the court a quo to enable both parties to ventilate their claims in a full-blown trial.

To facilitate the resolution of the case, however, the trial court should take note of the facts duly established during the hearing on the issue of prescription, as affirmed by the Court of Appeals and this Court.

WHEREFORE, the petition is hereby *DENIED*. The decision of the Court of Appeals in CA-G.R. CV No. 52179 is *AFFIRMED*.

SO ORDERED.

Vitug, Acting C.J. and *Sandoval-Gutierrez, J.*, concur.

Carpio Morales, J., took no part: participated in the case before the Court of Appeals.

SECOND DIVISION

[G.R. No. 140680. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RENY DE LOS REYES**, *appellant*.

SYNOPSIS

Appellant herein was charged with murder for stabbing to death one Felomeno Omamos. Upon arraignment, the appellant entered a plea of guilty, but interposed self-defense. A reverse trial ensued. After trial, the court *a quo* rendered its decision finding appellant guilty beyond reasonable doubt of murder and sentenced the accused to the penalty of *reclusion perpetua*. Hence, this appeal.

The Supreme Court affirmed the decision of the trial court. According to the Court, the appellant's claim of self-defense deserved scant consideration. An accused cannot invoke self-defense, complete or incomplete, unless he proves unlawful aggression on the part of the victim. In this case, while the

victim was inceptually the aggressor, the aggression ceased as soon as the appellant had managed to wrest the knife from him and no longer committed any overt act evidencing persistence to consummate the unlawful aggression. The appellant was not defending himself, but stabbed the victim in retaliation for the latter's inceptual unlawful aggression. The nature and location of the stab wounds sustained by the victim belie the appellant's affirmative defense. Hence, the appellant cannot invoke Article 11, paragraph 1 of the Revised Penal Code to justify the killing.

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— Case law has it that like alibi, the affirmative defense of self-defense under Article 11, paragraph 1 of the Revised Penal Code, is a weak defense. The accused who invokes self-defense thereby admits having killed the victim, and the burden of evidence is shifted on him to prove, with clear and convincing evidence, the confluence of the following essential elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and, (3) lack of sufficient provocation on the part of the person defending himself. The accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution because even if the evidence of the prosecution is weak, the same can no longer be disbelieved. The accused cannot escape conviction if he fails to prove the essential elements of a complete self-defense.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; DISTINGUISHED FROM RETALIATION; APPLICATION IN CASE AT BAR.— Unlawful aggression exists when there is an actual and sudden attack or imminent peril to the life and limbs of the person defending himself coming from the victim. Retaliation, as distinguished from unlawful aggression, exists when the inceptual aggression of the victim has already ceased and there is no evidence that he persists in consummating the same. The accused cannot invoke self-defense if he kills the victim by way of retaliation. The appellant was not defending himself; he stabbed the victim in retaliation for the latter's inceptual unlawful aggression. Indeed, the appellant stabbed the victim, not only once, but thrice; once on a vital part of

the body, the chest. The nature and location of the stab wounds sustained by the victim belie the appellant's affirmative defense. Hence, the appellant cannot invoke Article 11, paragraph 1 of the Revised Penal Code to justify the killing.

3. ID.; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS.— For evident premeditation to be appreciated, the prosecution must prove beyond reasonable doubt the following essential requirements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow his conscience to overcome the resolution of his will. The essence of evident premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. It must be based on external acts which must be notorious, manifest and evident — not merely suspecting — indicating deliberate planning.

4. ID.; ID.; ID.; MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.— Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice. It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out. Where there is no evidence thereon, evident premeditation cannot be considered as an aggravating circumstance.

5. ID.; ID.; TREACHERY; ELEMENTS.— For treachery to be considered present, the following requisites must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution. There is treachery 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. The essence of treachery is the sudden and unexpected attack by

the aggressor on the 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. Treachery, as any other circumstance that would qualify a killing as murder, must be proved fully as the crime itself and any doubt as to the existence thereof must be resolved in favor of the accused.

6. ID.; CIVIL LIABILITY; AWARD OF MORAL DAMAGES; PURPOSE THEREOF.— In *People v. Galvez,* this Court stressed that the purpose of the award of moral damages is not to enrich the heirs of the victim but to compensate them for the injuries to their feelings. The prosecution adduced evidence that the heirs of the victim spent for the funeral and the wake, but that the said expenses amount to less than ₱25,000. Conformably to current jurisprudence, the heirs of the victim are entitled to temperate damages in the amount of ₱25,000.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT BY THE TRIAL COURT; GIVEN HIGH RESPECT; RATIONALE.— It is a settled rule that the findings of facts of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and its conclusions based on the said findings are given high respect, if not conclusive effect by the appellate court. This is because of the trial court's unique advantage of being able to observe, at close range, the conduct and deportment of witnesses as they testify. However, this rule will not apply if the trial court ignored, overlooked, misinterpreted or misconstrued cogent facts and circumstances of substance, which, if considered, would alter the outcome of the case.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Roy Lago Salcedo for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

This is an appeal from the Decision[1] of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Case No. 98-343, convicting appellant Reny de los Reyes of murder, sentencing him to suffer *reclusion perpetua*, and ordering him to pay damages to the heirs of the victim in the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱5,000.00 as funeral expenses.

On May 5, 1998, an Information was filed against the appellant which reads as follows:

> On January 13, 1998 at about 4:00 o'clock in the afternoon, more or less, at Sitio Digcamara, Barangay Mapulog, Municipality of Naawan, Province of Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab to death one Felomeno Omamos, with the use of a knife, thereby hitting the victim on the different parts of his body which caused his instantaneous death. [2]

Upon arraignment, the appellant entered a plea of guilty, but interposed self-defense. A reverse trial, thus, ensued.

Case for the Prosecution[3]

At around 3:00 p.m. on January 13, 1998, the appellant's distant cousin, Myrnaflor Gaid, was in the house of her uncle, Mario de los Reyes. Myrnaflor wanted to have herself massaged by her Aunt Flora who was a *manghihilot*. While Myrnaflor was waiting for her aunt, the appellant arrived and placed a bet in the game of jai-alai. He then took a stainless steel knife from

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[1] Penned by Judge Noli T. Catli.

[2] Records, p. 2.

[3] The prosecution presented as witnesses Annaliza Omamos and Myrnaflor Gaid.

the *banggera* of the kitchen and went out of the house. The appellant informed Mario that he was borrowing the latter's knife, mounted his bicycle and left.

At around the same time, Felomeno Omamos was leaving their house to tether their cow, and brought along with him his five-year-old son. Worrying about the weather, Annaliza, his wife, decided to follow, to give father and son an umbrella. At a distance, Annaliza saw her husband walking along the road, followed by their son. The appellant appeared on a bicycle and pedaled behind the two. He suddenly stabbed Felomeno at the back with a knife, prompting Annaliza to shout, "Jofet, [4] do not stab my husband!" The appellant continued stabbing Felomeno as the little boy began to cry. Felomeno was stabbed on the elbow, the back and the chest.

Annaliza shouted for help. Ruel Omamos, Felomeno's elder brother, was the first to respond, followed by Marcillano Matano, Felomeno's grandfather. They got an Elf truck and brought Felomeno to the Naawan Municipal Hall where he was transferred to an ambulance coming from Cagayan de Oro City. Felomeno was, thereafter, brought to the Northern Mindanao Medical Center. Felomeno died in the hospital at around 7:50 p.m. while undergoing treatment for his wounds.

Despite the repeated issuance of *subpoena duces tecum* and *ad testificandum*, the medico-legal officer failed to attend the hearing to testify on the victim's medical records. The prosecution and the defense then agreed to waive the presentation of the said witness. The victim's death certificate[5] was admitted by the defense. The cause of death was indicated therein as follows:

> UNDETERMINED PROB HYPOVOLEMIC SHOCK 2° TO MASSIVE HEMOTHORAX (R CHEST 2° TO STAB WOUND R ANT CHEST).[6]

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[4] The appellant was also known in the community as "Jofet."

[5] Exhibit "B", Records, p. 11.

[6] *Ibid*.

The Version of the Defense[7]

At around 3:30 p.m. on January 13, 1998, the appellant was riding his bicycle[8] and went to the house of his uncle, Mario de los Reyes, at Sitio Digcamara, Naawan, Misamis Oriental, to read the tabloid *Bandera*. The appellant saw Felomeno Omamos along the road, who whistled to him and shouted, "*Hoy! Ayaw na ug agi diri kay adunay mahitabo kanimo!* (Do not pass this way otherwise, something might happen to you)." The appellant ignored Felomeno and proceeded to his uncle's house. He did not tell his uncle of the appellant's threat. After finishing reading the newspaper for about thirty to forty minutes, the appellant left for his house.

As the appellant rode his bicycle, he saw Felomeno alone, walking ahead of him. When the appellant was about twenty to twenty-five meters or so behind Felomeno, the latter suddenly turned around and picked up a stone about the size of two clenched fists. As the appellant neared Felomeno, at a distance of about five to six meters, the latter threw the stone at him. The stone barely missed the appellant, but the left side of the rear tire of his bicycle was hit, causing two spokes to be detached from the tire rim. The appellant fell off the right side of the bicycle in a crouching position, with his hands still holding on to the handlebars. The appellant saw Felomeno walking towards him, and suddenly took out a stainless steel knife. He thrust the knife towards the appellant, but the latter released his grip on the bicycle handlebars and stepped back to evade the thrust. Felomeno thrust at the appellant a second time, and the latter was able to parry the thrust. The appellant then turned around and, with both hands, held Felomeno's right wrist, and was able to wrest the knife from the latter. The appellant then thrust the knife, hitting Felomeno on his left posterior arm near the armpit. The appellant again thrust the knife towards Felomeno, this time stabbing the latter on the chest. With the knife still

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[7] The defense presented the appellant and Mario de los Reyes as witnesses.

[8] The bicycle was presented as Exhibit "1".

embedded on the victim's chest, the appellant took off and went to his mother's house. He immediately told his mother, Francisca, that he had stabbed Felomeno and said to her, "*Atimana ninyo ang akong pamilya kay mosurrender ako* (Take good care of my family because I will surrender)." When his mother asked him when he planned to surrender, the appellant replied he would do so at twilight. Francisca then rushed to the house of her brother-in-law, Mario de los Reyes, and informed the latter of the incident. That night, the appellant went to the Naawan Police Station, reported the stabbing incident and surrendered himself to the police authorities.

Mario de los Reyes corroborated, in part, the testimony of his nephew, the appellant.

After trial, the court *a quo* rendered its decision, the dispositive portion of which reads as follows:

> IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, this Court hereby finds the accused RENY DE LOS REYES, GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER, as charged in the Information, without any aggravating circumstance, with one (1) mitigating circumstance and sentences the accused, RENY DE LOS REYES, to the penalty of *RECLUSION PERPETUA*, with all the accessory penalties provided for by law, and to indemnify Analisa (*sic*) Omamos and her two children, Felomeno Omamos, Jr. and Fe Luisa Mae Omamos, the sum of Seventy-Five Thousand Pesos (₱75,000.00) and to pay the same offended parties the sum of Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and to pay Five Thousand Pesos (₱5,000.00) as funeral expenses, and to pay the costs.
>
> The accused is, however, credited in the service of his sentence with the full time under which he has undergone preventive imprisonment.
>
> SO ORDERED.[9]

On appeal to this Court, the appellant contends that the lower court erred as follows:

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[9] Records, pp. 165-166.

I

IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER QUALIFIED BY TREACHERY AND EVIDENT PREMEDITATION, AND REJECTING HIS PLEA OF SELF-DEFENSE.

II

IN NOT BELIEVING THE TESTIMONY OF ACCUSED-APPELLANT AS CORROBORATED BY A WITNESS.

III

IN RELYING ON THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING THE EVIDENCE ADDUCED DURING THE TRIAL IN FAVOR OF ACCUSED-APPELLANT.[10]

The Court's Ruling

The appeal is dismissed.

The appellant's claim of self-defense deserves scant consideration. Case law has it that like alibi, the affirmative defense of self-defense under Article 11, paragraph 1 of the Revised Penal Code, is a weak defense.[11] The accused who invokes self-defense thereby admits having killed the victim, and the burden of evidence is shifted on him to prove, with clear and convincing evidence, the confluence of the following essential elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and, (3) lack of sufficient provocation on the part of the person defending himself.[12] The accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution because even if the evidence of the prosecution is weak, the same can no longer be disbelieved. The accused cannot

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[10] *Rollo*, p. 109.

[11] *People vs. Noay*, 296 SCRA 292 (1998).

[12] Art. 11, par. 1, Revised Penal Code.

escape conviction if he fails to prove the essential elements of a complete self-defense.[13]

The accused cannot invoke self-defense, complete or incomplete, unless he proves unlawful aggression on the part of the victim.[14] Unlawful aggression exists when there is an actual and sudden attack or imminent peril to the life and limbs of the person defending himself coming from the victim.[15] Retaliation, as distinguished from unlawful aggression, exists when the inceptual unlawful aggression of the victim has already ceased and there is no evidence that he persists in consummating the same.[16] The accused cannot invoke self-defense if he kills the victim by way of retaliation.[17]

The issue of whether the accused acted in complete or incomplete self-defense for that matter is a question of fact to be resolved by the trial court on the basis of the evidence on record.[18] It is a settled rule that the findings of facts of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and its conclusions based on the said findings are given high respect, if not conclusive effect by the appellate court. This is because of the trial court's unique advantage of being able to observe, at close range, the conduct and deportment of witnesses as they testify. However, this rule will not apply if the trial court ignored, overlooked, misinterpreted or misconstrued cogent facts and circumstances of substance, which, if considered, would alter the outcome of the case.[19]

In this case, the trial court disbelieved the testimony of the appellant and his witness, and gave credence and full probative

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[13] *People vs. Real*, 308 SCRA 244 (1999).

[14] *People vs. Cañete*, 287 SCRA 490 (1998).

[15] *People vs. Recto*, 367 SCRA 390 (2001).

[16] See *People vs. More*, 321 SCRA 538 (2000).

[17] *People vs. Acosta*, 371 SCRA 181 (2001).

[18] *Jacobo vs. Court of Appeals*, 270 SCRA 270 (1997).

[19] *People vs. Barona*, 323 SCRA 239 (2000).

weight to the prosecution's witnesses. We have reviewed the evidence on record and find no justification to deviate from the findings of the trial court that the appellant failed to prove that he acted in self-defense when he killed the victim.

First. Mario de los Reyes, the appellant's uncle, made it appear in his testimony that Felomeno was still alive on January 30, 1998, although the appellant already admitted that he had stabbed and killed the victim earlier at 3:00 p.m. of January 13, 1998. The testimony of Mario de los Reyes reads:

Q Mario de los Reyes, will you please inform the Honorable Court where were you on January 30, 1998, at about 2:00 o'clock in the afternoon?
A I was in my house.

Q Will you please tell the Honorable Court what you were doing there, if there was any?
A I was busy drying my copra.

Q While you were drying your copra, did you notice something else?
A Yes, Sir.

Q Will you please inform the Honorable Court, what did you notice at that time?
A At 2:00 o'clock in the afternoon of January 30, 1998, Felomeno Omamos passed by our house.

Q Now, after that, what else did you notice, if there was any?
A Felomeno Omamos told me, "*Tatay*, I think your copra is already dry; do you know this is already money and we could beat a jai-alai." But I told him, "maybe, you are drunk, you better go home."

Q After that, what else happened, if there was any?
A I went down from the copra dryer and Felomeno Omamos said, "*Tatay*, did Fidel Gaid pass by here?" and I told him, "he had not passed by;" and he said, "If he passed by this time, maybe, he will be killed.

Q Do you know why he was looking for Fidel Gaid?

A Felomeno Omamos was looking for Fidel Gaid because they were enemies because Felomeno Omamos was stabbed by Fidel Gaid before.[20]

Second. It is incredible that Felomeno, who was walking alone on the road, knew of the appellant's presence. It must be stressed that the appellant was riding on his bicycle and was about twenty to twenty-five meters *behind* the victim;

Third. The appellant failed to surrender to the police authorities the knife he used to kill the victim. Such failure to surrender the weapon renders doubtful the appellant's claim that Felomeno, and not his uncle Mario de los Reyes, owned the knife.[21]

Fourth. The appellant failed to adduce evidence to prove that Myrnaflor Gaid nurtured any ill motive to falsely testify against the appellant. Absent such evidence, the testimony of Myrnaflor Gaid must be accorded full probative weight.[22]

Assuming for the nonce, that the appellant's testimony is the truth, nevertheless, he cannot invoke complete or incomplete self-defense. While the victim was inceptually the unlawful aggressor, the aggression ceased as soon as the appellant had managed to wrest the knife from him and no longer committed any overt act evidencing persistence to consummate the unlawful aggression. This is borne by the testimony of the appellant himself, *viz*:

Q Now, who has a bigger physical built, you or the victim?
A The victim has a bigger built.

Q Did I get it from you that after he made his second thrust, you moved your left foot and holding his right hand by clipping his right hand which was holding the knife as you demonstrated?
A Yes, Ma'am.

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[20] TSN, 24 July 1998, pp. 4-5.

[21] See *People vs. Camacho*, 359 SCRA 200 (2001).

[22] See *People vs. Dela Piedra*, 350 SCRA 163 (2001).

Q And when you were clipping his right hand under your armpit, the left of Felomeno Omamos did not do anything?
A Yes, Ma'am.

Q While you were clipping his right hand which was holding the knife, that was the time you were able to wrest the knife from him?
A Yes, Ma'am.

Q And when you were able to allegedly wrest the knife from him, that was the time you stabbed him, is that correct?
A Yes, Ma'am.

Q When you stabbed him, you were still clipping his right hand?
A No more, Ma'am.

Q You mean to say you loosen him from your grip (sic)?
A I released him already, Ma'am.

Q And when you released him, what did Felomeno Omamos do?
A When I released him, Felomeno Omamos was still standing.

Q In front of you?
A Yes, Ma'am.

Q And that is why you stabbed him in the chest?
A At first, he was hit at his forearm near his armpit.

Q He was hit at his forearm when you made the first thrust?
A Yes, Ma'am.

Q He was still standing in front of you after that?
A Yes, Ma'am.

Q And that was the reason why you were able to hit him in (sic) his chest?
A Yes, Ma'am.

Q And you testified that after Felomeno Omamos was hit for the second time, he was still standing, is that correct?
A Yes, Ma'am.

Q You mean to say, he did not fall down to the ground?
A He did not fall down, Ma'am.

Q Now, after you hit him for the second time in (sic) his chest, what did you do?

A When I hit Felomeno Omamos for the second time at his solar plexus, I ran away leaving the knife still embedded in his solar plexus.

Q And what was Felomeno do (sic) when you left him with embedded knife on his chest?
A When I left, I did not see anymore what happened to Felomeno Omamos because I was riding my bike.

Q But you said he was still standing when he was hit for the second time, is that correct?

ATTY. IMPROSO:
The question is already answered, Your Honor.

COURT:
Objection overruled.

A Yes, Ma'am, he was still standing.

Q By the way, can you describe the knife that Felomeno Omamos allegedly used in stabbing you, which eventually you were able to wrestle him (sic) and stabbed him in return?
A It was a stainless kitchen knife.

Q How long is (sic) it?
A It is (sic) about 5 to 6 inches.

COURT (to the Witness):
Q Excluding the handle?
A Yes, Your Honor.

Q Is is (sic) a (sic) double-bladed or a single-bladed?
A It is a single-bladed knife.

Q Do you know where is the knife now?
A I do not know, Ma'am.

Q After you stabbed him and you said you ran, where did you go?
A I proceeded to the house of my mother, Francisca.[23]

The appellant was not defending himself; he stabbed the victim in retaliation for the latter's inceptual unlawful aggression. Indeed, the appellant stabbed the victim, not only once, but thrice; once

[23] TSN, 22 July 1998, pp. 10-13.

on a vital part of the body, the chest. The nature and location of the stab wounds sustained by the victim belie the appellant's affirmative defense.[24] Hence, the appellant cannot invoke Article 11, paragraph 1 of the Revised Penal Code to justify the killing.

In *People vs. So*,[25] we held that:

> Even if we allow appellant's contention that Tuquero was the initial unlawful aggressor, we still cannot sustain his plea of self-defense. After appellant successfully wrested the knife from Tuquero, the unlawful aggression had ceased. After the unlawful aggression has ceased, the one making the defense has no more right to kill or even wound the former aggressor.[26]
>
> xxx xxx xxx
>
> But even if We assume that it was the deceased who attacked the accused with a knife, as the latter would make Us believe, We still hold that there was no self-defense because at that point when the accused was able to catch and twist the hand of the deceased, in effect immobilizing him, the unlawful aggression had already ended. Thus, the danger having ceased, there was no more need for the accused to start stabbing the deceased, not just once but five (5) times.[27]

We reiterated this ruling in *People vs. Tampon*[28] and *People vs. Magallanes*.[29]

The trial court anchored its appreciation of the qualifying circumstance of evident premeditation against the appellant on the following circumstances:

> a. On September 19, 1997, accused Reny de los Reyes and the victim, Felomeno Omamos, had an altercation — the time when the intent to commit the crime was engendered in the mind

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[24] *People vs. Unarce*, 270 SCRA 756 (1997).

[25] 247 SCRA 708 (1995).

[26] *Id.* at 720, citing *People vs. Maceda*, 197 SCRA 499 (1991).

[27] *Id.* at 721.

[28] 258 SCRA 115 (1996).

[29] 275 SCRA 222 (1997).

of the accused, who had the motive which gave rise to it, the means of which he had beforehand selected, to carry out his criminal intent.

b. On January 13, 1998, at 3:00 o'clock in the afternoon, he manifested this through the act of borrowing a 12-inch stainless steel kitchen knife from his uncle, Mario de los Reyes, this demonstrating that he clung to his determination as a result of meditation, calculation and reflection to kill Felomeno Omamos, his enemy.

c. Finally, there was sufficient lapse of time from September 19, 1997 to January 13, 1998 at 4:00 o'clock in the afternoon when he stabbed the victim, Felomeno Omamos, who was unarmed and defenseless when he assaulted the latter and stabbed him first on the left elbow and then on the chest, leaving a 12-inch stainless steel kitchen knife embedded or stuck like a flag planted on the ground and fled, leaving the victim bleeding profusely.[30]

We do not agree with the trial court.

For evident premeditation to be appreciated, the prosecution must prove beyond reasonable doubt the following essential requirements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow his conscience to overcome the resolution of his will.[31] The essence of evident premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[32] It must be based on external acts which must be notorious, manifest and evident — not merely suspecting — indicating deliberate planning.[33]

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[30] Records, pp. 172–173.

[31] *People vs. Guerrero, Jr.*, 389 SCRA 389 (2002).

[32] *People vs. Loterono*, 391 SCRA 593 (2002).

[33] *People vs. Tan*, 359 SCRA 283 (2001).

The prosecution failed to prove that there was an altercation between the victim and the appellant on September 19, 1997 before Felomeno was killed. The testimony of Annaliza Omamos relating to the said altercation is hearsay, because she learned of it only through her mother-in-law. Thus:

Q: Now, if you know, do you know the reason why Reny de los Reyes stabbed your husband?
A: I know.

Q: What it is? (*sic*)
A: They had an altercation last September 1997.

COURT:
Who?

A: Felomeno Omamos and Reny de los Reyes had an altercation last September 1997.

COURT:
Who is this Felomeno?

APP ABBU:
Her husband, Your Honor.

Q: How did you know that they had an altercation on that month?
A: Because I was told by the mother of my husband, Avelina Omamos.

Q: Did she tell you what was the reason for the altercation?

ATTY. IMPROSO:
Objection, Your Honor, this being twice hearsay.

COURT
Present Avelina if she is still alive.

APP ABBU:
That would be all for the direct, Your Honor.[34]

The prosecution never presented Avelina Omamos to prove the existence of an altercation between the appellant and the victim. Moreover, the prosecution failed to prove that from September 17, 1997 to January 13, 1998, the appellant had

[34] TSN, 24 August 1998, pp. 14-15.

perpetrated overt acts to indicate that he had planned to kill the victim, that he had reflected upon his decision, and that he was determined to kill the victim.[35] The prosecution must adduce clear and convincing evidence as to when and how the felony was planned and prepared before it was effected. The prosecution is burdened to prove overt acts that after deciding to commit the felony, the felon clung to his determination to commit the crime.[36]

Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.[37] It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[38] Where there is no evidence thereon, evident premeditation cannot be considered as an aggravating circumstance.[39]

Neither can the appellant's act of borrowing a knife from his uncle on January 13, 1998, as adverted to by prosecution witness Myrnaflor Gaid, be considered as indicative of the appellant's evident premeditation to kill the victim. The prosecution failed to prove that from the time Felomeno threatened the appellant on the road and before the latter borrowed the knife from his uncle, there was a sufficient interval of time for the appellant to ponder upon and realize the dire consequences of the killing.

The trial court, in appreciating treachery, declared, thus:

Treachery is present when the accused Reny de los Reyes employed means, methods, or form in the execution, by providing and arming himself with a knife when he executed his plan to kill at the time

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[35] *People v. Loterono, supra.*

[36] *People vs. Baldogo*, 396 SCRA 31 (2003).

[37] *People vs. Aytalin*, 359 SCRA 325 (2001).

[38] *People vs. Cabote*, 369 SCRA 65 (2001).

[39] *People vs. Galvez*, 355 SCRA 246 (2001).

and place when the victim least expected, (sic) this being while the victim was unarmed, defenseless and unprepared, bringing along his 5-year-old child while tethering the cow, and had his back turned from the accused who was following him.[40]

For treachery to be considered present, the following requisites must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[41] There is treachery 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.[42] The essence of treachery is the sudden and unexpected attack by the aggressor on the 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.[43]

Treachery, as any other circumstance that would qualify a killing as murder, must be proved fully as the crime itself and any doubt as to the existence thereof must be resolved in favor of the accused.[44] In the present recourse, the trial court relied on the testimony of Annaliza Omamos, the victim's widow, who testified that the appellant stabbed the victim on the back and the elbow:

Q Were you able to notice how your husband was killed by Reny de los Reyes?
A Yes, Mam. (*sic*)

Q Can you please tell the Honorable Court how he was killed by Reny de los Reyes?
A Reny de los Reyes stabbed my husband.

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[40] Records, p. 165.

[41] *People vs. Guzman*, 372 SCRA 344 (2001).

[42] Art. 14(16), Revised Penal Code.

[43] *People vs. Cabote, supra.*

[44] *People vs. Mahilum*, 390 SCRA 91 (2002).

Q Which part of the body was stabbed?
A My husband was stabbed first at his back and was also hit at his left elbow.

Q Now, you said you saw the incident. Where were you then?
A I saw the incident because I followed my husband to bring him (sic) umbrella because he was bringing our five (5)-year-old son and that was the time I saw the accused stabbed (sic) my husband.

Q Now, you said he was stabbed. What kind of instrument did he use in stabbing Felomeno Omamos?
A Accused used a stainless knife.

Q How long is this knife?
A The knife is a 12 inches in long, (sic) more or less, including the handle.

xxx xxx xxx

Q Now, while on your way, what happened?
A I saw Reny de los Reyes following my husband in going home.

Q Who is going home?
A My husband Felomeno Omamos was going home.

Q And you said you saw Reny de los Reyes following him?
A Yes, Mam. (sic)

Q Was he walking or riding?
A Reny de los Reyes was riding on a bicycle.

Q Now, when Reny de los Reyes was following your husband, Felomeno Omamos, riding on a bicycle, how far were you then from them?
A I was 15 meters away from them.

Q At a distance of 15 meters, that was the first time you saw your husband being stabbed by Reny de los Reyes?
A Yes, Mam. (sic)

Q And which part of his body which (sic) you saw being hit?

ATTY. IMPROSO:
Already answered.

Q Now, what did you do when you saw your husband being stabbed by Reny de los Reyes?
A I shouted at Reny de los Reyes telling him "Jopeth, do not stab my husband."

Q What did Jopeth do?
A Jopeth still continued stabbing my husband. (Witness is crying)

Q Now, after that, what happened next?
A I shouted for help from my parents-in-law.[45]

We note that the cause of the victim's death as indicated in the death certificate is "massive hemorrhage secondary to stab wound on the chest." Nevertheless, the certificate does not state that the victim did not sustain other wounds on other parts of the body. As it was, no autopsy was conducted on the cadaver of the victim. The certificate does not negate the fact that the victim sustained wounds on his elbow, as testified to by the appellant and Annaliza, and on his back, as recounted by the latter. In light of the testimony of the victim's widow, Annaliza, we hold that treachery was attendant in the commission of the crime. Hence, the appellant is guilty of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, punishable by *reclusion perpetua* to death. Since the appellant is entitled to the generic mitigating circumstance of voluntary surrender, the trial court correctly sentenced the appellant to *reclusion perpetua,* conformably to Article 63 of the Revised Penal Code.

However, the trial court erred in ordering the appellant to pay the victim's heirs ₱75,000 as civil indemnity; ₱75,000 as moral damages; and ₱5,000 as funeral expenses. The amount of ₱75,000 as indemnity for the death of the victim shall be reduced to ₱50,000, based on prevailing jurisprudence.[46] Also, the amount of ₱50,000 by way of moral damages is considered

[45] TSN, 24 August 1998, pp. 4-8.

[46] *People vs. Delim*, 396 SCRA 386 (2003).

sufficient. In *People v. Galvez*,[47] this Court stressed that the purpose of the award of moral damages is not to enrich the heirs of the victim but to compensate them for the injuries to their feelings. The prosecution adduced evidence that the heirs of the victim spent for the funeral and the wake, but that the said expenses amount to less than ₱25,000. Conformably to current jurisprudence, the heirs of the victim are entitled to temperate damages in the amount of ₱25,000. [48]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Cagayan de Oro City, Branch 25 in Criminal Case No. 98-1343 is *AFFIRMED with MODIFICATIONS*. The appellant Reny de los Reyes is found guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 and is sentenced to suffer the penalty of *reclusion perpetua*. The said appellant is ordered to pay to the heirs of the victim Felomeno Omamos the amount of ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as temperate damages. No costs.

SO ORDERED.

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

Puno, J. (Chairman)*,* is on official leave.

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[47] 374 SCRA 10 (2002).

[48] *People vs. Delos Santos*, G.R. No. 135919, May 9, 2003.

THIRD DIVISION

[G.R. No. 141868. May 28, 2004]

JOSE B. CRUZ, RODOLFO C. DELOS SANTOS, VICENTE A. RIGOS, GREGORIO A. LINGAL AND ALICIA P. FRANCISCO, *petitioners, vs.* **PHILIPPINE GLOBAL COMMUNICATIONS, INC. AND/OR ALFREDO PARUNGAO,** *respondents*.

SYNOPSIS

As a result of a decline in the volume of messages sent via telex and telegram, respondent suffered substantial financial losses. With this development, respondent adopted an organizational streamlining program that resulted in the closure of its branches and termination from the service of forty-two workers. Among them are the petitioners, who occupied managerial, supervisory and confidential positions. They were sent separation letters and eventually paid their separation pay at the rate of 1 ½ month's salary per year of service. However, petitioners filed with the labor arbiter a complaint for payment of retirement benefits and attorney's fees against respondent and its president. The Labor Arbiter sustained the petitioners' claim. The National Labor Relations Commission (NLRC) reversed the Labor Arbiters decision and dismissed the petitioner's complaint for payment of retirement benefits. The Court of Appeals affirmed the decision of the NLRC and denied the petitioners' motion for reconsideration. For resolution before the Supreme Court is whether or not a retrenched employee can still claim his retirement benefits after receiving his separation pay.

The Supreme Court denied the petition. According to the Court, as was held in previous cases, the employees' right to payment of retirement benefits and/or separation pay is governed by the Retirement Plan of the parties. Under the retirement plan in this case, petitioners are not allowed to both separation pay and retirement benefits. Hence, the Court ruled that the CA did not err in concluding that petitioners, having received their separation pay from respondent, are no longer entitled to retirement benefits.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYEES SEPARATED FROM SERVICE; THEIR RIGHT TO RECEIVE RETIREMENT BENEFITS AND SEPARATION PAY DEPENDS UPON THE PROVISIONS IN THE RETIREMENT PLAN.— In *Cipriano,* this Court, through Mr. Chief Justice Concepcion, ruled that regular employees who were separated from the service are entitled *either* to the amount prescribed in the retirement plan or the separation pay provided by law, whichever is higher. This is pursuant to the agreement between the company and the labor union, of which plaintiff is a member, thus: "Plaintiff's contention is manifestly devoid of merit. His right to the benefits of the aforementioned plan came into existence by virtue of the agreement between the defendant and the labor union, of which plaintiff is a member. Admittedly, said right is subject to the limitations prescribed in the agreement, Article X of which reads: 'Regular employees who are separated from the service of the company for any reason other than misconduct or voluntary resignation shall be entitled to *either* 100% of the benefits provided in Section 2, Article VIII hereof, regardless of their length of service in the company or to the severance pay provided by law, *which ever is the greater amount*.' Pursuant thereto, plaintiff was entitled to 'either' the amount prescribed in the plan or the severance pay provided by law, whichever is the greater amount.' In other words, *he had a right to one of the two benefits, not to both, at the same time*. The exclusion of one by the other is clearly deducible, not only from the terms 'either' and 'or' used in the agreement, but, also, by the qualifying phrase 'whichever is the greater amount.' x x x." In *Aquino vs. NLRC*, citing *University of the East vs. Minister of Labor* and *Batangas Laguna Tayabas Bus Co. vs. Court of Appeals*, we ruled that if there is no prohibition both in the Retirement Plan and the Collective Bargaining Agreement, the employee has the right to recover from the employer his separation pay and retirement benefits, thus: "The Court feels that if the private respondent really intended to make the separation pay and the retirement benefits mutually exclusive, it should have sought inclusion of the corresponding provision in the Retirement Plan and the Collective Bargaining Agreement

so as to remove all possible ambiguity regarding this matter. x x x. Knowing this, he should have made it a point to categorically provide in the Retirement Plan and the CBA that an employee who had received separation pay would no longer be entitled to retirement benefits. Or to put it more plainly, collection of retirement benefits was prohibited if the employee had already received separation pay." Clearly, under the above cases, the right of the concerned employees to receive both retirement benefits and separation pay depends upon the provisions in the Retirement Plan.

2. ID.; ID.; ID.; ID.; ID.; WHEN NOT ENTITLED TO RECEIVE BOTH SEPARATION PAY AND RETIREMENT BENEFITS; APPLICATION IN CASE AT BAR.— Under Article 283 of the Labor Code, as amended, affected employees, in case of retrenchment or cessation of operations, are always given termination or separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher. Under Section 4, Article VI of respondent's Retirement Plan, the employees are entitled to a retirement pay equivalent to one and a half (1 ½) months pay for every year of service computed on the basis of their basic monthly salary at the time of retirement. Here, respondent opted to pay petitioners separation benefits computed under the Retirement Plan, the same being higher than what Article 283 of the Labor Code, as amended, provides. As we held in *Cipriano* and *Aquino*, the employees' right to payment of retirement benefits and/or separation pay is governed by the Retirement Plan of the parties. *Under the Retirement Plan before us, petitioners are not entitled to both separation pay and retirement benefits.*

APPEARANCES OF COUNSEL

Chito C. Claudio for petitioners.

Siguion Reyna Montecillo and Ongsiako Law Office for private respondents.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

May a retrenched employee still claim his retirement benefits after receiving his separation pay? This is the basic issue for our resolution in the instant case.

At bar is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated July 30, 1999 and Resolution[2] dated February 4, 2000 rendered by the Court of Appeals in CA-G.R. SP No. 50654, entitled *"Jose B. Cruz, Rodolfo C. Delos Santos, Vicente A. Rigos, Gregorio A. Lingal, and Alicia P. Francisco vs. National Labor Relations Commission (Second Division), Philippine Global Communications, Inc. and/or Alfredo Parungao*."

The facts as borne by the records are:

Philippine Global Communications, Inc., respondent, is a corporation engaged in the principal business of communications through telex and telegram, with various branches nationwide.

As a result of a decline in the volume of recorded messages sent via telex and telegram, respondent suffered substantial financial losses equivalent to ₱2,221,804.00 in 1993 and ₱4,536,626.00 in 1994.

With this development, respondent adopted an organizational streamlining program that resulted in the closure of its branches and termination from the service of forty-two (42) workers. Among them were Jose B. Cruz, Rodolfo C. Delos Santos, Vicente A. Rigos, Gregorio A. Lingal and Alicia P. Francisco, petitioners, who occupied managerial, supervisory and confidential positions.

In separate letters dated January 30, 1995, respondent terminated petitioners' services effective March 1, 1995.

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[1] Annex "E" of the Petition for Review, *Rollo* at 330-342.

[2] Annex "I", *id.* at 394-396.

Eventually, respondent paid petitioners their separation pay at the rate of 1 ½ months salary per year of service.[3]

Then after having been paid their separation pay, they executed and signed a "Release, Waiver and Quitclaim."

However, on October 17, 1995, petitioners filed with the Labor Arbiter a complaint for payment of retirement benefits, damages and attorney's fees against respondent and its president, Alfredo Parungao, docketed as NLRC NCR Case No. 00-10-06979-95.

On July 31, 1997, the Labor Arbiter rendered a Decision sustaining petitioners' claim for retirement benefits under respondent's Retirement Plan. The dispositive portion of the Decision reads:

"WHEREFORE, judgment is hereby rendered finding merit in complainants' claim for retirement benefits, and orders respondents to pay each of the complainants, one and a half month salary for every year of service, as provided by respondent's Retirement Plan, to wit:

1. Jose B. Cruz — 35 years in service x one and half month salary for every year of service equivalent to ₱ 1,980,108.00;

2. Rodolfo C. delos Santos — 29 years in service x one and half month salary for every year of service equivalent to ₱1,099,543.15;

3. Vicente A. Rigo — 27 years in service x one and a half month salary for every year of service equivalent to ₱ 1,198,025.86

4. Gregorio A. Lingal — 31 years in service x one and a half month salary for every year of service equivalent to ₱ 1,542,920.85;

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[3] Petitioner Cruz served the respondent company for thirty-five (35) years with a monthly salary of ₱37,960.00. Petitioner Delos Santos, on the other hand, was employed with the respondent company for twenty-nine (29) years with a monthly salary of ₱24,875.00. While petitioner Rigos commenced his twenty-seven (27) years of employment on September 1, 1968 with a monthly salary rate at ₱30,125.00. Petitioner Lingal was employed on April 13, 1964 and has served the respondent company for thirty-one (31) years with a monthly salary of ₱ 33,287.50. Finally, petitioner Francisco was employed for thirteen (13) years (since March 18, 1982) with a monthly salary at ₱17,025.00.

5. Alicia P. Francisco — 13 years in service x one and a half month salary for every year of service equivalent to ₱ 331,007.00.

Or the total sum of ₱6,151,606.84 plus ten (10%) percent of the total money claims awarded as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED."

Upon appeal by the parties, the National Labor Relations Commission (NLRC), in a Decision dated March 2, 1998, reversed the Labor Arbiter's Decision and dismissed petitioners' complaint for payment of retirement benefits.

On March 23, 1998, petitioners filed a motion for reconsideration but was denied.

Hence, petitioners filed with this Court a petition for *certiorari* which we referred to the Court of Appeals pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*.[4]

On July 30, 1999, the Appellate Court promulgated its Decision affirming the assailed Decision of the NLRC. In denying petitioners' claim for retirement benefits, the Appellate Court ratiocinated:

"xxx , the pivotal issue at bar is whether or not the National Labor Relations Commission acted without in excess of jurisdiction or with grave abuse of discretion in declaring that petitioners are not entitled to retirement benefits under PHILCOM's Retirement Plan in addition to their separation pay. The answer must inevitably be in the negative as we find said decision and resolution to be in accord with law and jurisprudence.

Petitioners contend that the public respondent erred when it adopted the ruling in the case of *Cipriano vs. San Miguel*, *24 SCRA 703* where the employees' claims for retirement benefits in addition to separation pay were denied in view of a stipulation in the retirement plan that employees who are separated from the service for any reason

[4] G.R. No. 130866, September 16, 1998, 295 SCRA 494. In this case, we held that 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.

other than misconduct or voluntary resignation shall be entitled to the benefits under the said retirement plan or to the severance pay provided by law. They also contend that the applicable provision should be Section 4, Article VI of the PHILCOM's Retirement Plan which reads:

Section 4 — Involuntary Separation

"A member whose services may be terminated by the Company for any reason other than just cause or voluntary resignation shall be entitled to benefit determined in accordance with the retirement benefit formula provided in Article V hereof. However, if the termination is due to redundancy, the employee will be paid one and one-half months pay for every year of service (as amended on July 1, 1988).

Petitioners' contention holds no water. The above quoted provision should not be interpreted singly but should be read together with the other provisions of the Retirement Plan in question to determine the intent of the Plan. Thus, the meaning to be gathered from the agreement as a whole will control rather than that to be obtained from a particular part, and effect must be given to every part of the instrument if possible (*Badayos vs. Court of Appeals*, 207 SCRA 209).

Under Section 6, Article XI of PHILCOM's Retirement Plan which reads:

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 6 — Effect of Social Legislation

a) Social Security and Workmen's Compensation — The benefits payable under this Plan shall be in addition to such benefits which the Member shall be entitled under the Social Security and Workmen's Compensation Acts.

b) Adjustment of Benefits payments — Except only as provided in paragraph (a) of this Section, in the event the company is required under the law or by lawful order of competent authority, to pay to the Member benefits or emoluments similar or analogous to those already provided in the Plan, the member concerned shall not be entitled to both what the law or the lawful order of

> competent authority requires the company to give and the benefits provided by the Plan, but shall only be entitled to whichever is the greatest among them, it being understood however that for the purpose of determining whichever benefits is greatest, it is the total benefits required to be paid under the law or lawful order of competent authority or the Plan that shall be reckoned. The benefit provided by this Plan may be reduced or amended in an equitable manner by the company by the value of any present or future contract such as collective bargaining, law, *e.g.* termination pay provisions or lawful order of competent authority.

The aforesaid *Section 6(b) Article XI, of the Retirement Plan* is explicit and leaves no doubt as to the intention to prohibit the recovery of both separation pay and retirement benefits. The public respondent NLRC thus correctly pointed out that '*there is no further doubt that the payment of separation pay is a requirement of the law, i.e. the Labor Code, which is a social legislation. The clear intent of Article XI, section 6 is to input the effects of social legislation in the circulation of Retirement benefits due to retiring employees* (p. 238, *Rollo*). *The Retirement Plan itself clearly sets forth the intention of the parties to entitle employees only to whatever is greater between the Retirement Benefits then due and that which the law requires to be given by way of separation pay. To give way to complainant's demands would be to totally ignore the contractual obligations of the parties in the Retirement Plan, and to distort the clear intent of the parties as expressed in the terms and conditions contained in such plan*' (*Ibid*., p. 240).

xxx xxx xxx

After a judicious review of the case at bench, We find that the conclusions reached by respondent NLRC in its questioned decision and resolution are supported by substantial evidence, or that amount of evidence which a reasonable mind may accept as adequate to justify a conclusion. Succinctly put, with no showing that the public respondent NLRC gravely abused its discretion, or otherwise acted without jurisdiction or in excess the same, We are bound by its findings.

WHEREFORE, premises considered, the instant petition is hereby *DENIED DUE COURSE* and *DISMISSED* for lack of merit. The decision dated *March 2, 1998*, as well as the resolution dated *April*

16, 1998 of the respondent National Labor Relations Commission are *AFFIRMED in toto.*

SO ORDERED."

On February 4, 2000, the Court of Appeals issued a Resolution denying petitioners' motion for reconsideration.

Petitioners, in the instant petition for review on *certiorari*, contend that the Court of Appeals erred in relying upon our ruling in *Cipriano vs. San Miguel*[5] that the employee separated from the service is entitled to *either* the amount prescribed in the retirement plan or the separation pay provided by law, whichever is higher. Petitioners invoke Section 4, Article VI of respondent's Retirement Plan (of which they are members) expressly providing that retirement benefits may be granted to them in addition to their separation pay. They likewise call our attention to *Aquino vs. NLRC*[6] holding that payment of separation benefits does not exclude payment of retirement benefits.

For its part, respondent maintains that payment of *both* separation pay and retirement benefits is proscribed under Section 6(b), Article XI of its Retirement Plan. Thus, the NLRC's and the Court of Appeals' reliance on *Cipriano vs. San Miguel*[7] is in order.

In *Cipriano*,[8] this Court, through Mr. Chief Justice Concepcion, ruled that regular employees who were separated from the service are entitled *either* to the amount prescribed in the retirement plan or the separation pay provided by law, whichever is higher. This is pursuant to the agreement between the company and the labor union, of which plaintiff is a member, thus:

"Plaintiff's contention is manifestly devoid of merit. His right to the benefits of the aforementioned plan came into existence by

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[5] G.R No. L-24774, August 21, 1968, 24 SCRA 703.

[6] G.R No. 87653, February 11, 1992, 206 SCRA 118.

[7] *Supra*

[8] *Supra*.

virtue of the agreement between the defendant and the labor union, of which plaintiff is a member. Admittedly, said right is subject to the limitations prescribed in the agreement, Article X of which reads:

> 'Regular employees who are separated from the service of the company for any reason other than misconduct or voluntary resignation shall be entitled to *either* 100% of the benefits provided in Section 2, Article VIII hereof, regardless of their length of service in the company or to the severance pay provided by law, *which ever is the greater amount*.'

Pursuant thereto, plaintiff was entitled to 'either' the amount prescribed in the plan or the severance pay provided by law, whichever is the greater amount.' In other words, *he had a right to one of the two benefits, not to both, at the same time*. The exclusion of one by the other is clearly deducible, not only from the terms 'either' and 'or' used in the agreement, but, also, by the qualifying phrase 'whichever is the greater amount.' xxx."

In *Aquino vs. NLRC*,[9] citing University of the East vs. Minister of Labor[10] and *Batangas Laguna Tayabas Bus Co. vs. Court of Appeals*,[11] we ruled that if there is no prohibition both in the Retirement Plan and the Collective Bargaining Agreement, the employee has the right to recover from the employer his separation pay and retirement benefits, thus:

"The Court feels that if the private respondent really intended to make the separation pay and the retirement benefits mutually exclusive, it should have sought inclusion of the corresponding provision in the Retirement Plan and the Collective Bargaining Agreement so as to remove all possible ambiguity regarding this matter.

xxx Knowing this, he should have made it a point to categorically provide in the Retirement Plan and the CBA that an employee who had received separation pay would no longer be entitled to retirement benefits. Or to put it more plainly, collection of retirement benefits was prohibited if the employee had already received separation pay."

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[9] G.R. No. 87653, February 11, 1992, 206 SCRA 118, 123.

[10] G.R. No. L-74007, June 31, 1987, 152 SCRA 676.

[11] G.R. No L-38482, June 18, 1976, 71 SCRA 470.

Clearly, under the above cases, the right of the concerned employees to receive both retirement benefits and separation pay depends upon the provisions in the Retirement Plan.

Does respondent's Retirement Plan provide that petitioners are entitled to both separation pay and retirement benefit?

Section 6 (b), Article XI of the Retirement Plan provides:

"ARTICLE XI
MISCELLANEOUS PROVISIONS

xxx xxx xxx

Sec. 6. Effect of Social Legislation

xxx xxx xxx

b) Adjustment of Benefits Payments. — xxx, in the event the Company is required under the law or by lawful order of competent authority to pay to the Member benefits or emoluments similar or analogous to those already provided in the Plan, the *Member concerned shall not be entitled to both what the law or the lawful order of competent authority requires the Company to give and the benefits provided by the Plan, but shall only be entitled to whichever is the greatest among them*, xxx."

Thus, petitioners are entitled only to *either* the separation pay provided under Article 283 of the Labor Code, as amended, or retirement benefits prescribed by the Retirement Plan, whichever is higher.

Under Article 283 of the Labor Code, as amended, affected employees, in case of retrenchment or cessation of operations, are always given termination or separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher.

Under Section 4, Article VI[12] of respondent's Retirement Plan, the employees are entitled to a retirement pay equivalent

[12] Section 4, Article VI of the said Retirement Plan provides:

"ARTICLE VI
DEATH AND DISABILITY BENEFITS

xxx xxx xxx

to one and a half (1 ½) months pay for every year of service computed on the basis of their basic monthly salary at the time of retirement.

Here, respondent opted to pay petitioners separation benefits computed under the Retirement Plan, the same being higher than what Article 283 of the Labor Code, as amended, provides.

As we held in *Cipriano* and *Aquino*, the employees' right to payment of retirement benefits and/or separation pay is governed by the Retirement Plan of the parties. *Under the Retirement Plan before us, petitioners are not entitled to both separation pay and retirement benefits.*

We, therefore, rule that the Court of Appeals did not err in concluding that petitioners, having received from respondent their separation pay, are no longer entitled to retirement benefits.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated July 30, 1999 and Resolution dated February 4, 2000 of the Court of Appeals in CA-G.R. SP No. 50654 are hereby *AFFIRMED*.

SO ORDERED.

Vitug (Chairman)*, Corona,* and *Carpio Morales, JJ.,* concur.

Section 4. Involuntary Separation

A member whose services may be terminated by the Company for any reason other than just cause or voluntary resignation shall be entitled to benefit determined in accordance with the retirement benefit formula provided in Article V hereof. However, if the termination is due to redundancy, the employee will be paid one and one half months pay for every year of service. (as amended on July 1, 1988)

xxx xxx xxx."

SECOND DIVISION

[G.R. No. 143341. May 28, 2004]

SAN JUAN DE DIOS EDUCATIONAL FOUNDATION EMPLOYEES UNION-ALLIANCE OF FILIPINO WORKERS; MA. CONSUELO MAQUILING, LEONARDO MARTINEZ, ANDRES AYALA, VIRGINIA ARLANTE, ROGELIO BELMONTE, MA. ELENA GARCIA and RODOLFO CALUCIN, JR., *petitioners, vs.* **SAN JUAN DE DIOS EDUCATIONAL FOUNDATION, INC. (HOSPITAL) and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYNOPSIS

The petitioner union filed a notice of strike based on several grounds before the National Conciliation and Mediation Board (NCMB). However, the Department of Labor and Employment (DOLE), certifying the case to the NLRC, issued a return to work order to the striking officers and employees of herein respondent hospital. Nevertheless, the officers and striking members of the Union defied the order of the DOLE and continued with their strike. In a later development, the NLRC rendered its decision declaring the strike illegal and that its union officers (herein petitioners) to have lost their employment status in accordance with Article 264 (a) paragraph 2 of the Labor Code. The Union and its officers filed a petition for *certiorari* before the Court of Appeals, but the latter ruled that the petitioners failed to prove the allegation of unfair labor practice ascribed to the respondent hospital and thus affirmed the decision of the NLRC. Hence, they file this petition for review on *certiorari* assailing the decision and resolution of the Court of Appeals.

The Supreme Court denied the petition. According to the Court, only errors of law are generally reviewed by the Court in petition for review on *certiorari* of the CA decisions. Questions of fact are not entertained. Despite the receipt of an order from the SOLE to return to their respective jobs, the Union officers and members refused to do so and defied the

same. Consequently, the strike staged by the Union is a prohibited activity under the Labor Code. Hence, the dismissal of its officers is in order. The respondent hospital was, thus, justified in terminating the employment of the petitioner Union's officers.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF QUASI-JUDICIAL BODY; ACCORDED RESPECT AND EVEN FINALITY IF SUPPORTED BY SUBSTANTIAL EVIDENCE.—** At the outset, we must stress that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions. Questions of fact are not entertained. After all, this Court is not a trier of facts and, in labor cases, this doctrine applies with greater force. Factual questions are for labor tribunals to resolve. The findings of fact of quasi-judicial bodies like the NLRC, are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.

2. **ID.; ID.; DISPUTABLE PRESUMPTIONS; A SHERIFF HAS REGULARLY PERFORMED HIS OFFICIAL DUTY; CASE AT BAR.—** It bears stressing that the sheriff's report is an official statement by him of his acts under the writs and processes issued by the court in obedience to its directive and in conformity with law. In the absence of contrary evidence, a presumption exists that a sheriff has regularly performed his official duty. To controvert the presumption arising therefrom, there must be clear and convincing evidence. In this case, the petitioners failed to adduce clear and convincing evidence to overcome the presumption. The bare denial by the petitioners of receiving copies of the order will not suffice.

APPEARANCES OF COUNSEL

Edgar R. Martir for petitioners.

*Romulo Mabanta Buenaventura Sayoc and Delos Ange*les for respondent Foundation.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 53768, affirming with modification the Decision of the National Labor Relations Commission (NLRC) in NCMB-NCR-NS-08-397-94 (NLRC-NCR-CC-000089-94); NLRC-NCR-00-09-07117-94 and NLRC-NCR-09-06557-95 and its Resolution denying the motion for reconsideration of the said decision.

The Antecedents

San Juan de Dios Educational Foundation, Inc. (hereinafter referred to as the Foundation) is a domestic foundation operating as a college and hospital with a two hundred bed capacity, complemented by four hundred hospital personnel, more or less. It retains approximately seventy medical consultants specializing in various fields of applied medicine and medical research. The Foundation rendered medical and nursing services to indigents from Pasay City, Las Piñas, Parañaque, Muntinlupa and Cavite.[2]

San Juan de Dios Educational Foundation Employees Union-Alliance of Filipino Workers (hereinafter referred to as the Union), is the sole and exclusive bargaining representative of the rank-and-file employees in the Foundation.

Rodolfo Calucin, Jr., then Executive Secretary of the Union, had been employed at the Foundation as a medical clerk for almost twelve years. In a Letter dated January 14, 1994, the Foundation, through its Personnel Officer Teresita D. Doringo, informed him that, per its records, he had incurred five (5) sets[3] of tardiness for 1993, in addition to the two other sets he

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[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Ramon A. Barcelona (retired) and Demetrio G. Demetria, *concurring*. Promulgated on November 25, 1999, *Rollo* pp. 315-334.

[2] *Rollo*, p. 108.

[3] Equivalent to twenty (20) times.

had incurred in the year 1992, and that such tardiness had affected his efficiency. He was required to explain, in writing, within seventy-two hours from receipt of the letter, why his services should not be terminated for *gross and habitual neglect of his duties*, under Article 282 of the Labor Code of the Philippines.[4]

Calucin, Jr. expressed surprise over Doringo's directive. In his reply, he claimed that he had already served the maximum suspension of one week, from October 11 to 17, 1993, for his past tardiness. He furthered that he had not incurred tardiness for the past four months. Moreover, his superior had given him a performance rating of FAIR, as of October 1993.[5]

On July 27, 1994, the Foundation, through then Acting Vice-President for Health Services Sister Lourdes S. Sabidong, wrote Calucin, Jr. informing the latter that his employment had been terminated as of the month of March for gross and habitual neglect of duties under Article 282 (b) of the Labor Code.[6]

Calucin, Jr. filed a Complaint for Illegal Dismissal on August 1, 1994 before the National Arbitration Branch of the National Labor Relations Commission.[7] On the same date, the Union filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB), docketed as NCMB NCR-NS-08-397-94 (certified as NLRC-NCR-CC-000089-94), grounded on the following: (a) illegal dismissal of Calucin, Jr., a union officer; (b) discrimination; (c) union busting; (d) harsh enforcement of the company's code of discipline; and, (e) violation of CBA provisions.[8] Officers and employees who were also members of the Union staged a strike.

The Foundation, through counsel, filed a motion for bill of particulars, anent the basis of the notice of strike filed by the

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[4] Annex "A", Petition; *Rollo*, p. 89.

[5] Annex "B"; *Id*. at 90.

[6] Annex "C", *Id*. at 91-92.

[7] *Rollo*, p. 14.

[8] Annex "D", Petition; *Rollo*, p. 103.

Union. The Union specified the following as its basis for the said notice:

(a) illegal dismissal of Rodolfo Calucin, Jr., executive secretary of the Union;

(b) discriminations arising from the favorable actions of the Foundation to Editha H. Unlao who was not dismissed despite incurring similar number of absences as Calucin;

(c) Union busting arising from contracting out regular services performed by union members, forcing Rodolfo Cachuela, an active union member, to resign for no apparent reason; forced resignation from the union by Francis Rellevo, Nestor Centeno, Nemia Abregoso and Grace Isidro upon the insistence of the sisters who recruited them to work at the Foundation; harsh enforcement of the company code of discipline motivated by the desire to persecute militant union members especially on Fe Calucin (for being a wife of Rodolfo Calucin, [Jr.] a union officer), Joan Balucos (assigned heavy workload), Edgar Bas (saddled with extra work), suspending employees who became pregnant before marriage for five to seven months even after getting married or until delivery;

(d) violation of the CBA arising from the non-observance of friendly negotiations before enforcing management actions, refusal to activate grievance committee, refusal or failure to continue recreational activities.[9]

On August 26, 1994, then Department of Labor and Employment (DOLE) Secretary Ma. Nieves R. Confesor issued an Order[10] certifying the case to the NLRC, directing the striking employees to go to work, and directing the Foundation to accept all employees under the same terms and conditions prevailing before the strike.

Per the return of Sheriff Alfredo C. Antonio, copies of the order were served on the officers and striking members of the Union and its counsel.[11]

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[9] Annex "E"; *Id.*; *Id.* at 104-106.

[10] *Rollo*, pp. 108-109.

[11] *Id.* at 119.

Nevertheless, the officers and striking members of the Union defied the order of the DOLE and continued with their strike.

In the meantime, the Foundation filed a petition before the NCMB to declare the strike illegal. The petition was certified to the NLRC and was re-docketed as NLRC Case No. 00-09-07117-94. The Foundation alleged therein that the Union and its officers committed prohibited acts during the strike staged on August 26 to 31, 1994.[12]

Since the members of the Union had not heeded the Return-To-Work Order (RTWO), the Secretary of Labor and Employment (SOLE) issued another RTWO on August 29, 1994.[13]

The Foundation and the Union entered into an agreement on August 30, 1994, on the following matters: (a) the propriety and legality of the dismissal of Calucin, Jr. and the hiring of agency employees shall be submitted to a voluntary arbitrator chosen by the parties in accordance with the CBA; (b) the Union shall lift its picket line immediately after the signing of the agreement and report to work not later than August 31, 1994, except for Calucin, Jr.; (c) the Foundation would waive any legal action relating to the illegal strike and the illegal acts committed by the officers and members of the Union.[14]

In a Letter[15] dated August 31, 1994, the Union, through its President, Ma. Consuelo P. Maquiling, informed the Foundation that the night-shift duty (10:00 p.m. to 6:00 a.m.) would be reporting back to work. However, she requested that those whose duties fell on the 6:00 a.m. to 2:00 p.m., 8:00 a.m. to 5:00 p.m., and the 2:00 p.m. to 10 p.m. shifts, be required to return to work on September 1, 1994, considering that they had been in the picket line for the past few days.

The Foundation denied the Union's request. The twenty-seven employees who worked the said shifts were not allowed

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[12] *Id*. at 189-190.

[13] *Id*. at 111.

[14] *Id*. at 112.

[15] Annex "I", Petition; *Rollo*, p. 113.

to go back to work. In response to the manifestations and motions filed by the Union, the SOLE, on September 14 and 21 of 1994, ordered the Foundation to accept the said employees. The Foundation refused.

On October 5, 1994, the SOLE issued an Order[16] directing the Foundation to comply with her September 14 and 21, 1994 directives. The dispositive portion of the order reads:

> WHEREFORE, premises considered, the San Juan de Dios Hospital, Inc. is strictly enjoined to fully and faithfully comply with the return-to-work Orders dated 14 and 21 September 1994. More specifically, the Hospital is ordered to accept back to work the employees who were scheduled to report for work on 31 August 1994 and belonging to the 2:00–10:00 and 3:00–11:00 p.m. shifts without any condition or qualification under the same terms prevailing prior to the strike.
>
> Sheriff Alfredo C. Antonio, this Department, is hereby directed to implement this Order without further delay. If necessary, he may seek the assistance of the Pasay City Philippine National Police which is hereby deputized to assist in the peaceful and orderly implementation of this Order.

The Foundation filed a petition with this Court assailing the October 5, 1994 Order of the SOLE. The petition was docketed as G.R. No. 117226. In the meantime, the Foundation allowed the payroll reinstatement of the twenty-seven (27) employees, effective only on October 10, 1994, subject to the outcome of its petition filed with this Court in G.R. No. 117226. The Union agreed with this arrangement.[17]

On March 27, 1995, the Court, issued a Resolution,[18] ruling that the SOLE did not act with grave abuse of discretion and affirmed her October 5, 1994 Order. The decretal portion of the resolution reads, *viz*:

> ACCORDINGLY, finding that the public respondent has not committed grave abuse of discretion in issuing the order dated October

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[16] *Rollo*, pp. 115-117.

[17] *Id*. at 119.

[18] *Id*. at 120-124.

5, 1994, the same is hereby AFFIRMED, and the instant petition for *certiorari* with prayer for the issuance of a restraining order is hereby DISMISSED.

However, the Court held that, by voluntarily reinstating the striking employees in the payroll after they were deemed to have lost their employment status, the Foundation can no longer rely on the ruling in *St. Scholastica's College v. Torres*,[19] where it was held that employees who refused to go to work after the issuance of a return-to-work order were deemed to have abandoned their employment. The Court also made it clear that the reinstatement of the affected employees was only to maintain the *status quo* until the final determination of the pivotal issues were submitted before the NLRC.[20]

In the meantime, the Foundation accepted the twenty-seven employees, subject to the resolution of its motion for reconsideration.[21] The Court denied the said motion on March 27, 1995. Nevertheless, the Foundation refused to give the twenty-seven employees the equivalent of their salaries for the period they were refused reinstatement. This prompted the employees, through the Union, to file a complaint against the Foundation before the NLRC, docketed as NLRC-NCR-00-09-06557-95.

On motion of the parties, NCMB-NCR-NS-08-397-94 (NLRC-NCR-CC-000089-94); NLRC-NCR-00-09-07117-94 and NLRC-NCR-09-06557-95 were consolidated.[22]

In its position paper, the Union alleged that the Foundation was guilty of (a) illegal dismissal of Union officers; (b) discrimination; and, (c) union-busting. It also alleged that its strike was legal and was conducted in a peaceful and orderly manner.

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[19] 210 SCRA 565 (1992).

[20] *Rollo*, pp. 122-123.

[21] *Id*. at 126.

[22] *Id*. at 170-171.

On February 9, 1999, the NLRC rendered a Decision, the dispositive portion of which is herein quoted:

> WHEREFORE, premises considered, this Commission rules as follows:
>
> (a) The Petition to declare the strike illegal is hereby granted, and the following officers of the union are deemed to have lost their employment status, to wit:
>
> | | | | |
> |---|---|---|---|
> | I. | Ma. Consuelo Maquiling | - | President |
> | II | Leonardo O. Martinez | - | Vice-President, External Affairs |
> | III | Andres Ayala | - | Vice-President, Internal Affairs |
> | IV | Virginia Arlante | - | Secretary |
> | V | Tita Inovio | - | Treasurer |
> | VI | Rogelio Belmonte | - | P.R.O. |
> | VII | Ma. Elena Garcia | - | P.R.O. |
>
> (b) The dismissal of Rodolfo Calucin [Jr.] is declared valid and all charges of the union of unfair labor practice are likewise dismissed for lack of merit;
>
> (c) The complaint for payment of the money claims of the 27 employees subject of the third captioned case is dismissed for lack of merit.[23]

The Commission held that the strike staged by the Union from August 26, 1994 to August 31, 1994 was, at its inception, legal and peaceful. However, the striking employees' defiance of the August 26, 1994 RTWO of the SOLE rendered the strike illegal. Consequently, under Article 264 (a) paragraph 2 of the Labor Code,[24] the officers and members of the Union who refused to return to work after the issuance of the certification/

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[23] *Id*. at 195-196.

[24] ART. 264. (a) . . .

> No strike or lockout shall be declared after assumption of jurisdiction by the President or Secretary or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout . . . .

RTWO were deemed to have lost their employment status. It was also held that considering that the Union members did not know the consequences of their refusal to return to work, only the ranking officers of the Union, *i.e.*, the president, vice-president, secretary, treasurer and PROs, should be deemed to have lost their employment status.

The NLRC dismissed the claim of unfair labor practice arising from the illegal dismissal of Rogelio Calucin, Jr. It ruled that Calucin, Jr.'s dismissal was based on his continued tardiness for the year 1992 to 1993, which affected his efficiency as reflected by his performance rating and, therefore, sanctioned by Article 282(b) of the Labor Code.

The NLRC found that the Union's claim of discrimination amounting to unfair labor practice was unsubstantiated, particularly on the following matters: a) the treatment in the tardiness of union and non-union members; b) the meal break of dietary personnel; c) the hazard pay of midwives; d) the dismissal of Cachuela; and, e) the forced resignation of Francisco Rellevo, Nestor Centeno, Nemia Abregoso and Grace Isidro from the Union. It also found the explanation of the Foundation meritorious. The Commission also ruled in favor of the Foundation on the Union's claim of the harsh enforcement of the Company Code of Discipline on Fe Calucin, Joan Balucos, Edgar Bas, Victor Estuya, the suspension of unmarried pregnant women, and the charge of violation of the CBA for failure to activate the grievance committee. However, the Commission found the Foundation's refusal to continue to sustain the recreational activities of the Union invalid.

As regards the Foundation's refusal to pay the money claims of the twenty-seven employees, the NLRC ruled that the same was sanctioned by law, considering that the aforesaid employees refused to return to work even after the SOLE already issued a RTWO effective August 31, 1994.[25]

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[25] *Id.* at 189-195.

The Union filed a motion for reconsideration from the said decision. The NLRC denied the motion on April 30, 1999.[26]

On June 18, 1999, the Union, represented by its president, Ma. Consuelo Maquiling, filed an Amended Notice of Strike[27] before the NCMB, docketed as NCMB-06-221-99, citing the following as grounds therefor: (a) bargaining deadlock on economic issues, arising from disagreements in wage increase, signing bonus, meal allowance, uniform allowance, hospital uniform, hazard pay, longevity pay, and retirement pay; (b) bargaining deadlock on non-economic issues arising from union shop; and, (c) unfair labor practice arising from discrimination and contracting out of jobs performed by union members.

Dissatisfied with the decision and resolution of the NLRC, the Union and its officers filed a petition for *certiorari* before the Court of Appeals on July 16, 1999, docketed as CA-G.R. SP No. 53768 alleging as follows:

I.

RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN RULING FOR THE VALIDITY OF SERVICE OF THE CERTIFICATION ORDER OF THE HONORABLE SECRETARY OF LABOR AND EMPLOYMENT DATED AUGUST 26, 1994.

II

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING PETITIONER-UNION'S STRIKE ILLEGAL WITH THE EXTREME SANCTION OF THE LOSS OF EMPLOYMENT OF THE FIVE (5) INDIVIDUAL PETITIONERS NAMED IN THE ABOVE-CAPTIONED CASE.

III.

RESPONDENT NLRC TOTALLY DISREGARDED THE LAW, GRAVELY ABUSED ITS DISCRETION AND ACTED CAPRICIOUSLY AND WITH MANIFEST PARTIALITY IN ADJUDGING THE TERMINATION OF PETITIONER CALUCIN [JR.] FROM EMPLOYMENT LEGAL.

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[26] *Id*. at 211-218.

[27] *Id*. at 297.

IV.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING ALL CHARGES OF PETITIONER-UNION OF UNFAIR LABOR PRACTICE AGAINST THE RESPONDENT FOUNDATION IN UTTER DISREGARD OF SUBSTANTIAL EVIDENCE ON RECORD.

V.

RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION OR ACTED IN EXCESS OF JURISDICTION IN DENYING THE MONEY CLAIMS OF THE TWENTY-SEVEN (27) STRIKING EMPLOYEE-UNION MEMBERS FOR PAYMENT OF THEIR WITHHELD SALARIES FOR THE PERIODS SEPTEMBER 2, 1994 OCTOBER 9, 1994 AND APRIL 6, 1995 JUNE 30, 1995.[28]

The Court of Appeals issued a Resolution directing the respondents to file their Comment on the Petition.

In the meantime, the Foundation and the Union executed a new CBA. Among the conditions for its approval was that the termination of the Union officers as adjudged by the NLRC would not be enforced. However, the Foundation reneged on this agreement and terminated the services of the Union officers immediately after the new CBA was signed and approved on August 12, 1999.[29]

On November 25, 1999, the CA rendered a Decision in CA-G.R. SP No. 53768, partially granting the petition, in that the money claims of the twenty-seven employees were granted. The decretal portion of the decision reads:

WHEREFORE, FOREGOING PREMISES CONSIDERED, this petition is **partially granted** and the assailed Decision released on February 9, 1994 and the Order promulgated on April 30, 1994 are hereby **MODIFIED** in the sense that the complaint for the payment of the money claims of the 27 employees are *granted* and private respondent is hereby ordered to pay the money claims of the twenty-

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[28] *Id*. at 61.

[29] The new CBA covered the period from February 20, 1996 up to February 19, 2001.

seven (27) employees for the period covering September 2, 1994 to October 9, 1994 and April 6, 1995 to June 30, 1995 while the rest of the assailed decision is **affirmed** in all other respects. No pronouncement as to cost.[30]

The CA held that there was a valid service of the August 26, 1994 RTWO of the SOLE on the petitioners and their counsel, Atty. Alfredo Bentulan, as gleaned from the report of Sheriff Alfredo C. Antonio. It also ruled that for the Union officers' and members' failure to return to work as ordered, the strike was rendered illegal. Consequently, the said union officers and members were deemed to have lost their employment status.

The CA ruled that the petitioners failed to prove the allegation of unfair labor practice ascribed to the Foundation. It also declared that the evidence on record shows that Calucin, Jr. was dismissed for gross and habitual neglect of duties for his continued tardiness and inefficiency.

However, the appellate court ruled that the August 30, 1994 Letter of the petitioner, Ma. Consuelo Maquiling requesting that the 2:00-10:00 p.m. and 3:00-11:00 p.m. shifts be made to report on September 1, 1994 was justified; hence, the refusal of the respondent Foundation to pay the money claims of the twenty-seven employees was unjust and unfair.

Dissatisfied, the petitioners filed a motion for reconsideration of the decision of the CA. For its part, the respondent Foundation filed a partial motion for reconsideration of the decision, on the grant of the money claims of the twenty-seven employees. On May 11, 2000, the appellate court resolved to deny both motions.[31]

The Issues

On June 23, 2000, the petitioners filed a Petition for Review on *certiorari* under Rule 45 of the Rules of Civil Procedure assailing the decision and resolution of the CA, on the following grounds:

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[30] *Id*. at 334.

[31] *Id*. at 357-358.

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THERE WAS AN EFFECTIVE AND VALID SERVICE OF THE AUGUST 26, 1994 CERTIFICATION ORDER OF THE SECRETARY OF LABOR AND EMPLOYMENT;

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING PETITIONER-UNION['S] STRIKE ILLEGAL WITH THE SUPREME PENALTY OF THE LOSS OF EMPLOYMENT STATUS OF THE SIX (6) INDIVIDUAL PETITIONERS WHICH WAS TAINTED WITH BAD FAITH OR MALICE COMMITTED BY THE RESPONDENT FOUNDATION;

III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE CHARGES OF UNFAIR LABOR PRACTICE AGAINST THE RESPONDENT FOUNDATION IN THE PRESENCE OF SUBSTANTIAL EVIDENCE ON THE SAID CHARGES ON RECORD;

IV

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT UNLAWFUL DISCRIMINATION TAINTED PETITIONER CALUCIN'S TERMINATION FROM EMPLOYMENT.[32]

The issues for resolution are the following: (a) whether or not the petitioners were validly served with copies of the return to work order of the Secretary of the Department of Labor and Employment; (b) whether or not the strike staged by the officers and members of the Union was illegal; (c) whether the petitioner Union's officers were legally dismissed; and, (d) whether or not the respondent Foundation committed an unfair labor practice when it terminated the employment of petitioner Calucin, Jr.

The Court's Ruling

The petition is bereft of merit.

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[32] *Id.* at 24-25.

At the outset, we must stress that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions.[33] Questions of fact are not entertained.[34] After all, this Court is not a trier of facts and, in labor cases, this doctrine applies with greater force. Factual questions are for labor tribunals to resolve.[35] The findings of fact of quasi-judicial bodies like the NLRC, are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[36]

Even then, we have meticulously reviewed the records and find no reversible error committed by the Court of Appeals on the merits of the petition.

On the first, second, and third issues, the petitioners assert that the respondent Foundation failed to prove that the petitioners and their counsel were served with copies of the August 26, 1994 Return-to-Work Order issued by the Secretary of Labor and Employment and that, consequently, they could not have defied the same. Hence, they insist they were illegally dismissed by the respondent Foundation.

We do not agree. The return of Sheriff Alfredo C. Antonio irrefragably shows that copies of the Order were served on the striking employees and the petitioners. As gleaned from the Sheriff's Return, *viz*:

On 26 August 1994, the undersigned served copies of the Order issued in the above captioned case to both parties. The Hospital thru Counsel received a copy of the Order on 26 August 1994. On

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[33] *Producers Bank of the Phils. v. Court of Appeals*, 397 SCRA 651 (2003).

[34] *Alfaro v. Court of Appeals*, 363 SCRA 799 (2001).

[35] *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade,* 396 SCRA 518 (2003).

[36] *Shoppes Manila, Inc. v. The Hon. National Labor Relations Commission,* G.R. No. 147125, January 14, 2004.

the other hand, the striking employees of the Hospital refused to acknowledge receipt of the copies of the said Order necessitating the distribution of the same to the striking workers at the picket line.[37]

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A copy of the Order was served to Consuelo Maquiling at exactly 7:55 p.m. of 26 August 1994 but refused to receive officially. However, eight (8) copies of the Order was (sic) distributed by the undersigned to the officers and members of the striking workers.[38]

A copy of the order was also served on the petitioners' counsel, Atty. Alfredo Bentulan, but the latter refused to receive the same. This can be gleaned from the following notation made by the sheriff:

Served at his office at 11:05 a.m. of 27 August 1994 but his staff refused to receive the Order. A copy of the order was left by the undersigned to his staff.[39]

It bears stressing that the sheriff's report is an official statement by him of his acts under the writs and processes issued by the court in obedience to its directive and in conformity with law.[40] In the absence of contrary evidence, a presumption exists that a sheriff has regularly performed his official duty.[41] To controvert the presumption arising therefrom, there must be clear and convincing evidence.[42] In this case, the petitioners failed to adduce clear and convincing evidence to overcome the presumption. The bare denial by the petitioners of receiving copies of the order will not suffice.

The petitioners' bare denial is even belied by their admission in their position paper before the NLRC and their motion for reconsideration of the decision of the NLRC, that while the

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[37] *Rollo*, p. 26.

[38] *Id*. at 213.

[39] *Id*.

[40] *Sy v. Yerro,* 253 SCRA 340 (1996).

[41] *Navale v. Court of Appeals*, 253 SCRA 705 (1996).

[42] *Umandap v. Sabio, Jr.,* 339 SCRA 243 (2000).

sheriff served copies of the order on them, they refused to receive the same because they thought it was a "fake order." In such case, it behooved the petitioners to verify its validity from the Office of the Secretary of Labor and Employment. They failed to do so. The petitioners cannot, thus, feign ignorance of the said order.

Despite the receipt of an order from then SOLE to return to their respective jobs, the Union officers and members refused to do so and defied the same. Consequently, then, the strike staged by the Union is a prohibited activity under Article 264 of the Labor Code. Hence, the dismissal of its officers is in order.[43] The respondent Foundation was, thus, justified in terminating the employment of the petitioner Union's officers.

On the last issue, the petitioners failed to prove their claim that the respondent Foundation committed unfair labor practices and discrimination of its employees. We agree with the following discerning findings and encompassing disquisitions of the Court of Appeals on this issue:

> However, the records of this case do not show any hint that Calucin's [Jr.'s] dismissal is due to his trade union activities. On the other hand, per findings of the public respondent, the Foundation was able to support with documents how Calucin [Jr.] declared himself irrelevant in the Foundation through his tardiness and shallow excuses such as fetching the water, cooking breakfast, seeing to it that his kids took breakfast before going to school, preparing packed lunch for himself and even the diversions from the usual route of jeepneys that he rode in on these days that he was absent are all lame excuses that amount to lack of interest in his work. His lackluster work attitude reached his highest point when he filed for a leave of absence of three months to join his brother's business venture. Furthermore, it is not true that his attendance improved in 1993 because the records show that in 1993, his tardiness worsened to the point that his repeated tardiness went beyond the maximum contemplated in the Foundation's Code of Discipline.

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[43] *Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel Restaurant and Allied Industrial (GLOWHRAIN); Grand Boulevard Hotel v. Edna B. Dacanay,* G.R. Nos. 153664-65, July 18, 2003.

For the foregoing reasons, Calucin, Jr.'s dismissal is valid. (*Meralco Workers' Union vs. Meralco*, G.R. No. L-11896, May 29, 1959; *Laguna Transportation Employees' Union versus Laguna Transport Co., Inc.*, G.R. No. L-23266, April 25, 1968; *Cando v. NLRC,* G.R. [No.] 91344, September 14, 1990).

The rest of the charges on discrimination amounting to unfair labor practice acts specifically those affecting the alleged tardiness of Edith Unlao, the meal breaks of the dietary personnel, hazard pay for midwives, the salary of Carmen Herrera including hiring through agency, the resignation of Cachuela, Francisco Rellevo, Nestor Centeno, Nemia Abregoso and Grace Isidro are all dismissed on the ground that the explanation of the Foundation per records of this case were found to be meritorious.

The same holds true as regard the charges of unfair labor practice through alleged harsh enforcement of the Code of Discipline, affecting Fe Calucin, Joan Balucos, Edgar Bas, Victor Estuya and the suspension of unmarried pregnant women; including the alleged violation of CBA provisions such as paying employees through BPI, refusal to activate grievance committee and failure to maintain recreational activities.

The Foundation was able to explain and exculpate itself from the charges of unfair labor practice and discrimination as shown in their written replies to these charges which are all in the records of this case. Consequently, all the charges of unfair labor practice acts are dismissed.

Thus, in the case of *Castillo vs. NLRC, et al.,* L-104319, June 17, 1999, the Supreme Court ruled:

> "As earlier pointed out, findings of the NLRC are practically conclusive on this Court. It is only when the NLRC's findings are bereft of any substantial support from the records that the Court may step in and proceed to make its own independent evaluation of the facts. The Court has found none."[44]

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 53768 is *AFFIRMED*. Costs against the petitioners.

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[44] *Rollo*, pp. 331-332.

SO ORDERED.

Quisumbing, Austria-Martinez, and *Tinga, JJ*., concur.

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

THIRD DIVISION

[G.R. No. 144576. May 28, 2004]

SPOUSES ISABELO and ERLINDA PAYONGAYONG, *petitioners, vs.* **HON. COURT OF APPEALS, SPOUSES CLEMENTE and ROSALIA SALVADOR,** *respondents*.

SYNOPSIS

Petitioners herein filed a complaint against Eduardo Mendoza and his wife Sally. They alleged that the spouses Mendoza maliciously sold for the second time to the respondents a parcel of land which was previously sold to them and that the respondents acted in bad faith in acquiring it, the latter having had knowledge of the existence of the Deed of Absolute Sale with assumption of mortgage between the petitioners and Mendoza. Since the spouses Mendoza could not be located, the petitioners decided to drop the case against them but pursued the case against the respondents. The trial court decided in favor of the respondents. Dissatisfied, petitioners appealed the decision to the Court of Appeals, which affirmed the trial court's decision. Their motion for reconsideration having been denied, petitioners filed this petition for review on *certiorari* before the Supreme Court.

The Supreme Court denied the petition. The Court was not unmindful that petitioners and respondents were forced to litigate due to the deceitful acts of the spouses Mendoza, however, it cannot be denied that the petitioners' failure to register the sale in their favor made it possible for the Mendozas to sell

the same property to respondents. Under the circumstances, the Court cannot come to the petitioner's succor at the expense of respondents who were innocent purchasers in good faith. Petitioners are not without remedy, however. They may bring an action for damages against spouses Mendoza.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; PLEADINGS; MODE OF FILING AND SERVICE OTHER THAN PERSONAL; PARTY CONCERNED IS REQUIRED TO PROVIDE EXPLANATION WHY SERVICE OR FILINGWAS NOT DONE PERSONALLY.—** Under Section 11, Rule 13 of the Revised Rules of Court, service and filing of pleadings and other papers must, whenever practicable, be done personally. If they are made through other modes, the party concerned must provide a written explanation why the service or filing was not done personally. If only to underscore the mandatory nature of this innovation to the set of adjective rules requiring personal service whenever practicable, the provision gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. Strictest compliance is mandated, lest this provision be rendered meaningless and its sound purpose negated.

2. **CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; MAY BE RELIED UPON BY PERSONS DEALING WITH REGISTERED LAND; RATIONALE.—** It is a well-established principle that a person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. He is charged with notice only of such burdens and claims as are annotated on the title. He is considered in law as an innocent purchaser for value or one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim of another person. Where innocent third persons rely upon the correctness of a certificate of title and acquire rights over the property, the court cannot just disregard such rights.

Otherwise, public confidence in the certificate of title, and ultimately, the Torrens System, would be impaired. For everyone dealing with registed property would still have to inquire at every instance whether the title has been regularly or irregularly issued.

3. ID.; SALES; DOUBLE SALE OF IMMOVABLE PROPERTY; WHEN OWNERSHIP TRANSFERRED.— There being double sale of an immovable property, as Article 1544 of the Civil Code instructs, ownership shall be transferred (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith.

4. ID.; ID.; REMEDY OF INNOCENT PURCHASERS IN GOOD FAITH.— Petitioners' failure to register the sale in their favor made it possible for the Mendozas to sell the same property to respondents. Under the circumstance, this Court cannot come to petitioners' succor at the expense of respondents-innocent purchasers in good faith. Petiitoners are not without remedy, however. They may bring an action for damages against the spouses Mendoza.

5. ID.; CONTRACTS; WHEN SIMULATED; REQUISITES.— Simulation occurs when an apparent contract is a declaration of a fictitious will, deliberately made by agreement of the parties, in order to produce, for the purpose of deception, the appearance of a juridical act which does not exist or is different from that which was really executed. Its requisites are: a) an outward declaration of will different from the will of the parties; b) the false appearance must have been intended by mutual agreement; and c) the purpose is to deceive third persons. The basic characteristic then of a simulated contract is that it is not really desired or intended to produce legal effects or does not in any way alter the juridical situation of the parties.

APPEARANCES OF COUNSEL

Camilo R. Murillo for petitioners.
Rivera & Rivera Law Offices for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Being assailed by petition for review on *certiorari* under Rule 45 of the Rules of Court[1] is the June 29, 2000 Decision[2] of the Court of Appeals in CA-G.R. CV No. 52917 affirming that of the Regional Trial Court (RTC), Branch 217, Quezon City dismissing Civil Case No. Q-93-16891,[3] the complaint of spouses Isabelo and Erlinda Payongayong (petitioners) against spouses Clemente and Rosalia Salvador (respondents).

Eduardo Mendoza (Mendoza) was the registered owner of a two hundred square meter parcel of land situated in Barrio San Bartolome, Caloocan, covered by and described in Transfer Certificate of Title No. 329509[4] of the Registry of Deeds of Quezon City.

On April 18, 1985, Mendoza mortgaged the parcel of land to the Meralco Employees Savings and Loan Association (MESALA) to secure a loan in the amount of ₱81,700.00. The mortgage was duly annotated on the title as Primary Entry No. 2872[5] on April 23, 1985.

On July 11, 1987, Mendoza executed a Deed of Sale with Assumption of Mortgage[6] over the parcel of land together with all the improvements thereon (hereinafter referred to as the

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[1] At the outset, this Court notes the petitioners' error in impleading the Court of Appeals as party respondent. The only parties in an appeal by *certiorari* under Rule 45 of the Rules of Court are the appellant as petitioner and the appellee as respondent. The court which rendered the judgment appealed from is not a party in said appeal. It is in the special civil action of *certiorari* under Rule 65 where the court or judge is required to be joined as party defendant or respondent.

[2] *Rollo* at 24-28.

[3] CA *Rollo* at 33-39.

[4] Exhibit "3", Records at 227-228.

[5] Exhibit "3-D", Records at 227-A.

[6] Exhibit "A", Records at 6-7.

property) in favor of petitioners in consideration of ₱50,000.00. It is stated in the deed that petitioners bound themselves to assume payment of the balance of the mortgage indebtedness of Mendoza to MESALA.[7]

On December 7, 1987, Mendoza, without the knowledge of petitioners, mortgaged the same property to MESALA to secure a loan in the amount of ₱758,000.00. On even date, the second mortgage was duly annotated as Primary Entry No. 8697[8] on Mendoza's title.

On November 28, 1991, Mendoza executed a Deed of Absolute Sale[9] over still the same property in favor of respondents in consideration of ₱50,000.00. The sale was duly annotated as Primary Entry No. 1005[10] on Mendoza's title. On even date, MESALA issued a Cancellation of Mortgage[11] acknowledging that for sufficient and valuable consideration which it received from Mendoza, it was cancelling and releasing the real estate mortgage over the property. The cancellation was annotated as Primary Entry No. 1003[12] on Mendoza's title.

Respondents caused the cancellation of Mendoza's title and the issuance of Transfer Certificate Title No. 67432[13] in their name.

Getting wind of the sale of the property to respondents, petitioners filed on July 16, 1993 a complaint[14] for annulment of deed of absolute sale and transfer certificate of title with recovery of possession and damages against Mendoza, his wife Sally Mendoza, and respondents before the Quezon City RTC.

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[7] *Id.* at 6.

[8] Exhibit "3-C", Records at 228.

[9] Exhibit "1", Records at 224-225.

[10] Exhibit "3", Records at 228.

[11] Exhibit "2", Records at 226.

[12] Exhibit "3", Records at 228.

[13] Exhibit "G", Records at 200-201.

[14] Records at 1-9.

In their complaint, petitioners alleged that the spouses Mendoza maliciously sold to respondents the property which was priorly sold to them and that respondents acted in bad faith in acquiring it, the latter having had knowledge of the existence of the Deed of Absolute Sale with Assumption of Mortgage between them (petitioners) and Mendoza.

Branch 217 of the Quezon City RTC, by Order[15] of December 3, 1993, archived the case in view of the failure to determine the whereabouts of the spouses Mendoza.

A motion[16] for the revival of the case as against respondents and its dismissal as against the spouses Mendoza was later filed on December 17, 1993 by petitioners, which motion was granted by the trial court by Order[17] of December 27, 1993.

By Decision of February 5, 1996, the trial court found for respondents.

Dissatisfied, petitioners appealed the decision to the Court of Appeals (CA) which, as stated early on, affirmed the same.

Petitioners' Motion for Reconsideration[18] having been denied by the CA by Resolution of August 25, 2000,[19] the petition at bar was lodged.

Petitioners assign to the CA the following errors:[20]

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING IN (*sic*) EXCESS OF

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[15] *Id*. at 59.

[16] *Id*. at 60.

[17] *Id*. at 63.

[18] CA *Rollo* at 95-96.

[19] *Id*. at 113.

[20] This Court notes that while petitioners inappropriately allege grave abuse of discretion amounting to excess of jurisdiction in the assignment of errors, the body of the petition does in fact raise errors of judgment which are proper under Rule 45 of the Rules of Court.

JURISDICTION WHEN IT FAILED TO RULE THAT THE DEED OF SALE EXECUTED BY EDUARDO MENDOZA IN FAVOR OF PRIVATE RESPONDENTS WAS SIMULATED AND THEREFORE NULL AND VOID.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING IN (*sic*) EXCESS OF JURISDICTION WHEN IT GAVE CREDENCE TO THE THEORY OF THE PRIVATE RESPONDENTS THUS FOUND TO BE INNOCENT PURCHASERS FOR VALUE.

III

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING IN (*sic*) EXCESS OF ITS JURISDICTION BY HOLDING THAT PETITIONERS ARE BARRED BY LACHES.[21]

On procedural and substantive grounds, the petition fails.

The petition which was filed by registered mail was not accompanied by a written explanation why such service was not done personally, in contravention of Section 11, Rule 13 of the Revised Rules of Court which provides:

> SEC. 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.

Under the above-quoted provision, service and filing of pleadings and other papers must, whenever practicable, be done personally.

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[21] *Rollo* at 12.

[22] *MC Engineering, Inc. v. National Labor Relations Commission*, 360 SCRA 183, 191 (2001) (citation omitted), *Solar Team Entertainment, Inc. v. Ricafort*, 293 SCRA 661, 668 (1998).

[23] *Solar Team Entertainment, Inc. v. Ricafort,* 293 SCRA 661, 669-670 (1998).

If they are made through other modes, the party concerned must provide a written explanation why the service or filing was not done personally. If only to underscore the mandatory nature of this innovation to the set of adjective rules requiring personal service whenever practicable, the provision gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place.[22] Strictest compliance is mandated, lest this provision be rendered meaningless and its sound purpose negated.[23]

On the merits, respondents' claim that they are entitled to the protection accorded to purchasers in good faith is well-taken.

It is a well-established principle that a person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[24] He is charged with notice only of such burdens and claims as are annotated on the title.[25] He is considered in law as an innocent purchaser for value or one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim of another person.[26]

That petitioners did not cause the cancellation of the certificate of title of Mendoza and procure one in their names is not disputed. Nor that they had their claims annotated on the same title. Thus,

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[24] *Chu, Sr. v. Benelda Estate Development Corporation*, 353 SCRA 424, 430 (2001) (citation omitted), *AFP Mutual Benefit Association, Inc. v. Court of Appeals*, 327 SCRA 203, 218 (2000) (citation omitted), *Cruz v. Court of Appeals*, 281 SCRA 491, 496 (1997) (citation omitted).

[25] *Legarda v. Court of Appeals*, 280 SCRA 642, 655 (1997) (citations omitted).

[26] *Hemedes v. Court of Appeals*, 316 SCRA 347, 371 (1999) (citation omitted), *Republic v. Court of Appeals*, 306 SCRA 81, 87 (1999) (citation omitted).

at the time of the sale of the property to respondents on November 28, 1991, only the mortgages in favor of MESALA appeared on the annotations of encumbrances on Mendoza's title. Respondent Rosalia Salvador (Rosalia) so testified:

Q: Now, according to you, you bought this property from the Mendoza's (sic), Eduardo and Sally Mendoza on November 28, 1991, is that correct?
A: Yes, sir.

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Q: Now, Mrs. Sally Salvador, what did you do after buying the property from the Mendoza's (*sic*)?
A: We renovated it, we constructed a concrete fence, sir.

Q: When you bought the property, is this property encumbered or mortgaged?
A: The property was mortgaged to Meralco Savings and Loan Association, sir.

xxx xxx xxx

Q: And what did you do before buying the property?
A: I verified with the City Hall if they are real owners of the property.

xxx xxx xxx

Q: When you bought the property, mortgaged to Meralco, was this particular property titled in the name of Eduardo Mendoza?
A: Yes, sir.

xxx xxx xxx

Q: When you bought the property, Mrs. Sally Salvador, is this covered by any real property tax in the name of Eduardo Mendoza?
A: In the name of Eduardo Mendoza the one given to me, sir.

xxx xxx xxx

Q: Now, Mrs. Sally Salvador, when for the first time did you see Mr. Payongayong?
A: On the third call of Honorable Judge Enriquez, sir.

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Q: Is it not a fact that before you bought that property, you made an ocular inspection of the premises, is that correct?
A: Yes, sir.

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Q: And after you have inspected the premises in question, is it not a fact that you went to the Register of Deeds, is that correct?
A: Yes, sir. Together with Sally Mendoza and the agent.

xxx xxx xxx

Q: So, you went to the Office of the Register of Deeds of Quezon City, you, together with Benny Salvador and Mrs. Mendoza?
A: Yes, sir.

Q: What did you find out from your verification as to the authenticity of the title?
A: That she is the real owner of the property registered in the Register of Deeds.

Q: Who is the owner?
A: Mr. and Mrs. Eduardo Mendoza.

Q: Did you try to see if the property is free from any lien or encumbrance?
A: Before we went to the Register of Deeds, she told us that the property is mortgaged at (*sic*) Meralco, sir.

Q: Did you check it up, were you given a Xerox copy of the TCT, Transfer Certificate of Title No. 329509, in addition to the information given to you that the property in question is mortgaged in favor of Meralco Employees Savings?
A: Yes, sir.

Q: And when you went to the Register of Deeds, you saw that the mortgage in favor of the Meralco Employees Savings and Loan Association was duly annotated on the title which is being kept and intact in the Office of the Register of Deeds, is that correct?
A: Yes, sir.[27]

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[27] TSN, June 15, 1995 at 8-33, TSN, October 5, 1995 at 3-10.

Where innocent third persons rely upon the correctness of a certificate of title and acquire rights over the property, the court cannot just disregard such rights. Otherwise, public confidence in the certificate of title, and ultimately, the Torrens system, would be impaired, for everyone dealing with registered property would still have to inquire at every instance whether the title has been regularly or irregularly issued.[28]

> The real purpose of the Torrens system of registration is to quiet title to land and to put a stop to any question of legality of the title except to claims which have been recorded in the certificate of title at the time of registration or which may arise subsequent thereto. Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate. Hence, a purchaser is not required to explore further what the Torrens title on its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto.[29]

In respondents' case, they did not only rely upon Mendoza's title. Rosalia personally inspected the property and verified with the Registry of Deeds of Quezon City if Mendoza was indeed the registered owner. Given this factual backdrop, respondents did indeed purchase the property in good faith and accordingly acquired valid and indefeasible title thereto.

The law is thus in respondents' favor. Article 1544 of the Civil Code so provides:

> Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

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[28] *Hemedes v. Court of Appeals*, 316 SCRA 347, 373 (1999) (citation omitted).

[29] *Cruz v. Court of Appeals*, 281 SCRA 491, 495-496 (1997) (citations omitted).

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

There being double sale of an immovable property, as the above-quoted provision instructs, ownership shall be transferred (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith.[30]

The trial and appellate courts thus correctly accorded preferential rights to respondents who had the sale registered in their favor.

Petitioners claim, however, that the sale between Mendoza and respondents was simulated.

Simulation occurs when an apparent contract is a declaration of a fictitious will, deliberately made by agreement of the parties, in order to produce, for the purpose of deception, the appearance of a juridical act which does not exist or is different from that which was really executed. [31] Its requisites are: a) an outward declaration of will different from the will of the parties; b) the false appearance must have been intended by mutual agreement; and c) the purpose is to deceive third persons.[32]

The basic characteristic then of a simulated contract is that it is not really desired or intended to produce legal effects or does not in any way alter the juridical situation of the parties.[33]

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[30] *Balatbat v. Court of Appeals*, 261 SCRA 128, 141 (1996) (citation omitted).

[31] *Villaflor v. Court of Appeals*, 280 SCRA 297, 337 (1997) (citation omitted).

[32] *Peñalosa v. Santos*, 363 SCRA 545, 556 (2001) (citation omitted), *Loyola v. Court of Appeals*, 326 SCRA 285, 294 (2000) (citation omitted).

[33] *Loyola v. Court of Appeals*, 326 SCRA 285, 293 (2000), *Tongoy v. Court of Appeals*, 123 SCRA 99, 118 (1983), *Rodriguez v. Rodriguez*, 20 SCRA 908, 914 (1967).

The cancellation of Mendoza's certificate of title over the property and the procurement of one in its stead in the name of respondents, which acts were directed towards the fulfillment of the purpose of the contract, unmistakably show the parties' intention to give effect to their agreement. The claim of simulation does not thus lie.

That petitioners and respondents were forced to litigate due to the deceitful acts of the spouses Mendoza, this Court is not unmindful. It cannot be denied, however, that petitioners' failure to register the sale in their favor made it possible for the Mendozas to sell the same property to respondents.

Under the circumstances, this Court cannot come to petitioners' succor at the expense of respondents-innocent purchasers in good faith. Petitioners are not without remedy, however. They may bring an action for damages against the spouses Mendoza.[34]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Vitug (Chairman)*, Sandoval-Gutierrez,* and *Corona, JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 145233-52. May 28, 2004]

HENRY EDQUIBAN BARRERA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES (JOSEPHINE ELAMPARO, JOSELYN EDUCALANE, EDNA BAGASINA, MILA**

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[34] *Pino v. Court of Appeals,* 198 SCRA 434, 446 (1991), *Ching v. Court of Appeals,* 181 SCRA 9, 17 (1990) (citation omitted), *Gonzales v. Intermediate Appellate Court,* 157 SCRA 587, 600 (1988) (citation omitted).

SABERON, MICHELLE PALMA, CORAZON CANSAS, OSCAR LOPEZ, LUZ ECLARINO, NORA ELAMPARO, LERMA ESPINOSA, EDUARDO SISON, ERMELINDA ABELLA, LOURDES JACQUIAS, JOHN ESPINOSA, JEAN BASA and LINA HEBRON), *respondents*.

SYNOPSIS

Petitioner herein, as municipal mayor, was indicted before the Sandiganbayan for violation of Section 3(e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act) under twenty informations. An administrative case was also filed against him before the Office of the Ombudsman, which recommended for his suspension from office without pay for six months for abuse of authority. He appealed the decision with the Court of Appeals. With respect to the criminal cases, the Sandiganbayan ordered his preventive suspension for ninety days. His motion for reconsideration was denied. Upon receipt of the memorandum for the implementation of his preventive suspension, petitioner filed this petition for review before the Supreme Court.

According to the Court, the determination in this case of whether the preventive suspension under Rule 3019 is mandatory and automatic would not have any practical effect in this case for being moot and academic. The petitioner already started serving his preventive suspension, however, the Sandiganbayan later dismissed all the criminal cases filed against him on the ground that the elements of the offense were not established beyond reasonable doubt. The petition was denied.

SYLLABUS

CRIMINAL LAW; R.A. NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT), AS AMENDED; SECTION 13 THEREOF UNEQUIVOCALLY PROVIDES THAT THE ACCUSED PUBLIC OFFICIAL SHALL BE SUSPENDED FROM OFFICE WHILE CRIMINAL PROSECUTION IS PENDING IN COURT.— It has been long settled, however, and it bears reiteration that Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public official "*shall* be suspended

from office" while the criminal prosecution is pending in court. The rule on the matter is specific and categorical, leaving no room for interpretation. There are no ifs and buts about it. The court has neither the discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office.

APPEARANCES OF COUNSEL

Abello Concepcion Regala and Cruz for petitioner.
Apolinar C. Barrios for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Henry Barrera (petitioner), the Mayor of the Municipality of Candelaria, Zambales for the period from June 1998 to 2001, was re-elected[1] to the same office for the period from June 2001-2004.

On January 4, 2000,[2] he was indicted before the Sandiganbayan for violation of Section 3(e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act) under twenty (20) informations which, except as to the name of the complainant, uniformly read as follows:

That on or about 30 June 1998, or sometime prior or subsequent thereto, in Candelaria, province of Zambales Philippines, and within the jurisdiction of this Honorable Court, accused HENRY E. BARRERA, SANTOS EDQUIBAN and RUFINA E. ESCALA, all public officers, then being the Municipal Mayor, Market Collector and District Supervisor, respectively, all of Candelaria, Province of Zambales, committing the penal offenses herein charged against them while in the performance of, in relation to, and taking advantage of their official functions and duties as such, thru manifest partiality and/or evident bad faith, did then and there, willfully, unlawfully

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[1] Records of the Sandiganbayan, Vol. III at 113.

[2] Records of the Sandiganbayan, Vol. I at 349.

and criminally, in conspiracy with one another, prevent ERMILINDA ABELLA, a legitimate lessee-stallholder from exercising his/*her* contractual and/or proprietary rights to transfer to, occupy and/or operate his/*her* assigned stall at the public market of Candelaria, Province of Zambales, under the subsisting lease contract dated 25 June 1998, without any valid or justifiable reason whatsoever, by means of the issuance and implementation of patently unlawful Memorandum No. 1 dated 30 June 1998; thereby causing undue injury to ERMILINDA ABELLA.[3]

On recommendation[4] of the Ombudsman Prosecutor, which was approved by the Ombudsman, petitioner's co-accused Rufina E. Escala and Santos Edquipan were dropped from the informations, by Order[5] dated August 8, 2000, leaving petitioner as the only accused.

Aside from the criminal cases, an administrative case was also filed against petitioner before the Office of the Ombudsman which, by Decision[6] of February 28, 2000, recommended that he be faulted for abuse of authority and penalized with suspension from office without pay for six (6) months. From the decision, petitioner filed a motion for reconsideration which was later to be denied by Order[7] of August 22, 2000.

Petitioner thus filed a petition for review of the Ombudsman decision in the administrative case with the Court of Appeals which denied the same by Decision[8] of February 7, 2002, a motion for reconsideration[9] which does not appear to have been resolved.

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[3] *Id*. at 1.

[4] Records of the Sandiganbayan, Vol. I at 127-135.

[5] Records of the Sandiganbayan, Vol. II at 97.

[6] *Rollo* at 168-175.

[7] *Id*. at 176-177.

[8] Records of the Sandiganbayan, Vol. III at 81-89.

[9] *Id*. at 113-136.

With respect to the criminal cases, the Sandiganbayan, by Resolution[10] promulgated on June 28, 2000, ordered petitioner's preventive suspension for ninety (90) days. Petitioner moved to reconsider the resolution which was denied, however, by Resolution[11] of September 11, 2000.

Petitioner received on October 3, 2000, a copy of the Resolution[12] of the Sandiganbayan denying his motion for reconsideration of the order for his preventive suspension in the criminal cases. And he received on October 30, 2000 a memorandum[13] from then Secretary Alfredo S. Lim of the Department of Interior and Local Government implementing the suspension order.

Hence, the present petition for review on *certiorari*, the sole issue of which is whether the Sandiganbayan erred in placing petitioner under preventive suspension for a period not exceeding ninety (90) days.

Petitioner admits in his memorandum filed before this Court that upon his receipt of the resolution directing his preventive suspension, he *started serving the same*.[14] The issue has thus been rendered moot and academic.[15] Besides, the Sandiganbayan, by Decision[16] of May 6, 2002, dismissed Criminal Case Nos. 25035-37, 25039-41, 25043, 25045-47, 25049-50 and 25053-54 on the ground that the elements of the offense under Section 3(e) of R.A. 3019 were not established beyond reasonable doubt, as it did Criminal Case Nos. 25038, 25042, 25044, 25048, 25052 and 25052 by Order[17] of August 14, 2001.

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[10] *Rollo* at 45-49.

[11] *Id*. at 50.

[12] *Id*. at 50.

[13] *Id*. at 187.

[14] *Rollo* at 532.

[15] *Ganzon v. Court of Appeals*, 203 SCRA 399, 410 (1991).

[16] Records of the Sandiganbayan, Vol. III at 160-172.

[17] Records of the Sandiganbayan, Vol. II at 274.

At this juncture then, a determination of whether the preventive suspension under Section 13 of Rule 3019 is mandatory and automatic would not have any practical effect on the existing controversy.

En passant, if the administrative case filed against petitioner has been terminated also in his favor, he may invoke Section 13 of R.A. No. 3019 which provides:

> SEC. 13. *Suspension and loss of benefits*. — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but *if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension,* **unless in the meantime administrative proceedings have been filed against him**.
>
> In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the government. (Emphasis and italics supplied)

Mootness of the suspension order aside, the petition just the same would have failed.

It is petitioner's contention that Section 13, R.A. 3019 should not be taken in isolation but should be viewed in light of the rationale behind the suspension, the purpose being to prevent the officer or employee from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with the records which may be vital in the prosecution of the case against him. And, so petitioner maintains, since the prosecution failed to prove, if not substantially allege that he is abusing the prerogatives of the office, intimidating possible witnesses and/or tampering with documentary evidence during the pendency of the cases against him, the suspension order should not have been issued.

It has been long settled, however, and it bears reiteration that Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public official "*shall* be suspended from office" while the criminal prosecution is pending in court.[18] The rule on the matter is specific and categorical, leaving no room for interpretation.[19] There are no ifs and buts about it.[20] The court has neither the discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. *Bolastig v. Sandiganbayan*[21] so teaches.

WHEREFORE, the instant petition is hereby *DENIED*.

SO ORDERED.

Vitug, (*Acting C.J.*)*, Sandoval-Gutierrez,* and *Corona, JJ.*, concur.

SECOND DIVISION

[G.R. No. 145469. May 28, 2004]

COTABATO TIMBERLAND CO., INC., *petitioner, vs.* **C. ALCANTARA AND SONS, INC. and SEVEN BROTHERS SHIPPING CORPORATION**, *respondents*.

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[18] *Bunye v. Escareal*, 226 SCRA 332 (1993) at 336.

[19] *Socrates v. Sandiganbayan*, 253 SCRA 773, 796 (1996).

[20] *Ibid*.

[21] 235 SCRA 103, 108 (1994).

SYNOPSIS

Petitioner herein and respondent C. Alcantara and Sons, Inc. (CASI) entered into a contract of sale of logs. Petitioners made two shipments to CASI, through respondent Seven Brothers Shipping, Corp. (SBSC). Some of the logs fell overboard. Petitioner filed a complaint for collection of sum of money and damages against CASI and SBSC and later filed a motion for summary judgment. The Regional Trial Court denied the motion. The Court of Appeals sustained the trial court's order. After the motion for reconsideration was denied, the petitioner impugn the decision of the CA with the Supreme Court.

The Supreme Court denied the instant petition. According to the Court, since petitioner's allegations appeared to be contested by the other parties, it was erroneous to conclude prematurely that there were no real or genuine issues of questions of facts in this case. That being so, a full-blown trial on the merits and presentation of additional evidence was called for. As was held in a previous case, the rendition of summary judgment is not justified when the defending party tenders vital issues, which call for the presentation of evidence.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; SUMMARY JUDGMENT; PURPOSE THEREOF; NOT APPLICABLE IN CASE AT BAR.—** A court may grant a summary judgment to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages. In such event, the moving party is entitled to a judgment as a matter of law. Trial courts have limited authority to render summary judgments and may do so only when there is clearly *no genuine issue as to any material fact*. In other words, in a motion for summary judgment, the crucial question is: are the issues raised in the pleadings *genuine*, *sham* or *fictitious*, as shown by affidavits, depositions or admissions accompanying the motion? Notwithstanding certain stipulated facts, when material allegations as pleaded by the parties are disputed, including the interpretation of the stipulation itself, then it cannot be asserted that there was no real issue

necessitating a formal trial. For there can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute. As the party moving for summary judgment, petitioner has the burden of clearly demonstrating the absence of any genuine issue of fact. Any doubt as to the existence of such issue, in our view, must be resolved against the movant. The rule on summary judgments was devised to aid parties in avoiding the expense and loss of time involved in a trial. Ironically, petitioner, by resorting to a motion for summary judgment in the hope of expediting recovery of its claim, succeeded to delay the resolution of its own case.

2. ID.; ID.; GENUINE ISSUE; DEFINED AND CONSTRUED.— In *Evadel Realty and Development Corporation v. Soriano,* this Court defined what a "genuine issue" is, in this wise: A "*genuine issue*" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. *When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for*. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. *Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.*

3. ID.; ID.; ID.; BASIC FACTUAL ISSUES MUST FIRST BE ESTABLISHED TO DETERMINE WHETHER A PARTY IS ENTITLED TO RECOVER DAMAGES; CASE AT BAR.— It is beyond cavil that basic factual issues of when, how, and who caused the damage to the cargo must be established to determine if petitioner is, in fact and in law, entitled to recover damages. Put simply, since petitioner's allegations appear *contested* by the other parties, it is erroneous to conclude prematurely that there are no *real or genuine issues or questions of facts* in this case. That being so, a full-blown trial on the merits and presentation of additional evidence is called for. Following *Evadel*, we hold that *the instant case*

raise genuine and factual issues not proper in a summary judgment. Moreover, as ruled in *R and B Surety & Insurance Co., Inc. v. Savellano, the rendition of summary judgment is not justified when the defending party tenders vital issues which call for the presentation of evidence*.

4. ID.; ID.; STIPULATION OF FACTS; MAY INCLUDE ONLY FACTS WHICH ARE UNDISPUTED BY THE PARTIES.— Stipulation of facts may include only those which are *undisputed* by the parties. It could not include those facts which are contentious or disputed.

APPEARANCES OF COUNSEL

Martinez and Perez Law Offices for petitioner.

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for respondent.

Del Rosario & Del Rosario for C. Alcantara & Sons, Inc.

D E C I S I O N

QUISUMBING, *J.*:

In this petition for review, petitioner Cotabato Timberland Co., Inc. assails the decision[1] dated August 3, 2000 in CA-G.R. SP No. 57208 of the Court of Appeals, affirming the order[2] dated October 29, 1999 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 97-2908 which denied petitioner's motion for summary judgment.

On June 15, 1994, petitioner Cotabato Timberland Co., Inc., and respondent C. Alcantara and Sons, Inc. (CASI) entered into a contract of sale for the delivery of 5,500 metric tons of Lauan round logs. Of the said amount, CASI has paid twenty-

[1] *Rollo*, pp. 52-58. Penned by Associate Justice Quirino D. Abad Santos, Jr., with Associate Justices Romeo A. Brawner and Andres B. Reyes, Jr. *concurring*.

[2] Records, p. 429.

one million pesos (₱21,000,000) with the balance payable upon completion of loading.[3]

Petitioner made log shipments to CASI in two lots. The first was on October 12, 1994. The second shipment was on December 11, 1994, consisting of 643 pieces of logs covering 2,717.79 cubic meters loaded on *M/V Seven Logmaster* that was owned and operated by respondent Seven Brothers Shipping, Corp. (SBSC).[4]

In the second shipment, 273 pieces of logs were loaded at Polloc, Maguindanao and the other 370 logs were loaded at Sta. Maria, Zamboanga del Norte. The 273 logs shipped at Polloc, Maguindanao were covered by a Log Sale/Purchase Agreement between petitioner and CASI dated December 9, 1994, while shipment of 370 logs at Sta. Maria, Zamboanga del Norte, was covered by Log Sale/Purchase Agreement dated November 10, 1994.[5]

Of the total logs shipped on *M/V Seven Logmaster*, 156 logs fell overboard on its way to Davao City. SBSC wrote CASI to withhold payment of 110 logs out of the total 156 logs washed overboard upon its claim that it was due to petitioner's insistence to load 2 additional round logs after the vessel had been lashed and trimmed that caused the vessel to list and the logs to fall to the sea.[6]

On March 3, 1995, CASI offered to pay the petitioner the sum of P1,309,300.49. Petitioner accepted the offer and received said amount from CASI.[7]

On December 11, 1997, petitioner filed a complaint[8] for collection of sum of money and damages against CASI and

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[3] *Id*. at 364.

[4] *Ibid*.

[5] *Id*. at 364-365.

[6] *Id*. at 365.

[7] *Ibid*.

[8] *Id*. at 1-10.

SBSC with the Regional Trial Court of Makati City. On the basis of the stipulation of facts entered into by the parties and the documents they submitted, the RTC issued a Pre-Trial Order[9] dated August 6, 1999.

On September 22, 1999, petitioner filed a Motion for Summary Judgment with the trial court, which was opposed by CASI and SBSC. On October 29, 1999, the RTC denied petitioner's motion for summary judgment, in this wise:

> Records show that extended efforts were exerted to formulate stipulations in aid of abbreviating proceedings, hence the August 6, 1999 formal Pre-Trial Order (a) setting forth stipulations and (b) an agreement to identify residual issues relative to **i** sufficiency of documentation of logs, **ii** responsibility for the loading and stowing of the logs on MV Logmaster, **iii** liability for the value of 156 logs, iv the breach of contract of sale, if any, v the extent of plaintiff's claim, **vi** liability of defendants, if any, vii plaintiff's liability on [A]lcantara's counterclaim, and **viii** liability of Seven Brothers *vis-à-vis* Alcantara's cross-claim.
>
> Parties and counsel are bound by the clear recitals of the August 6, 1999 Pre-Trial Order, and in that context the subject motion for summary judgment may not be acted upon, on a perception that identified residual issues must be addressed.
>
> WHEREFORE, plaintiff's motion for summary judgment is accordingly denied. The November 10, and 24, 1999, and January 5 and 6, 2000 hearing dates are maintained.
>
> SO ORDERED.[10]

Forthwith, petitioner filed a petition for *certiorari* with the Court of Appeals to annul and set aside the RTC order. On August 3, 2000, the Court of Appeals sustained the RTC orders denying the motion for summary judgment. The Court of Appeals opined that there exists a genuine issue which must be tried, *viz*:

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[9] *Id*. at 364-366.

[10] Records, p. 429.

Considering therefore that genuine and triable issue exists in the instant case, this Court finds no grave abuse of discretion on the part of public respondent judge when it held in its assailed Order that the "parties and counsel are bound by the clear recitals of the August 6, 1999 Pre-Trial Order, and in that context the subject motion for summary judgment may not be acted upon, *on a perception that identified residual issues must be addressed*."

WHEREFORE, premises considered, the petition is hereby *DISMISSED* for lack of merit.

SO ORDERED.[11]

Petitioner filed a motion for reconsideration of the above CA decision but the same was denied in a resolution dated October 12, 2000.[12] Before us, petitioner now impugns the decision of the Court of Appeals on three grounds, among them:

I

THE FACTUAL ISSUE POINTED OUT BY THE COURT OF APPEALS WAS NOT AN ISSUE STIPULATED UPON BY THE PARTIES

(A)

THE ISSUE OF THE ALLEGED FAULT OR NEGLIGENCE OF THE PETITIONER IN ALLEGEDLY LOADING TWO (2) ADDITIONAL LOGS WAS NOT AN ISSUE THAT WAS PENDING IN THE COURT BELOW

(B)

ASSUMING THE LOADING OF THE TWO (2) ADDITIONAL LOGS IS A RESIDUAL ISSUE, THE PRESENTATION OF EVIDENCE ON THIS POINT CANNOT BE ALLOWED UNDER THE RULES OF EVIDENCE

II

PETITIONER IS ENTITLED TO A SUMMARY JUDGMENT AS A MATTER OF LAW DUE TO THE ABSENCE OF ANY FACTUAL ISSUES

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[11] *Rollo*, p. 58.

[12] *Id*. at 60.

III

THE FACTUAL AND LEGAL BASES FOR THE PETITIONER'S MOTION FOR SUMMARY JUDGMENT WERE NOT CONTRADICTED OR OTHERWISE OPPOSED BY AFFIDAVITS[13]

Is petitioner entitled by law to a summary judgment by the RTC? To resolve this issue we must inquire now whether the CA erred in holding that no grave abuse of discretion was committed when the RTC denied petitioner's motion for summary judgment.

Petitioner contends that under prevailing jurisprudence, summary judgment by the trial court is authorized if the pleadings, depositions and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[14] According to petitioner, on the basis of the stipulation of facts of the parties and on the exhibits submitted, it is entitled to a summary judgment inasmuch as there are no genuine issues raised in the case below that requires trial.

After a careful consideration of the submissions of the parties, we hold that this contention lacks merit.

Petitioner filed its motion for summary judgment pursuant to Section 1, Rule 35 of the 1997 Rules of Court, which states that:

> SECTION 1. *Summary judgment for claimant*. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

A court may grant a summary judgment to settle expeditiously a case if, on motion of either party, there appears from the

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[13] *Id*. at 18.

[14] *Id*. at 19, citing *Galicia v. Polo,* G.R. No. 49668, 14 November 1989, 179 SCRA 371, 376.

pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages. In such event, the moving party is entitled to a judgment as a matter of law. Trial courts have limited authority to render summary judgments and may do so only when there is clearly *no genuine issue as to any material fact*.[15] In other words, in a motion for summary judgment, the crucial question is: are the issues raised in the pleadings *genuine, sham* or *fictitious,* as shown by affidavits, depositions or admissions accompanying the motion?[16]

In *Evadel Realty and Development Corporation v. Soriano*,[17] this Court defined what a "genuine issue" is, in this wise:

> A *"genuine issue"* is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. *When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for.* The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. *Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.* (Italics supplied)

The parties' respective pleadings show that there are genuine issues of fact that necessitate formal trial. Petitioner's complaint before the RTC avers facts on which it relies to support its claim for damages. Specifically, petitioner sought to recover the value of the logs that were lost and washed overboard M/V Seven Logmaster chartered by CASI. Petitioner claims

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[15] *Concrete Aggregates Corporation v. Court of Appeals*, G.R. No. 117574, 2 January 1997, 266 SCRA 88, 95.

[16] *Manufacturers Hanover Trust Co. v. Guerrero*, G.R. No. 136804, 19 February 2003, 397 SCRA 709, 714.

[17] G.R. No. 144291, 20 April 2001, 357 SCRA 395, 401.

that at the time of the loss, ownership over said logs was already transferred from petitioner as seller, to CASI as buyer. As owner, CASI must bear the loss, according to petitioner. But CASI, in its answer,[18] maintains that it should not be held liable for the purchase price or value of said logs considering that the logs were washed away and lost due to the fault and negligence of petitioner and SBSC or their agents. SBSC, in its answer,[19] disowns liability for the loss of said logs and imputes fault and negligence committed by petitioner and CASI. In our view, it is beyond cavil that basic factual issues of when, how, and who caused the damage to the cargo must be established to determine if petitioner is, in fact and in law, entitled to recover damages. Put simply, since petitioner's allegations appear ***contested*** by the other parties, it is erroneous to conclude prematurely that there are no ***real or genuine issues or questions of facts*** in this case. That being so, a full-blown trial on the merits and presentation of additional evidence is called for.

As aptly explained by the appellate court:

> The special and affirmative defenses raised by private respondents CASI and SBSC invoking, *inter alia*, *the alleged fault and negligence of petitioner as the proximate cause of the loss of the subject logs indubitably tender a genuine and factual issue as regards the proximate cause of the loss necessitating trial on the merits and presentation of evidence so that the trial court can properly determine which, among the parties, must shoulder the loss.* In fact, said factual controversy was clearly identified in public respondent's August 6, 1999 Pre-Trial Order, to wit:
>
> *Pre-Trial Order*
>
> In aid of abbreviating proceedings, appearing counsel for plaintiff and both defendants entered into stipulations as follows:
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> xxx xxx xxx
>
> 7. Of the total shipment of logs on MV 'Seven Logmaster' 156 logs fell or were washed overboard on its way to Davao City;

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[18] Records, pp. 59-68.

[19] *Id.* at 46-54.

8. Seven Brothers wrote Alcantara to withhold payment of 110 logs out of the total 156 logs because plaintiff insisted to load 2 additional round logs after the vessel had been lashed and trimmed, causing the vessel to list and the logs to fall to the sea;

xxx xxx xxx

By agreement of the parties, the residual issues to be addressed are:

a. Are the shipments of the 273 logs from Polloc, Parang, Maguindanao and 370 logs from Sta. Maria, Zamboanga del Norte sufficiently documented in accordance with the agreement/contract between the parties and/or DENR rules and regulations. If not, will such insufficiency nullify the contract of sale?

b. Who was responsible for the loading and s[t]owing of the logs on board [the] vessel Logmaster?

c. *Who is liable for the value of the 156 pcs. of logs*?

d. Who committed the breach, if any, of the contract of sale; if there was such a breach, was it induced and by whom?

e. What is the extent of plaintiff's claim?

f. *Are defendants liable for the plaintiff's claim*?

g. Is plaintiff liable for defendant Alcantara's counterclaim?

h. Is defendant Seven Brothers liable for Alcantara's crossclaim and vice versa?

xxx xxx xxx (Italics supplied)[20]

Following Evadel, we hold that *the instant case raise genuine and factual issues not proper in a summary judgment.* Moreover, as ruled in *R and B Surety & Insurance Co., Inc. v. Savellano*,[21] *the rendition of summary judgment is not justified when the defending party tenders vital issues which call for the presentation of evidence*.

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[20] *Rollo*, pp. 56-57.

[21] No. L-45234, 8 May 1985, 136 SCRA 312, 321, cited in I REGALADO, *REMEDIAL LAW COMPENDIUM* 360 (1997 Ed).

To elucidate, herein respondents raised the issue that petitioner's own negligence was the proximate cause of the loss inasmuch as it loaded two (2) more logs without the consent of respondents. Notably, the RTC found respondents' defense to be a genuine, not a sham issue, which finding was affirmed by the Court of Appeals. From this consistent ruling of the trial and the appellate courts, we cannot lightly deviate. We agree that respondents' defense necessitates reception of additional evidence, since the matter cannot be threshed out judiciously by a summary judgment.

Further, petitioner itself tenders a procedural issue when it claims that respondents are barred from adducing evidence in support of their defense. According to petitioner, respondents' defense runs counter to their admission, stated in the Pre-Trial Order of the RTC, that only the 273 logs and the 370 logs were delivered on board, without any mention of the two additional logs.

Stipulation of facts may include only those which are *undisputed* by the parties. It could not include those facts which are contentious or disputed. Thus, it may appear in paragraph 6 of the Stipulation of Facts[22] stated that respondent CASI's agent signed the conforme attesting to the receipt of the 273 logs as well as of the 370 logs without any mention of the two additional logs. But said paragraph 6 must be read in relation to paragraph 8 thereof, which states that SBSC wrote CASI to withhold the payment of damages to petitioner for the lost logs on the ground that petitioner insisted on loading 2 additional logs on top of the other logs after the cargo had been lashed and trimmed causing the vessel to tilt and the logs to fall overboard. [23] Hence, it cannot be said that respondents are barred from presenting evidence to prove their defense that petitioner itself caused the loss of the cargo.

Notwithstanding certain stipulated facts, when material allegations as pleaded by the parties are disputed, including the interpretation of the stipulation itself, then it cannot be asserted

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[22] Records, p. 365.

[23] *Ibid*.

that there was no real issue necessitating a formal trial. For there can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute.[24] As the party moving for summary judgment, petitioner has the burden of clearly demonstrating the absence of any genuine issue of fact. Any doubt as to the existence of such issue, in our view, must be resolved against the movant.

The rule on summary judgments was devised to aid parties in avoiding the expense and loss of time involved in a trial. Ironically, petitioner, by resorting to a motion for summary judgment in the hope of expediting recovery of its claim, succeeded to delay the resolution of its own case.

WHEREFORE, finding no reversible error committed by the Court of Appeals, the instant petition is denied for lack of merit. The decision dated August 3, 2000 of the Court of Appeals in CA-G.R. SP No. 57208 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

Puno (Chairman)*, J.*, on official leave.

SECOND DIVISION

[G.R. No. 147855. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CONDE RAPISORA *y* ESTRADA,** *appellant*.

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[24] *Manufacturers Hanover Trust Co. v. Guerrero*, G.R. No. 136804, 19 February 2003, 397 SCRA 709, 714, 715.

SYNOPSIS

While on her way to work, a picture appearing on the tabloid displayed on the newsstand caught her attention. The man on the picture resembled her assailant. After looking at the picture more closely, Helen became certain that he was the man who raped her a few months earlier. She brought the tabloid to the NBI where she showed the news item. She was advised to go to the Western Police District where she was interviewed and was asked to point to the man who raped her. Thereafter, appellant herein was charged with rape as AAA positively identified him as her assailant. For his part, appellant denied raping AAA. In convicting the appellant, the trial court found Helen to be a credible witness. In assailing his conviction before the Supreme Court, the appellant impugned the victim's credibility.

The appellant's conviction was affirmed. The Court considered that the testimony of AAA even during the grueling cross-examination was unequivocal. Her testimony bears the hallmarks of truth, as she remained consistent on material points. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit. In contrast, the appellant's claim that he and AAA had an amorous relationship was flimsy. Being an affirmative defense, the allegation of love affair must be supported by convincing proof. The appellant failed to discharge this burden.

SYLLABUS

1. **CRIMINAL LAW; RAPE; CONVICTION; MAY BE BASED SOLELY ON THE CREDIBLE TESTIMONY OF THE VICTIM; RATIONALE.—** Rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from the prying eyes, and the crime usually commences solely upon the word of the offended woman herself and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence. As a corollary, a conviction for rape may be made even on the testimony of the victim herself, as long as such testimony is credible. In fact, the victim's testimony is the most important factor to prove that the felony has been committed.

2. ID.; ID.; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

3. ID.; ID.; ELEMENTS; DOES NOT INCLUDE HYMENAL LACERATION; APPLICATION IN CASE AT BAR.— Simply put, the absence of lacerations does not negate rape. Moreover, hymenal lacerations after sexual congress normally occurs on women who have had no prior sexual experience.

4. ID.; ID.; ID.; INTIMIDATION MUST BE VIEWED IN THE LIGHT OF THE VICTIM'S PERCEPTION AND JUDGMENT AT THE TIME OF RAPE.— Intimidation in rape cases is not calibrated or governed by hard and fast rules. It is not necessary that the force or intimidation employed be so great or be of such character that it cannot be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused. Intimidation must be viewed in the light of the victim's perception and judgment at the time of rape. It is enough that it produces fear – fear that if the victim does not yield to the bestial demands of the accused, something horrible will happen to her at that moment or thereafter.

5.REMEDIAL LAW EVIDENCE; SWEETHEART DEFENSE; MUST BE SUPPORTED BY CONVINCING PROOF; NOT PRESENT IN CASE AT BAR.— The "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience. Being an affirmative defense, the allegation of a love affair must be supported by convincing proof. Since the appellant admitted to having had carnal knowledge of the victim, he bears the burden of proving his defense by clear and convincing evidence. The appellant failed to discharge this burden. Other than his self-serving assertions, there was no support to his claim that he and Helen were lovers. His "sweetheart defense" cannot be given credence

in the absence of corroborative proof like love notes, mementos, pictures or tokens, that such romantic relationship really existed.

6. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; RECIDIVIST; DEFINED; WHEN APPRECIATED.— Article 14(9) of the Revised Penal Code defines a recidivist as "one who, at the time of his trial for one crime shall have been previously convicted by final judgment of another crime embraced in the same title of this Code." To prove recidivism, it is necessary to allege the same in the Information and to attach thereto certified copies of the sentences rendered against the accused. Nonetheless, the trial court may still give such aggravating circumstance credence if the accused does not object to the presentation of evidence on the fact of recidivism.

7. REMEDIAL LAW; EVIDENCE; TESTIMONY OF RAPE VICTIM; WHEN CREDIBLE.— Even during the grueling cross-examination, AAA was unequivocal. Her testimony bears the hallmarks of truth, as she remained consistent on material points. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit. Her tears add poignancy and credibility to the rape charge with the verity born out of human nature and experience.

8. ID.; ID.; ID.; AFFIDAVITS ARE GENERALLY CONSIDERED INFERIOR TO TESTIMONIES GIVEN IN COURT; RATIONALE.— The infirmity of affidavits as a species of evidence is a common occurrence in judicial experience. Affidavits are generally not prepared by the affiants themselves but by other persons who used their own language in writing the statements. Being *ex parte*, they are almost always incomplete and inaccurate, but these factors do not denigrate the credibility of witnesses. As such, affidavits are generally considered to be inferior to testimonies given in court. Also, victims of rape are not expected to have an accurate or errorless recollection of the traumatic experience that was so humiliating and painful, that she might, in fact, be trying to obliterate it from her memory.

9. ID.; ID.; CREDIBILITY OF WITNESSES; NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN CONFRONTED WITH STRANGE TRAUMATIC

EXPERIENCE; PRESENT IN CASE AT BAR.— Times without number, this Court has held that the workings of the human mind placed under a great deal of emotional and psychological stress (such as during rape) are unpredictable, and different people react differently. There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience – some may shout, some may faint, and some may be shocked into insensibility.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jose De G. Ferrer for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

This is an appeal from the Decision[1] dated February 9, 2001 of the Regional Trial Court of Manila, Branch 27, in Criminal Case No. 97-161141, finding Conde Rapisora *y* Estrada guilty beyond reasonable doubt of rape and meting on him the penalty of *reclusion perpetua*. In addition, he was ordered to pay the victim the amounts of ₱50,000 as indemnity and ₱50,000 as moral damages.

Rapisora was charged under an Information which reads:

The undersigned Assistant Prosecutor, upon sworn complaint filed by the offended party, AAA, a copy of which is hereto attached as Annex "A", hereby accuses CONDE RAPISORA *y* ESTRADA, of the crime of Rape, committed as follows:

That on or about June 05, 1997, in the City of Manila, Philippines, the said accused, with lewd designs, and by means of force, violence, and intimidation to wit: by then and there poking a knife against the complainant, forcibly undressing her and thereafter inserting his penis into her vagina, did then and there wilfully, unlawfully and feloniously succeeded in having carnal knowledge with the said

[1] Penned by Judge Teresa P. Soriaso.

complainant, against her will and consent.

Contrary to law.[2]

At his arraignment, Rapisora, with the assistance of counsel, pleaded not guilty. Trial ensued.

The Evidence of the Prosecution[3]

Based mainly on the testimony[4] of the victim, AAA, the prosecution established the following facts:

Helen is a salesclerk of Jag Clothing Company, then assigned at the Shoe Mart (SM) Department Store in Makati City. She is married and has a seven-month-old son.

On June 5, 1997, being her day off from work, AAA went to Pampanga to bring milk for her son who was under the care of her mother-in-law. AAA returned to Manila in the afternoon of the same day. When the bus that she was riding reached Manila, Helen decided to pass by her sister's house in Mandaluyong City, where she used to reside when she was still single, to get some things that she had left when she moved to Taguig with her husband. It was almost 9:00 p.m.

While walking along Martinez Street in Mandaluyong City, AAA met the accused, Rapisora, who was clad in a white sleeveless shirt ("*sando*") and blue pants. Rapisora approached AAA, greeted her and asked why she could not remember him anymore. He claimed they were relatives. Rapisora was hitting his shoulders (as if flagellating himself) with a white face towel while talking to her. AAA, who was less than three feet from Rapisora, suddenly became dizzy and felt very weak.

Rapisora then hailed a passing taxi and immediately shoved AAA inside. He, likewise, boarded the cab and sat beside her at the backseat. He placed his arms around AAA's shoulder and whispered to her, "*huwag kang magkamaling sumigaw,*

[2] Records, p. 1.

[3] Aside from the victim, the prosecution likewise presented as witnesses Dr. Armie Soreta-Umil and PO2 Dolores Villegas.

[4] TSN, 28 September 1998.

huwag kang maingay."[5] AAA got scared as she noticed that there was a knife bulging at Rapisora's waistline. He took out the knife and placed it inside the pocket of his pants.

They alighted along V. Mapa Street in Sta. Mesa, Manila, in front of what seemed to AAA was a house but was actually the Filipinas Walk-Inn Motel. They entered the "house" with Rapisora never releasing his hold on AAA. As soon as they were inside, Rapisora shoved AAA into a room. He pushed her so hard that she hit the wall. AAA attempted to run to the door, but Rapisora immediately closed and locked it. He then poked the knife at her neck saying, "*huwag kang magkamaling magwala dito kung gusto mong makawala ng buhay*."[6]

AAA knelt before Rapisora, pleading for mercy and said that she had a husband and a baby. Rapisora, however, was unmoved saying, "*pagbigyan mo na lang ako sa gusto ko, makakauwi ka ng buhay*."[7] He ordered her to undress. AAA refused. In the meantime, Rapisora discarded his clothes. When he saw that AAA was not undressing herself, he forcibly took off her shirt, pants and even her underwear. Thereafter, he pushed her to the bed.

When AAA was lying prostrate, Rapisora immediately placed himself on top of her. He proceeded to kiss her on the lips and on her breasts. He spread her legs and tried to insert his flaccid organ into hers, but did not initially succeed. Wiping off the blood on his organ, as AAA had her monthly period then, he held AAA's head and forced him to suck his organ. When it hardened, he again inserted it into her vagina. This time, his organ penetrated hers.

After his bestial desires had been satisfied, Rapisora told AAA to put on her clothes. She did as she was told, since she desperately wanted to go home. Rapisora, likewise, got dressed. Before they left the room, Rapisora warned her against making any noise. He placed his arm around her shoulders as they went

[5] *Id*. at 10.

[6] *Id*. at 19.

[7] *Id*. at 19-20.

outside. Upon reaching the street, Rapisora instructed her to cross it. AAA obeyed. When she got to the other side, she looked back and saw that Rapisora was no longer there.

Despite her condition, AAA managed to get home. She broke down when she saw her husband. She narrated to him her ordeal and they both cried. They agreed to report the matter to the authorities. On June 9, 1997, Helen submitted herself to a medico-genital examination with the National Bureau of Investigation (NBI). At that time, she did not know the identity of her assailant. The examination yielded the following conclusions:

1.) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination;

2.) Hymen, reduced to carunculae myrtiformis.[8]

A few months later, on August 21, 1997, while on her way to work, AAA passed by a newsstand. A picture appearing in the tabloid "*Abante Tonite*" caught her attention. The man on the picture resembled her assailant. The news item, with the title "*Biktima pa ng bumberong serial rapist, lumitaw*,"[9] identified the man as Conde Rapisora. After looking at the picture more closely, AAA became certain that he was her assailant. Bringing the tabloid with her, she went back to the NBI and showed them the news item. She was advised to go to the Western Police District (WPD) where she showed the news item to the police authorities. She was also interviewed by PO2 Dolores Villegas. Thereafter, AAA was brought to a detention cell. There were several men inside, but AAA immediately recognized Rapisora. She pointed to him as the one who raped her.

Thereafter, PO2 Villegas took AAA's sworn statement[10] and prepared the booking sheet and arrest report,[11] police report[12] and referral letter for inquest.[13] When she took the witness

[8] Exhibit "A", Records, p. 46.

[9] Exhibit "G".

[10] Exhibit "C", Records, p. 10.

[11] Exhibit "D", *Id*. at 20.

[12] Exhibit "E", *Id*. at 15.

[13] Exhibit "F", *Id*. at 4.

stand, AAA again positively identified Rapisora as her assailant.[14]

Dr. Armie Soreta-Umil, the medico-legal officer of the NBI, explained the results of the medico-genital examination that she conducted on AAA.[15] According to Dr. Soreta-Umil, the absence of laceration in AAA's hymen was due to the fact that it had been reduced to *carunculae myrtiformis* or, in laymen's term, "tug." Normally, the hymen of a woman who had already given birth, as in AAA's case, would no longer suffer any laceration even if she was raped. Dr. Soreta-Umil did not conduct an examination to determine the presence of spermatozoa on AAA's sexual organ because exactly four days had already lapsed since the alleged rape. At most, the spermatozoa's life span in the vaginal canal would only be up to seventy-two hours.

The Evidence of the Accused[16]

For his part, Rapisora[17] vigorously denied raping AAA. He testified that he was a fireman at the Mandaluyong Fire Department. In the morning of May 23, 1997, his day off from work, Rapisora was eating "*lugaw*" at one of the stores along Boni-EDSA Highway when a lady arrived at the store. She made a phone call using the pay phone. Rapisora noticed that the lady was glancing at him so he invited her to eat "*lugaw*." She politely declined. Apparently, she was not able to contact the person at the other end because she put down the phone and sat beside Rapisora. She introduced herself as AAA and said that she worked at a department store in Makati. Rapisora also introduced himself and told her that he was a fireman at the Mandaluyong Fire Department. When she asked for his telephone number, Rapisora gave the fire station's number as he practically lived there. AAA, on the other hand, told him that she did not have a telephone. She teased him, saying that his wife might receive the call if she phoned him. Rapisora replied that he was still single and jokingly countered that someone would probably

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[14] TSN, September 28, 1998, p. 13.

[15] TSN, September 15, 1998, pp. 1-49.

[16] The accused, Conde Rapisora, was the sole witness for the defense.

[17] TSN, February 8, 1999.

get mad if he invited her out. AAA said that she was already a "graduate" and has a "diploma." He took this to mean that she was already married and had a child.

The following day, he received a phone call from Helen. She claimed that she missed him and confided that she had a problem. They talked briefly. AAA even commented that "*okay kang kausap, malakas ang dating mo, tatawagan na lang kita*."[18]

On May 25, 1997, AAA again called up Rapisora and after learning that he was not on duty then, set a date with him that same morning. At 8:00 a.m., upon their agreement, they met in a Jollibee restaurant in Cubao. While they were eating, AAA mentioned to Rapisora that she liked him and that he was her "type." He replied that she was his "type," too. Before parting, they agreed to meet again.

At 5:00 p.m. on June 5, 1997, they met along Martinez Street in Mandaluyong. AAA informed him that she just arrived from Pampanga where she delivered her baby's food supply. Upon her insistence that they transfer to a more private place, Rapisora suggested that they go to a motel. Helen offered no objection.

Rapisora flagged down a taxi and they briefly stopped at the convenience store in the corner of Shaw Boulevard and Kalentong to buy some food. They proceeded to the Filipinas Walk-Inn Motel at V. Mapa Street in Sta. Mesa, Manila. After they had checked-in with the receptionist, they entered one of the rooms. AAA confided to him about her problems. She proposed that they rent a room where they could meet at least twice a week. She, likewise, asked if he could give support to her child, and Rapisora replied that he would think about it.

Thereafter, AAA went to the bathroom. When she returned, she had already taken off her pants and a towel was wrapped around her waist. She still had her shirt on. She laid down on the bed and they began kissing and caressing each other. Since AAA had her monthly period then, they mutually decided not to consummate the sexual act. They checked out of the motel

[18] *Id*. at 14.

later in the evening of that day. By then, AAA was worried that her husband might already be looking for her. They both rode the jeepney bound for Crossing. Rapisora noticed during the ride that AAA was trying to cover her face with her hair. When he alighted in Kalentong, AAA told him that she would call him up again.

The following day, Rapisora reported for work. As she had promised, AAA called him up. She pressed him for his answer to her request for support to her child. She also mentioned that her sister already knew about them, as somebody saw them together in Martinez Street. He flatly told her that he could not accede to her request. She became angry at once and accused him of being a coward. That was the last time that they talked.

The Trial Court's Ruling

After weighing the parties' respective evidence, the trial court rendered the appealed judgment finding Rapisora guilty beyond reasonable doubt of rape. In convicting him, the trial court found AAA to be a credible witness. On the other hand, it characterized Rapisora's testimony to be "replete with inconsistencies and improbabilities" which rendered his uncorroborated testimony "unworthy of belief."[19] The dispositive portion of the decision of the trial court reads:

> Wherefore, in view of all the foregoing, the Court finds the accused CONDE RAPISORA *y* ESTRADA guilty beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*. Accused is further ordered to pay the complainant the amount of ₱50,000.00 as indemnity and another ₱50,000.00 as moral damages.[20]

The Present Appeal

In his appeal brief, Rapisora, now the appellant, assails the judgment of the trial court alleging that:

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[19] RTC Decision, p. 11; *Rollo*, p. 28.

[20] *Id*. at 12; *Id*. at 29.

I

THE LOWER COURT ERRED IN NOT FINDING THAT [THE] COMPLAINING WITNESS HAD CLOSE ACQUAINTANCE WITH THE ACCUSED BEFORE JUNE 5, 1997, AND HAD AGREED TO MEET ON SAID DATE;

II

THE LOWER COURT ERRED IN NOT FINDING THAT [THE] COMPLAINING WITNESS WENT ALONG VOLUNTARILY (*SIC*) WITH [THE] ACCUSED FOR A DATE AT FILIPINAS WALK-IN MOTEL ON JUNE 5, 1997;

III

THE LOWER COURT ERRED IN NOT FINDING THAT [THE] COMPLAINING WITNESS HAD SEX VOLUNTARILY (*SIC*) WITH [THE] ACCUSED ON JUNE 5, 1997 AT THE SAID MOTEL;

IV

THE LOWER COURT ERRED IN FINDING [THE] COMPLAINING WITNESS AS AN INNOCENT ANGEL, SO TO SPEAK, AND IN GIVING CREDENCE TO HER TESTIMONY; AND

V

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED ON THE BASIS OF HIS DEFENSE AND ON THE GROUND OF REASONABLE DOUBT.[21]

Underlying the foregoing issues is the credibility of the victim, Helen, as the prosecution's principal witness. Thus, in assailing his conviction, the appellant impugns her credibility. According to the appellant, AAA's version of what transpired on June 5, 1997 taxes credulity. It is allegedly difficult to believe that, as AAA had testified, she and the appellant just coincidentally met each other in Martinez Street in Mandaluyong. Rather, the appellant insists that he and AAA had previous close acquaintance and that they agreed to meet each other on the said place and time. And with nary a sign of struggle, she boarded the taxi with him as they proceeded to the motel.

[21] *Rollo*, pp. 44-45.

The appellant capitalizes on purported inconsistencies between AAA's sworn statement and her testimony in court. She testified that the appellant was waving a white towel when he approached her. However, AAA omitted to mention this in her sworn statement. Neither was it mentioned therein that the appellant pointed a knife at her on board the taxi. But in her testimony, AAA averred that, at knifepoint during the taxi ride, the appellant warned her uttering, "*huwag kang magkamaling sumigaw, huwag kang maingay*."

The appellant, likewise, harps on Dr. Soreta-Umil's statement that AAA told her that the appellant "befriended her (AAA) and later on brought her to a motel." Such revelation allegedly negates AAA's claim that he forced her to come along with him to the motel. Further, Dr. Soreta-Umil's finding that there was no laceration in AAA's genitalia debunks her assertion that he had sexual intercourse with her against her will.

Given these alleged flaws in the prosecution's evidence, the appellant contends that the trial court erred in not acquitting him on the ground of reasonable doubt.

On the other hand, the Office of the Solicitor General (OSG) not only urges this Court to affirm the appellant's conviction but, likewise, to increase the penalty meted on him to death. The OSG avers that the rape was committed with the use of a knife and that this fact was alleged in the information and proved during trial. Moreover, the aggravating circumstance of recidivism should be appreciated against the appellant as he had previously been convicted by final judgment of two counts of rape in G.R. Nos. 140934-35[22] and six counts of rape in G.R. No. 138086.[23]

The Ruling of the Court

The appellant's conviction is affirmed.

Rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from the prying eyes, and the crime usually commences solely

[22] 368 SCRA 170 (2001).

[23] 350 SCRA 299 (2001).

upon the word of the offended woman herself and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence.[24]

As a corollary, a conviction for rape may be made even on the testimony of the victim herself, as long as such testimony is credible. In fact, the victim's testimony is the most important factor to prove that the felony has been committed.[25]

In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[26]

In this case, the Court finds no cogent reason to deviate from the trial court's findings regarding AAA's credibility as a witness and the weight and value it gave to her testimony. Although Judge Teresa P. Soriaso, the judge who wrote the appealed decision, was not the judge who heard the testimonies of the witnesses,[27] this fact would not prevent this Court from affirming the trial court's findings of facts on the credibility of witnesses. After all, the judge who did not hear the testimonies personally could always rely on the transcripts of stenographic notes taken during trial.[28]

Indeed, a careful review of the records shows that AAA testified in a candid, straightforward and categorical manner.

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[24] *People v. Molleda*, G.R. No. 153219, December 1, 2003.

[25] *People v. Antonio*, 399 SCRA 585 (2003).

[26] *People v. Novio*, G.R. No. 139332, June 30, 2003.

[27] It was Judge Edgardo P. Cruz (now an Associate Justice of the Court of Appeals) who heard the witnesses.

[28] *People v. Buayaban*, 400 SCRA 48 (2003).

The following excerpt of her lengthy and graphic testimony supports this conclusion:

Q You said you are walking along Martinez St., going to the house of your sister to get some things. Now, on that particular time, date and place, do you recall of any unusual incident, Madam Witness?
A There was, sir.

Q What is that unusual incident?
A While I was walking along Martinez St., on my way to the house of my sister, I met a man wearing a white sleeveless t-shirt (*sando*) and blue pajama which clothing materials appeared to be similar to the fabric used in making umbrellas.

Q What happened when you met this person?
A This man suddenly greeted me and asked me, you don't remember me anymore? And while he was talking with me, he was swinging his towel (*hinahampas sa balikat*) he was holding in (*sic*) his both hands alternately in his shoulder.

PUB. PROS. REBAGAY:
Q Will you please describe to us this towel he was holding and alternately swinging in his shoulder?
A White hand towel like Good Morning hand towel.

THE COURT:
Q What is the size? Like this hand towel?

WITNESS:
A Narrower than the towel shown by the Hon. Court.

xxx xxx xxx

PUB. PROS. REBAGAY:
Q After that, what happened, Madam Witness?
A While he was hitting his shoulder with his hand towel he was holding, I felt weak and dizzy.

Q After that what happened next, Madam Witness?
A After that, a taxi cab passed by and he flagged down the taxi cab and told to go with him so that I can meet my sister Ate Ren-Ren.

THE COURT:
Q Do you have a sister by the name of Ren-Ren?

WITNESS:
A None, Your Honor.

THE COURT:
Q Then, why did you go with him when you have no sister by the name of Ren-Ren?

WITNESS:
A No, Your Honor, Ren-Ren, according to him is his sister.

PUB. PROS. REBAGAY:
Q What happened Madam Witness, when he flagged down the taxi cab and told you to meet his sister Ren-Ren?

xxx xxx xxx

WITNESS:
A After telling me to go with him for me to see Ate Ren-Ren, I was then feeling very weak and dizzy. He shoved me inside the taxi cab, then he went also inside the taxi cab and put his arms around my shoulder.

PUB. PROS. REBAGAY:
Q What happened Madam Witness, when you were inside the taxi cab and (*sic*) put his arms around your shoulder?

A When the taxi cab moved forward, he whispered to me *"huwag kang magkamaling sumigaw, huwag kang maingay."*

Q After that, what did you do Madam Witness, when he whispered to you, not to shout (*huwag kang sumigaw*), so [that] nothing will happen to you?
A I was afraid because I noticed that there was a knife bulging in his waistline which he took and transferred to the pocket of his pajama.

xxx xxx xxx

PUB. PROS. REBAGAY:
Q What happened Madam Witness, after the accused transferred the knife from the waistline and then placed it in his pocket?
A His left arm was on my shoulder and he was holding my right hand.

Q Where did you go Madam Witness, while he was holding your shoulder and his right arm were (*sic*) holding your right arm?

A The taxi stopped in front of what seems to be a house. The man paid for the taxi fare and then we alighted from the taxi.

THE COURT:
Q Who is that man you are referring to?
A The accused, Your Honor.

PUB. PROS. REBAGAY:
Q If you see that person again, will you be able to recognize him, Madam Witness?
A Yes, Sir.

Q Please point to him.

COURT INTERPRETER:
Witness is pointing to a male person inside the courtroom. [W]hen asked his name[,] [he] identified himself as Conde Rapisora.

xxx xxx xxx

PUB. PROS. REBAGAY:
Q What happened Madam Witness, after you alighted from the taxi cab?
A We entered a house and he was still holding me and he never released me from his hold. He talked to a man and after that, we entered the third room of that house.

Q To complete this picture again, Madam Witness, will you please describe to us that building where you entered?
A It is like this room, Sir. One-storey building, the door is transparent and there is a receiving room at the left side and there was also a small store. At the right side were the rooms.

Q By the way, Madam Witness, you mentioned that upon entering that building, the accused whispered to a person. Was he the only person there inside?
A Yes, Sir. A male person, Sir.

Q What is the lighting condition of that building when you entered, Madam Witness?
A At the receiving room, it was dark, Sir, but the rooms were lighted with flourescent lamp.

Q You mentioned that you entered the third room. How did you enter the room?

A He opened the door and after opening the door, he shoved me inside the room.

THE COURT:

Q You said that while on board the taxi, you felt weak and dizzy. Now, after you alighted from the taxi until you entered the room, were you still weak and dizzy?

WITNESS:

A Yes, Your Honor. I still felt weak and dizzy, as if I am drunk.

THE COURT:

You may proceed, Fiscal.

PUB. PROS. REBAGAY:

Q Will you please tell this Hon. Court why you suddenly become (*sic*) weak and dizzy after talking with the said accused?

A When he was swinging his towel on his shoulder alternately, that was the time that I felt an unusual feeling, I became weak and dizzy.

xxx xxx xxx

PUB. PROS. REBAGAY:

Let me go back Madam Witness, while you were inside the taxi cab, where is this towel that he has been holding all the time that he was talking to you at Martinez St.?

A Inside the pocket of his pajama, Sir.

Q You mentioned that you were shoved inside that room. What happened after that, Madam Witness?

A He shoved me so hard that my hips hit the concrete wall of the room.

Q After hitting the wall, what happened?

A My hips hit the concrete wall and I stumbled such that I was in a kneeling position. I tried to run outside but he blocked my way and locked the door.

Q After that Madam Witness, what happened next?

A After he locked the door, he poked a knife at my neck and told me *"huwag kang magkamaling magwala dito kung gusto mong makawala ng buhay."*

Q Will you describe to us this knife, Madam Witness, the one he used in poking to (*sic*) your neck?

A The handle of the knife is made of plastic and the color is black and silver blade, three inches long while the handle is two inches long.

Q After poking the knife on (*sic*) you and telling you not to shout, what happened next?

A After poking the knife at my neck, I closed my eyes and kneel (sic) before him and pleaded to him, telling him, have mercy because I have a family, I have a child, I have a husband and he told me just to give in to my wish (*pagbigyan mo na lang ako sa gusto ko, makakauwi ka ng buhay*).

PUB. PROS. REBAGAY:

Q At this point in time, Your Honor, we would like to put on record that the witness is shedding tears when she narrated this particular incident.

ATTY. FERRER:

There is (*sic*) no tears from the eyes of the witness, Your Honor.

PUB. PROS. REBAGAY:

She just shed tears, Your Honor.

ATTY. FERRER:

She is even smiling, Your Honor.

THE COURT:

Anyway, the Court noticed that the witness was sobbing.

PUB. PROS. REBAGAY:

Q What happened Madam Witness, after that?

A While I was on a kneeling position, he held both my hands and raised me up and ordered me to undress.

Q After raising you up and asking you to undress, what happened, Madam Witness?

A I just stood up and did not obey his order and I was shivering in fear with my both arms covering my body.

PUB. PROS. REBAGAY:

Q What happened after that, Madam Witness?

A He ordered me to undress but I did not obey him because I was in fear. But, he proceeded to undress himself. He was completely naked. When I don't (*sic*) want to remove my clothes, he raised my t-shirt upward.

Q What happened after he raised your t-shirt?
A My both (*sic*) arms were still covering my body. So, he kicked me.

Q What part of your body did he kick you (*sic*)?
A My left leg, Sir.

Q What happened after he kicked you at the left leg?
A As a result of that kick on my left leg, I almost lost my balance and my arms were still covering my body.

Q What happened after that, Madam Witness?
A His eyes were "*nanglilisik*". He looked very mad and he lifted my arms upward and removed my t-shirt.

Q Just to complete the picture, Madam Witness, what was the lighting condition of the light (*sic*) at that time, at that particular time?
A The light was open, Sir.

Q What happened when he forced you to undress, Madam Witness?
A When my t-shirt was already removed, he ordered me to put down my panty (*sic*) and also my underwear, Your Honor, and my bra.

Q What happened when he ordered you to put down your pants and your underwear?
A I was shivering in fear and I cannot put down my pants, so, he was the one who put down my pants. He was about to cut down my bra and later, he just unhooked my bra. So, what was left was my panty.

Q What happened after that, Madam Witness?
A After that I was only clad in panty. So, he pulled down my panty, so I was already naked.

Q What happened after that, Madam Witness?
A He pushed me to the bed, so, I was already lying on the bed and I was lying face up. Then, he put himself on top of me.

Q What happened after he placed himself on top of you?
A He placed both his arms over my arms and his legs over my legs.

Q What happened after that, Madam Witness?

A He kissed me and held my breast and he kissed my lips and told me to respond. He cannot kiss my private parts because during that time I have (*sic*) my monthly period, my menstruation, so, he kissed my lips and my breast only.

Q How long did he kiss you, Madam Witness?
A Fifteen minutes, Sir.

Q After 15 minutes, Madam Witness, what happened next?
A After that, he spread my legs and inserted his penis into my vagina.

Q After that, what did you do next, after he inserted his penis into your vagina, Madam Witness?
A I wanted to shout but I was afraid.

Q Why were you afraid, Madam Witness?
A I was afraid because he had threatened me, Sir, that he will kill me, if I make noise and since my child is still small, I did not shout.

Q How did he insert his penis into your vagina?
A When he inserted his penis into my vagina, at that time, it was not very hard yet and he was not satisfied. So, he ordered me to suck his penis, but before that, he wiped off the blood in his penis by using his towel.

Q What did you do after he wiped off the blood in his penis, Madam Witness?
A He put his penis inside my mouth, because during that time, I was not in my normal self and I was shivering, so, I was not able to do what he wanted me to do. So, he placed my head against his penis.

Q What happened when he placed your face against his penis, Madam Witness?
A After that, he made me lie on the bed and put himself on top of me again. He inserted again his penis into my vagina.

Q Just to complete the picture, Madam Witness, what happened to his penis when you sucked it?
A It hardened, sir.

THE COURT:
Q Did you not bite his penis?

WITNESS:

A Fear overcome (*sic*) me, Your Honor. What was on my mind during that time, Your Honor, is for me to be able to go home.

THE COURT:

Q How many minutes had lapsed from the time he inserted his penis for the second time into your vagina until he ejaculated?

A 15 minutes, Your Honor.

Q So, what was the accused doing during that 15-minute period until he ejaculated?

A He was making a push and pull movement, Your Honor.

THE COURT:

You may proceed, Fiscal.

PUB. PROS. REBAGAY:

Q While doing that push and pull movement, was that all he was doing, Madam Witness?

A He held my breast and kissed me again.

Q Where did he kiss you again, Madam Witness?

A He kissed my lips, Sir.

Q After that Madam Witness, after he ejaculated, what happened next?

A After he had ejaculated, I again pleaded to him, to let me go because I wanted to go home.

xxx xxx xxx

Q Now, let me go back to the place, Madam Witness. After the sexual intercourse, Madam Witness, what happened after that?

A After the sexual intercourse, he ordered me to dress up. So, I immediately dressed up because I wanted to go home already and to leave that place.

Q Did you dress up, Madam Witness?

A After I had dressed up, he also dressed up and before we left the room, he threatened me not to make a noise, not to shout.

Q How did you go out from that room, Madam Witness?

A When we went out of that room, his arms were still on my shoulder. And when we left that house and reached the street,

> he ordered me to cross the street. And, when I crossed the street, when I looked back, he already disappeared.[29]

Even during the grueling cross-examination, AAA was unequivocal. Her testimony bears the hallmarks of truth, as she remained consistent on material points. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[30] Her tears add poignancy and credibility to the rape charge with the verity born out of human nature and experience. [31]

Moreover, the purported discrepancies and inconsistencies between AAA's sworn statement and her testimony in court do not discredit her. The infirmity of affidavits as a species of evidence is a common occurrence in judicial experience.[32] Affidavits are generally not prepared by the affiants themselves but by other persons who used their own language in writing the statements. Being *ex parte*, they are almost always incomplete and inaccurate, but these factors do not denigrate the credibility of witnesses.[33] As such, affidavits are generally considered to be inferior to testimonies given in court. Also, victims of rape are not expected to have an accurate or errorless recollection of the traumatic experience that was so humiliating and painful, that she might, in fact, be trying to obliterate it from her memory.[34]

Neither could Dr. Soreta-Umil's statement that AAA told her that the appellant "befriended her (AAA) and later on brought her to a motel" negate the fact that he raped AAA. Rather, it is consistent with her testimony that the appellant approached her and even introduced himself to her as a relative. Thereafter, when she felt weak and dizzy, he shoved her into a taxi and

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[29] TSN, 28 September 1998, pp. 6-30.

[30] *People v. Manallo*, 400 SCRA 129 (2003).

[31] *Ibid*.

[32] *People v. Almanzor*, 384 SCRA 311 (2002).

[33] *Ibid*.

[34] *People v. Masapol*, G.R. No. 121997, December 10, 2003.

brought her to a motel. In short, AAA's purported statement to Dr. Soreta-Umil does not at all belie the crux of the case, *i.e.*, that the appellant had carnal knowledge of AAA against her will.

That there was no laceration in AAA's hymen is immaterial. As Dr. Soreta-Umil stated, AAA's hymen had been reduced to *carunculae myrtiformis*, which means that no laceration was found on the hymen. Laceration is not an element of the crime of rape.[35] Simply put, the absence of lacerations does not negate rape. Moreover, hymenal lacerations after sexual congress normally occurs on women who have had no prior sexual experience.[36] AAA is a married woman and had already given birth.

In another futile attempt to discredit AAA, the appellant characterizes her conduct before, during and after the incident as unnatural.[37] The appellant is obviously clutching at straw. Times without number, this Court has held that the workings of the human mind placed under a great deal of emotional and psychological stress (such as during rape) are unpredictable, and different people react differently.[38] There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience — some may shout, some may faint, and some may be shocked into insensibility.[39]

AAA's failure to shout when she was brought to the motel was due to her genuine fear that the appellant would harm her. As she stated during her cross-examination, she feared for her life because the appellant was armed with a knife.[40] Intimidation in rape cases is not calibrated or governed by hard and fast rules. It is not necessary that the force or intimidation employed be so great or be of such character that it cannot be resisted. It is

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[35] *People v. Ferrer*, 362 SCRA 778 (2001).

[36] *Ibid*.

[37] *Rollo*, p. 62.

[38] *People v. Dagami*, G.R. No. 136397, November 11, 2003.

[39] *Ibid*.

[40] TSN, October 26, 1998, p. 31.

only necessary that the force or intimidation be sufficient to consummate the purpose of the accused. Intimidation must be viewed in the light of the victim's perception and judgment at the time of rape. It is enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something horrible will happen to her at that moment or thereafter.[41]

In any case, the records show that AAA did not succumb to the appellant's lustful design without putting up resistance. When they were inside the room, she tried to run to the door but the appellant blocked her path. She refused to undress; thus, the appellant had to do the task for her. She begged and pleaded to him not to proceed with his lewd design, to no avail.

Significantly, the conduct of a woman immediately following the alleged assault is of utmost importance as it tends to establish the truth or falsity of her claim.[42] In the case at bar, AAA broke down as soon as she saw her husband when she got home after the appellant ravished her. She forthwith related to him her ordeal. The first chance that she had, and this was on June 9, 1997 or four days after the incident, she went to the NBI to file a complaint, notwithstanding that she did not know the appellant's identity then, and submitted herself to a medico-genital examination. A few months later, when she saw the appellant's photograph in the tabloid, she lost no time in pursuing the charge against him.

To the Court's mind, the actuation of AAA bolsters her charge of rape. Her willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim.[43] Certainly, she would not have implicated a person, who was allegedly her lover, as the perpetrator of an abominable crime and thereby lay open their illicit relationship to public shame and ridicule, not to mention the ire of her husband were it not the truth.[44]

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[41] *People v. Anggit*, 390 SCRA 46 (2002).

[42] *Supra* at note 36.

[43] *People v. Dizon*, G.R. No. 144053, December 11, 2003.

[44] *People v. Dagami, supra*.

In contrast, the appellant's claim that he and AAAhad an amorous relationship is flimsy. The "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience.[45] Being an affirmative defense, the allegation of a love affair must be supported by convincing proof.[46] Since the appellant admitted to having had carnal knowledge of the victim, he bears the burden of proving his defense by clear and convincing evidence.[47] The appellant failed to discharge this burden. Other than his self-serving assertions, there was no support to his claim that he and AAA were lovers. His "sweetheart defense" cannot be given credence in the absence of corroborative proof like love notes, mementos, pictures or tokens, that such romantic relationship really existed.[48] All told, the appellant has miserably failed to destroy the credibility of AAA.

The Court agrees with the OSG that the rape was committed with the use of a deadly weapon, a knife, for which Republic Act No. 7659 prescribes the penalty of *reclusion perpetua* to death. However, contrary to the stance taken by the OSG, the Court cannot appreciate the appellant's recidivism as an aggravating circumstance. Article 14(9) of the Revised Penal Code defines a recidivist as "one who, at the time of his trial for one crime shall have been previously convicted by final judgment of another crime embraced in the same title of this Code." To prove recidivism, it is necessary to allege the same in the Information and to attach thereto certified copies of the sentences rendered against the accused.[49] Nonetheless, the trial court may still give such aggravating circumstance credence if the accused does not object to the presentation of evidence on the fact of recidivism.[50]

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[45] *Ibid*.

[46] *Id*.

[47] *Id*.

[48] *People v. Manallo, supra*.

[49] *People v. Molina*, 336 SCRA 400 (2000).

[50] *Ibid*.

In this case, the appellant's recidivism was not alleged in the Information nor even proved during trial. The prosecution failed to present during trial certified copies of the judgments convicting the appellant of rape in the other cases filed against him. Since neither aggravating nor mitigating circumstance attended the commission of the crime, the penalty of *reclusion perpetua* was properly meted on the appellant.

As to the award of damages, a modification is in order. While the trial court was correct in awarding the amounts of ₱50,000 as civil indemnity and ₱50,000 as moral damages to AAA, conformably to prevailing jurisprudence,[51] the amount of ₱25,000 should be additionally awarded as exemplary damages considering that the use of a deadly weapon attended the commission of the crime.[52]

WHEREFORE, the appealed Decision dated February 9, 2001 of the Regional Trial Court of Manila, Branch 27, in Criminal Case No. 97-161141, finding Conde Rapisora *y* Estrada *GUILTY* beyond reasonable doubt of rape under Article 335 of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED* with *MODIFICATION*. In addition to the amounts of ₱50,000 as civil indemnity and ₱50,000 as moral damages, the appellant is hereby *ORDERED* to pay the victim, AAA, the amount of ₱25,000 as exemplary damages.

SO ORDERED.

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

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

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[51] *People v. Dizon, supra.*

[52] *Ibid.*

FIRST DIVISION

[G.R. No. 149454. May 28, 2004]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **CASA MONTESSORI INTERNATIONALE and LEONARDO T. YABUT,** *respondents*.

[G.R. No. 149507. May 28, 2004]

CASA MONTESSORI INTERNATIONALE, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent*.

SYNOPSIS

Casa Montessori Internationale (Casa) filed a complaint for collection with damages against Bank of Philippine Islands (BPI). Casa prayed that BPI be ordered to restore the amount of ₱782,600.00 worth of checks with forged signature of Casa's President, which were encashed by their external auditor under a fictitious account. The RTC rendered a decision in favor of Casa. On appeal the Court of Appeals apportioned the loss between BPI and Casa. CA took into account Casa's contributory negligence that resulted in the undetected forgery. Hence, both parties filed their petition before the Supreme Court.

The Supreme Court denied the appeal of BPI and partly granted the appeal of Casa. The Court ruled that the forgery in this case had been established when the required preponderance of evidence had been satisfied and BPI, the drawee, erred in making payments by virtue thereof. The forged signatures are wholly inoperative, and Casa, the drawer whose signatures do not appear on the negotiable instruments, cannot be held liable thereon. Neither was the latter precluded from setting up forgery as a real defense. The Court also found that Casa was not negligent in its financial affairs. For allowing payment on the checks to a wrongful and fictitious payee, BPI becomes liable to its depositor drawer. The Court however denied Casa's claim for moral and exemplary damages. In the absence of a wrongful act or omission, or of fraud or bad faith,

moral damages could not be awarded. Having no right to moral damages, Casa could not also demand exemplary damages.

SYLLABUS

1. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; FORGERY; DEFINED.— Under Sec. 23 of the Negotiable Instruments Law, a forged signature is a real or absolute defense, and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it. The counterfeiting of any writing, consisting in the signing of another's name with intent to defraud, is forgery.

2. ID.; ID.; ID.; SHOULD BE ESTABLISHED BY CLEAR POSITIVE AND CONVINCING EVIDENCE.— Forgery "cannot be presumed." It must be established by clear, positive and convincing evidence. Under the best evidence rule as applied to documentary evidence like the checks in question, no secondary or substitutionary evidence may inceptively be introduced, as the original writing itself must be produced in court. But when, without bad faith on the part of the offeror, the original checks have already been destroyed or cannot be produced in court, secondary evidence may be produced.

3. ID.; BANKS; HIGH STANDARDS OF INTEGRITY AND PERFORMANCE REQUIRED; RATIONALE.— We have repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it. By the nature of its functions, a bank is "under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."

4. REMEDIAL LAW; CRIMINAL PROCEDURE; VOLUNTARY ADMISSION; WHEN NOT VIOLATIVE OF THE CONSTITUTIONAL RIGHTS; RATIONALE.— The voluntary admission of Yabut did not violate his constitutional rights (1) on custodial investigation, and (2) against self-incrimination. The mantle of protection under Section 12 of Article III of the 1987 Constitution covers only the period "from the time a person is taken into custody for investigation of his possible

participation in the commission of a crime or from the time he is singled out as a suspect in the commission of a crime although not yet in custody." Therefore, to fall within the ambit of Section 12, quoted above, there must be an arrest or a deprivation of freedom, with "questions propounded on him by the police authorities for the purpose of eliciting admissions, confessions, or any information." The said constitutional provision does "not apply to spontaneous statements made in a voluntary manner" whereby an individual orally admits to authorship of a crime. "What the Constitution proscribes is the compulsory or coercive disclosure of incriminating facts." Moreover, the right against self-incrimination under Section 17 of Article III of the Constitution, which is ordinarily available only in criminal prosecutions, extends to all other government proceedings — including civil actions, legislative investigations, and administrative proceedings that possess a criminal or penal aspect — but not to private investigations done by private individuals. Even in such government proceedings, this right may be waived, provided the waiver is certain; unequivocal; and intelligently, understandingly and willingly made. Under these two constitutional provisions, "[t]he Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State." Moreover, the Bill of Rights "is a charter of liberties for the individual and a limitation upon the power of the [S]tate." These rights are guaranteed to preclude the slightest coercion by the State that may lead the accused "to admit something false, not prevent him from freely and voluntarily telling the truth." Yabut is not an accused here. Besides, his mere invocation of the aforesaid rights "does not automatically entitle him to the constitutional protection." When he freely and voluntarily executed his Affidavit, the State was not even involved. Such Affidavit may therefore be admitted without violating his constitutional rights while under custodial investigation and against self-incrimination.

5. ID.; EVIDENCE; BEST EVIDENCE RULE; WHEN TESTIMONIAL AS WELL AS SECONDARY EVIDENCE IS ADMISSIBLE AS EXCEPTION THEREOF; PRESENT IN CASE AT BAR.— Even with respect to documentary evidence, the best evidence rule applies only when the contents of a document — such as the drawer's signature on a check —

is the subject of inquiry. As to whether the document has been actually executed, this rule does not apply; and testimonial as well as any other secondary evidence is admissible. Carina Lebron herself, the drawer's authorized signatory, testified many times that she had never signed those checks. Her testimonial evidence is admissible; the checks have not been actually executed. The genuineness of her handwriting is proved, not only through the court's comparison of the questioned handwritings and admittedly genuine specimens thereof, but above all by her. The failure of CASA to produce the original checks neither gives rise to the presumption of suppression of evidence nor creates an unfavorable inference against it. Such failure merely authorizes the introduction of secondary evidence in the form of microfilm copies. Of no consequence is the fact that CASA did not present the signature card containing the signatures with which those on the checks were compared. Specimens of standard signatures are not limited to such a card. Considering that it was not produced in evidence, other documents that bear the drawer's authentic signature may be resorted to. Besides, that card was in the possession of BPI — the adverse party. We have held that without the original document containing the allegedly forged signature, one cannot make a definitive comparison that would establish forgery; and that a comparison based on a mere reproduction of the document under controversy cannot produce reliable results. We have also said, however, that a judge cannot merely rely on a handwriting expert's testimony, but should also exercise independent judgment in evaluating the authenticity of a signature under scrutiny. In the present case, both the RTC and the CA conducted independent examinations of the evidence presented and arrived at reasonable and similar conclusions. Not only did they admit secondary evidence; they also appositely considered testimonial and other documentary evidence in the form of the Affidavit.

6. **CIVIL LAW; ESTOPPEL; NOT APPLICABLE ON CLIENT'S FAILURE TO REPORT ERROR IN THE BANK STATEMENT.—** The monthly statements issued by BPI to its clients contain a notice worded as follows: "If no error is reported in ten (10) days, account will be correct." Such notice cannot be considered a waiver, even if CASA failed to report the error. Neither is it estopped from questioning the mistake after the lapse of the ten-day period. This notice is a simple

confirmation or "circularization" — in accounting parlance — that requests client-depositors to affirm the accuracy of items recorded by the banks. Its purpose is to obtain from the depositors a direct corroboration of the correctness of their account balances with their respective banks. Internal or external auditors of a bank use it as a basic audit procedure — the results of which its client-depositors are neither interested in nor privy to — to test the details of transactions and balances in the bank's records. Evidential matter obtained from independent sources outside a bank only serves to provide greater assurance of reliability than that obtained solely within it for purposes of an audit of its own financial statements, not those of its client-depositors.

7. ID.; ID.; EFFECT THEREOF SHALL NOT APPLY TO PERSON WHO HAD NO KNOWLEDGE OF NOR CONSENT TO A TRANSACTION.— Estoppel precludes individuals from denying or asserting, by their own deed or representation, anything contrary to that established as the truth, in legal contemplation. Our rules on evidence even make a *juris et de jure* presumption that whenever one has, by one's own act or omission, intentionally and deliberately led another to believe a particular thing to be true and to act upon that belief, one cannot — in any litigation arising from such act or omission — be permitted to falsify that supposed truth. In the instant case, CASA never made any deed or representation that misled BPI. The former's omission, if any, may only be deemed an innocent mistake oblivious to the procedures and consequences of periodic audits. Since its conduct was due to such ignorance founded upon an innocent mistake, estoppel will not arise. A person who has no knowledge of or consent to a transaction may not be estopped by it. "Estoppel cannot be sustained by mere argument or doubtful inference x x x." CASA is not barred from questioning BPI's error even after the lapse of the period given in the notice.

8. REMEDIAL LAW; EVIDENCE; NEGLIGENCE; ALLEGATION WHICH REQUIRED PROOF; PRESENT IN CASE AT BAR.— In this jurisdiction, the negligence of the party invoking forgery is recognized as an exception to the general rule that a forged signature is wholly inoperative. Contrary to BPI's claim, however, we do not find CASA negligent in handling its financial affairs. CASA, we stress, is not precluded from setting up forgery as a real defense.

Negligence is not presumed, but proven by whoever alleges it. Its mere existence "is not sufficient without proof that it, and no other cause," has given rise to damages. In addition, this fault is common to, if not prevalent among, small and medium-sized business entities, thus leading the Professional Regulation Commission (PRC), through the Board of Accountancy (BOA), to require today not only accreditation for the practice of public accountancy, but also the registration of firms in the practice thereof. In fact, among the attachments now required upon registration are the code of good governance and a sworn statement on adequate and effective training.

9. ID.; ACTIONS; PROXIMATE CAUSE; DEFINED.— Proximate cause is determined by the facts of the case. "It is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred."

10. CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARD THEREOF REQUIRES THE PRESENCE OF A WRONGFUL ACT OR OMISSION OR OF FRAUD OR BAD FAITH; ABSENCE IN CASE AT BAR.— In the absence of a wrongful act or omission, or of fraud or bad faith, moral damages cannot be awarded. The adverse result of an action does not *per se* make the action wrongful, or the party liable for it. One may err, but error alone is not a ground for granting such damages. While no proof of pecuniary loss is necessary therefor — with the amount to be awarded left to the court's discretion — the claimant must nonetheless satisfactorily prove the existence of its factual basis and causal relation to the claimant's act or omission. Regrettably, in this case CASA was unable to identify the particular instance — enumerated in the Civil Code — upon which its claim for moral damages is predicated. Neither bad faith nor negligence so gross that it amounts to malice can be imputed to BPI. Bad faith, under the law, "does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."

11. ID.; ID.; ID.; AS A RULE CORPORATION IS NOT ENTITLED THERETO; EXCEPTION.— As a general rule, a corporation — being an artificial person without feelings,

emotions and senses, and having existence only in legal contemplation — is not entitled to moral damages, because it cannot experience physical suffering and mental anguish. However, for breach of the fiduciary duty required of a bank, a corporate client may claim such damages when its good reputation is besmirched by such breach, and social humiliation results therefrom.

12. ID.; ID.; EXEMPLARY DAMAGES; MAY NOT BE AWARDED IN THE ABSENCE OF MORAL DAMAGES.— Imposed by way of correction for the public good, exemplary damages cannot be recovered as a matter of right. As we have said earlier, there is no bad faith on the part of BPI for paying the checks of CASA upon forged signatures. Therefore, the former cannot be said to have acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. The latter, having no right to moral damages, cannot demand exemplary damages.

13. ID.; ID.; ATTORNEY'S FEES; WHEN AWARD THEREOF PROPER; CASE AT BAR.— When the act or omission of the defendant has compelled the plaintiff to incur expenses to protect the latter's interest, or where the court deems it just and equitable, attorney's fees may be recovered. In the present case, BPI persistently denied the claim of CASA under the NIL to recredit the latter's account for the value of the forged checks. This denial constrained CASA to incur expenses and exert effort for more than ten years in order to protect its corporate interest in its bank account. Besides, we have already cautioned BPI on a similar act of negligence it had committed seventy years ago, but it has remained unrelenting. Therefore, the Court deems it just and equitable to grant ten percent (10%) of the total value adjudged to CASA as attorney's fees.

14. ID.; ID.; JUSTIFIED BY THE PROVISIONS OF THE CIVIL CODE.— Under Section 196 of the NIL, any case not provided for shall be "governed by the provisions of existing legislation or, in default thereof, by the rules of the law merchant." Damages are not provided for in the NIL. Thus, we resort to the Code of Commerce and the Civil Code. Under Article 2 of the Code of Commerce, acts of commerce shall be governed by its provisions and, "in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of the civil law." This law being silent, we look at Article 18 of the Civil Code, which states: "In matters

which are governed by the Code of Commerce and special laws, their deficiency shall be supplied" by its provisions. A perusal of these three statutes unmistakably shows that the award of interest under our civil law is justified.

APPEARANCES OF COUNSEL

Oscar F. Martinez for Casa Montesori Internationale.
Benedicto Verzosa Gealogo Burkley & Asso. for BPI.
Mauricio Law Office for L. Yabut.

D E C I S I O N

PANGANIBAN, *J.*:

By the nature of its functions, a bank is required to take meticulous care of the deposits of its clients, who have the right to expect high standards of integrity and performance from it. Among its obligations in furtherance thereof is knowing the signatures of its clients. Depositors are not estopped from questioning wrongful withdrawals, even if they have failed to question those errors in the statements sent by the bank to them for verification.

The Case

Before us are two Petitions for Review[1] under Rule 45 of the Rules of Court, assailing the March 23, 2001 Decision[2] and the August 17, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 63561. The decretal portion of the assailed Decision reads as follows:

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[1] G.R. No. 149454 *rollo*, pp. 20-40; G.R. No. 149507 *rollo*, pp. 3-20.

[2] *Id*., pp. 44-52 & 22-30. Penned by Justice Portia Aliño-Hormachuelos, with the concurrence of Justices Fermin A. Martin, Jr. (Second Division chairman) and Mercedes Gozo-Dadole (member).

[3] *Id*., pp. 54 & 32. Penned by Justice Portia Aliño-Hormachuelos, with the concurrence of Justices Ramon A. Barcelona (Special Former Second Division chairman) and Mercedes Gozo-Dadole (member).

"WHEREFORE, upon the premises, the decision appealed from is *AFFIRMED* with the modification that defendant bank [Bank of the Philippine Islands (BPI)] is held liable only for one-half of the value of the forged checks in the amount of ₱547,115.00 after deductions subject to REIMBURSEMENT from third party defendant Yabut who is likewise *ORDERED* to pay the other half to plaintiff corporation [Casa Montessori Internationale (CASA)]."[4]

The assailed Resolution denied all the parties' Motions for Reconsideration.

The Facts

The facts of the case are narrated by the CA as follows:

"On November 8, 1982, plaintiff CASA Montessori International[5] opened Current Account No. 0291-0081-01 with defendant BPI[,] with CASA's President Ms. Ma. Carina C. Lebron as one of its authorized signatories.

"In 1991, after conducting an investigation, plaintiff discovered that nine (9) of its checks had been encashed by a certain Sonny D. Santos since 1990 in the total amount of ₱782,000.00, on the following dates and amounts:

'Check No.		Date	Amount
1.	839700	April 24, 1990	₱43,400.00
2.	839459	Nov. 2, 1990	110,500.00
3.	839609	Oct. 17, 1990	47,723.00
4.	839549	April 7, 1990	90,700.00
5.	839569	Sept. 23, 1990	52,277.00
6.	729149	Mar. 22, 1990	148,000.00
7.	729129	Mar. 16, 1990	51,015.00
8.	839684	Dec. 1, 1990	140,000.00
9.	729034	Mar. 2, 1990	98,985.00
		Total	₱782,600.00[6]

[4] Assailed CA Decision, pp. 8-9; G.R. No. 149454 *rollo*, pp. 51-52; G.R. No. 149507 *rollo*, pp. 29-30.

[5] This is also referred to in the records as Casa Montessori Internationale or Casa Montessori International, Inc.

[6] The amount was earlier stated in the CA Decision as ₱782,000.

"It turned out that 'Sonny D. Santos' with account at BPI's Greenbelt Branch [was] a fictitious name used by third party defendant Leonardo T. Yabut who worked as external auditor of CASA. Third party defendant voluntarily admitted that he forged the signature of Ms. Lebron and encashed the checks.

"The PNP Crime Laboratory conducted an examination of the nine (9) checks and concluded that the handwritings thereon compared to the standard signature of Ms. Lebron were not written by the latter.

"On March 4, 1991, plaintiff filed the herein Complaint for Collection with Damages against defendant bank praying that the latter be ordered to reinstate the amount of ₱782,500.00[7] in the current and savings accounts of the plaintiff with interest at 6% per annum.

"On February 16, 1999, the RTC rendered the appealed decision in favor of the plaintiff."[8]

Ruling of the Court of Appeals

Modifying the Decision of the Regional Trial Court (RTC), the CA apportioned the loss between BPI and CASA. The appellate court took into account CASA's contributory negligence that resulted in the undetected forgery. It then ordered Leonardo T. Yabut to reimburse BPI half the total amount claimed; and CASA, the other half. It also disallowed attorney's fees and moral and exemplary damages.

Hence, these Petitions.[9]

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[7] The total amount of the encashed checks was earlier computed in the CA Decision to be ₱782,600.

[8] Assailed CA Decision, pp. 2-4; G.R. No. 149454 *rollo*, pp. 45-47; G.R. No. 149507 *rollo*, pp. 23-25. Citations omitted.

[9] These two cases were consolidated and deemed submitted for decision on July 25, 2002, upon the Court's receipt of BPI's Memorandum in GR No. 149454, which was signed by Atty. Justino M. Marquez III. CASA's Memorandum, signed by Atty. Oscar F. Martinez, was filed on July 4, 2002; while Yabut's Memorandum, signed by Atty. Leny L. Mauricio, was filed on June 25, 2002.

In G.R. No. 149507, a Manifestation (re: Memorandum) by Yabut, also signed by Atty. Mauricio, was filed on June 25, 2002. BPI's Memorandum, also signed by Atty. Marquez, was filed on June 3, 2002; while CASA's Memorandum, also signed by Atty. Martinez, was filed on April 19, 2002.

Issues

In G.R. No. 149454, Petitioner BPI submits the following issues for our consideration:

> "I. The Honorable Court of Appeals erred in deciding this case *NOT in accord with the applicable decisions of this Honorable Court* to the effect that forgery cannot be presumed; that it must be proved by clear, positive and convincing evidence; and that the burden of proof lies on the party alleging the forgery.
>
> "II. The Honorable Court of Appeals erred in deciding this case *not in accord with applicable laws,* in particular the Negotiable Instruments Law (NIL) which precludes CASA, on account of its own negligence, from asserting its forgery claim against BPI, specially taking into account the absence of any negligence on the part of BPI."[10]

In G.R. No. 149507, Petitioner CASA submits the following issues:

> "1. The Honorable Court of Appeals erred when it ruled that 'there is no showing that [BPI], although negligent, acted in bad faith xxx' thus denying the prayer for the award of attorney's fees, moral damages and exemplary damages to [CASA]. The Honorable Court also erred when it did not order [BPI] to pay interest on the amounts due to [CASA].
>
> "2. The Honorable Court of Appeals erred when it declared that [CASA] was likewise negligent in the case at bar, thus warranting its conclusion that the loss in the amount of ₱547,115.00 be 'apportioned between [CASA] and [BPI] xxx'"[11]

These issues can be narrowed down to three. *First*, was there forgery under the Negotiable Instruments Law (NIL)? *Second*, were any of the parties negligent and therefore precluded from setting up forgery as a defense? *Third*, should moral and exemplary damages, attorney's fees, and interest be awarded?

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[10] BPI's Memorandum, p. 7; G.R. No. 149454 *rollo*, p. 140. Boldface and upper case characters copied verbatim.

[11] CASA's Memorandum, p. 6; G.R. No. 149507 *rollo*, p. 83.

The Court's Ruling

The Petition in G.R. No. 149454 has no merit, while that in G.R. No. 149507 is partly meritorious.

First Issue:
Forged Signature Wholly Inoperative

Section 23 of the NIL provides:

"Section 23. *Forged signature; effect of* . — When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right xxx to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."[12]

Under this provision, a forged signature is a real[13] or absolute defense,[14] and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it.[15]

The counterfeiting of any writing, consisting in the signing of another's name with intent to defraud, is forgery.[16]

In the present case, we hold that there was forgery of the drawer's signature on the check.

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[12] Act No. 2031 took effect on June 2, 1911. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. I* (1989 ed.), p. 191.

[13] Campos and Lopez-Campos, *Notes and Selected Cases on Negotiable Instruments Law* (5th ed., 1994), pp. 268-269.

[14] *Gempesaw v. CA,* 218 SCRA 682, 689, February 9, 1993.

[15] *Associated Bank v. CA*, 322 Phil. 677, 695, January 31, 1996.

[16] Agbayani, *supra*, p. 191.

First, both the CA[17] and the RTC[18] found that Respondent Yabut himself had voluntarily admitted, through an Affidavit, that he had forged the drawer's signature and encashed the checks.[19] He never refuted these findings.[20] That he had been coerced into admission was not corroborated by any evidence on record.[21]

Second, the appellate and the trial courts also ruled that the PNP Crime Laboratory, after its examination of the said checks,[22] had concluded that the handwritings thereon — compared to the standard signature of the drawer — were not hers.[23] This conclusion was the same as that in the Report[24] that the PNP Crime Laboratory had earlier issued to BPI — the drawee bank — upon the latter's request.

Indeed, we respect and affirm the RTC's factual findings, especially when affirmed by the CA, since these are supported by substantial evidence on record.[25]

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[17] Assailed CA Decision, p. 7; G.R. No. 149454 *rollo*, p. 50; G.R. No. 149507 *rollo*, p. 28.

[18] RTC Decision, p. 4; G.R. No. 149454 *rollo*, p. 59.

[19] Yabut's Affidavit, pp. 1-2; GR No. 149454 records, pp. 323-324.

[20] RTC Decision, p. 4; GR No. 149454 *rollo*, p. 59.

[21] Assailed CA Decision, p. 8; *id*., p. 51; GR No. 149507 *rollo*, p. 29.

[22] Questioned Document Report No. 291-91 dated November 25, 1991; G.R. No. 149454 records, p. 326.

[23] Assailed CA Decision, p. 7; G.R. No. 149454 *rollo*, p. 50; G.R. No. 149507 *rollo*, p. 28. See also RTC Decision, p. 3; G.R. No. 149454 *rollo*, p. 58.

[24] Questioned Document Report No. 029-91 dated January 28, 1991, issued upon the request of BPI Vice President Amante S. Bueno; G.R. No. 149454 records, p. 328.

[25] *Francisco v. CA,* 377 Phil. 368, 378, November 29, 1999. See also *Almeda v. CA*, 336 Phil. 621, 629, March 13, 1997; *Fuentes v. CA*, 335 Phil. 1163, 1169, February 26, 1997; and *People v. Magallano*, 334 Phil. 276, 282, January 16, 1997.

Voluntary Admission Not Violative of Constitutional Rights

The voluntary admission of Yabut did not violate his constitutional rights (1) on custodial investigation, and (2) against self-incrimination.

In the first place, he was not under custodial investigation.[26] His Affidavit was executed in private and before private individuals.[27] The mantle of protection under Section 12 of Article III of the 1987 Constitution[28] covers only the period "from the time a person is taken into custody for investigation of his possible participation in the commission of a crime or

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[26] Custodial investigation is defined as "any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Sebastian Sr. v. Garchitorena*, 343 SCRA 463, 470, October 18, 2000, per De Leon Jr., *J.* See also *Navallo v. Sandiganbayan*, 234 SCRA 175, 183-184, July 18, 1994; *People v. Loveria*, 187 SCRA 47, 61, July 2, 1990; and *Miranda v. Arizona*, 384 US 436, 444, 16 L. Ed. 2d 694, 706, June 13, 1966.

In the deliberations on the 1987 Constitution, Commissioner Felicitas Aquino summed up the right as extending to the period of "custodial interrogation, temporary detention and preliminary technical custody." Bernas, *The Constitution of the Republic of the Philippines: A Commentary, Vol. I* (1st ed., 1987), p. 345; citing Record of the Constitutional Commission: Proceedings and Debates, Vol. I (1986), pp. 713-714, 716-717.

§12 of Article III of the Constitution provides for the rights available to a person facing custodial investigation. Cruz, *Constitutional Law* (1995 ed.), p. 292.

[27] Yabut's Affidavit, *supra*.

[28] "xxx [A]mong the rights of a person under custodial investigation is the right to have competent and independent counsel preferably of his own choice and if the person cannot afford the services of counsel, that he must be provided with one." *Marcelo v. Sandiganbayan,* 361 Phil. 772, 788, January 26, 1999, per Mendoza, *J.*

See also *People v. Porio*, 376 SCRA 596, 609-610, February 13, 2002; *People v. Suela*, 373 SCRA 163, 182, January 15, 2002; *People v. Tulin*, 416 Phil. 365, 382-383, August 30, 2001; *People v. Continente*, 339 SCRA 1, 17-18, 20-21, 26, August 25, 2000; *People v. Santocildes, Jr.*, 378 Phil. 943, 949-950, December 21, 1999; *People v. Bermas*, 365 Phil. 581, 593-596, April 21, 1999; *People v. Santos*, 347 Phil. 943, 949-950, December

from the time he is singled out as a suspect in the commission of a crime although not yet in custody."[29]

Therefore, to fall within the ambit of Section 12, quoted above, there must be an arrest or a deprivation of freedom, with "questions propounded on him by the police authorities for the purpose of eliciting admissions, confessions, or any information."[30] The said constitutional provision does "not apply to spontaneous statements made in a voluntary manner"[31] whereby an individual orally admits to authorship of a crime.[32] "What the Constitution proscribes is the compulsory or coercive disclosure of incriminating facts."[33]

22, 1997; *People v. Andal*, 344 Phil. 889, 911-912, September 25, 1997; *People v. Fabro*, 342 Phil. 708, 772, 726, August 11, 1997; *People v. Deniega*, 251 SCRA 626, 638-639, December 29, 1995; and *People v. Duero*, 191 Phil. 679, 687-688, May 13, 1981.

[29] *People v. Felixminia*, 379 SCRA 567, 575, March 20, 2002, *per curiam.* See also *People v. Bariquit*, 341 SCRA 600, 618, October 2, 2000; *People v. Bravo*, 376 Phil. 931, 940, November 22, 1999; *People v. Andan*, 336 Phil. 91, 102, March 3, 1997; and *People v. Marra*, 236 SCRA 565, 573, September 20, 1994.

These rights are available if a person is in custody, even if not yet a suspect; or if already the suspect, even if not yet in custody. Bernas, *supra*.

[30] *People v. Arondain*, 418 Phil. 354, 367-368, September 27, 2001, per Ynares-Santiago, *J.* See also *People v. Amestuzo*, 413 Phil. 500, 508, July 12, 2001; *People v. Valdez*, 341 SCRA 25, 41-42, September 25, 2000; *People v. Labtan*, 377 Phil. 967, 982, 984, December 8, 1999; *People v. De la Cruz*, 344 Phil. 653, 660-661, September 17, 1997; *People v. Del Rosario*, 365 Phil. 292, 310, April 14, 1990; *People v. Ayson,* 175 SCRA 216, 231, July 7, 1989; and *Gamboa v. Cruz*, 162 SCRA 642, 648, June 27, 1988.

[31] *People v. Dano*, 339 SCRA 515, 528, September 1, 2000, per Quisumbing, *J.* See also *Aballe v. People*, 183 SCRA 196, 205, March 15, 1990; *People v. Dy*, 158 SCRA 111, 123-124, February 23, 1988; and *People v. Taylaran*, 195 Phil. 226, 233-234, October 23, 1981.

[32] In fact, the exclusionary rule under §12, paragraph (2) of the Bill of Rights, "applies only to admissions made in a criminal investigation but not to those made in an administrative investigation." *Remolona v. CSC*, 414 Phil. 590, 599, August 2, 2001, per Puno, *J.* See also *Sebastian Sr. v. Garchitorena, supra; Manuel v. N.C. Construction Supply,* 346 Phil. 1014, 1024, November 28, 1997; and *Lumiqued v. Exevea*, 346 Phil. 807, 822-823, November 18, 1997.

[33] *People v. Dano, supra*. See *People v. Ordoño*, 390 Phil. 169, 183-184, June 29, 2000.

Moreover, the right against self-incrimination[34] under Section 17 of Article III [35] of the Constitution, which is ordinarily available only in criminal prosecutions, extends to all other government proceedings — including civil actions, legislative investigations,[36] and administrative proceedings that possess a criminal or penal aspect[37] — but not to private investigations done by private individuals. Even in such government proceedings, this right may be waived,[38] provided the waiver is certain; unequivocal; and intelligently, understandingly and willingly made.[39]

If in these government proceedings waiver is allowed, all the more is it so in private investigations. It is of no moment that no criminal case has yet been filed against Yabut. The filing thereof is entirely up to the appropriate authorities or to the private individuals upon whom damage has been caused. As we shall also explain later, it is not mandatory for CASA — the plaintiff below — to implead Yabut in the civil case before the lower court.

Under these two constitutional provisions, "[t]he Bill of Rights[40] does not concern itself with the relation between a private

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[34] This provision prohibits the "compulsory oral examination of prisoners before the trial, or upon trial, for the purpose of extorting unwilling confessions or declarations implicating them in the commission of a crime." Bernas, *supra*, pp. 422-423; citing *US v. Tan Teng*, 23 Phil. 145, 152, September 7, 1912.

The kernel of this right is against testimonial compulsion only. Cruz, *supra*, p. 283. See Regalado, *Remedial Law Compendium,* Vol. II (7th rev. ed., 1995), p. 369.

[35] *People v. Rondero*, 378 Phil. 123, 139-140, December 9, 1999. See *People v. Bacor*, 366 Phil. 197, 212, April 30, 1999.

[36] Cruz, *supra*, p. 282.

[37] *Secretary of Justice v. Lantion*, 379 Phil. 165, 200, January 18, 2000; citing *Pascual Jr. v. Board of Medical Examiners,* 138 Phil. 361, 366, May 26, 1969, and *Cabal v. Kapunan Jr.,* 116 Phil. 1361, 1366-1369, December 29, 1962. *See* Bernas, *supra*, p. 423.

[38] *Alvero v. Dizon*, 76 Phil. 637, 645, May 4, 1946.

[39] Cruz, *supra*, p. 286.

[40] The Bill of Rights in Article III of the Constitution is a statement of an individual's rights that are normally protected, except in extreme cases of

individual and another individual. It governs the relationship between the individual and the State."[41] Moreover, the Bill of Rights "is a charter of liberties for the individual and a limitation upon the power of the [S]tate."[42] These rights [43] are guaranteed to preclude the slightest coercion by the State that may lead the accused "to admit something false, not prevent him from freely and voluntarily telling the truth."[44]

Yabut is not an accused here. Besides, his mere invocation of the aforesaid rights "does not automatically entitle him to the constitutional protection."[45] When he freely and voluntarily executed[46] his Affidavit, the State was not even involved. Such Affidavit may therefore be admitted without violating his constitutional rights while under custodial investigation and against self-incrimination.

Clear, Positive and Convincing Examination and Evidence

The examination by the PNP, though inconclusive, was nevertheless clear, positive and convincing.

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real public necessity, against impairment, usurpation, or removal by any form of State action. Sinco, *Philippine Political Law: Principles and Concepts* (10th ed., 1954), p. 73.

[41] *People v. Silvano*, 381 SCRA 607, 616, April 29, 2002, per Mendoza, *J.* See *People v. Domantay*, 366 Phil. 459, 474, May 11, 1999; *People v. Maqueda*, 312 Phil. 646, 675-676, March 22, 1995; *People v. Marti*, 193 SCRA 57, 67, January 18, 1991.

[42] *Filoteo Jr. v. Sandiganbayan*, 331 Phil. 531, 574, October 16, 1996, per Panganiban, *J.* See Bernas, *supra*, p. 33.

[43] A person suspected or accused of a crime is entitled to the specific safeguards embodied in §§12 and 17 of the Bill of Rights against arbitrary prosecution or punishment. Cruz, *supra*, p. 274.

[44] *People v. Vallejo*, 382 SCRA 192, 216, May 9, 2002, *per curiam*; citing *People v. Andan, supra*. See also *People v. Ordoño, supra; People v. Barlis*, 231 SCRA 426, 441, March 24, 1994; and *People v. Layuso*, 175 SCRA 47, 53, July 5, 1989.

[45] Sinco, *supra*, p. 670.

[46] In the absence of coercion, paragraph 17 of Article 32 of the Civil Code does not apply. It states:

Forgery "cannot be presumed."[47] It must be established by clear, positive and convincing evidence.[48] Under the best evidence rule as applied to documentary evidence like the checks in question, no secondary or substitutionary evidence may inceptively be introduced, as the original writing itself must be produced in court.[49] But when, without bad faith on the part of the offeror, the original checks have already been destroyed or cannot be produced in court, secondary evidence may be produced.[50] Without bad faith on its part, CASA proved the loss or destruction of the original checks through the Affidavit of the one person who knew of that fact[51] — Yabut. He clearly admitted to discarding the paid checks to cover up his misdeed.[52] In such a situation, secondary evidence like microfilm copies may be introduced in court.

The drawer's signatures on the microfilm copies were compared with the standard signature. PNP Document Examiner II Josefina de la Cruz testified on cross-examination that two different persons had written them.[53] Although no conclusive report could be issued in the absence of the original checks,[54] she affirmed that

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"Art. 32. Any xxx private individual xxx who directly or indirectly xxx violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

"(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess a guilt xxx"

[47] *American Express International, Inc. v. CA*, 367 Phil. 333, 341, June 8, 1999, per Bellosillo, *J.*; citing *Tenio-Obsequio v. CA,* 230 SCRA 550, 558, March 1, 1994. See *Siasat v. IAC*, 139 SCRA 238, 248, October 10, 1985.

[48] *Metropolitan Bank & Trust Co. v. CA,* 194 SCRA 169, 176, February 18, 1991. See *MWSS v. CA*, 227 Phil. 18, 26, July 14, 1986.

[49] Regalado, *supra*, p. 555.

[50] §3(a) of Rule 130 of the Rules of Court.

[51] *De Vera v. Aguilar*, 218 SCRA 602, 607, February 9, 1993.

[52] Yabut's Affidavit, p. 1; G.R. No. 149454 records, p. 323.

[53] TSN, January 18, 1994, p. 13.

[54] *Id.*, p. 29.

her findings were 90 percent conclusive.[55] According to her, even if the microfilm copies were the only basis of comparison, the differences were evident.[56] Besides, the RTC explained that although the Report was inconclusive, no conclusive report could have been given by the PNP, anyway, in the absence of the original checks.[57] This explanation is valid; otherwise, no such report can ever be relied upon in court.

Even with respect to documentary evidence, the best evidence rule applies only when the contents of a document — such as the drawer's signature on a check — is the subject of inquiry.[58] As to whether the document has been actually executed, this rule does not apply; and testimonial as well as any other secondary evidence is admissible.[59] Carina Lebron herself, the drawer's authorized signatory, testified many times that she had never signed those checks. Her testimonial evidence is admissible; the checks have not been actually executed. The genuineness of her handwriting is proved, not only through the court's comparison of the questioned handwritings and admittedly genuine specimens thereof,[60] but above all by her.

The failure of CASA to produce the original checks neither gives rise to the presumption of suppression of evidence[61] nor creates an unfavorable inference against it.[62] Such failure merely

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[55] *Id.*, pp. 33-34.

[56] *Ibid*.

[57] RTC Decision, p. 3; G.R. No. 149454 *rollo*, p. 58.

[58] §3 of Rule 130 of the Rules of Court.

[59] Regalado, *supra*.

[60] §22 of Rule 132 of the Rules of Court.

[61] This adverse presumption does not arise when the suppression is not willful. Regalado, *supra*, p. 639; citing *People v. Navaja*, 220 SCRA 624, 633, March 30, 1993.

[62] "xxx [T]he genuineness of a standard writing may be established by any of the following: (1) by the admission of the person sought to be charged with the disputed writing made at or for the purposes of the trial, or by his testimony; (2) by witnesses who saw the standards written or to whom or in

authorizes the introduction of secondary evidence[63] in the form of microfilm copies. Of no consequence is the fact that CASA did not present the signature card containing the signatures with which those on the checks were compared.[64] Specimens of standard signatures are not limited to such a card. Considering that it was not produced in evidence, other documents that bear the drawer's authentic signature may be resorted to.[65] Besides, that card was in the possession of BPI — the adverse party.

We have held that without the original document containing the allegedly forged signature, one cannot make a definitive comparison that would establish forgery;[66] and that a comparison based on a mere reproduction of the document under controversy cannot produce reliable results.[67] We have also said, however, that a judge cannot merely rely on a handwriting expert's testimony,[68] but should also exercise independent judgment in evaluating the authenticity of a signature under scrutiny.[69] In the present case, both the RTC and the CA conducted independent examinations of the evidence presented and arrived at reasonable and similar conclusions. Not only did they admit secondary evidence; they also appositely considered testimonial and other documentary evidence in the form of the Affidavit.

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whose hearing the person sought to be charged acknowledged the writing thereof; (3) by evidence showing that the reputed writer of the standard has acquiesced in or recognized the same, or that it has been adopted and acted upon by him in his business transactions or other concerns." *Security Bank & Trust Company v. Triumph Lumber and Construction Corp.,* 361 Phil. 463, 478, January 21, 1999, per Davide Jr., *CJ*, citing *BA Finance Corp. v. CA,* 161 SCRA 608, 618, May 28, 1988.

[63] Regalado, *supra*, p. 561.

[64] This is the normal process followed in verifying signatures for purposes of making bank withdrawals.

[65] *Chiang Yia Min v. CA*, 355 SCRA 608, 622-623, March 28, 2001.

[66] *Heirs of Gregorio v. CA*, 360 Phil. 753, 763, December 29, 1998.

[67] *Ibid*.

[68] *Id*., p. 764.

[69] *Ibid*.

The best evidence rule admits of exceptions and, as we have discussed earlier, the first of these has been met.[70] The result of examining a questioned handwriting, even with the aid of experts and scientific instruments, may be inconclusive;[71] but it is a *non sequitur* to say that such result is not clear, positive and convincing. The preponderance of evidence required in this case has been satisfied.[72]

Second Issue:
Negligence Attributable to BPI Alone

Having established the forgery of the drawer's signature, BPI — the drawee — erred in making payments by virtue thereof. The forged signatures are wholly inoperative, and CASA — the drawer whose authorized signatures do not appear on the negotiable instruments — cannot be held liable thereon. Neither is the latter precluded from setting up forgery as a real defense.

Clear Negligence
in Allowing Payment
Under a Forged Signature

We have repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence[73] is expected,[74] and high standards of integrity and performance are even required, of it.[75] By the nature of its functions, a bank is "under obligation to treat the

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[70] §3(a) of Rule 130 of the Rules of Court.

[71] Regalado, *supra*, p. 627.

[72] §1 of Rule 133 of the Rules of Court.

[73] The diligence required of banks is more than that of a *pater familias* or good father of a family. *Bank of the Philippine Islands v. CA*, 383 Phil. 538, 554, February 29, 2000. See *Philippine Bank of Commerce v. CA,* 336 Phil. 667, 681, March 14, 1997.

[74] *Philippine Commercial International Bank v. CA*, 350 SCRA 446, 472, January 29, 2001.

[75] §2 of Republic Act No. 8791, otherwise known as "*The General Banking Law of 2000.*"

accounts of its depositors with meticulous care,[76] always having in mind the fiduciary nature of their relationship."[77]

BPI contends that it has a signature verification procedure, in which checks are honored only when the signatures therein are verified to be the same with or similar to the specimen signatures on the signature cards. Nonetheless, it still failed to detect the eight instances of forgery. Its negligence consisted in the omission of that degree of diligence required[78] of a bank. It cannot now feign ignorance, for very early on we have already ruled that a bank is "bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged."[79] In fact, BPI was the same bank involved when we issued this ruling seventy years ago.

Neither Waiver nor Estoppel Results from Failure to Report Error in Bank Statement

The monthly statements issued by BPI to its clients contain a notice worded as follows: "If no error is reported in ten (10) days, account will be correct."[80] Such notice cannot be considered a waiver, even if CASA failed to report the error. Neither is it estopped from questioning the mistake after the lapse of the ten-day period.

This notice is a simple confirmation[81] or "circularization" — in accounting parlance — that requests client-depositors to affirm

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[76] *Westmont Bank v. Ong*, 375 SCRA 212, 221, January 30, 2002; citing *Citytrust Banking Corp. v. IAC*, 232 SCRA 559, 564, May 27, 1994.

[77] *Simex International (Manila), Inc. v. CA,* 183 SCRA 360, 367, March 19, 1990, per Cruz, *J.*

[78] Article 1173 of the Civil Code.

[79] *San Carlos Milling Co., Ltd. v. Bank of the Philippine Islands*, 59 Phil. 59, 66, December 11, 1933, per Hull, *J.*

[80] BPI's Memorandum, p. 14; G.R. No. 149454 *rollo*, p. 147.

[81] Aside from positive confirmations, there are also negative ones that request debtors to respond to an auditor only if the balance in an attached

the accuracy of items recorded by the banks.[82] Its purpose is to obtain from the depositors a direct corroboration of the correctness of their account balances with their respective banks.[83] Internal or external auditors of a bank use it as a basic audit procedure[84] — the results of which its client-depositors are neither interested in nor privy to — to test the details of transactions and balances in the bank's records.[85] Evidential matter obtained from independent sources outside a bank only serves to provide greater assurance of reliability[86] than that obtained solely within it for purposes of an audit of its own financial statements, not those of its client-depositors.

Furthermore, there is always the audit risk that errors would not be detected[87] for various reasons. One, materiality is a consideration in audit planning;[88] and two, the information obtained from such a substantive test is merely presumptive and cannot

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statement is incorrect. Ricchiute, *Auditing Concepts and Standards (rev. 2nd ed., 1991),* p. 491.

[82] Santos, *Basic Auditing: Theory and Concepts,* Vol. I (1988), p. 111.

[83] *Association of CPAs in Public Practice, Audit Manual* (1985), p. 49.

[84] Confirmation of accounts payable balances is normally applied to nearly every audit engagement. Holmes and Burns, *Auditing Standards and Procedures* (9th ed., 1979), p. 675.

A bank deposit is in the nature of a simple loan or *mutuum*, as provided for in Articles 1953 and 1980 of the Civil Code. *See* De Leon, *Comments and Cases on Credit Transactions,* 1995 ed., pp. 32-33; *Integrated Realty Corp. v. Philippine National Bank,* 174 SCRA 295, 309, June 28, 1989; *Serrano v. Central Bank of the Philippines,* 96 SCRA 96, 102, February 14, 1980; and *Central Bank of the Philippines v. Morfe,* 63 SCRA 114, 119, March 12, 1975.

In bank parlance, a bank deposit is an account payable by the bank to its client-depositor.

[85] Santos, *supra*, p. 102.

[86] Association of CPAs in Public Practice, *Audit Manual*, *supra*.

[87] *Id*., p. 57.

[88] *Id*., p. 24.

be the basis of a valid waiver.[89] BPI has no right to impose a condition unilaterally and thereafter consider failure to meet such condition a waiver. Neither may CASA renounce a right[90] it has never possessed.[91]

Every right has subjects — active and passive. While the active subject is entitled to demand its enforcement, the passive one is duty-bound to suffer such enforcement.[92]

On the one hand, BPI could not have been an active subject, because it could not have demanded from CASA a response to its notice. Besides, the notice was a measly request worded as follows: "Please examine xxx and report xxx"[93] CASA, on the other hand, could not have been a passive subject, either, because it had no obligation to respond. It could — as it did — choose not to respond.

Estoppel precludes individuals from denying or asserting, by their own deed or representation, anything contrary to that established as the truth, in legal contemplation.[94] Our rules on evidence even make a *juris et de jure* presumption[95] that whenever one has, by one's own act or omission, intentionally and deliberately led another to believe a particular thing to be true and to act upon that belief, one cannot — in any litigation arising

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[89] "Waiver is defined as the relinquishment of a known right with both knowledge of its existence and an intention to relinquish it." Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines,* Vol. I (1990), p. 29.

[90] Article 6 of the Civil Code.

[91] "The general rule of law is that a person may renounce any right which the law gives xxx." *The Manila Railroad Company v. The Attorney-General*, 20 Phil. 523, 537, December 1, 1911, per Moreland, *J*. See Tolentino, *supra*, p. 30.

[92] Tolentino, *supra*, p. 28.

[93] BPI's Memorandum, p. 14; G.R. No. 149454 *rollo*, p. 147.

[94] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines,* Vol. IV (1991), p. 656.

[95] Conclusive or absolute presumption. §2(a) of Rule 131 of the Rules of Court.

from such act or omission — be permitted to falsify that supposed truth.[96]

In the instant case, CASA never made any deed or representation that misled BPI. The former's omission, if any, may only be deemed an innocent mistake oblivious to the procedures and consequences of periodic audits. Since its conduct was due to such ignorance founded upon an innocent mistake, estoppel will not arise.[97] A person who has no knowledge of or consent to a transaction may not be estopped by it.[98] "Estoppel cannot be sustained by mere argument or doubtful inference xxx."[99] CASA is not barred from questioning BPI's error even after the lapse of the period given in the notice.

Loss Borne by Proximate Source of Negligence

For allowing payment[100] on the checks to a wrongful and fictitious payee, BPI — the drawee bank — becomes liable to its depositor-drawer. Since the encashing bank is one of its branches,[101] BPI can easily go after it and hold it liable for reimbursement.[102] It "may not debit the drawer's account[103]

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[96] Art. 1431 of the Civil Code also provides:

"Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

[97] *Ramiro v. Graño*, 54 Phil. 744, 750, March 31, 1930.

[98] *Lodovica v. CA*, 65 SCRA 154, 158, July 18, 1975.

[99] *Kalalo v. Luz*, 145 Phil. 152, 161, July 31, 1970, per Zaldivar, *J.*

[100] Under Article 1231(1) of the Civil Code, payment is the actual performance that extinguishes an obligation.

It implies not only an assent to the order of the drawer and a recognition of the drawee's obligation to pay the sum therein, but also a compliance with such obligation. *Philippine National Bank v. CA*, 134 Phil. 829, 833, October 29, 1968.

[101] Greenbelt Branch. Assailed CA Decision, p. 3; G.R. No. 149454 *rollo*, p. 46; G.R. No. 149507 *rollo*, p. 24.

[102] *The Great Eastern Life Insurance Co. v. Hongkong & Shanghai Banking Corp.,* 43 Phil. 678, 683, August 23, 1922.

[103] Campos and Lopez-Campos, *supra*, pp. 286-287.

and is not entitled to indemnification from the drawer."[104] In both law and equity, when one of two innocent persons "must suffer by the wrongful act of a third person, the loss must be borne by the one whose negligence was the proximate cause of the loss or who put it into the power of the third person to perpetrate the wrong."[105]

Proximate cause is determined by the facts of the case.[106] "It is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred."[107]

Pursuant to its prime duty to ascertain well the genuineness of the signatures of its client-depositors on checks being encashed, BPI is "expected to use reasonable business prudence."[108] In the performance of that obligation, it is bound by its internal banking rules and regulations that form part of the contract it enters into with its depositors.[109]

Unfortunately, it failed in that regard. *First*, Yabut was able to open a bank account in one of its branches without privity;[110] that is, without the proper verification of his corresponding identification papers. *Second*, BPI was unable to discover early on not only this irregularity, but also the marked differences in

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[104] *Associated Bank v. CA*, 322 Phil. 677, 697, January 31, 1996, per Romero, *J.*; citing *The Great Eastern Life Insurance Co. v. Hongkong & Shanghai Banking Corp., supra*, and *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corp.,* 157 SCRA 188, 198, January 20, 1988.

[105] *Philippine National Bank v. CA, supra,* per Concepcion, *C.J.*; citing *Blondeau v. Nano*, 61 Phil. 625, 631-632, July 26, 1935. See *Philippine National Bank v. The National City Bank of New York,* 63 Phil. 711, 723-726, October 31, 1936.

[106] Sangco, *Philippine Law on Torts and Damages*, Vol. I (rev. ed., 1993), p. 90.

[107] *Bataclán v. Medina*, 109 Phil. 181, 185-186, October 22, 1957, per Montemayor, *J.*

[108] *Philippine National Bank v. Quimpo*, 158 SCRA 582, 585, March 14, 1988, per Gancayco, *J.*

[109] *Gempesaw v. CA, supra*, p. 696.

[110] Agbayani, *supra*, p. 207.

the signatures on the checks and those on the signature card. *Third*, despite the examination procedures it conducted, the Central Verification Unit[111] of the bank even passed off these evidently different signatures as genuine. Without exercising the required prudence on its part, BPI accepted and encashed the eight checks presented to it. As a result, it proximately contributed to the fraud and should be held primarily liable[112] for the "negligence of its officers or agents when acting within the course and scope of their employment."[113] It must bear the loss.

CASA Not Negligent in Its Financial Affairs

In this jurisdiction, the negligence of the party invoking forgery is recognized as an exception[114] to the general rule that a forged signature is wholly inoperative.[115] Contrary to BPI's claim, however, we do not find CASA negligent in handling its financial affairs. CASA, we stress, is not precluded from setting up forgery as a real defense.

Role of Independent Auditor

The major purpose of an independent audit is to investigate and determine objectively if the financial statements submitted for audit by a corporation have been prepared in accordance with the appropriate financial reporting practices[116] of private

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[111] As testified to on direct examination by Angelita Dandan, senior manager of the BPI Muntinlupa Branch and formerly connected with the BPI Forbes Park Branch. TSN, August 26, 1997, pp. 3-4, and 7.

[112] "xxx [B]anks are expected to exercise the highest degree of diligence in the selection and supervision of their employees." *BPI v. CA*, 216 SCRA 51, 71, November 26, 1992, per Gutierrez Jr., *J.*

[113] *Philippine Commercial International Bank v. CA, supra*, per Quisumbing, *J.*, p. 469.

[114] Agbayani, *supra*, p. 199.

[115] *BPI v. CA*, *supra*, p. 65.

[116] Holmes and Burns, *supra*, p. 1.

entities. The relationship that arises therefrom is both legal and moral.[117] It begins with the execution of the engagement letter[118] that embodies the terms and conditions of the audit and ends with the fulfilled expectation of the auditor's ethical[119] and competent performance in all aspects of the audit.[120]

The financial statements are representations of the client; but it is the auditor who has the responsibility for the accuracy in the recording of data that underlies their preparation, their form of presentation, and the opinion[121] expressed therein.[122] The auditor does not assume the role of employee or of management in the client's conduct of operations[123] and is never under the control or supervision[124] of the client.

During the pendency of this case, an auditor had to ascertain whether the financial statements were in conformity with the Generally Accepted Accounting Principles (GAAP). Valix and Peralta, *Financial Accounting* (Vol. I, 1985 ed.), p. 8.

As of April 2004, the Accounting Standards Council (ASC) of the Philippines has approved many Statements of Financial Accounting Standards (SFAS) and has also adopted several International Accounting Standards (IAS) issued by the International Accounting Standards Council (IASC). http://www.picpa.com.ph/press.htm, last visited April 23, 2004, 12:05 p.m. PST.

[117] Holmes and Burns, *supra*, p. 79.

[118] *Id*., p. 206.

[119] Certified public accountants or CPAs adhere to a Code of Professional Ethics, promulgated by the Board of Accountancy (BOA) on March 15, 1978. In January 2004, a new Code of Ethics for CPAs was approved by the Board of Directors of the Philippine Institute of CPAs (PICPA), to be recommended for adoption by the BOA and approval by the Professional Regulation Commission (PRC) as part of the rules and regulations of the BOA for the practice of the accountancy profession in the Philippines. http://www.picpa.com.ph/news/codeofethics2.pdf, last visited April 23, 2004, 12:17 p.m. PST.

[120] Holmes and Burns, *supra*, p. 79.

[121] Santos, *supra*, pp. 11 & 168.

[122] Holmes and Burns, *supra*, p. 80.

[123] Ricchiute, *supra*, p. 48.

[124] Santos, *supra*, pp. 52 & 76.

Yabut was an independent auditor[125] hired by CASA. He handled its monthly bank reconciliations and had access to all relevant documents and checkbooks.[126] In him was reposed the client's[127] trust and confidence[128] that he would perform precisely those functions and apply the appropriate procedures in accordance with generally accepted auditing standards.[129] Yet he did not meet these expectations. Nothing could be more horrible to a client than to discover later on that the person tasked to detect fraud was the same one who perpetrated it.

Cash Balances
Open to Manipulation

It is a *non sequitur* to say that the person who receives the monthly bank statements, together with the cancelled checks and other debit/credit memoranda, shall examine the contents and give notice of any discrepancies within a reasonable time. Awareness is not equipollent with discernment.

Besides, in the internal accounting control system prudently installed by CASA,[130] it was Yabut who should examine those documents in order to prepare the bank reconciliations.[131] He

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[125] As testified to on cross-examination by Carina Lebron (TSN, February 13, 1992, pp. 18-19). See Yabut's Affidavit, p. 1; G.R. No. 149454 records, p. 323.

That Respondent Yabut is a CPA appears in CASA's pretrial Brief. G.R. No. 149454 records, p. 83.

[126] Yabut's Affidavit, *supra*.

[127] Ricchiute, *supra*, p. 54.

[128] Santos, *supra*, p. 6.

[129] *Commissioner of Internal Revenue v. TMX Sales, Inc.,* 205 SCRA 184, 191, January 15, 1992.

As of April 2004, many Generally Accepted Auditing Standards (GAAS) have been replaced by International Standards on Auditing (ISA).

[130] A depositor has a duty to set up an accounting system that is reasonably calculated to prevent any forgery or to render it difficult to perpetrate. *Gempesaw v. CA, supra,* p. 690.

[131] A bank reconciliation is an audit technique that verifies if the cash balance appearing on a bank statement per bank records is in agreement with

owned his working papers,[132] and his output consisted of his opinion as well as the client's financial statements and accompanying notes thereto. CASA had every right to rely solely upon his output — based on the terms of the audit engagement — and could thus be unwittingly duped into believing that everything was in order. Besides, "[g]ood faith is always presumed and it is the burden of the party claiming otherwise to adduce clear and convincing evidence to the contrary."[133]

Moreover, there was a time gap between the period covered by the bank statement and the date of its actual receipt. Lebron personally received the December 1990 bank statement only in January 1991[134] — when she was also informed of the forgery for the first time, after which she immediately requested a "stop payment order." She cannot be faulted for the late detection of the forged December check. After all, the bank account with BPI was not personal but corporate, and she could not be expected to monitor closely all its finances. A preschool teacher charged with molding the minds of the youth cannot be burdened with the intricacies or complexities of corporate existence.

There is also a cut-off period such that checks issued during a given month, but not presented for payment within that period, will not be reflected therein.[135] An experienced auditor with intent to defraud can easily conceal any devious scheme from a client unwary of the accounting processes involved by manipulating the cash balances on record — especially when bank transactions are numerous, large and frequent. CASA could only be blamed, if at all, for its unintelligent choice in the selection

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that in the depositor's records or books of accounts. Meigs and Meigs, *Accounting: The Basis for Business Decisions,* Part I (5th ed., 1981), p. 315.

[132] §24 of Presidential Decree (PD) No. 692, otherwise known as "The Revised Accountancy Law."

[133] *Chiang Yia Min v. CA, supra*, p. 624, per Gonzaga-Reyes, *J.*

[134] G.R. No. 149454 records, p. 491.

[135] Cutoff bank statements do not represent all the transactions in a given month. Ricchiute, *supra*, p. 498.

and appointment of an auditor — a fault that is not tantamount to negligence.

Negligence is not presumed, but proven by whoever alleges it.[136] Its mere existence "is not sufficient without proof that it, and no other cause,"[137] has given rise to damages.[138] In addition, this fault is common to, if not prevalent among, small and medium-sized business entities, thus leading the Professional Regulation Commission (PRC), through the Board of Accountancy (BOA), to require today not only accreditation for the practice of public accountancy,[139] but also the registration of firms in the practice thereof. In fact, among the attachments now required upon registration are the code of good governance[140] and a sworn statement on adequate and effective training.[141]

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[136] *Taylor v. The Manila Electric Railroad and Light Co*., 16 Phil. 8, 28, March 22, 1910, per Carson*, J*.; citing *Scævola in Jurisprudencia del Código Civil*, Vol. 6 (1902), pp. 551-552.

[137] *Taylor v. The Manila Electric Railroad and Light Co., supra*, p. 27, quoting the judgment of the Supreme Court of Spain on June 12, 1900.

[138] Before there can be a judgment for damages, "negligence must be affirmatively established by competent evidence." *Sor Consuelo Barceló v. The Manila Electric Railroad and Light Co.,* 29 Phil. 351, 359, January 28, 1915, per Carson, *J*.

[139] §27 of PD 692.

[140] Good governance has been defined as a "really strong senior managerial control" exercised by the chief executive officer or "CEO and one of his/her strongest direct reports." Gerry Conroy, *Good Governance and Good Management Keys to Successful Project Management*. http://www.pwcglobal.com/Extweb/ncinthenews.nsf/docid/28123C3F882E48B7CA256AFA007A33EA, last visited May 6, 2004, 1:12 p.m. PST.

"Accountability is a key requirement of good governance." As such, it "cannot be enforced without transparency and the rule of law." http://www.unescap.org/huset/gg/governance.htm, last visited May 6, 2004, 12:55 p.m. PST.

[141] http://www.picpa.com.ph, last visited May 4, 2004, 1:57 p.m. PST.

The missing checks were certainly reported by the bookkeeper[142] to the accountant[143] — her immediate supervisor — and by the latter to the auditor. However, both the accountant and the auditor, for reasons known only to them, assured the bookkeeper that there were no irregularities.

The bookkeeper[144] who had exclusive custody of the checkbooks[145] did not have to go directly to CASA's president or to BPI. Although she rightfully reported the matter, neither an investigation was conducted nor a resolution of it was arrived at, precisely because the person at the top of the helm was the culprit. The vouchers, invoices and check stubs in support of all check disbursements could be concealed or fabricated — even in collusion — and management would still have no way to verify its cash accountabilities.

Clearly then, Yabut was able to perpetrate the wrongful act through no fault of CASA. If auditors may be held liable for breach of contract and negligence,[146] with all the more reason may they be charged with the perpetration of fraud upon an unsuspecting client. CASA had the discretion to pursue BPI alone under the NIL, by reason of expediency or munificence or both. Money paid under a mistake may rightfully be recovered,[147] and under such terms as the injured party may choose.

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[142] Isidra Carandang. TSN, February 13, 1992, pp. 18-19.

[143] Felipa Cabuyao. TSN, February 13, 1992, pp. 18-19.

Yabut admitted that he had recommended Cabuyao to the position. Yabut's Affidavit, *supra*.

[144] The job of a bookkeeper is so integrated with a corporation that the regular recording of its business accounts and transactions safeguards it from possible fraud, which is adverse to its corporate interest. *Pabon v. NLRC*, 296 SCRA 7, 14, September 24, 1998.

[145] Yabut's Affidavit, p. 1; G.R. No. 149454 records, p. 323.

[146] *Holmes and Burns, supra*, pp. 84-86.

[147] Campos and Lopez-Campos, *supra*, p. 287; Agbayani, *supra*, p. 211. Both cited Article 2154 of the Civil Code.

Third Issue:
Award of Monetary Claims

Moral Damages Denied

We deny CASA's claim for moral damages.

In the absence of a wrongful act or omission,[148] or of fraud or bad faith,[149] moral damages cannot be awarded.[150] The adverse result of an action does not *per se* make the action wrongful, or the party liable for it. One may err, but error alone is not a ground for granting such damages. [151] While no proof of pecuniary loss is necessary therefor — with the amount to be awarded left to the court's discretion[152] — the claimant must nonetheless satisfactorily prove the existence of its factual basis[153] and causal relation[154] to the claimant's act or omission.[155]

Regrettably, in this case CASA was unable to identify the particular instance — enumerated in the Civil Code — upon which its claim for moral damages is predicated.[156] Neither bad faith nor negligence so gross that it amounts to malice[157] can be imputed to BPI. Bad faith, under the law, "does not simply

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[148] *Ong Yiu v. CA*, 91 SCRA 223, 229, June 29, 1979.

[149] *Suario v. Bank of the Philippine Islands*, 176 SCRA 688, 696, August 25, 1989; citing *Guita v. CA*, 139 SCRA 576, 580, November 11, 1985.

[150] *Rubio v. CA*, 141 SCRA 488, 515-516, March 12, 1986; citing *R&B Surety & Insurance Co., Inc. v. IAC,* 214 Phil. 649, 657, June 22, 1984.

[151] *Filinvest Credit Corp. v. Mendez*, 152 SCRA 593, 601, July 31, 1987.

[152] Article 2216 of the Civil Code.

[153] *Silva v. Peralta*, 110 Phil. 57, 64, November 25, 1960.

[154] Article 2217 of the Civil Code.

[155] *Dee Hua Liong Electrical Equipment Corp. v. Reyes*, 230 Phil. 101, 107, November 25, 1986.

[156] *Guilatco v. City of Dagupan*, 171 SCRA 382, 389, March 21, 1989; citing *Bagumbayan Corp. v. IAC*, 217 Phil. 421, 424, September 30, 1984.

[157] *Soberano v. Manila Railroad Co.,* 124 Phil. 1330, 1337, November 23, 1966; citing *Fores v. Miranda*, 105 Phil. 266, 274, 276, March 4, 1959 and *Necesito v. Paras,* 104 Phil. 75, 82-83, June 30, 1958.

connote bad judgment or negligence;[158] it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[159]

As a general rule, a corporation — being an artificial person without feelings, emotions and senses, and having existence only in legal contemplation — is not entitled to moral damages,[160] because it cannot experience physical suffering and mental anguish.[161] However, for breach of the fiduciary duty required of a bank, a corporate client may claim such damages when its good reputation is besmirched by such breach, and social humiliation results therefrom.[162] CASA was unable to prove that BPI had debased the good reputation of, [163] and consequently caused incalculable embarrassment to, the former. CASA's mere allegation or supposition thereof, without any sufficient evidence on record,[164] is not enough.

Exemplary Damages Also Denied

We also deny CASA's claim for exemplary damages.

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[158] *Northwest Orient Airlines v. CA,* 186 SCRA 440, 444, June 8, 1990; citing *Sabena Belgian World Airlines v. CA,* 171 SCRA 620, 629, March 31, 1989.

[159] *Cathay Pacific Airways, Ltd. v. Vazquez*, 399 SCRA 207, 220, March 14, 2003, per Davide Jr., *CJ*; citing *Francisco v. Ferrer Jr.,* 353 SCRA 261, 265, February 28, 2001. See also *Morris v. CA*, 352 SCRA 428, 437, February 21, 2001; *Magat, Jr. v. CA,* 337 SCRA 298, 307, August 4, 2000; and *Tan v. Northwest Airlines, Inc*., 383 Phil. 1026, 1032, March 3, 2000.

[160] *LBC Express, Inc. v. CA*, 236 SCRA 602, 607, September 21, 1994. See *Layda v. CA*, 90 Phil. 724, 730, January 29, 1952.

[161] Article 2217 of the Civil Code.

[162] Morales, *The Philippine General Banking Law (Annotated 2002),* pp. 3-4; citing *Simex International (Manila), Inc. v. CA, supra,* and *Mambulao Lumber Co. v. Philippine National Bank*, 130 Phil. 366, 391, January 30, 1968.

[163] Sangco, *supra*, p. 989.

[164] *Grapilon v. Municipal Council of Carigara, Leyte*, 112 Phil. 24, 29, May 30, 1961.

Imposed by way of correction[165] for the public good,[166] exemplary damages cannot be recovered as a matter of right.[167] As we have said earlier, there is no bad faith on the part of BPI for paying the checks of CASA upon forged signatures. Therefore, the former cannot be said to have acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[168] The latter, having no right to moral damages, cannot demand exemplary damages.[169]

Attorney's Fees Granted

Although it is a sound policy not to set a premium on the right to litigate,[170] we find that CASA is entitled to reasonable attorney's fees based on "factual, legal, and equitable justification."[171]

When the act or omission of the defendant has compelled the plaintiff to incur expenses to protect the latter's interest,[172]

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[165] Article 2229 of the Civil Code.

[166] *Ledesma v. CA*, 160 SCRA 449, 456, April 15, 1988, *Prudenciado v. Alliance Transport System, Inc.,* 148 SCRA 440, 450, March 16, 1987; and *Lopez v. Pan American World Airways,* 123 Phil. 256, 267, March 30, 1966.

[167] *De Leon v. CA*, 165 SCRA 166, 176, August 31, 1988; *Sweet Lines, Inc. v. CA,* 206 Phil. 663, 669, April 28, 1983; *Octot v. Ybañez*, 197 Phil. 76, 82, January 18, 1982; and *Ventanilla v. Centeno*, 110 Phil. 811, 816, January 28, 1961, citing Article 2233 of the Civil Code.

[168] Article 2232 of the Civil Code. See *Nadura v. Benguet Consolidated, Inc.,* 116 Phil. 28, 32, August 24, 1962.

[169] *Estopa v. Piansay Jr.*, 109 Phil. 640, 642, September 30, 1960.

[170] *Firestone Tire & Rubber Co. of the Philippines v. Ines Chaves & Co., Ltd.,* 124 Phil. 947, 950, October 19, 1966, citing *Heirs of Basilisa Justiva vs. Gustilo*, 117 Phil. 71, 73, January 31, 1963. *See Tan Ti (alias Tan Tico) v. Alvear*, 26 Phil. 566, 571, January 16, 1914.

[171] *Scott Consultants & Resource Development Corporation, Inc. v. CA*, 312 Phil. 466, 481, March 16, 1995, per Davide Jr., *J.* (now *CJ.*).

[172] Article 2208 (2) of the Civil Code. See *Rivera v. Litam & Co., Inc.,* 114 Phil. 1009, 1022, April 25, 1962; and *Luneta Motor Co. v. Baguio Bus Co., Inc.,* 108 Phil. 892, 898, June 30, 1960.

or where the court deems it just and equitable,[173] attorney's fees may be recovered. In the present case, BPI persistently denied the claim of CASA under the NIL to recredit the latter's account for the value of the forged checks. This denial constrained CASA to incur expenses and exert effort for more than ten years in order to protect its corporate interest in its bank account. Besides, we have already cautioned BPI on a similar act of negligence it had committed seventy years ago, but it has remained unrelenting. Therefore, the Court deems it just and equitable to grant ten percent (10%)[174] of the total value adjudged to CASA as attorney's fees.

Interest Allowed

For the failure of BPI to pay CASA upon demand and for compelling the latter to resort to the courts to obtain payment, legal interest may be adjudicated at the discretion of the Court, the same to run from the filing[175] of the Complaint.[176] Since a court judgment is not a loan or a forbearance of recovery, the legal interest shall be at six percent (6%) *per annum*.[177] "If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of xxx legal interest, which is six percent *per annum*."[178] The actual base

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173 Article 2208 (11) of the Civil Code. See *Philippine National Bank v. Utility Assurance & Surety Co., Inc*., 177 SCRA 208, 219, September 1, 1989; citing *Plaridel Surety & Insurance Co., Inc. v. P.L. Galang Machinery Co., Inc*., 100 Phil. 679, 682, January 11, 1957. See also *Apelario v. Ines* Chavez & Co., Ltd., 113 Phil. 215, 217-218, October 16, 1961; and *Guitarte v. Sabaco*, 107 Phil. 437, 440, March 28, 1960.

174 Jarencio, *Torts and Damages in Philippine Law* (4th ed., 1983), p. 334; citing *Pirovano v. The De la Rama Steamship* Co., 96 Phil. 335, 367, December 29, 1954.

175 When a claim is made judicially under Article 1169 of the Civil Code.

176 *Philippine National Bank v. Utility Assurance & Surety Co., Inc., supra*.

177 *Cabral v. CA,* 178 SCRA 90, 93, September 29, 1989.

178 Article 2209 of the Civil Code.

for its computation shall be "on the amount finally adjudged,"[179] compounded[180] annually to make up for the cost of money[181] already lost to CASA.

Moreover, the failure of the CA to award interest does not prevent us from granting it upon damages awarded for breach of contract.[182] Because BPI evidently breached its contract of deposit with CASA, we award interest in addition to the total amount adjudged. Under Section 196 of the NIL, any case not provided for shall be "governed by the provisions of existing legislation or, in default thereof, by the rules of the law merchant."[183] Damages are not provided for in the NIL. Thus, we resort to the Code of Commerce and the Civil Code. Under Article 2 of the Code of Commerce, acts of commerce shall be governed by its provisions and, "in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of the civil law."[184] This law being silent, we look at Article 18 of the Civil Code, which states: "In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied" by its provisions. A perusal of these three statutes unmistakably shows that the award of interest under our civil law is justified.

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[179] *Francisco v. CA, supra,* p. 381, per Gonzaga-Reyes, *J*.

[180] In compounding interest, "xxx the amount of interest earned for a certain period is added to the principal for the next period. Interest for the subsequent period is computed on the new amount, which includes both the principal and accumulated interest." Smith and Skousen, *Intermediate Accounting*, the 11th ed., 1992, p. 235.

[181] "The payment (cost) for the use of money is interest." *Id*., p. 234.

[182] Article 2210 of the Civil Code.

[183] The law merchant refers to the body of law relating to mercantile transactions and instruments of widespread use. Its usage as adopted by the courts is the origin of the law merchant on negotiable securities. Agbayani, *supra*, pp. 11-12.

[184] A current account is a commercial transaction. *In re Liquidation of Mercantile Bank of China, Tan Tiong Tick v. American Apothecaries Co*., 65 Phil. 414, 419-420, March 31, 1938.

WHEREFORE, the Petition in G.R. No. 149454 is hereby *DENIED*, and that in G.R. No. 149507 *PARTLY GRANTED*. The assailed Decision of the Court of Appeals is *AFFIRMED* with modification: BPI is held liable for ₱547,115, the total value of the forged checks less the amount already recovered by CASA from Leonardo T. Yabut, plus interest at the legal rate of six percent (6%) *per annum* — compounded annually, from the filing of the complaint until paid in full; and attorney's fees of ten percent (10%) thereof, subject to reimbursement from Respondent Yabut for the entire amount, excepting attorney's fees. Let a copy of this Decision be furnished the Board of Accountancy of the Professional Regulation Commission for such action as it may deem appropriate against Respondent Yabut. No costs.

SO ORDERED.

Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

Davide, Jr., C.J. (Chairman), on official leave.

FIRST DIVISION

[G.R. No. 149569. May 28, 2004]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **RBL ENTERPRISES, INC., RAMON B. LACSON SR., and Spouses EDWARDO and HERMINIA LEDESMA,** *respondents*.

SYNOPSIS

Respondents herein instituted an action against petitioner PNB. Alleging that the failure of petitioner to release the remaining half of the loan they applied for and approved caused disruption of their business operations leading to severe losses

and eventual closure of their business. Petitioner, however, claimed that the non-release of the remaining balance of the loan was due to respondents' failure to comply with the additional requirement of the lessor's conformity over the chattel mortgage over the buildings, culture tanks and other hatchery facilities located in the property leased by the petitioners. The Regional Trial Court (RTC) ruled that petitioner PNB had breached its obligation under the contract of loan and should therefore be held liable for the consequential damages suffered by respondents. The Court of Appeals, in affirming the decision of the lower court, held that the lessor was not a party to the mortgage contract and could not be compelled to affix her signature thereto. The issue to be resolved by the Supreme Court is whether the non-release of the balance of the loan by PNB is justified.

The Supreme Court affirmed the decision of the Court of Appeals. According to the Court, having released fifty percent of the loan proceeds on the basis of the signed loan and mortgage contracts, petitioner could no longer require borrowers to secure the lessor's conformity of the mortgage contract as a condition precedent to the release of the loan balance. The conformity of the lessor was not necessary to protect the bank interest, because respondents were unquestionably the absolute owners of the mortgaged property. Furthermore, the registration of the mortgage created a legal right by the mortgagor; the transferees are legally bound to respect.

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONDITIONS PRECEDENT ARE NOT FAVORED; APPLICATION IN CASE AT BAR.— Conditions precedent are not favored. Unless impelled by plain and unambiguous language or by necessary implication, courts will not construe a stipulation as laden with such burden, particularly when that stipulation would result in a forfeiture or in inequitable consequences. Nowhere did PNB explicitly state that the release of the second half of the loan accommodation was subject to the mortgagor's procurement of the lessor's conformity to the Mortgage Contract. Absent such a condition, the efficacy of the Credit Agreement stood, and petitioner was obligated to release the balance of the loan.

Its refusal to do so constituted a breach of its reciprocal obligation under the Loan Agreement.

2. **ID.; ID.; MORTGAGE; NATURE THEREOF.—** Article 2126 of the Civil Code describes the real nature of a mortgage: it is a real right following the property, such that in subsequent transfers by the mortgagor, the transferee must respect the mortgage. A registered mortgage lien is considered inseparable from the property inasmuch as it is a right *in rem*. The mortgage creates a real right or a lien which, after being recorded, follows the chattel wherever it goes. Under Article 2129 of the same Code, the mortgage on the property may still be foreclosed despite the transfer. Indeed, even if the mortgaged property is in the possession of the debtor, the creditor is still protected. To protect the latter from the former's possible disposal of the property, the chattel mortgage is made effective against third persons by the process of registration.

3. **ID.; ID.; ID.; BECAME UNENFORCEABLE UPON FAILURE OF MORTGAGEE TO RELEASE THE BALANCE OF THE LOAN.—** Since PNB failed to release the ₱1,000,000 balance of the loan, the Real Estate and Chattel Mortgage Contract became unenforceable to that extent. Relevantly, we quote this Court's ruling in *Central Bank of the Philippines v. Court of Appeals*: "The consideration of the accessory contract of real estate mortgage is the same as that of the principal contract. For the debtor, the consideration of his obligation to pay is the existence of a debt. Thus, in the accessory contract of real estate mortgage, the consideration of the debtor in furnishing the mortgage is the existence of a valid, voidable, or unenforceable debt. x x x x x x x x x "[W]hen there is partial failure of consideration, the mortgage becomes unenforceable to the extent of such failure. Where the indebtedness actually owing to the holder of the mortgage is less than the sum named in the mortgage, the mortgage cannot be enforced for more than the actual sum due."

4. **ID.; DAMAGES; ACTUAL OR COMPENSATORY; THE AMOUNT OF LOSS IS REQUIRED TO BE PROVEN WITH REASONABLE CERTAINTY; APPLICATION IN CASE AT BAR.—** True, indemnification for damages comprises not only the loss that was actually suffered, but also the profits — referred to as compensatory damages — that the obligee failed to obtain. To justify a grant of actual or compensatory damages,

however, it would be necessary to prove the amount of loss with a reasonable degree of certainty, based upon competent proof and the best evidence obtainable by the injured party. The quarterly income tax report of Respondent RBL Enterprises, Inc., which was presented by petitioner and used by the appellate court as basis for computing the average profits earned by respondents in their business, provided a reasonable means for ascertaining their claims for lost profits.

5. **ID.; ID.; MORAL DAMAGES; MAY BE AWARDED IN BREACH OF CONTRACT WHEN THE PARTY ACTED FRAUDULENTLY OR IN BAD FAITH; NOT PRESENT IN CASE AT BAR.—** Moral damages are explicitly authorized in breaches of contract when the defendant has acted fraudulently or in bad faith. Concededly, the bank was remiss in its obligation to release the balance of the loan extended to respondents. Nothing in the findings of the trial and the appellate courts, however, sufficiently indicate a deliberate intent on the part of PNB to cause harm to respondents.

6. **ID.; ID.; EXEMPLARY DAMAGES; NATURE THEREOF.—** Exemplary damages, in turn, are intended to serve as an example or a correction for the public good. Courts may award them if the defendant is found to have acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Given the above premises and the circumstances here obtaining, the exemplary damages granted by the courts *a quo* cannot be sustained.

7. **ID.; ID.; ATTORNEY'S FEES; WHEN PROPER.—** The award of attorney's fees as part of the damages is just and equitable under the circumstances. Such fees may be awarded when parties are compelled to litigate or to incur expenses to protect their interest by reason of an unjustified act of the opposing party. In the present case, petitioner's refusal to release the balance of the loan has compelled respondents to institute an action for injunction and damages in order to protect their clear rights and interests.

APPEARANCES OF COUNSEL

The Chief Legal Counsel (PNB) for petitioner.
Rafael A. Diaz for RBL Enterprise, Inc.
The Law Firm of Mirano, Mirano & Mirano for Sps. Ledesma.

D E C I S I O N

PANGANIBAN, *J.*:

Having released fifty percent of the loan proceeds on the basis of the signed loan and mortgage contracts, petitioner can no longer require the borrowers to secure the lessor's conformity to the Mortgage Contract as a condition precedent to the release of the loan balance. The conformity of the lessor was not necessary to protect the bank's interest, because respondents were unquestionably the absolute owners of the mortgaged property. Furthermore, the registration of the mortgage created a real right to the properties which, in subsequent transfers by the mortgagor, the transferees are legally bound to respect.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the August 22, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 49749. The dispositive portion of the Decision reads as follows:

"*WHEREFORE*, premises considered[,] the judgment appealed from is hereby *AFFIRMED*, with xxx *MODIFICATION* as follows:

"1. The amount of actual damages and losses is reduced from ₱985,722.15 to merely ₱380,713.55 with legal interest from the date of the filing of the complaint. The interest payable on the loan is ordered reduced by using the agreed interest rate of 18% per annum in the computation[;]

"2. The amount of moral damages is reduced from ₱100,000.00 to ₱50,000.00;

"3. The amount of exemplary damages is reduced from ₱50,000.00 to ₱30,000.00; and

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[1] *Rollo*, pp. 8-22.

[2] *Id*., pp. 24-34. Eleventh Division. Penned by Justice Juan Q. Enriquez Jr. and concurred in by Justices Ruben T. Reyes (Division chairman) and Presbitero J. Velasco, Jr. (member).

"4. The award of attorney's fees is reduced from ₱200,000.00 to ₱50,000.00."[3]

The Facts

The facts of the case are narrated in the assailed Decision of the CA, as follows:

"1. On April 28, 1993, [respondents] instituted an action against [Petitioner] PNB and the Provincial Sheriff of Negros Occidental alleging among others, the following:

"(a) Sometime in 1987, [respondents] opened a prawn hatchery in San Enrique, Negros Occidental, and for this purpose, leased from Nelly Bedrejo a parcel of land where the operations were conducted;

"(b) In order to increase productions and improve the hatchery facilities, [respondents] applied for and was approved a loan of ₱2,000,000.00, by [Petitioner] PNB. To secure its payment, [respondents] executed in favor of PNB, a real estate mortgage over two (2) parcels of land, located at Bago City, Negros Occidental, covered by Transfer Certificate of Title Nos. T-13005 and T-12642 in the names of [respondents], and another real [estate] and chattel mortgage over the buildings, culture tanks and other hatchery facilities located in the leased property of Nelly Bedrejo;

"(c) PNB partially released to [respondents] on several dates, the total sum of ₱1,000,000.00 less the advance interests, which amount [respondents] used for introducing improvements on the leased property where the hatchery business was located.

"(d) During the mid-part of the construction of the improvements, PNB refused to release the balance of ₱1,000,000.00 allegedly because [respondents] failed to comply with the bank's requirement that Nelly Bedrejo should execute an undertaking or a 'lessors' conformity' provided in *Real Estate and Chattel Mortgage* contract dated August 3, 1989, which states, '*par. 9.07. It is a condition of this mortgage that while the obligations remained unpaid, the acquisition by the lessor of the permanent improvements covered by this Real Estate Mortgage as provided for in the covering Lease Contract, shall be subject to this*

[3] CA Decision, pp. 9-10; *rollo*, pp. 32-33.

mortgage. For this purpose, the mortgagor hereby undertakes to secure the lessor's conformity hereto'.

"(e) For said alleged failure of [respondents] to comply with the additional requirement and the demand of PNB to pay the released amount of ₱1,000,000.00, PNB foreclosed the mortgaged properties, to the detriment of [respondents].

"(f) Due to the non-release of the remaining balance of the loan applied for and approved, the productions-operations of the business were disrupted causing losses to [respondents], and thereafter, to the closure of the business.

"2. On June 29, 1990, [Petitioner] PNB filed its Answer with Counterclaim alleging that the lessors' conformity was not an additional requirement but was already part of the terms and conditions contained in the *Real Estate and Chattel Mortgage* dated August 3, 1989, executed between [respondents] and [petitioner]; and that the release of the balance of the loan was conditioned on the compliance and submission by the [respondents] of the required lessors' conformity.

"3. On November 8, 1993, a writ of preliminary injunction was issued by the court *a quo* prohibiting PNB and the Provincial Sheriff of Negros Occidental from implementing the foreclosure proceedings including the auction sale of the properties of the [respondents] subject matter of the real [estate] and chattel mortgages."[4]

The Regional Trial Court (RTC) ruled that Philippine National Bank (PNB) had breached its obligation under the Contract of Loan and should therefore be held liable for the consequential damages suffered by respondents. The trial court held that PNB's refusal to release the balance of the loan was unjustified for the following reasons: 1) the bank's partial release of the loan of respondents had estopped it from requiring them to secure the lessor's signature on the Real Estate and Chattel Mortgage Contract; 2) Nelly Bedrejo, the lessor, had no interest in the property and was not in any manner connected with respondents' business; thus, the fulfillment of the condition was legally impossible; and 3) the interests of PNB were amply protected,

[4] *Id*., pp. 2-3 & 25-26. Italics in the original.

as the loan had overly been secured by collaterals with a total appraised value of ₱3,088,000.

The RTC further observed that while the loan would mature in three years, the lease contract between Bedrejo and respondents would expire in ten years. According to a provision in the Contract, upon its expiration, all improvements found on the leased premises would belong to the lessor. Thus, in the event of nonpayment of the loan at its maturity, PNB could still foreclose on those improvements, the subject of the chattel mortgage.

Ruling of the Court of Appeals

Affirming the lower court, the CA held that Nelly Bedrejo, who was not a party to the Mortgage Contract, could not be compelled to affix her signature thereto. The appellate court further ruled that the registration of the mortgage not only revealed PNB's intention to give full force and effect to the instrument but, more important, gave the mortgagee ample security against subsequent owners of the chattels.

The CA, however, reduced the amount of actual damages for lack of competent proof of the lost income and the unrealized profits of RBL, as well as for the additional expenses and liabilities incurred by respondents as a result of petitioner's refusal to release the balance of the loan. Moral and exemplary damages as well as attorney's fees were likewise lessened.

Hence, this Petition.[5]

Issues

Petitioner raises the following alleged errors for our consideration:

"A.

Whether or not the Court of Appeals committed serious error when it held that Petitioner PNB has no legal basis to require

[5] This case was deemed submitted for decision on July 9, 2002, upon this Court's actual receipt of respondent's Memorandum, which was signed by Atty. William N. Mirano. Petitioners' Memorandum, signed by Attys. Eligio P. Petilla and Jose Troy A. Almario, was received by the Court on June 28, 2002.

respondents to secure the conformity of the lessor and owner of the property where their hatchery business is being conducted notwithstanding that respondents obligated themselves in no uncertain terms to secure such conformity pursuant to par. 9.07 of the Real Estate and Chattel Mortgage and considering further that respondents' authority to mortgage the lessor's property and leasehold rights are annotated [on] the titles of the mortgage[d] properties.

"B.

Whether or not the Court of Appeals erred in holding Petitioner PNB liable for actual, moral and exemplary damages as well as attorney's fees for the non-release of the balance of the loan applied by respondents even though there is no evidence that such non-release was attended by malice or bad faith."[6]

Simply put, the issues are as follows: 1) whether the non-release of the balance of the loan by PNB is justified; and 2) whether it is liable for actual, moral and exemplary damages as well as attorney's fees.

The Court's Ruling

The Petition is partly meritorious.

First Issue:
Was PNB's Non-Release of the Loan Justified?

Petitioner maintains that the lessor's signature in the *conforme* portion of the Real Estate and Chattel Mortgage Contract was a condition precedent to the release of the balance of the loan to respondents. Petitioner invokes paragraph 9.07 of the Contract as legal basis for insisting upon respondents' fulfillment of the aforesaid clause.

We are not persuaded. If the parties truly intended to suspend the release of the ₱1,000,000 balance of the loan until the lessor's conformity to the Mortgage Contract would have been obtained, such condition should have been plainly stipulated either in that Contract or in the Credit Agreement. The tenor of the language

[6] Petitioners' Memorandum, p. 7; *rollo*, p. 112. Original in upper case.

used in paragraph. 9.07, as well as its position relative to the whole Contract, negated the supposed intention to make the release of the loan subject to the fulfillment of the clause. From a mere reading thereof, respondents could not reasonably be expected to know that it was petitioner's unilateral intention to suspend the release of the ₱1,000,000 balance until the lessor's conformity to the Mortgage Contract would have been obtained.

Respondents had complied with all the requirements set forth in the recommendation and approval sheet forwarded by petitioner's main office to the Bacolod branch for implementation; and the Credit Agreement had been executed thereafter. Naturally, respondents were led to believe and to expect the full release of their approved loan accommodation. This belief was bolstered by the initial release of the first ₱1,000,000 portion of the loan.

We agree with the RTC in its ruling on this point:

"xxx. In the instant case, there is a clear and categorical showing that when the parties have finally executed the contract of loan and the Real Estate and Chattel Mortgage Contract, the applicant complied with the terms and conditions imposed by defendant bank on the recommendation and approval sheet, hence, defendant bank waived its right to further require the plaintiffs other conditions not specified in the previous agreement. Should there [appear] any obscurity after such execution, the same should not favor the party who caused such obscurity. Therefore, such obscurity must be construed against the party who drew up the contract. Art. 1377 of the Civil Code applies xxx [even] with greater force [to] this type of contract where the contract is already prepared by a big concern and [the] other party merely adheres to it."[7] (Citations omitted)

Conditions Precedent

Conditions precedent are not favored. Unless impelled by plain and unambiguous language or by necessary implication, courts will not construe a stipulation as laden with such burden, particularly when that stipulation would result in a forfeiture or in inequitable consequences.[8]

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[7] RTC Decision, pp. 11-12; records, pp. 372-373.

[8] 17A Am. Jur. 2d, S 471, p. 491.

Nowhere did PNB explicitly state that the release of the second half of the loan accommodation was subject to the mortgagor's procurement of the lessor's conformity to the Mortgage Contract. Absent such a condition, the efficacy of the Credit Agreement stood, and petitioner was obligated to release the balance of the loan. Its refusal to do so constituted a breach of its reciprocal obligation under the Loan Agreement.

Flimsy was the insistence of petitioner that the lessor should be compelled to sign the Mortgage Contract, since she was allegedly a beneficiary thereof. The chattel mortgage was a mere accessory to the contract of loan executed between PNB and RBL. The latter was undisputably the absolute owner of the properties covered by the chattel mortgage. Clearly, the lessor was never a party to either the loan or the Mortgage Contract.

The Real Nature of a Mortgage

The records show that all the real estate and chattel mortgages were registered with the Register of Deeds of Bago City, Negros Occidental, and annotated at the back of the mortgaged titles. Thus, petitioner had ample security to protect its interest. As correctly held by the appellate court, the lessor's nonconformity to the Mortgage Contract would not cause petitioner any undue prejudice or disadvantage, because the registration and the annotation were considered sufficient notice to third parties that the property was subject to an encumbrance.[9]

Article 2126 of the Civil Code describes the real nature of a mortgage: it is a real right following the property, such that in subsequent transfers by the mortgagor, the transferee must respect the mortgage. A registered mortgage lien is considered inseparable from the property inasmuch as it is a right *in rem*.[10] The mortgage creates a real right or a lien which, after being recorded, follows the chattel wherever it goes. Under Article 2129 of the same

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[9] *Isaguirre v. De Lara*, 332 SCRA 803, May 31, 2000; *Asuncion v. Evangelista,* 316 SCRA 848, October 13, 1999; *Northern Motors, Inc. v. Coquia*, 68 SCRA 374, December 15, 1975; *Ong Liong Tiak v. Luneta Motor Company*, 66 Phil. 459, November 7, 1938.

[10] *Ganzon v. Inserto,* 208 Phil. 630, July 25, 1983.

Code, the mortgage on the property may still be foreclosed despite the transfer.

Indeed, even if the mortgaged property is in the possession of the debtor, the creditor is still protected. To protect the latter from the former's possible disposal of the property, the chattel mortgage is made effective against third persons by the process of registration.

PNB violated the Loan Agreement when it refused to release the ₱1,000,000 balance. As regards the partial release of that amount, over which respondents executed three Promissory Notes, the bank is deemed to have complied with its reciprocal obligation. The Promissory Notes compelled them to pay that initial amount when it fell due. Their failure to pay any overdue amortizations under those Promissory Notes rendered them liable thereunder.

Effect of Failure of Consideration

Since PNB failed to release the ₱1,000,000 balance of the loan, the Real Estate and Chattel Mortgage Contract became unenforceable to that extent. Relevantly, we quote this Court's ruling in *Central Bank of the Philippines v. Court of Appeals*:[11]

"The consideration of the accessory contract of real estate mortgage is the same as that of the principal contract. For the debtor, the consideration of his obligation to pay is the existence of a debt. Thus, in the accessory contract of real estate mortgage, the consideration of the debtor in furnishing the mortgage is the existence of a valid, voidable, or unenforceable debt.

xxx xxx xxx

"[W]hen there is partial failure of consideration, the mortgage becomes unenforceable to the extent of such failure. Where the indebtedness actually owing to the holder of the mortgage is less than the sum named in the mortgage, the mortgage cannot be enforced for more than the actual sum due."[12]

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[11] 139 SCRA 46, October 3, 1985.

[12] *Id.*, p. 56, per Makasiar, *C.J.*

Second Issue:
Propriety of Award for Damages and Attorney's Fees

In reducing the award for actual damages from ₱985,722.15 to ₱380,713.55, the CA explained:

"The alleged projected cash flow and net income for the 5-year period of operations were not substantiated by any other evidence to sufficiently establish the attainability of the projection. No evidence was also introduced to show the accounts payable of and other expenses incurred by [respondents]. The court *a quo* therefore, erred when it ruled that [respondents] incurred actual damages and losses amounting to ₱985,722.15 from 1990 to 1992, when no evidence was presented to establish the same.

"Compensatory or actual damages cannot be presumed. They cannot be allowed if there are no specific facts, which should be a basis for measuring the amount. The trial court cannot rely on speculation as to the fact and amount of damages, but must depend on actual proof that damage had been suffered. The amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence to support his claim for actual damages.

"At most, the court *a quo* may declare as lost income and unrealized profits, the amount of ₱380,713.55 for the 3-year period of business operations from 1990 when PNB refused to release the loans until closure of business in 1992, based on the highest quarterly taxable income earned in 1989 in the amount of ₱28,754.80, with a conservative and reasonable increase of 10% per year on the net income. The amount of actual damages is therefore, reduced from ₱985,722.15 to ₱380,713.55 xxx."[13]

We see no reason to overturn these findings. True, indemnification for damages comprises not only the loss that was actually suffered, but also the profits — referred to as compensatory damages — that the obligee failed to obtain. To justify a grant of actual or compensatory damages, however, it

[13] CA Decision, p. 8; *rollo*, p. 31. Citations omitted.

would be necessary to prove the amount of loss with a reasonable degree of certainty, based upon competent proof and the best evidence obtainable by the injured party.[14] The quarterly income tax report of Respondent RBL Enterprises, Inc., which was presented by petitioner and used by the appellate court as basis for computing the average profits earned by respondents in their business, provided a reasonable means for ascertaining their claims for lost profits. Thus, we believe that the assessment by the Court of Appeals was fair and just.

On the other hand, the award for moral and exemplary damages should be deleted, because respondents failed to prove malice or bad faith on the part of petitioner.

Moral damages are explicitly authorized in breaches of contract when the defendant has acted fraudulently or in bad faith.[15] Concededly, the bank was remiss in its obligation to release the balance of the loan extended to respondents. Nothing in the findings of the trial and the appellate courts, however, sufficiently indicate a deliberate intent on the part of PNB to cause harm to respondents.

Exemplary damages, in turn, are intended to serve as an example or a correction for the public good. Courts may award them if the defendant is found to have acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[16] Given the above premises and the circumstances here obtaining, the exemplary damages granted by the courts *a quo* cannot be sustained.

Finally, the award of attorney's fees as part of the damages is just and equitable under the circumstances.[17] Such fees may be awarded when parties are compelled to litigate or to incur

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[14] *Integrated Packaging Corporation v. Court of Appeals*, 333 SCRA 170, June 8, 2000.

[15] *Mirasol v. Court of Appeals*, 351 SCRA 44, February 1, 2001.

[16] Article 2232 of the Civil Code; *Far East Bank and Trust Company v. Court of Appeals, supra.*

[17] Article 2208 of the Civil Code.

expenses to protect their interest by reason of an unjustified act of the opposing party.[18] In the present case, petitioner's refusal to release the balance of the loan has compelled respondents to institute an action for injunction and damages in order to protect their clear rights and interests.

WHEREFORE, the Petition is *PARTLY GRANTED*. The assailed Decision is hereby *AFFIRMED*, with the *MODIFICATION* that the award of actual and exemplary damages is deleted. No costs.

SO ORDERED.

Ynares-Santiago and *Carpio, JJ.*, concur.

Davide, Jr., C.J. (Chairman), on official leave.

Azcuna, J., took no part — former PNB Chairman.

FIRST DIVISION

[G.R. No. 155023. May 28, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CORNELIO CAJUMOCAN,** *appellant*.

SYNOPSIS

Apolinario Mirabueno was shot in the head while he was asleep beside his brother Leo. The latter was able to identify the man who shot and killed his brother. On the basis of Leo's account, appellant was charged with murder. He pleaded not guilty to the crime charged and offered the defense of denial and alibi. However, the trial court found him guilty of murder

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[18] *Producers Bank of the Philippines v. Court of Appeals, supra.*

and was sentenced to *reclusion perpetua*. Thereafter, appellant appealed the decision to the Supreme Court.

The Supreme Court affirmed the conviction made by the trial court. According to the Court, the appellant's argument that the negative result of gun powder nitrates from the paraffin test conducted on him on the day after the crime was committed showed an absence of evidence that he fired a gun was untenable. The Court ruled, as in previous cases, that paraffin test is inconclusive, as the same had proved to be unreliable in use. It can only establish the presence or absence of nitrates or nitrites on the hand but the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of the firearm. Verily, establishing the identity of the malefactor through the testimony of the witness is the heart and cause of the prosecution. All other matters, such as paraffin test, are of lesser consequence where there is positive identification by the lone witness, Leo, of the appellant as the perpetrator of the crime. The court *a quo* also correctly found the presence of the qualifying circumstance of treachery in the instant case. In this case the appellant took advantage that his victim was asleep when he shot the unsuspecting victim.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PARAFFIN TESTS; GENERALLY RENDERED INCONCLUSIVE BY THE SUPREME COURT; RATIONALE.—** Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test has proved extremely unreliable in use. It can only establish the presence or absence of nitrates or nitrites on the hand; still, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder. Paraffin tests, it must be emphasized, merely corroborate direct evidence that may be presented by the prosecution.

2. **ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR.—** In the case at bar, the positive, clear and categorical testimony of

the lone eyewitness to the crime deserves full merit in both probative weight and credibility over the negative results of the paraffin test conducted on the appellant. Verily, establishing the identity of the malefactor through the testimony of the witness is the heart and cause of the prosecution. All other matters, such as the paraffin test, are of lesser consequence where there is positive identification by the lone eyewitness, Leo Mirabueno, of appellant as the perpetrator of the crime. Hence, a paraffin test cannot be considered as conclusive proof of appellant's innocence.

3. **ID.; ID.; CREDIBILITY OF WITNESS; NOT AFFECTED BY RELATIONSHIP BETWEEN THE WITNESS AND THE VICTIM.—-** Relationship by consanguinity between the witness and the victim does not *per se* impair the credibility of the former. In certain cases relationship may even strengthen credibility for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual perpetrator. We held in *People v. Realin* that the earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime. As further elaborated in *People v. Javier*, there is absolutely nothing in this jurisdiction which disqualifies a person from testifying in a criminal case in which a relative is involved, if the former was really at the scene of the crime and witnessed the execution of the criminal act.

4. **ID.; ID.; ID.; TRIAL COURT'S FINDINGS ARE ACCORDED FINALITY; EXCEPTION.—** This Court has consistently ruled that findings of fact and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' behavior on the stand while testifying, which opportunity is denied to the appellate courts. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.

5. **ID.; ID.; ALIBI, AS A DEFENSE; PROOF OF PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME IS REQUIRED.—** Well-settled is the rule that for alibi to prosper, appellant 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 transpired and the place where it was committed, as well as the facility of access between the two places.

6. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; ESSENCE THEREOF.—** Treachery is present when the offender commits any of the crimes against persons, 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. The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.

7. **ID.; ID.; ID.; ELEMENTS.—** Two conditions must concur for treachery to be present: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and; (2) the deliberate or conscious adoption of the means of execution.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jesus R. Cornago for accused-appellant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

On appeal is a Decision of the Regional Trial Court (RTC) of Morong, Rizal, Branch 79 in Criminal Case No. 99-3576-M[1] finding appellant Cornelio Cajumocan *y* Birdin guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusión perpetua*, and ordering him to pay the heirs of the victim, Apolinario Mirabueno *y* Morao, the amount of ₱50,000.00 as

[1] Decision penned by Judge Candido O. delos Santos. See *Rollo*, p. 18.

civil indemnity, ₱50,000.00 as actual damages, and costs of the suit.

At 11:30 p.m. of September 30, 1999, while the deceased, Apolinario Mirabueno, was asleep beside his fourteen year old brother Leo inside their house in Sitio Waray, Barangay Plaza Aldea, Tanay, Rizal, the latter was roused from his slumber by the rustling of dried leaves outside the house. He saw a solitary figure walk toward their house, paused outside their room, and removed the fish net covering the window and looked inside the house. From the light of the fluorescent lamp inside the house, Leo recognized the man as appellant Cornelio Cajumocan, who drew a gun and shot Apolinario in the head, and thereafter ran away. Leo cried out to his older sister, Margarita and they brought Apolinario to a hospital in Morong, but he was declared dead on arrival.[2]

Appellant was charged with Murder before the RTC of Morong, Rizal, Branch 79, in the following Information dated October 4, 1999 which reads:[3]

> That on or about 30th day of September 1999, in the Municipality of Tanay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, treachery and evident premeditation, and taking advantage of nighttime did, then and there willfully, unlawfully and feloniously shot (sic) with said gun, one Apolinario Mirabueno *y* Morao hitting him on his head, thereby inflicting upon the latter intracranial hemorrhage, which directly caused his immediate death.
>
> CONTRARY TO LAW.

During the arraignment, appellant, assisted by counsel *de parte* pleaded "*not guilty*" to the charge.

Dr. Emmanuel Reyes, Medico-Legal of the PNPC Crime Laboratory in Camp Crame, Quezon City, conducted the physical examination of the victim's cadaver. He found an open gunshot wound, located at the front part of the head, measuring 2.5

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[2] TSN, 14 December 1999, pp. 2-6.

[3] Original Records, p. 1; *Rollo*, p. 8.

c.m., 3.5 c.m. left of the anterior midline with an abraded collar measuring 0.1 c.m., 158 c.m., from the heel, making a point of exit at the right parietal region, measuring 2.5 x 3 c.m., 6 c.m. from the midsagital line.[4] The point of entry of the bullet was 3 to 4 c.m. above the left eyebrow, and the point of exit was at the back of the head. The gunshot wound was fatal, damaging both cerebral hemispheres of the brain.[5] According to his report, the victim's death resulted instantaneously.[6] The cause of death was intracranial hemorrhage secondary to gunshot wound of the head.[7]

Virginia Mirabueno, the victim's mother, testified that she incurred the following expenses due to the death of her son: funeral service, ₱15,000.00; expenses for the wake, ₱5,000.00; and burial lot, ₱2,500.00. She further testified that she mortgaged her house and lot in order to pay for the funeral expenses. However, she could not present receipts since some of the expenses for the wake came from the neighbors and relatives in the form of "*abuloy*." She also alleged that her son was engaged in the business of buying and selling goods, earning ₱150.00 per day.[8]

Ernesto Carpo, an inspector/investigator of AFSLAI Security Service where appellant was employed as a security guard was presented by the defense as its first witness. Carpo testified that as inspector, he was assigned the task of overseeing security detachments. As investigator, his responsibility was to check unusual incidents and report them directly to the AFSLAI President. He further testified that appellant was one of the agency's security guards. According to Carpo, appellant was assigned at the Monterey Farm in 1999, then he transferred to Tanay, Rizal to the property of Gen. Rene Cruz, and was assigned

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[4] TSN, 31 May 2000, p. 5.

[5] *Id*. at 6.

[6] *Id*. at 5.

[7] *Id*. at 6. See Exhibit "H".

[8] TSN, 3 May 2000, pp. 2-5.

a long firearm, specifically a 12-gauge shotgun. In the evening of September 30, 1999, he made a roving inspection of the detachment in Sitio Bathala, Barangay Plaza Aldea, Tanay, Rizal, located inside the compound of Gen. Rene Cruz where appellant was one of the security guards detailed. The head of the security guards stationed in the Cruz property informed Carpo that appellant was picked up by Tanay police authorities because he was a suspect in a killing incident. Carpo made inquiries and found out that appellant's tour of duty was from 7 p.m. to 7 a.m., and concluded that he never left the place as shown by a photocopy of the Detail Order signed by the head of the security guards stationed in the Cruz property. They told him that the place where the shooting incident took place was about one kilometer. Carpo inspected the logbook and saw the signature of the appellant.[9]

For his part, appellant testified that prior to 7 p.m. on September 30, 1999, he arrived at his assignment in the Cruz property, located in Sitio Bathala, Plaza Aldea, Tanay, Rizal. He went to their outpost, signed the logbook and stayed up to 8:30 p.m. He then went to the *bodega* where construction equipment and materials were kept and, upon seeing that they were secure, he returned to the outpost and watched television. He asked permission from the head of the security guards to sleep. At 7 a.m., he signed the logbook to end his tour of duty.[10] While still at the compound, police officers from Tanay, Rizal came and invited him to the police station. During the investigation, he denied any participation in the killing of Apolinario. The following day, on October 1, 1999, he was brought to Camp Crame to undergo paraffin testing.[11] The paraffin test showed him negative for powder burns.[12]

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[9] TSN, 10 October 2000, pp. 2-8.

[10] TSN, 7 March 2001, pp. 3-9.

[11] *Id*. at 5-6.

[12] Physical Science Report No. C-89-99E. See Exhibit "1".

On January 7, 2002, the trial court rendered a decision finding appellant guilty of Murder, the dispositive portion of which reads:[13]

> WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of MURDER, as defined and penalized by the Revised Penal Code, he is hereby sentenced to suffer the penalty prescribed by Art. 248, in its medium period, that is *RECLUSION PERPETUA*. Accused is hereby ordered to pay the heirs of the victim in the amount of ₱50,000.00 in accordance with recent jurisprudence, and the further amount of ₱50,000.00 as actual damages. With costs.
>
> SO ORDERED.

Hence, this appeal, based on the following assignment of errors:

> I
>
> THE TRIAL COURT ERRED IN EXTENDING FULL RELIANCE AND CREDENCE TO THE PROSECUTION'S PURPORTED EYEWITNESS LEO MIRABUENO, OBVIOUSLY A BIASED AND PREDISPOSED WITNESS BY REASON OF RELATIONSHIP, BEING A BROTHER OF THE DECEASED VICTIM.
>
> II
>
> THE COURT *A QUO* LIKEWISE ERRED IN DISBELIEVING AND EXTENDING SCANT CONSIDERATION TO THE OFFICIAL NEGATIVE FINDINGS ON THE PARAFFIN GUNPOWDER EXAMINATION ON THE PERSON OF THE ACCUSED-APPELLANT.
>
> III
>
> THE LOWER COURT COMMITTED A GRIEVOUS ERROR IN APPRECIATING THE CIRCUMSTANCE OF TREACHERY AND CONSIDERING THE SAME AS A QUALIFYING CIRCUMSTANCE.

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[13] *Rollo*, p. 27.

IV

THE HONORABLE TRIAL COURT GRAVELY ERRED IN REFUSING TO EXTEND CREDENCE TO APPELLANT'S CLAIM OF DENIAL AND ALIBI.

V

THE COURT *A QUO* AGAIN ERRED GRIEVOUSLY IN FINDING THE APPELLANT GUILTY FOR MURDER AND IN IMPOSING THE PENALTY OF *RECLUSIÓN PERPETUA* AND AWARDING THE TOTAL AMOUNT OF ₱100,000.00 AS AND BY WAY OF ACTUAL DAMAGES.[14]

The foregoing issues need to be resolved: (1) Whether the negative findings of the paraffin test conducted on the appellant is conclusive proof of his innocence; (2) Whether treachery can be appreciated in the instant case to qualify the crime to Murder; and (3) Whether the appellant is guilty beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code.

As to the first issue, appellant alleges that the trial court failed to give consideration to the results of the chemical test indicating that appellant was negative of gunpowder nitrates consequent to the paraffin test conducted.

Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test has proved extremely unreliable in use. It can only establish the presence or absence of nitrates or nitrites on the hand; still, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.[15]

Appellant's argument that the negative result of gunpowder nitrates from the paraffin test conducted on him the day after

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[14] *Id.*, pp. 50-51.

[15] *People v. de Guzman*, G.R. No. 116730, 16 November 1995, 250 SCRA 118, 128.

the crime was committed, thereby showing an absence of physical evidence that he fired a gun, is untenable. In the case of *People v. Manalo,*[16] we stressed:

> xxx even if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test. The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol.

In *People v. Abriol, et al.,*[17] we reiterated the rule on the admissibility of this kind of evidence:

> A paraffin test could establish the presence or absence of nitrates on the hand. However, it cannot establish that the source of the nitrate was the discharge of firearms. Nitrates are also found in substances other than gunpowder. A person who tests positive may have handled one or more substances with the same positive reaction for nitrates such as explosives, fireworks, fertilizers, pharmaceuticals, tobacco, and leguminous plants. Hence, the presence of nitrates should only be taken as an indication of a possibility that a person has fired a gun. However, it must be borne in mind that appellants were not convicted on the sole basis of the paraffin test.

Paraffin tests, it must be emphasized, merely corroborate direct evidence that may be presented by the prosecution.

In the case at bar, the positive, clear and categorical testimony of the lone eyewitness to the crime deserves full merit in both probative weight and credibility over the negative results of the paraffin test conducted on the appellant. Verily, establishing the identity of the malefactor through the testimony of the witness is the heart and cause of the prosecution.[18] All other matters, such as the paraffin test, are of lesser consequence where there is positive identification by the lone eyewitness, Leo Mirabueno,

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[16] G.R. Nos. 96123-24, 8 March 1993, 219 SCRA 656, 663.

[17] G.R. No. 123137, 17 October 2001, 367 SCRA 327, 342.

[18] *People v. Manalo, supra,* note 15 at 662-663.

of appellant as the perpetrator of the crime. Hence, a paraffin test cannot be considered as conclusive proof of appellant's innocence.

As to the second issue, appellant avers that there is no treachery in the case at bar since there is no direct and positive evidence to prove the same.

We do not agree.

The court *a quo* correctly found the presence of the qualifying circumstance of treachery in the instant case. Treachery is present when the offender commits any of the crimes against persons, 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.[19] The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.[20]

Two conditions must concur for treachery to be present: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and; (2) the deliberate or conscious adoption of the means of execution.[21]

In the case at bar, appellant took advantage that Apolinario Mirabueno was asleep when he shot the unsuspecting victim. The unexpected attack on the victim rendered him unable and unprepared to defend himself by reason of the suddenness and severity of the attack. The nature of the wounds and the testimony of the eyewitness sufficiently established that, *first*, at the time of the attack, the victim was not in a position to defend himself, as he was asleep; and *second*, appellant consciously adopted the particular means, method or form of attack, armed and

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[19] Art. 14, par. 16, Revised Penal Code.

[20] *People v. Paulino*, G.R. No. 148810, 18 November 2003; *People v. Aguilos*, G.R. No. 121828, 27 June 2003.

[21] *People v. Pabillo*, G.R. No. 122103, 4 November 2003, citing *People v. Caisip,* G.R. No. 119757, 21 May 1998, 290 SCRA 451, 461.

stealthily performed the criminal act at an unexpected time while the victim was asleep in his dwelling.

As to the third issue, appellant contends that the court *a quo* gravely erred in giving probative weight and credibility to the lone eyewitness, Leo Mirabueno, whom he claims to be a biased and predisposed witness by reason of relationship, being the brother of the deceased victim. He likewise argues that the trial court erred in refusing to lend credence to appellant's claim of denial and alibi and finding him guilty of Murder, imposing the penalty of *reclusión perpetua* and awarding actual damages in the amount of ₱100,000.00.

We find no reversible error in the case at bar.

The positive identification of the appellant at the scene of the crime by Leo Mirabueno should be given due weight and credence. Relationship by consanguinity between the witness and the victim does not *per se* impair the credibility of the former. In certain cases relationship may even strengthen credibility for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual perpetrator. We held in *People v. Realin*[22] that the earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime. As further elaborated in *People v. Javier*,[23] there is absolutely nothing in this jurisdiction which disqualifies a person from testifying in a criminal case in which a relative is involved, if the former was really at the scene of the crime and witnessed the execution of the criminal act.

Appellant's bare denial and alibi cannot prevail over the positive and categorical testimony of Leo Mirabueno concerning appellant's identification and presence at the crime scene. Well-settled is the rule that for alibi to prosper, appellant 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

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[22] G.R. No. 126051, 21 January 1999, 301 SCRA 495, 510.

[23] G.R. No. 130489, 19 February 2002, 377 SCRA 300, 307-308.

the crime.[24] Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[25]

Appellant failed to show that it was physically impossible for him to be at the *locus criminis*. Sitio Bathala, the place where appellant was on duty at the time of the commission of the crime, and Sitio Waray, the place where the crime was actually committed, were within walking distance. Since Sitio Bathala was approximately one kilometer from Sitio Waray, appellant could have easily accessed the scene of the crime in a matter of minutes, leading to the conclusion that it was not physically impossible for appellant to be in the house of Apolinario Mirabueno in Sitio Waray. Clearly, appellant had access to the *locus criminis* from his place of work.

This Court has consistently ruled that findings of fact and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' behavior on the stand while testifying, which opportunity is denied to the appellate courts. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[26] We find none of the circumstances that give rise to the exceptions in the case at bar.

The court *a quo* gave credence and full probative value to the testimony of Leo Mirabueno, the victim's brother. Having observed at close range the deportment, conduct and demeanor of the sole eyewitness and the appellant when they testified, the findings of the trial court, its calibration of the testimonial

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[24] *People v. Ignas*, G.R. Nos. 140514-15, 30 September 2003.

[25] *Id*.

[26] *Id*., citing *People v. Federico*, G.R. No. 146956, 25 July 2003.

evidence of the parties and its assessment and probative weight of the said evidence were all accorded by the appellate court high respect, if not conclusive effect.[27]

Thus, there is moral certainty that appellant is guilty beyond reasonable doubt of the crime of Murder. As defined under Art. 248 of the Revised Penal Code, Murder is the unlawful killing of any person which is not parricide or infanticide, and committed with any of the qualifying circumstances under the same article.[28]

Murder was evidently perpetrated when the appellant killed the victim, Apolinario Mirabueno, which was attended by the qualifying circumstance of treachery. The elements of Murder have been proven in this case, *viz.*: (1) A person is killed; (2) The appellant killed him; (3) The killing was attended by treachery; and (4) The killing is not parricide or infanticide. The killing was qualified to Murder by *alevosia* since the treacherous means employed to kill the victim was duly proven.

The penalty for Murder is *reclusion perpetua* to death. There being no mitigating or aggravating circumstance, the lesser of the two indivisible penalties shall be imposed.[29] Hence, the trial court correctly sentenced appellant to suffer the penalty of *reclusion perpetua*.

Civil indemnity in the amount of ₱50,000.00 given by the court *a quo* to the heirs of the victim should be upheld as being consistent with current jurisprudence.[30] Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[31]

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[27] See *People v. Dala*, G.R. No. 134563, 28 October 2003, citing *People v. Galam*, 325 SCRA 489, 496-497.

[28] L.B. Reyes, *The Revised Penal Code,* Book Two (15th Ed., 2001), p. 462.

[29] Revised Penal Code, Art. 63(2).

[30] *People v. Pinuela*, G.R. Nos. 140727-28, 31 January 2003; *People v. Dela Cruz,* G.R. No. 139970, 6 June 2002.

[31] *People v. Roxas*, G.R. No. 140762, 10 September 2003.

However, the ₱50,000.00 awarded as actual damages for the hospitalization, medical and funeral expenses incurred by the family of the victim cannot be sustained for being unsubstantiated by receipts.

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Morong, Rizal, Branch 79 in Criminal Case No. 99-3576-M finding appellant Cornelio Cajumocan *y* Birdin guilty beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusión perpetua*, and ordering him to pay the heirs of the victim Apolinario Mirabuena civil indemnity in the amount of ₱50,000.00, is *AFFIRMED* with the *MODIFICATION* that the award of actual damages is *DELETED* for lack of factual basis.

Costs *de oficio*.

SO ORDERED.

Panganiban, Carpio, and *Azcuna, JJ.,* concur.

Davide, Jr., C.J., on official leave.

FIRST DIVISION

[G.R. No. 155856. May 28, 2004]

LEONORA CEBALLOS, *petitioner, vs.* **Intestate Estate of the Late EMIGDIO MERCADO and the Heirs of EMIGDIO MERCADO**, *respondents*.

SYNOPSIS

Petitioner herein executed a real estate mortgage over a piece of land registered in her name in favor of Emigdio Mercado for the purpose of obtaining a loan from him. When

she failed to pay the loan on time she executed a deed of absolute sale over the same subject property. Later, she offered to buy back the property but Emigdio's wife refused since the title was already transferred to their name. After Emigdio died, petitioner instituted a suit against the Intestate Estate of the Late Emigdio Mercado. She claimed that the Deed of Absolute Sale of the subject property was an absolute fabrication with the signatures of the petitioner and her husband were absolute forgeries. The trial court, however, rendered a judgment in favor of herein respondents. On appeal, the Court of Appeals held that petitioner had failed to prove by the requisite evidence her allegation of forgery in the subject Deed of Absolute Sale. The CA also found no reason to consider as an equitable mortgage the transaction between petitioner and the late Emigdio Mercado, since none of the circumstances enumerated in Article 1602 of the Civil Code was present. The petitioner assailed the decision of the Court of Appeals in this petition for review before the Supreme Court.

The Supreme Court affirmed the decision of the Court of Appeals. The Court agreed that there were sufficient factual basis to hold that the questioned signatures were not forgeries. The Court also ruled that an expert opinion is never conclusive. Courts may exercise discretion in accepting the opinions of handwriting experts. Clear and convincing evidence is required to overturn the presumption of validity of a notarized deed of absolute sale. Absent such species of evidence, the presumption stands as in the present case. The Court also found no basis to disturb the findings that the assailed notarized deed of Absolute Sale superseded the loan document entered into by the petitioner with the late Emigdio Mercado.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; APPEALS TO THE SUPREME COURT; LIMITED TO REVIEWING OR REVERSING ERRORS OF LAW.—** Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court. Factual findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on the parties. Since such findings are generally not reviewable by

this Court, it is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.

2. ID.; EVIDENCE; TESTIMONY; EXPERT OPINIONS; NATURE THEREOF.— Justice Francisco, a recognized authority in Remedial Law, explains: "Expert opinions are not ordinarily conclusive in the sense that they must be accepted as true on the subject of their testimony, but are generally regarded as purely advisory in character; the courts may place whatever weight they choose upon such testimony and may reject it, if they find it is inconsistent with the facts in the case or otherwise unreasonable."

3. ID.; ID.; PRESUMPTIONS, A PUBLIC DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY.— As a public document, the subject Deed of Absolute Sale has in its favor the presumption of regularity. To contradict it, one must present evidence that is clear and convincing; otherwise, the document should be upheld. This Court has held that a document acknowledged before a notary public enjoys the presumption of regularity. It is a *prima facie* evidence of the facts therein stated. To overcome this presumption, there must be presented evidence which is clear and convincing. Absent such evidence, the presumption must be upheld.

4. CIVIL LAW; SALES; EQUITABLE MORTGAGE; WHEN PRESUMED.— The instances when a contract — regardless of its nomenclature — may be presumed to be an equitable mortgage are enumerated in the Civil Code as follows: "Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: (1) When the price of a sale with right to repurchase is unusually inadequate: (2) When the vendor remains in possession as lessee or otherwise; (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (4) When the purchaser retains for himself a part of the purchase price; (5) When the vendor binds himself to pay the taxes on the thing sold; (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. "In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject

to the usury laws." "Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale."

5. **ID.; ID.; ID.; DEFINED.—** An equitable mortgage is one that — although lacking in some formality, form or words, or other requisites demanded by a statute — nevertheless reveals the intention of the parties to charge a real property as security for a debt and contains nothing impossible or contrary to law. Delay in transferring title is not one of the instances enumerated by law — instances in which an equitable mortgage can be presumed.

6. **ID.; DAMAGES; MAY NOT BE AWARDED IN THE ABSENCE OF BAD FAITH.—** A resort to judicial processes is not, *per se*, evidence of ill will upon which a claim for damages may be based. In *China Banking Corporation v. Court of Appeals*, we held: "x x x Malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: a) malice; and b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and baseless (*Manila Gas Corporation v. Court of Appeals*, 100 SCRA 602 [1980]). Hence, mere filing of a suit does not render a person liable for malicious prosecution should he be unsuccessful, for the law could not have meant to impose a penalty on the right to litigate (*Ponce v. Legaspi*, 208 SCRA 377 [1992]; *Saba v. Court of Appeals*, 189 SCRA 50 [1990]; *Rubio v. Court of Appeals*, 141 SCRA 488 [1986]. Settled in our jurisprudence is the rule that moral damages cannot be recovered from a person who has filed a complaint against another in good faith, or without malice or bad faith (*Philippine National Bank v. Court of Appeals*, 159 SCRA 433 [1988]; *R & B Surety and Insurance v. Intermediate Appellate Court*, 129 SCRA 736 [1984]). If damage results from the filing of the complaint, it is *damnum absque injuria* (*Ilocos Norte Electrical Company v. Court of Appeals*, 179 SCRA 5 [1989])."

APPEARANCES OF COUNSEL

Florido & Associates for petitioner.
Francis M. Zosa for respondents.

D E C I S I O N

PANGANIBAN, *J.*:

Well-settled is the rule that expert opinion is never conclusive. Courts may exercise discretion in accepting or overruling the opinions of handwriting experts. Clear and convincing evidence is required to overturn the presumption of validity of a notarized deed of absolute sale. Absent such species of evidence, the presumption stands.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the June 20, 2002 Decision[2] and the October 11, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 53463. The dispositive part of the assailed Decision reads as follows:

"WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the decision appealed from in Civil Case No. CEB-12690 is hereby AFFIRMED with MODIFICATION in that the award of moral damages is hereby REDUCED to ₱50,000.00.

"With double costs against the plaintiff-appellant."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The facts of the case are summarized by the CA in this wise:

"[Petitioner] Leonora Emparado Ceballos is the registered owner of a certain parcel of land (Lot No. 3353, Pls-657-D) situated in

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[1] *Rollo*, pp. 4-21.

[2] *Id*., pp. 83-92. Penned by Justice Martin S. Villarama Jr. (acting chairman of the Special Seventh Division) and concurred in by Justices Rebecca de Guia-Salvador and Mariano C. del Castillo (members).

[3] *Id*., p. 101.

[4] Assailed Decision, p. 10; *rollo*, p. 92.

Bato, Badian, Cebu, consisting of 53,301 square meters and covered by Transfer Certificate of Title No. T-948 of the Register of Deeds for the Province of Cebu. Sometime in October 1980, [petitioner] was introduced to Emigdio Mercado for the purpose of obtaining a loan as the latter was also known to be in the business of lending money. [Petitioner] was able to borrow the amount of ₱12,000.00 payable in two (2) months and to secure said loan, she executed in favor of Emigdio Mercado a 'Deed of Real Estate Mortgage' over the subject property. The said mortgage deed was not registered by the mortgagee. [Petitioner] was not able to pay her mortgage indebtedness to Emigdio Mercado within the stipulated period. On February 13, 1982, a 'Deed of Absolute Sale' was executed whereby the mortgaged property was sold to Emigdio Mercado for the price of ₱16,500.00. Said instrument contained the signatures of [petitioner] and her husband Narciso Ceballos and notarized by Atty. Elias V. Ortiz. It appears that sometime in 1990, [petitioner] offered to buy back the property from Emigdio Mercado for the price of ₱30,000.00 but the latter's wife refused since the same was already transferred in their names under TCT No. TF-3252 issued on June 1, 1987. Emigdio Mercado died on January 12, 1991 and a petition for the issuance of letters of administration over his intestate estate was filed by her daughter Thelma M. Aranas before the RTC-Cebu City, Branch 11 (Spec. Proc. No. 3094-CEB).

"On August 18, 1990, [petitioner] instituted the present suit against the Intestate Estate of the Late Emigdio Mercado, Teresita Mercado as the Administrator, and/or the Heirs of the Late Emigdio Mercado. The Complaint alleged the following:

"[Petitioner] is the owner as her paraphernal property of a parcel of land located at Barangay Bato, Municipality of Badian, Province of Cebu and covered by TCT No. T-948, the same being her hereditary share from the property of her late father Rufo Emparado. Sometime in the early part of December 1980, to accommodate a friend who was hospitalized, [petitioner] went to the late Emigdio Mercado, who was known, besides his other businesses, to be also in the business of lending money, although at exorbitant rate of interest. A Real Estate Mortgage was drawn on December 31, 1980 for ₱12,000.00 although only ₱8,000.00 was actually delivered, the difference represents the interest for the use of money, for a period of two (2) months. Since the accommodated party could not yet produce the redemption money, [petitioner] periodically went to the mortgagee to beg him not to foreclose the mortgage. On February 13, 1982,

[petitioner] was made to execute a 'Deed of Sale with *Pacto de Retro'* for an increased consideration, from ₱12,000.00 to ₱16,500.00 for a period of one (1) year from date of execution thereof, which contract was in fact an equitable mortgage. [Petitioner] religiously paid interest on the loan even beyond the term of the mortgage, on the repeated request by [petitioner] to the deceased mortgagee not to foreclose the mortgage. [Petitioner] learned to engage in the buy and sell of just any commodity, more especially real estate, and her income improved. In November 1990, she went to the deceased mortgagee to redeem the property to which the latter agreed but the wife, Teresita Virtucio-Mercado vehemently objected saying that it could no longer be done because the title had been transferred in their names. [Petitioner] waited for a propitious time to again propose to redeem the property since it was a matter of convincing by the deceased mortgagee for his wife to agree to the redemption, when she learned of his death on January 12, 1991. [Petitioner] then started her epic to recover the property; she engaged in gathering documentation when to her great worry and apprehension she discovered that the title to the property had indeed been transferred in the name of the deceased Emigdio S. Mercado under TCT No. TF-3252. Such transfer of title was based on a document, 'Deed of Absolute Sale,' purportedly executed by [petitioner] and her husband on February 13, 1982, the same date when deceased Emigdio Mercado and [petitioner] executed the 'Deed of Sale With *Pacto de Retro'* and for the same consideration of ₱16,500.00, the latter document turned out not to have been submitted by the deceased for notarization. Said 'Deed of Absolute Sale' is an absolute fabrication with the signatures therein appearing to have been of the [petitioner's] and husband's, were absolute forgeries. [Petitioner] submitted said deed of sale to disinterested third parties to confirm its being spurious; she sought the assistance of the Philippine National Police (PNP) which found (PNP Report No. 097-91) that said document of sale is a forgery; and hence, it is patent that the transfer of title on the property was done through fraud. [Petitioner] is willing and ready to redeem the property and there is no other way for her to recover her property but through the courts. [Petitioner] thus prayed for a judgment (1) declaring the 'Deed of Absolute Sale' void from the beginning; (2) to allow [petitioner] to redeem her property; (3) ordering defendant, after redemption, to reconvey the property to [petitioner]; (4) ordering defendant to reimburse [petitioner] attorney's fees of ₱50,000.00 and litigation expenses of ₱10,000.00, and to pay moral damages in the sum of ₱100,000.00.

"In their Answer with Counterclaim, [respondents] Heirs of the Late Emigdio Mercado asserted that what was written on the deed of real estate mortgage was the truth and that the deed of sale with *pacto de retro* was not pushed through because [petitioner] decided to sell the property to the late Emigdio Mercado absolutely for the price of ₱16,500.00. [Petitioner] already knew that she had sold the property to Mr. Mercado and she was even the one who delivered to him the 'Deed of Absolute Sale' already signed by her and her husband, and already notarized by the notary public; and since that time [respondents] have been in possession of said property and were the ones paying the realty taxes thereon. The signatures appearing on the deed of sale are genuine, and the property can no longer be redeemed as it had already been sold in an absolute manner to Mr. Mercado. [Respondents] thus prayed that the complaint be dismissed and on the counterclaim, that [petitioner] be ordered to pay [respondents] the amounts of ₱30,000.00 as attorney's fees, ₱20,000.00 as litigation expenses, ₱1,000,000.00 as moral damages and ₱200,000.00 as exemplary damages.

xxx xxx xxx

"To prove her allegations in the complaint, [petitioner] presented documentary evidence and her own testimony and those of her witnesses Romeo Varona (document examiner of the PNP Crime Laboratory, Camp Sotero Cabahug) and Jovencio Virtucio. [Respondents], on the other hand, presented the testimonies of Atty. Elias Ortiz (who notarized the 'Deed of Absolute Sale'), Teresita Virtucio Mercado and SPO2 Wilfredo Espina (member of the PNP assigned at the Crimes Record Section). In rebuttal, [petitioner] returned to the witness stand and also presented the testimony of Pio Delicano (alleged overseer of the subject land since 1990). [Respondents'] sur-rebuttal evidence consisted of a copy of tax declaration in the names of [petitioner] and Francisca Emparado and copy of the complaint in Civil Case No. CEB-13680 pending before RTC-Cebu City, Branch 22 between [petitioner] and her own brothers and sisters over the same property subject of the present litigation. On October 19, 1995, the trial court rendered judgment in favor of the [respondents] and against the [petitioner] as earlier cited."[5]

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[5] *Id*., pp. 2-4 & 84-86. Citations omitted.

Ruling of the Court of Appeals

The Court of Appeals held that petitioner had "failed to prove by the requisite evidence her allegation of forgery in the subject 'Deed of Absolute Sale.'" It further ruled thus:

"[T]he trial court had observed the correct process of identification first, by not completely relying on the findings or statements by the handwriting expert presented by appellant as to the existence of forgery in the questioned document, and more important, in considering both similarities and dissimilarities between the questioned signatures and the standard signatures as to extract by such comparison between the two (2) sets of signatures the habitual and characteristic resemblance which naturally appears in the genuine writing. xxx. The apparent dissimilarities are overshadowed by the striking similarities and therefore, fail to overcome the presumption of validity in favor of the duly notarized 'Deed of Absolute Sale.'"[6]

Moreover, the CA found no reason to consider as an equitable mortgage the transaction between petitioner and the deceased Emigdio Mercado, since none of the circumstances enumerated in Article 1602 of the Civil Code was present.

The CA also affirmed a reduced award of moral damages because of bad faith on the part of petitioner when she imputed to the deceased acts of forgery and fraud. This imputation tended to blacken his memory, and caused his surviving heirs emotional and psychological suffering.

Hence, this Petition.[7]

The Issues

Petitioner raises the following issues for our consideration:

"I. The findings of the appellate court as regards the questioned signature cannot be upheld as it is in disregard of fundamental

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[6] *Id*., pp. 9 & 91.

[7] This case was deemed submitted for decision on May 30, 2003, upon the Court's receipt of petitioner's Reply to Supplemental Memorandum, signed by Atty. Joan J. Sarausos. Respondents' Memorandum and Supplemental Memorandum, both signed by Atty. Francis M. Zosa, were received by this Court on May 20, 2003 and May 22, 2003, respectively.

precepts on handwriting analysis. Moreover, the said findings failed to take into account circumstances admitted by respondents and which ineluctably show a transaction of mortgage, not of sale.

II. Even granting that the subject deed is valid, it is incumbent upon the lower courts to declare the contract as one of equitable mortgage, not of sale.

III. The award of moral damages, attorney's fees and costs of suit finds no support in fact, in law, and in prevailing jurisprudence."[8]

The Court's Ruling

The Petition is partly meritorious.

First Issue: Handwriting Analysis

Petitioner assails the CA's findings of fact. She insists that the signatures on the subject Deed of Absolute Sale were forged.

Her contention has no merit. Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court. Factual findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on the parties. Since such findings are generally not reviewable by this Court,[9] it is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[10]

In the present case, we find no reason to deviate from this rule. The courts a quo had sufficient factual basis in holding that the questioned signatures were not forgeries. Although there

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[8] Petitioner's Memorandum, p. 5; *rollo*, p. 140. Original in upper case.

[9] *Goldenrod, Incorporated v. Court of Appeals*, 418 Phil. 492, September 28, 2001; *International Corporate Bank v. Gueco*, 351 SCRA 516, February 12, 2001.

[10] *Goldenrod, Incorporated v. Court of Appeals, supra; Romago Electric Co., Inc. v. Court of Appeals*, 388 Phil. 964, June 8, 2000; *Borromeo v. Sun*, 375 Phil. 595, October 22, 1999.

were dissimilarities between the questioned and the standard signatures, the CA also found between them "striking similarities as to indicate the habitual and characteristic writing of the appellant. The apparent dissimilarities are overshadowed by the striking similarities and, therefore, fail to overcome the presumption of validity in favor of the duly notarized 'Deed of Absolute Sale.'"

Petitioner fails to convince us that the CA committed reversible error in affirming the trial court and in giving no weight to expert opinion. Justice Francisco, a recognized authority in Remedial Law, explains:

"Expert opinions are not ordinarily conclusive in the sense that they must be accepted as true on the subject of their testimony, but are generally regarded as purely advisory in character; the courts may place whatever weight they choose upon such testimony and may reject it, if they find it is inconsistent with the facts in the case or otherwise unreasonable."[11]

Such opinion was not arbitrarily disregarded by the courts below. The RTC, as affirmed by the CA, overruled the conclusion of the expert witness, because he only relied on the dissimilarities in the signatures, but ignored their striking similarities or characteristics. The trial court meticulously explained:

"The aforementioned similarities between the questioned signatures and the standard signatures, are more prominent or pronounced in comparison with the standard signatures appearing in the said deed of real estate mortgage which was omitted by Mr. Varona in the list of documents submitted by [petitioner] to him which contained her standard signatures. It has been written by an authority in handwriting that, to wit:

> 'The principles underlying handwriting identification are based on the comparison of certain distinctive characteristics imprinted in the individual writing. These characteristics are injected into the writing involuntarily as a habit which are unconscious and inconspicuous to the eye of the writer and cannot be completely suppressed or concealed whether they

[11] Francisco, *Evidence* (1994 ed.), p. 357.

> appear in signature or general writing and constitute the identifying evidence that forms the basis of expert opinion. (Baker, Law of Disputed and Forged Documents, p. 22.)
>
> 'The test of the comparison for identification actually is the accurate judging of the individual's writing habit which means the comparative weighing of the characteristics, and, like any other evidence, the deduction must be determined by the number and value of the peculiarities. (Baker, *ibid*., p. 24.)

"The specimens of the standard signatures of [petitioner] found in Exhibit 'N' were written and given by her in 1991 per investigation report submitted by Mr. Romeo Varona when the questioned document was dated February 13, 1982, or after a lapse of almost nine (9) years. A closer look over said specimens of [petitioner's] standard signatures disclose xxx much different strokes, a rather smooth, accomplished, disguised and much improved handwriting, possibly due to the fact that [petitioner] in the latter years became proficient in her handwriting compared to her signatures several years back as shown in her standard signatures found in the deed of real estate mortgage where marked similarities in the questioned signatures and the standard signatures are present in both.

"Yet despite the lapse of time, the instinctive habit of [petitioner's] own handwriting characteristics set forth in her standard signatures find their similar impressions in her questioned signatures as distinctly observed by this Court.

"It is for this reason that this Court holds as it hereby holds that the finding of the handwriting expert, Mr. Romeo Varona, that the signature of [petitioner] as appearing in the questioned document is forged and cannot be binding or conclusive to this Court in view of the aforementioned observation of this Court as to the existence of similar imprinted characteristic habit of the writer seen both present in the questioned signatures and the standard signatures. xxx"

The RTC made an impressively thorough study and arrived at a well-reasoned resolution of the issue of forgery. We have no reason to overrule the CA's affirmation of that resolution.

As a public document, the subject Deed of Absolute Sale has in its favor the presumption of regularity. To contradict it,

one must present evidence that is clear and convincing; otherwise, the document should be upheld.[12]

Second Issue:
Equitable Mortgage

Petitioner also contends that the Contract should be declared as an equitable mortgage, because (1) the original transaction was a loan; and, (2) for a titled property with an area of more than fifty-three thousand square meters in a tourist area, the contract price of ₱16,500 was ridiculously low.

The instances when a contract — regardless of its nomenclature — may be presumed to be an equitable mortgage are enumerated in the Civil Code as follows:

"Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate:

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

"In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws."

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[12] *Ladignon v. Court of Appeals*, 390 Phil. 1161, July 18, 2000.

"Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale."

In this case, both the trial and the appellate courts found none of the above-enumerated circumstances. We find no cogent reason to reverse their factual finding.

Concededly, the original transaction was a loan. Petitioner failed to pay the loan; consequently, the parties entered into another agreement — the assailed, duly notarized Deed of Absolute Sale, which superseded the loan document. Petitioner had the burden of proving that she did not intend to sell the property; that Emigdio Mercado did not intend to buy it; and that the new agreement did not embody the true intention of the parties.[13] We find no basis for disturbing the CA's finding that she had failed to discharge this burden.

Harping on the alleged unconscionably low selling price of the subject land, petitioner points out that it is located in a tourist area and golf haven in Cebu. Notably, she has failed to prove that on February 13, 1982, the date of the sale, the area was already the tourist spot and golf haven that she describes it to be. In 1990, the property might have been worth ten million pesos,[14] as she claimed; however, at the time of the sale, the area was still undeveloped.[15] Hence, her contention that the selling price was unconscionably low lacks sufficient substantiation.

Petitioner also argues that Mercado's delay in registering the Deed of Absolute Sale and transferring the land title shows that the real agreement was an equitable mortgage.

An equitable mortgage is one that — although lacking in some formality, form or words, or other requisites demanded by a

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[13] In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side; therefore, plaintiff must establish his case by a preponderance of evidence. *Pacific Banking Corporation Employees Organization v. Court of Appeals,* 351 Phil. 438, March 27, 1998.

[14] TSN, June 6, 1994, p. 18.

[15] TSN, October 18, 1994, p. 10; TSN, October 18, 1994, pp. 31 & 38.

statute — nevertheless reveals the intention of the parties to charge a real property as security for a debt and contains nothing impossible or contrary to law.[16] Delay in transferring title is not one of the instances enumerated by law — instances in which an equitable mortgage can be presumed. Moreover, throughout the testimony of petitioner before the trial court, she never claimed that after the Deed of Absolute Sale had been executed in February 13, 1982, the land continued to be intended merely to secure payment of the ₱12,000 loan taken on December 31, 1980.[17]

This Court has held that a document acknowledged before a notary public enjoys the presumption of regularity. It is a *prima facie* evidence of the facts therein stated. To overcome this presumption, there must be presented evidence which is clear and convincing. Absent such evidence, the presumption must be upheld.[18]

In this case, petitioner failed to present clear and convincing evidence to overcome the presumption of validity of the notarized Deed conveying the land to private respondents. Her testimony denying the validity of the sale, having been "made by a party who has an interest in the outcome of the case, is not as reliable as written or documentary evidence. Moreover, self-serving statements are inadequate to establish one's claims. Proof must be presented to support the same."[19]

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[16] 41 C.J. 303.

[17] This was the date on which a Real Estate Mortgage was drawn to secure a loan of ₱12,000. Records, pp. 153-154.

[18] *Llana v. Court of Appeals*, 413 Phil. 329, 336, July 11, 2001, per Kapunan, *J .*; citing *Spouses Caoili v. Court of Appeals,* 373 Phil. 122, 139, September 14, 1999; and §23, Rule 132 of the Revised Rules of Court.

[19] *Llana v. Court of Appeals, supra,* pp. 336-337; citing *Ortañez v. Court of Appeals,* 266 SCRA 561, 567, January 23, 1997; *Chico v. Court of Appeals*, 348 Phil. 37, 43, January 5, 1998.

Third Issue:
Moral Damages

We now discuss the propriety of the award of moral damages. A resort to judicial processes is not, *per se*, evidence of ill will upon which a claim for damages may be based.[20]

In *China Banking Corporation v. Court of Appeals*,[21] we held:

"xxx Malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: a) malice; and b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and baseless (*Manila Gas Corporation v. Court of Appeals*, 100 SCRA 602 [1980]). Hence, mere filing of a suit does not render a person liable for malicious prosecution should he be unsuccessful, for the law could not have meant to impose a penalty on the right to litigate (*Ponce v. Legaspi*, 208 SCRA 377 [1992]; *Saba v. Court of Appeals*, 189 SCRA 50 [1990]; *Rubio v. Court of Appeals*, 141 SCRA 488 [1986]. Settled in our jurisprudence is the rule that moral damages cannot be recovered from a person who has filed a complaint against another in good faith, or without malice or bad faith (*Philippine National Bank v. Court of Appeals,* 159 SCRA 433 [1988]; *R & B Surety and Insurance Co., Inc.v. Intermediate Appellate Court,* 129 SCRA 736 [1984]). If damage results from the filing of the complaint, it is *damnum absque injuria* (*Ilocos Norte Electrical Company v. Court of Appeals,* 179 SCRA 5 [1989])."[22]

Respondents have failed to show that petitioner was motivated by bad faith or malice when she instituted the action for declaration of nullity of the Deed of Absolute Sale. Moreover, although she claims that her signature on the Deed was a forgery, contrary to the findings of the court *a quo*, she does not impute authorship

[20] *Pro Line Sports Center, Inc. v. Court of Appeals*, 346 Phil. 143, October 23, 1997.

[21] 231 SCRA 472, March 28, 1994.

[22] *Id*., p. 478, per Quiason, *J*.; also cited in *Mijares v. Court of Appeals*, 338 Phil. 274, 289-290, April 18, 1997.

of the alleged forgery to the deceased Emigdio Mercado. Hence, the courts *a quo* erred in awarding moral damages.

For the same reasons, the award for attorney's fees and expenses of litigation cannot be sustained.

WHEREFORE, the Petition is *PARTLY GRANTED*. The assailed Decision is *AFFIRMED*, with the *MODIFICATION* that the awards for moral damages, attorney's fees and expenses of litigation are deleted. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Carpio, and *Azcuna, JJ.*, concur.

Davide, Jr., C.J. (Chairman), on official leave.

FIRST DIVISION

[G.R. No. 156522. May 28, 2004]

ERLINDA SAN PEDRO, *petitioner, vs.* **RUBEN LEE and LILIAN SISON,** *respondents*.

SYNOPSIS

In this petition for review, the Court was tasked to determine whether a document denominated as a "*Kasulatan ng Ganap na Bilihan ng Lupa*" was a deed of absolute sale — as it appeared to be on the surface — or merely an equitable mortgage. Petitioner's version of events paints a portrait of an unscrupulous couple, usuriously taking advantage of her financial straits to enrich themselves. Petitioner claimed that she was coerced to sign the "*Kasulatan*" and that the document was executed merely as written evidence of the loan and mortgage. She further claimed to be in continued possession of the land through her tenant and continued to receive her landowner's share of the harvest from 1985 until 1995. In

1986, she learned that the property had been transferred to the names of the respondent. Nine years after the contract was executed, she initiated this suit to recover title to the subject property. Respondents however presented a different version of the events. They claimed that negotiation was made for the purchase of the property, which had an initial asking price of ₱200,000.00, and offered to pay ₱150,000.00 therefor. Petitioner accepted their offer and agreed to sell the land. The trial court rendered a decision in favor of petitioner, declaring the contract between petitioner and respondents as one of mortgage and not of sale, and ordering the reconveyance of the property and the payment of damages. On appeal, the Court of Appeals reversed the trial court, and rendered a decision in favor of respondents. Hence, this appeal, which raised the sole issue of whether the contract in question is an equitable mortgage or a deed of absolute sale.

In this case, it was incumbent upon the petitioner to adduce sufficient evidence to support her claim of an equitable mortgage. Petitioner relies on Pars. 1,2,5, and 6 of Article 1602 of the Civil Code of the Philippines. Upon an examination of the evidence, the court found insufficient basis to conclude the existence of any of the grounds she relied upon. In contrast, respondents' witnesses all testified as to the existence of a contract of sale between her and the respondent. The "*Kasunduan*" unequivocally states the absolute sale of the property covered. Being a notarized document, it carries the evidentiary weight conferred upon duly executed instruments provided by law, and is entitled to full faith and credit upon its face. The decision of the Court of Appeals was affirmed.

SYLLABUS

1. **CIVIL LAW; CONTRACTS; EQUITABLE MORTGAGE; WHEN MAY BE PRESUMED.—** Article 1602 of the Civil Code provides: Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: (1) When the price of a sale with right to repurchase is unusually inadequate; (2) When the vendor remains in possession as lessee or otherwise; (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold; (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. It is well-settled that the presence of even one of the foregoing circumstances is sufficient to declare a contract as an equitable mortgage, in consonance with the rule that the law favors the least transmission of property rights.

2. ID.; ID.; ID.; ID.; REQUISITES.— For the presumption of an equitable mortgage to arise under Article 1602, two requisites must concur: (1) that the parties entered into a contract denominated as a sale; and (2) that their intention was to secure an existing debt by way of a mortgage.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF RESTS UPON THE PLAINTIFF.— *Actori incumbit onus probandi.* Upon the plaintiff in a civil case, the burden of proof never parts. Plaintiff must therefore establish her case by a preponderance of evidence. She has the burden of presenting evidence required to obtain a favorable judgment, and she, having the burden of proof, will be defeated if no evidence were given on either side.

4. ID.; ID.; GROSS INADEQUACY OF THE MARKET VALUE OF THE LOCALE AS OF THE DATE OF THE CONTRACT MUST BE PROVED.— Absent any evidence of the market value of the locale as of the date of the contract, it cannot be concluded that the price at which the property was sold, or about ₱8.70 per square meter, was grossly inadequate. Mere inadequacy of price would not be sufficient. The price must be grossly inadequate, or purely shocking to the conscience. Since the property in question could have been worth as little as ₱20.00 per square meter in 1994, the price of ₱8.70 per square meter nine years earlier, in 1985, does not seem to be grossly inadequate. Indeed, respondents' Declaration of Real Property No. 10786, for the year 1987, shows the market value of the property to be only ₱34,470.00 for that year.

5. ID.; ID.; JUDICIAL ADMISSION; NOT ADMISSIBLE WHEN CONTRADICTED; CASE AT BAR.— Rule 129, Section 4 of the Revised Rules of Court provides that a judicial admission may be contradicted by showing that it was made through palpable

mistake, or that no such admission was made. Petitioner's theory as regards the purported judicial admission is readily contradicted by a perusal of the records, which show that in fact no such admission was made by respondents. We thus find no adequate proof for petitioner's contention that she was exercising possessory rights over the parcel of land covered by TCT No. T-305595.

APPEARANCES OF COUNSEL

Wilfredo O. Arceo for petitioner.
Gonzales Batiller Bilog & Associates for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

In this petition for review, we are tasked with determining whether a document denominated as a "*Kasulatan ng Ganap na Bilihan ng Lupa*" is a deed of absolute sale — as it appears to be on the surface — or merely an equitable mortgage.

Petitioner Erlinda San Pedro initiated this suit against the spouses Ruben[1] Lee and Lilian Sison on November 23, 1994, praying for: (1) a declaration that the document entitled "*Kasulatan ng Ganap na Bilihan ng Lupa*" is an equitable mortgage and not a sale; (2) the reconveyance of the property subject of the "*Kasulatan ng Ganap na Bilihan ng Lupa*"*;* and (3) damages.

The "*Kasulatan ng Ganap na Bilihan ng Lupa*," which the parties executed on May 23, 1985 provides as follows:

NA AKONG SI, ERLINDA SAN PEDRO, may sapat na gulang, Pilipino, balo at naninirahan sa 374 Herbosa Street, Tondo, Manila, sa bisa ng kasulatang ito ay nagpapatunay —

Na ako ang tunay at ganap na may-ari at namumusesyon sa isang (1) lagay ng lupa na nakatala sa aking pangalan sa ilalim ng Transfer Certificate of Title No. T-290387 ng Patalaan ng

[1] Ruben Lee's name also appears in the Records as "Rubin Lee" and "Rubin T. Lee."

Kasulatan ng Lalawigang Bulakan, na lalong makikilala sa mga sumusunod na palatandaan:

[Technical description follows.]

Na dahil at alang-alang sa halagang ISANG DAAN AT LIMAMPUNG LIBONG PISO (₱150,000.00), Salaping Pilipino, na ngayong araw na ito ay ibinayad sa akin at tinanggap ko naman ng buong kasiyahang-loob bilang husto at ganap na kabayaran ni RUBIN T. LEE, may sapat na gulang, Pilipino, kasal kay Lilian Sison at naninirahan sa 230 MacArthur Highway, Karuhatan, Valenzuela, Metro Manila, aking IPINAGBIBILI, ISINASALIN at INILILIPAT ng ganap at patuluyan at walang anumang pasusubali o pananagutan, ang lahat at boo [sic] kong karapatan at pagmamay-ari at pamumusesyon sa nabanggit na lagay ng lupa at mga kaunlaran o mejoras na dito ay makikita o nakatirik o matatagpuan sa nasabing RUBIN T. LEE at sa kanyang mga tagapamana o kahalili.[2]

The document bears two signatures above the typewritten words "ERLINDA SAN PEDRO, *Nagbibili.*" It contains the signatures of two witnesses, one of whom was Philip dela Torre, and was notarized by a certain Venustiano S. Roxas.[3]

San Pedro's version of events paints a portrait of an unscrupulous couple, usuriously taking advantage of her financial straits to enrich themselves. Petitioner claims that she desperately needed money to support her children's college education,[4] and approached one Philip dela Torre, who introduced her to respondent Ruben Lee.[5] From Lee and his wife Lilian Sison, San Pedro was able to secure a loan in the amount of ₱105,000.00, with interest of ₱45,000.00, or a total indebtedness of ₱150,000.00.[6] As security for this loan, she agreed to mortgage a 17,235-square meter parcel of agricultural land located at San Juan, Balagtas, Bulacan, covered by Transfer Certificate

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[2] Records, p. 14.

[3] *Id*.

[4] TSN, 22 September 1995, p. 5.

[5] *Id*.

[6] *Id*., pp. 4-5.

of Title (TCT) No. T-290387.[7] This transaction took place in the office of Atty. Venustiano Roxas, where she met Lee for the first time.[8]

San Pedro claims that Atty. Roxas and Lee coerced her to sign the "*Kasulatan ng Ganap na Bilihan ng Lupa*" and that the document was executed merely as written evidence of the loan and mortgage. She alleges that Atty. Venustiano Roxas and Ruben Lee told her that the document was just a formality,[9] with the assurance from Atty. Roxas and Lee that respondents would never enforce the contract against her.[10] She readily agreed because she believed in good faith that the spouses were "*tunay na tao*."[11] She further claims that she continued in possession of the parcel of land through her tenant, Federico Santos, and continued to receive her landowner's share of the harvest from 1985 until 1995.[12]

In 1986,[13] petitioner attempted to pay the real property tax on the subject agricultural land.[14] To her surprise, she learned that the property had already been transferred to the names of respondents.[15] She also learned that TCT No. T-290387 had been cancelled and TCT No. RT-41717 (T-305595) had been issued in the name of Ruben Lee.[16]

After saving enough money to pay her indebtedness, San Pedro attempted to redeem her mortgage. She approached Ruben Lee's brother, Carlito, offering to pay her debt, but she was

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[7] *Id*., p. 6.

[8] *Id*., pp. 3-4.

[9] *Id*., p. 7.

[10] *Id*.

[11] *Id*.

[12] *Id*., p. 8.

[13] *Id*., p. 15.

[14] *Id*., p. 9.

[15] *Id*.

[16] *Id*., p. 12.

continually rebuffed.[17] Nine years after the contract was executed, she initiated this suit to recover title to the subject property.

Respondents, on the other hand, present an entirely different version of events. They claim that the sale of the property in question was brokered by their mutual acquaintance and broker, Philip dela Torre.[18] Spouses Lee and Sison are engaged in the real estate business, and believed that San Pedro's agricultural property would be a good investment. It was disclosed to them that the property had no existing right of way, that it was not tenanted,[19] and that it was low-lying real estate which was prone to flooding during the rainy season.[20] They thus negotiated for the purchase of the property, which had an initial asking price of ₱200,000.00,[21] and offered to pay ₱150,000.00 therefor. San Pedro accepted their offer and agreed to sell the land.[22]

Respondents requested that petitioner execute an affidavit of non-tenancy [23] and a written power of attorney authorizing respondents to pay the capital gains taxes and expenses on the registration of the property in their name.[24]

During the trial, petitioner presented four witnesses. The first, Federico Santos, a 61-year-old farmer, testified that he was San Pedro's tenant and had been tilling her land since 1975,[25] which his parents had been tilling before him.[26] He further claimed that this tenancy relation was uninterrupted until the time of his testimony in 1995, and that he paid San Pedro her owner's

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[17] *Id*., pp. 9-14.

[18] TSN, 8 July 1996, p. 3-4.

[19] *Id*., p. 6.

[20] *Id*.

[21] *Id*., p. 5.

[22] *Id*., pp. 7-8.

[23] *Id*., p. 9.

[24] *Rollo*, pp. 60-61; Records, p. 174.

[25] TSN, 14 June 1985, pp. 3-4.

[26] *Id*., pp. 4-6.

share of the harvest every year.[27] Introduced in evidence were a tenancy agreement between Santos and San Pedro's mother,[28] and trust receipts dated from 1981 to 1991, all showing payment to San Pedro of 18 cavans of *palay*.[29]

Petitioner's second witness, Adela Ortega, claimed to be an experienced broker, engaged in the real estate business since after the Second World War.[30] She testified that the parcel of land which was the subject of the contract in question was grossly undervalued, since she sold similarly located parcels of land in 1985 for around ₱60.00 per square meter.[31] She also claimed that, in 1995, she sold a piece of agricultural land adjacent to the subject property for ₱350.00 per square meter.[32]

Juanito Angeles, the third witness for the petitioner, was a Supervising Revenue Examiner in Revenue District 25.[33] He produced Department Order No. 83-94, effective September 25, 1994, which contains zonal valuations of several municipalities in Bulacan.[34] Based on these zonal valuations, he testified that the price of agricultural lots located in Barangay San Juan, Balagtas, Bulacan ranges from ₱60.00 per square meter (for lots along the *barangay* road)[35] to ₱20.00 per square meter (for interior lots).[36] He also stated that prior to the effectivity of Department Order No. 83-94, the capital gains tax was determined from the consideration or the zonal valuation, whichever was higher.[37]

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[27] *Id*.

[28] Records, p. 66.

[29] *Id*., pp. 67-72.

[30] TSN, 3 July 1995, p. 8.

[31] *Id*., p. 9; TSN, 21 July 1995, p. 3.

[32] *Id*., p. 8.

[33] TSN, 11 September 1995, pp. 3-4.

[34] *Id*., pp. 5-8.

[35] *Id*., p. 7; Records, pp. 75-77.

[36] *Id*.

[37] *Id*., pp. 8-11.

For their part, respondents presented Carlito Lee, Jose Samaniego, Atty. Amando Tetangco, Philip dela Torre, and Atty. Venustiano Roxas, in addition to respondent Ruben Lee.

Carlito Lee, Ruben's brother, testified that Philip dela Torre introduced him and Ruben to Erlinda San Pedro, who wanted to sell her property.[38] The sale price was originally ₱200,000.00, which was reduced to ₱150,000.00 because the agricultural lot in question had no existing right of way and was frequently flooded during the rainy season.[39] Carlito also testified that although the contract of sale was entered into between San Pedro and Ruben Lee, the money for the purchase of the property came from Cenica Hardware, a corporation of which he is a part owner.[40]

Carlito alleged that he and Ruben met with San Pedro on several occasions, in order to negotiate the purchase price and terms of payment.[41] On their second meeting, they requested San Pedro to execute an affidavit of non-tenancy to prove that the property was not occupied.[42] On their third meeting, San Pedro produced the requested affidavit, which was notarized by a certain Atty. Amando Tetangco.[43] They set another meeting, for May 23, 1985, at which San Pedro arrived at the Cenica Hardware store with the affidavit of non-tenancy and the original title of the property.[44] That same day, Carlito and his brother withdrew the amount of ₱150,000.00 from Solid Bank, and paid San Pedro, for which she signed a receipt.[45] They then proceeded to the office of Atty. Venustiano Roxas for the execution of the contract of sale.[46]

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[38] TSN, 9 February 1996, p. 4.

[39] *Id*., pp. 6-8.

[40] *Id*., p. 18.

[41] *Id*., p. 8.

[42] *Id*.

[43] *Id*., p. 9.

[44] *Id*.

[45] *Id*., pp. 11-12.

[46] *Id*., p. 14.

Jose Samaniego, the Municipal Assessor of Balagtas, Bulacan, produced, inter alia, the Declaration of Real Property No. 10786[47] and Declaration of Real Property No. 01846,[48] both in the name of Ruben Lee. Declaration of Real Property No. 10786, for the year 1987, covers the property identified by TCT No. T-305595, and proclaims the market value of this property to be ₱34,470.00. Declaration of Real Property No. 01846, for the year 1994, is for the property covered by TCT No. T-305595, and identifies the market value of the property to be ₱137,880.00.

Samaniego explained that the amount appearing on the declaration of real property stands for the value of a certain parcel of land per square meter if the land is residential, commercial or industrial, and per hectare if it is agricultural. The unit value is based on the schedule of market value prepared during the revision, which is approved by the Provincial Assessor and submitted to the Sangguniang Panlalawigan for approval. Thus, the bases for determining unit value are the deed of sale, the payment value and the production cost of the land.[49]

The next witness, Atty. Amando Tetangco, testified that he notarized an affidavit of non-tenancy executed by Erlinda San Pedro sometime in May 1985.[50] He identified his signature on the said affidavit, which he drafted.[51] He also identified the signature of San Pedro, alleging that she caused the preparation of the affidavit,[52] although he admitted that he had never met San Pedro prior to May 17, 1985, the date of execution of the affidavit.[53]

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[47] Records, p. 169.

[48] *Id*., p. 170.

[49] TSN, 2 October 1996, pp. 12-14.

[50] TSN, 25 October 1996, pp. 4-5.

[51] *Id*., p. 6.

[52] *Id*.

[53] *Id*., pp. 9-10.

Philip dela Torre, a real estate broker, testified as to the negotiations between San Pedro and Lee regarding the purchase price of the property.[54] The sum of ₱150,000.00 was finally agreed upon,[55] with the capital gains tax to be paid by Lee.[56] The agreement between the parties was reduced in writing as the "*Kasulatan ng Ganap na Bilihan ng Lupa.*"[57] For his participation in the transaction, dela Torre received a commission of 3%, or ₱4,500.00.[58] Dela Torre was one of the witnesses to this contract, and identified his signature thereon.[59] He also identified (1) the signature of San Pedro, who signed the document in his presence,[60] and (2) the document embodying the agreement that Ruben Lee would pay the capital gains tax on the transaction.[61]

Finally, Atty. Venustiano Roxas testified for the respondents. He recalls having prepared and notarized the "*Kasulatan ng Ganap na Bilihan ng Lupa*," and identified his signature thereon.[62]

On June 22, 1998, the trial court rendered a decision in favor of petitioner, declaring the contract between petitioner and respondents as one of mortgage and not of sale, and ordering the reconveyance of the property and the payment of damages.

On appeal, the Court of Appeals reversed the trial court, and rendered a decision in favor of respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed Decision dated 22 June 1998 of the Regional Trial Court of Malolos, Bulacan, Branch

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[54] TSN, 25 November 1996, pp. 6-8.

[55] *Id*., pp. 6-7; TSN, May 5, 1997, p. 6.

[56] *Id*., p. 8.

[57] *Id*., pp. 8-9.

[58] *Id*., p. 12.

[59] *Id*., p. 9.

[60] *Id*., p. 9-10.

[61] *Id*., pp. 10-11.

[62] TSN, 25 June 1997, pp. 5-7.

17 is hereby REVERSED and SET ASIDE, and a new one is hereby entered dismissing the Complaint for lack of merit. No pronouncement as to costs.

SO ORDERED.

Hence, this appeal, which raises the sole issue of whether the contract in question is an equitable mortgage or a deed of absolute sale.

The document appears on its face to be a contract of sale, and contains the following clause:

Na dahil at alang-alang sa halagang ISANG DAAN AT LIMAMPUNG LIBONG PISO (₱150,000.00), Salaping Pilipino, na ngayong araw na ito ay ibinayad sa akin at tinanggap ko naman ng buong kasiyahang-loob bilang husto at ganap na kabayaran ni RUBIN T. LEE, may sapat na gulang, Pilipino, kasal kay Lilian Sison at naninirahan sa 230 MacArthur Highway, Karuhatan, Valenzuela, Metro Manila, aking IPINAGBIBILI, ISINASALIN at INILILIPAT ng ganap at patuluyan at walang anumang pasusubali o pananagutan, ang lahat at boo [sic] kong karapatan at pagmamay-ari at pamumusesyon sa nabanggit na lagay ng lupa at mga kaunlaran o mejoras na dito ay makikita o nakatirik o matatagpuan sa nasabing RUBIN T. LEE at sa kanyang mga tagapamana o kahalili.[63]

Its nomenclature notwithstanding, we are called upon to decide whether the contract is really one of equitable mortgage, in accordance with the statutory presumptions set forth in Article 1602 of the Civil Code, which are applicable to documents purporting to be contracts of absolute sale.[64]

Article 1602 provides:

Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;

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[63] Records, p. 14.

[64] CIVIL CODE, Art. 1604.

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

It is well-settled that the presence of even one of the foregoing circumstances is sufficient to declare a contract as an equitable mortgage,[65] in consonance with the rule that the law favors the least transmission of property rights.[66] For the presumption of an equitable mortgage to arise under Article 1602, two requisites must concur: (1) that the parties entered into a contract denominated as a sale; and (2) that their intention was to secure an existing debt by way of a mortgage.[67]

After a careful review of the records of the case, we find no cogent reason to disturb the ruling of the Court of Appeals.

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[65] *Aguila v. Court of Appeals,* G.R. No. 127347, 25 November 1999, 319 SCRA 247, 251; *Lustan v. Court of Appeals*, G.R. No. 111924, 27 January 1997, 266 SCRA 663, 672.

[66] *Oronce v. Court of Appeals*, G.R. No. 125766, 19 October 1998, 298 SCRA 133, 156.

[67] *Reyes v. Court of Appeals*, G.R. No. 134166, 25 August 2000, 339 SCRA 97, 104.

Actori incumbit onus probandi.[68] Upon the plaintiff in a civil case, the burden of proof never parts.[69] Plaintiff must therefore establish her case by a preponderance of evidence.[70] She has the burden of presenting evidence required to obtain a favorable judgment,[71] and she, having the burden of proof, will be defeated if no evidence were given on either side.[72]

In this case, it was incumbent upon San Pedro to adduce sufficient evidence to support her claim of an equitable mortgage. Petitioner relies on paragraphs 1, 2, 5 and 6 of Article 1602.[73] Upon an examination of the evidence, we find insufficient basis to conclude the existence of any of the grounds she relied upon.

Anent alleged inadequacy of the purchase price, petitioner presented two witnesses who testified as to the market values of real estate in the subject locale. Neither of these witnesses, however, was able to conclusively demonstrate that the purchase price of the property was grossly inadequate.

The testimony of the purported broker, Adela Ortega, was not given any credence by the Court of Appeals. We quote with approval the ruling of the Court of Appeals on this point:

> Plaintiff-appellee's witness Adela Ortega failed to substantiate her allegation that the prevailing price of the subject property at the time of the sale (1985) was ₱60.00 per square meter. Although Adela Ortega claimed that she was able to sell lots adjacent to the subject property at the said prevailing price, she failed to present proof of

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[68] Upon the plaintiff lies the burden of proof.

[69] *Jison v. Court of Appeals*, 350 Phil. 138, 173 (1998).

[70] *Borlongan v. Madrideo*, 380 Phil. 215, 223 (2000), citing *New Testament Church of God v. Court of Appeals,* 246 SCRA 266, 269 (1996), and *Republic v. Court of Appeals,* 204 SCRA 160, 168 (1991).

[71] *Transpacific Supplies, Inc. v. Court of Appeals*, G.R. No. 109172, 19 August 1994, 235 SCRA 494, 502; *Geraldez v. Court of Appeals*, G.R. No. 108253, 23 February 1994, 230 SCRA 320, 330.

[72] *Summa Insurance Corporation v. Court of Appeals*, 323 Phil. 214, 227 (1996).

[73] *Rollo*, p. 20.

such claim despite her reservation to do so. Moreover, Adela Ortega's competency and credibility as an experienced real estate broker is also suspect or questionable. She admitted that she was not aware or familiar with the factors or bases that affect the increase in the value of realty, or how does it influence the zonal valuation made by the local government, which should be very basic to a real estate broker.

The second witness, BIR Revenue Supervisor Juanito Angeles, testified as to the market value of properties in the subject locale as of the effectivity of Department Order No. 83-94, on *September 25, 1994*. However, it must be noted that Angeles did not testify as to the market value of the locale as of *May 23, 1985*, the date of the contract in question. Neither did petitioner present any other evidence of the real estate market values as of that date.

Absent any evidence of the market value of the locale as of the date of the contract, it cannot be concluded that the price at which the property was sold, or about ₱8.70 per square meter, was grossly inadequate. Mere inadequacy of price would not be sufficient. The price must be *grossly* inadequate,[74] or purely shocking to the conscience.[75] Since the property in question could have been worth as little as ₱20.00 per square meter in 1994, the price of ₱8.70 per square meter nine years earlier, in 1985, does not seem to be grossly inadequate. Indeed, respondents' Declaration of Real Property No. 10786, for the year 1987, shows the market value of the property to be only ₱34,470.00 for that year.

As regards the alleged continuous possession of the property in question, San Pedro presented Federico Santos, who testified that he is a farmer by occupation, currently tilling a farmholding of less than two hectares located at San Juan, Balagtas, Bulacan,[76]

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[74] *Noel v. Court of Appeals*, G.R. No. 59550, 11 January 1995, 240 SCRA 78, 87.

[75] *Cachola, Sr. v. Court of Appeals*, G.R. No. 97822, 7 May 1992, 208 SCRA 496, 501; *Abapo v. Court of Appeals*, G.R. No. 128677, 2 March 2000, 327 SCRA 180, 187; *Vda. De Cruzo v. Carriaga*, G.R. Nos. 75109-10, 28 June 1989, 174 SCRA 330, 345–346.

[76] TSN, 14 June 1995, p. 3.

owned by Erlinda San Pedro, to whom he has been paying lease rentals of 18 cavans a year.[77] The testimony of the witness was offered to prove that he was the agricultural leasehold tenant of the petitioner on the parcel of land which was described in the complaint.[78]

However, while the witness may have established that he was, indeed, the agricultural tenant of the petitioner, the identity of the parcel of land which he tills and the parcel of land described in the complaint was not established. The "*Kasunduan sa Buwisan*"[79] entered into between Federico J. Santos and Lourdes Manalo *Vda*. De San Pedro dated May 14, 1975 reiterates the tenancy relation between witness Santos and the San Pedro family. The parcel of land described therein has an area of 1.5 hectares,[80] while the property subject of the contract in question has an area of 17,235 square meters, or 1.72 hectares. There is therefore no clear indicator that the parcel of land being tilled by Santos is, indeed, the parcel of land subject of the contract between San Pedro and Lee. Although a landowner-tenant relation has been established between San Pedro and Santos, we cannot conclude therefrom that San Pedro was in possession of the property subject of the "*Kasulatan ng Ganap na Bilihan ng Lupa*" through her tenant Federico Santos.

Petitioner argues that the direct connection between the parcel of land tilled by Santos and the land in question needs no proof, in view of the purported admission by respondents in the course of the proceedings.[81] Specifically, petitioner points to (1) an alleged admission made by respondents' counsel during the cross-examination of witness Federico Santos on July 3, 1995, [82] and (2) a statement made in respondents' Comment/Opposition to

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[77] *Id*., p. 4.

[78] *Id*., p. 3.

[79] Records, p. 66.

[80] *Id*.

[81] *Rollo*, p. 21.

[82] *Id*.

Plaintiff's Formal Offer of Evidence, to the effect that petitioner's exercise of rights of ownership over the parcel of land in question amounts to a usurpation of respondents' rights as owner of the property.[83] Petitioner relies on Rule 129, Section 4 of the Revised Rules of Court, which provides in part that "[a]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof."

An examination of the records of the case, however, will readily disclose that no such admission was made either by respondents or by respondents' counsel. The question propounded by respondents' counsel on July 3, 1995, is as follows:

> Q Mr. Witness, are you aware of the fact that since 1985 the land you have been cultivating has been transferred in the name of Sps. Ruben Lee and Lilian Sison?
> A No, ma'am.[84]

In the assessment of this Court, said question contains absolutely no admission that the parcel of land tilled by Santos is in fact the parcel of land subject of the contract in question.

We likewise find no admission made in respondents' Comment/ Opposition to Plaintiff's Formal Offer of Evidence. The alleged admission was made in the comment/objection to petitioner's Exhibits F to F-14, the Receipts of Payments of Rentals by Federico Santos to Erlinda San Pedro, and reads:

> These receipts do not prove rights of ownership. The same even show acts of USURPATION of the Rights of Ownership of the defendants by the plaintiff and her alleged tenant since Title to the property in question is now in the name of Defendant spouses as Evidenced by TCT No. T-305595. (Ehx. B of the Plaintiff)[85]

On the contrary, what the foregoing portion of the Comment/ Objection reveals is that: if Santos was indeed tilling the parcel

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[83] *Id.*, pp. 21-22.

[84] TSN, 3 July 1995, pp. 6-7.

[85] *Rollo*, pp. 136-37.

of land covered by TCT No. T-305595 as a tenant of San Pedro, San Pedro would be guilty of usurpation.

Rule 129, Section 4 of the Revised Rules of Court provides that a judicial admission may be contradicted by showing that it was made through palpable mistake, or that no such admission was made. Petitioner's theory as regards the purported judicial admission is readily contradicted by a perusal of the records, which show that in fact no such admission was made by respondents. We thus find no adequate proof for petitioner's contention that she was exercising possessory rights over the parcel of land covered by TCT No. T-305595.

As a third ground for the establishment of the purported equitable mortgage, petitioner argues that paragraph 5 of Article 1602 is present.[86] Again, petitioner presented no proof that she, as vendor of property, bound herself to pay taxes on the thing sold.

Finally, petitioner relies on Article 1602, paragraph 6, which applies to "any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation."

In contrast, respondents' witnesses all testified as to the existence of a contract of sale between her and respondent Ruben Lee. Pertinently, Philip dela Torre, who brokered the sale, and Atty. Venustiano Roxas, who prepared the contract in question, were both unequivocal as to the nature of the contract. These two witnesses, whose impartiality was not impugned, both affirmed the sale of the subject property.

Respondents presented documentary evidence which shows that the contract was indeed a sale: (1) a receipt for ₱150,000.00 dated May 23, 1985, issued by Erlinda San Pedro, attesting full receipt of the amount in question;[87] (2) an authority to pay capital gains tax, executed by Erlinda San Pedro in favor of

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[86] *Id*., p. 20.

[87] Records, p. 171.

Ruben Lee;[88] and (3) an affidavit of non-tenancy executed by Erlinda San Pedro.[89]

The "*Kasulatan ng Ganap na Bilihan ng Lupa*" unequivocally states the absolute sale of the property covered by Transfer Certificate of Title No. T-290387. Being a notarized document, it carries the evidentiary weight conferred upon duly executed instruments provided by law,[90] and is entitled to full faith and credit upon its face.

WHEREFORE, premises considered, the decision of the Court of Appeals dated November 20, 2002, which dismissed the complaint filed by petitioner for lack of merit, is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Panganiban, Carpio, and *Azcuna, JJ* ., concur.

Davide, Jr., C.J., on official leave.

FIRST DIVISION

[G.R. No. 157219. May 28, 2004]

NATIVIDAD E. BAUTISTA, CLEMENTE E. BAUTISTA and SOCORRO L. ANGELES, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, MANILA PAPERMILLS, INTERNATIONAL, INC., ADELFA PROPERTIES, INC. and SPOUSES RODOLFO JAVELLANA and NELLY JAVELLANA**, *respondents*.

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[88] *Id*., p. 174.

[89] *Id*., p. 159.

[90] Rule 132, Sec. 30 of the RULES OF COURT reads: "SEC. 30. *Proof of notarial documents.* — Every instrument duly acknowledged or proved

SYNOPSIS

A case for quieting of title was filed by herein petitioners against private respondents. Petitioners, claiming absolute ownership of a parcel of land in Imus, Cavite, alleged that they had discovered that the said land was covered by a reconstituted title in the name of the respondents; however, they claimed that the said title and the derivatives thereof were spurious. The trial court denied petitioners' motion for postponement and considered them as having waived the presentation of their evidence. The Court of Appeals dismissed the petitioners' motion for *certiorari*. This petition for review before the Supreme Court, petitioners claimed that the trial court acts resulted in the denial of their right to due process and that the Court of Appeals erred in holding that the trial court did not commit grave abuse of discretion in issuing the challenged orders.

The Supreme Court found that the Court of Appeals did not err in finding that no grave abuse of discretion was committed by the trial court in denying petitioners' motion for postponement and declaring them to have waived their right to present evidence. According to the Court, the grant of a motion for postponement is not a matter of right. It is addressed to the sound discretion of the court. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; PLEADINGS; MOTION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING DISTINGUISHED FROM MOTION FOR POSTPONEMENT OF TRIAL.— An extension to file a responsive pleading is clearly different from a request for a postponement of trial. The former is less likely to waste the time of the court, the litigants, their counsels and witnesses who may have

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and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved."

already prepared for the trial and traveled to the courthouse to attend the hearing.

2. CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; DEEMED SATISFIED AS LONG AS THE PARTY IS ACCORDED OPPORTUNITY TO BE HEARD.— In *Gohu v. Spouses Gohu*, we ruled that, far from being tainted with bias and prejudice, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party. Petitioners' contention that they were denied due process is not well- taken. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.

3. REMEDIAL LAW; MOTIONS; MOTION FOR CONTINUANCE OR POST-PONEMENT; GRANT THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT; EFFECT OF DENIAL.— The grant of a motion for continuance or postponement is not a matter of right. It is addressed to the sound discretion of the court. Action thereon will not be disturbed by appellate courts, in the absence of clear and manifest abuse of discretion resulting in a denial of substantial justice. In other words, we cannot make a finding of grave abuse of discretion simply because a court decides to proceed with the trial of a case rather than postpone the hearing to another day, because of the absence of a party. That the absence of a party during trial constitutes a waiver of his right to present evidence and cross-examine the opponent's witnesses is firmly supported by jurisprudence. To constitute grave abuse of discretion amounting to lack or excess of jurisdiction, the refusal of the court to postpone the hearing must be characterized by arbitrariness or capriciousness.

APPEARANCES OF COUNSEL

Angeles & Associates for petitioners.
Aspiras and Galang Law Offices for Adelfa Properties, Inc.
Gerald C. Jacob for MPMII.
Pastor C. Bacani for Sps. Javellana.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, seeking the reversal of the decision of the Court of Appeals in CA-G.R. SP No. 72307 dated February 17, 2003.[1]

The facts are not in dispute.

On August 12, 1999, petitioners Natividad E. Bautista, Clemente E. Bautista and Socorro L. Angeles filed a complaint against respondent Manila Papermills, International, Inc., before the RTC of Imus, Cavite, Branch 22, docketed as Civil Case No. 1948-99, for quieting of title.[2] This complaint was later amended to implead respondents Adelfa Properties, Inc. and the spouses Rodolfo and Nelly Javellana.[3]

Petitioners alleged in their Amended Complaint that they have been in actual and uninterrupted possession of Lot 5753 of the Imus Estate; that they discovered that the land was covered by a reconstituted title in the name of respondents; and that the said title and the derivatives thereof are spurious. Hence, they prayed that they be declared the absolute owners of the land in dispute.

After several delays spanning more than two years, the case was finally set for trial. However, on May 2, 2002, petitioners filed an Urgent Motion for Postponement to cancel the hearing on the ground that Atty. Michael Macaraeg, the lawyer assigned to the case was in the United States attending to an important matter.

The trial court denied petitioners motion for postponement and considered them as having waived the presentation of their evidence.

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[1] *Rollo*, p. 28. Penned by Justice Eubulo G. Verzola and concurred in by Justices Sergio L. Pestaño and Amelita G. Tolentino.

[2] CA *Rollo*, p. 24.

[3] *Rollo*, p. 40.

Petitioners filed a Motion for Reconsideration, which was denied. Petitioners filed a special civil action for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 72307. On February 17, 2003, the Court of Appeals denied due course to the petition for *certiorari* and dismissed the same.

Hence, this petition on the following assignment of errors:

1. The respondent Court of Appeals erred in failing to consider the partiality and prejudice of the trial court against the petitioners since the inception of the case thereby depriving the petitioners of their constitutionally guaranteed right to due process (*Padua vs. Ericta*, *161 SCRA 458*);

2. As a consequence, the respondent appellate court denied the petitioners of their chance to present evidence even after satisfactorily explaining the failure of petitioners' counsel to attend the scheduled hearing the due process guarantee was violated (*Continental Leaf Tobacco [Phil.]), Inc. vs. Intermediate Appellate Court*, 1*40 SCRA 269*).[4]

Petitioners claim that the arbitrary acts of the trial court have resulted in the denial of their right to due process, and that the Court of Appeals erred in holding that the trial court did not commit grave abuse of discretion in issuing the challenged Orders.

Petitioners further aver that the trial judge displayed "noticeable partiality and prejudice" in dealing with their case, by granting several continuances to respondents while denying petitioner's Urgent Motion for Postponement.[5] They cite four instances wherein respondents were granted extensions to file responsive pleadings and two instances wherein respondents' requests for postponement were similarly granted.[6] An extension to file a responsive pleading is clearly different from a request for a postponement of trial. The former is less likely to waste the time of the court, the litigants, their counsels and witnesses who may have already prepared for the trial and traveled to the

[4] *Id*., p. 17.

[5] *Rollo*, p. 19.

[6] *Id*., p. 11.

courthouse to attend the hearing. More specifically, out of the two postponements prayed for by respondents, one was for the cancellation of a court date unilaterally requested by petitioners which has not been approved by the trial court.[7]

On the other hand, the trial court, in its Order dated July 2, 2002, clearly stated that petitioners' motions for postponement on three previous occasions were granted.[8] This was never refuted by petitioners. Petitioners' last motion for postponement was, however, denied because it was filed on the very date of the hearing sought to be rescheduled.[9]

In *Gohu v. Spouses Gohu*,[10] we ruled that, far from being tainted with bias and prejudice, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party.[11]

Petitioners' contention that they were denied due process is not well-taken. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.[12]

Moreover, the grant of a motion for continuance or postponement is not a matter of right. It is addressed to the sound discretion of the court. Action thereon will not be disturbed by appellate courts, in the absence of clear and manifest abuse

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[7] *Id*., p. 66.

[8] *Id*.

[9] *Id*., p. 59.

[10] G.R. No. 128230, 13 October 2000, 343 SCRA 114.

[11] *Id*.

[12] *Tiomico v. Court of Appeals*, G.R. No. 122539, 4 March 1999, 304 SCRA 216. (Citations omitted)

of discretion resulting in a denial of substantial justice.[13] In other words, we cannot make a finding of grave abuse of discretion simply because a court decides to proceed with the trial of a case rather than postpone the hearing to another day, because of the absence of a party. That the absence of a party during trial constitutes a waiver of his right to present evidence and cross-examine the opponent's witnesses is firmly supported by jurisprudence. To constitute grave abuse of discretion amounting to lack or excess of jurisdiction, the refusal of the court to postpone the hearing must be characterized by arbitrariness or capriciousness.[14]

After a careful review of the evidence on record, we find that the Court of Appeals did not err in finding that no grave abuse of discretion was committed by the trial court in denying petitioners motion for postponement and declaring them as having waived their right to present evidence.

WHEREFORE, in view of the foregoing, the petition is *DENIED*. The decision of the Court of Appeals in CA-G.R. SP No. 72307 which dismissed the special civil action for *certiorari*, is *AFFIRMED*.

No costs.

SO ORDERED.

Panganiban, Carpio, and *Azcuna, JJ.,* concur.

Davide, Jr., C.J., on official leave.

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[13] *Id*.

[14] *Adorable v. Court of Appeals*, G.R. No. 119466, 25 November 1999, 319 SCRA 200, 209.

FIRST DIVISION

[G.R. No. 158922. May 28, 2004]

FERNANDO GO, *petitioner, vs.* **COURT OF APPEALS and MOLDEX PRODUCTS, INC.,** *respondents*.

SYNOPSIS

Petitioner filed with the NLRC a complaint for constructive dismissal, separation pay, service incentive leave including damages and attorney's fees against respondent. Petitioner alleged that he received an advice from the respondent company that his services were being terminated on account of command responsibility due to the anomalies discovered involving his staff. He was promised payments of benefits due him on account of his long and dedicated employment with the company and he was also promised a distributorship agreement with the respondent company. In exchange, petitioner was asked to submit a courtesy resignation to the respondent. Thereafter, petitioner's responsibility as the senior sales manager of the respondent was eventually stripped from him. The Labor Arbiter rendered a judgment in favor of the complainant. The NLRC affirmed the decision of the labor arbiter except that the award of attorney's fees was deleted. The Court of Appeals annulled and set aside the decision of the NLRC and ruled that the petitioner voluntarily resigned from the company. Hence, this petition for review before the Supreme Court.

The failure of the petitioner to fully substantiate his claim that the respondent stripped him of his duties and functions is fatal to the petitioner's cause. Petitioner fully exercised the prerogatives and the responsibilities of his office as the Senior Sales Manager of the respondent during the time the said functions were supposedly removed from him. Therefore, there can be no constructive dismissal to speak of. The totality of the evidence indubitably showed that petitioner resigned from employment without any coercion or compulsion from respondent. His resignation was voluntary. Petition herein was denied by the Supreme Court.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF THE COURT OF APPEALS; AS A RULE, CONCLUSIVE AND BINDING UPON THE SUPREME COURT; EXCEPTIONS.—** It is a well-established rule that the jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals via Rule 45 of the 1997 Rules of Civil Procedure, as amended, is limited to reviewing errors of law. This Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the Court of Appeals are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again. The above rule, however, is not iron-clad. In *Siguan v. Lim*, we enumerated the instances when the factual findings of the Court of Appeals are not deemed conclusive, to wit: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of appeals, in making its findings went beyond the issues of the case and the same is contrary to the admission of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply brief are not disputed by the respondent; and when (10) the findings of fact are premised on the supposed evidence and contradicted by the evidence on record.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CONSTRUCTIVE DISMISSAL, CONSTRUED.—** Constructive dismissal exists where there is a cessation of work because continued employment is rendered impossible, unreasonable or unlikely. It is present when an employee's functions, which were originally supervisory in nature, were reduced, and such reduction is not grounded on valid grounds such as genuine business necessity.

APPEARANCES OF COUNSEL

V.M. Panaguiton & D.F. Pedrasa Law Offices for F. Go.
Glenn Nelson Macavinta for Moldex Products, Inc.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision[1] of the Court of Appeals dated June 30, 2003, in CA-G.R. SP No. 73349, which set aside the twin resolutions[2] of the National Labor Relations Commission (NLRC).

The antecedent facts are as follows:

On April 26, 1986, petitioner Moldex Products, Inc. hired private respondent, Fernando Go as a salesman with a monthly salary of One Thousand Six Hundred Ninety One Pesos (₱1,691.00) and an allowance of Five Hundred Ten Pesos (₱510.00).[3] Over the years, private respondent worked himself within petitioner's corporate structure until he eventually attained the rank of Senior Sales Manager with a monthly compensation of Fifty Thousand Pesos (₱50,000.00) and an average sales commission of Fifteen Thousand Pesos (₱15,000.00) per month.[4]

As the Senior Sales Manager of private respondent, petitioner was responsible for overseeing and managing the sales force of the company such as dealing with clients, getting orders, entering into agreement with clients, subject to the approval of higher management.[5]

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[1] Penned by Justice Romeo A. Brawner and concurred in by Justices Eliezer R. de los Santos and Regalado E. Maambong.

[2] NLRC Resolution dated May 31, 2002 and July 31, 2002; Original Records, pp. 35-43.

[3] *Rollo*, p. 8.

[4] Original Records, p. 121.

[5] *Rollo*, p. 23.

Sometime in the middle of 1998, petitioner's attention was called by Antonio Roman, the Executive Vice-President and Chief Operating Officer of respondent corporation, regarding the discovery of alleged anomalies purportedly committed by the sales people under the Commercial and Industrial Division of the respondent's Marketing Department. The anomalies stemmed from the disbursement of funds by the respondent to government officials for the purpose of getting big supply contracts from the government.[6]

It appears that sometime in 1998, the accounts handled by the petitioner and his staff experienced collection problems. This difficulty in collection necessitated the conduct of an investigation by the respondent,[7] which led to the discovery of anomalies. Among the sales personnel investigated was a member of petitioner's division. Consequently, respondent corporation dismissed a number of its personnel.[8]

For its part, respondent claimed that it also questioned petitioner and that "obviously feeling guilty for not exercising effective supervision over his subordinates, (petitioner) submitted a letter of resignation [9] dated October 12, 1998 but effective on November 16, 1998."[10] Respondent added that petitioner went on leave from October 12, 1998 to November 16, 1998. While on leave, petitioner worked for the release of his clearance and the payment of 13th month pay and leave pay benefits.

On the other hand, petitioner averred that he was not investigated. During his talk with the higher management of the respondent corporation, petitioner contended that the sales people who were found to be involved in the anomalies were directly getting instructions, relative to the disbursement of funds to government officials, from respondent's personnel who were

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[6] *Id*., p. 9.

[7] Original Records, p. 122.

[8] *Id*., p. 121.

[9] *Rollo*, p. 69.

[10] *Id*., p. 5.

occupying management positions higher than that of the petitioner.[11]

Petitioner further alleged that after the investigation, he was surprised to receive an advice from the respondent that his services were being terminated by the latter on account of command responsibility. But since the petitioner was not involved in the anomalies, he was promised payment of separation pay, commission and other benefits due him on account of his long and dedicated employment with the respondent. In addition, the respondent also granted to petitioner a distributorship agreement for the right to be a distributor of its products. In exchange, petitioner was asked to submit a courtesy resignation to the respondent.[12] Thereafter, petitioner's responsibility as the senior sales manager of the respondent was eventually stripped from him.

On March 21, 2000, petitioner filed with the NLRC a complaint[13] for constructive dismissal, separation pay, service incentive leave including damages and attorney's fees against the respondent.[14] The case was docketed as NLRC NCR Case No. 00-03-01684-2000 and it was raffled to the office of Labor Arbiter Ermita T. Abrasaldo-Cuyuca.

On April 30, 2001, Labor Arbiter Abrasaldo-Cuyuca rendered a Decision[15] the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in favor of the complainant and against the respondent.

1. Declaring the dismissal of complainant to be illegal;
2. Ordering respondent to pay complainant his backwages in the amount of ₱1,597,916.67;

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[11] Original Records, p. 51.

[12] *Id*., p. 52.

[13] *Id*., pp. 46-47.

[14] *Id*., p. 122.

[15] *Id*., pp. 120-127.

3. To pay complainant his separation pay in the amount of ₱375,000.00

Ten Percent of the total award as attorney's fees.

Respondent appealed[16] the aforesaid decision to the NLRC. On May 31, 2002, the Third Division of the NLRC promulgated a Resolution[17] which affirmed with modification the Labor Arbiter's decision. As modified, the NLRC deleted the award of attorney's fees for lack of factual basis but it affirmed the rest of the Labor Arbiter's award in favor of herein petitioner. The dispositive portion of the decision reads:

WHEREFORE, the appealed decision is hereby AFFIRMED, with modification deleting the award of attorney's fees.

SO ORDERED.

Respondent sought a reconsideration of the NLRC decision which was denied in a Resolution[18] dated July 31, 2002. Respondent filed a petition for *certiorari* with the Court of Appeals.[19]

As stated earlier, the Court of Appeals annulled and set aside the twin resolutions of the NLRC. In arriving at its decision, the Court of Appeals relied heavily on the annexes[20] attached to the affidavit[21] of Antonio Roman, the Senior Executive Vice and Chief Operating Officer of the respondent. The said annexes purportedly showed that, contrary to the allegations of the petitioner that he was stripped of his responsibility as a sales manager, he was actively performing his normal duties and functions between the periods of July and September 1998, the

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[16] *Id*., pp. 128-146. The appeal was docketed as CA No. 028714-02.

[17] *Id*., pp. 35-43, penned by Commissioner Ireneo B. Bernardo; concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[18] *Id*., pp. 44-45.

[19] *Id*., pp. 2-32.

[20] *Id*., pp. 174-183.

[21] *Id*., pp. 172-173.

months immediately prior to his resignation on October 12, 1998.

Hence, this petition for review, raising the following arguments:

The Court of Appeals committed reversible error considering that:

1. It weighed at face value the sworn statement of Antonio Roman and its annexes, which were both presented for the first time on appeal;
2. It ruled that herein petitioner was not constructively dismissed rather he voluntarily resigned from the respondent;
3. It held that the petitioner's witnesses are biased and therefore tainted with prejudice against the private respondent;
4. It ruled that the resignation of the petitioner was not a result of the manipulation and deception of the private respondent, and;
5. It held that the NLRC committed grave abuse of discretion when it misappreciated the facts and rendered judgment contrary to established evidence.[22]

The petition lacks merit.

It is a well-established rule that the jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals via Rule 45 of the 1997 Rules of Civil Procedure, as amended, is limited to reviewing errors of law.[23] This Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the Court of Appeals are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again.[24]

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[22] *Rollo*, pp. 27-28.

[23] *Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation, et al.,* G.R. No. 133877, 14 November 2001.

[24] *Alejandro Gabriel, et al. v. Spouses Mabanta, et al.,* G.R. No. 142403, 26 March 2003.

The above rule, however, is not iron-clad. In *Siguan v. Lim*,[25] we enumerated the instances when the factual findings of the Court of Appeals are not deemed conclusive, to wit: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings went beyond the issues of the case and the same is contrary to the admission of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply brief are not disputed by the respondent; and when (10) the findings of fact are premised on the supposed evidence and contradicted by the evidence on record.

In the instant case, the issue is shrouded by a conflict of factual perception. We are constrained to review the factual findings of the Court of Appeals, because the conflict falls within the ambit of one of the recognized exceptions to the conclusiveness of its findings, *i.e.*, when its findings of facts contradict those of the lower court, in this case that of the Labor Arbiter and the agency which exercised adjudicative functions over him, the NLRC.

The principal issue to be resolved in this case is whether or not the petitioner was constructively dismissed. Petitioner claims that his separation from employment with the respondent was a case of constructive dismissal, an allegation which the respondent refutes with its own set of evidence pointing to the petitioner's voluntary resignation.

After a careful review of the records of this case, we find sufficient reasons to uphold respondent's contention.

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[25] G.R. No. 134685, 19 November 1999, 318 SCRA 725; citing *Sta. Maria v. Court of Appeals,* 285 SCRA 351 (1998).

Constructive dismissal exists where there is a cessation of work because continued employment is rendered impossible, unreasonable or unlikely.[26] It is present when an employee's functions, which were originally supervisory in nature, were reduced, and such reduction is not grounded on valid grounds such as genuine business necessity.[27]

Petitioner contends that he felt compelled to tender his resignation on October 12, 1998 because after the discovery of anomalies perpetrated by sales people under him, he started getting shabby treatment from the company, and that slowly, he was divested of his duties and responsibilities as the Senior Sales and Marketing Manager of the respondent. He, however, maintains that his resignation was involuntary.

In support of his contention, the petitioner submitted the respective affidavits of Mario Carangan III[28] and Floriza Tuazon,[29] his former co-employees, who both alleged that petitioner was one of the officers of respondent who was stripped of responsibilities and duties while the investigation of the anomalies was going on.

By way of rebuttal, the respondent challenged the contents of the sworn statements for being purely hearsay. With respect to the sworn statement of Ms. Floriza G. Tuazon, respondent argues that Ms. Tuazon resigned even before the petitioner. Thus, she could not be privy to the events involving petitioner which transpired after her resignation. More specifically, the cause of petitioner's resignation on October 12, 1998 was no longer within the competence of Ms. Tuazon.[30] The sworn statement of Mr. Mario Carangan III also suffers from the same infirmity.

As correctly observed by the Court of Appeals:

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[26] *Globe Telecoms, Inc., et al. v. Florendo-Flores*, G.R. No. 150092, 27 September 2002, 390 SCRA 201.

[27] *Id*., p. 203.

[28] Original Records, p. 82.

[29] *Id*., p. 80.

[30] *Id*., p. 99.

It should be remembered that the petitioner has submitted a letter of resignation. It is thus incumbent upon him to substantiate his claim that his resignation was not voluntary but in truth was actually a constructive dismissal.[31]

The failure of the petitioner to fully substantiate his claim that the respondent stripped him of his duties and functions is fatal to his present petition. Except for the sworn statements previously discussed, which we have found to be lacking in probative value, petitioner did not present any other proof of the alleged stripping of his functions by the respondent. Petitioner's bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.

Further, respondent presented copies of its confidential sales evaluation form[32] which prove that, contrary to the allegations of the petitioner, he was still performing his duties and responsibilities one month prior to his resignation. This clearly negates his allegations that he was stripped of his duties.

Apparently, petitioner fully exercised the prerogatives and the responsibilities of his office as the Senior Sales Manager of the respondent during the time that the said functions were supposedly removed from him. Therefore, there can be no constructive dismissal to speak of. He who asserts must prove.[33]

Moreover, after petitioner resigned, he went on leave from October 12, 1998 to November 16, 1998, the date of the effectivity of his resignation. While on leave, he worked for the release of his clearance and the payment of his 13th month pay and leave pay benefits. In doing so, he in fact performed all that an employee normally does after he resigns. Petitioner has taken his theory of coerced or manipulated resignation out of the equation. If indeed the petitioner was forced into resigning from the respondent, he would not have sought to be cleared by the respondent and to be paid the monies due him. Resignation

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[31] *Rollo*, p. 11.

[32] Original Records, pp. 174-183.

[33] 2 Jones on Evidence, 2nd Ed. Section 491.

is the formal pronouncement or relinquishment of an office.[34] The voluntary nature of petitioner's acts has manifested itself clearly and belie his claim of constructive dismissal.

The totality of the evidence indubitably shows that petitioner resigned from employment without any coercion or compulsion from respondent. His resignation was voluntary. As such, he shall only be entitled to his 13th month pay and leave pay benefits. These, however, have already been paid to him by respondent.[35]

WHEREFORE, the petition is *DENIED* and the decision of the Court Appeal dated June 30, 2003 is *AFFIRMED*. The complaint for constructive dismissal filed by respondent Fernando Go against petitioner is ordered *DISMISSED*.

SO ORDERED.

Panganiban, Carpio, and *Azcuna, JJ.*, concur.

Davide, Jr., C. J., on official leave.

FIRST DIVISION

[G.R. No. 159890. May 28, 2004]

EMPERMACO B. ABANTE, JR., *petitioner, vs.* **LAMADRID BEARING & PARTS CORP. and JOSE LAMADRID, President**, *respondents*.

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[34] Section II, Rule XIV, Book V of the Revised Rules Implementing the Labor Code.

[35] Original Records, p. 72.

SYNOPSIS

Petitioner filed a complaint for illegal dismissal with money claims against respondent company and its president. Finding no necessity for further hearing the case after the parties submitted their respective position papers; the Labor Arbiter rendered a decision in favor of petitioner herein. On appeal, the National Labor Relations Commission reversed the decision of the Labor Arbiter. Petitioner challenged the decision of the NLRC before the Court of Appeals, which rendered the assailed judgment affirming the NLRC decision. Upon decision of the motion for reconsideration, petitioner filed the instant appeal. The Supreme Court is called upon to resolve the issue of whether or not petitioner, as a commission salesman, is an employee of respondent corporation.

The Supreme Court affirmed the decision of the Court of Appeals. According to the Court, the so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the "control test", employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching the end. Applying such test in this case, an employer-employee relationship is notably absent. The Court apllied and reiterated the rule that there could be no employer-employee relationship where the element of control is absent.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; EXISTENCE THEREOF IS ULTIMATELY A QUESTION OF FACT WHICH REQUIRES SUBSTANTIAL EVIDENCE.—** Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by Labor Arbiter and the National Labor Relations Commission shall be accorded not only respect but even finality when supported by substantial evidence. The decisive factor in such finality is the presence of substantial evidence to support

said finding, otherwise, such factual findings cannot be accorded finality by this Court. Considering the conflicting findings of fact by the Labor Arbiter and the NLRC as well as the Court of Appeals, there is a need to reexamine the records to determine with certainty which of the proposition espoused by the contending parties is supported by substantial evidence.

2. **ID.; ID.; ID.; ID.; TEST TO ASCERTAIN EXISTENCE THEREOF.—** To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end. In *Encyclopedia Britanica (Philippines) Inc. vs. NLRC,* we reiterated the rule that there could be no employer-employee relationship where the element of control is absent. Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, no relationship of employer-employee exists.

3. **ID.; ID.; ID.; ID.; PAYMENT OF COMPENSATION ON COMMISSION BASIS IS NOT PROOF OF THE EXISTENCE THEREOF.—** While in the case of *Songco v. NLRC,* the term "commission" under Article 96 of the Labor Code was construed as being included in the definition of the term "wage" available to employees, there is no categorical pronouncement that the payment of compensation on commission basis is conclusive proof of the existence of an employer-employee relationship. After all, commission, as a form of remuneration, may be availed of by both an employee or a non-employee.

APPEARANCES OF COUNSEL

Bernabe B. Alabastro for petitioner.
Macario S. Meneses for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the Decision dated March 7, 2003 of the Court of Appeals in CA-G.R. SP No. 73102 which affirmed the Resolution dated April 2, 2002 of the National Labor Relations Commission.

Petitioner was employed by respondent company Lamadrid Bearing and Parts Corporation sometime in June 1985 as a salesman earning a commission of 3% of the total paid-up sales covering the whole area of Mindanao. His average monthly income was more or less ₱16,000.00, but later was increased to approximately ₱20,269.50. Aside from selling the merchandise of respondent corporation, he was also tasked to collect payments from his various customers. Respondent corporation had complete control over his work because its President, respondent Jose Lamadrid, frequently directed him to report to a particular area for his sales and collection activities, and occasionally required him to go to Manila to attend conferences regarding product competition, prices, and other market strategies.

Sometime in 1998, petitioner encountered five customers/ clients with bad accounts, namely:

Customers/Clients		Amount
1) A&B Engineering Services		₱86,431.20
2) Emmanuel Engineering Services		126,858.50
3) Panabo Empire Marketing		226,458.76
4) Southern Fortune Marketing		191,208.00
5) Alreg Marketing		56,901.18
Less Returns:	691.02	56,210.16
Total Bad Accounts		₱687,166.62

Petitioner was confronted by respondent Lamadrid over the bad accounts and warned that if he does not issue his own checks to cover the said bad accounts, his commissions will not be released and he will lose his job. Despite serious misgivings, he issued his personal checks in favor of respondent corporation on condition that the same shall not be deposited for clearing and that they shall be offset against his periodic commissions.[1]

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[1]

	Check No.	Date	Amount
1.	3320013401	8-28-98	₱15,000.00
2.	3320013402	9-28-98	-same-
3.	3320013403	10-28-98	-same-
4.	3320013404	11-28-98	-same-
5.	3320013405	12-28-98	-same-
6.	3320013501	1-28-99	-same-
7.	3320013502	2-28-99	-same-
8.	3320013503	3-28-99	-same-
9.	3320013504	4-28-99	-same-
10.	3320013505	5-28-99	-same-
11.	3320013506	6-28-99	-same-
12.	3320013507	7-28-99	-same-
13.	3320013508	8-28-99	-same-
14.	3320013509	9-28-99	-same-
15.	3320013510	10-28-99	-same-
16.	3320013511	11-28-99	-same-
17.	3320013512	12-28-99	-same-
18.	3320013513	1-28-00	-same-
19.	3320013514	2-28-00	-same-
20.	3320013515	3-28-00	-same-
21.	3320013516	4-28-00	-same-
22.	3320013517	5-28-00	-same-
23.	3320013518	6-28-00	-same-
24.	3320013519	7-28-00	-same-
25.	3320013520	8-28-00	-same-
26.	3320013521	9-28-00	-same-
27.	3320013522	10-28-00	-same-
28.	3320013523	11-28-00	-same-
29.	3320013524	12-28-00	-same-
30.	3320013525	1-28-01	-same-
31.	3320013526	2-28-01	-same-

Not contented with the issuance of the foregoing checks as security for the bad accounts, respondents "tricked" petitioner into signing two documents, which he later discovered to be a Promissory Note[2] and a Deed of Real Estate Mortgage.[3]

Pursuant to the parties' agreement that the checks would not be deposited, as their corresponding values would be offset from petitioner's sales commissions, respondents returned the same to petitioner as evidenced by the undeposited checks and respondent Lamadrid's computations of petitioner's commissions.[4]

Due to financial difficulties, petitioner inquired about his membership with the Social Security System in order to apply for a salary loan. To his dismay, he learned that he was not covered by the SSS and therefore was not entitled to any benefit. When he brought the matter of his SSS coverage to his employer, the latter berated and hurled invectives at him and, contrary to their agreement, deposited the remaining checks which were dishonored by the drawee bank due to "Account Closed."

On March 22, 2001, counsel for respondent corporation sent a letter to petitioner demanding that he make good the dishonored checks or pay their cash equivalent. In response, petitioner sent a letter addressed to Atty. Meneses, counsel for respondent corporation, which reads:[5]

32.	3320013527	3-28-01	-same-
33.	3320013528	4-28-01	-same-
34.	3320013529	5-28-01	-same-
35.	3320013530	6-28-01	-same-
36.	3320013531	7-28-01	-same-
37.	3320013532	8-28-01	-same-
38.	3320013533	9-28-01	-same-
39.	3320013534	10-28-01	-same-
40.	3320013535	11-28-01	-same-

[2] Annex "4" to Affidavit of Jose Lamadrid dated 4 June 2001 attached to Atty. Meneses' letter dated 4 June 2001 addressed to Hon. Arturo L. Gamolo.

[3] Annex "5" to Affidavit of Jose Lamadrid dated 4 June 2001 attached to Atty. Meneses' letter dated 4 June 2001 addressed to Hon. Arturo L. Gamolo.

[4] See Annexes "F" to "P".

[5] CA Records, p. 153.

This has reference to your demand letter dated March 22, 2001 which I received on March 30, 2001, relative to the checks I issued to my employer LAMADRID BEARING PARTS CORPORATION.

May I respectfully request for a consideration as to the payment of the amount covered by the said checks, as follows:

1. I have an earned commission in the amount of ₱33,412.39 as shown in the hereto attached Summary of Sales as of February 28, 2001 (₱22,748.60) and as of March 31, 2001 (₱10,664.79), which I offer to be charged or deducted as partial payment thereof;

2. I hereby commit One Hundred Percent (100%) of all my commission to be directly charged or deducted as payment, from date onward, until such time that payment will be completed;

Sir, kindly convey my good faith to your client and my employer, as is shown by my willingness to continue working as Commission Salesman, having served the Company for the last sixteen (16) years.

I'm sincerely appealing to my employer, through you, Sir, to settle these accountabilities which all resulted from the checks issued by my customers which bounced and later charged to my account, in the manner afore-cited.

May this request merit your kindest consideration, Sirs.

Thank you very much.

On April 2, 2001, petitioner sent another letter to respondent Lamadrid, to wit:[6]

Dear Mr. Lamadrid,

This is to inform your good office that if you pursue the case against me, I may refer this problem to Mr. Paul Dominguez and Atty. Jesus Dureza to solicit proper legal advice. I may also file counter charges against your company of (sic) unfair labor practice and unfair compensation of 3% commission to my sales and commissions of more or less 90,000,000.00 (all collected and covered with cleared check payments) for 16 years working with your company up to the present year 2001.

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[6] Annex "7" to Jose Lamadrid's Affidavit dated 4 June 2001 attached to Atty. Meneses' letter to Hon. Arturo L. Gamolo dated 4 June 2001.

If I am not wrong your company did not exactly declare the correct amount of ₱90,000,000.00 more or less representing my sales and collections (all collected and covered with cleared check payments to the Bureau of Internal Revenue [BIR] for tax declaration purposes). In short your company profited large amount of money to (*sic*) the above-mentioned sales and collections of ₱90,000,000.00 more or less for 16 years working with your company.

I remember that upon my employment with your company last 1985 up to the present year 2001 as commission basis salesman, I have not signed any contract with your company stating that all uncollected accounts including bounced checks from Lamadrid Bearing & Parts Corp. will be charged to me. I wonder why your company forcibly instructed me to secure checking account to pay and issue check payment of ₱15,000.00 per month to cover your company's bad accounts in which this amount is too heavy on my part paying a total bad accounts of more than ₱650,000.00 for my 16 years employment with your company as commission basis salesman.

Recalling your visit here at my Davao City residence, located at Zone 1 2nd Avenue, San Vicente Buhangin Davao City, way back 1998, you even forced me to sign mortgage contract of my house and lot located at Zone 1 2nd Avenue, San Vicente, Buhangin, Davao City, according to Mr. Jose Lamadrid this mortgage contract of my house and lot will serve as guarantee to the uncollected and bounced checks from Lamadrid Bearing and Parts Corp., customers. I have asked 1 copy of the mortgage contract I have signed but Mr. Jose C. Lamadrid never furnished me a copy.

Very truly yours,

(Sgd.) Empermaco B. Abante, Jr.

While doing his usual rounds as commission salesman, petitioner was handed by his customers a letter from the respondent company warning them not to deal with petitioner since it no longer recognized him as a commission salesman.

In the interim, petitioner received a subpoena from the Office of the City Prosecutor of Manila for violations of Batas Pambansa Blg. 22 filed by respondent Lamadrid.

Petitioner thus filed a complaint for illegal dismissal with money claims against respondent company and its president,

Jose Lamadrid, before the NLRC Regional Arbitration Branch No. XI, Davao City.

By way of defense, respondents countered that petitioner was not its employee but a freelance salesman on commission basis, procuring and purchasing auto parts and supplies from the latter on credit, consignment and installment basis and selling the same to his customers for profit and commission of 3% out of his total paid-up sales. Respondents cite the following as indicators of the absence of an employer-employee relationship between them:

(1) petitioner constantly admitted in all his acts, letters, communications with the respondents that his relationship with the latter was strictly commission basis salesman;

(2) he does not have a monthly salary nor has he received any benefits accruing to regular employment;

(3) he was not required to report for work on a daily basis but would occasionally drop by the Manila office when he went to Manila for some other purpose;

(4) he was not given the usual pay-slip to show his monthly gross compensation;

(5) neither has the respondent withheld his taxes nor was he enrolled as an employee of the respondent under the Social Security System and Philhealth;

(6) he was in fact working as commission salesman of five other companies, which are engaged in the same line of business as that of respondent, as shown by certifications issued by the said companies;[7]

(7) if respondent owed petitioner his alleged commissions, he should not have executed the Promissory Note and the Deed of Real Estate Mortgage.[8]

Finding no necessity for further hearing the case after the parties submitted their respective position papers, the Labor

[7] Annexes "G to J".

[8] Annexes "D & E".

Arbiter rendered a decision dated November 29, 2001, the decretal portion of which reads:[9]

WHEREFORE, premises considered judgment is hereby rendered DECLARING respondents LAMADRID BEARING & PARTS CORPORATION AND JOSE LAMADRID to pay jointly and severally complainant EMPERMACO B. ABANTE, JR., the sum of PESOS ONE MILLION THREE HUNDRED THIRTY SIX THOUSAND SEVEN HUNDRED TWENTY NINE AND 62/100 ONLY (₱1,336,729.62) representing his awarded separation pay, back wages (partial) unpaid commissions, refund of deductions, damages and attorney's fees.

SO ORDERED.

On appeal, the National Labor Relations Commission reversed the decision of the Labor Arbiter in a Resolution dated April 5, 2002, the dispositive portion of which reads:[10]

WHEREFORE, the Appeal is GRANTED. Accordingly, the appealed decision is Set Aside and Vacated. In lieu thereof, a new judgment is entered dismissing the instant case for lack of cause of action.

SO ORDERED.

Petitioner challenged the decision of the NLRC before the Court of Appeals, which rendered the assailed judgment on March 7, 2003, the dispositive portion of which reads:[11]

WHEREFORE, premises considered, petition is hereby DENIED. Let the supersedeas bond dated 09 January 2002, issued the Philippine Charter Insurance Corporation be cancelled and released.

SO ORDERED.

Upon denial of his motion for reconsideration, petitioner filed the instant appeal based on the following grounds:

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[9] Decision penned by Labor Arbiter Arturo L. Gamolo.

[10] Decision penned by Commissioner Leon G. Gonzaga, Jr., concurred in by Acting Presiding Commissioner Oscar N. Abella, Fifth Division NLRC.

[11] Decision penned by Associate Justice Buenaventura J. Guerrero, concurred in by Associate Justices Teodoro P. Regino and Mariano C. Del Castillo, Court of Appeals-Second Division.

I

THE HONORABLE COURT OF APPEALS IN GRAVE ABUSE OF DISCRETION "MODIFIED" THE IMPORT OF THE "RELEVANT ANTECEDENTS" AS ITS PREMISE IN ITS QUESTIONED DECISION CAUSING IT TO ARRIVE AT ERRONEOUS CONCLUSIONS OF FACT AND LAW.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPRECIATING THE TRUE FACTS OF THIS CASE THEREBY IT MADE A WRONG CONCLUSION BY STATING THAT THE FOURTH ELEMENT FOR DETERMINING EMPLOYER-EMPLOYEE RELATIONSHIP, WHICH IS THE "CONTROL TEST," IS WANTING IN THIS CASE.

III

THE HONORABLE COURT OF APPEALS IS AT WAR WITH THE EVIDENCE PRESENTED IN THIS CASE AS WELL AS WITH THE APPLICABLE LAW AND ESTABLISHED RULINGS OF THIS HONORABLE COURT.

Initially, petitioner challenged the statement by the appellate court that "petitioner, who was contracted a 3% of the total gross sales as his commission, was tasked to sell private respondent's merchandise in the Mindanao area and to collect payments of his sales from the customers." He argues that this statement, which suggests contracting or subcontracting under Department Order No. 10-97 Amending the Rules Implementing Books III and VI of the Labor Code, is erroneous because the circumstances to warrant such conclusion do not exist. Not being an independent contractor, he must be a regular employee pursuant to Article 280 of the Labor Code because an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.

Petitioner likewise disputes the finding of the appellate court that no employer-employee relationship exists between him and respondent corporation since the power of control, which is the most decisive element to determine such relationship, is wanting. He argues that the following circumstances show that he was in truth an employee of the respondent corporation:

(1) As salesman of the private respondents, petitioner was also the one collecting payment of his sales from various customers. Thus, he was bringing with him Provisional Receipts, samples of which are attached to his Position Paper filed with the Labor Arbiter.

(2) Private respondents had complete control over the work of the petitioner. From time to time, respondent JOSE LAMADRID was directing him to report to a particular area in Mindanao for his sales and collection activities, and sometimes he was required to go to Manila for a conference regarding competitions, new prices (if any), special offer (if competitors gave special offer or discounts), and other selling/marketing strategy. In other words, respondent JOSE LAMADRID was closely monitoring the sales and collection activities of the petitioner.

Petitioner further contends that it was illogical for the appellate court to conclude that since he was not required to report for work on a daily basis, the power of control is absent. He reasons that being a field personnel, as defined under Article 82 of the Labor Code, who is covering the Mindanao area, it would be impractical for him to report to the respondents' office in Manila in order to keep tab of his actual working hours.

Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the Labor Arbiter and the National Labor Relations Commission shall be accorded not only respect but even finality when supported by substantial evidence. The decisive factor in such finality is the presence of substantial evidence to support said finding, otherwise, such factual findings cannot be accorded finality by this Court.[12] Considering the conflicting findings of fact by the Labor Arbiter and the NLRC as well as the Court of Appeals, there is a need to reexamine the records to determine with certainty which of the propositions espoused by the contending parties is supported by substantial evidence.

We are called upon to resolve the issue of whether or not petitioner, as a commission salesman, is an employee of respondent

[12] *AFP Mutual Benefit Association, Inc. v. NLRC*, G.R. No. 102199, 28 January 1997, 267 SCRA 47.

corporation. To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important.[13] The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.

Applying the aforementioned test, an employer-employee relationship is notably absent in this case. It is undisputed that petitioner Abante was a commission salesman who received 3% commission of his gross sales. Yet no quota was imposed on him by the respondent; such that a dismal performance or even a dead result will not result in any sanction or provide a ground for dismissal. He was not required to report to the office at any time or submit any periodic written report on his sales performance and activities. Although he had the whole of Mindanao as his base of operation, he was not designated by respondent to conduct his sales activities at any particular or specific place. He pursued his selling activities without interference or supervision from respondent company and relied on his own resources to perform his functions. Respondent company did not prescribe the manner of selling the merchandise; he was left alone to adopt any style or strategy to entice his customers. While it is true that he occasionally reported to the Manila office to attend conferences on marketing strategies, it was intended not to control the manner and means to be used in reaching the desired end, but to serve as a guide and to upgrade his skills for a more efficient marketing performance. As correctly observed by the

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[13] *Ushio Marketing v. NLRC*, G.R. No. 124551, 28 August 1998, 294 SCRA 673; *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 119930, 12 March 1998, 287 SCRA 476.

appellate court, reports on sales, collection, competitors, market strategies, price listings and new offers relayed by petitioner during his conferences to Manila do not indicate that he was under the control of respondent.[14] Moreover, petitioner was free to offer his services to other companies engaged in similar or related marketing activities as evidenced by the certifications issued by various customers.[15]

In *Encyclopedia Britannica (Philippines), Inc. v. NLRC*, [16] we reiterated the rule that there could be no employer-employee relationship where the element of control is absent. Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, no relationship of employer-employee exists.

We do not agree with petitioner's contention that Article 280[17] is a crucial factor in determining the existence of an employment relationship. It merely distinguishes between two kinds of employees, *i.e.*, regular employees and casual employees, for purposes of determining their rights to certain benefits, such as to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute.[18]

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[14] *Rollo*, p. 72.

[15] *Supra* note 5.

[16] G.R. No. 87098, 4 November 1996, 264 SCRA 1, 7.

[17] Art. 280. *Regular and Casual Employment*. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

[18] *Singer Sewing Machine Company v. Drilon*, G.R. No. 91307, 24 January 1991, 193 SCRA 270.

Neither can we subscribe to petitioner's misplaced reliance on the case of *Songco v. NLRC*.[19] While in that case the term "commission" under Article 96 of the Labor Code was construed as being included in the definition of the term "wage" available to employees, there is no categorical pronouncement that the payment of compensation on commission basis is conclusive proof of the existence of an employer-employee relationship. After all, commission, as a form of remuneration, may be availed of by both an employee or a non-employee.

Petitioner decried the alleged intimidation and trickery employed by respondents to obtain from him a Promissory Note and to issue forty-seven checks as security for the bad accounts incurred by five customers.

While petitioner may have been coerced into executing force to issue the said documents, it may equally be true that petitioner did so in recognition of a valid financial obligation. He who claims that force or intimidation was employed upon him lies the *onus probandi*. He who asserts must prove. It is therefore incumbent upon petitioner to overcome the disputable presumption that private transactions have been prosecuted fairly and regularly, and that there is sufficient consideration for every contract.[20] *A fortiori*, it is difficult to imagine that petitioner, a salesman of long standing, would accede without raising a protest to the patently capricious and oppressive demand by respondent of requiring him to assume bad accounts which, as he contended, he had not incurred. This lends credence to the respondent's assertion that petitioner procured the goods from the said company on credit, consignment or installment basis and then sold the same to various customers. In the scheme of things, petitioner, having directly contracted with the respondent company, becomes responsible for the amount of merchandise he took from the respondent, and in turn, the customer/s would be liable for their respective accounts to the seller, *i.e.*, the petitioner, with whom they contracted the sale.

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[19] G.R. Nos. 50999-51000, 23 March 1990, 183 SCRA 610.

[20] Revised Rules on Evidence, Rule 131, Section 3, pars. P & Q.

All told, we sustain the factual and legal findings of the appellate court and accordingly, find no cogent reason to overturn the same.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated March 7, 2003 in CA-G.R. SP No. 73102, which denied the petition of Empermaco B. Abante, is *AFFIRMED in toto*.

SO ORDERED.

Panganiban, Carpio, and *Azcuna, JJ.*, concur.

Davide, Jr., C.J., is on official leave.

SECOND DIVISION

[A.M. No. MTJ-04-1543. May 31, 2004]
[Formerly OCA-IPI-02-1259-MTJ]

ATTY. AUDIE C. ARNADO, *complainant, vs.* **JUDGE MARINO S. BUBAN, MTCC, Branch 1, Tacloban City,** *respondent*.

SYNOPSIS

Complainant filed a complaint against the respondent judge of gross ignorance of the law amounting to judicial incompetence in the Office of the Court Administrator. According to him, the respondent judge issued a warrant of arrest despite lack of jurisdiction. In its comment, the Office of the Court Administrator found that respondent judge erred in assuming jurisdiction over the criminal cases and issuing warrant for the arrest of the complainant lawyer.

The Supreme Court agreed with the evaluation of the Court Administrator. Under the law, the jurisdiction of municipal trial court is confined to offenses punishable by imprisonment not exceeding six years, irrespective of the amount of fine.

Hence, the jurisdiction over the criminal cases against the complainant lawyer pertained to the Regional Trial Court. Respondent judge, therefore, gravely erred in taking cognizance of the two criminal cases for estafa against the complainant, and worse still, in issuing warrants for his arrest. The respondent judge of the Municipal Trial Court of Tacloban City was found liable for gross ignorance of the law and was ordered to pay a fine of ten thousand pesos, with a warning that a repetition of the same or a similar act shall be dealt with more severely.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION; DEFINED.— The power and authority of a court to hear, try and decide a case is defined as jurisdiction. Elementary is the distinction between jurisdiction over the subject-matter and jurisdiction over the person.

2. ID.; ID.; ID.; JURISDICTION OVER THE SUBJECT MATTER; DISTINGUISHED FROM JURISDICTION OVER THE PERSON.— Jurisdiction over the subject-matter is conferred by the Constitution or by law. It is so essential that erroneous assumption of such jurisdiction carries with it the nullity of the entire proceedings in the case. At the first instance or even on appeal, and although the parties do not raise the issue of jurisdiction, courts are not precluded from ruling that they have no jurisdiction over the subject-matter if such indeed is the situation. In contrast, jurisdiction over the person is acquired by the court by virtue of the party's or accused's voluntary submission to the authority of the court or through the exercise of its coercive processes. To prevent the loss or waiver of this defense, the accused must raise the lack of jurisdiction seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself or his person to that jurisdiction. In other words, jurisdiction over the person is waivable unlike jurisdiction over the subject-matter which is neither subject to agreement nor conferred by consent of the parties. Also basic is that jurisdiction over the subject matter is ascertained by considering the allegations of the complaint or information.

3. ID.; CRIMINAL PROCEDURE; TRIAL *IN ABSENTIA*; AVAILABLE ONLY WHEN THE ACCUSED FAILED TO

APPEAR AT THE TRIAL WITHOUT JUSTIFICATION AND DESPITE DUE NOTICE.— Obviously, he failed to consider that the cases before him are criminal cases and if indeed the accused failed to appear in court the appropriate sanction is not to consider him a legal non-entity but merely to order his arrest. The judge may order a trial *in absentia* only when the accused *fails to appear at the tria*l without justification and despite due notice.

4. **POLITICAL LAW; LAW ON PUBLIC OFFICERS; JUDGES; WHEN GUILTY OF GROSS IGNORANCE OF THE LAW; PENALTY.—** While this Court agrees with the Court Administrator's finding that the rulings of the respondent judge evince gross ignorance of the law, it finds the amount of Five Thousand (₱5,000.00) Pesos which he recommended as fine to be disproportionate to the wrong done by the respondent. The appropriate penalty is a fine of Ten Thousand (₱10,000) Pesos. In the case of *Simplicio Alib v. Labayen*, where the respondent committed a very similar infraction and was found guilty of gross ignorance of the law, the Court imposed a fine of Ten Thousand (₱10,000.00) Pesos.

APPEARANCES OF COUNSEL

Mantilla Mantilla & Associates for complainant.

D E C I S I O N

TINGA, *J.*:

Ignorantia judicis est calamitas innocentis.[1]

As judges are front-liners in the dispensation of justice, it is imperative they keep abreast with the changes and developments in law and jurisprudence. As judges are apostles of the law, their ignorance of the law is impermissible and inexcusable.

On June 5, 2002, the Office of the Court Administrator received the verified *Complaint* of Attorney Audie Arnado,

[1] The ignorance of a judge is the misfortune of the innocent.

accusing respondent Judge Marino S. Buban of gross ignorance of the law amounting to judicial incompetence, as well as manifest partiality and bias, prejudgment and grossly oppressive and abusive conduct in handling Criminal Cases Nos. 2000-02-13 and 2000-02-12, entitled "*People of the Philippines versus Atty. Audie Arnado*."

The antecedents are as follows:

On February 3, 2000 and May 16, 2000, informations for two (2) counts of estafa involving the amounts of Eight Hundred Eighteen Thousand Five Hundred Ten and 20/100 (₱818,510.20) Pesos and Fifty-Nine Thousand Nine Hundred Sixty-Eight (₱59,968.00) Pesos, respectively, were filed against the complainant with the Municipal Trial Court, Branch I, of Tacloban City, presided by respondent judge.

On May 26, 2000, complainant, thru his original counsel, filed a motion to suspend proceedings in the criminal cases on the ground that a civil case pending before the Regional Trial Court in Region 7, seeking as it does the declaration of nullity of a contract, constitutes a prejudicial question. On August 4, 2000, respondent judge issued an order denying the motion. In the same order, he directed the bonding company, in view of the complainant's failure to appear in court for three (3) times, to show cause why the bail bond should not be cancelled and a warrant for his arrest should not be issued. He also scheduled the arraignment of the complainant in the same order.

On March 11, 2002, complainant, thru his new counsel, filed a motion seeking to quash the informations and recall the warrant of arrest on the ground of lack of jurisdiction. He averred that while the MTC has original jurisdiction over offenses punishable with imprisonment not exceeding six (6) years, in the criminal cases before the respondent judge the imposable penalties both exceed six (6) years in view of the amounts involved.

On March 18, 2002, complainant reiterated his move by filing a motion to recall the warrant of arrest. On April 5, 2002, respondent judge denied the motion to quash and recall arrest warrant on the ground that the complainant had lost standing for having jumped bail.

After receiving the order of the respondent judge canceling his bond and ordering the issuance of a warrant for his arrest, complainant filed the present *Complaint*.

On June 26, 2002, the Office of the Court Administrator, required respondent to comment on the *Complaint*.

In his *Comment*, dated September 5, 2002, respondent seeks to absolve himself based on the following averments, *viz*.: (a) as the informations were filed by the City Prosecutor's Office of Tacloban City and they were raffled and assigned only to his sala, he has no (personal) interest "in insisting or assuming jurisdiction" over the cases; (b) the issue of jurisdiction was never raised by complainant until he filed the motion dated March 11, 2002; (c) the grounds invoked by the complainant are matters of defense and are not therefore proper grounds for a motion to quash; and, (d) complainant submitted himself to the jurisdiction of the court by posting bail. Respondent judge further alleges that the motions which complainant filed are sham as he had no standing in court.

On November 28, 2002, complainant filed his rejoinder.

Finding that respondent judge erred in assuming jurisdiction over the criminal cases and in thereafter issuing a warrant for the arrest of the complainant lawyer, Court Administrator Presbitero J. Velasco, Jr. recommended that he be fined Five Thousand (₱5,000.00) Pesos for gross ignorance of the law in his report to the Court.[2]

We agree with the evaluation of the Court Administrator.

The power and authority of a court to hear, try and decide a case is defined as jurisdiction.[3] Elementary is the distinction between jurisdiction over the subject-matter and jurisdiction

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[2] Rule 140 Sections 2 and 10, provides a minimum of ₱20,000.

[3] *Paulino Zamora, et al. v. Court of Appeals*, G.R. No. 78206, March 19, 1990, 183 SCRA 279, citing *Herrera v. Barretto*, 25 Phil. 245 (1913), *Conchada v. Director of Prisons,* 31 Phil. 94 (1915), *U.S. v. Limsiangco*, 41 Phil. 94 (1920).

over the person. Clearly, respondent judge is not cognizant of the difference as he blatantly confused one with the other.

Jurisdiction over the subject-matter is conferred by the Constitution or by law.[4] It is so essential that erroneous assumption of such jurisdiction carries with it the nullity of the entire proceedings in the case. At the first instance or even on appeal, and although the parties do not raise the issue of jurisdiction, courts are not precluded from ruling that they have no jurisdiction over the subject-matter if such indeed is the situation.[5]

In contrast, jurisdiction over the person is acquired by the court by virtue of the party's or accused's voluntary submission to the authority of the court or through the exercise of its coercive processes.[6] To prevent the loss or waiver of this defense, the accused must raise the lack of jurisdiction seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself or his person to that jurisdiction.[7] In other words, jurisdiction over the person is waivable unlike jurisdiction over the subject-matter which is neither subject to agreement nor conferred by consent of the parties.

Also basic is that jurisdiction over the subject matter is ascertained by considering the allegations of the complaint or information. The informations involved are clear as water. Criminal Case No. 2000-02-12 involves ₱59,986.00, while Criminal Case No. 2000-02-13 covers ₱818,510.20.

Under Article 315 of the Revised Penal Code, "the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00; and

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[4] *Id*. at 283 citing *Banco Español Filipino v. Palanca*, 37 Phil. 921.

[5] *Andaya v. Abadia, et al.,* G.R. No. 104033, December 27, 1993, 228 SCRA 705.

[6] *Supra* note 4 at 284.

[7] *La Naval Drug Corporation v. The Honorable Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78.

if such amount exceeds the latter sum, the penalty provided xxx shall be imposed in its maximum period, adding one (1) year for its additional ₱10,000.00 xxx." *Prision mayor* in its minimum period, ranges from six (6) years and one (1) day to eight (8) years. Under the law,[8] the jurisdiction of municipal trial courts is confined to offenses punishable by imprisonment not exceeding six (6) years, irrespective of the amount of the fine.

Hence, jurisdiction over the criminal cases against the complainant lawyer pertains to the Regional Trial Court. Respondent judge, therefore, gravely erred in taking cognizance of the two criminal cases and, worse still, in issuing warrants for the complainant's arrest.

As a last-ditch effort to make the respondent see the light, complainant submitted on March 11, 2002 a motion to quash alleging lack of jurisdiction. The exercise proved to be futile. Respondent judge denied the motion on April 5, 2002 nonetheless, thereby manifesting his gross ignorance of the law. When the law is so elementary, not to know it constitutes gross ignorance.[9]

Consequently, respondent's argument that complainant had submitted himself to the jurisdiction of the court by posting a bond is evidently erroneous.

Another point. Respondent's position that complainant had lost his standing in court in view of his alleged repeated failure to appear in court and for that reason his motions should be considered as sham is patently baseless and smacks of jumbled reasoning. Obviously, he failed to consider that the cases before him are criminal cases and if indeed the accused failed to appear in court the appropriate sanction is not to consider him a legal non-entity but merely to order his arrest. The judge may order

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[8] Republic Act No. 7691, An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa, Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980."

[9] *Domondon v. Lopez*, A.M. No. RTJ-02-1696, June 20, 2002, 383 SCRA 376.

a trial *in absentia* only when the accused *fails to appear at the trial* without justification and despite due notice.[10]

With respect to the charges of manifest partiality and bias, prejudgment, and, grossly oppresive and abusive conduct in handling the two criminal cases, suffice to say that the records do not bear out the accusations. At any rate, all the actions taken by the respondent in the cases are null and void for lack of jurisdiction.

While this Court agrees with the Court Administrator's finding that the rulings of the respondent judge evince gross ignorance of the law, it finds the amount of Five Thousand (₱5,000.00) Pesos which he recommended as fine to be disproportionate to the wrong done by the respondent. The appropriate penalty is a fine of Ten Thousand (₱10,000) Pesos. In the case of *Simplicio Alib v. Labayen*,[11] where the respondent committed a very similar infraction and was found guilty of gross ignorance of the law, the Court imposed a fine of Ten Thousand (₱10,000.00) Pesos.

WHEREFORE, respondent JUDGE MARINO S. BUBAN of the Municipal Trial Court of Tacloban City is found LIABLE for gross ignorance of the law. He is *ORDERED* to pay a *FINE* of Ten Thousand (₱10,000.00) Pesos, with a *WARNING* that a repetition of the same or a similar act shall be dealt with more severely.

SO ORDERED.

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

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[10] Sec. 2 (b), Rule 114, Rules of Criminal Procedure.

[11] A.M. No. RTJ-00-1576, 412 Phil. 443 [2001].

SECOND DIVISION

[G.R. No. 152569. May 31, 2004]

MILWAUKEE INDUSTRIES CORPORATION, *petitioner, vs.* **PAMPANGA III ELECTRIC COOPERATIVE, INC.,** *respondent*.

SYNOPSIS

Petitioner and respondent executed a Waiver Agreement for Sale of Electricity, as a condition for the former's purchase of electricity for its steel plant operations directly from the National Power Corporation (NAPOCOR). Under the contract, petitioner promised to pay respondent a waiver or royalty fee equivalent to 2.5% of its monthly power bill from NAPOCOR plus a surcharge of 2% per month in case of delay. Subsequently, respondent filed a complaint for collection of sum of money for petitioner's refusal to pay the unpaid royalties and surcharges despite repeated demands for payment. The trial court ruled in favor of petitioner. On appeal, the Court of Appeals reversed the trial court and held that petitioner was liable for payment of royalty fees to respondent under the terms of the Waiver Agreement. Petitioner's motion for reconsideration was denied. Hence, this petition.

In denying the petition, the Supreme Court ruled that petitioner was indeed liable to pay respondent royalty fees and surcharges pursuant to Item 1 of the Waiver Agreement. There being no ambiguity in the wording of Item 1 of the Waiver Agreement, its literal meaning is controlling. To give effect to Item 1 as worded is likewise consistent with the rule that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon by the parties and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. Since the terms of the Waiver of Agreement were clear, and are not contrary to law, morals, good customs, public order or public policy, the contract is considered as the law between petitioner and respondent. Thus, petitioner must comply with its obligations thereunder in good faith.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; TERMS OF AN AGREEMENT, HOW CONSTRUED; CASE AT BAR.— The general rule is that when the terms of an agreement are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall prevail. It is further required that the stipulations of a contract be interpreted as a whole, attributing to the questionable stipulations the sense which may result from all of them taken jointly. … There being no ambiguity in the wording of Item 1 of the Waiver Agreement, its literal meaning is controlling. To give effect to Item 1 as worded is likewise consistent with the rule that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon by the parties and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

2. ID.; ID.; CONTRACTS TAKE EFFECT ONLY BETWEEN PARTIES THERETO AND THEIR SUCCESSORS-IN-INTEREST.— It is elementary that contracts take effect only between the parties thereto and their successors-in-interest.

3. ID.; ID.; WHEN THE TERMS OF A CONTRACT ARE CLEAR AND ARE NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY, THE CONTRACT IS CONSIDERED THE LAW BETWEEN THE PARTIES; CASE AT BAR.— Since the terms of the Waiver Agreement are clear, and are not contrary to law, morals, good customs, public order or public policy, the contract is considered as the law between petitioner and respondent. Thus, petitioner must comply with its obligations thereunder in good faith.

APPEARANCES OF COUNSEL

Guillermo G. Sotto for petitioner.
Restituto M. David for respondent.

D E C I S I O N

TINGA, *J.*:

The case at bar is simple in the sense that its adjudication calls for nothing but the enforcement of the plain terms of the contract involved. The simplicity of the decisive issue notwithstanding, the case pays off a dividend. It puts in focus the structure of the electric power industry which underlies the prestation established in the contract.

Before the Court is a *Petition for Review on Certiorari* assailing the *Decision*[1] of the Court of Appeals dated September 7, 2001 in CA-G.R. No. 62131[2] and its *Resolution* dated March 6, 2002, denying the *Motion for Reconsideration* filed by petitioner Milwaukee Industries Corporation.

Respondent Pampanga III Electric Cooperative, Inc. is the grantee of a franchise to provide electric light and power supply in the municipalities of Apalit, Macabebe, Masantol, Minalin, San Simon and Sto. Tomas, Pampanga.

Petitioner, a private corporation operating a steel plant in Apalit, Pampanga, wanted to purchase electricity for its operations directly from the National Power Corporation (NAPOCOR). To be able to purchase directly from NAPOCOR, petitioner needed to secure a waiver from respondent, as the municipality of Apalit was within its franchise area.

On February 17, 1995, petitioner and respondent executed a Waiver Agreement for Sale of Electricity (Waiver Agreement). Under the contract, petitioner promised to pay respondent a waiver or royalty fee equivalent to two and a half percent (2.5%) of its monthly power bill from NAPOCOR not later than the

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[1] Penned by Justice Conrado Vasquez, Jr., concurred in by Justices Martin S. Villarama, Jr. and Eliezer R. De Los Santos.

[2] Pampanga III Electric Cooperative, Inc., represented by its Board President, *Cesar Sigua v. Milwaukee Industries Corporation*.

15th day of each month, plus a surcharge of 2% per month in case of delay.[3]

On March 24, 1998, respondent filed a *Complaint* for collection of sum of money in the Regional Trial Court of Macabebe, Pampanga. Respondent alleged that pursuant to the Waiver Agreement, it billed petitioner for unpaid royalties and surcharges in the amount of ₱3,145,291.10 and ₱263,042.59, respectively, for the period April 1997 to January 1998. Despite repeated demands for payment, petitioner refused to pay respondent.

In its *Answer*, petitioner denied that it was liable to pay respondent royalty fees and surcharges. Petitioner claimed that respondent induced it to execute the Waiver Agreement through fraud and misrepresentation. Respondent allegedly misrepresented that it had an existing agreement with another corporation, and its agreement therewith contained the same terms and conditions as the Waiver Agreement between petitioner and respondent. However, petitioner discovered that the other corporation only paid a one-time fee for a similar waiver/royalty, while petitioner was required to pay royalties every month.[4]

At the pre-trial of the case, both parties agreed to limit the issue to the validity of the Waiver Agreement. Corollary thereto, the parties prayed that the trial court determine whether under the terms of the Waiver Agreement, petitioner's obligation to pay 2.5% of its monthly bill from NAPOCOR arises only when its monthly consumption exceeds 32 megawatts.[5]

The parties agreed that the bone of contention was the interpretation of Item 1 of the Waiver Agreement, which states that petitioner shall pay respondent a waiver/royalty fee of 2.5% of its monthly power bill not later than the 15th day of the month, and that any delay in the payment shall be levied a surcharge 2% per month, computed from the date when payment is due.[6]

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[3] RTC Records, p. 43.

[4] *Id.* at 12.

[5] Pre-Trial Order, *Id.* at 32-33.

[6] Exhibit "A-1", *Id.* at 43.

At the trial, respondent's Board President, Cesar Sigua (Sigua), testified that petitioner failed to pay respondent royalties, in violation of the Waiver Agreement. In support of his testimony, respondent offered the following documentary evidence:

(1) Demand letter dated March 15, 1997, from respondent to petitioner, requesting that the latter comply with Item 1 of the Waiver Agreement;[7]

(2) Letter dated September 11, 1997, from petitioner's Plant Manager, Philip Go, to respondent, requesting that petitioner be allowed to make payments pursuant to Item 1 of the Waiver Agreement beginning April 1997 and appealing that it be allowed to pay its arrears in installments;[8]

(3) Resolution of respondent's Board of Directors approving petitioner's request that their royalty payments be computed beginning April 1997;[9] and

(4) Statement of account as of July 31, 1998, indicating that from April 1997 to July 1998 petitioner's obligation already amounted to Five Million Nine Hundred Fifty Three Thousand Three Hundred Five Pesos and 67/100 (₱5,953,305.67).[10]

For its part, petitioner presented as witness Edwin Dizon (Dizon), the Industrial Relations Manager of SKK Steel Corporation (SKK), a company operating within respondent's franchise area. SKK also purchased electricity directly from NAPOCOR. Dizon averred that unlike petitioner, SKK does not pay royalties to respondent.[11]

Philip Go, petitioner's Plant manager, testified that what petitioner and respondent actually agreed upon was that petitioner

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[7] Exhibit "B", *Id*. at 45.

[8] Exhibit "C", *Id*. at 46.

[9] Exhibit "D", *Id*. at 47.

[10] Exhibit "F", *Id*. at 50.

[11] TSN, October 12, 1998, pp. 4-5.

would be liable to pay royalty fees only if its monthly electric power consumption exceeds 32 megawatts.[12]

In support of its contention that it is only liable to pay royalties if it consumes more than 32 megawatts of electricity in a month, petitioner offered in evidence a Letter dated November 28, 1995,[13] sent by respondent to the Director of the EIAB of the Department of Energy, stating that respondent was no longer objecting to the renewal of the contract between SKK and NAPOCOR, provided that if SKK's monthly electric power consumption exceeds 30 megawatts, it shall enter into a waiver agreement with respondent, which agreement would have the same terms and conditions as the Waiver Agreement between petitioner and respondent.

On November 24, 1998, the RTC rendered its *Decision* in favor of petitioner. The trial court ruled that petitioner was not liable to pay royalty fees to respondent. It held that although the wording of the contract makes it appear that petitioner is obligated to pay royalty fees to respondent every month, there is proof that such was not the real intention of the parties. According to the RTC, the November 28, 1995 letter sent by respondent to the EIAB, Department of Energy, shows that petitioner had to pay royalties only when its electric power consumption in a month exceeds 32 megawatts. The trial court also cited Sigua's testimony that like SKK, petitioner would only be obligated to pay royalties when its electric power consumption in a month exceeds 32 megawatts.[14]

Respondent appealed the *Decision* of the RTC to the Court of Appeals.

In its *Decision* dated September 7, 2001, the Court of Appeals reversed the trial court and held that petitioner is liable for payment of royalty fees to respondent under the terms of the Waiver Agreement. The appellate court characterized as

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[12] TSN, October 5, 1998, pp. 3-4.

[13] Exhibit "2", RTC Records, p. 66.

[14] RTC Decision, CA Records, pp. 23-27.

unnecessary the trial court's resort to extrinsic aids to ascertain the intention of the parties because the terms of the Waiver Agreement are clear and leave no room for interpretation.[15]

Petitioner filed a *Motion for Reconsideration* of the appellate court's *Decision*, but the *Motion* was denied by the Court of Appeals in a *Resolution* dated March 6, 2002.

On May 20, 2002, petitioner filed the present *Petition*, assailing the ruling of the Court of Appeals.

After respondent filed its *Comment*[16] on October 2, 2002, and petitioner filed its *Reply*[17] thereto on March 14, 2003, the Court, in a *Resolution dated* July 28, 2003 gave due course to the petition and required the parties to submit their respective memoranda.[18]

Petitioner claims that the Court of Appeals erred in holding that it is liable to pay royalty fees to the respondent under the terms of the Waiver Agreement. It argues that the appellate court should not have disregarded the admission by Sigua in his testimony that respondent would only be entitled to royalty fees if petitioner consumes more than 32 megawatts of electric power in a month. Petitioner contends that Sigua's admission is relevant for the purpose of determining the real intent of the parties because it was he who signed the Waiver Agreement for and in behalf of the respondent.[19]

Petitioner further claims that the appellate court's pronouncement that petitioner cannot invoke the terms of the contract between respondent and SKK in its favor because Article 1311 of the Civil Code provides that contracts take effect only between the parties thereto and their assigns and heirs, is misplaced. It avers that contrary to the findings of the Court of Appeals,

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[15] *Rollo*, pp. 25-27.

[16] *Id*. at 33-35.

[17] *Id*. at 41-45.

[18] *Id*. at 48.

[19] Memorandum for Petitioner. *Id*. at 67-69.

no contract exists between respondent and SKK. In fact, SKK does not pay royalties to respondent even though like petitioner, SKK purchases electricity directly from NAPOCOR.[20]

Respondent, on the other hand, insists that the Court of Appeals was correct in relying only upon the terms of the Waiver Agreement in determining whether petitioner is liable to pay royalty fees. It asseverates that Sigua's statement in open court — that royalty fees would only be due to respondent if petitioner consumes more than 32 megawatts per month — cannot change the terms of the Waiver Agreement, especially considering that Sigua's statement was a mere supposition, having been preceded by the words, "I think . . .."[21]

The Court is now tasked to resolve the issue of whether petitioner is liable to pay royalty fees to respondent.

There is no merit in the *Petition*.

Item 1 of the Waiver expressly provides:

> 1. A waiver/royalty fee of two and a half percent (2.5%) based on the monthly power bill of the CONSUMER [petitioner] shall be paid to the cooperative [respondent] not later than the 15th day of every month. Any delay in the payment shall be levied a surcharge of two percent (2%) per month computed from the date the payment is due.[22]

In resolving an issue based upon contract, the Court must first examine the contract itself, especially the provisions thereof which are relevant to the controversy. The general rule is that when the terms of an agreement are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall prevail.[23] It is further required that the

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[20] *Id*. at 72-73.

[21] Memorandum for Respondent. *Id*. at 58-59.

[22] Exhibit "A-1", RTC Records, p. 43.

[23] Article 1370, paragraph 1, Civil Code; See also *Leaño v. Court of Appeals,* G.R. No. 129018, November 15, 2001, 369 SCRA 36; *Roble v. Arbasa*, G.R. No. 130707, July 31, 2001, 362 SCRA 69; *German Marine Agencies, Inc. v. NLRC*, G.R. No. 142049, January 30, 2001, 350 SCRA 629.

stipulations of a contract be interpreted as a whole, attributing to the questionable stipulations the sense which may result from all of them taken jointly.[24]

Bearing in mind the aforementioned guidelines, and after a thorough study of the contract in question, the Court finds that the Court of Appeals committed no reversible error in ruling that petitioner is indeed liable to pay respondent royalty fees and surcharges pursuant to Item 1 of the Waiver Agreement.

Petitioner's obligation under Item 1 and the extent of such obligation are not difficult to divine. The said provision in no uncertain terms obligates petitioner to pay royalty fees in the amount of 2.5% of its electric power consumption appearing in its bill from NAPOCOR not later than the 15th of every month. Its failure to pay the royalty fee on the 15th shall result in its payment of a 2% surcharge.

Item 1, as worded, provides no qualification to petitioner's obligation. However, petitioner claims that royalty fees would only be due to respondent if petitioner's electric power consumption for the month exceeds 32 megawatts. Petitioner anchors its claim on the second Whereas clause of the Waiver Agreement which states:

> WHEREAS, the CONSUMER has a steel plant located along McArthur Highway, Paligui, Apalit, Pampanga with a projected load of Thirty-Two (32) megawatts;[25]

According to petitioner, this clause qualifies its obligation under Item 1. Thus, its obligation to pay royalty fees is not absolute, but arises only when it consumes more than 32 megawatts of electricity in a month.

The Court is not persuaded. There is nothing in aforementioned clause which supports petitioner's claim that the clause limits its obligation under Item 1. Evidently, the clause is merely descriptive of petitioner's electric power supply requirements.

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[24] Article 1374, Civil Code.

[25] Exhibit "A-6", RTC Records, p. 43.

This interpretation is also supported by a reading of the contract in its entirety.[26]

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[26] The recitals and stipulations of the Waiver Agreements are as follows:

WHEREAS, the *COOPERATIVE (PELCO III*) is the exclusive holder of Certificate of Franchise No. 145 granted by the National Electrification Administration (NEA) to operate electric light and power service within the areas presently comprised by the following municipalities:

APALIT	*MACABEBE*	*MASANTOL*
MINALIN	*SAN SIMON*	*STO. TOMAS*

WHEREAS, the *CONSUMER* has a steel plant located along McArthur Highway, Paligui, Apalit, Pampanga, with the projected load of *Thirty-Two (32MW) megawatts*;

WHEREAS, the National Power Corporation (NPC) would make available the power needs of *CONSUMER* provided the *COOPERATIVE* would authorize and allow the National Power Corporation (NPC) to serve the power needs of the *CONSUMER*;

WHEREAS, the National Power Corporation (NPC) is legally inhibited from directly serving the power needs of *CONSUMER* without the WAIVER from the COOPERATIVE;

WHEREAS, the *CONSUMER* had applied and requested for a WAIVER from the *COOPERATIVE* and the *COOPERATIVE* hereby grants the said WAIVER under the following terms and conditions to wit:

1. A waiver/loyalty fee of two and one half percent (25% based on the monthly power bill of the CONSUMER shall be paid to the cooperative not later than the 15th day of the month. Any delay in the payment shall be levied a surcharge of two percent (2%) per month computed from the date the payment is due.

2. Payment of waiver/royalty fee shall commence upon the approval of CONSUMER's application with NPC for a direct connection or upon the National Electrification Administration's (NEA) approval of COOPERATIVE's resolution which ever comes first.

3. That a representative of the COOPERATIVE duly designated by its General Manager will be allowed to witness the monthly NPC reading of CONSUMER's meter.

4. That CONSUMER shall use the facilities for the direct connection for its exclusive use and no other commercial or industrial consumers will be allowed to use the same without the prior consent and written approval of the COOPERATIVE.

5. That during the lifetime of this Waiver, COOPERATIVE will not impose new or additional charges in whatever form irrespective of the change in the composition of the membership of the Board and renounces whatever

There being no ambiguity in the wording of Item 1 of the Waiver Agreement, its literal meaning is controlling. To give effect to Item 1 as worded is likewise consistent with the rule that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon by the parties and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.[27]

Even assuming *arguendo* that the Waiver Agreement failed to express the real intent of the parties, and renders necessary a resort to evidence other than the Waiver Agreement, an examination of the parties' contemporaneous acts fails to support petitioner's contention that it is liable to pay royalty fees only when its electric power consumption in a month exceeds 32 megawatts.

The testimony of Mr. Sigua, respondent's President, does not confirm petitioner's claim that its obligation to pay royalties arises only when its monthly consumption exceeds 32 megawatts. It bears noting that when he testified before the trial court on

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rights to claim for any royalty against CONSUMER before the effectivity of this Waiver as set forth in paragraph 2 hereof.

6. That this Waiver is binding for both parties for a period of twenty (20) years reckoned from the date of its approval subject to renewal upon mutual agreement.

7. That should CONSUMER fail to comply with any of the terms and conditions of this Waiver, the COOPERATIVE reserves its rights to cancel this agreement and demand for damages that it may incur by reason of such failure.

8. Any dispute or suit arising out of this agreement shall be filed with the Courts of the Province of Pampanga having the proper jurisdiction.

9. That this Waiver rescinds and supersedes any agreement or contract entered into before relating to the same subject matter.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the place, day and year first above-written.

[27] Section 9, Rule 130, Revised Rules of Court; see also *Llana v. Court of Appeals,* G.R. No. 104802, July 11, 2001, 361 SCRA 27; *Manufacturer's Building, Inc. v. Court of Appeals*, G.R. No. 116847, March 16, 2001, 354 SCRA 521.

September 2, 1998, he could not vividly remember the terms of respondent's agreement with SKK:

> ATTY. SOTTO
> Questioning
>
> Mr. Witness, upon perusal of the letter, under this letter, which reads among others: "However, conformably with the offer of SKK Steel Corporation that in the event its electrical power demand contract with the National Power Corporation exceeds Thirty Megawatts (30), SKK Steel Corporation shall enter into a new agreement similar to that of Milwaukee Industrial Corporation and Pampanga Electric Corporation III. What do you mean by that similar agreement as that of Milwaukee and Pelco?
>
> WITNESS (Mr. Sigua)
>
> . . . . . .
>
> ATTY. DAVID
>
> We will object, Your Honor, the similarity does not bind the plaintiff. . . .
>
> ATTY. SOTTO
>
> I am just asking what he meant by that. . . .?
>
> COURT
>
> Overruled.
>
> WITNESS
>
> I think, the proceedings in that case because this agreement is a product of investigation conducted by the Department of Energy particularly brought about by our operation with the SKK Steel Corporation, but if my memory served me right, our understanding between the Milwaukee and SKK after consuming the thirty-two (32) megawatts, because we made mention that Milwaukee will consume the aforestated megawatts, and meaning they will be paying the royalty fee.[28]

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[28] TSN, September 2, 1998, pp. 7-8.

The letter referred to by Sigua in his testimony was the November 28, 1995 letter of respondent to the EIAB, Department of Energy, which states that respondent was withdrawing its objection to the renewal of the contract between SKK and NAPOCOR in consideration of SKK's offer that "in the event its electrical power demand exceeds THIRTY MEGAWATTS (30MW), SKK Steel Corp. shall enter into a new agreement similar to that of the agreement of Milwaukee Industrial Corp. and Pampanga Electric Coop., Inc."[29]

The Court of Appeals correctly held that any agreement between the respondent and SKK has no relevance to the Waiver Agreement between respondent and petitioner, since the latter is a contract separate and distinct from that of the respondent and SKK. The agreement cited in the November 28, 1995 letter does not and cannot modify the terms of the Waiver Agreement because it involves a different set of parties and a different object. It does not touch upon the contract between respondent and petitioner. It is elementary that contracts take effect only between the parties thereto and their successors-in-interest.[30]

Moreover, in his letter dated September 11, 1997, petitioner's Plant Manager, Philip Go, effectively admitted petitioner's obligation under the Waiver Agreement when on behalf of the company, he requested that the latter's arrears be computed only beginning April 1997, and that petitioner be given "more liberal installment terms for our arrears."[31] Noteworthy is petitioner's acknowledgment in said letter of its obligation to pay respondent for royalty fees and surcharges without any qualification. Had it been the true intention of the parties to limit petitioner's liability to instances when its monthly electric power consumption exceeds 32 megawatts, such limitation should have been mentioned in the letter.

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[29] Exhibit "2", RTC Records, p. 66.

[30] Article 1311, paragraph 2, Civil Code; *Visayan Surety & Insurance Corporation v. Court of Appeals,* G.R. No. 127261, September 7, 2001, 364 SCRA 631.

[31] Exhibit "C", RTC Records, p. 46.

The facts of the present case reveal that the parties really intended to oblige petitioner to pay royalty fees to respondent every month under the terms of the Waiver Agreement in exchange for respondent's waiver of its right to object to the direct purchase by petitioner of electric power supply from NAPOCOR.

The Waiver Agreement between the parties must be understood in the context of the dynamics of the distribution and generation sectors of the electric power industry at the time the contract was executed.

Presidential Decree No. 269,[32] otherwise known as the "National Electrification Decree" (PD No. 269), the law in effect at the time the parties executed the Waiver Agreement, aimed to achieve electrification nationwide.[33] PD No. 269 expressed

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[32] Creating the "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organizational, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for Their Operations, the Repeal of Republic Act No. 6038, and For Other Purposes.

[33] Chapter I (Policy and Definitions), Section 2 of PD No. 269 provides:

SEC. 2. *Declaration of National Policy*. — The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the State to pursue and foster, in an orderly and vigorous manner, the attainment of this objective. For this purpose, the State shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing to pursue diligently this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being by their nature substantially self-regulating and Congress, having, by the enactment of this Decree, substantially covered all phases of their organization and operation requiring or justifying regulation, and in order to further encourage and promote their development, they should be subject to minimal regulation by other administrative agencies.

the State's policy of promoting, encouraging and assisting all public service entities engaged in supplying electricity, particularly electric cooperatives, in furtherance of the law's objectives. Electric cooperatives are granted franchises. PD No. 269 defines "*franchise*" as "the privilege extended to a person to operate an electric system for service to the public at retail within a described geographic area, whether such privilege had been granted by the Congress, by a municipal, city or provincial government, or as herein provided, by the NEA [National Electrification Administration]."[34]

In areas where electric cooperatives do not operate, the distribution of electric power is done by private utilities. To be able to operate, a private distribution utility has to secure the corresponding franchise, just like an electric cooperative.

The distribution utility, whether an electric cooperative or a private entity, possesses the exclusive right to sell electric power to consumers within its authorized area of operation. In turn, NAPOCOR, as the sole agency authorized to generate electric power — at least before the enactment of Republic Act No. No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) — in turn may sell electric power only to duly franchised distribution utilities and electric cooperatives. It may sell electricity directly to end-users only with the consent of the distribution utility or electric cooperative operating in the area concerned.

Area coverage electrification cannot be achieved unless service to the more thinly settled areas and therefore more costly to electrify is combined with service to the most densely settled areas and therefore less costly to electrify. Every public service entity should hereafter cooperate in a national program of electrification on an area coverage basis, or else surrender its franchise in favor of those public service entities which will. It is hereby found that the total electrification of the Nation requires that the laws and administrative practices relating to franchised electric service areas be revised and made more effective, as herein provided. It is therefore hereby declared to be the policy of the State that franchises for electric service areas shall hereafter be so issued, conditioned, altered or repealed, and shall be subject to such continuing regulatory surveillance, that the same shall conduce to the most expeditious electrification of the entire Nation on an area coverage basis.

[34] Section 3(m).

The electric power industry is highly capital-intensive and as such operates as a natural monopoly. This is true for all the traditional sectors, namely: generation, transmission and distribution, the latter insofar as private distribution utilities is concerned. Specifically, distribution utilities have to spend tremendous amounts to set up distribution lines, power stations, operation centers, transformers and the like, not to mention the typical operating costs, to operate and do business. In consideration of the huge pre-operation costs, generating companies in view of the exigencies of the business have to grant distribution companies the exclusive right to sell electricity within the latter's area of operation.[35]

Thus, respondent, as the grantee of a franchise to provide electric power supply to all consumers within its franchise area of Apalit, Macabebe, Masantol, Minalin, San Simon and Sto. Tomas, Pampanga, had the exclusive right to sell electricity at retail to all consumers within that area. Understandably, NAPOCOR would refuse to sell electricity to any consumer within respondent's franchise area unless respondent gives its consent to such sale. Should NAPOCOR act otherwise, it would infringe the rights of the respondent under its franchise and the latter would have a cause to action to prevent the direct sale of electricity by NAPOCOR to the end-user.

The contract between petitioner and NAPOCOR is not in the records of the case. One of the conditions of the said contract should be that petitioner must obtain the consent of respondent, as franchise holder for the area of Apalit, Pampanga, to allow NAPOCOR to sell electricity directly to petitioner. This is so because Section 39 (b) thereof provides that:

> The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable,

[35] Even under the restructured electric power industry established by R.A. No. 2001 (EPIRA), generating companies may sell electricity directly to consumers only after paying wheeling charges to the distribution utility concerned. See Sec. 24.

including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, *the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power, and energy which* without regard to the location of the point of delivery thereof, *will be utilized and consumed within any area franchised to a cooperative*. (Italics supplied.)

Even if the condition that petitioner must obtain respondent's prior consent to the contract between petitioner and NAPOCOR is not expressly stated in said contract, Section 39 (b) is deemed written into their agreement.[36]

It was for all the foregoing that the parties executed the Waiver Agreement and agreed that petitioner pay respondent royalty fees at 2.5% of petitioner's monthly electric power consumption.

Indeed, if the purpose of paying royalty fees to respondent under the Waiver Agreement is to compensate respondent for loss of income resulting from petitioner's direct purchase from NAPOCOR of electricity, for petitioner's operations within respondent's franchise area, specifically, the municipality of Apalit, it is not surprising that the parties agreed on royalty fees of 2.5% percent of petitioner's monthly consumption, regardless of the number of megawatts consumed by petitioner in a month.

Since the terms of the Waiver Agreement are clear, and are not contrary to law, morals, good customs, public order or public policy,[37] the contract is considered as the law between petitioner

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[36] See *Heirs of San Miguel v. Court of Appeals*, G.R. No. 136054, September 5, 2001, 364 SCRA 523; *National Steel Corporation v. RTC of Lanao del Norte,* G.R. No. 127004, March 11, 1999, 304 SCRA 595.

[37] Article 1306, Civil Code; See also *Development Bank of the Philippines v. Court of Appeals,* G.R. No. 137557, 30 October 2000, 344 SCRA 492; *Roman Catholic Archbishop of Manila v. Court of Appeals,* G.R. Nos. 77425 and 77450, 19 June 1991, 198 SCRA 300; *De Luna v. Abrigo*, G.R. No. 57455, 18 January 1990, 181 SCRA 150; *Rocamora, et al. v. RTC-Cebu (Branch VIII), et al.,* G.R. No. L-65037, 23 November 1988, 167 SCRA 615; *Community Savings & Loan Association*, *Inc. vs. Court of Appeals*, G.R. No. 75786, 31 August 1987, 153 SCRA 564.

and respondent. Thus, petitioner must comply with its obligations thereunder in good faith.[38]

WHEREFORE, the Petition is *DENIED* for lack of merit.

SO ORDERED.

Puno, Quisumbing, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

EN BANC

[A.M. No. 2003-18-SC. June 3, 2004]

RE: ADMINISTRATIVE LIABILITIES OF THE SECURITY PERSONNEL INVOLVED IN THE ENTRY OF AN UNIDENTIFIED PERSON AT THE PHILIPPINE JUDICIAL ACADEMY.

SYNOPSIS

On November 5, 2003 Ms. Nennette Z. Tapales, a Training Specialist I, assigned at the Philippine Judicial Academy (PHILJA), saw a man stooping down in the cubicle of co-employee Atty. Joy Amethyst Martinez. The man was opening one of the drawers of Atty. Martinez. The man was later identified as a certain Gaudencio Chavez Bohol. It was found out that he had no entry pass. There was neither a blotter nor a report made about the incident, which as a matter of course should be done. After an investigation, the Complaint and Investigation Division (CID) of the Office of Administrative

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[38] Article 1159, Civil ' Code; See also *National Sugar Trading and/or the Sugar Regulatory Administration v. Philippine National Bank*, G.R. No. 151218, 28 January 2003; *Pilipinas Hino, Inc. v. Court of Appeals*, G.R. No. 126570, 18 August 2000, 338 SCRA 355.

Services (OAS), through Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, asked the following security personnel then on duty to explain why they should not be held administratively liable. Mr. Lino G. Lumansoc, the shift-in-charge declared that that he did not hear Security Guard Ricardo U. Tubog, the guard who responded to Ms. Tapales' report, say that Bohol was seen opening a drawer inside the PHILJA office. Had he known about it, he would have taken the necessary steps to apprehend the man. Chief Administrative Officer Atty. Eden Candelaria found Mr. Lino Lumansoc guilty of negligence in the performance of his official duties and recommended that the latter be reprimanded with a warning that a repetition of the same or similar acts in the future will be dealt with more severely.

The Supreme Court found Lino G. Lumansoc, Security Guard III of the Court, guilty of simple neglect of duty. According to the Court, the factual circumstances show that Mr. Lumansoc was negligent in the performance of his duties *vis-á-vis* the supervisory control required of him. After Bohol was turned over to him, Mr. Lumansoc still allowed him to take his lunch outside the Supreme Court compound instead of endorsing him to the Chief of the Security Division for appropriate action. The Court also found it suspicious why, after Bohol entered the building and was apprehended, Mr. Lumansoc still ordered Tubog to allow Bohol to register in the visitor's logbook. Mr. Lumansoc's utter lack of diligence to conduct further inquiry constituted dereliction of duty tantamount to negligence. As an officer of the Court, Mr. Lumansoc was duty-bound to perform his duties with skill, diligence and to the best of his ability, particularly where the safety or interests of court personnel may be jeopardized by his neglect or cavalier attitude towards his responsibilities. It was fortunate, according to the Court, that his behavior did not cause any material damage to the Court. But it certainly could have put the security of the property and the lives of the employees of the Court in possible danger. Lumansoc was suspended for one month and one day without pay. He was also warned that a repetition of the same or similar acts will be dealt with more severely.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; SECURITY OFFICERS OF THE COURT MUST PERFORM THEIR DUTIES WITH SKILL, DILIGENCE AND TO THE BEST OF THEIR ABILITY, PARTICULARLY WHERE THE SAFETY OR INTERESTS OF COURT PERSONNEL MAY BE JEOPARDIZED BY THEIR NEGLECT AND CAVALIER ATTITUDE TOWARDS THEIR RESPONSIBILITIES.— As an officer of the Court, Mr. Lumansoc was duty-bound to perform his duties with skill, diligence and to the best of his ability, particularly where the safety or interests of court personnel may be jeopardized by his neglect or cavalier attitude towards his responsibilities. It was fortunate that his behavior did not cause any material damage to the Court. But it certainly could have put the security of the property and the lives of the employees of this Court in possible danger. Having been in the service for more than 30 years, Mr. Lumansoc should have been familiar with the standard operating procedure when a suspect is apprehended. Time and again, we have said that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Mr. Lumansoc failed to comply with the strict and rigorous standards required of all security officers in the judiciary.

R E S O L U T I O N

CORONA, *J.*:

This refers to the report dated November 10, 2003 of the Court's Security Division relative to the case of a certain person caught opening a drawer in one of the offices of the Philippine Judicial Academy (PHILJA) located at the 3rd floor of the Centennial Building, Padre Faura, Manila on November 5, 2003.

Based on the report, the man, later identified as Gaudencio Chavez Bohol, was caught by Nennette Z. Tapales in the act of opening the drawer of Atty. Joy Amethyst Martinez. When asked

who he was looking for, Bohol answered he wanted to see a certain Atty. Enciso. There is no "Atty. Enciso" in PHILJA. Apparently, Bohol was able to enter the building without an entry pass. Because of this, the Complaint and Investigation Division (CID) of the Office of Administrative Services (OAS), through Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, asked the following security personnel then on duty to explain why they should not be held administratively liable:

1.	Mr. Lino G. Lumansoc	Security Guard III
2.	Mr. Ricardo U. Tubog	Security Guard I
3.	Ms. Etheldreda Velasquez	Watchman II
4.	Mr. Edgar C. Carbonel	Watchman II

After investigation, the CID wrote a memorandum dated March 30, 2004 to the Chief Justice, through the Clerk of Court, Atty. Luzviminda D. Puno, which read:

On or about 12:15 p.m. on November 5, 200[3] at PHILJA, Ms. [Nennette] Z. Tapales, a Training Specialist I, assigned at the said office, saw a man stooping down in the cubicle of Atty. Joy Amethyst Martinez. The man was opening one of the drawers of Atty. Martinez. It was found out that he had no entry pass.

Ms. Tapales asked the man who he was looking for. He replied, "*Si* Atty. Insenso." The man looked alarmed. Upon stating that there was no such name in that office, Ms. Tapales led the man to the hallway to leave. While the man was waiting for the elevator, Ms. Tapales called her co-employee Lope Palermo to take a look at the man. She went back to her cubicle and then called-up the guard immediately. The guard, who was later on identified as Ricardo Tubog, was then the security assigned at the lobby of the Centennial Building, answered the call.

According to Ms. Tapales, she immediately informed the guard at the lobby. The transcript of her testimony is quoted as follows:

> *"Hello, si [Nennette] ito ng Philja, meron ditong naghahanap ng Atty. Insenso dito sa Philja nagpunta, naghahalungkat ng drawer. Sinabi ko yon. Sabi ko nagbubukas ng drawer. Tapos sabi niya, hello, ma'am, sandali po. Hoy, hoy sinong hinahanap ninyo? Atty. Enciso*

> *na ang sinabi niya doon. A eto na ma'm. Tapos saka niya hinung-up yung phone."* — (Italics supplied. Transcript of [Nennette] Z. Tapales on December 16, 2003)

At that juncture, Mr. Tubog called the man who had just come out from the elevator. He requested him for an identification. The man gave Mr. Tubog a driver's license bearing the name Gaudencio Chavez Bohol, with residence address at Bohol Avenue, Quezon City. He asked him what he was doing at the PHILJA and why he was opening the drawer of Atty. Martinez. He denied the accusation. Afterward, Mr. Tubog called on the radio his Shift-in-Charge, Mr. Lino Lumansoc, informing the latter that there was a problem at the lobby.

Mr. Lumansoc heeded the call and went to the lobby. There, Mr. Tubog allegedly told his Shift-in-Charge regarding the incident where, according to him, a man who was able to enter the Centennial Building without an entry pass was caught by Ms. Tapales opening a drawer at PHILJA. Mr. Tubog then, turned-over the man to Mr. Lumansoc, as a procedure they follow. After a short conversation by Mr. Lumansoc with the man, the former called Mr. Tubog and said, "*parehistruhin mo na lang yan*," afterwards, Mr. Lumansoc left.

Despite the order to let the man register, Mr. Tubog did not allow the man to register. Instead, he stated that it was already 12:20 p.m. then, and it was lunch break, thus no reason to let him in. *After a brief conversation with Mr. Lumansoc, on the lame excuse that he would be having lunch outside, the man had his way out of the premises freely***.** Mr. Tubog, on the other hand, noted on a piece of paper the name and address of the person.

There was neither a blotter nor a report made by Mr. Lumansoc about the incident, which as a matter of course should be done.

Mr. Lino Lumansoc admitted during the investigation that he was immediately informed by Mr. Tubog about the man who gained an entry to the PHILJA at the Centennial Building, without the necessary entry pass. However, he denied having been informed about the opening of the drawer. If ever Mr. Tubog allegedly reported about the opening of the drawer at PHILJA, he said, that he surely did not hear it all. In support, he attached an Affidavit of Allan R. Cabuhat, a janitor from Sparrow Janitorial Services, who corroborated that he himself did not hear Mr. Tubog reported about the drawer being opened by the man. The affidavit, however, was not under oath.

During the investigation, the exact point of entrance of the man was not established. The only safe conclusion which can be deduced from all the lines of questioning to this effect, was that the man effected his entrance using the back door of the stairway from the construction area. The security guards assigned, prior to Mr. Tubog, at the registration and walk through metal detector at the lobby were Etheldreda Velasquez and Edgar Carbonel, respectively. At the investigation, the two (2) testified that it was impossible for the man to pass through the lobby unnoticed. They said that there were only few visitors at that time and that everybody was registered. They also established and confirmed the possibility that the man entered through the backdoor. Both of them confirmed that the said door was still open on November 5, 2003. After the incident, the backdoor was ordered closed. (Italics Ours)

In his defense, Mr. Lumansoc declared that he did not hear Mr. Tubog say that Bohol was seen opening a drawer inside the PHILJA office. Had he known about it, he would have taken the necessary steps to apprehend the man. He submitted the unsworn statement of Mr. Allan R. Cabuhat, a janitor from the Sparrow Janitorial Services, corroborating his declaration. All this notwithstanding, Mr. Lumansoc nevertheless found nothing unusual or alarming about the fact that Bohol was being "held" by one of our security officers.

Chief Administrative Officer Atty. Candelaria found Mr. Lino Lumansoc guilty of negligence in the performance of his official duties and recommended that the latter be reprimanded with a warning that a repetition of the same or similar acts in the future will be dealt with more severely. The other three security personnel were exonerated for lack of proof of negligence in the performance of their duties.

After a thorough review of the records, we agree with the factual findings of the CID but we find the penalty recommended too light and certainly not commensurate with the gravity of the offense committed.

The factual circumstances show that Mr. Lumansoc was indeed negligent in the performance of his duties *vis-á-vis* the supervisory control required of him. After Bohol was turned over to him, Mr. Lumansoc still allowed him to take his lunch outside the

Supreme Court compound instead of endorsing him to the Chief of the Security Division for appropriate action. We also find it suspicious why, after Bohol entered the building and was apprehended, Mr. Lumansoc still ordered Tubog to allow Bohol to register in the visitor's logbook. Assuming, for the sake of argument, that Mr. Lumansoc did not hear Tubog say that Bohol was found opening a drawer inside the PHILJA office, Mr. Lumansoc's utter lack of diligence to conduct further inquiry constituted dereliction of duty tantamount to negligence. In *Garcia vs. Catbagan*,[1] we ruled:

> xxx. However, the delay in the transmittal of the records could have been avoided had the respondents Jose S. Catbagan and Emmanuel Bantug, after knowing of the untimely death of Rustica Geronimo in 1973, complied with their duty to ascertain that the records in Criminal Case No. C-4029 (73) as well as the records of other cases which were in her possession, were actually sent to, and received by, the Court of Appeals. The failure of both respondents to take such step constitutes dereliction in the performance of their duties, which merits disciplinary action. Such apathy of the respondents is the bane of the public service.

As an officer of the Court, Mr. Lumansoc was duty-bound to perform his duties with skill, diligence and to the best of his ability, particularly where the safety or interests of court personnel may be jeopardized by his neglect or cavalier attitude towards his responsibilities. It was fortunate that his behavior did not cause any material damage to the Court. But it certainly could have put the security of the property and the lives of the employees of this Court in possible danger. Having been in the service for more than 30 years, Mr. Lumansoc should have been familiar with the standard operating procedure when a suspect is apprehended. Time and again, we have said that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Mr. Lumansoc failed to comply with the strict

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[1] 101 SCRA 804, 808 [1980].

and rigorous standards required of all security officers in the judiciary.

With regard to the other three court security personnel, we agree with the recommendation of the CID that they should be exonerated for lack of evidence.

Under the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty, classified as a less grave offense, carries a penalty of suspension for one month and one day to six months for the first violation.[2] Section 54 provides that the minimum penalty shall be imposed where only mitigating and no aggravating circumstances are present. Considering Mr. Lumansoc's 30 years of service in the government, we hereby impose the minimum penalty of suspension of one month and one day.

WHEREFORE, the Court finds Mr. Lino G. Lumansoc, Security Guard III of this Court, guilty of simple neglect of duty and hereby orders him *SUSPENDED* for one month and one day without pay. He is also *WARNED* that a repetition of this or similar acts will be dealt with more severely.

This order is immediately executory.

SO ORDERED.

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

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[2] Rule IV, Section 52(B).

EN BANC

[A.M. No. CA-02-15-P. June 3, 2004]

RE: AC No. 04-AM-2002 (JOSEJINA FRIA *v.* GEMILIANA DE LOS ANGELES)

SYNOPSIS

Complainant Court of Appeals (CA) stenographer Josejina Fria charged her co-stenographer respondent Gemiliana De los Angeles, both are members of the staff of CA Associate Justice Marina Buzon, with grave misconduct arising from the loss of money kept in the drawer of complainant's table in the office. The money which complainant had in her custody belongs to Atty. Amelia Alado, also a member of the staff of Justice Buzon, who took a leave of absence for six months. After an investigation, the Court of Appeals found respondent Delos Angeles guilty of the administrative offense of conduct prejudicial to the best interest of the service. In finding respondent guilty of the administrative offense, the appellate court merely relied on circumstantial evidence and the fact that respondent offerred no countervailing evidence despite the opportunity and time to do so.

The Supreme Court dismissed the administrative complaint. The Court found the alleged circumstantial evidence insufficient. Complainant established two circumstances *viz*: 1) prior to the incident, respondent was in dire need of money; and 2) respondent was left alone in the office in the late afternoon of December 20, 2001, and was seen alone in the mezzanine between 11:00 a.m. and 12:00 noon of December 21, 2001. The circumstances proven by complainant do not completely discount the possibility that, other than respondent, there could be another who could have stolen the money. As testified by complainant herself, the drawer of her table could be opened by a paperclip, the bread knife that lies around in the office, or any key, like that of an officemate's, that fits. Besides, aside from complainant and respondent, three officemates had a key to the main door. The possibility of others going inside the office at odd hours has not thus been ruled out. The Court emphasized that it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one

to a fair and reasonable conclusion pointing to the person being accused, to the exclusion of others, as the guilty person.

SYLLABUS

REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE REQUIRED IN ADMINISTRATIVE CASES; NOT ESTABLISHED IN CASE AT BAR.— In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Rule 133, Section 5 of the Revised Rules on Evidence defines "substantial evidence" as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." The evidence complainant proffered in support of her complaint is clearly circumstantial. Complainant established two circumstances *viz*: 1) prior to the incident, respondent was in dire need of money; and 2) respondent was left alone in the office in the late afternoon of December 20, 2001, and was seen alone in the mezzanine between 11:00 a.m. and 12:00 noon of December 21, 2001. For the third requisite to seal the circumstantial evidence against respondent, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to *a fair and reasonable* conclusion pointing to the person being accused, *to the exclusion of others,* as the guilty person. Though administrative proceedings are not strictly bound by formal rules on evidence, the liberality of procedure in administrative actions is still subject to the limitations imposed by the fundamental requirement of due process, especially if the charge, as in the case at bar, if found to be true, also warrants her indictment criminally. The circumstances proven by complainant do not completely discount the possibility that, other than respondent, there could be another who could have stolen the money. As testified by complainant herself, the drawer of her table could be opened by a paperclip, the bread knife that lies around in the office, or any key, like that of an officemate's, that fits. Besides, aside from complainant and respondent, three officemates had a key to the main door. The possibility of others going inside the office at odd hours has not thus been ruled out. Complainant's finding it improbable for anyone of her officemates to return to the office after everyone had left does not convince. "The improbable . . . is not always the untrue." "The most improbable things are

sometimes true, and the most probable things do not happen." The fact is that complainant failed to prove that the only possible occasions that the money was stolen were the two instances that respondent was left or seen alone in the mezzanine. Complainant thus failed to discharge the quantum of evidence — substantial evidence — to fault respondent. Her complaint must thus fail. This leaves it unnecessary to dwell on respondent's evidence. Suffice it to state that the result of the polygraph examination respondent took is in her favor, and her explanation why she no longer pressed for her request to borrow money from her friends and/or officemates is plausible.

APPEARANCES OF COUNSEL

Roco Navera Law Office for G. Delos Angeles

D E C I S I O N

CARPIO MORALES, *J.*:

Court of Appeals (CA) stenographer Josejina Fria (complainant), by a January 9, 2002 complaint-affidavit[1] filed on February 5, 2002, charged her co-stenographer Gemiliana De los Angeles (respondent) with grave misconduct arising from the loss of money kept in the drawer of complainant's table in the office.

Complainant and respondent were in 2001 both assigned to the staff of CA Associate Justice Marina Buzon.

As Atty. Amelia Alado, also a member of the staff of Justice Buzon, took a leave of absence for six months starting November 2001, she authorized complainant to receive her salary and other benefits during her absence.[2] Complainant would then wait for Atty. Alado's instructions on what to do with the amounts received.[3]

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[1] *Rollo* at 4-8.

[2] Transcript of Stenographic Notes (TSN), April 25, 2002 at 5.

[3] TSN, March 21, 2002 at 9.

As of December 20, 2001, complainant had in her custody the amount of ₱10,150.00 representing the salary and other benefits of Atty. Alado which she placed in a brown envelope. On even date, she also had in her possession the amount of ₱5,500.00 belonging to her which she placed in a white envelope. She inserted both envelopes of money in her logbook which she placed and locked inside the drawer of her table at the mezzanine of the Office of Justice Buzon.

The drawer could be opened, however, by any key which could fit.[4] Complainant had even borrowed before a key of Gertrude Remolacio, also an officemate, to open the drawer.[5] In fact a paper clip or the bread knife that lies around the office could be used to open it.[6]

Before complainant kept her and Atty. Alado's monies inside the drawer, she, at around 10:00 a.m. of December 20, 2001, counted them[7] within the view of everyone in their office at the mezzanine including respondent who also occupied a table thereat. The counting done, complainant filled up bank deposit slips reflecting the amounts she was to deposit for the account of Atty. Alado and for her own account. She then inserted the two envelopes containing the monies and the respective deposit slips in a logbook which she placed inside the drawer and locked it.[8]

Also in the morning of December 20, 2001, respondent made several phone calls to her friends from whom she was requesting to borrow money.[9] She also asked Atty. Joy Reyala, a former officemate who twice paid their office a visit that day, first during *merienda* time in the afternoon and second around 5:00 p.m., if she could borrow money from her,[10] to which Atty. Reyala replied "*Tingnan natin*."

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[4] *Rollo* at 4-5; TSN, March 21, 2002 at 23.

[5] TSN, March 21, 2002 at 26.

[6] *Id.* at 27.

[7] *Id.* at 32-33.

[8] *Id.* at 35.

[9] TSN, April 25, 2002 at 28.

[10] TSN, June 6, 2002 at 16-17.

On December 20, 2001, around 5:30 p.m., complainant left the office ahead of respondent and Atty. Reyala, both of whom were to attend a party at the Pasay City Legal Office later that night.[11] In the meantime, Atty. Reyala left Justice Buzon's office and repaired to another building of the CA, leaving respondent in the mezzanine.[12] After about an hour Atty. Reyala returned to the mezzanine following which she and respondent left for the party at Pasay.

On their way to the party, respondent asked Atty. Reyala if she knew someone selling second-hand cellular phones, she having intended to buy one for her daughter.[13]

Around 11:00 a.m. of the following day, December 21, 2001, respondent advised her officemates to get ready to leave for the lunch which Justice Buzon was hosting at the Holiday Inn. Complainant thereupon stepped out of the office and repaired to the comfort room, but as she observed that not all her officemates seemed to be ready to leave, she returned to the mezzanine where she saw respondent alone.

Around 2:30 p.m. also of December 21, 2001, the office staff returned from lunch upon which exchange of gifts took place, lasting up to 4:30 p.m.

Around 5:30 p.m., complainant, together with Atty. Clara Javier, also an officemate, left the office to attend the 6:00 p.m. mass at Ermita Church,[14] leaving the gifts she received and other stuff personal with the guard then manning the guardhouse at the CA main entrance.

After the mass, complainant, together with Atty. Javier, returned to the CA premises to pick up the stuff she had left at the guardhouse. She having remembered that she was to deposit Atty. Alado's money, and Atty. Javier having agreed to do the

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[11] *Id*. at 9.

[12] *Id*. at 26.

[13] *Id*. at 9-10.

[14] *Id*. at 40-42.

depositing on the 26th of December,[15] the two went up their office to get the monies from complainant's drawer.

When complainant opened her drawer, she discovered that the brown envelope containing Atty. Alado's money was missing.[16] She and Atty. Javier thus searched for the envelope until 10:00 p.m. but failed to find the same.[17]

As respondent reported only on January 7, 2002 (a Tuesday) following the holidays, complainant accused her of stealing the money.[18] To the accusation, respondent replied: "*Bakit ako*." After complainant had told her so many things, respondent replied: "*Kung alam mo lang tuyong-tuyo ang Pasko namin. Wala akong pera, maawa ka.*"

Complainant thus filed the complaint at bar.

In her complaint-affidavit, complainant alleged, *inter alia*, as follows:

xxx xxx xxx

14. That I believe my officemate, Gemiliana delos Angeles, took said envelope for the following reasons:

A. It has been our practice in the Office to put money or other valuable items in our desk drawers *and there was never an instance that anyone lost any of it, until she was assigned in the office*;

B. *This was not the first time that I lost money inside my drawer since she became my officemate. In those incidents, she was left alone in the Office after office hours*;

C. It is common knowledge in our Office that she receives only an average of ₱500.00 more or less every pay day;

D. On Thursday, December 20, 2001, she saw me counting the money of Atty. Alado, inserted the same in the logbook

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

[16] *Id.* at 47-48.

[17] *Id.* at 14.

[18] TSN, August 19, 2002 at 29.

and placed it inside my drawer as I was talking to her and asking her as well as my other officemates about the benefits we have received so far;

E. On the same day, she was in dire need of money for the long Christmas break. She called some of her friends asking them for a loan and went in and out of our Office in desperate search of someone who can lend her money to no avail. She even mentioned to us that she did not have any money to buy an exchange gift for our Christmas party the next day;

F. Earlier that day, Atty. Joy Reyala visited our Office. While we were having our *merienda* in the afternoon at around 3:30, she announced that she will borrow money from Atty. Joy Reyala and repeated the same to the latter right after office hours while we were still in the office;

G. *She was the only one who has the opportunity to get the money in the drawer on December 20, 2001 as she was left alone in the Office after office hours*;

H. In our common experience in the Office, she would reiterate to some of us her request for loan even though she is already indebted to almost everybody. *Surprisingly the next day, December 21, 2001, she did not borrow money from any one in the Office*;

I. Knowing her predicament the day before, on December 21, 2001, we decided among ourselves to contribute cash as our Christmas gift for her; and

J. She has difficulty settling her obligations as they fall due as I know of some people who demanded payment from her on several occasions immediately prior to the loss;

15. That when I asked Atty. Joy Reyala whether Gemiliana delos Angeles was able to borrow money from her after we left the office on December 20, 2001, she informed me in the negative and that the latter no longer reiterated her request to borrow money when they were together later in the evening of that day nor the next day, December 21, 2001;

16. That according to Atty. Reyala, when we left them (Atty. Joy Reyala and Gemiliana delos Angeles) in the Office on December 20, 2001, the former went downstairs to get her gifts *leaving the latter alone in the Office for at least an hour*;

17. That Atty. Joy Reyala wondered why Ms. Delos Angeles did not anymore repeat her request for a loan that evening but instead asked the former if she knows anybody who is selling second hand cellphone and she wants to buy one for her with the price ranging from ₱2,000.00 to 3,000.00;

18. That *there was never an opportunity for my other officemates to get the money from my drawer since we were together the whole day*;

19. That when I confronted her on January 7, 2002, as she did not immediately report for work after the Holidays, *she did not say anything to deny the accusations against her or defend herself but just look down* until Ms. Gerthrude Remolcacio and Ms. Claradel Javier arrived from the Library;

xxx xxx xxx (Italics supplied)

By Order[19] of February 12, 2002, then CA Presiding Justice Ma. Alicia Austria Martinez[20] designated Atty. Elisa B. Pilar-Longalong, CA Assistant Clerk of Court, to conduct an investigation on the complaint-affidavit and to submit a report and recommendation within thirty (30) days after the termination of the investigation.

On February 15, 2002, Atty. Longalong sent respondent the following memorandum:[21]

Enclosed are the complaint-affidavit dated January 9, 2002 of Ms. Josefina Fria and the affidavits of Atty. Ma. Claredel C. Javier, Ms. Gerthrude M. Remolacio and Vilma Felix.

Within three days from receipt hereof, you are hereby required to explain in writing under oath, *why you should not be held liable for misconduct for the loss of the amount of ₱16,150 from Ms. Josefina Frias' table drawer.* In your answer, you may submit evidence. You are also required to manifest if you opt for a formal investigation of the charge, in which case you are entitled to be assisted by a counsel of your choice. (Italics supplied)

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[19] *Id.* at 1.

[20] Now Supreme Court Justice.

[21] *Rollo* at 16.

In her counter-affidavit[22] filed on February 18, 2002, respondent denied the charge against her. Regarding the fact that on December 21, 2001 she no longer pursued her request to borrow money the day before, respondent declared that on December 20, 2001, she received a letter[23] from her husband's sister Maria Roth from the USA "which was addressed to me but I knew it was for my husband as it has been customary that his sister-in-law sent money to him twice a year, once mostly on Christmas."

Respondent later requested, by motion dated February 17, 2002, for an extension of time to file further affidavits and supporting documentary evidence and manifested her desire for a formal investigation, which was granted by Order of February 19, 2002.

An investigation was thus conducted.

NBI POLYGRAPH EXAMINATION

In a related move, the NBI subjected respondent to polygraph examination, and while complainant was scheduled to also take the polygraph examination, she did not show up on the date rescheduled (on her request) for the purpose.

Polygraph Report No. 2002-111[24] states that respondent's polygrams "revealed that there were *no specific reactions indicative of deception* to pertinent questions relevant to instant investigation on th[e]s[e] questions," to wit:

Alam mo bang sigurado kung sino ang nagnakaw sa ₱10,650 sa drawer ni Ms. J. Fria? Hindi po

Ikaw ba mismo ang nagnakaw sa ₱10,650? Hindi po

Kasabwat o kaisplit ka ba sa pagnakaw sa P10,650? Hindi po

Nakinabang o nakaparte ka ba sa ₱10,650 na nanakaw sa drawer ni Ms. Fria? Hindi po

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[22] *Id.* at 17-21.

[23] *Id.* at 60-61.

[24] Exhibit "3"; *Rollo* at 54.

Alam mo ba kung nasaan kung kanino napunta ang nagnakaw na ₱10,650? Hindi po

May napunta ba sa iyo sa nanakaw na ₱10,650? Wala po

Mayroon ka bang actual na partisipasyon o kinalaman sa kasong ito? Wala po

DATE REPORTED: 6 March 2002 (Italics supplied)

COURT OF APPEALS REPORT AND RECOMMENDATION

In her October 2, 2002[25] Report to CA Presiding Justice Cancio C. Garcia, Atty. Longalong gave the following pertinent observations.

Although there was no eyewitness presented by complainant on the actual taking, several circumstances all point to respondent as the one who took the money from complainant's drawer. These circumstances are the proven fact that *respondent was borrowing money from friends on December 20, 2001* but no one lent her; that *she was in need of money* at the time; that she was *left alone in the office in the late afternoon* of December 20, 2001 *and in the morning of December 21, 2001*, thus had the only opportunity to take the money and that she *failed to deny taking the money when complainant confronted her of the loss*. Hence, complainant has sufficiently established by substantial evidence that respondent took Atty. Alado's money. *There being no countervailing evidence offered* by respondent despite the opportunity and time to do so, her evidence presented during the hearing but which were not formally offered in evidence can not be considered in her defense.

However, respondent can not be held liable for the administrative offense of grave misconduct because her offense was not committed in the exercise of her official functions. As held by the Supreme Court, misconduct must have direct relation to and be connected with the performance of official duty, which is not so in this case (*Mariano v. Roxas*, AM NO. CA-02-14-P, July 31, 2002; *Apiag v. Cantero*, 268 SCRA 47, 59). Hence, respondent may be held liable for *conduct prejudicial to the best interest of the service*.

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[25] *Rollo* at 66-70.

Civil Service Commission Memorandum Circular No. 19, S. 1999 provides that the penalty for conduct prejudicial to the best interest of the service is Suspension from 6 months 1 day to 1 year for the 1st offense. Considering the mitigating circumstances that this is *respondent's first offense and her length of service of 23 years,* the penalty in its minimum period may be imposed on her.

In view of all the foregoing, Gemiliana delos Angeles may *be held guilty of the administrative offense of conduct prejudicial to the best interest of the service*. If this recommendation is approved and considering that the *prescribed penalty for said offense exceeds 1 month suspension*, the case may now be referred to the Supreme Court for appropriate action, pursuant to Circular No. 30-91 of the Office of the Court Administrator. (Italics supplied)

Presiding Justice Garcia, by letter[26] of October 22, 2002 to Chief Justice Hilario G. Davide, Jr., signifying his full accord with Atty. Longalong's Report and Recommendation, adopted them as his.

THIS COURT'S FINDINGS

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.[27]

Rule 133, Section 5 of the Revised Rules on Evidence defines "substantial evidence" as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

The evidence complainant proffered in support of her complaint is clearly circumstantial.

Section 4, Rule 133 of the Revised Rules on Evidence provides for the requisites for circumstantial evidence to be considered sufficient, to wit:

Section 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if:

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[26] *Id*. at 65.

[27] *Lorena v. Encomienda*, 302 SCRA 632 (1999).

(a) There is more than one circumstance;

(b) The facts from which the inference are derived are proven; and

(c) The combination of all the circumstances is such as to prove conviction beyond reasonable doubt. (Italics in the original)

In the case at bar, complainant established two circumstances *viz*: 1) prior to the incident, respondent was in dire need of money; and 2) respondent was left alone in the office in the late afternoon of December 20, 2001, and was seen alone in the mezzanine between 11:00 a.m. and 12:00 noon of December 21, 2001.

For the third requisite to seal the circumstantial evidence against respondent, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to *a fair and reasonable* conclusion pointing to the person being accused, *to the exclusion of others*, as the guilty person.[28]

Though administrative proceedings are not strictly bound by formal rules on evidence, the liberality of procedure in administrative actions is still subject to the limitations imposed by the fundamental requirement of due process,[29] especially if the charge, as in the case at bar, if found to be true, also warrants her indictment criminally.

The circumstances proven by complainant do not completely discount the possibility that, other than respondent, there could be another who could have stolen the money. As testified by complainant herself, the drawer of her table could be opened by a paperclip, the bread knife that lies around in the office, or any key, like that of an officemate's, that fits. Besides, aside from complainant and respondent, three officemates had a key to the main door. The possibility of others going inside the office at odd hours has not thus been ruled out.

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[28] *People v. Canlas*, 372 SCRA 401 (2001); *People v. Ayola*, 362 SCRA 451 (2001).

[29] *Daracan v. Natividad*, 341 SCRA 161, 176-177 (2000).

Complainant's finding it improbable for anyone of her officemates to return to the office after everyone had left does not convince. "The improbable . . . is not always the untrue." "The most improbable things are sometimes true, and the most probable things do not happen."[30]

The fact is that complainant failed to prove that the only possible occasions that the money was stolen were the two instances that respondent was left or seen alone in the mezzanine.

Complainant thus failed to discharge the quantum of evidence — substantial evidence — to fault respondent. Her complaint must thus fail. This leaves it unnecessary to dwell on respondent's evidence. Suffice it to state that the result of the polygraph examination respondent took is in her favor, and her explanation why she no longer pressed for her request to borrow money from her friends and/or officemates is plausible.

WHEREFORE, the administrative complaint against respondent, Gemiliana de los Angeles, is hereby *DISMISSED* for insufficiency of evidence.

SO ORDERED.

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

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[30] II VICENTE J. FRANCISCO, *Evidence*, 464 (1997) citing *Cooper v. Bockett*, 4 Mo. P.C. 419, 439, per *Knight Bruce, V.C. and Sydney v. Mutual L. Ins. Co.,* 22 Fed. Cas. No. 13, 154, per Cadwallader, Jr.

EN BANC

[A.M. No. RTJ-00-1526. June 3, 2004]

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **JUDGE FRANKLIN A. VILLEGAS,** *respondent*.

SYNOPSIS

An administrative complaint was filed by complainant Dr. Fe Yabut against respondent Judge Franklin A. Villegas of the Regional Trial Court (RTC) of Pagadian City, Branch 19. Dr. Yabut complained of the delay in the disposition of Civil Case No. 1576 pending before Judge Villegas of the RTC-Pagadian City. The case was filed in 1976 by Romeo Alcantara against spouses Norberto and complainant Fe Yabut for reconveyance of agricultural properties situated in Pagadian City. It was originally assigned to the then Court of First Instance of Zamboanga del Sur and Pagadian City presided by Judge Asaali S. Isnani. On August 22, 1984, respondent judge took over the case after Judge Isnani's demise. But after almost 15 years, Judge Villegas had yet to finish the trial of the case and render his decision thereon which prompted Dr. Yabut to bring the matter to the Court's attention. Respondent judge filed his comment and reasoned that the delay in the disposition of the Civil Case was brought about by postponements initiated by both parties, failure to transcribe the testimonies of vital witnesses due to the court stenographer's death, and negotiations between the parties for an amicable settlement. He also implored the Court's mercy for the long delay in filing his comment.

The Supreme Court found respondent Judge guilty of undue delay in rendering a decision and violation of court directives. The Court found the explanation of Judge Villegas to be completely unsatisfactory. According to the Court, incidents such as the numerous postponements of hearings, non-submission of the transcript of stenographic notes (TSN) and the possibility of an amicable settlement between the parties are not reasonable justifications for failing to dispose of a case and render a decision within the prescribed period. Respondent judge's defiance of two directives of the Office of the Court Administrator and six resolutions of the Court

requiring him either to file his comment or to show cause was also considered by the Court as contumacious conduct and blatant disregard of the Court's mandate. Respondent Judge was fined in the amount of ₱20,000.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING DECISION; RESPONDENT'S EXPLANATION FOR DELAY FOUND COMPLETELY UNSATISFACTORY; CASE AT BAR.—** The noble office of a judge is to render justice not only impartially but expeditiously as well, for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Thus, Canon 3, Rule 3.05 of the Code of Judicial Conduct requires judges to dispose of the court's business promptly and decide cases within the period specified in Section 15(1)(2), Article VIII of the Constitution, that is, three months from the filing of the last pleading, brief or memorandum. We have consistently held that the failure of a judge to decide a case within the said prescribed period is inexcusable and constitutes gross inefficiency. We find the explanation of Judge Villegas to be completely unsatisfactory. It deserves scant consideration. Incidents such as the numerous postponements of hearings, non-submission of the transcript of stenographic notes (TSN) and the possibility of an amicable settlement between the parties are not reasonable justifications for failing to dispose of a case and render a decision within the prescribed period.

2. **ID.; ID.; ID.; RESPONDENT JUDGE'S CONTUMACIOUS CONDUCT AND BLATANT DISREGARD OF THE COURT'S MANDATE FOR MORE THAN THREE YEARS AMOUNTED TO STUDIED DEFIANCE AND DOWNRIGHT INSUBORDINATION.—** Respondent judge defied two directives of the OCA and six resolutions of this Court requiring him either to file his comment or to show cause. Assuming his visual difficulty to be true, respondent judge admitted that he was in fact being assisted by his clerks in attending to his paperwork. We thus find it improbable that such serious orders of this Court and the OCA could have escaped his or his clerks' notice. No sufficient justification therefore existed for his failure to comply with the directives of this Court. As the Court

Administrator stated: Respondent judge ought to be reminded that a resolution of this Court requiring comment on an administrative complaint against officials and employees of the Judiciary is not to be construed as a mere request from this Court. On the contrary, respondents in administrative cases are to take such resolutions seriously by commenting on all accusations or allegations against them as it is their duty to preserve the integrity of the judiciary. The Supreme Court can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority. Clearly, Judge Villegas' contumacious conduct and blatant disregard of the Court's mandate for more than three years amounted to studied defiance and downright insubordination.

R E S O L U T I O N

CORONA, *J.*:

Before this Court is an administrative complaint initiated by Dr. Fe Yabut against Judge Franklin A. Villegas of the Regional Trial Court (RTC) of Pagadian City, Branch 19.

In an undated letter received by the Office of the Court Administrator (OCA) on January 5, 1999, Dr. Yabut complained of the delay in the disposition of Civil Case No. 1576 pending before Judge Villegas of the RTC-Pagadian City. The case was filed in 1976 by Romeo Alcantara against spouses Norberto and Fe Yabut for reconveyance of agricultural properties situated in Pagadian City. It was originally assigned to the then Court of First Instance of Zamboanga del Sur and Pagadian City presided by Judge Asaali S. Isnani. On August 22, 1984, respondent judge took over the case after Judge Isnani's demise. But after almost 15 years, Judge Villegas had yet to finish the trial of the case and render his decision thereon. This prompted Dr. Yabut to bring the matter to this Court's attention.

Acting on the letter of Dr. Yabut, then Court Administrator Alfredo L. Benipayo twice required Judge Villegas to comment on the allegations against him, first on February 9, 1999 and

then on August 13, 1999. However, Judge Villegas failed to file his comment. Thus, on January 18, 2000, the Court *en banc* ordered Judge Villegas to answer the complaint and show cause why no disciplinary action should be taken against him for not complying with the directives of the OCA. Still he filed no answer.

On August 8, 2000, respondent judge was fined by this Court in the amount of ₱1,000 for his continued failure to comply with its resolution. This fine was increased to ₱2,000 in a resolution dated January 16, 2001.

On March 29, 2001, the Court received a letter from respondent judge seeking its indulgence for his failure to comply with the resolution dated January 18, 2000. He stressed that he had no intention of disregarding the Court's directive. He explained that his vision in both eyes started deteriorating since the late 1980's and, despite the treatments and laser operations, his vision did not improve. As a result, he encountered much difficulty reading without the assistance of his clerks. He also enclosed postal money orders in the amount of ₱2,000 as payment of the fine previously imposed upon him. He further requested an extension of ten days from April 2, 2001 within which to file his comment on the complaint.

However, it was only on December 12, 2003 that respondent judge filed his comment. He reasoned that the delay in the disposition of Civil Case No. 1576 was brought about by postponements initiated by both parties, failure to transcribe the testimonies of vital witnesses due to the court stenographer's[1] death, and negotiations between the parties for an amicable settlement. Likewise, he implored the Court's mercy for the long delay in filing his comment.

In compliance with the resolution of the Court *en banc* dated January 27, 2004, the Office of the Court Administrator filed its reply on March 11, 2004.

The noble office of a judge is to render justice not only impartially but expeditiously as well, for delay in the disposition

[1] Marcelo Fabillar.

of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.[2] Thus, Canon 3, Rule 3.05 of the Code of Judicial Conduct requires judges to dispose of the court's business promptly and decide cases within the period specified in Section 15(1)(2), Article VIII of the Constitution, that is, three months from the filing of the last pleading, brief or memorandum. We have consistently held that the failure of a judge to decide a case within the said prescribed period is inexcusable and constitutes gross inefficiency.[3]

We find the explanation of Judge Villegas to be completely unsatisfactory. It deserves scant consideration. Incidents such as the numerous postponements of hearings, non-submission of the transcript of stenographic notes (TSN) and the possibility of an amicable settlement between the parties are not reasonable justifications for failing to dispose of a case and render a decision within the prescribed period.

Worse, respondent judge defied two directives of the OCA and six resolutions of this Court requiring him either to file his comment or to show cause. Assuming his visual difficulty to be true, respondent judge admitted that he was in fact being assisted by his clerks in attending to his paperwork. We thus find it improbable that such serious orders of this Court and the OCA could have escaped his or his clerks' notice. No sufficient justification therefore existed for his failure to comply with the directives of this Court. As the Court Administrator stated:

> Respondent judge ought to be reminded that a resolution of this Court requiring comment on an administrative complaint against officials and employees of the Judiciary is not to be construed as a mere request from this Court. On the contrary, respondents in administrative cases are to take such resolutions seriously by commenting on all accusations or allegations against them as it is their duty to preserve the integrity of the judiciary. The Supreme Court can hardly discharge its constitutional mandate of overseeing

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[2] *Office of The Court Administrator vs. Quilala*, 351 SCRA 597 [2001].

[3] *Ubarra vs. Tecson*, 134 SCRA 4 [1985].

judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.[4]

Clearly, Judge Villegas' contumacious conduct and blatant disregard of the Court's mandate for more than three years amounted to studied defiance and downright insubordination.

A magistrate's (1) delay in rendering a decision or order and (2) failure to comply with this Court's rules, directives and circulars constitute less serious offenses under Rule 140, Section 9 of the Rules of Court:

> SEC. 9. Less Serious Charges. — Less serious charges include:
>
> 1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
>
> xxx xxx xxx
>
> 4. Violation of Supreme Court rules, directives and circulars;
>
> xxx xxx xxx.

Section 11(B) of said Rule 140 provides the following sanctions for less serious offenses:

> SEC. 11. Sanctions. xxx xxx xxx
>
> 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) month nor more than three (3) months; or
>
> 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

We note that, in another administrative case, docketed as A.M. No. RTJ-03-1812 (promulgated November 19, 2003) the Court *en banc* found respondent judge guilty of serious misconduct, and ordered his dismissal from the service and the

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[4] OCA Reply, pp. 1-2.

forfeiture of his retirement benefits. Respondent's motion for reconsideration of his dismissal was denied with finality on May 25, 2004.

WHEREFORE, Judge Franklin Villegas is hereby found guilty of two less serious offenses: (1) undue delay in rendering a decision and (2) violation of Supreme Court directives. He is hereby *FINED* in the amount of ₱20,000.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. RTJ-04-1852. June 3, 2004]
[OCA-IPI No. 03-1759-RTJ]

WILFREDO M. TALAG, *complainant, vs.* **JUDGE AMOR A. REYES, Regional Trial Court, Manila Branch 21,** *respondent*.

SYNOPSIS

An administrative complaint was filed against respondent judge Amor A. Reyes of the Regional Trial Court, Manila for partiality, grave abuse of authority and oppression in connection with Criminal Case No. 02-201852 entitled "*People of the Philippines v. Wilfredo Talag*" where the principal accused is the complainant himself Wilfredo M. Talag. According to complainant, respondent judge exhibited partiality and malevolent attitude when she did not only deny all remedies available to complainant but also uttered hostile side-comments during hearings and even commented that complainant was overly fond of filing motions.

The Supreme Court dismissed the complaint for lack of merit. According to the Court, respondent did not exhibit any bias or partiality to warrant her voluntarily inhibition from the case. The Court noted that while complainant decried respondent's predilection for denying all his motions, complainant himself conceded that respondent Judge has done everything pursuant to law and jurisprudence. The Court emphasized that bias and partiality cannot be presumed, for in administrative proceedings no less than substantial proof is required. Apart from bare allegations, there must be convincing evidence to show that respondent Judge is indeed biased and partial. In administrative proceedings, the burden of proof that respondent Judge committed the act complained of rests on the complainant. Complainant failed to discharge this burden.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; ADMINISTRATIVE COMPLAINT FOR PARTIALITY, GRAVE ABUSE OF AUTHORITY AND OPPRESSION FOUND BASELESS.— We have closely scrutinized the arguments of the contending parties and find the charges filed against respondent are baseless. The Information was filed on May 7, 2002 while the warrant of arrest was issued May 23, 2003. When complainant filed the omnibus motion on May 7, 2002, the court has not yet acquired jurisdiction over his person. With the filing of Information, the trial court could then issue a warrant for the arrest of the accused as provided for by Section 6 of Rule 112 of the Revised Rules on Criminal Procedure. The issuance of the warrant was not only procedurally sound but it was even required considering that respondent had yet to acquire jurisdiction over the person of complainant. Consequently, complainant's charge that respondent Judge failed to act on the omnibus motion before issuing the arrest warrant is untenable. Whether respondent correctly disregarded the omnibus motion in view of the alleged fatal defects is a judicial matter, which is not a proper subject in an administrative proceeding. It bears noting that respondent court immediately deferred the execution of the warrant of arrest upon issuance by the Court of Appeals of the TRO. Incidentally, although the Court of Appeals issued a temporary restraining order, it eventually sustained the issuance by

respondent of the arrest warrant and dismissed the petition for *certiorari.* Neither can we ascribe partiality nor grave abuse of authority on the part of respondent for issuing anew an *alias* warrant after the expiration of the Court of Appeals' 60-day TRO. With the lifting of the restraining order, no legal obstacle was left for the issuance of the arrest warrant and thus set in motion the stalled prosecutorial process by acquiring jurisdiction over the person of the accused. Complainant blames the respondent for his failure to appear at his arraignment because the notice was sent to the wrong address despite a prior notice for change of address. A cursory reading of the notice of change of address will show that it pertains to the counsel's residence, not to the complainant's. In view of this, it becomes reasonable for the court to assume that court processes could be sent to complainant's "old" and "unchanged" residence. As correctly pointed out by respondent Judge, the Produce Order of the December 11, 2002 and January 22, 2003 settings were sent to complainant's bondsman. Hence, in accordance with Sec. 21, Rule 114 of the Revised Rules of Court, his bondsman must produce him before the court on the given date and failing to do so; the bond was forfeited as it was.

2. ID.; ID.; ID.; ID.; BIAS AND PARTIALITY; CANNOT BE PRESUMED; THERE MUST BE CONVINCING EVIDENCE TO SHOW THAT THE JUDGE IS INDEED BIASED AND PARTIAL.— On the matter of respondent's denial of the motion for inhibition, suffice it to say that the issue of whether a judge should voluntarily inhibit himself is addressed to his sound discretion pursuant to paragraph 2 of Section 1 of Rule 137, which provides for the rule on voluntary inhibition and states: "a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for a just or valid reasons other than those above-mentioned." Taking together all the acts and conduct of respondent Judge relative to complainant's case, we believe that she did not exhibit any bias or partiality to warrant her voluntarily inhibition from the case. Curiously, while complainant decries the alleged respondent's predilection for denying all his motions, he himself conceded that respondent Judge has done everything pursuant to law and jurisprudence. Bias and partiality cannot be presumed, for in administrative proceedings no less than substantial proof is required. Apart from bare allegations, there must be convincing evidence to

show that respondent Judge is indeed biased and partial. In administrative proceedings, the burden of proof that respondent Judge committed the act complained of rests on the complainant. Complainant failed to discharge this burden.

D E C I S I O N

YNARES-SANTIAGO, *J*:

This is an administrative complaint filed against Judge Amor A. Reyes of the Regional Trial Court, Manila for partiality, grave abuse of authority and oppression in connection with Criminal Case No. 02-201852 entitled "*People of the Philippines v. Wilfredo Talag*."

The instant case arose when, on April 18, 2001, a certain Romeo Lacap filed a complaint against Wilfredo Talag, Leticia Talag and Kenneth Bautista, for violation of Batas Pambansa Blg. 22 and Estafa occasioned by the dishonor of four checks.

On June 4, 2001, during the preliminary investigation, Wilfredo Talag, Leticia Talag, and Kenneth Bautista, submitted their counter-affidavits denying any participation in the transaction allegedly perpetrated by them to defraud the complainant.

On December 15, 2001, the Assistant City Prosecutor issued a Resolution recommending the filing of an Information for Estafa against herein complainant and the dismissal of all the charges against Leticia Talag and Kenneth Bautista. The Information was filed with the RTC of Manila, Branch 21, presided by respondent Judge Amor A. Reyes, and docketed as Criminal Case No. 02-201852.

On May 7, 2002, complainant filed a motion for reconsideration before the Office of the City Prosecutor, praying for the dismissal of the complaint against him for utter lack of merit. On even date, he filed an Omnibus Motion before the trial court: (1) to defer issuance of warrant of arrest and/or to recall the same if already issued; and (2) to remand case to the Office of the City Prosecutor pending review of the motion for reconsideration.

On May 31, 2002, complainant filed with the trial court a Very Urgent Motion to Set for Hearing Accused's Omnibus Motion to defer issuance of warrant of arrest and/or to remand case to the Office of the City Prosecutor pending review of the motion for reconsideration.

According to complainant, on June 11, 2002, he requested his counsel to determine whether the hearing for the pending motions had already been set. To his consternation, he was told by his counsel that respondent Judge ordered the issuance of a warrant of arrest without first resolving the said motions.

Complainant immediately filed a petition for *certiorari* before the Court of Appeals challenging the issuance of the warrant of arrest. The Court of Appeals issued a temporary restraining order enjoining the trial court from enforcing the said warrant. Accordingly, respondent Judge issued an Order on June 25, 2002, deferring the resolution of the Very Urgent Motion until after the expiration of the TRO issued by the Court of Appeals. Thereafter, the petition was dismissed by the Court of Appeals for lack of merit.

On August 20, 2002, complainant filed a motion for respondent Judge's inhibition. Two days after, *i.e.,* on August 22, respondent Judge issued the assailed warrant of arrest against complainant. Meanwhile, complainant through counsel filed a Notice of Change of Address.

On September 30, 2002, complainant filed a Very Urgent Motion to Consider Motion to Remand Case to the Office of the City Prosecutor pending Review of the Motion for Reconsideration and Motion for Re-investigation and to Resolve the Same with Urgency. On October 2, 2002, he filed a Motion to Resolve Motion for Inhibition.

Respondent Judge denied the motion for inhibition and set the case for arraignment on December 11, 2002. Complainant claims that said order never reached him or his counsel since it was sent by registered mail to his previous address at No. 1 Zaragosa Street, San Lorenzo Village, Makati City, inspite of the Notice of Change Address which was filed as early as August 28, 2002.

Since complainant failed to attend his arraignment allegedly due to lack of notice, respondent Judge reset the same to January 22, 2003. However, the second notice was again sent to the wrong address at Makati City, again resulting in complainant's failure to attend his arraignment. As a consequence, respondent judge issued a bench warrant of arrest.

Subsequently, complainant filed a Motion to Recall Warrant of Arrest and a Very Urgent Motion for Reconsideration. On February 28, 2003, an order was issued by the respondent Judge which lifted the bench warrant but denied the motion for reconsideration.

On May 12, 2003, complainant filed a verified complaint before the Office of the Court Administrator charging respondent Judge with partiality, grave abuse of authority and oppression allegedly committed in the following manner:

(1) Respondent Judge issued the warrant of arrest on May 23, 2003 despite complainant's pending omnibus motion to defer issuance of warrant of arrest or to recall the same if already issued and to remand case to Office of the City Prosecutor, and the very urgent motion to set for hearing the omnibus motion;

(2) When the matter was elevated to the Court of Appeals and a temporary restraining order was issued, respondent seemed to have waited for the TRO to expire and for the dismissal of complainant's petition before the Court of Appeals because she did not resolve the motion for inhibition, and she immediately issued a warrant of arrest against him after said petition was dismissed.

(3) Respondent had a predisposition to deny the motions filed by complainant since, although she was in haste in issuing the warrant of arrest, she nonetheless dilly-dallied in resolving the motions filed by complainant;

(4) Despite complainant's notice for a change of address, respondent's order of November 18, 2002, setting his arraignment on December 11, 2002, was sent to his and counsel's former address resulting in his failure to attend the arraignment;

(5) In the same way, the notice of the resetting of arraignment from December 11, 2002 to January 22, 2003, was again sent to the wrong address, such that he was not notified of said scheduled arraignment. Such lack of notice however, did not stop respondent Judge from issuing a bench warrant of arrest for his failure to appear on the scheduled arraignment;

(6) Although respondent Judge lifted the said bench warrant on February 28, 2003, she nevertheless denied complainant's motion for reconsideration relative to the Order dated November 2002 denying the motion for inhibition;

(7) Respondent Judge exhibited partiality and malevolent attitude when she did not only deny all remedies available to complainant but also uttered hostile side-comments during hearings and even commented that complainant was overly fond of filing motions.[1]

In her comment, respondent Judge refuted the charges in this wise:

(1) She did not consider the omnibus motion dated May 7, 2002 filed by complainant because its notice of hearing was addressed to the Public Prosecutor, for which reason, she issued the warrant of arrest on May 23, 2003;

(2) She issued the order dated June 25, 2002 deferring the resolution of complainant's very urgent motion to set the case for hearing in view of the resolution of the Court of Appeals dated June 14, 2002, enjoining her from enforcing the warrant of arrest issued against complainant;

(3) Since the trial court had not yet acquired jurisdiction over the person of the complainant when the court received the motion to set the case for trial filed by Asst. City Prosecutor, she again issued a warrant of arrest against complainant;

(4) Respondent's issuance of warrant of arrest against complainant on May 23, 2002, despite the filing of the omnibus motion and the motion to set the omnibus motion for hearing, was sustained by the Court of Appeals in its

[1] *Rollo*, pp. 115-116.

decision dated August 14, 2002, dismissing complainant's petition;

(5) Inasmuch as the trial court has not acquired jurisdiction over the person of the complainant, respondent, after the Court of Appeals denied complainant's petition and lifted the 60-day TRO, ordered the issuance of a warrant of arrest against complainant;

(6) Since it was only on October 17, 2002 that the bail posted by complainant on September 26, 2002 for his provisional liberty before the Executive Judge of RTC, Makati, was received by respondent court, she could not resolve the motion for inhibition considering that the court has not acquired jurisdiction over his person;

(7) Complainant is to blame for the delay in the resolution of his motions because of his penchant in filing defective motions and for not immediately submitting himself to the jurisdiction of the court;

(8) The issuance of a warrant of arrest and confiscation of the bond of complainant on January 22, 2003 was in accordance with Sec. 21, Rule 114 of the Revised Rules on Criminal procedure in view of complainant's failure to appear despite notice to him and his bondsman. The notice of change of address filed by complainant pertains to the change of address of his counsel and not to himself, hence, court processes were sent to his "alleged" old address. Moreover, Produce Orders of the December 11, 2002 and January 22, 2003 settings were sent to complainant's bondsman, but this notwithstanding, complainant's bondsman failed to produce him in court and it even filed a motion of extension of time to do so;

(9) Complainant's claim of bias and partiality on the part of respondent in denying complainant's motion for reconsideration and motion to inhibit is baseless and unfounded considering that the assailed orders of the respondent were made on the basis of law and facts of the case.[2]

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[2] *Id*., pp. 116-118.

On August 8, 2003, the Office of the Court Administrator submitted its recommendation for the dismissal of the complaint for lack of merit.

We have closely scrutinized the arguments of the contending parties and find the charges filed against respondent are baseless.

The Information was filed on May 7, 2002 while the warrant of arrest was issued May 23, 2003. When complainant filed the omnibus motion on May 7, 2002, the court has not yet acquired jurisdiction over his person. With the filing of Information, the trial court could then issue a warrant for the arrest of the accused as provided for by Section 6 of Rule 112 of the Revised Rules on Criminal Procedure. The issuance of the warrant was not only procedurally sound but it was even required considering that respondent had yet to acquire jurisdiction over the person of complainant. Consequently, complainant's charge that respondent Judge failed to act on the omnibus motion before issuing the arrest warrant is untenable. Whether respondent correctly disregarded the omnibus motion in view of the alleged fatal defects is a judicial matter, which is not a proper subject in an administrative proceeding. It bears noting that respondent court immediately deferred the execution of the warrant of arrest upon issuance by the Court of Appeals of the TRO. Incidentally, although the Court of Appeals issued a temporary restraining order, it eventually sustained the issuance by respondent of the arrest warrant and dismissed the petition for *certiorari*.

Neither can we ascribe partiality nor grave abuse of authority on the part of respondent for issuing anew an *alias* warrant after the expiration of the Court of Appeals' 60-day TRO. With the lifting of the restraining order, no legal obstacle was left for the issuance of the arrest warrant and thus set in motion the stalled prosecutorial process by acquiring jurisdiction over the person of the accused.

Complainant blames the respondent for his failure to appear at his arraignment because the notice was sent to the wrong address despite a prior notice for change of address. A cursory reading of the notice of change of address will show that it pertains to the counsel's residence, not to the complainant's.

In view of this, it becomes reasonable for the court to assume that court processes could be sent to complainant's "old" and "unchanged" residence. As correctly pointed out by respondent Judge, the Produce Order of the December 11, 2002 and January 22, 2003 settings were sent to complainant's bondsman. Hence, in accordance with Sec. 21, Rule 114 of the Revised Rules of Court, his bondsman must produce him before the court on the given date and failing to do so; the bond was forfeited as it was.

On the matter of respondent's denial of the motion for inhibition, suffice it to say that the issue of whether a judge should voluntarily inhibit himself is addressed to his sound discretion pursuant to paragraph 2 of Section 1 of Rule 137, which provides for the rule on voluntary inhibition and states: "a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for a just or valid reasons other than those above-mentioned." Taking together all the acts and conduct of respondent Judge relative to complainant's case, we believe that she did not exhibit any bias or partiality to warrant her voluntarily inhibition from the case. Curiously, while complainant decries the alleged respondent's predilection for denying all his motions, he himself conceded that respondent Judge has done everything pursuant to law and jurisprudence.[3] Bias and partiality cannot be presumed, for in administrative proceedings no less than substantial proof is required. Apart from bare allegations, there must be convincing evidence to show that respondent Judge is indeed biased and partial. In administrative proceedings, the burden of proof that respondent Judge committed the act complained of rests on the complainant.[4] Complainant failed to discharge this burden.

WHEREFORE, in view of the foregoing, the Court resolves to adopt the recommendation of the Court Administrator, and accordingly, *DISMISS* the instant complaint for lack of merit.

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[3] See Reply to Respondent's Comment.

[4] *Agpalasin v. Agcaoili*, A.M. No. RTJ-95-1308, 12 April 2000, 330 SCRA 253.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 104238-58. June 3, 2004.]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CORA ABELLA OJEDA,** *appellant.*

SYNOPSIS

Appellant Cora Abella Ojeda was convicted of estafa defined under paragraph 2 (d) of Article 315 of the Revised Penal Code, as amended by Republic Act 4885 and was sentenced to suffer the penalty of *reclusion perpetua.* In her appeal before the Court, Appellant firmly denied any criminal liability for estafa. She argued there was no deceit employed when she issued the checks because she never assured the complainant Ruby Chua that the checks were funded. Chua allegedly knew all along that the checks were merely intended to guarantee future payment by appellant. Appellant also denied she received any notice of dishonor of the checks, contrary to the findings of the trial court. She was not even aware that cases had already been filed against her for violation of BP 22. Since there was allegedly no proof of notice of the dishonor of the checks, appellant claimed that she cannot be convicted of violation of BP 22.

The Supreme Court reversed and set aside the trial court's judgment of conviction and acquitted appellant. According to the Court, the prosecution failed to prove deceit in case at bar. The *prima facie* presumption of deceit was successfully rebutted by appellant's evidence of good faith, a defense in

estafa by postdating a check. Good faith may be demonstrated, for instance, by a debtor's offer to arrange a payment scheme with his creditor. In the present case, the debtor not only made arrangements for payment; as complainant herself categorically stated, the debtor-appellant fully paid the entire amount of the dishonored checks. The Court also ruled that appellant cannot be held guilty of violation of BP 22 with the evident lack of notice of dishonor of the subject checks because the lack of such notice violated appellant's right to procedural due process. Since appellant denied during the trial that she received a demand letter, it then became incumbent upon the prosecution to prove that the demand letter was indeed sent through registered mail and that the same was received by appellant. But it did not. The prosecution relied merely on the weakness of the evidence of the defense. The said evident failure of the prosecution to establish that she was given the requisite notice of dishonor justified appellant's acquittal.

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS; DECEIT AND DAMAGE ARE ESSENTIAL ELEMENTS OF THE OFFENSE AND MUST BE ESTABLISHED BY SATISFACTORY PROOF TO WARRANT CONVICTION.— Under paragraph 2(d) of Article 315 of the RPC, as amended by RA 4885, the elements of estafa are: (1) a check is postdated or issued in payment of an obligation contracted at the time it is issued; (2) lack or insufficiency of funds to cover the check; (3) damage to the payee thereof. Deceit and damage are essential elements of the offense and must be established by satisfactory proof to warrant conviction. Thus, the drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check. Otherwise a *prima facie* presumption of deceit arises.

2. ID.; ID.; ID.; PROSECUTION FAILED TO PROVE DECEIT IN CASE AT BAR.— The prosecution failed to prove deceit in this case. The *prima facie* presumption of deceit was successfully rebutted by appellant's evidence of good faith, a defense in *estafa* by postdating a check. Good faith may be demonstrated, for instance, by a debtor's offer to arrange a

payment scheme with his creditor. In this case, the debtor not only made arrangements for payment; as complainant herself categorically stated, the debtor-appellant fully paid the entire amount of the dishonored checks.

3. ID.; ID.; ID.; LACK OF NOTICE OF DISHONOR OF THE SUBJECT CHECKS JUSTIFIES APPELLANT'S ACQUITTAL; LACK OF SUCH NOTICE VIOLATED APPELLANT'S RIGHT TO PROCEDURAL DUE PROCESS.— With the evident lack of notice of dishonor of the checks, appellant cannot be held guilty of violation of BP 22. The lack of such notice violated appellant's right to procedural due process. "It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service." The burden of proving receipt of notice rests upon the party asserting it and the quantum of proof required for conviction in this criminal case is proof beyond reasonable doubt. When, during the trial, appellant denied having received the demand letter, it became incumbent upon the prosecution to prove that the demand letter was indeed sent through registered mail and that the same was received by appellant. But it did not. Obviously, it relied merely on the weakness of the evidence of the defense. This Court therefore cannot, with moral certainty, convict appellant of violation of BP 22. The evident failure of the prosecution to establish that she was given the requisite notice of dishonor justifies her acquittal.

4. ID.; ID.; ID.; WITHOUT PROOF OF NOTICE OF DISHONOR, KNOWLEDGE OF INSUFFICIENCY OF FUNDS CANNOT BE PRESUMED AND NO CRIME OF ESTAFA OR BP 22 CAN BE DEEMED TO EXIST.— It is worth mentioning that notice of dishonor is required under both par. 2(d) Art. 315 of the RPC and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within *five* days from receipt of notice of dishonor. Under both laws, notice of dishonor is necessary for prosecution (for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist.

5. ID.; FELONIES; TO CONSTIUTE A CRIME, THE ACT MUST, GENERALLY AND IN MOST CASES, BE ACCOMPANIED BY A CRIMINAL INTENT; NO CRIME IS COMMITTED IF THE MIND OF THE PERSON PERFORMING THE ACT IS INNOCENT.— It must be noted that our Revised Penal Code was enacted to penalize unlawful acts accompanied by evil intent denominated as crimes *mala in se*. The principal consideration is the existence of malicious intent. There is a concurrence of freedom, intelligence and intent which together make up the "criminal mind" behind the "criminal act." Thus, to constitute a crime, the act must, generally and in most cases, be accompanied by a criminal intent. *Actus non facit reum, nisi mens sit rea.* No crime is committed if the mind of the person performing the act complained of is innocent.

6. ID.; ID.; ID.; APPELLANT WAS ABLE TO PROVE ABSENCE OF CRIMINAL INTENT IN HER TRANSACTIONS WITH COMPLAINANT.— The accused may thus prove that he acted in good faith and that he had no intention to convert the money or goods for his personal benefit. We are convinced that appellant was able to prove the absence of criminal intent in her transactions with Chua. Had her intention been tainted with malice and deceit, appellant would not have exerted extraordinary effort to pay the complainant, given her own business and financial reverses.

APPEARANCES OF COUNSEL

J.P. Villanueva & Associates for appellant.

D E C I S I O N

CORONA, *J.*:

For review is the decision[1] dated June 21, 1991 of the Regional Trial Court of Manila, Branch 38, the dispositive portion of which read:

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[1] Penned by Judge Arturo U. Barias, Jr.

WHEREFORE, the Court finds accused Cora Abella Ojeda guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Rep. Act 4885, in Criminal Case No. 88-66228 and hereby sentences her to suffer a penalty of *reclusion perpetua*, with the accessories provided by law and with credit for preventive imprisonment undergone, if any, in accordance with Article 29 of the Revised Penal Code as amended, and to pay complainant Ruby Chua the amount of Two Hundred Twenty Eight Thousand Three Hundred Six (₱228,306.00) Pesos with interests thereon from the time of demand until fully paid.

Likewise, the Court also finds the said accused guilty for Violation of Batas Pambansa Blg. 22 in Criminal Cases Nos. 88-66230, 88-66232, 88-66235 to 88-66240, 88-66242, 88-66243, 88-66245 to 88-66248 (14) counts and hereby sentences her to suffer a penalty of one year of imprisonment for each count. On the other hand, the other charges docketed as Criminal Cases Nos. 88-66229, 88-66231, 88-66233, 88-66234, 88-66241 and 88-66244 are hereby dismissed for insufficiency of evidence.

Costs against accused in all instances.[2]

Appellant Cora Abella Ojeda was charged in 21 separate Informations for estafa in Criminal Case No. 88-66228 and for violation of Batas Pambansa (BP) 22 in Criminal Case Nos. 88-66229 to 88-66248.

The Information charging Ojeda with estafa read:

That on or about the first week of November, 1983, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud RUBY CHUA in the following manner, to wit: the said accused, well knowing that she did not have sufficient funds in the bank and without informing the said Ruby Chua of such fact drew, made out and issued to the latter the following post-dated Rizal Commercial Banking Corporation checks, to wit:

Check No.	Date	Amount
1. 033550	Nov. 5, 1983	₱17,100.00
2. 041782	Nov. 5, 1983	5,392.34

[2] *Rollo*, p. 40.

3.	042935	Nov. 6, 1983	1,840.19
4.	041799	Nov. 9, 1983	1,953.38
5.	033530	Nov. 10, 1983	9,437.34
6.	041714	Nov. 10, 1983	6,890.00
7.	042942	Nov. 10, 1983	1,941.59
8.	041783	Nov. 12, 1983	5,392.34
9.	041800	Nov. 14, 1983	1,953.39
10.	041788	Nov. 15, 1983	3,081.90
11.	033529	Nov. 15, 1983	9,437.34
12.	041784	Nov. 18, 1983	5,392.34
13.	042901	Nov. 18, 1983	11,953.38
14.	042902	Nov. 23, 1983	11,953.38
15.	041785	Nov. 25, 1983	5,392.34
16.	042903	Nov. 29, 1983	11,953.38
17.	033532	Nov. 29, 1983	13,603.22
18.	041786	Nov. 30, 1983	5,392.34
19.	042905	Dec. 8, 1983	11,953.39
20.	043004	Dec. 10, 1983	2,386.25
21.	042907	Dec. 15, 1983	11,953.38
22.	042906	Dec. 18, 1983	11,953.39
			₱228,306.60

in payment of various fabrics and textile materials all in the total amount of ₱228,306.60 which the said accused ordered or purchased from the said RUBY CHUA on the same day; that upon presentation of the said checks to the bank for payment, the same were dishonored and payment thereof refused for the reason 'Account Closed,' and said accused, notwithstanding due notice to her by the said Ruby Chua of such dishonor of the said checks, failed and refused and still fails and refuses to deposit the necessary amount to cover the amount of the checks to the damage and prejudice of the said RUBY CHUA in the aforesaid amount of ₱228,306.60, Philippine currency.

Contrary to law.

The Informations charging Ojeda for violation of BP 22 were similarly worded except for the amounts of the checks, the check numbers and the dates of the checks:

That on or about the first week of November 1983, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously make or draw and issue to RUBY CHUA to apply on account or for value Rizal Commercial Banking Corp.

Check No. 041784 dated November 18, 1983 payable to Ruby Chua in the amount of ₱5,392.34, said accused well knowing that at the time of issue he/she/they did not have sufficient funds in or credit with the drawee bank or payment of such check in full upon its presentment, which check, when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for insufficiency of funds, and despite receipt of notice of such dishonor, said accused failed to pay said complainant the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

Contrary to law.

The pertinent facts of the case follow.

Appellant Cora Abella Ojeda used to buy fabrics (*telas*) from complainant Ruby Chua. For the three years approximately she transacted business with Chua, appellant used postdated checks to pay for the fabrics she bought. On November 5, 1983, appellant purchased from Chua various fabrics and textile materials worth ₱228,306 for which she issued 22 postdated checks bearing different dates and amounts.

Chua later presented to the bank for payment check no. 033550 dated November 5, 1983 in the amount of ₱17,100[3] but it was dishonored due to "Account Closed."[4] On April 10, 1984, Chua deposited the rest of the checks but all were dishonored for the same reason.[5] Demands were allegedly made on the appellant to make good the dishonored checks, to no avail.

Estafa and BP 22 charges were thereafter filed against appellant. The criminal cases were consolidated and appellant, on arraignment, pleaded not guilty to each of the charges.

On the whole, appellant's defense was grounded on good faith or absence of deceit, lack of notice of dishonor and full payment of the total amount of the checks.

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[3] Exhibit "A".

[4] Exhibit "Y".

[5] Exhibits "X", "Y", "AA", "BB" and "CC".

With the exception of six checks[6] which did not bear her signature, appellant admitted that she issued the postdated checks which were the subject of the criminal cases against her. She, however, alleged that she told Chua not to deposit the postdated checks on maturity as they were not yet sufficiently funded. Appellant also claimed that she made partial payments to Chua in the form of finished garments worth ₱50,000. This was not rebutted by the prosecution.

The trial court convicted appellant of the crime of estafa as defined and penalized under paragraph 2(d) of Article 315 of the Revised Penal Code (RPC), and sentenced her to *reclusion perpetua*. The trial court also convicted appellant of violation of BP 22 for issuing bouncing checks. However, the court *a quo* held her guilty of only 14 counts out of the 22 bouncing checks issued. The court reasoned:

> xxx This is due to the fact that of the 22 checks, two of them are not covered by the indictment. This refers to Check No. 042935 dated November 6, 1983 in the amount of ₱1,840.19 (Exhibit D) and Check No. 042942 dated November 10, 1983 in the amount of ₱1,941.59 (Exhibit F). And of the total number of checks, six of them were not signed by the accused but by the latter's husband (Exhibits C, H, J, M, R and O). The accused should not be liable for the issuance of the 6 checks in the absence of any showing of conspiracy.[7]

Appellant appealed to this Court, seeking acquittal. Her counsel, however, failed to file the appellant's brief within the prescribed period. Her appeal was thus dismissed in a resolution of this Court dated October 14, 1992.[8]

In her motion for reconsideration, appellant asked this Court to reverse its order of dismissal in the interest of substantial justice and equity.[9] We initially found no compelling reason to

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[6] Exhibits "C", "H", "J", "M", "O" and "R".

[7] Record, p. 139.

[8] *Rollo*, p. 47.

[9] *Rollo*, p. 49.

grant her motion and resolved to deny with finality appellant's MR in a resolution dated February 3, 1993.[10] Appellant thereafter filed a "Second and Urgent Motion for Reconsideration," attaching thereto an "Affidavit of Desistance" of complainant Ruby Chua which stated in part:

xxx xxx xxx.

2. That the defendant Mrs. Cora Ojeda has already fully paid her monetary obligation to me in the amount of ₱228,306.00 which is the subject of the aforementioned cases;

xxx xxx xxx.

5. That as the private complainant, I am now appealing to the sense of compassion and humanity of the good justices of the Supreme Court to reconsider the appeal of Mrs. Cora Ojeda and I solemnly pray that the criminal liability be extinguished with her civil liability.[11]

In a resolution dated March 17, 1993,[12] this Court denied the second MR for having been filed without leave of court. In the same resolution, this Court ordered the entry of judgment in due course.

Appellant thereafter filed another motion dated April 21, 1993, praying that she be recommended to then President Fidel V. Ramos for executive clemency. In support of such motion, she once more attached the affidavit of desistance[13] of complainant Ruby Chua which categorically declared that "the defendant, Ms. Cora Ojeda, (had) already fully paid her monetary obligations to (Chua) in the amount of ₱228,306 which (was) the subject of the aforementioned cases."[14]

In view of such special circumstances, this Court issued a resolution dated June 9, 1993[15] recalling its resolutions dated

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[10] *Rollo*, p. 52.

[11] *Ibid*., p. 61.

[12] *Rollo*, p. 62.

[13] *Rollo*, p. 70.

[14] *Ibid*.

[15] *Rollo*, p. 76.

October 14, 1992, February 3, 1993 and March 17, 1993 for humanitarian reasons and in the interest of justice, and in order that this Court may resolve appellant's appeal on the merits.[16]

Hence, the instant appeal with the following assignments of error:

I.

THE LOWER COURT ERRED IN FINDING THAT DECEIT WAS EMPLOYED BY ACCUSED APPELLANT WHEN SHE ISSUED THE CHECKS TO THE PRIVATE COMPLAINANT.

II.

THE LOWER COURT ERRED IN NOT FINDING THAT THE ISSUANCE BY THE ACCUSED-APPELLANT OF THE CHECKS TO THE PRIVATE COMPLAINANT WAS MERELY A MODE OF PAYMENT WHICH ARRANGEMENT HAD BEEN THEIR PRACTICE FOR THREE (3) YEARS.

III.

THE LOWER COURT ERRED IN NOT FINDING THAT GOOD FAITH IS A VALID DEFENSE AGAINST ESTAFA BY POSTDATING A CHECK.

IV.

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF FOURTEEN (14) COUNTS OF B.P. 22 WHEN THERE WAS NO PROOF OF NOTICE OF DISHONOR TO THE ACCUSED.

V.

THE LOWER COURT ERRED IN NOT FINDING THAT SINCE 13 OF THE 14 CHECKS WERE DEPOSITED ONLY AFTER THE LAPSE OF THE 90 DAY PERIOD, HENCE, THE *PRIMA FACIE* PRESUMPTION OF KNOWLEDGE DOES NOT APPLY.[17]

Appellant firmly denies any criminal liability for estafa. She argues there was no deceit employed when she issued the checks because she never assured Chua that the checks were funded.

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[16] *Rollo*, p. 76.

[17] *Rollo*, pp. 87-88.

Chua allegedly knew all along that the checks were merely intended to guarantee future payment by appellant.

Appellant further claims good faith in all her transactions with Chua for three years. She explained that her failure to fund the checks was brought about by the collapse of the country's economy in the wake of the Aquino assassination in 1983. The capital flight and financial chaos at that time caused her own business to shut down when her customers also failed to pay her. Despite the closure of her business, appellant maintains that she did her best to continue paying Chua what she owed and, when she could no longer pay in cash, she instead paid in kind in the form of finished goods. But these were not enough to cover her debts. Nevertheless, she spared no effort in complying with her financial obligations to Chua until she was gradually able to pay all her debts, a fact fully admitted as true by complainant in her affidavit.

From the foregoing, appellant contends that the element of deceit thru abuse of confidence or false pretenses was not present. Thus, her guilt was not established with satisfactory proof. Appellant asserts that good faith on her part was a valid defense to rebut the *prima facie* presumption of deceit when she issued the checks that subsequently bounced.

Furthermore, out of the 14 checks cited in the decision of the trial court, only one check was deposited within 90 days from due date. This was check no. 033550 dated November 5, 1983. The rest of the checks were deposited only on April 10, 1984 or more than 90 days from the date of the last check.[18]

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[18] Section 2 of BP 22 states:

SEC. 2. *Evidence of knowledge of insufficient funds*. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented *within ninety (90) days* from the date of the check, shall be ***prima facie evidence of knowledge*** of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check *within five (5) banking days after receiving notice* that such check has not been paid by the drawee.

Appellant also denies she received any notice of dishonor of the checks, contrary to the findings of the trial court. She was not even aware that cases had already been filed against her for violation of BP 22. Since there was allegedly no proof of notice[19] of the dishonor of the checks, appellant claims that she cannot be convicted of violation of BP 22.

On the other hand, the Solicitor General contends that appellant was criminally liable for issuing worthless checks. Complainant Chua accepted the postdated checks as payment because of appellant's good credit standing. She was confident that appellant's checks were good checks. Thus, no assurances from appellant that the checks were sufficiently funded were needed for Chua to part with her goods. And when the checks later bounced, appellant betrayed the confidence reposed in her by Chua.

The Solicitor General also argues that there was a *simultaneous* exchange of textile materials and checks between complainant and appellant. Complainant Chua would not have parted with her *telas* had she known that appellant's checks would not clear. Appellant obtained something in exchange for her worthless checks. When she issued them, she knew she had no funds to back up those checks because her account had already been closed. Yet, she did not inform Chua that the checks could not be cashed upon maturity. She thus deceived Chua into parting with her goods and the deceit employed constituted estafa.

We grant the appeal.

DECEIT AND DAMAGE AS ELEMENTS OF ESTAFA

Under paragraph 2(d) of Article 315 of the RPC, as amended by RA 4885,[20] the elements of estafa are: (1) a check is postdated

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[19] *Ibid*.

[20] Art. 315 par. 2(d) of the Revised Penal Code states:

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check *within three (3) days from receipt of notice* from the bank and/or the payee

or issued in payment of an obligation contracted at the time it is issued; (2) lack or insufficiency of funds to cover the check; (3) damage to the payee thereof. Deceit and damage are essential elements of the offense and must be established by satisfactory proof to warrant conviction.[21] Thus, the drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check. Otherwise a *prima facie* presumption of deceit arises.

The prosecution failed to prove deceit in this case. The *prima facie* presumption of deceit was successfully rebutted by appellant's evidence of good faith, a defense in *estafa* by postdating a check. [22] Good faith may be demonstrated, for instance, by a debtor's offer to arrange a payment scheme with his creditor. In this case, the debtor not only made arrangements for payment; as complainant herself categorically stated, the debtor-appellant fully paid the entire amount of the dishonored checks.

It must be noted that our Revised Penal Code was enacted to penalize unlawful acts accompanied by evil intent denominated as crimes *mala in se*. The principal consideration is the existence of malicious intent. There is a concurrence of freedom, intelligence and intent which together make up the "criminal mind" behind the "criminal act." Thus, to constitute a crime, the act must, generally and in most cases, be accompanied by a criminal intent. *Actus non facit reum, nisi mens sit rea.* No crime is committed if the mind of the person performing the act complained of is innocent. As we held in *Tabuena vs. Sandiganbayan*:[23]

The rule was reiterated in *People v. Pacana*, although this case involved falsification of public documents and estafa:

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or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

[21] *People vs. Chua*, 315 SCRA 326 [1999].

[22] *People vs. Gulion*, 349 SCRA 610 [2001]; *Vallarta vs. Court of Appeals,* 150 SCRA 336 [1987]; *People vs. Villapando*, 56 Phil. 31 [1931].

[23] 268 SCRA 332 [1997].

> "Ordinarily, evil intent must unite with an unlawful act for there to be a crime. *Actus non facit reum, nisi mens sit rea*. There can be no crime when the criminal mind is wanting."

American jurisprudence echoes the same principle. It adheres to the view that criminal intent in embezzlement is not based on technical mistakes as to the legal effect of a transaction honestly entered into, and there can be no embezzlement if the mind of the person doing the act is innocent or if there is no wrongful purpose.

The accused may thus prove that he acted in good faith and that he had no intention to convert the money or goods for his personal benefit.[24] We are convinced that appellant was able to prove the absence of criminal intent in her transactions with Chua. Had her intention been tainted with malice and deceit, appellant would not have exerted extraordinary effort to pay the complainant, given her own business and financial reverses.

LACK OF NOTICE OF DISHONOR

We also note that the prosecution presented virtually no evidence to show that the indispensable notice of dishonor was sent to and received by appellant. Excerpts from the following testimony of complainant are significant:

ATTY. ANGELES:

Q Now, Mrs. Witness, when these checks from Exhibits 'A' to 'V' have bounced, what steps, did you do?
A I consulted my lawyer and she wrote a Demand Letter.

COURT:

Q What is the name of that lawyer?
A Atty. Virginia Nabor.

ATTY. ANGELES:

Q Now, you mentioned a Demand Letter sent by Atty. Virginia Nabor, I am showing to you this Demand Letter dated March 16, 1988, will you kindly examine the same if this is the same Demand Letter you mentioned a while ago?
A Yes, sir.

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[24] *Lecaroz vs. Sandiganbayan*, 305 SCRA 396 [1999].

Q Now, on this second page of this Demand Letter there is a signature above the printed name Virginia Guevarra Nabor, do you know the signature, Mrs. Witness?
A Yes, that is the signature of my lawyer.

ATTY. ANGELES:

May we request that this Demand Letter dated March 16, 1988 consisting of two (2) pages, Your Honor, be marked as Exhibit 'W' and that the signature on the second page of this letter of Virginia Guevarra Nabor be encircled and be marked as Exhibit 'W-1' and that the attached Registry Receipt, Your Honor, be marked as Exhibit 'W-2'.

COURT:

Mark them.

ATTY. ANGELES:

Q Now, Mrs. Witness, why do you know that this is the signature of Virginia Guevarra Nabor?
A After preparing that I saw her sign the letter.

Q. Now, after sending this Demand Letter, do you know If the accused herein made payments or replaced the checks that were issued to you?

COURT:

Q Of course, you assumed that the accused received that letter, that is his basis on the premise that the accused received that letter?

ATTY. ANGELES:

A Yes, Your Honor.

COURT:

Q What proof is there to show that accused received the letter because your question is premises (*sic*) on the assumption that the accused received the letter?

ATTY. ANGELES:

Q Now, do you know Mrs. Witness if the accused received the letter?
A There is a registry receipt.

COURT:

Q Now, later on after sending that letter, did you have communication with the accused?
A I kept on calling her but I was not able to get in touch with her.

Q But do you know if that letter of your lawyer was received by the accused?
A I was not informed by my lawyer but I presumed that the same was already received by the accused.

ATTY. ANGELES:

Q Now, aside from sending this Demand Letter, do you know what your lawyer did?
A We filed a case with the Fiscal's.[25]

Aside from the above testimony, no other reference to the demand letter was made by the prosecution. The prosecution claimed that the demand letter was sent by registered mail. To prove this, it presented a copy of the demand letter as well as the registry return receipt bearing a signature which was, however, not even authenticated or identified. A registry receipt alone is insufficient as proof of mailing.[26] "Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters."[27]

It is clear from the foregoing that complainant merely presumed that appellant received the demand letter prepared and sent by her lawyer. She was not certain if appellant indeed received the notice of dishonor of the checks. All she knew was that a demand letter was sent by her lawyer to the appellant. In fact, right after complainant made that presumption, her lawyer filed the criminal cases against appellant at the Fiscal's office[28] without

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[25] TSN, December 7, 1989, pp. 37-43.

[26] *Ting vs. Court of Appeals*, 344 SCRA 551 [2000], citing *Central Trust Co. vs. City of Des Moines*, 218 NW 580.

[27] *Ting vs. Court of Appeals, Ibid.*

[28] TSN, December 7, 1989, pp. 42-23.

any confirmation that the demand letter supposedly sent through registered mail was actually received by appellant.

With the evident lack of notice of dishonor of the checks, appellant cannot be held guilty of violation of BP 22. The lack of such notice violated appellant's right to procedural due process. "It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service."[29] The burden of proving receipt of notice rests upon the party asserting it and the quantum of proof required for conviction in this criminal case is proof beyond reasonable doubt.

When, during the trial, appellant denied having received the demand letter, it became incumbent upon the prosecution to prove that the demand letter was indeed sent through registered mail and that the same was received by appellant. But it did not. Obviously, it relied merely on the weakness of the evidence of the defense.

This Court therefore cannot, with moral certainty, convict appellant of violation of BP 22. The evident failure of the prosecution to establish that she was given the requisite notice of dishonor justifies her acquittal.[30]

As held in *Lao vs. Court of Appeals*:[31]

"It has been observed that the State, under this statute, actually offers the violator 'a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated.' This was also compared 'to certain laws allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability.' In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a 'complete defense.' The absence of a notice of dishonor necessarily deprives an accused an opportunity to

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[29] *Ting vs. Court of Appeals, supra*, citing 58 Am Jur 2d, Notice, § 45.

[30] *Caras vs. Court of Appeals*, 366 SCRA 371 [2001].

[31] *Lao vs. Court of Appeals*, 274 SCRA 572 [1997].

preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand — and the basic postulates of fairness require — that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22.

Stated otherwise, responsibility under BP 22 was personal to appellant; hence, personal knowledge of the notice of dishonor was necessary. Consequently, while there may have been constructive notice to appellant regarding the insufficiency of her funds in the bank, it was not enough to satisfy the requirements of procedural due process.

Finally, it is worth mentioning that notice of dishonor is required under both par. 2(d) Art. 315 of the RPC and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within *five* days from receipt of notice of dishonor. Under both laws, notice of dishonor is necessary for prosecution (for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist.

WHEREFORE, the decision of the trial court is hereby *REVERSED* and *SET ASIDE*. Appellant Cora Abella Ojeda is *ACQUITTED* in Criminal Case No. 88-66228 for estafa and in Criminal Case Nos. 88-66230, 88-66232, 88-66235 to 88-66240, 88-66242, 88-66243, 88-66245 to 88-66248 for violation of BP 22.

SO ORDERED.

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

EN BANC

[G.R. Nos. 132125-26. June 3, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SANTIAGO AGSAOAY,**[1] **JR.** ***y*** **ALVENDIA,** *appellant*.

SYNOPSIS

The Regional Trial Court of Urdaneta, Pangasinan convicted appellant Santiago Agsaoay, Jr. *y* Alvendia of two (2) counts of qualified rape, committed against his own daughter, and was sentenced to suffer the supreme penalty of death. On automatic review, appellant contended that the trial court erred in giving faith and credence to the testimony of the victim, AAA, and in finding him guilty beyond reasonable doubt of qualified rape. Appellant contended that AAA's version is "fabricated and lacked the elements of truthfulness." He faulted trial court for "failing to exercise greatest care in scrutinizing complainant's story." According to appellant, "it is highly strange" for him to rape AAA on two occasions in a small room where her sister DDD, then sleeping, was just 1½ meters away. Under such condition, Winnie could have been awakened while he was committing the crimes.

The Supreme Court affirmed appellant's conviction. The Court found AAA's account of her ordeal in the hands of appellant forthright and credible. AAA's woeful tale of her harrowing experience is impressively clear, definite, and convincing with no indication whatsoever of a concocted recital. She was positive and firm in pointing to appellant, her very own father, as the person who ravished her twice in July of 1997. The Court also considered the fact that her narration contains details only a real victim could remember and reveal. The Court also ruled that it is not strange for appellant to have committed rape in a small room. The Court pointed out that rape is not always committed in seclusion. Rapists are not deterred from committing their odious act even in unlikely places such as a cramped room where other family members also slept. Rape may take only a short time to consummate,

[1] Appellant's surname is spelled as "Agsaway" in the Certificate of Live Birth (Exhibit "E") of his daughter Josephine Ferrer Agsaway, the victim in this case.

given the anxiety and high risk of being caught, especially when committed near sleeping persons oblivious to the goings-on and the fact that lust is no respecter of time or place.

SYLLABUS

1. CRIMINAL LAW; RAPE; GRAVAMEN OF THE CRIME; REQUISITES FOR OFFENSE TO PROSPER.— The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. Consequently, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman and (2) he accomplished such act through force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.

2. ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE.— It is not strange for appellant to have committed rape in a small room. In the many rape cases that have reached this Court, we observed that rape is not always committed in seclusion. We never cease to be appalled at the extreme depravity of the rapists who are not deterred from committing their odious act even in unlikely places such as a cramped room where other family members also slept. Rape may take only a short time to consummate, given the anxiety and high risk of being caught, especially when committed near sleeping persons oblivious to the goings-on. Indeed, lust is no respecter of time or place.

3. ID.; ID.; QUALIFIED RAPE; VICTIM'S MINORITY AND HER RELATIONSHIP WITH OFFENDER ALLEGED AND PROVED DURING HEARING.— The trial court, therefore, correctly found appellant guilty beyond reasonable doubt of two counts of qualified rape and in imposing the death penalty upon him. As shown by her Certificate of Live Birth, AAA was born on January 15, 1980. Thus, she was only 17 years old when appellant, her own father, raped her on July 15 and 17, 1997. Both the qualifying circumstances of the victim's *minority* and her *relationship* with the offender were alleged in the two Informations and proved during the hearing.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; VICTIM'S TESTIMONYMAY BE THE SOLE BASIS OF CONVICTION IN RAPE CASES.— The sole important issue in a rape case is the credibility of the

victim's testimony, in view of its nature in which only two persons are normally involved. Hence, in adjudicating such issue, jurisprudence has established the following guidelines: (1) the victim's testimony must be scrutinized with extreme caution since an accusation of rape can be made with facility, but difficult for the accused to disprove it; and (2) when her testimony meets the test of credibility, the accused may be convicted solely on the basis thereof.

5. ID.; ID.; ID.; ID.; VICTIM'S ACCOUNT OF HER ORDEAL IS FORTHRIGHT AND CREDIBLE; NARRATION CONTAINS DETAILS ONLY A REAL VICTIM COULD REMEMBER AND REVEAL.— In the case at bar, we find AAA's account of her ordeal in the hands of appellant forthright and credible. She testified that on two occasions, he *had carnal knowledge of her through force or intimidation*. AAA's woeful tale of her harrowing experience is impressively clear, definite, and convincing. There is no indication whatsoever of a concocted recital. She was positive and firm in pointing to appellant, her very own father, as the person who ravished her twice in July of 1997. Her narration contains details only a real victim could remember and reveal. The physical evidence likewise reinforced AAA's testimony. The Medico-Legal Report of Dr. Joseph Gomez, who physically examined her on August 1, 1997, shows that her genital has healed hymenal lacerations at 3:00 and 8:00 o'clock positions, and that her vaginal canal admits one finger with ease. As noted by Dr. Gomez, the occurrence of the lacerations coincides with the dates the crimes were committed. Consequently, the lacerations and pain Josephine suffered in her genital could be the result of penile penetration showing that appellant had carnal knowledge of her.

6. ID.; ID.; ID.; DEFENSE OF DENIAL; CANNOT OVERCOME VICTIM'S AFFIRMATIVE, CATEGORICAL, SPONTANEOUS, AND CONVINCING TESTIMONY.— With respect to appellant's defense of denial, the rule is that such defense is intrinsically weak, being a negative and self-serving assertion; it has no weight in law if unsubstantiated by clear, strong, and convincing evidence of non-culpability. Sadly, appellant failed to buttress his denial by the required quantum of proof. Certainly, it cannot overcome AAA's affirmative, categorical, spontaneous, and convincing testimony.

7. ID.; ID.; ID.; DEBASEMENT OF VICTIM'S CHARACTER DOES NOT NECESSARILY CAST DOUBT ON HER CREDIBILITY, NOR DOES IT NEGATE THE EXISTENCE OF RAPE; VICTIM'S MORAL CHARACTER IS IMMATERIAL IN RAPE.— Also, the defense endeavors to prove that AAA is an unchaste young woman who habitually goes out with different men. Suffice it to state that such debasement of her character does not necessarily cast doubt on her credibility, nor does it negate the existence of rape. It is a well-established rule that in the prosecution and conviction of an accused for rape, the victim's moral character is immaterial, there being absolutely no nexus between it and the odious deed committed. Even a prostitute or a woman of loose morals can be the victim of rape, for she can still refuse a man's lustful advances.

8. REMEDIAL LAW; EVIDENCE; AFFIRMATIVE TESTIMONY IS FAR WEIGHTIER THAN A NEGATIVE ONE. — We cannot accord credence to DDD's testimony that she was already awake during those hours and that appellant could not have committed the crimes. For one, the familiar rule on evidence is that an affirmative testimony is far weightier than a negative one, especially when the former comes from a credible witness,such as AAA.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

***PER CURIAM*:**

For automatic review is the Decision[2] dated November 28, 1997 of the Regional Trial Court, Branch 46, Urdaneta, Pangasinan in Criminal Cases Nos. U-9332 and U-9333, convicting Santiago Agsaoay, Jr. *y* Alvendia, appellant, of two counts of rape (qualified by relationship and minority) and sentencing him to suffer the supreme penalty of death in each

[2] Penned by Judge Modesto C. Juanson.

count. He was also ordered to pay the victim, his very own daughter AAA, ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages in each count.

The two Informations charging appellant with rape read:

Criminal Case No. U-9333 —

"That on or about July 15, 1997, at xxx, municipality of xxx, province of xxx, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a minor age 17 year old and accused's own daughter, against her will and without her consent, to the damage and prejudice of said AAA.

"Contrary to Art. 335, Revised Penal Code, as amended by R.A. 7659."[3]

Criminal Case No. U-9332 —

"That on or about July 17, 1997, at Barangay xxx, municipality of xxx, province of xxx, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo with intent to have sexual intercourse with his own daughter, AAA, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a 17 year old minor and accused's own daughter, against her will and without her consent, to the damage and prejudice of said AAA.

"Contrary to Art. 335, Revised Penal Code, as amended by R.A. 7659."[4]

Upon arraignment, appellant, assisted by counsel, entered a plea of not guilty to the crimes charged. Thereafter, a joint trial on the merits followed.

The evidence for the prosecution shows that AAA[5] is the eldest child of appellant and BBB. The couple are both farmers.

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[3] RTC Records in Criminal Case No. U-9333 at 1.

[4] RTC Records in Criminal Case No. U-9332 at 56.

[5] Spelled as "Agsaway" in her Certificate of Live Birth.

AAA was born on January 15, 1980 as shown by her Certificate of Live Birth.[6] She was 17 years old when the crimes were committed. The couple's five other children are CCC (16), DDD (14),[7] EEE (11), FFF (6) and GGG (2). They all reside at barangay xxx, xxx, xxx.[8]

Very early in the morning of *July 15, 1997*, BBB left their house and went to the field to uproot *palay* seedlings. AAA and her sister DDD were then sleeping on the second floor of their house,[9] while the other members of the family were at the ground floor. Around 3:30 o'clock that morning, Josephine was awakened when appellant suddenly kissed her lips.[10] Instinctively, she pushed him away but to no avail as she was too weak and sick.[11] He threatened to kill her and her entire family should she report the matter to her mother. She was so terrified and was not able to shout and resist him "because he might kill me as he killed my Uncle Jose" (her mother's brother).[12] While he continued kissing her, she tried to awaken DDD, her younger sister, about 1½ meters away from her, but the latter was fast asleep.[13] Appellant then undressed her, spread her legs, held her hands, and inserted his penis into her vagina and made a push and pull movement. It was painful. Minutes later, a hot fluid came out from his penis. After his bestial act, he put on his brief and shorts and went downstairs. For her part, she cried until she fell asleep.[14] When she woke up the following morning, she saw blood on her underwear. Meanwhile, appellant went to the farm.

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[7] TSN, November 5, 1997 at 2.

[8] TSN, October 7, 1997 at 5-6.

[9] TSN, October 9, 1997 at 9-10; October 22, 1997 at 7.

[10] *Id.* at 7; TSN, October 9, 1997 at 3.

[11] *Id.* at 4.

[12] TSN, October 20, 1997 at 7.

[13] TSN, October 22, 1997 at 7.

[14] *Id.* at 6; October 9, 1997 at 5.

AAA did not tell BBB, her mother, about the incident because of her father's threat.[15] It was only the following day (July 16, 1997) that she finally mustered enough courage and revealed to her mother what happened. BBB was shocked but could not report the matter immediately to the authorities. She was scared of him because on August 22, 1990, he killed her younger brother, but he was not imprisoned since "he settled the case."[16]

On *July 17, 1997*, appellant ravished AAA for the second time. As usual, BBB left the house early to work in the rice field. AAA and DDD were still sleeping. About 4:00 o'clock that same morning, Josephine was roused from her sleep when appellant forcibly undressed her. She begged him not to molest her again. Instead, he got a bolo, placed it beside her and said, "Do you want me to cut your neck?" Immediately, he removed his brief, inserted his penis into her vagina and made a push and pull movement. After satisfying his lust, he went downstairs. She could only cry.

When BBB arrived home in the afternoon of that same day, she saw her daughter crying. AAA told her mother that appellant sexually molested her again. Despite her plea, her mother refused to report the incidents to the police authorities for fear he might kill all of them.[17] Later, however, BBB and her five children finally went to the Philippine National Police (PNP) station at Pozorrubio[18] where AAA reported the harrowing experiences she suffered in the hands of appellant.

During the hearing and upon being asked by the trial judge, AAA declared that she is well aware that if convicted of the charges, appellant would be sentenced to die by lethal injection.[19]

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[15] TSN, October 9, 1997 at 7.

[16] TSN, October 6, 1997 at 20.

[17] TSN, October 9, 1997 at 8-11.

[18] *Id.* at 13-16.

[19] TSN, October 7, 1997 at 3.

On August 1, 1997, Dr. Joseph S. Gomez, Medical Officer of the Pozorrubio Community Hospital, examined Josephine and issued a Medico-Legal Report.[20] On the witness stand, he confirmed his report that she has "healed hymenal lacerations at 3:00 and 8 o'clock positions"; that her "vaginal canal admits one finger with ease";[21] and that the lacerations could have been caused by a hard and blunt instrument such as an erect penis which "could have occurred as early as the 15th of July, 1997, or even closer to the day of examination (August 1, 1997)."[22]

Appellant vehemently denied the charges. He testified that around 3:00 o'clock in the morning of July 15, 1997, he was sleeping at the ground floor of their house when he heard someone asking his wife to go to the field to uproot *palay* seedlings. Then his wife went upstairs. Later, his daughter DDD accompanied him to the field to pasture their animals. When they returned home, he got his fish net and proceeded to the river to catch fish. He was home three hours after.[23]

On July 17, 1997, appellant was also at home. He woke up in the morning and saw his wife and two children still sleeping on the bamboo bed at the ground floor of their house. Afterwards, he went to the field to pasture animals.[24]

In the early afternoon of July 31, 1997, appellant arrived home from the farm and found their house in disarray. When his wife arrived, he got angry and told her to stop gambling. He then cooked their food and ate with his children. Then he returned to the farm. He arrived home about 6:00 o'clock in the evening and saw his daughter AAA and a man on their bamboo bed holding hands. He slapped AAA and the man left. Moments later, his nephew arrived and invited him to join him in his (nephew's house) because he slaughtered a pig. When appellant asked permission from his wife to join his nephew, she scolded

[20] Exhibit "B", Records at 8.

[21] TSN, September 16, 1997 at 5.

[22] *Id.* at 14.

[23] TSN, November 17, 1997 at 9-11; Appellant's Brief, *Rollo* at 72.

[24] *Id.* at 13; Appellant's Brief, *Rollo* at 72-73.

him resulting in a heated argument. AAA intervened, but he slapped her and his wife, prompting them to leave. He followed them but he could not find them. So he went home and sleep. About 12:00 o'clock midnight, he was awakened by policemen who invited him to their station at xxx. There he was detained after having been informed that AAA filed complaints for rape against him.[25]

According to appellant, he "always inflicts physical violence on Josephine for going around with different men,"[26] the reason why she charged him with rape. There were times he saw her "with another man, so I punished her."[27] He also claimed that his wife was sore at him when he told her that he will separate from her as he could not stop her from gambling.[28]

Appellant's daughter DDD also testified. Considering that she was only 1½ meters away from AAA, appellant maintains that he could not have committed the crimes. DDD declared that on July 15, 1997, around 3:15 o'clock in the morning, she and AAA were sleeping at the second floor of their house. Their mother woke her up and asked her to accompany her to the rice field to uproot *palay* seedlings. She refused because she had to study her lessons for her school examination that day. At 5:00 o'clock that morning, however, she accompanied her father to the field and helped him pasture their carabao and goats. An hour later, she went to school at Don Benito National High School.[29]

DDD further testified that on July 17, 1997, she woke up at 5:30 in the morning to prepare breakfast. AAA was still asleep. Her mother was sleeping downstairs, while her father was preparing the things to be brought to the farm. After breakfast,

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[25] *Id*. at 3-8; Appellant's Brief, *Rollo* at 73.

[26] TSN, November 18, 1997 at 5.

[27] TSN, November 17, 1997 at 13-15.

[28] *Id*. at 15.

[29] TSN, November 5, 1997 at 3-5, 8-9; TSN, November 6, 1997 at 3; Appellant's Brief, *Rollo* at 70-71.

she went to school. She learned at the xxx Police Station that AAA filed two complaints for rape against their father.[30]

On November 28, 1997, the court *a quo* rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, finding accused SANTIAGO AGSAOAY, JR., *guilty* beyond reasonable doubt of the crime of *rape aggravated by relationship and age*, the court sentences said Santiago Agsaoay, Jr., the following:

1. In CRIMINAL CASE No. U-9332, to suffer the penalty of *death*, to be implemented in the manner provided by law. Accused is likewise ordered to pay AAA the amount of ₱50,000.00 as moral damages, and further sum of ₱20,000.00 as exemplary damages;

2. In CRIMINAL CASE No. U-9333, to suffer the penalty of *death*, to be implemented in the manner provided by law. Accused is likewise ordered to pay AAA the amount of ₱50,000.00 as moral damages, and further sum of ₱20,000.00 as exemplary damages.

"SO ORDERED."

Appellant now seeks the reversal of the trial court's Decision on the following grounds:

"I

THE TRIAL COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONY OF AAA.

"II

THE TRIAL COURT LIKEWISE ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF RAPE."[31]

For his part, the Solicitor General, in his Appellee's Brief, disputed appellant's claim and prayed that the assailed Decision be affirmed.

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[30] TSN, November 6, 1997 at 6-7.

[31] *Rollo* at 66.

In his Reply Brief, appellant prayed that "should this Honorable Court find him guilty, he should only be convicted of SIMPLE RAPE and be given the penalty of *reclusion perpetua*."[32]

The two crimes of rape, as alleged in the Informations, were committed on July 15 and 17, 1997. Hence, the law applicable to the cases at bar is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[33] which provides:

"Article 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.*

xxx xxx xxx

The *death penalty* shall also be imposed if the crime of rape is committed with *any of the following attendant 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***.**

xxx xxx xxx." (Emphasis ours)

The above provisions of the amendatory law classify rape as either simple or qualified. It is qualified when any of the qualifying/aggravating circumstances which attended the

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[32] Reply Brief, *Rollo* at 128.

[33] "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes," which took effect on December 31, 1993 (*People vs. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 569; *People vs. Derilo*, G.R. No. 117818, April 18, 1997, 271 SCRA 633, 661).

commission of the crime — as when 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 — is alleged in the Information and proven during trial.[34] A finding of qualified rape raises the penalty to death.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[35] Consequently, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman and (2) he accomplished such act through force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.[36]

The sole important issue in a rape case is the credibility of the victim's testimony, in view of its nature in which only two persons are normally involved.[37] Hence, in adjudicating such issue, jurisprudence has established the following guidelines: (1) the victim's testimony must be scrutinized with extreme caution since an accusation of rape can be made with facility, but difficult for the accused to disprove it; and (2) when her testimony meets the test of credibility, the accused may be convicted solely on the basis thereof. [38]

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[34] *People vs. Jose Santos y Ruiz,* G.R. Nos. 137828-33, March 23, 2004, citing *People vs. Pancho*, G.R. Nos. 136592-93, November 24, 2003; *People vs. Bartolome*, 323 SCRA 836 (2000).

[35] *People vs. Jason S. Navarro and Solomon S. Navarro*, G.R. No. 137597, October 24, 2003, citing *People vs. Awing*, 352 SCRA 188, 199 (2001).

[36] *Id.*; *Eduardo Limos y de Vera*, G.R. Nos. 122114-17, January 20, 2004; *People vs. Paraiso*, G.R. No. 131823, January 17, 2001, 349 SCRA 335; *People vs. Pillas*, G.R. Nos. 138716-19, September 23, 2003.

[37] *People vs. Antonio*, G.R. No. 145726, March 26, 2003, 399 SCRA 585, 591, citing *People vs. Dela Cruz*, 276 SCRA 191 (1997).

[38] *People vs. Ruben Dalisay*, G.R. No. 133926, August 6, 2003; *People vs. Estomaca*, G.R. Nos. 134288-89, January 15, 2002, 373 SCRA 197; *People vs. Agustin*, G.R. Nos. 132524-25, September 24, 2001, 365 SCRA 667; *People vs. Palero*, G.R. No. 138235, May 10, 2001, 357 SCRA 724.

In the case at bar, we find AAA's account of her ordeal in the hands of appellant forthright and credible. She testified that on two occasions, he *had carnal knowledge of her through force or intimidation*:

1. *First rape committed by appellant on July 15, 1997 —*

"PROSECUTOR MANAOIS:

xxx xxx xxx

Q xxx where were you in the early dawn of July 15, 1997?
A I was in our house, sir.

Q You are referring to your house at xxx xxx, xxx?
A Yes, sir.

Q At around 3:30 o'clock in the early morning of July 15, 1997, do you recall if there was any incident that took place?
A Yes, sir, there was.

Q What was that?
A My father, sir.

Q What happened to your father?
A He abused me, sir.

Q In what particular place in your house on that early morning of July 15, 1997 xxx?
A I was upstairs, sir.

Q In what room xxx?
A I was at the floor xxx as there is no room, sir.

Q What were you doing xxx in that floor?
A I was sleeping, sir.

Q What happened around 3:30 o'clock dawn of July 15, 1997?
A My father xxx undressed me, sir.[39]

xxx xxx xxx

Q What was the very first thing that your father did?
A He kissed me on my lips.

[39] TSN, October 7, 1997 at 6-7.

Q When he kissed you on your lips, what did you do or say?
A *I was pushing him away.*

xxx xxx xxx

Q While you were pushing him, what did he do?
A On that night I had a flu, and when I pushed him strongly I felt something painful on my right side, so I lost my strength.[40]

xxx xxx xxx

Q xxx, will you tell us what do you mean by that word 'undress'?
A *xxx he removed my panty and pajama, and then inserted his organ, sir.*

Q At the time your father xxx removed your pajama and underwear, what did you do?
A *I asked my father why he was doing that to me, and he said, 'If you will report this to your mother, I will kill you all.'*

Q What happened after your father told you that?
A On July 16, 1997 I reported to my mother, sir.

COURT:

Q What did you report to your mother on July 16, 1997?
A *I reported to my mother that my father abused me (ginalaw).*

PROSECUTOR MANAOIS:

Q Let us go back to that incident, your father . . . removed your pajama, as well as your underwear, and then you said to him, 'Father, why are you doing this to me?,' and he answered, 'Do not report this to your mother, or else I will kill you all.' What did your father do next?
A *He inserted his organ to my organ, sir.*

Q *When he inserted his organ to your organ, what did you do*?
A *I could not move because I was nervous as he warned me that he will kill us, sir.*

xxx xxx xxx

[40] TSN, October 9, 1997 at 3-5.

Q *What was the position of your father when he inserted his organ to your organ*?
A *He spread my legs and held my two hands, and then he made the push and pull up, and it was painful, sir*.[41] (Italics ours)

xxx xxx xxx

Q *xxx, how long did you feel that pain*?
A *Up to the time he finished.*

COURT:

Q *Was that the first time that happened to you*?
A *Yes, sir*.

xxx xxx xxx.[42] (Emphasis ours)

Q After that, what else did your father do, if any?
A There was something hot that came out from him. After that my father stood and went downstairs. He warned me that if I will report this to my mother, he will kill us all, sir.

xxx xxx xxx

Q What part of his body did the hot fluid come from?
A From his penis, sir.

xxx xxx xxx

Q Did you bleed as a result?
A Yes, sir.

PROSECUTOR MANAOIS:

Q How did you know that your organ bled?
A I saw it in my panty, sir.

Q After your father went downstairs, what did you do?
A I cried, sir.

Q At the time your father abused you in the early morning of July 15, 1997 xxx, where was your mother?
A She was uprooting rice seedlings in the field, sir.

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[41] TSN, October 7, 1997 at 7-9.

[42] TSN, October 9, 1997 at 5-6.

xxx xxx xxx

COURT:

Q What time did she leave?
A About 3:30 in the morning, sir."[43] (Emphasis ours)

2. *Second rape committed by appellant on July 17, 1997 —*

"PROSECUTOR MANAOIS:

Q After 12:00 o'clock, which was already July 17, 1997, do you recall if you were awakened?
A About 4:00 o'clock dawn because my father undressed me.

xxx xxx xxx

Q *When your father undressed you, what did you do or say, if any*?
A *I told my father, 'You cannot do what you have done to me previously***.'**

Q What did your father do?
A *My father instead got a bolo hanging on the wall and said, 'Do you want that I will cut your neck?' That is why I was frightened***.**

Q After saying that, what did he do next?
A *He placed the bolo near me, and then he undressed me.*

Q After undressing you, what did he do next?
A *After removing my panty, he also removed his brief, and then he inserted his penis into my vagina.*

Q *When he was inserting his penis to your vagina, what did you do next*?
A *I cannot fight because he has with him the bolo.*

Q *Why were you afraid to fight*?
A *I was afraid to fight because he might kill me as he killed my Uncle Jose.*

Q *After your father inserted his penis into your vagina, what happened next*?
A *He made the push and pull movement, up and down.*

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[43] TSN, October 7, 1997 at 9-10.

Q After making that push and pull movement, what happened next?
A I felt a hot thing coming from him.

Q xxx, what happened next?
A He stood and put on his brief and short pants, got the bolo, and went downstairs.

Q How about you, what did you do after your father went downstairs?
A I cried severely and then I put on my panty and pajama.

xxx xxx xxx

Q At the time, where was your mother?
A She was in the field uprooting *palay* seedlings."[44] (Italics ours)

AAA's woeful tale of her harrowing experience is impressively clear, definite, and convincing. There is no indication whatsoever of a concocted recital. She was positive and firm in pointing to appellant, her very own father, as the person who ravished her twice in July of 1997. Her narration contains details only a real victim could remember and reveal.

The physical evidence likewise reinforced AAA's testimony. The Medico-Legal Report of Dr. Joseph Gomez, who physically examined her on August 1, 1997, shows that her genital has healed hymenal lacerations at 3:00 and 8:00 o'clock positions, and that her vaginal canal admits one finger with ease. As noted by Dr. Gomez, the occurrence of the lacerations coincides with the dates the crimes were committed. Consequently, the lacerations and pain AAA suffered in her genital could be the result of penile penetration showing that appellant had carnal knowledge of her.[45]

Appellant, however, contends that AAA's version is "fabricated and lacks the elements of truthfulness." He faults the trial court

[44] TSN, October 9, 1997 at 8-11.

[45] *People vs. Makilang*, G.R. No. 139329, October 23, 2001, 368 SCRA 155; *People vs. Pillas, supra*.

for "failing to exercise greatest care in scrutinizing complainant's story." According to him, "it is highly strange" for him to rape AAA on two occasions in a *small* room where her sister DDD, then sleeping, was just *1½ meters away*. Under such condition, DDD could have been awakened while he was committing the crimes.[46]

It is not strange for appellant to have committed rape in a small room. In the many rape cases that have reached this Court, we observed that rape is not always committed in seclusion.[47] We never cease to be appalled at the extreme depravity of the rapists who are not deterred from committing their odious act even in unlikely places such as a cramped room where other family members also slept.[48] Rape may take only a short time to consummate, given the anxiety and high risk of being caught, especially when committed near sleeping persons oblivious to the goings-on.[49] Indeed, lust is no respecter of time or place.[50]

AAA testified that when appellant sexually assaulted her twice, DDD was fast asleep. In fact, during the first incident, she tried to awaken DDD, who was 1½ meters away, by touching the latter with her (AAA's) left foot.[51] But DDD could not have been awakened because appellant perpetrated his bestial acts *quietly*. And because of his threat, she *calmly* succumbed to his sexual assaults.

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[46] Appellant's Brief, *Rollo* at 76-77.

[47] *People vs. Baybado*, G.R. No. 132136, July 14, 2000, 335 SCRA 712, citing *People vs. Silvano*, 309 SCRA 362 (1999); *People vs. Perez*, 296 SCRA 17 (1998).

[48] *People vs. Baybado, id.,* citing *People vs. Bayona*, 327 SCRA 190 (2000); *People vs. Escala*, 292 SCRA 48 (1998); *People vs. Manuel*, 236 SCRA 545 (1994); and *People vs. Cervantes*, 222 SCRA 365 (1993); *People vs. Paraiso, supra; People vs. Bersabe*, G.R. No. 122768, April 27, 1998, 289 SCRA 685.

[49] *People vs. Baybado, supra; People vs. Zabala*, G.R. Nos. 140034-35, August 14, 2003.

[50] *People vs. San Juan*, G.R. No. 105556, April 4, 1997, 270 SCRA 693.

[51] TSN, October 22, 1997 at 7.

We cannot accord credence to DDD's testimony that she was already awake during those hours and that appellant could not have committed the crimes. For one, the familiar rule on evidence is that an *affirmative* testimony is far weightier than a *negative* one, especially when the former comes from a credible witness,[52] such as AAA. For another, DDD's testimony lacks credibility. She testified that during the first incident on July 15, 1997, around 3:15 o'clock in the morning, she and AAA were sleeping at the second floor of their house and that their mother woke her up and requested her to accompany her to the rice field to uproot *palay* seedlings. But *she refused because she had to study for her school examination that day*. She contradicted herself, however, when she further stated that in *that same morning, she accompanied her father to the field to pasture their carabao and goats* and, thereafter, she went to school.[53] If, indeed, she had an examination that day, she could have stayed home and studied her lessons, instead of going with appellant to the field.

DDD's inconsistent attitude is understandable. The appellant is her father. In cases where conflicting family interests are involved, it is "not uncommon" for any of the family members to choose "to remain neutral or stay in the background," "or vacillate," or take sides on a specific issue.[54] To our mind, it is exceedingly probable that appellant's moral ascendancy over Winnie swayed her to testify in his favor. As aptly stated by the trial court, DDD "made up stories in order to save the neck of her father."[55]

With respect to appellant's defense of denial, the rule is that such defense is intrinsically weak, being a negative and self-

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[52] *People vs. Quiñanola*, G.R. No. 126148, May 5, 1999, 306 SCRA 710, citing *People vs. Ramirez*, 334 Phil. 305 (1997).

[53] TSN, November 5, 1997 at 3-5, 8-9; TSN, November 6, 1997 at 3; Appellant's Brief, *Rollo* at 70-71.

[54] See *People vs. Hivela*, G.R. No. 132061, September 21, 1999, 314 SCRA 815.

[55] RTC Decision dated November 28, 1997, *Rollo* at 91.

serving assertion; it has no weight in law if unsubstantiated by clear, strong, and convincing evidence of non-culpability.[56] Sadly, appellant failed to buttress his denial by the required quantum of proof. Certainly, it cannot overcome AAA's affirmative, categorical, spontaneous, and convincing testimony.[57]

Also, the defense endeavors to prove that AAA is an unchaste young woman who habitually goes out with different men. Suffice it to state that such debasement of her character does not necessarily cast doubt on her credibility, nor does it negate the existence of rape. It is a well-established rule that in the prosecution and conviction of an accused for rape, the victim's moral character is immaterial, there being absolutely no nexus between it and the odious deed committed.[58] Even a prostitute or a woman of loose morals can be the victim of rape, for she can still refuse a man's lustful advances.[59]

In a last-ditch effort to exculpate himself from criminal liability, appellant tries to impute ill-motive to AAA. We have consistently ruled that parental punishment is not a good reason for a daughter to falsely charge her father with rape.[60] For even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which would put her own father for the most of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame.[61]

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[56] *People vs. Antonio, supra,* citing *People vs. Silvano*, *supra*.

[57] *People vs. Baybado, supra*, citing *People vs. Aquino*, G.R. Nos. 145309-10, April 4, 2003.

[58] *People vs. Jason S. Navarro and Solomon S. Navarro, supra,* citing *People vs. Dela Peña*, 354 SCRA 186, 193 (2001); *People vs. Anthony Sandig y Espanola*, G.R. No. 143124, July 25, 2003, citing *People vs. Javier*, 311 SCRA 122 (1999).

[59] *People vs. Jason S. Navarro and Solomon S. Navarro, supra,* citing *People vs. Vidal*, 353 SCRA 194, 203 (2001); *People vs. Anthony Sandig y Espanola, supra,* citing *People vs. Igdanes*, 272 SCRA 113 (1997); *People vs. Manallo*, G.R. No. 143704, March 28, 2003, 400 SCRA 129.

[60] *People vs. Baybado, supra*, citing *People vs. Cabanela*, 299 SCRA 153 (1998).

[61] *Id.*, citing *People vs. Guiwan*, 331 SCRA 70 (2000).

We likewise reject appellant's claim that BBB was furious after he told her that he would separate from her as he could not stop her gambling habit. His depiction of BBB as an incorrigible gambler and irresponsible housewife finds no basis whatsoever from the records. On the contrary, Josephine, Winnie and appellant himself testified that BBB habitually wakes up very early in the morning to work in the rice field and returns home in the afternoon — a clear portrayal of a hardworking and responsible mother.

It bears stressing that the determination of AAA and BBB in facing a public trial, unmindful of the resulting humiliation and shame, obviously demonstrates their genuine desire to condemn an injustice and to have the offender apprehended and punished.

The trial court, therefore, correctly found appellant guilty beyond reasonable doubt of two counts of qualified rape and in imposing the death penalty upon him. As shown by her Certificate of Live Birth, AAA was born on January 15, 1980. Thus, she was only 17 years old when appellant, her own father, raped her on July 15 and 17, 1997. Both the qualifying circumstances of the victim's *minority* and her *relationship* with the offender were alleged in the two Informations and proved during the hearing.

However, with respect to the civil aspect of the crimes, the trial court erred in awarding only ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages in each case. Current jurisprudence requires that upon a finding of qualified rape, the award of civil indemnity in the sum of ₱75,000.00 is mandatory in each count.[62] Additionally, the victim is entitled to moral damages in the same amount, also in each count,[63] without need of pleading or proof of the basis thereof since the

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[62] *People vs. Escaño*, G.R. Nos. 140218-23, February 13, 2002, 376 SCRA 670; *People vs. Arizapa*, G.R. No. 131814, March 15, 2000, 328 SCRA 214.

[63] *People vs. Soriano*, G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140; *People vs. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106.

anguish and pain she endured are evident.[64]

We likewise award the victim exemplary damages of ₱25,000.00 in Criminal Case No. U-9332 only. Here, the use of a bolo, a deadly weapon, in the commission of the crime was alleged in the Information and proved during the trial. In *People vs. Ronie Gabelinio*,[65] citing *People vs. Joel Ayuda*,[66] 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."

Three members of this Court maintain that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can be lawfully imposed herein.

WHEREFORE, the appealed Decision dated November 28, 1997 of the Regional Trial Court, Branch 46, Urdaneta Pangasinan, in Criminal Cases Nos. U-9332 and U-9333, finding appellant Santiago Agsaoay, Jr. guilty of the crimes of *qualified rape* and sentencing him to suffer the penalty of *DEATH* in each case, is hereby *AFFIRMED* with *MODIFICATION* in the sense that he is ordered to pay the amount of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages in each case. Additionally, appellant is ordered to pay ₱25,000.00 as exemplary damages in Criminal Case No. U-9332.

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[64] *People vs. Jose Santos y Ruiz, supra*, citing *People vs. Pancho, supra.*

[65] G.R. Nos. 132127-29, March 31, 2004.

[66] G.R. No. 128882, October 2, 2003, citing *People vs. Sorongon*, 397 SCRA 264 (2003).

In accordance with Section 25 of R.A. 7659, amending Article 83 of the Revised Penal Code, upon the finality of this Decision, let the records of this case be forwarded to the Office of the President of the Philippines for the possible exercise of her pardoning power.

Costs *de oficio*.

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.

FIRST DIVISION

[G.R. No. 140278. June 3, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SONNY BAUTISTA *y* LACANILAO,** *appellant*.

SYNOPSIS

Appellant Sonny Bautista *y* Lacanilao was convicted of rape by the Regional Trial Court (RTC) of Manila and was sentenced to suffer the penalty of *reclusion perpetua.* In his appeal before the Court, appellant faulted the trial court for relying heavily on the testimony of the victim that she was deceived and later forced to have sexual intercourse with him. Appellant maintained that, on the contrary, her testimony revealed that she had been forewarned of danger; and that she had reasonable time and opportunity to escape if she had wanted to.

The Supreme Court affirmed appellant's conviction. The Court gave credence to the victim's narration of the incident that appellant had carnal knowledge of her by force and without her consent. Her account of the harrowing experience was

replete with explicit and sordid details that could not have been conjured by the imagination of an inexperienced 15-year-old girl. The Court also rejected appellant's "sweetheart defense." According to the Court, as an affirmative defense, it must be established with convincing evidence by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like. In case at bar, the only thing appellant proffered to prove that he and the victim were lovers was his self-serving statement, which the victim and her mother categorically denied. Even if he and the victim were really sweethearts, such a fact would not necessarily establish consent because a love affair does not justify rape, for the beloved cannot be sexually violated against her will and the fact that a woman voluntarily goes out on a date with her lover does not give the latter unbridled license to have sex with her against her will.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BASIC PRINCIPLES IN REVIEWING RAPE CASES.— We have meticulously scrutinized the records of this case, while following these basic principles in reviewing rape cases: (1) although an accusation of rape can easily be made, it is difficult to prove; and it is even more difficult for the person accused — though innocent — to disprove; (2) since only two persons are usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the prosecution's evidence must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense. In the present case, nothing in the records indicates that the prosecution evidence was wanting; or that the victim had any ill motive to fabricate a false accusation; or that the trial judge mistakenly believed her testimony.

2. ID.; ID.; HUMAN MIND WORKS UNPREDICTABLY, AND NO STANDARD FORM OF BEHAVIOR CAN BE EXPECTED OF PEOPLE UNDER STRESSFUL SITUATIONS.— It must be remembered that at the time of the incident — when appellant and his wife were renting a room in the house of the family of the victim — the girl considered him as a close family friend, a *kinakapatid,* and a virtual family member who gave them food. Finding no reason to disbelieve

him, the victim went with him to meet his wife for the purported field trip, only to realize too late what his real intentions were. Such naivete is not unheard of, especially in this case in which the girl knew and trusted him. Moreover, it must be stressed that the human mind works unpredictably, and no standard form of behavior can be expected of people under stressful situations. According to the victim, she just sat on a chair while appellant was taking a bath, because she did not suspect foul play until then. Besides, she testified that he had closely monitored her while he was taking a bath and even after he had paid the bill for the motel room.

3. ID.; ID.; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON MINOR DETAILS TEND TO STRENGTHEN RATHER THAN WEAKEN CREDIBILITY.— The attempt of appellant to malign the testimony of the victim for alleged inconsistencies on some points must also fail for being minor. They serve to strengthen rather than weaken the prosecution's cause, as they signify that she was neither coached nor prevaricating on the witness stand. Whether she had time to talk with the room attendant and whether she was bound by appellant before or after sexually abusing her are minor details that do not detract from her testimony that she was raped. It would be unfair to expect a flawless recollection from one who is forced to relive the gruesome details of a painful and humiliating experience such as rape. No woman in her right mind would openly acknowledge the violation of her person and allow the examination of her private parts if she has not been raped. The Court has ruled that when the testimony of a rape victim meets the test of credibility, she is deemed to have said all that is necessary to show that she has been violated. Further, we find in this case that no ill motive to testify falsely against the accused has been attributed to the rape victim. Thus, it is much more likely that she came out in the open for no other reason than to obtain justice. Finally, the fact that she promptly reported her ravishment to her parents and the authorities supports the finding that she had indeed been defiled by appellant. Such conduct further bolstered her credibility.

4. ID.; ID.; SWEETHEART DEFENSE; REJECTED.— Appellant's sweetheart defense must be rejected for lack of corroboration. As an affirmative defense, it must be established with convincing evidence — by some documentary and/or other evidence like

mementos, love letters, notes, pictures and the like. In this case, the only thing he proffered to prove that he and the victim were lovers was his self-serving statement, which she and her mother categorically denied. Besides, even if he and the victim were really sweethearts, such a fact would not necessarily establish consent. It has been consistently ruled that "a love affair does not justify rape, for the beloved cannot be sexually violated against her will." The fact that a woman voluntarily goes out on a date with her lover does not give him unbridled license to have sex with her against her will.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PANGANIBAN, *J.*:

In rape, the "sweetheart" defense must be proven by compelling evidence: *first*, that the accused and the victim were lovers; and, *second*, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust.

The Case

Sonny Bautista *y* Lacanilao appeals the September 13, 1999 Decision[1] of the Regional Trial Court (RTC) of Manila (Branch 26) in Criminal Case No. 96-148248, finding him guilty of rape. The dispositive part of the Decision reads as follows:

"WHEREFORE, PREMISES CONSIDERED, this Court finds accused SONNY BAUTISTA *y* LACANILAO GUILTY beyond reasonable doubt [of] the crime of Rape under Article 335 of the Revised [P]enal Code of the Philippines, as charged in the information. He is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with all the accessory penalties provided by law; to indemnify the

[1] Written by Judge Guillermo L. Loja Sr.

private complainant AAA the sum of Fifty Thousand (₱50,000.00) Pesos by way of moral damages; and to pay the costs of this suit."[2]

The Information[3] dated March 14, 1996, charged appellant in these words:

"That on or about March 8, 1996, in the City of Manila, Philippines, the said accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force, violence and intimidation, to wit: by then and there forcibly carrying her and lying her in bed, placing himself on top of her and kissing and embracing her tightly, and when said complainant is resisting and pushing him away from her, said accused punched her thighs, remov[ed] her clothes and panty and succeeded in having carnal knowledge of her against her will and consent."[4]

Upon his arraignment on April 16, 1996,[5] appellant, assisted by his counsel *de oficio*,[6] pleaded not guilty. After trial in due course, the court *a quo* 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 in the following manner:

"On March 8, 1996, appellant Sonny Bautista went to the house of AAA at xxx, xxx. xxx, who was fifteen [15] years old and in her third year in high school, knew appellant very well. He is the godchild by marriage of her parents and had previously rented a room in their house for a year. Appellant's wife Analisa Sagot and AAA's mother, BBB, were the best of friends and both worked as janitresses at Paz Manpower Agency. Thus, BBB had readily agreed to Analisa's request for the newly-wed couple to stay at their house.

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[2] RTC Decision, p. 10; *rollo*, p. 31.

[3] Signed by Assistant City Prosecutor Alicia A. Risos-Vidal.

[4] Records, p. 1; *rollo*, p. 7.

[5] See Order dated April 16, 1996; records, p. 19. See also Certificate of Arraignment; records, p. 17.

[6] Atty. Virginia Fabe.

"The bond between the two (2) women had drawn appellant and the Amparo family closer. Appellant, who worked as a taxi driver, was like a son to them. AAA and her siblings addressed him as 'Kuya Sonny.'

"Appellant pleaded [with] AAA to skip her classes and to go with him and his wife to a supposed field trip in Cavite. Having complete trust [i]n him as a family friend and remembering the couple's acts of kindness such as giving food to her family, Mischel agreed to go with him although she still had a class at 12:00 noon.

"Appellant told AAA that they would fetch his wife in Sta. Mesa before going to Cavite. They boarded a bus going to Cubao. From Cubao, they took a jeep bound for Sta. Mesa. When they arrived in Sta. Mesa, AAA asked appellant regarding her 'Ate Ana.' Appellant replied that since she had yet to arrive with her co-employees, they should just pass time at the SM Centerpoint. When they arrived at the mall at 2:00 p.m., appellant invited her to see a movie. Without thinking that he just might be deceiving her, AAA went along.

"While watching the film, appellant muttered to AAA that his wife was domineering. She would get quarrelsome over small matters and would be very angry if he could not give her seven hundred pesos (₱700.00) a week. He likewise told her that his sister had been behaving strangely. She once took a bath while exposed to appellant and had once taken off her clothes in front of him. Appellant then remarked that AAA should do the same. AAA advised him to understand his wife and then inquired if they could go to 'Ate Ana.' He replied that his wife would arrive at 4:30 p.m.

"Before the film was finished, appellant and Mischel went out of the mall. She asked him again if they could go to her 'Ate Ana.' Appellant answered that they were going to fetch her. He hailed a taxi and invited her to board it. Thinking that they were indeed going to meet appellant's wife, AAA boarded the taxi although she had no specific idea where they were heading.

"When the taxi had reached Town and Country Motel, appellant told the young girl that they were going to wait for her 'Ate Ana' in a room in the motel. She had no idea that the place they were in was a motel.

"Inside the room, appellant told AAA that he had to take a bath since Cavite was quite far. AAA believed him. However, she was

surprised when appellant told her that she should take a bath as well. She refused. Whereupon, appellant threatened to leave her. He then urged AAA to take a bath since there was no water in the place they were going.

"A male attendant went to the room and handed two (2) shampoo sachets to appellant. He took a bath. Not knowing what to do, Mischel meanwhile sat on a chair.

"Appellant went out of the bathroom and again told AAA to take a bath. Again, she refused. This enraged appellant. His display of wrath unnerved AAA. He held her hand and pushed her inside the bathroom, forcing her into taking a short bath.

"A few minutes later, she emerged from the bathroom. Appellant suddenly carried her to the bed and poured kisses on her neck. He removed the towel covering his waist, leaving him completely naked.

"AAA resisted appellant fiercely. She slapped him on the face four (4) times. But appellant, who is bigger and taller, returned each slap with fist blows on the young girl's left thigh. She felt her strength drain away.

"Although she tried to push appellant away and free herself, appellant nevertheless proceeded to undress AAA methodically. First, he took off her T-shirt and her skirt. Next, he stripped of[f] her bra and then finally removed her panty.

"The young girl was now lying naked with her back on the bed. Appellant, equally bare, knelt on the bed. He forced AAA to part her legs. Appellant went away quickly to wet his fingers. When he returned, he drove his wet finger into AAA's vagina. She felt pain.

"After a while, appellant mounted AAA. He spread her legs open and tried to insert his penis into her vagina. AAA continued to struggle with her remaining strength so that appellant failed to penetrate her sexually.

"Appellant decided to change AAA's position. By kicking the young girl, he let her know that he wanted her to assume a prone position ('*pinatuwad*') in the bed. In that position, appellant parted AAA's legs and then plunged his penis into her vagina. This time, the penetration was successful. The pain felt by AAA weakened her further. Fear gripped her as her genitals bled.

"After abusing AAA in such position for fifteen minutes, appellant stood up and took a piece of cloth. He tied up her hands and legs. AAA sat on the bed. Appellant then told her that he would kill her and her family. In sheer terror, AAA pleaded to him, '*huwag mo akong papatayin, hindi ako magsusumbong kahit kanino*.'

"Appellant untied AAA. He told her that they were going home. Appellant left the room and paid the bill. AAA put back her clothes and went out of the room after thirty (30) minutes. She saw appellant waiting at the gate of the motel. They boarded a jeep going to Cubao. Upon arrival, appellant left her. She went home.

"When AAA arrived at their home around 11:30 p.m., BBB noticed her tears. She asked her what happened. Unable to contain herself, she blurted out that she was raped by appellant. BBB cried and looked at the panty of her daughter. She saw blood. Mother and daughter went to the *barangay* hall for assistance. With the help of the Quezon City Police, appellant was apprehended in his house in Sta. Ana on the same night.

"AAA was examined by Dr. Maximo Reyes, a medico-legal officer of the NBI, on March 9, 1996. He found a kiss mark on the neck of the victim and contusions on her left thigh. He opined that the bruises could be caused by a bare hand which forcefully hit the victim. He also concluded that the laceration on the hymen of AAA was caused by a fully-erect penis. The medical report he issued reads:

'March 11, 1996

PRELIMINARY REPORT

To Whom It May Concern:

This is to certify that Dr. Maximo L. Reyes, NBI Medico-Legal Officer, conducted a medico-genital examination on AAA, 15 yrs. old, single, of xxx, xxx. xxx on March 9, 1996 with the hereunder findings:

1. Extragenital physical injuries present
2. Healing complete hymenal laceration, present.'"[7]

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[7] Appellee's Brief, pp. 3-12; *rollo*, pp. 126-135; citations omitted. Signed by Assistant Solicitors General Carlos N. Ortega and Renan E. Ramos and Associate Solicitor Jonathan L. de la Vega.

Version of the Defense

Appellant does not deny that he had sexual intercourse with the victim who, he claims, had consented to it; hence, no rape was committed. His version of the incident is as follows:

". . . [T]he accused fetched the victim from her house on March 8, 1996 at around 11:00 or 12:00 [noon] in order to watch a movie. The victim's parent[s] disapproved but [she still] went with him. They went to the SM Centerpoint in Sta. Mesa, Manila and they arrived thereat at around 2:00 p.m. Inside the movie house, the accused placed his arm around the shoulder of the victim, and he kissed her twice on the lips and cheeks. She got mad, since she was concentrating in watching the movie and he was disturbing her. The accused kept quiet and also focused his attention on the movie. They left the movie house at around 4:00 or 4:30 P.M. They boarded a taxi and proceeded to Anito Lounge, but they were not admitted since the victim looked very young, hence, they proceeded to Town and Country located at V. Mapa. Upon arriving thereat, they paid the fare and the accused called the room boy. [T]he accused went up first and the victim followed. They entered Room No. 48. The ac[c]used took a bath while the victim watched T.V. After taking a bath, he asked the victim, if she wanted to take a bath and the latter replied 'yes.' Since there was no shampoo, he requested for one and the roomboy gave him the shampoo which he in turn gave to the victim. The victim took a bath. Afterwards, she went out of the bathroom wearing only a T-shirt and towel wrapped around her waist. She sat beside the accused. The accused started kissing the victim and the latter did not get angry. He removed her T-shirt and started kissing her breast, and she did not get angry. He continued kissing her on the lips and she felt tickled. He removed her panty and she did not object, but said that the mother might know about it and get angry, but he told her that if she really love[d] him, they alone [would] be responsible. He placed himself on top of her and she felt pain after which he removed himself from her. The victim told him that her mother might learn about it and the latter might kill her. He in turn replied that she should not worry, since he will take the responsibility. The victim embraced him and he kissed her on the forehead. They dressed up and the accused paid at the counter. They walked towards the corner of Sta. Mesa and boarded a jeepney going to Cubao. Upon reaching the said place, he gave the victim ₱50.00 for her transportation and his telephone number. He even accompanied her in boarding a bus bound for Fairview.

The accused went home to Sta. Ana where he ate and slept. At around 3:00 A.M., someone knocked at the door. There were policemen who pointed a .45 caliber gun at him and handcuffed him. He was taken to police precinct No. 6 in Quezon City. His wife visited him and informed him that the victim's parents came to know about it and mauled the victim to admit where she came from and who her companion [was]. The accused denied that he forced the victim as she actually agreed."[8]

Ruling of the Trial Court

The trial court ruled that appellant had employed deception as well as force and intimidation upon the victim, in order to consummate his libidinous desire. It was convinced that appellant — on the pretext that he had been sent by his wife to fetch the victim for an excursion — inveigled the girl to a motel, where he forced himself upon her. The lower court was impressed by the straightforward, positive and convincing testimony of the victim.

The court *a quo* likewise ruled that her credibility was enhanced by 1) the fact that she had immediately reported the incident to her mother; 2) there was no showing of any motive on the part of the girl to testify falsely against the accused; and 3) the medicolegal report indicated contusions on her body and the laceration of her hymen.

On the other hand, it discarded the sweetheart defense of appellant for its intrinsic weakness and lack of corroboration.

Hence, this appeal.[9]

Issues

In his Brief, appellant raises the following issues for our consideration:

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[8] Appellant's Brief, pp. 6-7; *rollo*, pp. 71-72; citations omitted. Signed by Attys. Amelia C. Garchitorena and Marvin R. Osias of the Public Attorney's Office (PAO).

[9] This case was deemed submitted for decision on December 1, 2003, upon receipt by this Court of appellant's "Manifestation in Lieu of a Reply Brief." Appellee's Brief was received by this Court on September 3, 2003, while appellant's Brief was filed on March 4, 2003.

"I.

The court *a quo* gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape.

"II.

The court *a quo* gravely erred in not giving weight and credence to the evidence for the defense."[10]

The issues boil down to whether the prosecution evidence was sufficient to convict appellant of rape, and whether his so-called sweetheart defense was credible.

The Court's Ruling

The appeal has no merit.

First Issue:
Sufficiency of Evidence

Appellant faults the trial court for relying heavily on the testimony of the victim that she was deceived and later forced to have sexual intercourse with him. He maintains that, on the contrary, her testimony revealed that she had been forewarned of danger; and that she had reasonable time and opportunity to escape if she had wanted to.

In particular, he argues that it is highly inconceivable for the victim — a 15-year-old, third-year high school student — not to have sensed danger. She herself testified that 1) in the movie house, he had suggested that she should take her clothes off in front of him, as his sister had done; and 2) the taxi took them to a motel instead of Cavite, where they were supposed to meet his wife.

Moreover, he pointed out that the victim had several opportunities to ask for help or to escape, but she chose not to do so. In the motel, she did not ask for help either from the attendant who had met and accompanied them up to their room, or from the other one who had given them two shampoo sachets.

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[10] Appellant's Brief, pp. 7-8; *rollo*, pp. 72-73. Original in upper case.

Appellant added that she also had the chance to flee while he was taking a bath, but she just sat on a chair. And, supposedly, during the thirty long minutes he was at the counter paying their bill, she failed to call for help or to break away from him.

He further contends that her testimony was marred by serious inconsistencies that weakened her credibility. Notably, he said that she gave conflicting accounts as to when he had tied her hands and feet. He likewise alleges that she lied when she first told the court that she was not able to talk to the room attendant, who had immediately gone down after fixing the room. It was supposedly clear from her testimony that the attendant had accompanied them to their room to provide water.

The factual matters now raised by appellant have been passed upon by the RTC. As a rule, its findings deserve weight and respect.[11] The same is true as regards the evaluation of the credibility of witnesses, because it is the trial judge who hears them and observes their demeanor while testifying.[12] It is only when the trial court has overlooked or misapprehended some facts or circumstances of weight and influence[13] that these matters are re-opened for independent examination and review by appellate courts.

We have meticulously scrutinized the records of this case, while following these basic principles in reviewing rape cases: (1) although an accusation of rape can easily be made, it is difficult to prove; and it is even more difficult for the person accused — though innocent — to disprove; (2) since only two persons are usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the prosecution's

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[11] *People v. De la Cruz*, 398 SCRA 415, 422, February 28, 2003; *People v. Ansowas*, 394 SCRA 227, 236, December 18, 2002; *People v. Flores*, 379 Phil. 857, 864, January 20, 2000.

[12] *People v. Alcodia*, 398 SCRA 673, 679, March 6, 2003; *People v. Villanueva Jr.,* 394 SCRA 93, 99, December 16, 2002; *People v. Bayona*, 383 Phil. 943, 954, March 2, 2000.

[13] *People v. Nogar*, 341 SCRA 206, 214, September 27, 2000; *People v. Bayona, supra; People v. Valla*, 380 Phil. 31, 40, January 24, 2000.

evidence must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense.[14] In the present case, nothing in the records indicates that the prosecution evidence was wanting; or that the victim had any ill motive to fabricate a false accusation; or that the trial judge mistakenly believed her testimony.

Like the trial court, we believe her narration of the incident that appellant had carnal knowledge of her by force and without her consent. Her account of the harrowing experience was replete with explicit and sordid details that could not have been conjured by the imagination of an inexperienced 15-year-old girl. She recounted what had transpired at the motel, as follows:

"PROS. ICAY:
Q When the taxi entered the compound of Town and Country Motel, what did the accused tell you?
WITNESS:
A When we went up he told me we would wait for Ate Ana, sir.

COURT:
If you could recall, is the room located on the first floor or the second floor?
A Second floor, sir.

COURT:
Before entering the room, do you know if the accused met or talked to someone?

WITNESS:
A Yes, sir, the person carrying water.

COURT:
Do you know that they talked to each other?
A No, sir.

COURT:
After that someone brought water, to whom was the water given?
A He brought inside the room and placed it on top of the table, sir.

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[14] *People v. Barcelona*, 382 Phil. 46, 53, February 9, 2000; *People v. Gozano*, 379 Phil. 967, 973, January 21, 2000.

COURT:
When the man brought inside the room the water and placed it on top of the table, where did he go if you can recall?
A He went down, sir.

COURT:
And when that someone left and went down, what happened next, if any?
A When we were inside the room, he told me to take a bath, sir.

PROS. ICAY:
Q And what was your reaction, if any?
A I was surprised, sir.

Q Why were you surprised?
A He told me that after taking a bath, we will proceed to Cavite, sir.

Q I am asking you, why were you surprised when he told you to take a bath?
A When he said that, I refused and he forced me, sir.

COURT:
How?
A He told me if I don't take a bath he will leave me, sir.

COURT:
Is that all what he told you?
A He also said that I should take a bath because there is no water to where we are going, sir.

COURT:
What else?
A When I refused, a male person handed over two (2) packets of shampoo, sir.

COURT:
To whom the two (2) packets of shampoo was handed over?
A To Sonny Bautista, sir.

PROS. ICAY:
Q What happened next, if any, after the two (2) packets of shampoo [were] handed over to the accused?

WITNESS:
A After the two (2) packets of shampoo [were] handed over, the accused took a bath first, sir.

Q Where were you when he was taking bath?
A I was seated on a chair, sir.

Q Aside from the chair where you were seated, what other appliances you saw inside the room, if you can recall?
A Television set, table and a bed, sir.

Q What happened next, if any, after the accused went inside the bathroom?
A When he went out of the shower room, he told me to take a bath, sir.

Q What happened next, if any?
A I refused and I was rattled because he was mad at me, sir.

Q What was his attire when he told you to take a bath?
A Only [a] towel wrapped around his waist, sir.

COURT:
What do you mean '*nataranta ka*'?
A When he told me to take a bath, I was surprised, sir.

COURT:
Why were you surprised?
A He was already pushing me and forcing me inside the bathroom, sir.

COURT:
How?
A He was forcing my hand and told me to take a bath because we will fetch Ate Ana in Cavite, sir.

COURT:
How did you react to the statement of the accused?
A I was forced to take a bath, sir.

COURT:
Inside the bathroom, what was your attire?
A I was still wearing my clothes, sir.

PROS. ICAY:
Q What [were] your clothes at that time?
A My blouse and skirt. My uniform, sir.

COURT:
What uniform?
A My high school uniform, sir.

COURT:
What is the combination of that uniform?
A T-shirt colored green and skirt colored white, sir."[15]

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"[PROS. ICAY:]
Q When you went [out] of said bathroom, what happened next, if any?
A He suddenly carried me, sir.

Q Carried you where, Madam Witness?
A To the bed and [he] kissed me, sir.

Q Where?
A He kissed me around my neck, sir.

COURT:
What was the attire of the accused when he suddenly carried you to the bed?
A He removed the towel wrapped around his waist and he was naked, sir.

COURT:
After he kissed you around your neck and the accused [was] naked, after he took off the towel wrapped around his waist, what happened next, if any?
A He started to undress me, sir.

COURT:
How?
A First, he took off my T-shirt and then my skirt and then my bra, sir.

COURT:
After that, what else?
A He took off my panty, sir.

COURT:
What was your position when the accused took off your dress?
A He was seated on the bed but I resisted his attempt to take off my dress, sir.

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[15] TSN, June 11, 1996, pp. 7-10.

COURT:
How did you resist?
A I pushed him, sir.

PROS. ICAY:
Q What else?
A I pushed him away from me (Witness demonstrating, trying to parry).
I tried to liberate myself from him.

Q Why do you . . . What happened next when you tried to liberate yourself from the accused?
A He boxed my thigh, sir.

Q How many times?
A He boxed both thighs, sir.

Q What part of the thigh?
A Middle part of both thighs, sir.

Q How many times were you boxed by the accused?
A Five (5) times, more or less, sir.

Q And what happened to you when the accused boxed you five (5) times on your thighs, if any?
A I felt weaken[ed], sir.

Q When you felt [weak after] the accused boxed you five (5) times what happened next, if any?
A He forcibly spread open both my legs, sir.

Q What was your position then when the accused spread open your legs?
A I was lying [on] my back, sir.

Q How about the accused?
A He was [i]n a kneeling position on the bed, sir.

Q Kneeling naked, Madam Witness?
A Yes, sir.

Q What about you?
A I was lying down, sir.

Q Aside from spread[ing] open your legs and box[ing] you five (5) times, what was he doing with his hand, if any?
A He was forcibly inserting his finger into my vagina, sir.

ATTY. SEBASTIAN:
We object to the use of word 'inserting,' Your Honor.

COURT:
Witness may answer.

WITNESS:
A He was inserting his finger into my vagina, sir.

PROS. ICAY:
Q What else?

WITNESS:
A In fact before doing that, he wet his finger with water, sir.

Q Where did he get the water?
A He went away for a moment from me and he went to the comfort room and got water and brought it near the bed, sir.

Q When the accused touched you after wetting his finger with water, what happened next, if any?
A After inserting his finger into my vagina, [he then] inserted his organ into my vagina, sir.

Q What did you feel when the accused was inserting his finger into your vagina?
A I felt pain, sir.

Q In your place, what did you do, if any, when he was inserting his penis into your vagina?
A I pushed him away from me, sir.

Q For how long did he place his finger into your vagina?
A Only for a while, sir. After that, he placed himself on top of me, sir.

Q What did he do after he placed himself on top of you?
A He was inserting his penis into my vagina, sir.

Q How did he insert his penis into your vagina?
A He spread open my two (2) legs, sir.

Q After spreading your two (2) legs, how did he place his organ into your vagina?
A While on top of me, he tried to insert his penis into my vagina but he failed to do so, sir.

Q Why did he fail to insert his organ into your vagina?
A Because I struggled, sir.

Q After failing to insert his penis into your sex organ, what did you do, if any?
A He tried to change my position, this time my face down and my back towards the ceiling, sir.

ATTY. SEBASTIAN:
We object, Your Honor. With due respect, the translation, because it was the witness who turned around.

COURT:
Reform the question.

PROS. ICAY:
Q You said, Madam Witness, the accused turned you around and you . . .

ATTY. SEBASTIAN:
We object to that, Your Honor. It was the complaining witness who turned around as suggested by the accused.

COURT:
Reform the question.

PROS. ICAY:
You said, Madam Witness, [that] while you [were] lying [with] your back on the bed, . . . the accused was not able to insert his penis into your vagina. [W]hat happened next, if any?

WITNESS:
A 'Pinatuwad niya ako,' sir.

Q Did he say that by action or by words?
A He did it by action, sir.

Q How?
A He turned my body, my face facing the bed and the back portion of my body facing the ceiling, sir.

Q What happened next, if any?
A He had my legs spread open, sir.

Q After the accused separated your legs, while in that position, what did the accused do next, if any?
A He inserted his penis into my vagina, sir.

Q What happened when he inserted his penis into [your] vagina?
A He succeeded in inserting his penis into my vagina, sir.

Q When the accused succeeded in inserting his penis into your vagina in that position, what happened next, if any?
A He stood up to get a piece of cloth and tied my hands and legs, sir.

PROS. ICAY:
Q Before the accused stood up, what did you notice from the accused while doing that position?

WITNESS:
A He was wet, sir.

COURT:
How long did he insert his penis into your organ?
A It lasted for a long time, for about fifteen (15) minutes, sir.

PROS. ICAY:
Q Now, you said that the accused immediately stood up, where did he go?

WITNESS:
A He went to the comfort room and dressed up, sir.

Q Where did he get the piece of cloth?
A I don't know, sir.

Q What did he do with the piece of cloth, if any?
A He tied my hands and feet, sir.

Q What else did he do to you aside from tying your hands and feet?
A After tying both hands and feet, he let me s[i]t on top of the bed and told me that he would kill me, sir.

Q What was your reaction when he told you that he will kill you?
A I felt afraid, sir.

Q Why?
A Because [he] would kill me and my family, sir.

Q What happened next, if any?
A I pleaded [with] him not to kill me, sir.

COURT:
What real words you pleaded to him?

WITNESS:
A '*Huwag mo akong papatayin. Hindi ako magsusumbong kahit kanino*.'

PROS. ICAY
Q When you pleaded, '*Huwag mo akong papatayin. Hindi ako magsusumbong kahit kanino*,' what happened next, if any?

WITNESS:
A He took off the piece of cloth tied around my hands and legs, sir."[16]

To appellant, it seems strange that the victim did not sense danger when he suggested early on inside the movie house that she undress before him, and when he thereafter took her to a motel. Capitalizing on her supposedly unusual reaction and behavior, he insists that what took place was consensual — though illicit — sexual intercourse between lovers.

We are not persuaded. It must be remembered that at the time of the incident — when appellant and his wife were renting a room in the house of the family of the victim[17] — the girl considered him as a close family friend, a *kinakapatid*,[18] and a virtual family member who gave them food.[19] Finding no reason to disbelieve him, the victim went with him to meet his wife for the purported field trip, only to realize too late what his real intentions were. Such naivete is not unheard of, especially in this case in which the girl knew and trusted him.

Moreover, it must be stressed that the human mind works unpredictably, and no standard form of behavior can be expected of people under stressful situations.[20] According to the victim,

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[16] *Id*., pp. 11-17.

[17] *Ibid*.

[18] The victim's mother stood as principal sponsor in appellant's wedding. TSN, June 11, 1996, p. 3; TSN, February 12, 1997, p. 8.

[19] *Id*., p. 5.

she just sat on a chair while appellant was taking a bath, because she did not suspect foul play until then. Besides, she testified that he had closely monitored her while he was taking a bath and even after he had paid the bill for the motel room. Excerpts from her testimony are reproduced below:

"[ATTY. SEBASTIAN]:
Q While the accused is taking a bath, why did you not escape from the room of the second floor down to the ground floor?

PROS. ICAY:
No basis yet, Your Honor.

COURT:
Witness may answer.

WITNESS:
He closed the door.

ATTY. SEBASTIAN:
Q Do you mean to tell the Hon. Court that the key to the door, there is a key to the door[,] which is in the possession of the accused?
A There are two doors and two locks.

Q But you could easily unlock the two doors if you want to, is it not?
A Yes, sir.

Q And you did not do so?
A When he went out of the comfort room, he saw me."[21]

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"[COURT]:
Q How did you and the accused go out from the motel, Madam Witness?
A He went out ahead of me, sir.

Q Where did he go?
A He went downstairs and paid the bill, sir.

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[20] *People v. Flores*, 423 Phil. 687, 700-701, December 14, 2001; *People v. Manahan*, 374 Phil. 77, 87, September 29, 1999; *People v. Lapinoso*, 363 Phil. 288, 298, February 25, 1999.

[21] TSN, August 21, 1996, p. 12.

Q After paying the bill, what did he do next, if any?
A I went down and I noticed [that] he was waiting for me, sir.

Q You said the accused went ahead of you, can you tell how long did he pay the bill?
A For thirty (30) minutes, sir.

PROS. ICAY:
Q You said [that] when you went out from the hotel, you had seen the accused outside, where, Madam Witness?
A He was at the gate of the motel, sir."[22]

The gravamen of the crime of rape is carnal knowledge of a woman against her will or without her consent.[23] Both carnal knowledge and force, indicating absence of consent, were adequately established in the present case. The fact that appellant boxed the victim on her thighs when she resisted and struggled against him sufficiently indicated force. The force required in rape cases need not be overpowering or irresistible. Failure to offer tenacious resistance does not make the submission by the complainant to the criminal acts of the accused voluntary.[24] What is necessary is that the force employed against her be sufficient to consummate the purpose which he has in mind.[25]

In the present case, the medical findings corroborated the declarations of the victim that appellant had boxed her thighs a number of times when she resisted his advances. Aside from the contusions found on her left thigh, Dr. Maximo Reyes[26] likewise reported a complete hymenal laceration, a physical evidence of forcible defloration.[27] He testified as follows:

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[22] TSN, June 11, 1996, pp. 17-18.

[23] *People v. Docena*, 379 Phil. 903, 913, January 20, 2000.

[24] *People v. Corea*, 269 SCRA 76, March 3, 1997.

[25] *People v. Corea, supra*; citing *People v. Antonio*, 233 SCRA 283, June 17, 1994.

[26] Dr. Reyes was the NBI medicolegal officer who conducted the genital examination on the victim on March 9, 1996, the day after the incident.

[27] *People v. Bayona, supra*, p. 956.

"[COURT]:

Q In your physical findings, there is and I quote 'contusion anterior aspect, neck; left thigh bluish in color.' [W]hat could have caused this injury on the body of the victim, in your well-considered medical opinion?

A The one on the neck is a 'kiss mark' but the one in the lower portion of the thigh, left side[,] is caused by a blunt instrument.

Q When you say blunt, could it have been caused by struggling or boxing? Could you say [that] xxx [the] bare hands, [when used] forcefully and hitting the thigh of the victim, xxx [could be] a blunt instrument?

A Yes, sir.

Q xxx [F]or purposes of identification[,] may we request that the findings be bracketed and marked as Exhibit I-4 (physical findings)?

COURT:

Mark it.

Q [N]ow, going to this genital findings, which I quote: 'pubic hair fully grown, abundant, labia majora; hymen moderate, 6:00 o'clock laceration, 2 cm. diameter, prominent.' [W]ill you kindly explain this. [I]n your well-learned medical opinion, what could have caused the laceration?

A Laceration of the hymen per se is caused by a fully erect penile organ."[28]

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"Q Again, in your findings, is it possible that the 6:00 o'clock laceration could have been caused by riding [a] bicycle or horse riding?

A [A]ctually, those are possibilities that could be seen in the books of legal medicine, but the possibility is quite remote when it comes to sexual crimes, when it comes to hymenal laceration, more so, if the hymenal laceration is a complete type."[29]

The attempt of appellant to malign the testimony of the victim for alleged inconsistencies on some points must also fail for

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[28] TSN, March 12, 1997, pp. 4-5.

[29] *Id*., p. 6.

being minor. They serve to strengthen rather than weaken the prosecution's cause, as they signify that she was neither coached nor prevaricating on the witness stand.[30] Whether she had time to talk with the room attendant and whether she was bound by appellant before or after sexually abusing her are minor details that do not detract from her testimony that she was raped.

It would be unfair to expect a flawless recollection from one who is forced to relive the gruesome details of a painful and humiliating experience such as rape.[31] No woman in her right mind would openly acknowledge the violation of her person and allow the examination of her private parts if she has not been raped. The Court has ruled that when the testimony of a rape victim meets the test of credibility, she is deemed to have said all that is necessary to show that she has been violated.[32]

Further, we find in this case that no ill motive to testify falsely against the accused has been attributed to the rape victim.[33] Thus, it is much more likely that she came out in the open for no other reason than to obtain justice.

Finally, the fact that she promptly reported her ravishment to her parents and the authorities supports the finding that she had indeed been defiled by appellant. Such conduct further bolstered her credibility.[34]

Second Issue:
"Sweetheart" Defense

Contending that he and the victim were lovers, appellant claims that what transpired was consensual, though illicit, sexual intercourse.

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[30] *People v. Navarro*, 351 SCRA 462, 477, February 12, 2001; *People v. Flores, supra*, p. 703; *People v. Pailanco*, 379 Phil. 869, 883, January 20, 2000.

[31] *People v. Flores, supra; People v. Bayona, supra.*

[32] *People v. Sampior*, 383 Phil. 775, 783, March 1, 2000; *People v. Docena, supra; People v. Garces Jr.,* 379 Phil. 919, 927-928, January 20, 2000.

[33] *People v. Arofo*, 380 SCRA 663, 670, April 11, 2002; *People v. Sampior, supra*, p. 783.

[34] *People v. Cepeda*, 381 Phil. 300, 313, February 1, 2000.

His sweetheart defense must be rejected for lack of corroboration. As an affirmative defense, it must be established with convincing evidence[35] — by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like.[36] In this case, the only thing he proffered to prove that he and the victim were lovers was his self-serving statement, which she and her mother categorically denied.[37]

Besides, even if he and the victim were really sweethearts, such a fact would not necessarily establish consent.[38] It has been consistently ruled that "a love affair does not justify rape, for the beloved cannot be sexually violated against her will."[39] The fact that a woman voluntarily goes out on a date with her lover does not give him unbridled license to have sex with her against her will. This truism was reiterated in *People v. Dreu*, from which we quote:

> "A sweetheart cannot be forced to have sex against her will. Definitely, a man cannot demand sexual gratification from a fiancee and, worse, employ violence upon her on the pretext of love. Love is not a license for lust."[40]

Also noteworthy is the fact that it was the wife of appellant who (1) accompanied the victim and her mother to police authorities to report the incident and (2) informed them of his whereabouts.[41] Such reaction was obviously inconsistent with

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[35] *People v. Barcelona, supra*, p. 56.

[36] *People v. Garces Jr., supra*, p. 937.

[37] TSN, February 12, 1997, p. 9.

[38] *People v. Cepeda, supra*, p. 310.

[39] *People v. Shareff Ali El Akhtar*, 368 Phil. 206, 219, June 21, 1999; citing *People v. Jimenez*, 302 SCRA 607, 609, February 4, 1999, per Panganiban, *J*.

[40] *People v. Dreu*, 389 Phil. 429, 435, June 20, 2000, per Mendoza, *J*.; citing *People v. Barcelona, supra*, p. 58; and *People v. Manahan, supra*, p. 84.

[41] TSN, July 16, 1997, p. 4; *Sinumpaang Salaysay of SPO2 Wilfredo L. Cara*, Exhibit "J"; records, p. 137.

that of a wife whose trust was betrayed by her husband — as the situation would have been, if he and the victim were indeed lovers.

For the foregoing reasons, the conviction of appellant is inevitable. But in addition to moral damages, civil indemnity must also be awarded to the rape victim, in conformity with prevailing jurisprudence. This indemnity — which is automatically given upon proof of the commission of the crime and the offender's responsibility for it[42] — is presently fixed at ₱50,000 when the penalty of *reclusion perpetua* is imposed, as in this case.

WHEREFORE, the appeal is ***DENIED***. The Decision of the Regional Trial Court of Manila (Branch 26) in Criminal Case No. 96-148248 is ***AFFIRMED***, with the modification that appellant is hereby ordered to pay the victim ₱50,000 as civil indemnity, in addition to the ₱50,000 in moral damages granted by the trial court. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J. (Chairman)*, Ynares-Santiago, Carpio,* and *Azcuna, JJ.,* concur.

FIRST DIVISION

[G.R. No. 146364. June 3, 2004]

COLITO T. PAJUYO, *petitioner, vs.* **COURT OF APPEALS and EDDIE GUEVARRA,** *respondents*.

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[42] *People v. Pagsanjan*, 394 SCRA 414, 432, December 27, 2002.

SYNOPSIS

Petitioner Colito T. Pajuyo paid ₱400 to a certain Pedro Perez for the rights over a 250-square meter lot in Barrio Payatas, Quezon City. Pajuyo then constructed a house made of light materials on the lot. Pajuyo and his family lived in the house. Pajuyo and private respondent Eddie Guevarra executed a *Kasunduan* or agreement. Pajuyo, as owner of the house, allowed Guevarra to live in the house for free provided Guevarra would maintain the cleanliness and orderliness of the house. Guevarra promised that he would voluntarily vacate the premises on Pajuyo's demand. In September 1994, Pajuyo informed Guevarra of his need of the house and demanded that Guevarra vacate the house. Guevarra refused. Pajuyo filed an ejectment case against Guevarra with the Metropolitan Trial Court of Quezon City. The MTC ruled that the subject of the agreement between Pajuyo and Guevarra is the house and not the lot. Pajuyo is the owner of the house, and he allowed Guevarra to use the house only by tolerance. Thus, Guevarra's refusal to vacate the house on Pajuyo's demand made Guevarra's continued possession of the house illegal. On appeal, the RTC upheld the *Kasunduan*, which established the landlord and tenant relationship between Pajuyo and Guevarra. The terms of the *Kasunduan* bound Guevarra to return possession of the house on demand. The RTC declared that in an ejectment case, the only issue for resolution is material or physical possession, not ownership. The Court of Appeals, however, reversed the MTC and RTC rulings. The Court of Appeals declared that Pajuyo and Guevarra are squatters. Pajuyo and Guevarra illegally occupied the contested lot which the government owned. Perez, the person from whom Pajuyo acquired his rights, was also a squatter. Perez had no right or title over the lot because it is public land. The assignment of rights between Perez and Pajuyo, and the *Kasunduan* between Pajuyo and Guevarra, did not have any legal effect. Pajuyo and Guevarra are in *pari delicto* or in equal fault and the court will leave them where they are.

The Supreme Court reversed and set aside the ruling of the Court of Appeals. According to the Court, the question that the courts must resolve in ejectment proceedings is who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. The Court also ruled that the principle of *pari delicto* is not

applicable in case at bar. To shut out relief to squatters on the ground of *pari delicto* would openly invite mayhem and lawlessness. A squatter would oust another squatter from possession of the lot that the latter had illegally occupied, emboldened by the knowledge that the courts would leave them where they are. Nothing would then stand in the way of the ousted squatter from re-claiming his prior possession at all cost. Courts must resolve the issue of possession even if the parties to the ejectment suit are squatters. The determination of priority and superiority of possession is a serious and urgent matter that cannot be left to the squatters to decide. To do so, according to the Court, would make squatters receive better treatment under the law. The law restrains property owners from taking the law into their own hands. However, the principle of *pari delicto* as applied by the Court of Appeals would give squatters free rein to dispossess fellow squatters or violently retake possession of properties usurped from them. Courts should not leave squatters to their own devices in cases involving recovery of possession.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; COURT OF APPEALS HAS POWER TO GRANT AN EXTENSION OF TIME TO FILE A PETITION FOR REVIEW.— The Court of Appeals has the power to grant an extension of time to file a petition for review. In *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*, we declared that the Court of Appeals could grant extension of time in appeals by petition for review. In *Liboro v. Court of Appeals,* we clarified that the prohibition against granting an extension of time applies only in a case where ordinary appeal is perfected by a mere notice of appeal. The prohibition does not apply in a petition for review where the pleading needs verification. A petition for review, unlike an ordinary appeal, requires preparation and research to present a persuasive position. The drafting of the petition for review entails more time and effort than filing a notice of appeal. Hence, the Court of Appeals may allow an extension of time to file a petition for review.

2. ID.; ID.; ID.; MATERIAL DATES TO CONSIDER IN DETERMINING TIMELINESS OF A MOTION FOR EXTENSION TO FILE PETITION FOR REVIEW.— The

material dates to consider in determining the timeliness of the filing of the motion for extension are (1) the date of receipt of the judgment or final order or resolution subject of the petition, and (2) the date of filing of the motion for extension. It is the date of the filing of the motion or pleading, and not the date of execution, that determines the timeliness of the filing of that motion or pleading. Thus, even if the motion for extension bears no date, the date of filing stamped on it is the reckoning point for determining the timeliness of its filing. Guevarra had until 14 December 1996 to file an appeal from the RTC decision. Guevarra filed his motion for extension before this Court on 13 December 1996, the date stamped by this Court's Receiving Clerk on the motion for extension. Clearly, Guevarra filed the motion for extension exactly one day before the lapse of the reglementary period to appeal.

3. **ID.; ID.; ID.; PETITIONER IS ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE COURT.—** Assuming that the Court of Appeals should have dismissed Guevarra's appeal on technical grounds, Pajuyo did not ask the appellate court to deny the motion for extension and dismiss the petition for review at the earliest opportunity. Instead, Pajuyo vigorously discussed the merits of the case. It was only when the Court of Appeals ruled in Guevarra's favor that Pajuyo raised the procedural issues against Guevarra's petition for review. A party who, after voluntarily submitting a dispute for resolution, receives an adverse decision on the merits, is estopped from attacking the jurisdiction of the court. Estoppel sets in not because the judgment of the court is a valid and conclusive adjudication, but because the practice of attacking the court's jurisdiction after voluntarily submitting to it is against public policy.

4. **ID.; ID.; FORUM SHOPPING; DEFECT IN THE VERIFICATION OF PLEADING WAS MERELY AN AFTER THOUGHT AND WAS RAISED TOO LATE IN THE PROCEEDINGS.—** A party's failure to sign the certification against forum shopping is different from the party's failure to sign personally the verification. The certificate of non-forum shopping must be signed by the party, and not by counsel. The certification of counsel renders the petition defective. On the other hand, the requirement on verification of a pleading is a formal and not a jurisdictional requisite. It is intended simply

to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification. We agree with the Court of Appeals that the issue on the certificate against forum shopping was merely an afterthought. Pajuyo did not call the Court of Appeals' attention to this defect at the early stage of the proceedings. Pajuyo raised this procedural issue too late in the proceedings.

5. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; ONLY ISSUE FOR ADJUDICATION IS THE PHYSICAL OR MATERIAL POSSESSION OVER REAL PROPERTY.— Settled is the rule that the defendant's claim of ownership of the disputed property will not divest the inferior court of its jurisdiction over the ejectment case. Even if the pleadings raise the issue of ownership, the court may pass on such issue to determine only the question of possession, especially if the ownership is inseparably linked with the possession. The adjudication on the issue of ownership is only provisional and will not bar an action between the same parties involving title to the land. This doctrine is a necessary consequence of the nature of the two summary actions of ejectment, forcible entry and unlawful detainer, where the only issue for adjudication is the physical or material possession over the real property.

6. ID.; ID.; ID.; ABSENCE OF TITLE OVER DISPUTED PROPERTY WILL NOT DIVEST THE COURTS OF JURISDICTION TO RESOLVE ISSUE OF POSSESSION.— Ownership or the right to possess arising from ownership is not at issue in an action for recovery of possession. The parties cannot present evidence to prove ownership or right to legal possession except to prove the nature of the possession when necessary to resolve the issue of physical possession. The same is true when the defendant asserts the absence of title over the property. The absence of title over the contested lot is not a ground for the courts to withhold relief from the parties in an ejectment case. The only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical possession of the premises, that is, to the possession *de facto*

and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.

7. ID.; ID.; ID.; COURTS MUST ABDICATE THEIR JURISDICTION TO RESOLVE THE ISSUE OF PHYSICAL POSSESSION BECAUSE OF THE PUBLIC NEED TO PRESERVE THE BASIC POLICY BEHIND THE SUMMARY ACTIONS OF FORCIBLE ENTRY AND UNLAWFUL DETAINER.— Courts must not abdicate their jurisdiction to resolve the issue of physical possession because of the public need to preserve the basic policy behind the summary actions of forcible entry and unlawful detainer. The underlying philosophy behind ejectment suits is to prevent breach of the peace and criminal disorder and to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his. The party deprived of possession must not take the law into his own hands. Ejectment proceedings are summary in nature so the authorities can settle speedily actions to recover possession because of the overriding need to quell social disturbances.

8. ID.; ID.; ID.; PRINCIPLE OF *PARI DELICTO*; NOT APPLICABLE IN EJECTMENT CASES.— The application of the principle of *pari delicto* to a case of ejectment between squatters is fraught with danger. To shut out relief to squatters on the ground of *pari delicto* would openly invite mayhem and lawlessness. A squatter would oust another squatter from possession of the lot that the latter had illegally occupied, emboldened by the knowledge that the courts would leave them

where they are. Nothing would then stand in the way of the ousted squatter from re-claiming his prior possession at all cost. Petty warfare over possession of properties is precisely what ejectment cases or actions for recovery of possession seek to prevent. Even the owner who has title over the disputed property cannot take the law into his own hands to regain possession of his property. The owner must go to court. Courts must resolve the issue of possession even if the parties to the ejectment suit are squatters. The determination of priority and superiority of possession is a serious and urgent matter that cannot be left to the squatters to decide. To do so would make squatters receive better treatment under the law. The law restrains property owners from taking the law into their own hands. However, the principle of *pari delicto* as applied by the Court of Appeals would give squatters free rein to dispossess fellow squatters or violently retake possession of properties usurped from them. Courts should not leave squatters to their own devices in cases involving recovery of possession.

9. ID.; ID.; ID.; PETITIONER IS ENTITLED TO POSSESSION OF THE DISPUTED PROPERTY.— Based on the *Kasunduan,* Pajuyo permitted Guevarra to reside in the house and lot free of rent, but Guevarra was under obligation to maintain the premises in good condition. Guevarra promised to vacate the premises on Pajuyo's demand but Guevarra broke his promise and refused to heed Pajuyo's demand to vacate. These facts make out a case for unlawful detainer. Unlawful detainer involves the withholding by a person from another of the possession of real property to which the latter is entitled after the expiration or termination of the former's right to hold possession *under a contract, express or implied.* Where the plaintiff allows the defendant to use his property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he will vacate on demand, failing which, an action for unlawful detainer will lie. The defendant's refusal to comply with the demand makes his continued possession of the property unlawful. The status of the defendant in such a case is similar to that of a lessee or tenant whose term of lease has expired but whose occupancy continues by tolerance of the owner. This principle should apply with greater force in cases where a contract embodies the permission or tolerance to use the property. The *Kasunduan* expressly articulated Pajuyo's

forbearance. Pajuyo did not require Guevarra to pay any rent but only to maintain the house and lot in good condition. Guevarra expressly vowed in the *Kasunduan* that he would vacate the property on demand. Guevarra's refusal to comply with Pajuyo's demand to vacate made Guevarra's continued possession of the property unlawful.

10. ID.; ID.; ID.; NOT A CONTRACT OF *COMMODATUM;* CASE AT BAR.— We do not subscribe to the Court of Appeals' theory that the *Kasunduan* is one of *commodatum*. In a contract of *commodatum,* one of the parties delivers to another something not consumable so that the latter may use the same for a certain time and return it. An essential feature of *commodatum* is that it is gratuitous. Another feature of *commodatum* is that the use of the thing belonging to another is for a certain period. Thus, the bailor cannot demand the return of the thing loaned until after expiration of the period stipulated, or after accomplishment of the use for which the *commodatum* is constituted. If the bailor should have urgent need of the thing, he may demand its return for temporary use. If the use of the thing is merely tolerated by the bailor, he can demand the return of the thing at will, in which case the contractual relation is called a *precarium*. Under the Civil Code, *precarium* is a kind of *commodatum*. The *Kasunduan* reveals that the accommodation accorded by Pajuyo to Guevarra was not essentially gratuitous. While the *Kasunduan* did not require Guevarra to pay rent, it obligated him to maintain the property in good condition. The imposition of this obligation makes the *Kasunduan* a contract different from a *commodatum.* The effects of the *Kasunduan* are also different from that of a *commodatum*. Case law on ejectment has treated relationship based on tolerance as one that is akin to a landlord-tenant relationship where the withdrawal of permission would result in the termination of the lease. The tenant's withholding of the property would then be unlawful. This is settled jurisprudence.

11. ID.; ID.; ID.; PRIOR POSSESSION IS NOT ALWAYS A CONDITION *SINE QUA NON*.— Prior possession is not always a condition *sine qua non* in ejectment. This is one of the distinctions between forcible entry and unlawful detainer. In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat,

strategy or stealth. Thus, he must allege and prove prior possession. But in unlawful detainer, the defendant unlawfully withholds possession after the expiration or termination of his right to possess under any contract, express or implied. In such a case, prior physical possession is not required. Pajuyo's withdrawal of his permission to Guevarra terminated the *Kasunduan*. Guevarra's transient right to possess the property ended as well. Moreover, it was Pajuyo who was in actual possession of the property because Guevarra had to seek Pajuyo's permission to temporarily hold the property and Guevarra had to follow the conditions set by Pajuyo in the *Kasunduan*. Control over the property still rested with Pajuyo and this is evidence of actual possession. Pajuyo's absence did not affect his actual possession of the disputed property. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession. One may acquire possession not only by physical occupation, but also by the fact that a thing is subject to the action of one's will. Actual or physical occupation is not always necessary.

12. ID.; ID.; ID.; RULING ON POSSESSION DOES NOT BIND TITLE TO THE LAND IN DISPUTE.— We are aware of our pronouncement in cases where we declared that "squatters and intruders who clandestinely enter into titled government property cannot, by such act, acquire any legal right to said property." We made this declaration because the person who had title or who had the right to legal possession over the disputed property was a party in the ejectment suit and that party instituted the case against squatters or usurpers. In this case, the owner of the land, which is the government, is not a party to the ejectment case. This case is between squatters. Had the government participated in this case, the courts could have evicted the contending squatters, Pajuyo and Guevarra. Since the party that has title or a better right over the property is not impleaded in this case, we cannot evict on our own the parties. Such a ruling would discourage squatters from seeking the aid of the courts in settling the issue of physical possession. Stripping both the plaintiff and the defendant of possession just because they are squatters would have the same dangerous implications as the application of the principle of *pari delicto*. Squatters would then rather settle the issue of physical

possession among themselves than seek relief from the courts if the plaintiff and defendant in the ejectment case would both stand to lose possession of the disputed property. This would subvert the policy underlying actions for recovery of possession.

13. ID.; ID.; ID.; COURT'S RULING CANNOT BE INTERPRETED TO CONDONE SQUATTING NOR DOES IT DIMINISH THE POWER OF GOVERNMENT AGENCIES, INCLUDING LOCAL GOVERNMENTS, TO CONDEMN, ABATE, REMOVE OR DEMOLISH ILLEGAL UNAUTHORIZED STRUCTURES IN ACCORDANCE WITH EXISTING LAWS.— Since Pajuyo has in his favor priority in time in holding the property, he is entitled to remain on the property until a person who has title or a better right lawfully ejects him. Guevarra is certainly not that person. The ruling in this case, however, does not preclude Pajuyo and Guevarra from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law. In no way should our ruling in this case be interpreted to condone squatting. The ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership. The owner can still go to court to recover lawfully the property from the person who holds the property without legal title. Our ruling here does not diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal or unauthorized structures in accordance with existing laws.

APPEARANCES OF COUNSEL

D.P. Burgos, Jr. for petitioner.
Jason Christopher Rayos Co for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before us is a petition for review[1] of the 21 June 2000 Decision[2] and 14 December 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 43129. The Court of Appeals set aside the 11 November 1996 decision[3] of the Regional Trial Court of Quezon City, Branch 81,[4] affirming the 15 December 1995 decision[5] of the Metropolitan Trial Court of Quezon City, Branch 31.[6]

The Antecedents

In June 1979, petitioner Colito T. Pajuyo ("Pajuyo") paid ₱400 to a certain Pedro Perez for the rights over a 250-square meter lot in Barrio Payatas, Quezon City. Pajuyo then constructed a house made of light materials on the lot. Pajuyo and his family lived in the house from 1979 to 7 December 1985.

On 8 December 1985, Pajuyo and private respondent Eddie Guevarra ("Guevarra") executed a *Kasunduan* or agreement. Pajuyo, as owner of the house, allowed Guevarra to live in the house for free provided Guevarra would maintain the cleanliness and orderliness of the house. Guevarra promised that he would voluntarily vacate the premises on Pajuyo's demand.

In September 1994, Pajuyo informed Guevarra of his need of the house and demanded that Guevarra vacate the house. Guevarra refused.

Pajuyo filed an ejectment case against Guevarra with the Metropolitan Trial Court of Quezon City, Branch 31 ("MTC").

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[1] Under Rule 45 of the 1997 Rules of Court.

[2] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Quirino D. Abad Santos, Jr. and Romeo A. Brawner, concurring.

[3] Penned by Judge Wenceslao I. Agnir.

[4] Docketed as Civil Case No. Q-96-26943.

[5] Penned by Judge Mariano M. Singzon, Jr.

[6] Docketed as Civil Case No. 12432.

In his Answer, Guevarra claimed that Pajuyo had no valid title or right of possession over the lot where the house stands because the lot is within the 150 hectares set aside by Proclamation No. 137 for socialized housing. Guevarra pointed out that from December 1985 to September 1994, Pajuyo did not show up or communicate with him. Guevarra insisted that neither he nor Pajuyo has valid title to the lot.

On 15 December 1995, the MTC rendered its decision in favor of Pajuyo. The dispositive portion of the MTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff and against defendant, ordering the latter to:
>
> A) vacate the house and lot occupied by the defendant or any other person or persons claiming any right under him;
>
> B) pay unto plaintiff the sum of THREE HUNDRED PESOS (₱300.00) monthly as reasonable compensation for the use of the premises starting from the last demand;
>
> C) pay plaintiff the sum of ₱3,000.00 as and by way of attorney's fees; and
>
> D) pay the cost of suit.
>
> SO ORDERED.[7]

Aggrieved, Guevarra appealed to the Regional Trial Court of Quezon City, Branch 81 ("RTC").

On 11 November 1996, the RTC affirmed the MTC decision. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the Court finds no reversible error in the decision appealed from, being in accord with the law and evidence presented, and the same is hereby affirmed *en toto*.
>
> SO ORDERED.[8]

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[7] *Rollo*, p. 41.

[8] *Ibid*., p. 49.

Guevarra received the RTC decision on 29 November 1996. Guevarra had only until 14 December 1996 to file his appeal with the Court of Appeals. Instead of filing his appeal with the Court of Appeals, Guevarra filed with the Supreme Court a "Motion for Extension of Time to File Appeal by *Certiorari* Based on Rule 42" ("motion for extension"). Guevarra theorized that his appeal raised pure questions of law. The Receiving Clerk of the Supreme Court received the motion for extension on 13 December 1996 or one day before the right to appeal expired.

On 3 January 1997, Guevarra filed his petition for review with the Supreme Court.

On 8 January 1997, the First Division of the Supreme Court issued a Resolution[9] referring the motion for extension to the Court of Appeals which has concurrent jurisdiction over the case. The case presented no special and important matter for the Supreme Court to take cognizance of at the first instance.

On 28 January 1997, the Thirteenth Division of the Court of Appeals issued a Resolution[10] granting the motion for extension conditioned on the timeliness of the filing of the motion.

On 27 February 1997, the Court of Appeals ordered Pajuyo to comment on Guevarra's petition for review. On 11 April 1997, Pajuyo filed his Comment.

On 21 June 2000, the Court of Appeals issued its decision reversing the RTC decision. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the assailed Decision of the court *a quo* in Civil Case No. Q-96-26943 is *REVERSED* and *SET ASIDE*; and it is hereby declared that the ejectment case filed against defendant-appellant is without factual and legal basis.
>
> SO ORDERED.[11]

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[9] *Ibid*., p. 221.

[10] *Ibid*., p. 224.

[11] *Ibid*., p. 60.

Pajuyo filed a motion for reconsideration of the decision. Pajuyo pointed out that the Court of Appeals should have dismissed outright Guevarra's petition for review because it was filed out of time. Moreover, it was Guevarra's counsel and not Guevarra who signed the certification against forum-shopping.

On 14 December 2000, the Court of Appeals issued a resolution denying Pajuyo's motion for reconsideration. The dispositive portion of the resolution reads:

> WHEREFORE, for lack of merit, the motion for reconsideration is hereby *DENIED*. No costs.
>
> SO ORDERED.[12]

The Ruling of the MTC

The MTC ruled that the subject of the agreement between Pajuyo and Guevarra is the house and not the lot. Pajuyo is the owner of the house, and he allowed Guevarra to use the house only by tolerance. Thus, Guevarra's refusal to vacate the house on Pajuyo's demand made Guevarra's continued possession of the house illegal.

The Ruling of the RTC

The RTC upheld the *Kasunduan*, which established the landlord and tenant relationship between Pajuyo and Guevarra. The terms of the *Kasunduan* bound Guevarra to return possession of the house on demand.

The RTC rejected Guevarra's claim of a better right under Proclamation No. 137, the Revised National Government Center Housing Project Code of Policies and other pertinent laws. In an ejectment suit, the RTC has no power to decide Guevarra's rights under these laws. The RTC declared that in an ejectment case, the only issue for resolution is material or physical possession, not ownership.

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[12] *Ibid*., p. 73.

The Ruling of the Court of Appeals

The Court of Appeals declared that Pajuyo and Guevarra are squatters. Pajuyo and Guevarra illegally occupied the contested lot which the government owned.

Perez, the person from whom Pajuyo acquired his rights, was also a squatter. Perez had no right or title over the lot because it is public land. The assignment of rights between Perez and Pajuyo, and the *Kasunduan* between Pajuyo and Guevarra, did not have any legal effect. Pajuyo and Guevarra are in *pari delicto* or in equal fault. The court will leave them where they are.

The Court of Appeals reversed the MTC and RTC rulings, which held that the *Kasunduan* between Pajuyo and Guevarra created a legal tie akin to that of a landlord and tenant relationship. The Court of Appeals ruled that the *Kasunduan* is not a lease contract but a *commodatum* because the agreement is not for a price certain.

Since Pajuyo admitted that he resurfaced only in 1994 to claim the property, the appellate court held that Guevarra has a better right over the property under Proclamation No. 137. President Corazon C. Aquino ("President Aquino") issued Proclamation No. 137 on 7 September 1987. At that time, Guevarra was in physical possession of the property. Under Article VI of the Code of Policies Beneficiary Selection and Disposition of Homelots and Structures in the National Housing Project ("the Code"), the actual occupant or caretaker of the lot shall have first priority as beneficiary of the project. The Court of Appeals concluded that Guevarra is first in the hierarchy of priority.

In denying Pajuyo's motion for reconsideration, the appellate court debunked Pajuyo's claim that Guevarra filed his motion for extension beyond the period to appeal.

The Court of Appeals pointed out that Guevarra's motion for extension filed before the Supreme Court was stamped "13

[13] *Rollo*, p. 134.

December 1996 at 4:09 PM" by the Supreme Court's Receiving Clerk. The Court of Appeals concluded that the motion for extension bore a date, contrary to Pajuyo's claim that the motion for extension was undated. Guevarra filed the motion for extension on time on 13 December 1996 since he filed the motion one day before the expiration of the reglementary period on 14 December 1996. Thus, the motion for extension properly complied with the condition imposed by the Court of Appeals in its 28 January 1997 Resolution. The Court of Appeals explained that the thirty-day extension to file the petition for review was deemed granted because of such compliance.

The Court of Appeals rejected Pajuyo's argument that the appellate court should have dismissed the petition for review because it was Guevarra's counsel and not Guevarra who signed the certification against forum-shopping. The Court of Appeals pointed out that Pajuyo did not raise this issue in his Comment. The Court of Appeals held that Pajuyo could not now seek the dismissal of the case after he had extensively argued on the merits of the case. This technicality, the appellate court opined, was clearly an afterthought.

The Issues

Pajuyo raises the following issues for resolution:

WHETHER THE COURT OF APPEALS ERRED OR ABUSED ITS AUTHORITY AND DISCRETION TANTAMOUNT TO LACK OF JURISDICTION:

1) in GRANTING, instead of denying, Private Respondent's Motion for an Extension of thirty days to file petition for review at the time when there was no more period to extend as the decision of the Regional Trial Court had already become final and executory.

2) in giving due course, instead of dismissing, private respondent's Petition for Review even though the certification against forum-shopping was signed only by counsel instead of by petitioner himself.

3) in ruling that the *Kasunduan* voluntarily entered into by the parties was in fact a *commodatum*, instead of a Contract

of Lease as found by the Metropolitan Trial Court and in holding that "the ejectment case filed against defendant-appellant is without legal and factual basis."

4) in reversing and setting aside the Decision of the Regional Trial Court in Civil Case No. Q-96-26943 and in holding that the parties are in *pari delicto* being both squatters, therefore, illegal occupants of the contested parcel of land.

5) in deciding the unlawful detainer case based on the so-called Code of Policies of the National Government Center Housing Project instead of deciding the same under the *Kasunduan* voluntarily executed by the parties, the terms and conditions of which are the laws between themselves.[13]

The Ruling of the Court

The procedural issues Pajuyo is raising are baseless. However, we find merit in the substantive issues Pajuyo is submitting for resolution.

Procedural Issues

Pajuyo insists that the Court of Appeals should have dismissed outright Guevarra's petition for review because the RTC decision had already become final and executory when the appellate court acted on Guevarra's motion for extension to file the petition. Pajuyo points out that Guevarra had only one day before the expiry of his period to appeal the RTC decision. Instead of filing the petition for review with the Court of Appeals, Guevarra filed with this Court an undated motion for extension of 30 days to file a petition for review. This Court merely referred the motion to the Court of Appeals. Pajuyo believes that the filing of the motion for extension with this Court did not toll the running of the period to perfect the appeal. Hence, when the Court of Appeals received the motion, the period to appeal had already expired.

We are not persuaded.

Decisions of the regional trial courts in the exercise of their appellate jurisdiction are appealable to the Court of Appeals by petition for review in cases involving questions of fact or mixed

questions of fact and law.[14] Decisions of the regional trial courts involving pure questions of law are appealable directly to this Court by petition for review.[15] These modes of appeal are now embodied in Section 2, Rule 41 of the 1997 Rules of Civil Procedure.

Guevarra believed that his appeal of the RTC decision involved only questions of law. Guevarra thus filed his motion for extension to file petition for review before this Court on 14 December 1996. On 3 January 1997, Guevarra then filed his petition for review with this Court. A perusal of Guevarra's petition for review gives the impression that the issues he raised were pure questions of law. There is a question of law when the doubt or difference is on what the law is on a certain state of facts.[16] There is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged.[17]

In his petition for review before this Court, Guevarra no longer disputed the facts. Guevarra's petition for review raised these questions: (1) Do ejectment cases pertain only to possession of a structure, and not the lot on which the structure stands? (2) Does a suit by a squatter against a fellow squatter constitute a valid case for ejectment? (3) Should a Presidential Proclamation governing the lot on which a squatter's structure stands be considered in an ejectment suit filed by the owner of the structure?

These questions call for the evaluation of the rights of the parties under the law on ejectment and the Presidential Proclamation. At first glance, the questions Guevarra raised appeared purely legal. However, some factual questions still have to be resolved because they have a bearing on the legal questions raised in the petition for review. These factual matters refer to the metes and bounds of the disputed property and the application of Guevarra as beneficiary of Proclamation No. 137.

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[14] *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, 358 Phil. 245 (1998).

[15] *Ibid*.

[16] *Ibid*.

[17] *Ibid*.

The Court of Appeals has the power to grant an extension of time to file a petition for review. In ***Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court,***[18] we declared that the Court of Appeals could grant extension of time in appeals by petition for review. In ***Liboro v. Court of Appeals,***[19] we clarified that the prohibition against granting an extension of time applies only in a case where ordinary appeal is perfected by a mere notice of appeal. The prohibition does not apply in a petition for review where the pleading needs verification. A petition for review, unlike an ordinary appeal, requires preparation and research to present a persuasive position.[20] The drafting of the petition for review entails more time and effort than filing a notice of appeal.[21] Hence, the Court of Appeals may allow an extension of time to file a petition for review.

In the more recent case of ***Commissioner of Internal Revenue v. Court of Appeals,***[22] we held that ***Liboro's*** clarification of ***Lacsamana*** is consistent with the Revised Internal Rules of the Court of Appeals and Supreme Court Circular No. 1-91. They all allow an extension of time for filing petitions for review with the Court of Appeals. The extension, however, should be limited to only fifteen days save in exceptionally meritorious cases where the Court of Appeals may grant a longer period.

A judgment becomes "final and executory" by operation of law. Finality of judgment becomes a fact on the lapse of the reglementary period to appeal if no appeal is perfected.[23] The RTC decision could not have gained finality because the Court of Appeals granted the 30-day extension to Guevarra.

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[18] 227 Phil. 606 (1986).

[19] G.R. No. 101132, 29 January 1993, 218 SCRA 193.

[20] *Ibid*.

[21] *Ibid*.

[22] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 110003, 9 February 2001, 351 SCRA 436.

[23] *City of Manila v. Court of Appeals*, G.R. No. 100626, 29 November 1991, 204 SCRA 362.

The Court of Appeals did not commit grave abuse of discretion when it approved Guevarra's motion for extension. The Court of Appeals gave due course to the motion for extension because it complied with the condition set by the appellate court in its resolution dated 28 January 1997. The resolution stated that the Court of Appeals would only give due course to the motion for extension if filed on time. The motion for extension met this condition.

The material dates to consider in determining the timeliness of the filing of the motion for extension are (1) the date of receipt of the judgment or final order or resolution subject of the petition, and (2) the date of filing of the motion for extension.[24] It is the date of the filing of the motion or pleading, and not the date of execution, that determines the timeliness of the filing of that motion or pleading. Thus, even if the motion for extension bears no date, the date of filing stamped on it is the reckoning point for determining the timeliness of its filing.

Guevarra had until 14 December 1996 to file an appeal from the RTC decision. Guevarra filed his motion for extension before this Court on 13 December 1996, the date stamped by this Court's Receiving Clerk on the motion for extension. Clearly, Guevarra filed the motion for extension exactly one day before the lapse of the reglementary period to appeal.

Assuming that the Court of Appeals should have dismissed Guevarra's appeal on technical grounds, Pajuyo did not ask the appellate court to deny the motion for extension and dismiss the petition for review at the earliest opportunity. Instead, Pajuyo vigorously discussed the merits of the case. It was only when the Court of Appeals ruled in Guevarra's favor that Pajuyo raised the procedural issues against Guevarra's petition for review.

A party who, after voluntarily submitting a dispute for resolution, receives an adverse decision on the merits, is estopped from attacking the jurisdiction of the court.[25] Estoppel sets in not

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[24] *Castilex Industrial Corporation v. Vasquez, Jr.*, 378 Phil. 1009 (1999).

[25] *Refugia v. Court of Appeals*, 327 Phil. 982 (1996).

because the judgment of the court is a valid and conclusive adjudication, but because the practice of attacking the court's jurisdiction after voluntarily submitting to it is against public policy.[26]

In his Comment before the Court of Appeals, Pajuyo also failed to discuss Guevarra's failure to sign the certification against forum shopping. Instead, Pajuyo harped on Guevarra's counsel signing the verification, claiming that the counsel's verification is insufficient since it is based only on "mere information."

A party's failure to sign the certification against forum shopping is different from the party's failure to sign personally the verification. The certificate of non-forum shopping must be signed by the party, and not by counsel.[27] The certification of counsel renders the petition defective.[28]

On the other hand, the requirement on verification of a pleading is a formal and not a jurisdictional requisite.[29] It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[30] The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.[31]

We agree with the Court of Appeals that the issue on the certificate against forum shopping was merely an afterthought. Pajuyo did not call the Court of Appeals' attention to this defect at the early stage of the proceedings. Pajuyo raised this procedural issue too late in the proceedings.

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[26] *Ibid*.

[27] *Far Eastern Shipping Company v. Court of Appeals*, 357 Phil. 703 (1998).

[28] *Ibid*.

[29] *Buenaventura v. Uy*, G.R. No. L-28156, 31 March 1987, 149 SCRA 220.

[30] *Ibid*.

[31] FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM*, VOL. I, SIXTH REV. ED., 143.

Absence of Title over the Disputed Property will not Divest the Courts of Jurisdiction to Resolve the Issue of Possession

Settled is the rule that the defendant's claim of ownership of the disputed property will not divest the inferior court of its jurisdiction over the ejectment case.[32] Even if the pleadings raise the issue of ownership, the court may pass on such issue to determine only the question of possession, especially if the ownership is inseparably linked with the possession.[33] The adjudication on the issue of ownership is only provisional and will not bar an action between the same parties involving title to the land.[34] This doctrine is a necessary consequence of the nature of the two summary actions of ejectment, forcible entry and unlawful detainer, where the only issue for adjudication is the physical or material possession over the real property.[35]

In this case, what Guevarra raised before the courts was that he and Pajuyo are not the owners of the contested property and that they are mere squatters. Will the defense that the parties to the ejectment case are not the owners of the disputed lot allow the courts to renounce their jurisdiction over the case? The Court of Appeals believed so and held that it would just leave the parties where they are since they are in *pari delicto*.

We do not agree with the Court of Appeals.

Ownership or the right to possess arising from ownership is not at issue in an action for recovery of possession. The parties cannot present evidence to prove ownership or right to legal possession except to prove the nature of the possession when necessary to resolve the issue of physical possession.[36] The same is true when the defendant asserts the absence of title

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[32] *Dizon v. Court of Appeals*, 332 Phil. 429 (1996).

[33] *Ibid*.

[34] *De Luna v. Court of Appeals*, G.R. No. 94490, 6 August 1992, 212 SCRA 276.

[35] *Ibid*.

[36] *Pitargue v. Sorilla*, 92 Phil. 5 (1952); *Dizon v. Court of Appeals, supra* note 32; Section 16, Rule 70 of the 1997 Rules of Court.

over the property. The absence of title over the contested lot is not a ground for the courts to withhold relief from the parties in an ejectment case.

The only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*.[37] It does not even matter if a party's title to the property is questionable,[38] or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency.[39] Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror.[40] Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, a party who can prove prior possession can recover such possession even against the owner himself.[41] Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him.[42] To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.

In ***Pitargue v. Sorilla***,[43] the government owned the land in dispute. The government did not authorize either the plaintiff or the defendant in the case of forcible entry case to occupy

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[37] *Ibid*.; *Fige v. Court of Appeals*, G.R. No. 107951, 30 June 1994, 233 SCRA 586; *Oblea v. Court of Appeals*, 313 Phil. 804 (1995).

[38] *Dizon v. Court of Appeals, supra* note 32.

[39] *Supra* note 36.

[40] *Drilon v. Gaurana*, G.R. No. L-35482, 30 April 1987, 149 SCRA 342.

[41] *Rubio v. The Hon. Municipal Trial Court in Cities*, 322 Phil. 179 (1996).

[42] *Ibid*.

[43] 92 Phil. 5 (1952).

the land. The plaintiff had prior possession and had already introduced improvements on the public land. The plaintiff had a pending application for the land with the Bureau of Lands when the defendant ousted him from possession. The plaintiff filed the action of forcible entry against the defendant. The government was not a party in the case of forcible entry.

The defendant questioned the jurisdiction of the courts to settle the issue of possession because while the application of the plaintiff was still pending, title remained with the government, and the Bureau of Public Lands had jurisdiction over the case. We disagreed with the defendant. We ruled that courts have jurisdiction to entertain ejectment suits even before the resolution of the application. The plaintiff, by priority of his application and of his entry, acquired prior physical possession over the public land applied for as against other private claimants. That prior physical possession enjoys legal protection against other private claimants because only a court can take away such physical possession in an ejectment case.

While the Court did not brand the plaintiff and the defendant in ***Pitargue***[44] as squatters, strictly speaking, their entry into the disputed land was illegal. Both the plaintiff and defendant entered the public land without the owner's permission. Title to the land remained with the government because it had not awarded to anyone ownership of the contested public land. Both the plaintiff and the defendant were in effect squatting on government property. Yet, we upheld the courts' jurisdiction to resolve the issue of possession even if the plaintiff and the defendant in the ejectment case did not have any title over the contested land.

Courts must not abdicate their jurisdiction to resolve the issue of physical possession because of the public need to preserve the basic policy behind the summary actions of forcible entry and unlawful detainer. The underlying philosophy behind ejectment suits is to prevent breach of the peace and criminal disorder and to compel the party out of possession to respect

[44] *Ibid*.

and resort to the law alone to obtain what he claims is his.[45] The party deprived of possession must not take the law into his own hands.[46] Ejectment proceedings are summary in nature so the authorities can settle speedily actions to recover possession because of the overriding need to quell social disturbances.[47]

We further explained in ***Pitargue*** the greater interest that is at stake in actions for recovery of possession. We made the following pronouncements in ***Pitargue***:

The question that is before this Court is: Are courts without jurisdiction to take cognizance of possessory actions involving these public lands before final award is made by the Lands Department, and before title is given any of the conflicting claimants? It is one of utmost importance, as there are public lands everywhere and there are thousands of settlers, especially in newly opened regions. It also involves a matter of policy, as it requires the determination of the respective authorities and functions of two coordinate branches of the Government in connection with public land conflicts.

Our problem is made simple by the fact that under the Civil Code, either in the old, which was in force in this country before the American occupation, or in the new, we have a possessory action, the aim and purpose of which is the recovery of the physical possession of real property, irrespective of the question as to who has the title thereto. Under the Spanish Civil Code we had the *accion interdictal*, a summary proceeding which could be brought within one year from dispossession (*Roman Catholic Bishop of Cebu vs. Mangaron*, 6 Phil. 286, 291); and as early as October 1, 1901, upon the enactment of the Code of Civil Procedure (Act No. 190 of the Philippine Commission) we implanted the common law action of forcible entry (Section 80 of Act No. 190), the object of which has been stated by this Court to be ***"to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves***

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[45] *Ibid.; Reynoso v. Court of Appeals*, G.R. No. 49344, 23 February 1989, 170 SCRA 546; *Aguilon v. Bohol*, G.R. No. L-27169, 20 October 1977, 79 SCRA 482.

[46] *Ibid*.

[47] *Ibid*.

entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the court to assert their claims." (*Supia and Batioco vs. Quintero and Ayala*, 59 Phil. 312, 314.) So before the enactment of the first Public Land Act (Act No. 926) the action of forcible entry was already available in the courts of the country. So the question to be resolved is, Did the Legislature intend, when it vested the power and authority to alienate and dispose of the public lands in the Lands Department, to exclude the courts from entertaining the possessory action of forcible entry between rival claimants or occupants of any land before award thereof to any of the parties? Did Congress intend that the lands applied for, or all public lands for that matter, be removed from the jurisdiction of the judicial Branch of the Government, so that any troubles arising therefrom, or any breaches of the peace or disorders caused by rival claimants, could be inquired into only by the Lands Department to the exclusion of the courts? The answer to this question seems to us evident. The Lands Department does not have the means to police public lands; neither does it have the means to prevent disorders arising therefrom, or contain breaches of the peace among settlers; or to pass promptly upon conflicts of possession. ***Then its power is clearly limited to disposition and alienation, and while it may decide conflicts of possession in order to make proper award, the settlement of conflicts of possession which is recognized in the court herein has another ultimate purpose, i.e., the protection of actual possessors and occupants with a view to the prevention of breaches of the peace. The power to dispose and alienate could not have been intended to include the power to prevent or settle disorders or breaches of the peace among rival settlers or claimants prior to the final award.*** As to this, therefore, the corresponding branches of the Government must continue to exercise power and jurisdiction within the limits of their respective functions. ***The vesting of the Lands Department with authority to administer, dispose, and alienate public lands, therefore, must not be understood as depriving the other branches of the Government of the exercise of the respective functions or powers thereon, such as the authority to stop disorders and quell breaches of the peace by the police, the authority on the part of the courts to take jurisdiction over possessory actions arising therefrom not involving, directly or indirectly, alienation and disposition.***

Our attention has been called to a principle enunciated in American courts to the effect that courts have no jurisdiction to determine the rights of claimants to public lands, and that until the disposition

of the land has passed from the control of the Federal Government, the courts will not interfere with the administration of matters concerning the same. (50 C. J. 1093-1094.) We have no quarrel with this principle. The determination of the respective rights of rival claimants to public lands is different from the determination of who has the actual physical possession or occupation with a view to protecting the same and preventing disorder and breaches of the peace. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, can never be "prejudicial interference" with the disposition or alienation of public lands. ***On the other hand, if courts were deprived of jurisdiction of cases involving conflicts of possession, that threat of judicial action against breaches of the peace committed on public lands would be eliminated, and a state of lawlessness would probably be produced between applicants, occupants or squatters, where force or might, not right or justice, would rule.***

It must be borne in mind that the action that would be used to solve conflicts of possession between rivals or conflicting applicants or claimants would be no other than that of forcible entry. This action, both in England and the United States and in our jurisdiction, is a summary and expeditious remedy whereby one in peaceful and quiet possession may recover the possession of which he has been deprived by a stronger hand, by violence or terror; its ultimate object being to prevent breach of the peace and criminal disorder. (*Supia and Batioco vs. Quintero and Ayala*, 59 Phil. 312, 314.) The basis of the remedy is mere possession as a fact, of physical possession, not a legal possession. (*Mediran vs. Villanueva*, 37 Phil. 752.) The title or right to possession is never in issue in an action of forcible entry; as a matter of fact, evidence thereof is expressly banned, except to prove the nature of the possession. (Second 4, Rule 72, Rules of Court.) With this nature of the action in mind, by no stretch of the imagination can conclusion be arrived at that the use of the remedy in the courts of justice would constitute an interference with the alienation, disposition, and control of public lands. To limit ourselves to the case at bar can it be pretended at all that its result would in any way interfere with the manner of the alienation or disposition of the land contested? On the contrary, it would facilitate adjudication, for the question of priority of possession having been decided in a final manner by the courts, said question need no longer waste the time of the land officers making the adjudication or award. (Emphasis ours)

The Principle of Pari Delicto is not Applicable to Ejectment Cases

The Court of Appeals erroneously applied the principle of *pari delicto* to this case.

Articles 1411 and 1412 of the Civil Code[48] embody the principle of *pari delicto*. We explained the principle of *pari delicto* in these words:

> The rule of *pari delicto* is expressed in the maxims *'ex dolo malo non eritur actio'* and *'in pari delicto potior est conditio defedentis.'* The law will not aid either party to an illegal agreement. It leaves the parties where it finds them.[49]

The application of the *pari delicto* principle is not absolute, as there are exceptions to its application. One of these exceptions is where the application of the *pari delicto* rule would violate well-established public policy.[50]

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[48] Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rule shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised to him. The other who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

[49] *Top-Weld Manufacturing, Inc. v. ECED S.A.,* G.R. No. L-44944, 9 August 1985, 138 SCRA 118.

[50] *Silagan v. Intermediate Appellate Court*, 274 Phil. 182 (1991).

In ***Drilon v. Gaurana***,[51] we reiterated the basic policy behind the summary actions of forcible entry and unlawful detainer. We held that:

> It must be stated that the purpose of an action of forcible entry and detainer is that, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by strong hand, violence or terror. In affording this remedy of restitution the object of the statute is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.[52]

Clearly, the application of the principle of *pari delicto* to a case of ejectment between squatters is fraught with danger. To shut out relief to squatters on the ground of *pari delicto* would openly invite mayhem and lawlessness. A squatter would oust another squatter from possession of the lot that the latter had illegally occupied, emboldened by the knowledge that the courts would leave them where they are. Nothing would then stand in the way of the ousted squatter from re-claiming his prior possession at all cost.

Petty warfare over possession of properties is precisely what ejectment cases or actions for recovery of possession seek to prevent.[53] Even the owner who has title over the disputed property cannot take the law into his own hands to regain possession of his property. The owner must go to court.

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[51] *Supra* note 40.

[52] *Ibid*.

[53] *Dizon v. Concina*, 141 Phil. 589 (1969); *Cine Ligaya v. Labrador*, 66 Phil. 659 (1938).

Courts must resolve the issue of possession even if the parties to the ejectment suit are squatters. The determination of priority and superiority of possession is a serious and urgent matter that cannot be left to the squatters to decide. To do so would make squatters receive better treatment under the law. The law restrains property owners from taking the law into their own hands. However, the principle of *pari delicto* as applied by the Court of Appeals would give squatters free rein to dispossess fellow squatters or violently retake possession of properties usurped from them. Courts should not leave squatters to their own devices in cases involving recovery of possession.

Possession is the only Issue for Resolution in an Ejectment Case

The case for review before the Court of Appeals was a simple case of ejectment. The Court of Appeals refused to rule on the issue of physical possession. Nevertheless, the appellate court held that the pivotal issue in this case is who between Pajuyo and Guevarra has the "priority right as beneficiary of the contested land under Proclamation No. 137."[54] According to the Court of Appeals, Guevarra enjoys preferential right under Proclamation No. 137 because Article VI of the Code declares that the actual occupant or caretaker is the one qualified to apply for socialized housing.

The ruling of the Court of Appeals has no factual and legal basis.

First. Guevarra did not present evidence to show that the contested lot is part of a relocation site under Proclamation No. 137. Proclamation No. 137 laid down the metes and bounds of the land that it declared open for disposition to *bona fide* residents.

The records do not show that the contested lot is within the land specified by Proclamation No. 137. Guevarra had the burden to prove that the disputed lot is within the coverage of Proclamation No. 137. He failed to do so.

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[54] *Rollo*, p. 54.

Second. The Court of Appeals should not have given credence to Guevarra's unsubstantiated claim that he is the beneficiary of Proclamation No. 137. Guevarra merely alleged that in the survey the project administrator conducted, he and not Pajuyo appeared as the actual occupant of the lot.

There is no proof that Guevarra actually availed of the benefits of Proclamation No. 137. Pajuyo allowed Guevarra to occupy the disputed property in 1985. President Aquino signed Proclamation No. 137 into law on 11 March 1986. Pajuyo made his earliest demand for Guevarra to vacate the property in September 1994.

During the time that Guevarra temporarily held the property up to the time that Proclamation No. 137 allegedly segregated the disputed lot, Guevarra never applied as beneficiary of Proclamation No. 137. Even when Guevarra already knew that Pajuyo was reclaiming possession of the property, Guevarra did not take any step to comply with the requirements of Proclamation No. 137.

Third. Even assuming that the disputed lot is within the coverage of Proclamation No. 137 and Guevarra has a pending application over the lot, courts should still assume jurisdiction and resolve the issue of possession. However, the jurisdiction of the courts would be limited to the issue of physical possession only.

In ***Pitargue***,[55] we ruled that courts have jurisdiction over possessory actions involving public land to determine the issue of physical possession. The determination of the respective rights of rival claimants to public land is, however, distinct from the determination of who has the actual physical possession or who has a better right of physical possession.[56] The administrative disposition and alienation of public lands should be threshed out in the proper government agency.[57]

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[55] *Supra* note 43.

[56] *Ibid.; Aguilon v. Bohol, supra* note 45; *Reynoso v. Court of Appeals, supra* note 45.

[57] *Reynoso v. Court of Appeals, supra* note 45.

The Court of Appeals' determination of Pajuyo and Guevarra's rights under Proclamation No. 137 was premature. Pajuyo and Guevarra were at most merely potential beneficiaries of the law. Courts should not preempt the decision of the administrative agency mandated by law to determine the qualifications of applicants for the acquisition of public lands. Instead, courts should expeditiously resolve the issue of physical possession in ejectment cases to prevent disorder and breaches of peace.[58]

Pajuyo is Entitled to Physical Possession of the Disputed Property

Guevarra does not dispute Pajuyo's prior possession of the lot and ownership of the house built on it. Guevarra expressly admitted the existence and due execution of the *Kasunduan*. The *Kasunduan* reads:

Ako, si COL[I]TO PAJUYO, may-ari ng bahay at lote sa Bo. Payatas, Quezon City, ay nagbibigay pahintulot kay G. Eddie Guevarra, na pansamantalang manirahan sa nasabing bahay at lote ng "walang bayad." Kaugnay nito, kailangang panatilihin nila ang kalinisan at kaayusan ng bahay at lote.

Sa sandaling kailangan na namin ang bahay at lote, sila'y kusang aalis ng walang reklamo.

Based on the *Kasunduan*, Pajuyo permitted Guevarra to reside in the house and lot free of rent, but Guevarra was under obligation to maintain the premises in good condition. Guevarra promised to vacate the premises on Pajuyo's demand but Guevarra broke his promise and refused to heed Pajuyo's demand to vacate.

These facts make out a case for unlawful detainer. Unlawful detainer involves the withholding by a person from another of the possession of real property to which the latter is entitled after the expiration or termination of the former's right to hold possession ***under a contract, express or implied***.[59]

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[58] *Aguilon v. Bohol, supra* note 45.

[59] Section 1, Rule 70 of the 1964 Rules of Court.

Where the plaintiff allows the defendant to use his property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he will vacate on demand, failing which, an action for unlawful detainer will lie.[60] The defendant's refusal to comply with the demand makes his continued possession of the property unlawful. [61] The status of the defendant in such a case is similar to that of a lessee or tenant whose term of lease has expired but whose occupancy continues by tolerance of the owner.[62]

This principle should apply with greater force in cases where a contract embodies the permission or tolerance to use the property. The *Kasunduan* expressly articulated Pajuyo's forbearance. Pajuyo did not require Guevarra to pay any rent but only to maintain the house and lot in good condition. Guevarra expressly vowed in the *Kasunduan* that he would vacate the property on demand. Guevarra's refusal to comply with Pajuyo's demand to vacate made Guevarra's continued possession of the property unlawful.

We do not subscribe to the Court of Appeals' theory that the *Kasunduan* is one of *commodatum*.

In a contract of *commodatum*, one of the parties delivers to another something not consumable so that the latter may use the same for a certain time and return it.[63] An essential feature

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[60] *Arcal v. Court of Appeals*, 348 Phil. 813 (1998).

[61] *Ibid*.

[62] *Ibid*.

[63] Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

of *commodatum* is that it is gratuitous. Another feature of *commodatum* is that the use of the thing belonging to another is for a certain period.[64] Thus, the bailor cannot demand the return of the thing loaned until after expiration of the period stipulated, or after accomplishment of the use for which the *commodatum* is constituted.[65] If the bailor should have urgent need of the thing, he may demand its return for temporary use.[66] If the use of the thing is merely tolerated by the bailor, he can demand the return of the thing at will, in which case the contractual relation is called a *precarium*.[67] Under the Civil Code, *precarium* is a kind of *commodatum*.[68]

The *Kasunduan* reveals that the accommodation accorded by Pajuyo to Guevarra was not essentially gratuitous. While the *Kasunduan* did not require Guevarra to pay rent, it obligated him to maintain the property in good condition. The imposition of this obligation makes the *Kasunduan* a contract different from a *commodatum*. The effects of the *Kasunduan* are also different from that of a *commodatum*. Case law on ejectment has treated relationship based on tolerance as one that is akin to a landlord-tenant relationship where the withdrawal of

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[64] *Pascual v. Mina*, 20 Phil. 202 (1911).

[65] Art. 1946. The bailor cannot demand the return of the thing loaned till after the expiration of the period stipulated, or after the accomplishment of the use for which the *commodatum* has been constituted. However, if in the meantime, he should have urgent need of the thing, he may demand its return or temporary use.

In case of temporary use by the bailor, the contract of *commodatum* is suspended while the thing is in the possession of the bailor.

[66] *Ibid*.

[67] Art. 1947. The bailor may demand the thing at will, and the contractual relation is called a *precarium*, in the following cases:

(1) If neither the duration of the contract nor the use to which the thing loaned should be devoted, has been stipulated; or

(2) If the use of the thing is merely tolerated by the owner.

[68] ARTURO M. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. V, 448.

permission would result in the termination of the lease.[69] The tenant's withholding of the property would then be unlawful. This is settled jurisprudence.

Even assuming that the relationship between Pajuyo and Guevarra is one of *commodatum*, Guevarra as bailee would still have the duty to turn over possession of the property to Pajuyo, the bailor. The obligation to deliver or to return the thing received attaches to contracts for safekeeping, or contracts of commission, administration and *commodatum*.[70] These contracts certainly involve the obligation to deliver or return the thing received.[71]

Guevarra turned his back on the *Kasunduan* on the sole ground that like him, Pajuyo is also a squatter. Squatters, Guevarra pointed out, cannot enter into a contract involving the land they illegally occupy. Guevarra insists that the contract is void.

Guevarra should know that there must be honor even between squatters. Guevarra freely entered into the *Kasunduan*. Guevarra cannot now impugn the *Kasunduan* after he had benefited from it. The *Kasunduan* binds Guevarra.

The *Kasunduan* is not void for purposes of determining who between Pajuyo and Guevarra has a right to physical possession of the contested property. The *Kasunduan* is the undeniable evidence of Guevarra's recognition of Pajuyo's better right of physical possession. Guevarra is clearly a possessor in bad faith. The absence of a contract would not yield a different result, as there would still be an implied promise to vacate.

Guevarra contends that there is "a pernicious evil that is sought to be avoided, and that is allowing an absentee squatter who (sic) makes (sic) a profit out of his illegal act."[72] Guevarra

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[69] *Arcal v. Court of Appeals, supra* note 60; *Dakudao v. Consolacion*, 207 Phil. 750 (1983); *Calubayan v. Pascual*, 128 Phil. 160 (1967).

[70] *United States v. Camara*, 28 Phil. 238 (1914).

[71] *Ibid*.

[72] *Rollo*, p. 87.

bases his argument on the preferential right given to the actual occupant or caretaker under Proclamation No. 137 on socialized housing.

We are not convinced.

Pajuyo did not profit from his arrangement with Guevarra because Guevarra stayed in the property without paying any rent. There is also no proof that Pajuyo is a professional squatter who rents out usurped properties to other squatters. Moreover, it is for the proper government agency to decide who between Pajuyo and Guevarra qualifies for socialized housing. The only issue that we are addressing is physical possession.

Prior possession is not always a condition *sine qua non* in ejectment.[73] This is one of the distinctions between forcible entry and unlawful detainer.[74] In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth. Thus, he must allege and prove prior possession.[75] But in unlawful detainer, the defendant unlawfully withholds possession after the expiration or termination of his right to possess under any contract, express or implied. In such a case, prior physical possession is not required.[76]

Pajuyo's withdrawal of his permission to Guevarra terminated the *Kasunduan*. Guevarra's transient right to possess the property ended as well. Moreover, it was Pajuyo who was in actual possession of the property because Guevarra had to seek Pajuyo's permission to temporarily hold the property and Guevarra had to follow the conditions set by Pajuyo in the *Kasunduan*. Control over the property still rested with Pajuyo and this is evidence of actual possession.

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[73] *Benitez v. Court of Appeals*, G.R. No. 104828, 16 January 1997, 266 SCRA 242.

[74] *Ibid*.

[75] *Ibid*.

[76] *Ibid*.

Pajuyo's absence did not affect his actual possession of the disputed property. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession.[77] One may acquire possession not only by physical occupation, but also by the fact that a thing is subject to the action of one's will.[78] Actual or physical occupation is not always necessary.[79]

Ruling on Possession Does not Bind Title to the Land in Dispute

We are aware of our pronouncement in cases where we declared that "squatters and intruders who clandestinely enter into titled government property cannot, by such act, acquire any legal right to said property."[80] We made this declaration because the person who had title or who had the right to legal possession over the disputed property was a party in the ejectment suit and that party instituted the case against squatters or usurpers.

In this case, the owner of the land, which is the government, is not a party to the ejectment case. This case is between squatters. Had the government participated in this case, the courts could have evicted the contending squatters, Pajuyo and Guevarra.

Since the party that has title or a better right over the property is not impleaded in this case, we cannot evict on our own the parties. Such a ruling would discourage squatters from seeking the aid of the courts in settling the issue of physical possession. Stripping both the plaintiff and the defendant of possession just because they are squatters would have the same dangerous implications as the application of the principle of *pari delicto*. Squatters would then rather settle the issue of physical possession among themselves than seek relief from the courts if the plaintiff

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[77] *Dela Rosa v. Carlos*, G.R. No. 147549, 23 October 2003.

[78] *Benitez v. Court of Appeals, supra* note 73.

[79] *Ibid*.

[80] *Caballero v. Court of Appeals*, G.R. No. 59888, 29 January 1993, 218 SCRA 56; *Florendo, Jr. v. Coloma*, G.R. No. L-60544, 19 May 1984, 214 SCRA 268.

and defendant in the ejectment case would both stand to lose possession of the disputed property. This would subvert the policy underlying actions for recovery of possession.

Since Pajuyo has in his favor priority in time in holding the property, he is entitled to remain on the property until a person who has title or a better right lawfully ejects him. Guevarra is certainly not that person. The ruling in this case, however, does not preclude Pajuyo and Guevarra from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law.[81]

In no way should our ruling in this case be interpreted to condone squatting. The ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership.[82] The owner can still go to court to recover lawfully the property from the person who holds the property without legal title. Our ruling here does not diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal or unauthorized structures in accordance with existing laws.

Attorney's Fees and Rentals

The MTC and RTC failed to justify the award of ₱3,000 attorney's fees to Pajuyo. Attorney's fees as part of damages are awarded only in the instances enumerated in Article 2208 of the Civil Code.[83] Thus, the award of attorney's fees is the exception rather than the rule. [84] Attorney's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.[85] We therefore delete the attorney's fees awarded to Pajuyo.

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[81] *Florendo, Jr. v. Coloma, supra* note 80.

[82] *Dizon v. Court of Appeals, supra* note 32; Section 7, Rule 70 of the 1964 Rules of Court.

[83] *Padillo v. Court of Appeals*, 442 Phil. 344 (2001).

[84] *Ibid*.

[85] *Ibid*.

We sustain the ₱300 monthly rentals the MTC and RTC assessed against Guevarra. Guevarra did not dispute this factual finding of the two courts. We find the amount reasonable compensation to Pajuyo. The ₱300 monthly rental is counted from the last demand to vacate, which was on 16 February 1995.

WHEREFORE, we *GRANT* the petition. The Decision dated 21 June 2000 and Resolution dated 14 December 2000 of the Court of Appeals in CA-G.R. SP No. 43129 are *SET ASIDE*. The Decision dated 11 November 1996 of the Regional Trial Court of Quezon City, Branch 81 in Civil Case No. Q-96-26943, affirming the Decision dated 15 December 1995 of the Metropolitan Trial Court of Quezon City, Branch 31 in Civil Case No. 12432, is *REINSTATED* with *MODIFICATION*. The award of attorney's fees is deleted. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), *Panganiban, Ynares-Santiago,* and *Azcuna, JJ.,* concur.

FIRST DIVISION

[G.R. No. 149434. June 3, 2004]

PHILIPPINE APPLIANCE CORPORATION (PHILACOR), *petitioner, vs.* **THE COURT OF APPEALS, THE HONORABLE SECRETARY OF LABOR BIENVENIDO E. LAGUESMA and UNITED PHILACOR WORKERS UNION-NAFLU,** *respondents*.

SYNOPSIS

During the collective bargaining negotiations between petitioner and respondent union in 1999, petitioner offered the amount of four thousand pesos (₱4,000.00) to each

employee as an "early conclusion bonus." Petitioner claims that the bonus was promised as a unilateral incentive for the speeding up of negotiations between the parties and to encourage respondent union to exert their best efforts to conclude a CBA. Upon conclusion of the CBA negotiations, petitioner accordingly gave the early signing bonus. Petitioner and respondent union failed to arrive at an agreement. Respondent union went on strike at the petitioner's plant at Barangay Maunong, Calamba, Laguna and at its washing plant at Parañaque, Metro Manila. The strike lasted for eleven days and resulted in the stoppage of manufacturing operations as well as losses for petitioner. The Labor Secretary assumed jurisdiction over the dispute and ordered the striking workers to return to work within twenty-four hours from notice and directed petitioner to accept back the said employees. The Labor Secretary also ordered the payment of signing bonus in the amount of ₱3,000. Petitioner filed a Partial Motion for Reconsideration argued that the award of the signing bonus was patently erroneous since it was not part of the employees' salaries or benefits or of the collective bargaining agreement. It is not demandable or enforceable since it is in the nature of an incentive. As no CBA was concluded through the mutual efforts of the parties, the purpose for the signing bonus was not served. The Labor Secretary denied the motion. Petitioner filed a Petition for *Certiorari* with the Court of Appeals but was dismissed. Petitioner moved for Reconsideration but the same was denied. Hence, the present petition for review assailing the Labor Secretary's order awarding the signing bonus.

The Supreme Court reversed and set aside the decision of the Court of Appeals affirming the Labor Secretary's award of the signing bonus. According to the Court, two things militate against the grant of the signing bonus: first, the non-fulfillment of the condition for which it was offered, *i.e.*, the speedy and amicable conclusion of the CBA negotiations; and second, the failure of respondent union to prove that the grant of the said bonus is a long established tradition or a "regular practice" on the part of petitioner. The Court emphasized that a signing bonus is justified by and is the consideration paid for the goodwill that existed in the negotiations that culminated in the signing of a CBA. In case at bar, the CBA negotiation between petitioner and respondent union failed notwithstanding the intervention of the National Conciliation and Mediation Board. Respondent

union went on strike for eleven days and blocked the ingress to and egress from petitioner's two work plants. The labor dispute had to be referred to the Secretary of Labor and Employment because neither of the parties was willing to compromise their respective positions regarding the four remaining items which stood unresolved. While the Court did not fault any one party for the failure of the negotiations, it is apparent that there was no more goodwill between the parties and that the CBA was clearly not signed through their mutual efforts alone. Hence, the payment of the signing bonus is no longer justified and to order such payment would be unfair and unreasonable for petitioner.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS COLLECTIVE BARGAINING AGREEMENT; PAYMENT OF SIGNING BONUS NOT JUSTIFIED IN CASE AT BAR.—A signing bonus is justified by and is the consideration paid for the goodwill that existed in the negotiations that culminated in the signing of a CBA. In the case at bar, the CBA negotiation between petitioner and respondent union failed notwithstanding the intervention of the NCMB. Respondent union went on strike for eleven days and blocked the ingress to and egress from petitioner's two work plants. The labor dispute had to be referred to the Secretary of Labor and Employment because neither of the parties was willing to compromise their respective positions regarding the four remaining items which stood unresolved. While we do not fault any one party for the failure of the negotiations, it is apparent that there was no more goodwill between the parties and that the CBA was clearly not signed through their mutual efforts alone. Hence, the payment of the signing bonus is no longer justified and to order such payment would be unfair and unreasonable for petitioner. Furthermore, we have consistently ruled that a bonus is not a demandable and enforceable obligation. True, it may nevertheless be granted on equitable considerations as when the giving of such bonus has been the company's long and regular practice. To be considered a "regular practice," however, the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice

requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof. Respondent does not contest the fact that petitioner initially offered a signing bonus only during the previous CBA negotiation. Previous to that, there is no evidence on record that petitioner ever offered the same or that the parties included a signing bonus among the items to be resolved in the CBA negotiation. Hence, the giving of such bonus cannot be deemed as an established practice considering that the same was given only once, that is, during the 1997 CBA negotiation.

2. ID.; ID.; ID.; ID.; REASONS.— In the case at bar, two things militate against the grant of the signing bonus: *first,* the non-fulfillment of the condition for which it was offered, *i.e*., the speedy and amicable conclusion of the CBA negotiations; and *second*, the failure of respondent union to prove that the grant of the said bonus is a long established tradition or a "regular practice" on the part of petitioner. Petitioner admits, and respondent union does not dispute, that it offered an "early conclusion bonus" or an incentive for a swift finish to the CBA negotiations. The offer was first made during the 1997 CBA negotiations and then again at the start of the 1999 negotiations. The bonus offered is consistent with the very concept of a signing bonus. In the case of *MERALCO v. The Honorable Secretary of Labor,* we stated that the signing bonus is a grant motivated by the goodwill generated when a CBA is successfully negotiated and signed between the employer and the union. In that case, we sustained the argument of the Solicitor General, *viz*: When negotiations for the last two years of the 1992-1997 CBA broke down and the parties sought the assistance of the NCMB, but which failed to reconcile their differences, and when petitioner MERALCO bluntly invoked the jurisdiction of the Secretary of Labor in the resolution of the labor dispute, whatever goodwill existed between petitioner MERALCO and respondent union disappeared.

APPEARANCES OF COUNSEL

Sanidad Abaya Te Viterbo Enriquez & Tan Law Firm for petitioner.

The Solicitor General for public respondents.

Ernesto M. Prias for private respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Before us is an appeal by *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the decision[1] of the Court of Appeals in CA-G.R. SP No. 59011, denying due course to petitioner Philippine Appliance Corporation's partial appeal, as well as the Resolution[2] of the same court, dated August 10, 2001, denying the motion for reconsideration.

Petitioner is a domestic corporation engaged in the business of manufacturing refrigerators, freezers and washing machines. Respondent United Philacor Workers Union-NAFLU is the duly elected collective bargaining representative of the rank-and-file employees of petitioner. During the collective bargaining negotiations between petitioner and respondent union in 1997 (for the last two years of the collective bargaining agreement covering the period of July 1, 1997 to August 31, 1999), petitioner offered the amount of four thousand pesos (₱4,000.00) to each employee as an "early conclusion bonus." Petitioner claims that this bonus was promised as a unilateral incentive for the speeding up of negotiations between the parties and to encourage respondent union to exert their best efforts to conclude a CBA. Upon conclusion of the CBA negotiations, petitioner accordingly gave this early signing bonus.[3]

In view of the expiration of this CBA, respondent union sent notice to petitioner of its desire to negotiate a new CBA. Petitioner and respondent union began their negotiations. On October 22, 1999, after eleven meetings, respondent union expressed dissatisfaction at the outcome of the negotiations and declared a deadlock. A few days later, on October 26, 1999, respondent

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[1] Penned by Justice Portia Aliño-Hormachuelos, as concurred in by Justices Fermin A. Martin and Mercedes Gozo-Dadole.

[2] Penned by Justice Portia Aliño-Hormachuelos, as concurred in by Justices Mercedes Gozo-Dadole and Eliezer Delos Santos.

[3] Petition for Review on *Certiorari*, *Rollo*, pp. 11-17.

union filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB), Region IV in Calamba, Laguna, due to the bargaining deadlock.[4]

A conciliation and mediation conference was held on October 30, 1999 at the NCMB in Imus, Cavite, before Conciliator Jose L. Velasco. The conciliation meetings started with eighteen unresolved items between petitioner and respondent union. At the meeting on November 20, 1999, respondent union accepted petitioner's proposals on fourteen items,[5] leaving the following items unresolved: wages, rice subsidy, signing, and retroactive bonus.[6]

Petitioner and respondent union failed to arrive at an agreement concerning these four remaining items. On January 18, 2000, respondent union went on strike at the petitioner's plant at Barangay Maunong, Calamba, Laguna and at its washing plant at Parañaque, Metro Manila. The strike lasted for eleven days and resulted in the stoppage of manufacturing operations as well as losses for petitioner, which constrained it to file a petition before the Department of Labor and Employment (DOLE). Labor Secretary Bienvenido Laguesma assumed jurisdiction over the dispute and, on January 28, 2000, ordered the striking workers to return to work within twenty-four hours from notice and directed petitioner to accept back the said employees.[7]

On April 14, 2000, Secretary Laguesma issued the following Order:[8]

In view of the foregoing, we fix the wage increases at ₱30 per day for the first year and ₱25 for the second year.

The rice subsidy and retroactive pay base are maintained at their existing levels and rates.

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[4] *Id*.

[5] *Id*.

[6] *Rollo*, p. 28.

[7] *Supra*, note 3.

[8] *Rollo*, pp. 50-53.

Finally, this Office rules in favor of Company's proposal on signing bonus. We believe that a ₱3,000 bonus is fair and reasonable under the circumstances.

WHEREFORE, premises considered, Philippine Appliance Corporation and United Philacor Workers Union-NAFLU are hereby directed to conclude a Collective Bargaining Agreement for the period July 1, 1999 to June 30, 2001. The agreement is to incorporate the disposition set forth above and includes other items already agreed upon in the course of negotiation and conciliation.

SO ORDERED. (Italics supplied)

On April 27, 2000, petitioner filed a Partial Motion for Reconsideration[9] stating that while it accepted the decision of Secretary Laguesma, it took exception to the award of the signing bonus. Petitioner argued that the award of the signing bonus was patently erroneous since it was not part of the employees' salaries or benefits or of the collective bargaining agreement. It is not demandable or enforceable since it is in the nature of an incentive. As no CBA was concluded through the mutual efforts of the parties, the purpose for the signing bonus was not served. On May 22, 2000, Secretary Laguesma issued an Order[10] denying petitioner's motion. He ruled that while the bargaining negotiations might have failed and the signing of the agreement was delayed, this cannot be attributed solely to respondent union. Moreover, the Secretary noted that the signing bonus was granted in the previous CBA.

On June 2, 2000, petitioner filed a Petition for *Certiorari* with the Court of Appeals docketed as CA-G.R. SP No. 59011 which was dismissed. The Labor Secretary's award of the signing bonus was affirmed since petitioner itself offered the same as an incentive to expedite the CBA negotiations. This offer was not withdrawn and was still outstanding when the dispute reached the DOLE. As such, petitioner can no longer adopt a contrary stand and dispute its own offer.

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[9] *Id.*, pp. 84-88.

[10] *Id.*, p. 49.

Petitioner filed a Motion for Reconsideration but the same was denied. Hence this petition for review raising a lone issue, to wit:

THE HONORABLE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RENDERED A DECISION NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT, SPECIFICALLY THE CALTEX DOCTRINE OF 1997.

The petition is meritorious.

Petitioner invokes the doctrine laid down in the case of *Caltex v. Brillantes,*[11] where it was held that the award of the signing bonus by the Secretary of Labor was erroneous. The said case involved similar facts concerning the CBA negotiations between Caltex (Philippines), Inc. and the Caltex Refinery Employees Association (CREA). Upon referral of the dispute to the DOLE, then Labor Secretary Brillantes ruled, *inter alia*:

> Fifth, specifically on the issue of whether the signing bonus is covered under the *"maintenance of existing benefits"* clause, we find that a clarification is indeed imperative. Despite the expressed provision for a signing bonus in the previous CBA, we uphold the principle that the award for a signing bonus should partake the nature of an incentive and premium for peaceful negotiations and amicable resolution of disputes which apparently are not present in the instant case. Thus, we are constrained to rule that the award of signing bonus is not covered by the *"maintenance of existing benefits"* clause.

On appeal to this Court, it was held:

> Although proposed by [CREA], the signing bonus was not accepted by [Caltex Philippines, Inc.]. Besides, a signing bonus is not a benefit which may be demanded under the law. Rather, it is now claimed by petitioner under the principle of "maintenance of existing benefits" of the old CBA. However, as clearly explained by [Caltex], a signing bonus may not be demanded as a matter of right. If it is not agreed upon by the parties or unilaterally offered as an additional incentive by [Caltex], the condition for awarding it must be duly satisfied. In

[11] G.R. No. 123782, 16 September 1997, 279 SCRA 218.

the present case, the condition *sine qua non* for its grant — a non-strike — was not complied with.

In the case at bar, two things militate against the grant of the signing bonus: *first*, the non-fulfillment of the condition for which it was offered, *i.e.,* the speedy and amicable conclusion of the CBA negotiations; and *second*, the failure of respondent union to prove that the grant of the said bonus is a long established tradition or a "regular practice" on the part of petitioner. Petitioner admits, and respondent union does not dispute, that it offered an "early conclusion bonus" or an incentive for a swift finish to the CBA negotiations. The offer was first made during the 1997 CBA negotiations and then again at the start of the 1999 negotiations. The bonus offered is consistent with the very concept of a signing bonus.

In the case of *MERALCO v. The Honorable Secretary of Labor*,[12] we stated that the signing bonus is a grant motivated by the goodwill generated when a CBA is successfully negotiated and signed between the employer and the union. In that case, we sustained the argument of the Solicitor General, *viz*:

> When negotiations for the last two years of the 1992-1997 CBA broke down and the parties sought the assistance of the NCMB, but which failed to reconcile their differences, and when petitioner MERALCO bluntly invoked the jurisdiction of the Secretary of Labor in the resolution of the labor dispute, whatever goodwill existed between petitioner MERALCO and respondent union disappeared. . . .

Verily, a signing bonus is justified by and is the consideration paid for the goodwill that existed in the negotiations that culminated in the signing of a CBA.[13]

In the case at bar, the CBA negotiation between petitioner and respondent union failed notwithstanding the intervention of the NCMB. Respondent union went on strike for eleven days and blocked the ingress to and egress from petitioner's

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[12] G.R. No. 127598, 27 January 1999, 302 SCRA 173.

[13] *Id*.

two work plants. The labor dispute had to be referred to the Secretary of Labor and Employment because neither of the parties was willing to compromise their respective positions regarding the four remaining items which stood unresolved. While we do not fault any one party for the failure of the negotiations, it is apparent that there was no more goodwill between the parties and that the CBA was clearly not signed through their mutual efforts alone. Hence, the payment of the signing bonus is no longer justified and to order such payment would be unfair and unreasonable for petitioner.

Furthermore, we have consistently ruled that a bonus is not a demandable and enforceable obligation.[14] True, it may nevertheless be granted on equitable considerations as when the giving of such bonus has been the company's long and regular practice.[15] To be considered a "regular practice," however, the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate.[16] The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[17] Respondent does not contest the fact that petitioner initially offered a signing bonus only during the previous CBA negotiation. Previous to that, there is no evidence on record that petitioner ever offered the same or that the parties included a signing bonus among the items to be resolved in the CBA negotiation. Hence, the giving of such bonus cannot be deemed as an established practice considering that the same was given only once, that is, during the 1997 CBA negotiation.

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[14] *Producers Bank of the Philippines v. NLRC*, G.R. No. 100701, 28 March 2001, 355 SCRA 489; Philippine National Construction Corporation vs. National Labor Relations Commission, G.R. No. 117240, 2 October 1992, 280 SCRA 109.

[15] *Manila Banking Corporation v. NLRC*, G.R. No. 83588, 27 September 1997, 279 SCRA 602.

[16] *Globe Mackay Cable and Radio Corporation v. NLRC*, G.R. No. L-74156, 163 SCRA 71.

[17] *National Sugar Refineries Corporation v. NLRC*, G.R. No. 101761, 220 SCRA 452.

WHEREFORE, premises considered, the instant petition is *GRANTED*. The decision of the Court of Appeals in CA-G.R. SP No. 59011 affirming the Order of the Secretary of Labor and Employment, directing petitioner Philippine Appliance Corporation to pay each of its employees a signing bonus in the amount of Three Thousand Pesos (₱3,000.00), is hereby *REVERSED and SET ASIDE*. No pronouncement as to costs.

SO ORDERED.

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

Panganiban, J., concurs in the result.

EN BANC

[G.R. No. 150501. June 3, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GERONIMO BOROMEO *y* MARCO,** *appellant*.

SYNOPSIS

Appellant Geronimo Boromeo *y* Marco was convicted of qualified rape by the Regional Trial Court of Lipa City, Batangas, and was sentenced to suffer the supreme penalty of death. On automatic review, appellant pointed to the results of the medical examination on the victim, AAA, showing the absence of hymenal laceration on her genitals. Appellant claimed that the medical report shows that AAA's hymen remained intact. Appellant asserted that the findings are incompatible with AAA's claim that appellant forced his organ into hers, much less, that appellant raped her. Appellant also submitted that the medical findings show no visible signs of physical injury even though AAA was of tender age at the time of the alleged rape.

The Supreme Court affirmed appellant's conviction. According to the Court, proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the *labia* of the *pudendum* of the female organ. In the present case, AAA testified that appellant was able to partially insert his private organ into hers, because of which she felt pain. AAA further testified that appellant failed to fully insert his private organ into hers because her mother arrived. AAA's hymen remained intact because there was no full penetration due to her mother's sudden arrival at the house. The Court also ruled that the absence of external signs of physical violence on AAA does not prove that appellant did not rape her. Proof of physical injury is not an essential element of rape. Article 266-A (d) 40 of the Revised Penal Code also provides that there is rape even in the absence of force, threat or intimidation when the victim is under 12 yrs. old. The Court found appellant guilty of statutory rape. The Information alleged, and the prosecution proved during trial, that AAA was below 12 years old when appellant raped her.

SYLLABUS

1. CRIMINAL LAW; RAPE; PROOF OF HYMENAL LACERATION IS NOT AN ELEMENT OF RAPE; CARNAL KNOWLEDGE OF VICTIM BY APPELLANT PROVEN.— Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the *labia* of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. In *People v. Tampos,* this Court held that rape is committed on the victim's testimony that she felt pain. In the present case, AAA testified that appellant was able "to partially insert his private organ into hers," because of which she felt pain. AAA further testified

that appellant failed to "fully insert his private organ into hers because BBB arrived." AAA's hymen remained intact because there was no full penetration due to BBB's sudden arrival at the house. Rape is committed when the accused has carnal knowledge of the victim by force, threat or intimidation, or when the victim is deprived of reason or is unconscious, or when the victim is under 12 years of age. Based on the records, the prosecution proved that appellant had carnal knowledge of AAA.

2. ID.; ID.; ID.; ABSENCE OF EXTERNAL SIGNS OF PHYSICAL VIOLENCE ON VICTIM DOES NOT DISPROVE RAPE.— That AAA bore no physical evidence of any force against her person is of no moment. Contrary to appellant's contention, the absence of external signs of physical violence on AAA does not prove that he did not rape her. Proof of physical injury is not an essential element of rape. Admittedly, appellant did not use force or violence in raping AAA. AAA merely obeyed when appellant ordered her to enter their bedroom. AAA did not offer any resistance when appellant raped her. This explains the absence of any external sign of injury on AAA's body. Besides, where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape.

3. ID.; ID.; DEATH PENALTY; PROPERLY IMPOSED IN CASE AT BAR.— To justify the imposition of the death penalty, the information must specifically allege the qualifying circumstances of minority and relationship. Moreover, the prosecution must prove during the trial the presence of these qualifying circumstances with the same certainty as the crime itself. In the present case, the Information alleged that appellant is the common-law spouse of BBB who is AAA's mother. The Information also alleged that AAA was only 10 years old when appellant raped her. During the trial, the prosecution proved AAA's minority by presenting in evidence her birth certificate. The document clearly states that AAA was born on 23 January 1990. AAA was thus 9 years and 8 months old when appellant raped her on 19 October 1999, although the Information stated that she is a "10-year old minor." Appellant and BBB categorically admitted in their testimonies that they are live-

in partners. The Information correctly alleged that the appellant is the "common-law spouse of the mother of herein victim." Thus, the trial court did not err in sentencing appellant to death.

4. ID. QUALIFIED RAPE; INDEMNITY.— We have ruled that if rape is qualified by any of the circumstances warranting the death penalty, the civil indemnity for the victim is ₱75,000.00

5. ID.; ID.; MORAL DAMAGES.— We also award the victim moral damages of ₱75,000.00, as the anguish and the pain she endured are evident.

6. ID.; ID.; ID.; EXEMPLARY DAMAGES.— We award the victim exemplary damages of ₱25,000.00 to deter other individuals with aberrant sexual behavior.

7. ID.; ID.; REMEDIAL LAW; EVIDENCE; CREDIBILITY OF TESTIMONY OF VICTIM IN RAPE CASES.— In a rape case, what is most important is the credible testimony at the victim. A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape. The Court may convict the accused based solely on the victim's credible, natural, and convincing testimony.

8. ID.; ID.; ID.; TESTIMONY OF VICTIM, IF CREDIBLE, IS ENOUGH TO SUSTAIN CONVICTION FOR RAPE.— If the victim's testimony meets the test of credibility, that is enough to convict the accused. We entertain no doubt that AAA told the truth. Her testimony was clear, candid and consistent. She positively identified appellant as her rapist. ... Courts give full weight and credence to testimonies of child-victims of rape. It is highly improbable that a ten-year old girl like AAA would impute to the live-in partner of her own mother a crime as serious as rape and undergo the humiliation of a public trial, if what she asserts is not true. Appellant did not ascribe any credible motive to explain why a girl of tender age like AAA would concoct a story accusing him of rape.

9. ID.; ID.; ID.; MINOR INCONSISTENCIES ARE NATURAL WHEN A CHILD-VICTIM NARRATES THE DETAILS OF A HARROWING EXPERIENCE LIKE RAPE.— Appellant assails the inconsistencies in AAA's statements on whether appellant totally undressed her or inserted his penis through

a hold in her shorts. These inconsistencies cannot exculpate appellant. Whether appellant raped AAA after undressing her or inserted his penis through a hole in her shorts is immaterial. Rape could take place under either situation. Besides, it is natural for inconsistencies to creep into the testimony of a rape victim who is of tender age like AAA. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Inconsistencies in a rape victim's testimony do not impair her credibility, expecially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. A rape victim is not expected to mechanically keep in memory details of the rape incident and then when called to testify automatically give an accurate account of the traumatic experience she suffered.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

***PER CURIAM*:**

Before us on automatic review[1] is the Decision[2] dated 15 August 2001 of the Regional Trial Court of Lipa City, Branch 12 ("trial court"), in Criminal Case No. 0759-99. The trial court convicted appellant Geronimo Boromeo *y* Marco ("appellant") of rape and sentenced him to suffer the death penalty.

On 22 October 1999, Second Assistant City Prosecutor Danilo S. Sandoval filed an information charging appellant with rape under Article 266-A, 1(d), and Article 266-B of the Revised Penal Code,[3] committed as follows:

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[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659.

[2] Penned by Judge Vicente F. Landicho.

[3] As amended by Republic Act Nos. 7659 and 8353.

That on or about the 19th day of October, 1999 at about 10:30 o'clock in the evening, at Sitio XXX, Barangay XXX, XXX City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a common law spouse of the mother of herein victim, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a ten (10) year old minor against her will and consent to her damage and prejudice in such amount as may be awarded to her under the provisions of the Civil Code.

Contrary to law.[4]

When arraigned on 10 November 1999, appellant, assisted by counsel, pleaded not guilty.[5] Trial on the merits ensued.

The prosecution presented two witnesses: the victim AAA, and Dr. Aletha Silang, Medico-Legal Officer III of the Lipa City District Hospital.

Born in Lipa City on 23 January 1990, AAA ("AAA") is one of BBB's ("BBB") eight children with CCC ("CCC"). BBB and CCC were lawfully married on 16 November 1980[6] but later separated. Sometime in 1997, BBB started living-in with appellant, a sidewalk vendor. Of her eight children with CCC, only AAA, four-year old DDD, and two-year old EEE lived with BBB and appellant.[7]

AAA testified that on 19 October 1999, around 10:30 o'clock in the evening, she and appellant were in their house in xxx, xxx, xxx City. EEE was also in the house sleeping. BBB was then attending a relative's wake.

AAA testified that appellant ordered her to go inside their room. She obeyed. Appellant then took off his clothes. Without removing AAA's T-shirt and shorts, the only garments she was

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[4] Records, p. 1.

[5] *Ibid*., p. 11.

[6] Exhibit "D", Records, p. 134.

[7] TSN, 12 April 2000, p. 4; TSN, 21 February 2001, pp. 2, 5-7; TSN, 14 March 2001, p. 2; TSN, 2 May 2001, pp. 3 & 16.

wearing, appellant placed himself on top of AAA. AAA stated that appellant forcibly inserted his organ into hers through the hole in her shorts. She felt pain. AAA further stated that appellant had "partially" penetrated her genitalia when BBB suddenly arrived and caught appellant on top of her.

BBB was furious on seeing what appellant was doing to AAA. AAA recalled BBB warning appellant that she would have him jailed. AAA and BBB then left their house and went to the house of FFF ("FFF"), BBB's mother. AAA stated that BBB did not tell FFF about the rape incident. However, when FFF learned of the rape, BBB decided to bring AAA to the Lipa City Police Station to file a complaint against appellant.[8] AAA executed a *Sinumpaang Salaysay* narrating how appellant raped her.[9] She confirmed the contents of her sworn statement during the trial.[10] BBB also executed her sworn statement, as follows:

04.T: *Bakit ka nagsasalaysay?*
S: *Akin pong inihahabla itong aking kinakasama na si GERONIMO BOROMEO, binata, tubo sa Albay, at naninirahan sa Paninsingin, Brgy. Tambo, Lipa City.*

T: *Ano ang dahilan at iyong inihahabla itong si Geronimo Boromeo?*
S: *Dahil po sa mismong nakita na itong si Geronimo ay nakapatong sa ibabaw ng aking anak na noon ay hubo at hubad na ang aking anak na si AAA.*

05.T: *Ilang taon na itong iyong anak na si AAA?*
S: *Sampung (10) taon na po siya.*

06.T: *Kailan at saan naganap ang pangyayaring ito?*
S: *Noon ang oras ay humigit kumulang sa alas 10:30 ng gabi petsa 19 ng Octobre 1999 at ito ay naganap sa loob ng aming bahay sa Sitio xxx, xxx, xxx City.*

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[8] TSN, 12 April 2000, pp. 2, 4-8; TSN, 7 June 2000, pp. 2-3; TSN, 2 May 2001, p. 2.

[9] Exhibit "B", Records, p. 131.

[10] TSN, 12 April 2000, p. 8.

07.T: *Maaari mo bang ipaliwanag ang tunay na pangyayari?*
S: *Galing po ako sa lamayan noon at noong ako ay dumating sa aming bahay, napansin ko na walang ilaw sa loob ng bahay at noong bigla kong itinulak ang pinto ng cuarto at nakita ko itong si Geronimo ay nakapatong sa aking anak at siya ay tumayo na hubo at hubad. Na nakita ko rin na itong aking anak na si AAA ay hubo at hubad din. Na, kaagad na aking pinapagdamit si AAA at kami ay umalis ng aming bahay.*

08.T: *Ano ang ginawa mo o sinabi sa iyong kinakasamang si Geronimo?*
S: *Hindi ko na po siya kinausap dahil lasing po siya at kami ay nagpunta sa bahay ng aking ina. Na kami ay nagsumbong dito sa Lipa City Police Station at matapos na aking masabi ang naganap sa aking anak, kami ay sinamahan ng pulis at itong si Geronimo at nahuli dito sa Bus Stop sa Mataas na Lupa.*

09.T: *Sino pa ang nadatnan mo sa iyong bahay noong makauwi ka galing sa lamayan?*
S: *Ito nga pong aking anak na si AAA at Geronimo at isa ko pang anak na dalawang taong gulang.*

10.T: *Ito bang si Geronimo na sinasabi mong kinakasama mo ay kapisan ninyo sa bahay?*
S: *Opo, magdadalawang taon na po akong kapisan siya sa akin at siyang kinikilalang ama ng aking anak.*

11.T: *Sino ba ang ama ng iyong anak na si AAA?*
S: *CCC po na kasalukuyan na kami ay hiwalay.*

12.T: *Pansamantala ay wala na akong nais pang itanong sa iyo, ikaw ba ay mayroon pang ibig na baguhin o idagdag sa salaysay mong ito?*
S: *Wala na po muna sa ngayon, kung mayroon man ay sa paglilitis na ng kaso.*

13.T: *Laan mo bang lagdaan at panumpaan ang salaysay mong ito?*

S: *Opo*.[11]

On 21 October 1999, Luzviminda brought AAA to the Lipa City District Hospital[12] where Dr. Aletha Silang ("Dr. Silang") examined her. Dr. Silang issued a medico-legal report with the following findings:

This is to certify that I have attended AAA, 10 years of age, female, child, Filipino, of xxx, xxx, xxx City at about 7:55 a.m., October 21, 1999 with the following injuries sustained:

– No external signs of physical injury.
– Genitalia — hymen intact.[13]

For its part, the defense presented two witnesses: appellant himself and BBB.

Appellant denied the accusation against him. Appellant recounted that after selling his merchandise that afternoon of 19 October 1999, his friends invited him to a drinking spree. They started to drink at 6 o'clock in the evening. On reaching home at 8 o'clock that night, appellant immediately went to their bedroom and slept, as he was drunk. He woke up when BBB arrived at 11 o'clock in the evening, without her children whom she left at a nearby store. Earlier that evening, BBB and her children had left the house to attend a relative's wake.

BBB was furious and became shrill because she saw her *Kumareng* Elena sleeping beside appellant. BBB had accommodated Elena in their house because of Elena's marital problems. Realizing BBB was jealous, appellant explained to her that he "happened to sleep beside Elena" because he was drunk when he came home. Appellant asserted that he and Elena were not doing anything wrong. Elena also tried to explain the matter to BBB, but BBB would not listen. As BBB would not

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[11] Exhibit "C", Records, p. 132.

[12] TSN, 2 May 2001, p. 7.

[13] Exhibit "A", Records, p. 130.

stop nagging him, appellant boxed and kicked her. When BBB retaliated, appellant slapped her.

Appellant then left the house and spent the whole evening at the bus stop in Mataas na Lupa, Lipa City. He was about to sell his goods at the bus stop the next day when a police officer arrived and arrested him. The police officer brought appellant to the Lipa City Police Station where the police investigated him for allegedly raping AAA.[14]

To corroborate his testimony, appellant presented BBB who testified that when she, AAA and GGG left their house at 6 o'clock in the evening of 19 October 1999 to attend a relative's wake, appellant was left alone resting in their living room. Appellant could not go with them to the wake because he was drunk. When she and her children returned home at 10:30 o'clock in the evening, BBB was surprised to see appellant sleeping beside Elena in their bedroom. She was so angry that she kicked appellant. Appellant kicked and slapped her in retaliation. Appellant then left the house.

BBB asserted that it was not true that appellant raped AAA. BBB stated that she was just jealous and wanted to get back at appellant. Hence, she reported the rape incident to the police and filed a complaint against appellant. BBB accompanied the police in their search for appellant. On 20 October 1999, around 8 o'clock in the morning, they found and arrested appellant at the bus stop in Mataas na Lupa.[15]

After trial on the merits, the trial court found that appellant raped AAA. The trial court gave full credence to AAA's testimony "which was positive and given in a straightforward, clear and convincing manner." The trial court noted that "during the cross-examination, she was unwavering and her answers were consistent;

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[14] TSN, 21 February 2001, pp. 3-4, 7-17; TSN, 14 March 2001, pp. 2-6, 8; Exhibit "C", Records, p. 132.

[15] TSN, 2 May 2001, pp. 2-8, 15-18.

she never changed her account of what transpired."[16] The dispositive part[17] of the trial court's decision reads:

> WHEREFORE, the Court finds the accused, GERONIMO BOROMEO, guilty beyond reasonable doubt, as principal by direct participation of the crime of Rape, as defined and penalized under Article 266-A 1(d) and Article 266-B of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353, sentences him to suffer the supreme penalty of DEATH, to indemnify AAA in the amount of ₱75,000.00, to pay her moral damages in the amount of ₱50,000.00 and to pay the cost.
>
> IT IS SO ORDERED.

Hence, this automatic review.

Appellant assigns the following errors:

I. The trial court erred in finding appellant guilty beyond reasonable doubt of the crime of rape.

II. Assuming *arguendo* that appellant is guilty of the crime charged, nonetheless, the trial court erred in imposing on him the death penalty.[18]

On 13 February 2003, the Office of the Solicitor General filed its Appellee's Brief praying that this Court affirm *in toto* the trial court's decision.[19]

On 14 March 2003, appellant filed his Reply Brief reiterating the same arguments he pleaded to seek an acquittal.[20]

We affirm the judgment of conviction.

In criminal cases, an appeal throws the whole case wide open for review. The reviewing tribunal can correct errors or even

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[16] Records, p. 170.

[17] *Ibid*., p. 172.

[18] *Rollo*, p. 38.

[19] *Ibid*., pp. 73-95.

[20] *Ibid*., pp. 98-102.

reverse the trial court's decision on grounds other than those that the parties raise as errors.[21]

Appellant points to the results of the medical examination on AAA showing the absence of hymenal laceration on her genitals. Appellant claims that the medical report shows that AAA's hymen remained intact. Appellant asserts that these findings are incompatible with AAA's claim that appellant forced his organ into hers, much less, that appellant raped her in the evening of 19 October 1999. Appellant also submits that the medical findings show no visible signs of physical injury even though AAA was of tender age at the time of the alleged rape. Appellant argues that if it were true that he raped AAA, "it is unbelievable that no external physical injuries or unusual findings could be noted on her body."

Appellant's arguments do not persuade us.

In a rape case, what is most important is the credible testimony of the victim. A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape. The court may convict the accused based solely on the victim's credible, natural, and convincing testimony.[22]

Proof of hymenal laceration is not an element of rape.[23] An intact hymen does not negate a finding that the victim was raped.[24] To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there

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[21] *People v. Lucero*, G.R. Nos. 102407-08, 26 March 2001, 355 SCRA 93; *People v. Mataro*, G.R. No. 130378, 8 March 2001, 354 SCRA 27; *People v. Balacano*, 391 Phil. 509 (2000).

[22] *People v. Cea*, G.R. Nos. 146462-63, 14 January 2004; *People v. Pillas*, G.R. Nos. 138716-19, 23 September 2003; *People v. Tamsi*, G.R. Nos. 142928-29, 11 September 2002, 388 SCRA 604.

[23] *People v. Lou*, G.R. No. 146803, 14 January 2004; *People v. De Taza*, G.R. Nos. 136286-89, 11 September 2003; *People v. Zabala*, G.R. Nos. 140034-35, 14 August 2003.

[24] *People v. Balas*, G.R. No. 138838, 11 December 2001, 372 SCRA 80; *People v. Almaden*, 364 Phil. 634 (1999).

is proof of entry of the male organ into the *labia* of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape,[25] and even the briefest of contact is deemed rape.[26] As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated.[27] In ***People v. Tampos***,[28] this Court held that rape is committed on the victim's testimony that she felt pain.

In the present case, AAA testified that appellant was able "to partially insert his private organ into hers," because of which she felt pain. AAA further testified that appellant failed to "fully insert his private organ into hers because BBB arrived."[29] AAA's hymen remained intact because there was no full penetration due to BBB's sudden arrival at the house.

Rape is committed when the accused has carnal knowledge of the victim by force, threat or intimidation, or when the victim is deprived of reason or is unconscious, or when the victim is under 12 years of age.[30] Based on the records, the prosecution proved that appellant had carnal knowledge of AAA.

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[25] *People v. Serado*, G.R. No. 138664, 6 August 2002, 386 SCRA 291; *People v. Bali-Balita*, G.R. No. 134266, 15 September 2000, 340 SCRA 450; *People v. Cura*, 310 Phil. 237 (1995).

[26] *People v. Aguiluz*, G.R. No. 133480, 15 March 2001, 354 SCRA 465; *People v. Dimapilis*, 360 Phil. 495 (1998).

[27] *People v. Calma*, 356 Phil. 945 (1998); *People v. Clopino*, 352 Phil. 1040 (1998).

[28] G.R. No. 142740, 6 August 2003; see also *People v. Libeta*, G.R. No. 139231, 12 April 2002, 381 SCRA 21 (2002); *People v. Ombreso*, G. R. No. 142861, 19 December 2001, 372 SCRA 675.

[29] TSN, 12 April 2000, p. 6; TSN, 7 June 2000, p. 3.

[30] *People v. Lozano*, G.R. No. 126149, 7 December 2001, 371 SCRA 546; *People v. Salonga*, 385 Phil. 1124 (2000).

If the victim's testimony meets the test of credibility, that is enough to convict the accused.[31] We entertain no doubt that AAA told the truth. Her testimony was clear, candid and consistent. She positively identified appellant as her rapist.[32] On the witness stand, AAA testified thus:

Q. On October 19, 1999, around 10:30 o'clock in the evening, where were you if you can still remember?
A. I was in our house sir.

Q. While you were in your house on that date, October 19, 1999, around 10:30 o'clock in the evening, do you know the whereabouts of Geronimo Boromeo or your Kuya Ronnie?
A. He was also at home sir.

Q. Do you know whether he did anything unusual to you on October 19, 1999 around 10:30 o'clock in the evening?
A. Yes sir.

Q. What was it?
A. He ordered me to go inside the room sir.

Q. After you were ordered to go inside the room, did you follow his instruction?
A. Yes sir.

Q. After that, after you entered inside the room, what did your Kuya Ronnie do if he did anything?
A. *Ginalaw po niya ako*.

Q. What did you mean by *ginalaw ka*?
A. He placed himself on top of me sir.

Q. **What else did he do when your Kuya went on top of you?**
A. **He placed his private organ inside my private organ sir.**

Q. **Was Geronimo Boromeo or your Kuya Ronnie able to insert his private organ fully to your private organ?**

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[31] *People v. Arriola*, G.R. Nos. 140779-80, 3 December 2002, 393 SCRA 318; *People v. Bali-Balita*, G.R. No. 134266, 15 September 2000, 340 SCRA 450.

[32] TSN, 12 April 2000, p. 4.

A. **No sir, because my mother arrived.**

Q. **When your Kuya Ronnie inserted his private organ into your private organ which he was not able to insert fully, what did you feel in your private organ?**
A. **It was painful sir.**

xxx xxx xxx

Q. What was the attire of your Kuya Ronnie when he went on top of you, if he has any clothing at all?
A. None sir.

Q. **How about you, when your Kuya Ronnie went on top of you, did you have any lower garments?**
A. **Yes sir. My shorts has a hole sir.**

Q. **What did your Kuya Ronnie do with your shorts?**
A. **He inserted his private organ into my private organ sir.**

Prosecutor

I am asking, what did your *Kuya* Ronnie do with your shorts?
A. He forcibly removed it sir.[33] (Emphasis supplied)

On cross-examination, AAA testified, thus:

Q. AAA, when you testified before this Court, you said that you were raped by your stepfather Geronimo Boromeo. Is that true?
A. Yes, sir.

Q. And it happened on October 19, 1999?
A. I cannot remember the date, sir.

Q. But when it happened, your mother then was out of the house because she attended a wake in the neighborhood. Am I correct?
A. Yes, sir.

Q. And when she arrived, she saw you while the accused was on top of you. Am I correct?
A. Yes, sir.

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[33] TSN, 12 April 2000, pp. 5-7.

Q. You were then totally naked?
A. There was (sic), sir.

Q. You were still wearing your panty and your blouse or t-shirt?
A. Shorts and t-shirt, sir.

Q. The accused was also wearing his t-shirt and shorts. Am I correct at the time he was on top of you and your mother arrived?
A. None, sir.

Q. Do (sic) we made to understand that he was totally naked while you were still wearing your shorts and your blouse?
A. Yes, sir.

Q. So the accused did not undress you before he went on top of you. Is that what you mean?
A. He undressed me, sir.

Q. Including your panty?
A. I was not wearing a panty, sir.

Q. Your panty was removed and your shorts was removed also?
A. No, sir.

Q. So it was the shorts of the accused which was removed when he went on top of you while you were still wearing shorts?
A. Yes, sir.

ATTY. BRAVO

That will be all for the witness, Your Honor.

PROSECUTOR

Considering AAA that you were wearing your shorts when your uncle Geronimo Boromeo went on top of you and on direct examination, you said that he was able to partially insert his private organ to your private organ, how did it happen that he was able to insert his private organ into your private organ when you were wearing shorts?

A. My shorts has a hole and I was not wearing a panty during that time, sir.

ATTY. BRAVO

Although you claimed that the penis of your stepfather was partially inserted to your vagina, you did not bleed? Am I correct?

PROSECUTOR
That was not covered by my re-direct, Your Honor.

ATTY. BRAVO
Partially. That is the basis of our question.

A. No, sir.[34]

Courts give full weight and credence to testimonies of child-victims of rape.[35] It is highly improbable that a ten-year old girl like AAA would impute to the live-in partner of her own mother a crime as serious as rape and undergo the humiliation of a public trial, if what she asserts is not true.[36] Appellant did not ascribe any credible motive to explain why a girl of tender age like AAA would concoct a story accusing him of rape.[37]

That AAA bore no physical evidence of any force against her person is of no moment. Contrary to appellant's contention, the absence of external signs of physical violence on AAA does not prove that he did not rape her. Proof of physical injury is not an essential element of rape.[38] Admittedly, appellant did not use force or violence in raping AAA. AAA merely obeyed when appellant ordered her to enter their bedroom. AAA did not offer any resistance when appellant raped her. This explains the absence of any external sign of injury on AAA's body. Besides, where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape. There is statutory rape where,

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[34] TSN, 7 June 2000, pp. 2-3.

[35] *People v. Servano*, G.R. Nos. 143002-03, 17 July 2003; *People v. Pascua*, G.R. No. 128159-62, 14 July 2003.

[36] *People v. Cana*, G.R. No. 139229, 22 April 2002, 381 SCRA 435; *People v. Caratay*, 374 Phil. 590 (1999); *People v. Ayo*, 365 Phil. 88 (1999).

[37] *People v. Daño*, G.R. Nos. 146786-88, 23 September 2003; *People v. Balleno*, G.R. No. 149075, 7 August 2003.

[38] *People v. Opeliña*, G.R. No. 142751, 30 September 2003; *People v. Dizon*, G.R. No. 133237, 11 July 2003; *People v. Flores*, G.R. No. 141782, 14 December 2001, 372 SCRA 44.

as in this case, the offended party is below 12 years of age.[39] Here, the Information alleged, and the prosecution proved during trial, that AAA was below 12 years old when appellant raped her. Under Article 266-A(d)[40] of the Revised Penal Code, when the victim is under twelve (12) years of age, there is rape even in the absence of force, threat or intimidation.[41]

Appellant assails the inconsistencies in AAA's statements on whether appellant totally undressed her or inserted his penis through a hole in her shorts. These inconsistencies cannot exculpate appellant. Whether appellant raped AAA after undressing her or inserted his penis through a hole in her shorts is immaterial. Rape could take place under either situation. Besides, it is natural for inconsistencies to creep into the testimony of a rape victim who is of tender age like AAA. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape.[42] Inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape.[43] A rape victim is not expected to mechanically keep in memory details of the rape incident and then when called to testify automatically give an accurate account of the traumatic experience she suffered.[44]

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[39] *People v. Negosa*, G.R. Nos. 142856-57, 25 August 2003; *People v. Aguiluz*, G.R. No. 133480, 15 March 2001, 354 SCRA 465.

[40] Article 266A-(d) of the Revised Penal Code provides that rape is committed "[W]hen the offended party is under twelve (12) years of age xxx, even though none of the circumstances mentioned above be present," referring to force, threat or intimidation.

[41] *People v. Rote*, G.R. No. 146188, 11 December 2003.

[42] *People v. Velasco*, G.R. Nos. 135231-33, 28 February 2001, 353 SCRA 138.

[43] *People v. Siao*, 383 Phil. 988 (2000); *People v. Gaorana*, G.R. Nos. 109138-39, 27 April 1998, 289 SCRA 652.

[44] *People v. Hivela*, 373 Phil. 600 (1999); *People v. Juntilla*, 373 Phil. 351 (1999).

Appellant capitalizes on BBB's turning into a defense witness as convincing proof of his innocence. Appellant argues that no sane mother would testify against her own daughter if the latter were telling the truth. That BBB turned her back on AAA and testified for appellant does not militate against AAA's credibility. Appellant insists that the charge arose out of BBB's desire to exact revenge on him because BBB caught appellant and Elena "sleeping side by side" that night.

Appellant argues that BBB's moral ascendancy over AAA made it easy for BBB to manipulate her daughter to tell an "orchestrated story." Appellant points out that when BBB's conscience bothered her, BBB recanted and corroborated his testimony that he did not rape AAA.

Appellant's assertions are futile. BBB's actuations after the rape incident convince this Court of the truthfulness of AAA's testimony. BBB brought AAA, a ten-year old girl, to the xxx City Police Station to report the rape incident. BBB filed the criminal complaint against appellant. BBB led the police to the place where appellant was arrested at 8 o'clock in the morning of 20 October 1999. On 21 October 1999, BBB executed a sworn statement before the police narrating her eyewitness account of the rape incident and pointing to appellant as the culprit. On that same day, BBB brought AAA to the xxx City District Hospital for medical examination.[45]

All these circumstances belie appellant's claim that AAA merely concocted the rape incident so that BBB could get back at appellant. We quote BBB's testimony on cross-examination:

Q. Mrs. Witness, when you went to the police for your complaint and you were the one who accompanied the police in arresting Geronimo Boromeo, isn't it?
A. Yes sir.

Q. You saw Geronimo Boromeo in the early morning of October 19, 1999 (sic) at the Bus Station, isn't it?
A. Yes sir.

[45] TSN, 12 April 2000, p. 8; TSN, 2 May 2001, pp. 7-10.

Q. You were together with your daughter AAA when you accompanied the policeman in arresting Geronimo Boromeo, isn't it?
A. Yes sir.

Q. Around what time did you cause the arrest of Geronimo Boromeo?
A. Around 8:00 o'clock sir.

Q. Your anger has already subsided by that time because of the lapse of more than 10 hours from the date you surprised your husband sleeping side by side with your *kumareng* Elena, isn't it?
A. Yes sir.

Q. But just the same, despite the fact that your anger to your common law husband Geronimo Boromeo already subsided, you still caused his arrest and incarceration, isn't it?
A. Yes sir.

Q. Three (3) days after you allegedly caught your husband sleeping side by side with your *kumareng* Elena, you gave your statement to the police, that was October 21, 1999, isn't it and this is your sworn statement that you gave to the police previously marked as an evidence for the prosecution as Exh. "C", will you look at this and confirm if this is your statement?
A. Yes sir.

Q. There is a signature appearing above the typewritten name BBB, is this your signature?
A. Yes sir.

Q. After you have executed this statement, you went to the Office of the City Prosecutor and you were made to take an oath?
A. Yes sir.

Q. You were asked by the Prosecutor Wilfredo Castillo who administered your oath whether you understand the contents of your statement?
A. Yes sir.

Q. You also affirmed before Pros. Wilfredo Castillo that the contents of your statement marked as Exh. "C" are the truth and nothing but the truth, isn't it?

A. Yes sir.

Q. And you voluntarily signed this statement in front of Prosecutor Castillo after you were made to swear an oath, isn't it?

A. Yes sir.

Q. When you executed your statement, three (3) days after you allegedly surprised your husband sleeping side by side with your *kumareng* Elena, your anger to your husband Geronimo Boromeo had vanished already from your heart because of the lapse of three (3) days already?

A. Yes sir.

Q. But despite the fact that no anger whatsoever remained in your heart you pursued with the execution of this statement and that of your daughter AAA who also gave her statement on that date, that was three (3) days after the incident in question, isn't it?

A. Yes sir.

Q. You even accompanied your daughter AAA on October 21, 1999 three (3) days after the incident to the police, so that AAA could be investigated by the police and she could give her statement, isn't it?

A. Yes sir.

Q. Both of you gave?

A. Yes sir.

Q. Both of you gave your statement on October 21, 1999 as shown by the record?

A. Yes sir.

Q. That was three (3) days after the incident in question?

A. Yes sir.

Q. You did not tell AAA what she would tell the police investigator when she gave her statement, isn't it? You were just an onlooker when AAA was being investigated by the police?

A. Because I have already taught her sir.

Q. When did you tell AAA what she would give to the police investigator?
A. The night before we gave the statement sir.

Q. But the night before you gave this statement, you have no anger anymore with your husband, isn't it, because even before you caused his arrest, the anger in your heart against your husband had already vanished?
A. My anger returned sir whenever I remember what he has done to me.[46]

BBB testified that after the lapse of ten hours since she surprised appellant sleeping side by side with Elena on the night of 19 October 1999, "no anger remained in her heart." BBB should have then desisted from executing her sworn statement to the police two days later on 21 October 1999 because by her own admission she was no longer angry with appellant. Still, BBBpursued the criminal complaint against appellant. This belies appellant's claim that AAA merely concocted the rape incident to satisfy BBB's desire for revenge against appellant. If AAA merely wanted to accommodate Luzviminda, AAA should have also changed her own story when BBB changed hers. AAA, however, remained steadfast that appellant raped her even after her mother recanted.

Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[47] Besides, the transcript of stenographic notes fails to show that AAA's testimony was elicited by intimidation or undue influence. Far from being an "orchestrated story," as appellant claims, AAA's testimony clearly appears candid, spontaneous and clear.

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[46] TSN, 2 May 2001, pp. 8-11.

[47] *People v. Alejo*, G.R. No. 149370, 23 September 2003; *People v. Fabian*, G.R. Nos. 148368-70, 8 July 2003; *People v. Villaroya*, 101 Phil. 1061 (1957).

It is lamentable that Luzviminda's concern for appellant was more intense than her desire to right a grievous wrong done to her own child. In ***People v. Dizon***,[48] this Court stated:

> Truly, some wives are overwhelmed by emotional attachments to their husbands to such an extent that the welfare of their own offsprings takes back seat. *Le coeur a ses raisons que la raison ne connait point.* Knowingly or otherwise, they suppress the truth and act as medium for injustice to preponderate. Though heavens fall, they would stand by their man. Teresa exemplifies this breed of women.

There being proof beyond reasonable doubt that appellant committed the crime as charged, we affirm his conviction.

Articles 266-A and 266-B of the Revised Penal Code partly provide:

> Article 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) x x x
>
> xxx xxx xxx
>
> 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.
>
> xxx xxx xxx
>
> Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> xxx xxx xxx

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, stepparent, guardian,

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[48] G.R. Nos. 134522-24 & 139508-09, 3 April 2001, 356 SCRA 69; see also *People v. Fontanilla*, G.R. Nos. 147662-63, 15 August 2003.

> relative by consanguinity or affinity within the third civil degree, or *the common-law spouse of the parent of the victim*;
>
> xxx xxx xxx. (Italics supplied)

To justify the imposition of the death penalty, the information must specifically allege the qualifying circumstances of minority and relationship. Moreover, the prosecution must prove during the trial the presence of these qualifying circumstances with the same certainty as the crime itself.[49]

In the present case, the Information alleged that appellant is the common-law spouse of BBB who is AAA's mother. The Information also alleged that AAA was only 10 years old when appellant raped her.

During the trial, the prosecution proved AAA's minority by presenting in evidence her birth certificate. The document clearly states that AAA was born on 23 January 1990.[50] AAA was thus 9 years and 8 months old when appellant raped her on 19 October 1999, although the Information stated that she is a "10-year old minor."

Appellant and Luzviminda categorically admitted in their testimonies that they are live-in partners.[51] The Information correctly alleged that the appellant is the "common-law spouse of the mother of herein victim."

Thus, the trial court did not err in sentencing appellant to death.[52]

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[49] *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003; *People v. Alfaro*, G.R. Nos. 136742-43, 30 September 2003; *People v. Rabago*, G.R. No. 149893, 2 April 2003.

[50] Exhibit "D", Records, p. 134.

[51] TSN, 21 February 2001, p. 5; TSN, 14 March 2001, p. 2; TSN, 2 May 2001, pp. 2-3.

[52] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. However, they submit to the ruling of the Court, by majority vote, that the law is constitutional.

We have ruled that if rape is qualified by any of the circumstances warranting the death penalty, the civil indemnity for the victim is ₱75,000.[53] The trial court's award of ₱75,000 as civil indemnity is thus proper.

We also award the victim moral damages of ₱75,000, as the anguish and the pain she endured are evident.[54] Also, we award the victim exemplary damages of ₱25,000 to deter other individuals with aberrant sexual behavior.[55]

WHEREFORE, the Decision dated 15 August 2001 of the Regional Trial Court of Lipa City, Branch 12, in Criminal Case No. 0759-99, finding appellant Geronimo Boromeo *y* Marco *GUILTY* beyond reasonable doubt of qualified rape and sentencing him to suffer the *DEATH* penalty, is *AFFIRMED*. In addition to the ₱75,000 civil indemnity and ₱75,000 moral damages, appellant is ordered to pay ₱25,000 exemplary damages to the victim. Costs *de oficio*.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this Decision, let certified true copies of the records of this case be forwarded forthwith to the President of the Philippines for the possible exercise of the pardoning power.

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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[53] *People v. Ocumen*, G.R. No. 135559, 18 September 2003; *People v. Reyes*, G.R. Nos. 140642-46, 7 August 2002, 386 SCRA 559; *People v. Rodavia*, G.R. Nos. 133008-24, 6 February 2002, 376 SCRA 320.

[54] *People v. Soriano*, G.R. Nos. 142779-95, 29 August 2002, 388 SCRA 140; *People v. Sambrano*, G.R. No. 143708, 24 February 2003, 398 SCRA 106.

[55] *People v. Dalisay*, G.R. No. 133926, 6 August 2003; *People v. Ylanan*, G.R. No. 131812, 22 August 2002, 387 SCRA 590.

FIRST DIVISION

[G.R. No. 151035. June 3, 2004]

ANDREA MAYOR and VERGEL ROMULO, *petitioners, vs.* **LOURDES MASANGKAY BELEN and LEONARDO BELEN,** *respondents.*

SYNOPSIS

Petitioner Andrea Mayor was the original owner of a parcel of land located at Bonifacio Street, San Pablo City measuring about 179 square meters, more or less. On November 27, 1979, respondent Lourdes M. Belen purchased the subject property from Andrea Mayor in consideration of ₱18,000.00 payable in installments. Lourdes M. Belen was able to pay ₱11,445.00 out of the ₱18,000.00 purchase price leaving a balance of ₱6,555.00. On June 17, 1980, Lourdes M. Belen sold back the subject property to Andrea Mayor in consideration of ₱18,000.00. For the said purpose, Lourdes M. Belen executed the *Kasulatan ng Bilihang Tuluyan* in favor of petitioner Andrea Mayor. On June 19, 1980, to secure a loan in the amount of ₱12,000.00 obtained from Lourdes M. Belen, Andrea Mayor executed a real estate mortgage over the subject property denominated as *Kasulatan ng Sanglaan* in favor of the former. Respondent Lourdes M. Belen filed a civil suit against Andrea Mayor for annulment of the *Kasulatang Bilihang Tuluyan* and *Kasulatan ng Sanglaan.* In the complaint, Lourdes alleged, among others, that petitioner Andrea Mayor, through co-petitioner Vergel Romulo *a.k.a*. Virgilio Romulo, made her believe that the sale in her favor by Andrea is void because the deed of conveyance did not reflect the true agreement of the parties as to the mode of payment of the purchase price. Lourdes further averred that she was also made to believe that she might lose what she had already paid which amounted to 70% of the purchase price. She was convinced by the representations of Andrea and Romulo that it would be best for the latter to make it appear that Andrea was merely mortgaging the subject property to her. Lourdes readily agreed to the scheme believing that it was for the protection of her rights. It turned out that the scheme was in fact a ruse employed by Romulo and Andrea to re-acquire the property, thus, Lourdes' consent in the execution of the

Kasulatan ng Bilihang Tuluyan and *Kasulatan ng Sanglaan* was obtained through fraud and undue influence. After trial, the court *a quo* rendered judgment in favor of the respondents. Dissatisfied, petitioners elevated their cause to the Court of Appeals which rendered judgment affirming the assailed decision but deleting the award of attorney's fees. Hence, the present petition. Petitioners claim that subject contracts are binding on respondents because the latter freely and voluntarily executed them.

The Supreme Court denied the petition. The Court observed that while the deeds denominated as *Kasulatan ng Bilihang Tuluyan* and *Kasulatan ng Sanglaan* were executed in Tagalog, a close scrutiny thereof shows that they are practically literal translations of their English counterparts. The mere fact that the documents were executed in the vernacular neither clarified nor simplified matters for Lourdes who admitted on cross-examination that she merely finished Grade 3, could write a little, and understand a little of the *Tagalog* language. The principle that a party is presumed to know the import of a document to which he affixes his signature is modified by the Article 1332 of the Civil Code. Under the said article, where a party is unable to read or when the contract is in a language not understood by a party and mistake or fraud is alleged, the obligation to show that the terms of the contract had been fully explained to said party who is unable to read or understand the language of the contract devolves on the party seeking to enforce it. The burden rests upon the party who seeks to enforce the contract to show that the other party fully understood the contents of the document. If he fails to discharge the burden, the presumption of mistake, if not, fraud, stands unrebutted and controlling. The Court have assiduously scoured the record but did not find any convincing evidence to support petitioners' allegations. The Court emphasized that in civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence and petitioners' self-serving claims are not enough to rebut the presumption of fraud provided for in Article 1332 of the Civil Code.

SYLLABUS

1. CIVIL LAW; CONTRACTS; REQUISITES; CONSENT; WHERE A PARTY IS UNABLE TO READ OR WHEN

THE CONTRACT IS IN A LANGUAGE NOT UNDERSTOOD BY A PARTY AND MISTAKE OR FRAUD IS ALLEGED, THE OBLIGATION TO SHOW THAT THE TERMS OF THE CONTRACT HAD BEEN FULLY EXPLAINED TO SAID PARTY WHO IS UNABLE TO READ OR UNDERSTAND THE LANGUAGE OF THE CONTRACT DEVOLVES ON THE PARTY SEEKING TO ENFORCE IT.— Impressive as the arguments petitioners have advanced in support of their cause may be, the fatal flaw lies in their inability to convincingly substantiate their claim that Lourdes M. Belen signed the contracts freely and voluntarily. This brings to the fore Lourdes M. Belen's limited educational attainment. While indeed petitioners point out that the deeds denominated as *Kasulatan ng Bilihang Tuluyan* and *Kasulatan ng Sanglaan* were executed in *Tagalog,* a close scrutiny thereof shows that they are practically *literal* translations of their English counterparts. Thus, the mere fact that the documents were executed in the vernacular neither clarified nor simplified matters for Lourdes who admitted on cross-examination that she merely finished Grade 3, could write a little, and understand a little of the *Tagalog* language. The appellate court could not then be faulted when it invoked Article 1332 of the Civil Code which states: ART. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. As aptly pointed out by the Court of Appeals, the principle that a party is presumed to know the import of a document to which he affixes his signature is modified by the foregoing article. Under the said article, where a party is unable to read or when the contract is in a language not understood by a party and mistake or fraud is alleged, the obligation to show that the terms of the contract had been fully explained to said party who is unable to read or understand the language of the contract devolves on the party seeking to enforce it. The burden rests upon the party who seeks to enforce the contract to show that the other party fully understood the contents of the document. If he fails to discharge this burden, the presumption of mistake, if not, fraud, stands unrebutted and controlling.

2. ID.; ID.; ID.; SELF-SERVING CLAIMS ARE NOT ENOUGH TO REBUT THE PRESUMPTION OF FRAUD PROVIDED FOR IN ARTICLE 1332 OF THE CIVIL CODE.— Petitioners alleged that Lourdes M. Belen affixed her signature on the questioned contracts freely and voluntarily. We have assiduously scoured the record but like the appellate court we have not come across convincing evidence to support their allegations. In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. Suffice it to state that such self-serving claims are not enough to rebut the presumption of fraud provided for in Article 1332 of the Civil Code. As the party claiming affirmative relief from the court, it is incumbent upon petitioners to convincingly prove their claim. This they failed to do. Bare allegations, unsubstantiated by evidence are not equivalent to proof under our Rules. In short, mere allegations are not evidence.

3. ID.; ID.; ID.; NOTARIZATION OF A DOCUMENT *PER SE* IS NOT A GUARANTEE OF THE VALIDITY OF ITS CONTENTS.— Both the *Kasulatan ng Bilihang Tuluyan* and the *Kasulatan ng Sanglaan* are public documents and there is no dispute that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. In addition, documents acknowledged before a notary public have in their favor the presumption of regularity. However, the presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. The presumption cannot be made to apply in this case because the regularity in the execution of the documents were challenged in the proceedings below where their *prima facie* validity was overthrown by the highly questionable circumstances pointed out by both trial and appellate courts. Furthermore, notarization *per se* is not a guarantee of the validity of the contents of a document. Indeed, as stated by the Supreme Court in *Nazareno v. CA:* The fact that the deed of sale was notarized *is not a guarantee of the validity of its contents.* As held in *Suntay v. Court of Appeals: Though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon*

the parties thereto. The intention of the parties still and always is the primary consideration in determining the true nature of the contract. The impugned documents cannot be presumed as valid because of the direct challenge posed thereto by respondents, which is precisely the reason for the commencement of this case: to bring to the fore the irregularity in their execution.

APPEARANCES OF COUNSEL

Balagtas P. Ilagan for petitioner.
Irineo D. Hernandez for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The crux of the controversy in this petition for review is whether or not the execution of the *Kasulatan ng Bilihang Tuluyan* and *Kasulatan ng Sanglaan* covering a 179 square meter lot on which stands the house where respondents live is tainted with irregularity. Petitioners claim that said contracts are binding on respondents because the latter freely and voluntarily executed them. The respondents, however, contend that the execution of the documents was procured through fraud and undue influence. The trial court sustained respondents. The ruling of the lower court was affirmed on appeal with modifications by the appellate tribunal. Aggrieved, petitioners elevated their cause by way of this proceeding to this Court.

The undisputed facts as culled from the factual findings of the appellate court[1] are as follows:

Petitioner Andrea Mayor was the original owner of a parcel of land located at Bonifacio Street, San Pablo City measuring about 179 square meters, more or less. On November 27, 1979, respondent Lourdes M. Belen purchased the subject property

[1] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eloy R. Bello and Perlita J. Tria-Tirona concurring.

from Andrea Mayor in consideration of ₱18,000.00 payable in installments. Lourdes M. Belen was able to pay ₱11,445.00 out of the ₱18,000.00 purchase price leaving a balance of ₱6,555.00.

On June 17, 1980, Lourdes M. Belen sold back the subject property to Andrea Mayor in consideration of ₱18,000.00. For this purpose, Lourdes M. Belen executed the *Kasulatan ng Bilihang Tuluyan* in favor of Andrea Mayor.

On June 19, 1980, to secure a loan in the amount of ₱12,000.00 obtained from Lourdes M. Belen, Andrea Mayor executed a real estate mortgage over the subject property denominated as *Kasulatan ng Sanglaan* in favor of the former.

On August 4, 1980, Lourdes M. Belen filed a civil suit against Andrea Mayor, docketed as Civil Case No. SP-1755, for annulment of the *Kasulatang Bilihang Tuluyan* and *Kasulatan ng Sanglaan*.

In the complaint, Lourdes alleged, among others, that petitioner Andrea Mayor, through co-petitioner Vergel Romulo a.k.a. Virgilio Romulo, made her believe that the sale in her favor by Andrea is void because the deed of conveyance did not reflect the true agreement of the parties as to the mode of payment of the purchase price, *i.e.*, the purchase price was made on installments and not in cash as stipulated in the document. Lourdes further averred that she was also made to believe that she might lose what she had already paid which amounted to 70% of the purchase price. She was convinced by the representations of Andrea and Romulo that it would be best for the latter to make it appear that Andrea was merely mortgaging the subject property to her. Lourdes readily agreed to the scheme believing that it was for the protection of her rights. It turned out that the scheme was in fact a ruse employed by Romulo and Andrea to re-acquire the property, thus, Lourdes' consent in the execution of the *Kasulatan ng Bilihang Tuluyan* and *Kasulatan ng Sanglaan* was obtained through fraud and undue influence.

In her answer with counterclaim, Andrea Mayor denied the material allegations of the complaint insisting, in sum, that Lourdes

M. Belen freely and voluntarily executed the subject contracts and the same is binding on the parties thereto.

On August 11, 1980, Leonardo Belen filed a complaint for Annulment of Deed of Absolute Sale and Real Estate Mortgage against Andrea Mayor and Lourdes Masangkay *a.k.a* Lourdes M. Belen. In the complaint, docketed as Civil Case No. SP-1756, he averred that he is living with Lourdes M. Belen without benefit of marriage. Lourdes bought the subject property from Andrea Mayor using their common fund. On account of the fraudulent acts of Andrea Mayor in connivance with Virgilio Romulo, Lourdes M. Belen agreed to execute the *Kasulatan ng Bilihang Tuluyan* and the *Kasulatan ng Sanglaan*. For lack of his approval or consent thereto, as co-owner of the property, the said documents are null and void.

Denying the allegations of the complaint, Andrea Mayor in her answer with counterclaim averred that Leonardo Belen did not have a cause of action because he was neither a party nor a privy to any of the subject contracts. Andrea also alleged that the execution thereof was Lourdes' free and voluntary act.

Subsequently on February 16, 1981, Leonardo Belen and Lourdes M. Belen filed a complaint for Damages against Virgilio Romulo. In the complaint, docketed as Civil Case No. SP-1821, Lourdes and Leonardo averred that they sustained damages for Virgilio's fraudulent acts of inducing Lourdes to sign the subject contracts.

In his answer, Virgilio Romulo insisted that he never had any transaction with Lourdes M. Belen and Leonardo Belen. For instituting a baseless action against him, Lourdes and Leonardo should be held liable for damages.

The three cases were consolidated and jointly tried. After trial, the court *a quo* rendered judgment in favor of the Belens, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered declaring the *Kasulatan ng Bilihang Tuluyan* dated June 17, 1980 and the *Kasulatan ng Sanglaan* dated June 19, 1980 null and void and ordering:

1. the defendants to jointly and severally pay to the plaintiffs Leonardo Belen and Lourdes Masangkay Belen the sum of ₱15,000.00 for their attorney's fees and costs of litigation in these three cases.

2. Virgilio Romulo to pay the plaintiffs the sum of ₱20,000.00 as moral damages.

Dissatisfied, petitioners elevated their cause to the Court of Appeals which rendered judgment[2] affirming the assailed decision but deleting the award of attorney's fees. A motion for reconsideration was subsequently denied.[3]

Hence, the instant petition filed by petitioners who argue:

> THAT WITH DUE RESPECT TO THE FINDINGS MADE BY PUBLIC RESPONDENT HONORABLE COURT OF APPEALS, THE PRIVATE RESPONDENTS WERE NOT ABLE TO PROVE THE FRAUD AND UNDUE INFLUENCE THEY CLAIMED TO HAVE BEEN EXERTED ON THEM BY THE PETITIONER IN THE EXECUTION OF THE QUESTIONED *KASULATAN NG BILIHAN* AND *KASULATAN NG SANGLAAN* .

The issue for resolution is whether or not fraud attended the execution of the *Kasulatan ng Bilihan* and *Kasulatan ng Sanglaan*.

The Civil Code provides that —

> ART. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

As defined, fraud refers to all kinds of deception, whether through insidious machination, manipulation, concealment or misrepresentation to lead another party into error.[4] The deceit employed must be serious. It must be sufficient to impress or

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[2] *Rollo*, pp. 47-57.

[3] *Id*., p. 60.

[4] Article 1338, Civil Code; Tolentino A., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, 1991 Ed., p. 505.

lead an ordinarily prudent person into error, taking into account the circumstances of each case.[5]

In support of their cause, petitioners intone the shopworn legal maxim that *fraus est odiosa et non praesumenda* — and argue that to establish the claim of fraud, evidence must be clear and more than merely preponderant. They contend, in sum, that the two deeds were duly executed by the parties thereto in accordance with the formalities required by law and as public documents the evidence to overcome their recitals is wanting.

We disagree.

Impressive as the arguments petitioners have advanced in support of their cause may be, the fatal flaw lies in their inability to convincingly substantiate their claim that Lourdes M. Belen signed the contracts freely and voluntarily.

This brings to the fore Lourdes M. Belen's limited educational attainment. While indeed petitioners point out that the deeds denominated as *Kasulatan ng Bilihang Tuluyan* and *Kasulatan ng Sanglaan* were executed in *Tagalog*, a close scrutiny thereof shows that they are practically *literal* translations of their English counterparts. Thus, the mere fact that the documents were executed in the vernacular neither clarified nor simplified matters for Lourdes who admitted on cross-examination that she merely finished Grade 3, could write a little, and understand a little of the *Tagalog* language.[6]

The appellate court could not then be faulted when it invoked Article 1332 of the Civil Code which states:

> ART. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

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[5] *Maestrado v. CA*, 384 Phil. 418 (2000), citing Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, *supra*, p. 514, citing Borrel *y* Soler, Nulidad, p. 250.

[6] TSN, 28 June 1982, p. 6.

As aptly pointed out by the Court of Appeals, the principle that a party is presumed to know the import of a document to which he affixes his signature is modified by the foregoing article. Under the said article, where a party is unable to read or when the contract is in a language not understood by a party and mistake or fraud is alleged, the obligation to show that the terms of the contract had been fully explained to said party who is unable to read or understand the language of the contract devolves on the party seeking to enforce it. The burden rests upon the party who seeks to enforce the contract to show that the other party fully understood the contents of the document. If he fails to discharge this burden, the presumption of mistake, if not, fraud, stands unrebutted and controlling.[7]

In this case, petitioners alleged that Lourdes M. Belen affixed her signature on the questioned contracts freely and voluntarily. We have assiduously scoured the record but like the appellate court we have not come across convincing evidence to support their allegations. In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence.[8] Suffice it to state that such self-serving claims are not enough to rebut the presumption of fraud provided for in Article 1332 of the Civil Code. As the party claiming affirmative relief from the court, it is incumbent upon petitioners to convincingly prove their claim. This they failed to do. Bare allegations, unsubstantiated by evidence are not equivalent to proof under our Rules.[9] In short, mere allegations are not evidence.[10]

Concededly, both the *Kasulatan ng Bilihang Tuluyan* and the *Kasulatan ng Sanglaan* are public documents and there is

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[7] *Ayola v. Valderrama Lumber Manufacturer Co., Inc.,* 49 O.G. 980, March 1953.

[8] *Heirs of Atanacio Fabela v. CA*, 414 Phil. 838 (2001), citing *Javier v. CA*, G.R. No. 101177, 28 March 1994, 231 SCRA 498; *United Airlines, Inc. v. CA*, G.R. No. 124110, 20 April 2001, 357 SCRA 99.

[9] *Manzano v. Perez, Sr.,* 414 Phil. 728 (2001), citing *PNB v. CA*, 334 Phil. 120 (1997) and *Martinez v. NLRC*, 339 Phil. 176 (1997).

[10] *Marubeni Corporation v. Lirag*, 415 Phil. 29 (2001), *Luxuria Homes, Inc. v. CA*, 361 Phil. 108 (1999); see also *Sadhwani v. CA*, 346 Phil. 54 (1997); *R.F. Navarro & Co., Inc. v. CA*, 413 Phil. 432 (2001).

no dispute that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. In addition, documents acknowledged before a notary public have in their favor the presumption of regularity. However, the presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary.[11] The presumption cannot be made to apply in this case because the regularity in the execution of the documents were challenged in the proceedings below where their *prima facie* validity was overthrown by the highly questionable circumstances pointed out by both trial and appellate courts. Furthermore, notarization *per se* is not a guarantee of the validity of the contents of a document. Indeed, as stated by the Supreme Court in *Nazareno v. CA*:[12]

> The fact that the deed of sale was notarized ***is not a guarantee of the validity of its contents.*** As held in ***Suntay v. Court of Appeals***:[13]
>
> *Though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto.* ***The intention of the parties still and always is the primary consideration in determining the true nature of the contract.***

The impugned documents cannot be presumed as valid because of the direct challenge posed thereto by respondents, which is precisely the reason for the commencement of this case: to bring to the fore the irregularity in their execution.

There are, moreover, other factual circumstances pointed out by both the trial and appellate courts which militate against the contention of petitioners. The evidence on record shows

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[11] *Basilio v. CA*, G.R. No. 125935, 29 November 2000, 346 SCRA 321, 324, citing *Lao v. Villones-Lao*, 366 Phil. 49 (1999); *Embrado v. CA*, G.R. No. 51457, 27 June 1994, 233 SCRA 335; *Salame v. CA*, G.R. No. 104373, 22 December 1994, 239 SCRA 356; *Gerales v. CA*, G.R. No. 85909, 9 February 1993, 218 SCRA 638.

[12] G.R. No. 138842, 18 October 2000, 343 SCRA 637, 652.

[13] 321 Phil. 809 (1995).

that the respondents Belens intended to stay and occupy the subject land for a considerable length of time. As borne out by the records, respondents bought from Celita Bordeos the house standing on the subject land then owned by Andrea Mayor.[14] Four years later or on November 27, 1979, respondents bought the subject land from petitioner Andrea Mayor.[15]

They bought the said land through installments and already paid ₱11,445.00 of the ₱18,000.00 purchase price. They also caused the transfer in their names of the tax declarations over the subject land and house. This they did even before they could have completed the payment of the purchase price. In short, their intention and desire to stay on the property is very evident. Petitioners' suggestion, therefore, that respondents made a sudden *volte face* and decided to resell the property to them — seven months from the date of the property's acquisition, after payment of almost two-thirds of the purchase price and transferring the tax declarations thereof in respondents' names, borders on the absurd and the incredible. It simply is contrary to human experience for respondents to have had a hasty change of heart to dispose of the land on which they intend to make their home and upon which they had invested so much.

Petitioners advance the excuse that respondents wanted to immediately dispose of the subject property because the area would be soon converted into a park. If this were so, why would Lourdes Belen thereafter accept the very same property as security knowing fully well that it would revert to the public domain?

A mortgage subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation whose security it was constituted.[16] Thus, in case of non-payment, the creditor may proceed against the property for the fulfillment of the obligation. No creditor would accept property as security

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[14] Records, p. 11.

[15] *Id*., p. 9.

[16] Article 2126, Civil Code.

for the fulfillment of the obligation knowing that the property offered as security would soon be out of the commerce of man.[17]

Finally, the non-presentation of petitioner Andrea Mayor on the witness stand is likewise not lost on us and adds to the weakness of petitioners' cause. While it is true that the non-presentation of a witness is not a reason for discrediting a party's defense, still we are inclined to take this omission against them in view of the numerous loopholes in their defense.[18]

All told, we see no reason in overturning the findings of the appellate court. As has often been stated, "[t]he jurisdiction of this Court over cases brought to it from the Court of Appeals is limited to a review of questions of law since the factual conclusions thereon are conclusive. There are of course exceptions to this rule, but none obtain in the case at bar to warrant a scrutiny of the Court of Appeals' conclusions which are supported by the evidence on record and carry more weight, it having affirmed the trial court's factual conclusions." [19]

WHEREFORE, in view of all the foregoing, the petition is *DENIED* and the decision dated April 3, 2001 of the Court of Appeals in CA-G.R. CV No. 48646, is *AFFIRMED* ***in toto.***

SO ORDERED.

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

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[17] Article 1327, Civil Code.

[18] See *Chua v. People*, G.R. No. 128075, 19 January 2001, 349 SCRA 662.

[19] *Ninoy Aquino International Airport Authority v. CA*, G.R. No. 116652, 10 March 2003, 398 SCRA 703, citing *Borromeo v. Sun*, G.R. No. 75908, 22 October 1999, 317 SCRA 176.

THIRD DIVISION

[G.R. No. 151314. June 3, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARIAM BANDANG y SALAMAT, ADING SALAMAT & RAKIMA ABUBAKAR,** *appellants*.

SYNOPSIS

Appellants Mariam Bandang *y* Salamat, Ading Salamat & Rakima Abubakar were convicted of selling "*shabu*," in violation of the Dangerous Drugs Act of 1972, as amended, and were sentenced to suffer the penalty of *reclusion perpetua.* In their appeal before the Court, appellants Bandang and Salamat maintain that the trial court erred in according weight to the evidence adduced by the prosecution and in disregarding their alibi. Appellant Abubakar, on the other hand, contended that that the trial court erred in convicting him on the basis solely of the stipulation of facts in the pre-trial order which although signed by appellant was however, not signed by her counsel.

The Supreme Court affirmed the conviction of appellants. According to the Court, the commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. In the present case, fact of sale was sufficiently proven by PO1 Olga Carpentero, the poseur-buyer. She gave a detailed account of how the sale took place, from the initial negotiation to the eventual delivery of the dangerous drugs. P01 Carpentero and the informant closed the deal with appellants Bandang and Abubakar for the purchase of the 700 grams of shabu at ₱490,000.00; and that the next day, the three appellants delivered to her the 700 grams of shabu for which she paid them the boodle money. The testimony of PO1 Carpentero as the poseur buyer clearly established the consummation of the sale. The Court also rejected appellant Abubakar's submission that she was erroneously convicted because the parties' Stipulation of Facts regarding the *corpus delicti* cannot be used against her considering that her counsel did not sign it because her conviction is not based solely on the Stipulations of Facts. The prosecution submitted evidence

to establish the elements of the crime instead of relying solely on the supposed admission of the accused in the stipulation of facts.

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a prosecution for illegal *sale* of dangerous drugs, the following must be proven: (*1*) that the transaction or sale took place; (*2*) the *corpus delicti* or the illicit drug was presented as evidence; and (*3*) that the buyer and seller were identified. A review of the records of this case reveals that the prosecution has proven all these elements.

2. ID.; ID.; ID.; ID.; FACT OF SALE ESTABLISHED.— The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. In the present case, this was sufficiently proven by PO1 Carpentero, the *poseur-buyer*. She gave a detailed account of how the sale took place, from the initial negotiation to the eventual delivery of the dangerous drugs. On May 2, 2000, she and the informant closed the deal with appellants Bandang and Abubakar for the purchase of the 700 grams of *shabu* at ₱490,000.00; and that the next day, the three appellants delivered to her the 700 grams of *shabu* for which she paid them the boodle money. Definitely, the testimony of PO1 Carpentero as the *poseur buyer* clearly established the consummation of the sale. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellants and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.

3. REMEDIAL LAW; EVIDENCE; *CORPUS DELICTI* OF THE CRIME PROPERLY PRESENTED IN COURT AND POSITIVELY IDENTIFIED BY PROSECUTION WITNESS.— The seven sachets of *shabu* presented before the trial court as Exhibits "J-1" to "J-7" were positively identified by PO1 Carpentero as the very same *shabu* sold and delivered to her by appellants. That the seven sachets of white crystalline were indeed *shabu* is shown by the Initial

Laboratory Report and the Chemistry Report No. D-1585-00, prepared by Cirox T. Omero, PNP forensic chemist, which both yield *"POSITIVE result to the test for Methylamphetamine hydrocloride."*

4. ID.; ID.; DEFENSE OF FRAME UP; MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.— Appellants failed to show any motive why PO1 Carpentero and PO2 Noceda would falsely impute a serious crime against them. Without proof of such motive, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over their self-serving and uncorroborated claim of having been framed. Like alibi, we view the defense of frame-up with disfavor as it can easily be concocted and it is one of the most hackneyed line of defense in dangerous drug cases. For this claim to prosper, the defense must therefore adduce clear and convincing evidence.In this aspect, appellants miserably failed.

5. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; REJECTED.— Appellants' defense of denial and alibi must likewise fail. As between their mere denial and their positive identification by the prosecution witnesses, the trial court did not err in according weight to the latter. For the defense of *alibi* to prosper, the accused must show that he was in another place at such a period of time and that it was physically impossible for him to be at the place where the crime was committed at the time of its commission. *These requirements of time and place must be strictly met*. Appellants failed to establish that it was physically impossible for them to be at Arlegui Bridge, Quiapo, Manila on May 3, 2000 at about 5:30 o'clock in the afternoon. What is clear from the evidence is that they were at Elizondo Street, Quiapo, Manila, a stone's throw away from Arlegui. It bears emphasis that *their testimonies as to their whereabouts during their arrest were inconsistent.* Appellant Bandang narrated during her direct testimony that she and appellant Abubakar were in a sidewalk store in Elizondo Street, Quiapo, Manila when they were suddenly accosted by the police officers. On cross-examination, she contradicted herself and claimed that she and appellant Abubakar were arrested inside their house. For her part, appellant Salamat stated that the police forcibly dragged her and her daughter, appellant Bandang, inside a vehicle and it was only then that she saw appellant Abubakar. Meanwhile,

both appellants Salamat and Abubakar were silent on appellant Bandang's claim that the apprehending policemen demanded hush money from them. Undoubtedly, the inconsistencies in appellants' testimonies weaken their defense. They reveal concocted stories and a web of lies.

6. ID.; ID.; ADMISSIBILITY OF CERTAIN DOCUMENTS, IF NOT URGED BEFORE THE COURT BELOW, CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— In *People vs. Uy,* we ruled that a forensic chemist is a public officer and as such, his report carries the presumption of regularity in the performance of his function and duties. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. Omero's reports that the seven sachets of white crystalline substance were "positive for *methylamphetamine hydrochloride*" or *shabu* are, therefore, conclusive in the absence of evidence proving the contrary, as in this case. *Second,* it must be stressed that Atty. Enriquez raises his objection to the Initial Laboratory Report and Chemistry Report No. D-1585-00 only now. He should have objected to their admissibility at the time they were being offered. Otherwise, the objection shall be considered waived and such evidence will form part of the records of the case as competent and admissible evidence. *The familiar rule in this jurisdiction is that the admissibility of certain documents, if not urged before the court below, cannot be raised for the first time on appeal.*

7. ID.; CRIMINAL PROCEDURE; PRE-TRIAL; OMISSION OF ACCUSED AND HIS COUNSEL'S SIGNATURE IN THE STIPULATION OF FACTS CURED BY PROSECUTION'S SUBMISSION OF EVIDENCE TO ESTABLISH THE ELEMENTS OF THE CRIME.— Appellant Abubakar submits that she was erroneously convicted because the parties' Stipulation of Facts regarding the *corpus delicti* cannot be used against her considering that her counsel, Atty. Enriquez, did not sign it. We do not agree. *First*, her conviction is not based solely on the Stipulations of facts. In *Fule vs. Court of Appeals*, we ruled that while the omission of the signature of the accused and his counsel indeed renders a stipulation of facts inadmissible in evidence, the prosecution is not without remedy. *What the prosecution should do is to submit evidence*

to establish the elements of the crime instead of relying solely on the supposed admission of the accused in the stipulation of facts. In the present case, this is what the prosecution did.

8. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; PROVEN BY APPELLANTS' CONDUCT DURING THE ENTRAPMENT REVEALING A COMMON DESIGN OR COMMUNITY OF INTEREST AMONG THEM.— We also affirm the trial court's finding that there was conspiracy among the three appellants. Their conduct during the entrapment reveals a common design or a community of interest among them. The clear fact is that they acted in concert in committing the crime, thus: (*a*) appellant Salamat carried the black shoulder bag containing the seven sachets of *shabu;* (*b*) appellant Abubakar asked PO1 Carpentero if she was ready with the money; (*c*) appellant Bandang handed the black shoulder bag to PO1 Carpentero; and (*d*) appellant Abubakar received the boodle money from PO1 Carpentero. All these acts clearly demonstrate the presence of conspiracy. The existence of a conspiracy need not be proved by direct evidence because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for M. Bandang and A.G. Salamat.

Joselito Enriquez for R. Abubakar.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

The commission of the offense of illegal sale of regulated drugs requires merely the consummation of the selling transaction. In a "buy-bust" operation, such as in the case at bar, what is important is the fact that the *poseur-buyer* received the *shabu*

from the appellants and that the same was presented as evidence in Court. In short, proof of the transaction suffices.[1]

This is an appeal from the Decision[2] dated December 21, 2001 of the Regional Trial Court, Branch 18, Manila in Criminal Case No. 00-182559 finding Mariam Bandang, Ading Salamat and Rakima Abubakar, appellants, guilty beyond reasonable doubt of selling "*shabu*," in violation of the Dangerous Drugs Act of 1972, as amended, and imposing upon them the penalty of *reclusion perpetua* and a fine of ₱500,000.00.

The Information filed against appellants reads:

"That on or about May 3, 2000, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully, unlawfully, knowingly and jointly sell or offer and/or attempt for sale, dispense, deliver, transport or distribute 100.43 gram; 100.83 gram; 102.80 gram; 100.70 gram; 107.21 gram; 102.92 gram and 101.65 gram or with a total weight of 716.54 grams of white crystalline substance contained in seven (7) transparent plastic sachet known as *shabu* containing *methylamphetamine hydrochloride*, which is a regulated drug.

Contrary to law."

On May 31, 2000, appellants, assisted by their counsel *de parte*, pleaded "not guilty"[3] to the charge. Thereafter, trial ensued. The prosecution presented two witnesses, namely: PO1 Olga Carpentero and PO2 Jigger Noceda.

The evidence for the prosecution established the following: In the morning of May 2, 2000, the Narcotics Group Intelligence Division of the Philippine National Police (PNP), in Camp Crame, Quezon City, was notified by an informant about the drug trafficking activities of appellants Mariam Bandang and Rakima Abubakar near the Arlegui Bridge, Quiapo, Manila. The PNP

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[1] *People vs. Catan*, G.R. No. 92928, January 21, 1992, 205 SCRA 325.

[2] Penned by Judge Edelwina Catubig Pastoral.

[3] Records at 32.

organized a team composed of PO1 Olga Carpentero, as the *poseur-buyer*, and Police Senior Inspector Crisostomo Mendoza, as the team leader, to conduct surveillance and buy-bust operation.[4] On the same day, PO1 Carpentero and the informant proceeded to Arlegui Bridge on board a car and were at the place between 3:00 to 5:00 in the afternoon. The informant introduced PO1 Carpentero to appellants as a prospective buyer of 700 grams of *shabu*. Appellants told PO1 Carpentero that it costs ₱490,000.00. When they asked her if she has the money, PO1 Carpentero replied that she will come back the following day with the money.[5] Appellants then told PO1 Carpentero to be at the place at around 5:30 in the afternoon.[6]

PO1 Carpentero reported the incident to her superior who, in turn, organized two teams — the buy-bust team and the back-up team. [7] They prepared boodle money in two bundles consisting of cut papers. They then placed two five hundred genuine bills on top of each bundle, wrapped and placed them in a blue transparent plastic bag. PO1 Carpentero placed her initials on the two genuine five hundred peso bills.[8]

On May 3, 2000, at around 5:30 in the afternoon, the teams proceeded to Arlegui, Quiapo, Manila on board three vehicles. The informant went to the house of appellant Abubakar, leaving PO1 Carpentero alone in the car. After a little while, the three appellants came out of the house and went inside the parked car. They sat on the back seats, while the informant and PO1 Carpentero on the front seats.

Once inside the car, appellant Abubakar asked PO1 Carpentero if she has the money. When she said "yes," appellant Bandang got the black shoulder bag from appellant Ading Salamat and gave it to PO1 Carpentero. She then opened the black shoulder

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[4] Transcript of Stenographic Notes (TSN), August 15, 2000 at 5-6.

[5] *Id*. at 8-9.

[6] *Id*. at 9.

[7] *Id*. at 8-9.

[8] Exhibits "C-1" and "C-2"; "C-1-A" and "C-2-A"; *id*. at 10-12.

bag and saw seven (7) transparent plastic sachets[9] containing white crystalline substance.[10] Thereupon, she handed the bundles of boodle money to appellant Abubakar and immediately pressed the button of the hazard lights of the car. The blinking of the hazard lights indicated that the deal was consummated. PO1 Carpentero then introduced herself as a police officer and arrested the three appellants. Simultaneously, the two teams rushed in and arrested[11] them and confiscated[12] the seven plastic sachets containing the white crystalline substance. PO2 Jigger Noceda recovered the boodle money from appellant Abubakar. Then the arresting police officers brought appellants to Camp Crame for investigation.[13] Thereafter, they were detained in the City Jail of Manila.[14] The substance, with a total weight of 716.54 grams, was submitted to the PNP Crime Laboratory for examination. It was positive for *methylamphetamine hydrochloride* or *shabu*.[15]

The prosecution dispensed with the direct testimony of Cirox T. Omero, PNP forensic chemist, considering that the prosecution and the defense stipulated that: **(***1***)** he conducted the laboratory analysis of the 716.54 grams of white crystalline substance; **(***2***)** that he stated in his initial Laboratory Report[16] and his Chemistry Report No. D-1585-00[17] that the substance is positive for *methylamphetamine hydrochloride* or *shabu*, and; **(***3***)** the seven (7) plastic bags of *shabu* has been identified.[18] Nonetheless, Omero presented to the trial court the specimen and it was

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[9] Exhibits "J-1" to "J-7", *id*.

[10] TSN, August 15, 2000 at 14.

[11] Exhibit "B", Records at 7-8; Exhibits "D", "E", "F", Records at 9-11.

[12] Exhibit "G", Records at 12-13.

[13] TSN, August 15, 2000 at 15-16.

[14] Records at 45.

[15] Exhibit "H", *id*. at 14; Exhibit "K", *id*. at 35.

[16] *Id*.

[17] Exhibit "K", Records at 35.

[18] Exhibit "J-1"—"J-7", Records at 38-39.

identified by PO1 Carpentero as the same white crystalline substance contained in a black shoulder bag handed to her by appellant Bandang.[19] Upon order of the trial court,[20] it was turned over to the PNP Crime Laboratory, through Omero, for safekeeping.

All the appellants raised the defenses of *alibi* and frame-up.

Appellant Bandang's testimony is as follows: she is a manicurist and a former resident of Quiapo, Manila until she transferred to Taguig, Metro Manila in 1994. *At the time of the incident, she was in a sidewalk store in Elizondo Street, Quiapo, Manila rendering manicure service to her old customers.*[21] *She was with her mother, appellant Ading Salamat, and her one year old child.* On her way to another customer, she met appellant Abubakar.[22] At that point she saw two men being chased by another two. Then, the two men behind suddenly accosted and ordered appellants Bandang and Abubakar to board a vehicle.[23] *Appellant Bandang shouted at her mother, who was a few meters away from her, to take care of her child*. When her mother came near, they also dragged her inside the vehicle which sped away. The two men forced appellants to identify the two men being chased, but they could not do so. Thereafter, they were brought to Camp Crame.

When cross examined, appellant Bandang denied having met the prosecution witnesses before they arrested them (appellants) on May 3, 2000.[24] She also claimed that she saw appellant Abubakar for the second time when they were arrested.[25] *She also narrated that they were arrested inside their house,*[26]

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[19] TSN, September 15, 2000 at 3.

[20] Order dated September 15, 2000; TSN, September 15, 2000 at 11.

[21] TSN, February 21, 2001 at 24.

[22] *Id*. at 5-11.

[23] *Id*. at 13.

[24] *Id*. at 20-21.

[25] *Id*. at 28.

[26] TSN, April 10, 2001 at 3.

contrary to her direct testimony that she was along a sidewalk at Elizondo, Quiapo.

Appellant Salamat corroborated the testimony of her daughter appellant Bandang.[27] When cross-examined, she declared that when she was arrested, she inadvertently left her grandchild on the sidewalk. The people there, however, were able to trace her residence, hence, they entrusted the child to her relatives.[28]

Appellant Abubakar gave the same version in the course of her testimony.[29]

On December 21, 2001, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, in light of the foregoings, herein accused Mariam Bandang *y* Salamat, @ Joharra, accused Ading Salamat y Guna and accused Rakima Abubakar *y* Usman (Abubacar) are hereby found guilty beyond reasonable doubt for the Violation of Section 15, Article III in relation to paragraphs (e), (f), (m), (o) of Section 2, Article I and in relation to Sections 20 & 21, Article IV of R.A. 6425, as amended by R.A. 7659. The three accused shall suffer the penalty of *reclusion perpetua* with the accessory penalties provided by law. They are ordered to pay a fine of ₱500,000.00.

The preventive imprisonment of the accused since their arrest at the buy-bust operation held on May 3, 2000 should be credited in their favor.

Forensic Chemist-Police Inspector Cirox T. Omero of PNP Crime Laboratory, Camp Crame, Quezon City is hereby ordered to immediately submit the confiscated *shabu* weighing 716.54 grams of *methylamphetamine hydrochloride* to the Chairman of the Dangerous Drugs Board, Champ Building, Bonifacio Drive, Intramuros, Manila, for proper disposal pursuant to Paragraph (b), Section 36 of R.A. 6425, as amended.

Also send a copy of this decision to the Chairman of the Dangerous Drugs Board of the aforesaid address; the Warden of the City Jail, Manila; to Forensic — Chemist Cirox T. Omero of the PNP Laboratory

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[27] TSN, April 20, 2001 at 4-6.

[28] TSN, April 27, 2001 at 3.

[29] TSN, May 11, 2001 at 2-4.

Service, Camp Crame, Quezon City, and to Police Superintendent Pancho Adelberto M. Hubilla of PNP Narcotics Group, Camp Crame, Quezon City.

SO ORDERED."[30]

Hence, this appeal, appellants ascribing to the trial court the following assignments of error:

By appellants Bandang and Salamat:

"I

THE COURT *A QUO* ERRED IN ACCORDING GREATER WEIGHT TO THE EVIDENCE ADDUCED BY THE PROSECUTION AND IN DISREGARDING ACCUSED-APPELLANTS' ALIBI.

II

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE INHERENT WEAKNESS OF THE PROSECUTION'S EVIDENCE."[31]

By appellant Abubakar:

"I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT HEREIN ALBEIT CLEAR FAILURE OF THE STATE TO PROVE THE CRIME CHARGED;

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT HEREIN ON THE BASIS SOLELY OF THE STIPULATION OF FACTS IN THE PRE-TRIAL ORDER OF JULY 6, 2000, WHICH PRE-TRIAL ORDER ALTHOUGH SIGNED BY ACCUSED-APPELLANT HEREIN WAS HOWEVER, NOT SIGNED BY COUNSEL."[32]

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[30] Records at 125-131.

[31] *Rollo* at 87-88.

[32] *Id*. at 56.

The Solicitor General counters that: **(***a***)** all the elements of the crime of illegal sale of dangerous drugs were established by evidence beyond reasonable doubt; **(***b***)** that appellants' defense of *alibi* and frame-up must fail because they did not present convincing evidence that it was physically impossible for them to be at the scene of the crime at the time it was committed; and **(***c***)** that the lack of signature of counsel for appellant Abubakar in the Stipulation of Facts between the parties is immaterial since the prosecution had adequately proven the offense charged.[33]

We affirm the assailed Decision.

I. Sufficiency of the Prosecution Evidence

In a prosecution for illegal *sale* of dangerous drugs, the following must be proven: **(***1***)** that the transaction or sale took place; **(***2***)** the *corpus delicti* or the illicit drug was presented as evidence;[34] and **(***3***)** that the buyer and seller were identified. A review of the records of this case reveals that the prosecution has proven all these elements.

A. The Fact of Sale was Established

The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.[35] In the present case, this was sufficiently proven by PO1 Carpentero, the *poseur-buyer*. She gave a detailed account of how the sale took place, from the initial negotiation to the eventual delivery of the dangerous drugs. On May 2, 2000, she and the informant closed the deal with appellants Bandang and Abubakar for the purchase of the 700 grams of *shabu* at

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[33] *Id*. at 117-154.

[34] *People vs. Rosdia Hajili, et al*., G.R. Nos. 149872-73, March 14, 2003, citing *People vs. Chen Tiz Chang*, 325 SCRA 776 (2000); *People vs. Padasin*, G.R. No. 143671, February 14, 2003, 397 SCRA 417, citing *People vs. Boco*, 309 SCRA 42 (1999); and *People vs. Batoctoy, et al.,* G.R. Nos. 137458-59, April 24, 2003, citing *People vs. Tan*, 381 SCRA 74 (2002).

[35] *People vs. Simon*, 234 SCRA 555 (1994).

₱490,000.00; and that the next day, the three appellants delivered to her the 700 grams of *shabu* for which she paid them the boodle money. Definitely, the testimony of PO1 Carpentero as the *poseur buyer* clearly established the consummation of the sale. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellants and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.[36] We quote PO1 Carpentero's clear and straightforward account of the transaction, thus:

"*PROS. GURAY*:

Q So what did you do on May 2, 2000?
A I, together with the confidential informant proceeded to the place where the duo, one *alias* Joharra and Rakima operate their illegal transaction.

Q And where was that place.
A Near the Arlegui Bridge, sir.

Q And where is that Arlegui Bridge located?
A In Quiapo, sir.

xxx xxx xxx

Q What time did you reach that place?
A Between 3:00 to 5:00 p.m., sir.

xxx xxx xxx

Q And upon arrival at Arlegui bridge in Quiapo, Manila, on that particular date on May 2, 2000, what happened next?
A Our confidential informant went to the place of Rakima and when he came back, he had a companion, one *alias* Joharra and the one Rakima.

Q When the informant, together with this Rakima and Joharra arrived at the place, what happened next?
A Our confidential informant introduced me to them as a buyer.

Q After the confidential informant introduced you as a buyer, what did Rakima and Joharra tell you, if any?

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[36] *People vs. Flores*, G.R. No. 80914, April 6, 1995, 243 SCRA 374.

A She said if I have money. First they asked how much I'm going to buy or purchase. Then I told them that I only have ₱500,000.00.

THE COURT:

Q Why did you say only?
A Because they said that one kilo of *shabu* is worth ₱700,000.00.

xxx xxx xxx

Q What is the quantity that you told the drug pusher that you are going to buy?
A I said that I am going to purchase three kilos of *shabu*.

xxx xxx xxx

Q And what was the reply?
A They said that the *shabu* costs ₱700,000.00 per kilo, sir.

xxx xxx xxx

Q What was your response?
A I told them that I'm going to buy only 700 grams of *shabu* because my money was only ₱500,000.00.

Q 700 grams?
A Yes, sir.

Q How would you know that 700 grams would cost ₱500,000.00.
A No, sir. They cost ₱490,000.00.

xxx xxx xxx

Q You were told?
A Yes, sir.

Q That 700 grams would cost ₱490,000.00.
A Yes, sir.

PROS. GURAY:

Q And after telling them the amount of *shabu* that you would buy, what did they tell you, if any?
A They asked if I have the money in my possession.

Q And what did you tell them?

A I answered that I did not have the money. But I would go back the following day.

Q And did they agree?
A Yes, sir.

Q After that, where did you proceed?
A We proceeded at our office in Camp Crame, sir.

Q And what did you do there?
A I reported about the transaction, sir, to our chief.

Q And what did your chief instructed you to do, if any?
A And he designated Police Senior Inspector Mendoza to make a team to form a back up team for the buy bust operation.

xxx xxx xxx

PROS. GURAY:

Q What time did you arrive at the target of operation?
A At around 5:30 in the afternoon.

Q When you arrived at Arlegui, Quiapo, Manila, what particular place in that area did you position yourself?
A Near the bridge of Arlegui.

Q And who was with you in that particular place?
A None, sir. I'm the only one inside the car.

Q And who arrived with you in that place? Who was with you in that place?
A Our back up team, sir.

THE COURT:

Q How about in the car that you rode in? Who was with you inside that car when you arrived in the area of operation?
A At first, sir, our driver and the confidential informant?

Q So there were three of you?
A Yes, sir.

Q This driver is also a police operative?
A Yes, sir.

Q And where did the back up team position themselves?
A At the distance that is visual to us.

Q You said that when you arrived at the place inside your car was the driver and your confidential informant. Where did they go after you arrived at the place?
A After we arrived at the place of the operation, the driver parked our car and he alighted and joined the members of the back up team while the police informant went to the house of the suspected drug pushers.

PROS. GURAY:

Q And did the confidential informant come back afterwards?
A Yes, sir.

Q And who was with the confidential informant when that informant came back?
A Together with him was one *alias* Joharra and one Rakima and the old woman.

THE COURT:

Q So there was three with the informant?
A Yes, sir.

Q Namely?
A *Alias* Rakima, Mariam Bandang alias Joharra.

Q And the third?
A A woman, an old woman.

Q So all in all there were how many women?
A Three, sir.

Q All these persons were women?
A Yes, sir.

PROS. GURAY:

Q What were they carrying, if any?
A An old woman is carrying a bag, a black shoulder bag.

Q And when these three persons you mentioned arrived at the place were you positioned yourself, what happened next?
A When they arrived I asked them to enter the car.

Q And did they enter the car?
A Yes, sir.

THE COURT:

Q Where were you seated at the time?
A At the driver seat, sir.

PROS. GURAY:

Q Where did they position themselves?
A At the back seat.

Q How about the confidential informant? Where did he or she position himself or herself?
A Beside me, sir.

Q You mean to tell the court that the three occupied the back seat?
A Yes, sir.

Q When they were already inside the car what transpired next?
A Rakima asked me if I have the money.

Q What was your response?
A I told her that I have the money.

Q Then what transpired next?
A The one alias Joharra got the black shoulder bag from the old woman and she gave it to me.

Q And after the bag was handed to you, what did you do with the bag?
A I opened it and I examined it and I saw seven transparent plastic bag or sachets containing white crystalline substance.

THE COURT:

Q Suspected shabu?
A Yes, sir.

PROS. GURAY:

Q What happened with the money which you said was asked by Rakima if it was already with you?
A I showed her the money.

THE COURT:

Q Wait. Wait. When did you show the money? Was it before or after the black shoulder bag was handed to you?
A After the shoulder bag was handed to me.

Q After you received the shoulder bag, you showed the money?
A Yes, sir. I examined first the contents of the bag.

Q Yes. And when you saw the suspected shabu inside, what did you do next?
A They asked for the money and they showed it to me and handed the xxx plastic sachets.

Q So before handling the boodle money, you showed it first to her?
A Yes, sir.

Q And you handed it to her?
A Yes, sir.

xxx xxx xxx

PROS. GURAY:

Q Then what transpired next after that?
A When the transaction was finished I pushed the hazard button.

xxx xxx xxx

PROS. GURAY:

Q And what did these blinking of hazard lights signify?
A To signify our pre-arranged signal, sir.

THE COURT:

Q What did it signify?
A That the transaction was done, sir.

Q That the transaction was consummated?
A Yes, sir.

PROS. GURAY:

Q Then after that, what happened?
A Our arresting back up team rushed in and then they effect the arrest?

THE COURT:

Q How about you? What did you do?

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[34] *People vs. Rosdia Hajili, et al*., G.R. Nos. 149872-73, March 14, 2003, citing *People vs. Chen Tiz Chang*, 325 SCRA 776 (2000); *People vs. Padasin*, G.R. No. 143671, February 14, 2003, 397 SCRA 417, citing *People vs. Boco*, 309 SCRA 42 (1999); and *People vs. Batoctoy, et al.,* G.R. Nos. 137458-59, April 24, 2003, citing *People vs. Tan*, 381 SCRA 74 (2002).

[35] *People vs. Simon*, 234 SCRA 555 (1994).

[36] *People vs. Flores*, G.R. No. 80914, April 6, 1995, 243 SCRA 374.

A *I identified myself as a police officer and we are arresting them for violation of Dangerous Drugs Act.*"[37]

The foregoing testimony was substantially corroborated by PO2 Noceda[38] and by PO2 Gabarda in his joint affidavit of apprehension.[39] Notwithstanding the searching cross-examination by the defense counsel, PO1 Carpentero and PO2 Noceda did not deviate from their direct testimonies. PO2 Noceda reinforced PO1 Carpentero's testimony when he affirmed that he confiscated seven sachets containing white crystalline substance at the scene of the crime; and that he recovered the bodle money from appellants.

That appellants knew that what they sold and delivered to PO1 Carpentero were dangerous drugs is evident from the narration of both witnesses that when they asked appellants whether they have license to carry or sell *shabu*, the latter merely replied "no."[40] They did not refute that the substance they delivered to PO1 Carpentero was *shabu*.

B. The Corpus Delicti was Presented in Court

The seven sachets of *shabu* presented before the trial court as Exhibits "J-1" to "J-7" were positively identified by PO1 Carpentero as the very same *shabu* sold and delivered to her by appellants, thus:[41]

"xxx xxx xxx

PROS. GURAY:

> For the record, Your Honor, the forensic chemist brought to court the specimen contained in a black shoulder bag which has been marked as Exhibit 'J' for the prosecution.

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[37] TSN, August 15, 2000 at 5-17.

[38] TSN, September 22, 2000 and October 13, 2000.

[39] Exhibit "B", Records at 7-8.

[40] TSN, September 15, 2000 at 16 and TSN, October 13, 2000 at 11.

[41] TSN, September 15, 2000 at 3.

Q For the record, may I now confront the witness with a shoulder bag and its contents. Madam Witness, will you step down and examine these small plastic bags or sachets containing white crystalline substances and tell the court what relation has these seven bags containing plastic sachets to the specimen which you said were handed to you by the accused in this case on May 3, 2000?

A These are the ones that were inside the bag when alias Joharra handed to me. These are all the seven sachets contained in the bag that was handed to me.

PROS. GURAY:

For the record, these plastic bags had been marked already as Exhibits 'J-1', 'J-2', 'J-3' up to 'J-7.'

Q And will you please examine the black shoulder bag and tell us what relation has this with the shoulder bag which was handed to you by the accused?

A This bag is where they put the seven sachets, sir.

PROS. GURAY:

For the record, the black shoulder bag containing the seven plastic sachets which were earlier marked as Exhibit 'J-1' to 'J-7' has been already marked as Exhibit 'J' for the prosecution."[42]

That the seven sachets of white crystalline were indeed *shabu* is shown by the Initial Laboratory Report and the Chemistry Report No. D-1585-00,[43] prepared by Cirox T. Omero, PNP forensic chemist, which both yield "*POSITIVE result to the test for Methylamphetamine hydrocloride.*"

Appellant Abubakar submits that she was erroneously convicted because the parties' Stipulation of Facts regarding the *corpus delicti* cannot be used against her considering that her counsel, Atty. Enriquez, did not sign it. We do not agree. *First*, her conviction is not based solely on the Stipulations of Facts. In *Fule vs. Court of Appeals,*[44] we ruled that while the omission

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[42] *Id.* at 3-4.

[43] Exhibit "K", Records at 35.

[44] G.R. No. L-79094, June 22, 1988, 162 SCRA 446.

of the signature of the accused and his counsel indeed renders a stipulation of facts inadmissible in evidence, the prosecution is not without remedy. *What the prosecution should do is to submit evidence to establish the elements of the crime instead of relying solely on the supposed admission of the accused in the stipulation of facts*. In the present case, this is what the prosecution did.

Appellant Abubakar now argues that the Initial Laboratory Report and the Chemistry Report No. D-1585-00 are inadmissible for being hearsay because Omero, the PNP forensic chemist, did not testify. This is a *non-sequitur* conclusion. In *People vs. Uy*,[45] we ruled that a forensic chemist is a public officer and as such, his report carries the presumption of regularity in the performance of his function and duties. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are prima facie evidence of the facts therein stated. Omero's reports that the seven sachets of white crystalline substance were "positive for *methylamphetamine hydrochloride*" or *shabu* are, therefore, conclusive in the absence of evidence proving the contrary, as in this case.

Second, it must be stressed that Atty. Enriquez raises his objection to the Initial Laboratory Report and Chemistry Report No. D-1585-00 only now. He should have objected to their admissibility at the time they were being offered. Otherwise, the objection shall be considered waived and such evidence will form part of the records of the case as competent and admissible evidence.[46] *The familiar rule in this jurisdiction is that the admissibility of certain documents, if not urged before the court below, cannot be raised for the first time on appeal*.

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[45] G.R. No. 128046, March 7, 2000, 327 SCRA 335.

[46] *Republic vs. Court of Appeals, et al*., G.R. No. 116372, January 18, 2001, 349 SCRA 451, citing *Chua vs. Court of Appeals*, 301 SCRA 356 (1999).

C. Positive Identification of the Appellants as the Sellers

PO1 Carpentero and PO2 Noceda positively identified appellants as the peddlers of the confiscated *shabu*. PO1 Carpentero testified:

"Q Madam Witness, who among the three accused handed to you this bag containing the plastic sachets?
A One alias Joharra.

Q And again, will you point to the person alias Joharra if she is in the court room?
A The one wearing a red shirt.

THE COURT:

Q Witness pointing to a woman who answered by the name of (stop), pangalan?
*A Mariam Bandang **po**, sir.*

Q And you testified earlier that before these specimen contained in a black shoulder bag was handed to you by alias Joharra who gave her name as Mariam Bandang, she left for a few minutes with another suspect. Who was that suspect who was with Joharra when they left for a few minutes?
A When she came back, sir, she has another old lady, sir.

Q My question is, when she left before the third lady who, was with them? Who was with Joharra?
A One alias Rakima, sir.

Q And will you please point to Rakima if she is in court?
A Siya po.

THE COURT:

*Q **Yung tinuro tumayo**. Witness pointing to another woman who answered by the name of (stop), **anong pangalan?***

ACCUSED ABUBAKAR:

Rakima Abubakar *po*.

xxx xxx xxx

PROS. GURAY:

Q And you also testified that after Rakima and Joharra left for a few minutes, they came back with another woman and this woman you said was the one carrying the black shoulder bag. If that woman is in court, will you be able to point to her?
A The old woman there, sir.

THE COURT:

Yung tinuro tumayo. Pangalan po ninyo?

ACCUSED SALAMAT:

Ading Salamat po.

THE COURT:

*Witness pointing to an old woman who answered by the name of Ading Salamat****. Maupo ka na.***

xxx xxx xxx"[47]

PO2 Noceda also identified appellants, thus:

"PROS. GURAY:

Q Mr. Witness, you earlier told the Court that you were part of the buy bust operation that was conducted on May 3, 2000. Who were the target of your buy bust operation?
A A certain Joharra and Rakima, sir.

Q If that Joharra and Rakima are in court, will you be able to recognize them?
A Yes, sir.

Q Will you be able to point to Rakima?
A Siya po.

THE COURT:

Yung tinuro tumayo. *Witness pointing to a woman who answered by the name of?* ***Anong pangalan mo?***

ACCUSED RAKIMA:

Rakima Abubakar ***po.***

PROS. GURAY:

Q And if this Alias Joharra is in court, will you please point to her?

THE COURT:

Yung tinuro tumayo. Witness pointing to another woman who answered by the name of? Pangalan?

ACCUSED BANDANG:

Mariam Bandang ***po.***

THE COURT:

Sige, maupo ka na."[48]

All the elements necessary for the conviction of appellants for illegal sale of dangerous drugs have been proved by the prosecution, thus:

(*1***)** The *shabu* was *in fact* delivered by appellants to PO1 Carpentero, the police *poseur-buyer*.[49]

(*2***)** The object of the sale was the 716.54 grams of *shabu* valued at ₱490,000.00.[50]

(*3***)** The buyer was PO1 Carpentero and the sellers were herein appellants.[51]

II. The Defenses of Frame-up, Denial and Alibi

In a last ditch effort to secure an acquittal, appellants claim that they were victims of frame-up[52] and extortion. Appellants' defense must fail. For a police officer to frame them up, he must have known them prior to the incident.[53] This is not the

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[47] TSN, September 15, 2000 at 3-4.

[48] TSN, October 13, 2000 at 4-5.

[49] TSN, September 15, 2000 at 14.

[50] TSN, August 15, 2000 at 8-9.

[51] *Id*. at 8-9, 20; TSN, October 13, 2000 at 5 & 13.

[52] Appellant's Brief at 9; *Rollo* at 95.

[53] *People vs. Saludes*, G.R. No. 144157, June 10, 2003.

situation here. The informant had to introduce PO1 Carpentero to appellants before she could negotiate with them the sale of *shabu*. Appellants themselves admitted that prior to their arrest, they did not know the police officers.

Furthermore, appellants failed to show any motive why PO1 Carpentero and PO2 Noceda would falsely impute a serious crime against them. Without proof of such motive, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over their self-serving and uncorroborated claim of having been framed.[54] Like alibi, we view the defense of frame-up with disfavor as it can easily be concocted and it is one of the most hackneyed line of defense in dangerous drug cases.[55] For this claim to prosper, the defense must therefore adduce clear and convincing evidence.[56] In this aspect, appellants miserably failed.

Appellants' defense of denial and alibi must likewise fail. As between their mere denial and their positive identification by the prosecution witnesses, the trial court did not err in according weight to the latter. For the defense of *alibi* to prosper, the accused must show that he was in another place at such a period of time and that it was physically impossible for him to be at the place where the crime was committed at the time of its commission.[57] *These requirements of time and place must be strictly met*.[58] Appellants failed to establish that it was physically impossible for them to be at Arlegui Bridge, Quiapo, Manila on

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[54] *People vs. Macalaba*, G.R. Nos. 146284-86, January 20, 2003, 395 SCRA 461; *People vs. Saludes, id*., citing *People vs. Bongalon*, 374 SCRA 289 (2002) and *People vs. Johnson*, 348 SCRA 526 (2001); *People vs. Uy*, G.R. No. 128046, March 7, 2000, 327 SCRA 335.

[55] *People vs. Saludes, supra; People vs. Hajili, et al., supra,* citing *People vs. Chen Tiz Chang, supra*.

[56] *People vs. De Leon*, G.R. Nos. 132484-85, November 15, 2002, 391 SCRA 682.

[57] *People vs. Azugue*, G.R. No. 110098, February 26, 1997, 268 SCRA 711.

[58] *People vs. Dela Cruz*, G.R. No. 108180, February 8, 1994, 229 SCRA 754.

May 3, 2000 at about 5:30 o'clock in the afternoon. What is clear from the evidence is that they were at Elizondo Street, Quiapo, Manila, a stone's throw away from Arlegui. It bears emphasis that *their testimonies as to their whereabouts during their arrest were inconsistent*. Appellant Bandang narrated during her direct testimony that she and appellant Abubakar were in a sidewalk store in Elizondo Street, Quiapo, Manila when they were suddenly accosted by the police officers. On cross-examination, she contradicted herself and claimed that she and appellant Abubakar were arrested inside their house.[59] For her part, appellant Salamat stated that the police forcibly dragged her and her daughter, appellant Bandang, inside a vehicle and it was only then that she saw appellant Abubakar.[60] Meanwhile, both appellants Salamat and Abubakar were silent on appellant Bandang's claim that the apprehending policemen demanded hush money from them. Undoubtedly, the inconsistencies in appellants' testimonies weaken their defense. They reveal concocted stories and a web of lies.

III. Presence of Conspiracy

We also affirm the trial court's finding that there was conspiracy among the three appellants. Their conduct during the entrapment reveals a common design or a community of interest among them.[61] The clear fact is that they acted in concert in committing the crime, thus: **(***a***)** appellant Salamat carried the black shoulder bag containing the seven sachets of *shabu*; **(***b***)** appellant Abubakar asked PO1 Carpentero if she was ready with the money; **(***c***)** appellant Bandang handed the black shoulder bag to PO1 Carpentero; and **(***d***)** appellant Abubakar received the boodle money from PO1 Carpentero. All these acts clearly demonstrate the presence of conspiracy. The existence of a conspiracy need not be proved by direct evidence because it may be inferred

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[59] TSN, April 10, 2001 at 3.

[60] *Id*. at 4-6.

[61] *People vs. San Andres*, 326 SCRA 223 (2000); *People vs. Alagon*, G.R. Nos. 126536-37, February 10, 2000, 325 SCRA 297; *People vs. Blanco*, G.R. No. 124078, February 1, 2000, 324 SCRA 280.

from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime.

IV. Penalty

The penalty prescribed under Section 15 of Article III, in relation to Section 20 and 21 of Article IV, of R.A. No. 6425, as amended by R.A. No. 7659, for unauthorized sale of 200 grams or more of *shabu* or *methylamphetamine hydrochloride* is *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos. In the case at bar, as the penalty of *reclusion perpetua* to death consists of two (2) indivisible penalties, appellants were correctly meted the lesser penalty of *reclusion perpetua*, with the accessory penalties provided by law, conformably with Article 63(2) of the Revised Penal Code that when there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be applied.

As regards the fine imposed by the trial court, it has been held that courts may fix any amount within the limits established by law; and in fixing the amount in each case, attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.[62] In view of the quantity of *shabu* confiscated in this case, we find no reason to disturb the trial court's imposition of fine in the amount of ₱500,000.00.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision of the Regional Trial Court, Branch 18, Manila, in Criminal Case No. 00-182559 is *AFFIRMED*.

Costs *de oficio*.

SO ORDERED.

Vitug (Chairman)*, Corona,* and *Carpio Morales, JJ., .,* concur.

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[62] Article 66, Revised Penal Code.

EN BANC

[G.R. No. 155732. June 3, 2004]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **DELIA T. CORTEZ,** *respondent*.

SYNOPSIS

Respondent Delia T. Cortez, Chief Personnel Specialist of the Examination and Placement Services Division (EPSD) of Civil Service Regional Office (CSRO) No. X, Cagayan de Oro City, was charged with dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service. After carefully evaluating the evidence of the parties, petitioner Civil Service Commission (CSC) found respondent guilty of illegally selling recycled stamps for her own financial gain, an act which constituted dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service. It ordered respondent dismissed from the service with forfeiture of benefits and disqualification from reemployment in the government service, without prejudice to any civil or criminal liability in a proper action. Respondent promptly filed a petition for review before the Court of Appeals under Rule 43 of the Rules of Court. The Court of Appeals granted respondent's petition. It ruled that the penalty of dismissal imposed on her was too harsh considering (a) her twenty-one years of service in the government. Accordingly, it modified the penalty imposed on respondent from dismissal from the service with all its accessory penalties to that of forced resignation from the service with entitlement to all the benefits under the law. Petitioner CSC moved for reconsideration but was denied. Hence, the present petition. Petitioner CSC contended that respondent is not entitled to any penalty lesser than dismissal considering the gravity of her offense. Respondent's act constituted dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service which, under Section 52 in relation to Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, are all grave offenses punishable by dismissal from the service.

The Supreme Court upheld the contention of the Civil Service Commission. Petitioner CSC is correct that length of service should be taken against the respondent. Length of service is

not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance. Length of service cannot be considered in favor of the respondent because of the gravity of the offense she committed and of the fact that it was her length of service in the CSC which helped her in the commission of the offense. Respondent's act irreparably tarnished the integrity of the CSC. Respondent was in the Civil Service Commission for twenty-one years, the last eight years of which (1990-1998) she spent as Chief of the Examination and Placement Services Division (EPSD). Surely, respondent earned the last position because of her length of service in the CSC. As Chief of the EPSD, she naturally had access to the previously processed and approved application forms wherefrom she detached the stamps and later on sold to new civil service examination applicants and pocketed the proceeds of the sale. The Court also noted that the stamps respondent was caught selling were issued in 1995, the time respondent was already in the EPSD, serving as its chief. Respondent's length of service in the CSC, therefore, clearly helped respondent in the commission of the offense.

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE LAW; DISHONESTY, GRAVE MISCONDUCT AND CONDUCT GROSSLY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE ARE GRAVE OFFENSES PUNISHABLE BY DISMISSAL FROM THE SERVICE; MITIGATING AND AGGRAVATING CIRCUMSTANCES MAY BE CONSIDERED; RESPONDENT IS NOT ENTITLED TO A LOWER PENALTY OTHER THAN DISMISSAL IN CASE AT BAR.— Under the Civil Service Law and its implementing rules, dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service are grave offenses punishable by dismissal from the service. Thus, as provided by law, there is no other penalty that should be imposed on respondent than the penalty of dismissal. Of course, the rules allow the consideration of mitigating and aggravating circumstances and provide for the manner of imposition of the proper penalty as provided in Section 54 of the Uniform

Rules on Administrative Cases in the Civil Service. Jurisprudence is abound with cases applying the above rule in the imposition of the proper penalty and even in cases where the penalty prescribed by law, on commission of the first offense, is that of dismissal, which is, as argued by petitioner, an indivisible penalty, the presence of mitigating or aggravating circumstances may still be taken into consideration by us in the imposition of the proper penalty. Thus, in at least three cases, taking into consideration the presence of mitigating circumstances, we lowered the penalty of dismissal imposed on respondent to that of forced resignation or suspension for 6 months and 1 day to 1 year without benefits. This being so, is respondent entitled to a penalty lesser than dismissal, considering (1) her length of service in the government and (2) the fact that the offense she was found guilty of was her first offense? Under the facts of this case, respondent is not entitled to a lower penalty.

2. ID.; ID.; ID.; ID.; LENGTH OF SERVICE CANNOT BE CONSIDERED AS MITIGATING IN FAVOR OF RESPONDENT BECAUSE OF THE GRAVITY OF THE OFFENSE SHE COMMITTED AND THAT IT WAS LENGTH OF SERVICE IN THE CIVIL SERVICE COMMISSION WHICH HELPED HER IN THE COMMISSION OF THE OFFENSE.— Petitioner CSC is correct that length of service should be taken against the respondent. Length of service is not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual *milieu* of each case. Length of service, in other words, is an alternative circumstance. That this is so is clear in Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Services Rules and Regulations dated 27 December 1991. The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating or alternative circumstances by the disciplining body. In *University of the Philippines vs. Civil Service Commission, et al*., we did not consider length of service in favor of the private respondent; instead, we took it against said respondent because her length of service, among other things, helped her in the commission of the offense. Thus: Respondent Commission contends that it did not err in

upholding the decision of the Merit Systems Protection Board since the decision of said Board took into account private respondent's length of service and the fact that it was her first offense. We do not agree . . . *Private respondent's length of service cannot be considered as a mitigating circumstance since it was her length of service, among others, that earned her the position she was in and the trust she enjoyed through which she illicitly allowed her relatives to enjoy unmerited privileges and, in the case of Fernando B. Manicad, an unwarranted diploma.* Moreover, a review of jurisprudence shows that, although in most cases length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious. Thus, in *Yuson vs. Noel*, we ruled: The mere length of his service (for ten years) *cannot mitigate the gravity of his offense or the penalty he deserves*. It is clear from facts here established that the respondent does not deserve to remain in the Judiciary, where integrity is an indispensable credential. And, in *Concerned Employee vs. Nuestro*, we held: Dishonesty is a malevolent act that has no place in the court system. In the present case, respondent's misconduct constitutes grave dishonesty that disqualifies her from holding any position in the judiciary ... The recommendation of the Office of the Court Administrator for six (6) months suspension is therefore *too lenient in view of the gravity of the offense charged.* It may be true that respondent has been in the service for eleven years but she has blemished her record irreparably and, under the circumstances, we believe that her dismissal is warranted. Applying the above-cited cases to the case at bar, we cannot also consider length of service in favor of the respondent because of the gravity of the offense she committed and of the fact that it was her length of service in the CSC which helped her in the commission of the offense. Respondent was in the Civil Service Commission for twenty-one years, the last eight years of which (1990-1998) she spent as Chief of the Examination and Placement Services Division (EPSD). Surely, respondent earned the last position because of her length of service in the CSC. As Chief of the EPSD, she naturally had access to the previously processed and approved application forms wherefrom she detached the stamps and later on sold to new civil service examination applicants and pocketed the proceeds of the sale. It is worthy to note that the stamps respondent was caught selling were issued in 1995, the time

respondent was already in the EPSD, serving as its chief. Respondent's length of service in the CSC, therefore, clearly helped her in the commission of the offense.

3. ID.; ID.; ID.; ID.; BY IRREPARABLY TARNISHING THE INTEGRITY OF THE CIVIL SERVICE COMMISSION, RESPONDENT DID NOT DESERVE TO STAY IN THE SAID AGENCY AND IN THE GOVERNMENT SERVICE.— As to the gravity of the offense, which is the other factor why we cannot consider length of service in favor of the respondent, it is clear from the ruling of the CSC that respondent's act irreparably tarnished the integrity of the CSC. Respondent was the Chief of the EPSD, but despite such important and senior position which should have impelled her to set a good example to her co-employees and other civil servants, respondent flagrantly and shamelessly violated the law by selling, for her own financial gain, used examination fee stamps, right in her own office and during office hours. Such flagrant and shameless disregard of the law by a senior officer seriously undermined the integrity of the CSC, the body mandated by the Constitution to preserve and safeguard the integrity of the civil service. She should be a model of honesty and integrity. By irreparably tarnishing the integrity of the Civil Service Commission, respondent did not deserve to stay in the said agency and in the government service. The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases we imposed the heavier penalty of dismissal or a fine of more than ₱20,000, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.

4. ID.; ID.; ID.; ID.; DISHONESTY AND GRAVE MISCONDUCT HAVE ALWAYS BEEN AND SHOULD REMAIN ANATHEMA IN THE CIVIL SERVICE.— Respondent also insists in her memorandum that she is entitled to a penalty lesser than dismissal because no damage was caused to the Government; she returned the money to the complainants and the latter thereafter paid the Cashier's Office for the proper issuance of examination fee stamps. She further emphasizes that the money involved was only six hundred pesos, not a "multi-million pesos scam." These arguments show respondent's

distorted sense of values. It seems all right for respondent to steal from the government as long as it does not involve millions of pesos. Respondent should be reminded that a public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service. In addition, the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) enunciates the State Policy of promoting a high standard of ethics and utmost responsibility in the public service. To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Arnold E. Cacho for respondent.

D E C I S I O N

***PER CURIAM*:**

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Civil Service Commission (CSC) seeks to reverse and set aside the decision[1] of 23 July 2002 of the Court of Appeals and its resolution[2] of 18 October 2002 in CA-G.R. SP No. 65096. The former modified the penalty imposed

[1] *Rollo*, 33-38. Per Labitoria, *J*., with Regino and Enriquez, Jr., *JJ*., concurring.

[2] *Id*., 30-31.

by the CSC on respondent Delia T. Cortez from dismissal from the service with forfeiture of benefits and disqualification from reemployment in the government service without prejudice to any civil or criminal liability in a proper action to that of being considered resigned from the service with entitlement to all the benefits under the law. The latter denied petitioner's motion to reconsider the former.

The antecedent facts follow.

Respondent Delia T. Cortez, Chief Personnel Specialist of the Examination and Placement Services Division (EPSD) of Civil Service Regional Office (CSRO) No. X, Cagayan de Oro City, was formally charged with dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service in Resolution No. 99-0039 of the CSC dated 7 January 1999. Pertinent portions of the formal charge read as follows:

1. That on June 26, 1998 at about 3 p.m., two teenagers, namely June Grace Abina and Rubielyn Ofredo appeared at the CSRO No. X for the purpose of filing application forms for the Career Service Professional Examination for their aunt and her [their aunt's] co-employees;

2. That on the above-mentioned date and time Abina and Ofredo proceeded to the CSRO No. X, Cashier's Office to purchase the required examination fee stamps. A personnel from the Cashier's Office, however, told them to first proceed to the EPSD for the approval of the said application forms;

3. That when Abina and Ofredo presented the said application forms at the EPSD, respondent Cortez pasted a stamp worth ₱150.00 on each of the application forms. Thereafter, she asked from them the payment corresponding to the value of the stamps pasted on the said application forms;

4. Thereafter, Abina and Ofredo returned to the Cashier's Office to inquire as to whether there are still other fees to be paid. But when the Cashier saw that the said application forms were already pasted with stamps, she examined the same and she noted that the serial numbers of the said stamps did not correspond with the serial numbers of the stamps issued to said Office;

5. This prompted the cashier, accompanied by Abina and Ofredo[,] to proceed to the EPSD and confronted [sic] respondent Cortez on the unauthorized selling of stamps. Consequently, respondent immediately removed the stamps from the application forms, kept them, and brought out the money which Abina and Ofredo earlier gave her and handed the same to the Cashier who subsequently, issued them another stamps;

6. That the stamps which respondent Cortez sold to Abina and Ofredo bearing serial numbers 0216430, 0216432, 0216441, and 0116443 were issued to the CSRO No. X way back in 1995 for the Professional Board Examination for Teachers (PBET).[3]

Respondent Cortez filed an answer vehemently denying the charges against her. She averred that the application forms submitted to her by June Grace Abina (hereafter, Abina) and Rubielyn Ofredo (hereafter, Ofredo) for the actual applicants were already pasted with stamps. Noticing that the stamps were not the ones being currently sold, she asked Abina and Ofredo where the applicants were and told them to tell the applicants to personally file their application forms since the rules require that applicants must personally thumbmark their application forms in the EPSD. She thereafter removed the stamps so that she could show them to the applicants when they personally would come to file their application forms. After she removed the stamps, Abina and Ofredo ran towards the gate. She waited, but the applicants never came to her office. She denied that she collected money for the stamps and that there was a confrontation between her and the cashier. She branded the charges against her as "brazen lies and concoctions" of some people determined to destroy her more than twenty years of service in the CSC, eight years of which she served as Chief of the EPSD.[4]

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[3] *Rollo*, 40-41.

[4] *Rollo*, 41-44.

In its resolution of 1 February 1999, the CSC placed respondent under a 90-day preventive suspension pending formal investigation of the serious charges against her.[5]

During the formal investigation, Abina and Ofredo identified and affirmed their joint-affidavit[6] wherein they narrated that upon perusal by a clerk in the Cashier's Office of their aunt's and their aunt's officemates' application forms, they were told to first go to the EPSD for approval of the application forms. Once there, they saw a woman, who was later identified as respondent Delia T. Cortez, attending to three applicants who were in the process of buying examination fee stamps from her. When it was their turn, respondent pasted examination fee stamps worth ₱150 each on each of the four application forms, took Abina's and Ofredo's money (₱900) and gave them their change (₱300). When they went back to the Cashier's Office to inquire for further requirements, the clerk asked them where they got the stamps and they told the clerk that they got them from the EPSD. The clerk immediately brought the matter to the Acting Cashier and the latter accompanied them to the EPSD where a confrontation took place between respondent and the cashier regarding the unauthorized sale of stamps. Respondent removed the stamps, but only after the cashier was able to successfully copy the serial numbers of the stamps. The respondent, followed by the cashier, then went inside the adjacent room, where, from outside, they saw respondent took their money from a cabinet. Respondent then handed back to them their money, which the latter thereafter used to buy another set of examination fee stamps at the Cashier's Office.[7]

Eva S. Alcalde and Angeline P. Lim, clerk and Acting Cashier of CSRO No. X, respectively, also identified and affirmed their affidavits[8] supporting the joint-affidavit of Abina and Ofredo.

Eva S. Alcalde affirmed that she told Abina and Ofredo to first go to the EPSD for the approval of their aunt's and their

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[5] *Id*., 44-45.

[6] Exhibit "A", *Rollo*, 45-46.

[7] *Rollo*, 45-46.

[8] Exhibits "B" and "C", *Rollo*, 46-49.

aunt's officemates' application forms before she could issue to them examination fee stamps. However, when the two teenagers went back to the Cashier's Office from the EPSD, Alcalde noticed that the application forms were already pasted with stamps. Puzzled, she referred the matter to her superior, Acting Cashier Angeline P. Lim.[9]

Acting Cashier Angeline P. Lim affirmed that Alcalde referred to her certain application forms containing stamps whose serial numbers did not correspond to the serial numbers of the stamps the Cashier's Office was authorized to issue for that particular day. Upon information from Abina and Ofredo that the stamps came from the EPSD, Lim, with Abina and Ofredo, immediately proceeded to the EPSD where a confrontation took place between Lim and respondent regarding the questionable stamps. Respondent feigned innocence, saying "*Unsa man diay ni day*?" ("What is this all about?"). However, after Lim copied the serial numbers of the stamps in front of respondent, respondent detached the stamps and went inside the Records Section of the EPSD. Lim followed her inside the room, and respondent handed to her ₱600 which Lim did not accept but instead told respondent to personally return the money to Abina and Ofredo. When Lim returned to her office, she immediately traced the origin of the questionable stamps and discovered that they were among the batch of stamps bearing serial numbers 0215993 to 0216492 issued by then Cashier Marilyn S. Tapay and sold two years ago (18 May 1995) by the Cashier's Office under O.R. No. 1332901 for the Professional Board Examination for Teachers. Around 5:00 p.m. of the same day, respondent approached Lim and told her that someone just asked her to sell the recycled stamps. When Lim asked respondent who made her do such a thing, respondent vaguely answered that the person was their co-employee and a mere rank and file personnel. When Lim inquired further the person's real identity, respondent did not reply. The following day, respondent once again approached Lim during the general assembly and told her that they had to talk after the meeting. After the meeting, respondent told Lim

[9] Exhibit "B", 46-47.

that it would be better if the matter would not reach top management because the person she referred to yesterday as the source of the recycled stamps would see to it that they (respondent and Lim) would be the first ones to lose their jobs.[10]

Respondent Cortez, for her part, identified and affirmed the contents of her counter-affidavit.[11] Her counter-affidavit contained almost the same averments as that in her answer, that is, that the application forms were already pasted with stamps when presented to her by Abina and Ofredo and that the charges against her were "brazen lies." In addition, respondent alleged in her counter-affidavit that Acting Cashier Lim concocted the charges against her in order for Lim to be promoted.[12]

After carefully evaluating the evidence of the parties, petitioner CSC in its Resolution No. 010499 of 22 February 2001 concluded that the version of the complainants was more credible. It noted that witnesses Abina and Ofredo categorically pointed to respondent as the source of the questionable stamps and material portions of their testimonies were corroborated by two other witnesses, Eva S. Alcalde and Acting Cashier Angeline P. Lim. In contrast, the CSC noted that respondent Cortez relied on mere denials which could not prevail over the clear, positive and categorical testimonies against her. It also pointed out that respondent never presented any competent and credible evidence to show why the witnesses against her, especially Abina and Ofredo, would falsely testify against her. Thus, it ruled that respondent was guilty of illegally selling recycled stamps for her own financial gain, an act which constituted dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service. It ordered respondent dismissed from the service with forfeiture of benefits and disqualification from reemployment in the government service, without prejudice to any civil or criminal liability in a proper action.[13]

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[10] Exhibit "C", *Rollo*, 47-49.

[11] Exhibit 28, *Rollo*, 49-52.

[12] *Rollo*, 49-52.

[13] *Rollo*, 53-54.

Respondent filed a motion for reconsideration, but the CSC denied it in its Resolution No. 010926 of 11 May 2001, on the ground that the motion was a mere rehash of the allegations in her answer and counter-affidavit which had already been passed upon by the Commission in its decision.[14]

Respondent promptly filed a petition for review before the Court of Appeals under Rule 43 of the Rules of Court. She raised in her petition the issues of violation of administrative due process and the propriety of the penalty of dismissal.[15] The appeal was docketed as CA-G.R. SP No. 65096.

In its decision of 23 July 2002, the Court of Appeals granted respondent's petition. It ruled that although respondent was properly accorded administrative due process as evidenced by the fact that she was able to file an answer, a counter-affidavit and even a motion for reconsideration, the penalty of dismissal imposed on her was too harsh considering (a) her twenty-one years of service in the government, (b) the fact that it was her first offense and (c) that no damage was sustained by the Government. Accordingly, it modified the penalty imposed on respondent from dismissal from the service with all its accessory penalties to that of forced resignation from the service with entitlement to all the benefits under the law. Pertinent portions of the decision of the Court of Appeals read as follows:

> Applying these principles and given the fact that Petitioner duly filed her Answer, Counter-Affidavit and even a Motion for Reconsideration, there is no denying that she was duly accorded administrative due process.
>
> Nonetheless, We agree with the Petitioner that the penalty of dismissal would be too harsh for the offense she has committed. Considering that the Petitioner has been in the service for twenty one (21) years, the fact that this is her first offense, during the length of her service she was never administratively called upon to answer for any official misconduct not to mention that no damage was sustained by the government for the misconduct she has committed,

[14] *Id*., 55-58.

[15] *Id*., 37.

should be considered mitigating circumstances for which a penalty less than dismissal would be justified. In her motion for reconsideration, Petitioner prayed that if the penalty imposed upon her be mitigated, that she would just be considered forcibly resigned.

WHEREFORE, premises considered, the instant Petition for Review is GRANTED. Petitioner is hereby considered forcibly resigned from the service with a right to all the benefits to which she may be entitled under the law.

SO ORDERED.[16]

Its motion for reconsideration having been denied by the Court of Appeals for having been filed one day late,[17] petitioner filed the petition at bar, assigning the following issue for our consideration:

> WHETHER THE PENALTY OF DISMISSAL METED OUT TO RESPONDENT IS TOO HARSH TAKING INTO CONSIDERATION HER BEING A FIRST-TIME OFFENDER AND HER OVER TWENTY-ONE (21) YEARS IN GOVERNMENT SERVICE.

After the issues were joined, we gave due course to the petition and required the parties to submit their respective memoranda.

To be sure, respondent's guilt for the administrative offense charged has long been settled when she did not question before the Court of Appeals the decision of the CSC finding her guilty of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service. What respondent questioned before the Court of Appeals was the penalty of dismissal imposed on her, which she considered to be too harsh considering her length of service in the government and the fact that the offense she was found guilty of was her first offense.[18]

Petitioner contends that respondent is not entitled to any penalty lesser than dismissal considering the gravity of her offense. Respondent's act constituted dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service

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[16] *Rollo*, 37-38.

[17] *Id.*, 30-31.

[18] *Rollo*, 37.

which, under Section 52 in relation to Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, are all grave offenses punishable by dismissal from the service. Based on jurisprudence, dishonesty warrants dismissal from the service, with forfeiture of benefits and disqualification from reemployment in the government service. The mitigating circumstances of length of service and "first offense" invoked by respondent cannot be considered since dismissal is an indivisible penalty. In any case, if length of service is to be considered at all, it should be taken against the respondent because despite her long service in the government, she did not exhibit any sense of loyalty; instead, she abused the government's trust by taking advantage of her position. Petitioner also asserts that the Court of Appeals erred in imposing the penalty of forced resignation on respondent since forced resignation as an administrative penalty is not provided under the Administrative Code of 1987. Besides, the penalty of forced resignation without forfeiture of benefits and disqualification from reemployment in the government service for the grave offenses of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service is reprehensible because this, in effect, would be rewarding an erring employee instead of punishing her for her offense.

Upon the other hand, respondent maintains that dismissal from the service with forfeiture of benefits is not commensurate with the offense she committed and that considering the mitigating circumstances mentioned above, the lesser penalty of forced resignation with entitlement to all benefits under the law is the proper penalty. She emphasizes that the amount involved was only ₱600, which she returned to the complainants. Since the complainants thereafter bought examination fee stamps at the Cashier's Office using the money she returned to them, no damage was caused to the Government. Her case, she claims, warrants the appreciation of the mitigating circumstances of length of service and "first offense," not because she deserves sympathy or pity, but because she is entitled to the said mitigating circumstances as a matter of right.

We rule in favor of petitioner CSC.

Under the Civil Service Law[19] and its implementing rules,[20] dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service[21] are grave offenses punishable by dismissal from the service.[22] Thus, as provided by law, there is no other penalty that should be imposed on respondent than the penalty of dismissal.

Of course, the rules allow the consideration of mitigating and aggravating circumstances[23] and provide for the manner of imposition of the proper penalty: Section 54 of the Uniform Rules on Administrative Cases in the Civil Service provides:

Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

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[19] Subtitle A, Title I, Book V of E.O. No. 292, otherwise known as the Administrative Code of 1987.

[20] Omnibus Civil Service Rules and Regulations dated 27 December 1991, amended by the Uniform Rules on Administrative Cases in the Civil Service dated 31 August 1999.

[21] Section 52, Uniform Rules on Administrative Cases in the Civil Service.

[22] Under Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, if respondent is found guilty of two or more charges, the penalty to be imposed shall be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Thus, although conduct prejudicial to the best interest of the service is punishable by dismissal only on commission of the second offense, if we take it with the two other charges respondent was found guilty of (dishonesty and grave misconduct), the penalty imposable on respondent is dismissal from the service, the penalty for dishonesty or grave misconduct which is the most serious charge.

[23] Section 53, Uniform Rules on Administrative Cases in the Civil Service, dated 31 August 1999.

d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances.

Jurisprudence is abound with cases applying the above rule in the imposition of the proper penalty and even in cases where the penalty prescribed by law, on commission of the first offense, is that of dismissal, which is, as argued by petitioner, an indivisible penalty, the presence of mitigating or aggravating circumstances may still be taken into consideration by us in the imposition of the proper penalty. Thus, in at least three cases,[24] taking into consideration the presence of mitigating circumstances, we lowered the penalty of dismissal imposed on respondent to that of forced resignation[25] or suspension for 6 months and 1 day to 1 year without benefits.[26] This being so, is respondent entitled to a penalty lesser than dismissal, considering (1) her length of service in the government and (2) the fact that the offense she was found guilty of was her first offense?

Under the facts of this case, respondent is not entitled to a lower penalty.

Petitioner CSC is correct that length of service should be taken against the respondent. Length of service is not a magic

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[24] *Marasigan v. Buena*, 348 Phil. 1 (1998); *Office of the Court Administrator v. Ibay*, A.M. No. P-02-1649, 29 November 2002; *Office of the Court Administrator v. Sirios*, A.M. No. P-02-1659, 28 August 2003.

[25] In *Marasigan v. Buena, supra*, the Court, taking into consideration respondent's demonstrated repentance, immediate full restitution and sincere effort to reform her life, modified the penalty of dismissal to that forced resignation ("deemed resigned from the service") with entitlement to leave credits and retirement benefits, without prejudice to reemployment in the government service.

[26] In *Office of the Court Administrator v. Ibay*, *supra*, the Court, after ruling that the penalty next lower to dismissal from the service is suspension for 6 months and 1 day to 1 year without benefits including leave credits, ordered respondent suspended from the service for 7 months without benefits including leave credits, while in *Office of the Court Administrator v. Sirios*, *supra*, the Court reduced the imposable penalty from dismissal to suspension for 3 months without pay.

word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance. That this is so is clear in Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Services Rules and Regulations dated 27 December 1991. The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating or alternative circumstances by the disciplining body:

> Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances*. — In the determination of the penalties imposed, mitigating, aggravating and *alternative circumstances* attendant to the commission of the offense shall be considered.
>
> The following circumstances shall be appreciated:
>
> a. Physical illness
> b. Good faith
> c. Taking undue advantage of official position
> d. Taking undue advantage of subordinate
> e. Undue disclosure of confidential information
> f. Use of government property in the commission of the offense
> g. Habituality
> h. Offense is committed during office hours and within the premises of the office or building
> i. Employment of fraudulent means to commit or conceal the offense
> j. Length of service in the government
> k. Education, or
> l. Other analogous circumstances (Italics ours)

In *University of the Philippines vs. Civil Service Commission, et al.,*[27] we did not consider length of service in favor of the private respondent; instead, we took it against said respondent because her length of service, among other things, helped her in the commission of the offense. Thus:

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[27] G.R. No. 89454, 20 April 1992, 208 SCRA 174.

Respondent Commission contends that it did not err in upholding the decision of the Merit Systems Protection Board since the decision of said Board took into account private respondent's length of service and the fact that it was her first offense. We do not Agree . . . *Private respondent's length of service cannot be considered as a mitigating circumstance since it was her length of service, among others, that earned her the position she was in and the trust she enjoyed through which she illicitly allowed her relatives to enjoy unmerited privileges and, in the case of Fernando B. Manicad, an unwarranted diploma.* (Italics ours)

Moreover, a review of jurisprudence shows that, although in most cases length of service is considered in favor of the respondent,[28] it is not considered where the offense committed is found to be serious.[29] Thus, in *Yuson vs. Noel*,[30] we ruled:

The mere length of his service (for ten years) *cannot mitigate the gravity of his offense or the penalty he deserves*. It is clear from facts here established that the respondent does not deserve to remain in the Judiciary, where integrity is an indispensable credential. (Italics ours)

And, in *Concerned Employee vs. Nuestro*,[31] we held:

Dishonesty is a malevolent act that has no place in the court system. In the present case, respondent's misconduct constitutes grave dishonesty that disqualifies her from holding any position in the judiciary . . . The recommendation of the Office of the Court

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[28] *Perez v. Abiera*, A.C. No. 223-J, 11 June 1975, 64 SCRA 302, 309–310; *Garcia v. Asilo*, A.M. No. P-1769, 28 February 1979, 88 SCRA 606, 609; *Seguisabal v. Cabrera*, 193 Phil. 809 (1981); *Civil Service Commission v. Lucas*, 361 Phil. 486, 491 (1999); *Velasquez v. Inacay*, A.M. No. CA-02-11-P, 29 May 2002, 382 SCRA 389, 395; *Reyes v. Vidor*, A.M. No. P-02-1552, 3 December 2002; *Albello v. Galvez*, A.M. No. P-01-1476, 16 January 2003.

[29] *University of the Philippines v. Civil Service Commission*, G.R. No. 89454, 20 April 1992, 208 SCRA 174; *Yuson v. Noel*, A.M. No. RTJ-91-762, 23 October 1993, 227 SCRA 1; *Concerned Employee v. Nuestro*, A.M. No. P-02-1629, 11 September 2002.

[30] A.M. No. RTJ-91-762, 23 October 1993, 227 SCRA 1.

[31] A.M. No. P-02-1629, 11 September 2002.

Administrator for six (6) months suspension is therefore *too lenient in view of the gravity of the offense charged*. It may be true that respondent has been in the service for eleven years but she has blemished her record irreparably and, under the circumstances, we believe that her dismissal is warranted. (Italics ours)

Applying the above-cited cases to the case at bar, we cannot also consider length of service in favor of the respondent because of the gravity of the offense she committed and of the fact that it was her length of service in the CSC which helped her in the commission of the offense.

Respondent was in the Civil Service Commission for twenty-one years, the last eight years of which (1990-1998) she spent as Chief of the Examination and Placement Services Division (EPSD). Surely, respondent earned the last position because of her length of service in the CSC. As Chief of the EPSD, she naturally had access to the previously processed and approved application forms wherefrom she detached the stamps and later on sold to new civil service examination applicants and pocketed the proceeds of the sale. It is worthy to note that the stamps respondent was caught selling were issued in 1995, the time respondent was already in the EPSD, serving as its chief. Respondent's length of service in the CSC, therefore, clearly helped her in the commission of the offense.

As to the gravity of the offense, which is the other factor why we cannot consider length of service in favor of the respondent, it is clear from the ruling of the CSC that respondent's act irreparably tarnished the integrity of the CSC. Respondent was the Chief of the EPSD, but despite such important and senior position which should have impelled her to set a good example to her co-employees and other civil servants, respondent flagrantly and shamelessly violated the law by selling, for her own financial gain, used examination fee stamps, right in her own office and during office hours. Such flagrant and shameless disregard of the law by a senior officer seriously undermined the integrity of the CSC, the body mandated by the Constitution to preserve and safeguard the integrity of the civil service.[32]

[32] Article IX-B, Section 3, 1987 Constitution.

She should be a model of honesty and integrity. By irreparably tarnishing the integrity of the Civil Service Commission, respondent did not deserve to stay in the said agency and in the government service.

The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases,[33] we imposed the heavier penalty of dismissal[34] or a fine of more than ₱20,000,[35] considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.

Respondent also insists in her memorandum that she is entitled to a penalty lesser than dismissal because no damage was caused to the Government; she returned the money to the complainants and the latter thereafter paid the Cashier's Office for the proper issuance of examination fee stamps. She further emphasizes that the money involved was only six hundred pesos, not a "multi-million pesos scam." These arguments show respondent's distorted sense of values. It seems all right for respondent to steal from the government as long as it does not involve millions of pesos.

Respondent should be reminded that a public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.[36] This constitutionally-enshrined

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[33] *Monsanto v. Palarca*, 211 Phil. 237, 251 (1983); *Cajot v. Cledera*, A.M. No. P-98-1262, 12 February 1998, 286 SCRA 238, 243; *Gutierrez v. Quitalig*, A.M. P-02-1545, 2 April 2003.

[34] *Cajot v. Cledera, supra*.

[35] *Monsanto v. Palarca, supra; Gutierrez v. Quitalig, supra.*

[36] Section 1, Article XI, 1987 Constitution.

principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service. In addition, the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) enunciates the State Policy of promoting a high standard of ethics and utmost responsibility in the public service.

To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office.[37] When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[38]

WHEREFORE, the Decision of 23 July 2002 and the Resolution of 18 October 2002 of the Court of Appeals in CA-G.R. SP No. 65096 are hereby *REVERSED* and *SET ASIDE*. Resolution No. 010499 of the Civil Service Commission dated 22 February 2001, dismissing respondent Delia T. Cortez from the service with forfeiture of leave credits and retirement benefits, cancellation of eligibility and disqualification from reemployment in the government service, without prejudice to civil or criminal liability in a proper action, is hereby *REINSTATED*.

No pronouncement as to costs.

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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[37] *Nera v. Garcia*, 106 Phil. 1031, 1035-36 (1960).

[38] *Bautista v. Negado*, 108 Phil. 283, 289 (1960)

FIRST DIVISION

[G.R. No. 156786. June 3, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SUSANO PATEO *y* GARCIA alias "Sanok" and VICENTE BATUTO *y* JAPAY,** *appellants*.

SYNOPSIS

Appellants Susano Pateo *y* Garcia *alias* "Sanok" and Vicente Batuto *y* Japay were convicted of murder by the Regional Trial Court of Naval, Biliran and were sentenced to suffer the penalty of *reclusion perpetua.* In their appeal before the Court, petitioners contended that the trial court erred in giving credence to the testimonies of prosecution witnesses Anna Marie Silvano, Eric Silvano and Teresa Mallen inspite of their grossly inconsistent and contradictory statements. Appellants also contended that the trial court erred in not appreciating the incomplete self-defense in favor of appellant Vicente Batuto.

The Supreme Court affirmed their conviction for murder. According to the Court, witnesses are not expected to give a flawless testimony all the time. Although there may be inconsistencies in minor details, the same do not impair the credibility of the witnesses, where, as in the present case, there is no inconsistency in relating the principal occurrence and the positive identification of the assailant. Minor discrepancies do not damage the essential integrity of the evidence in its material whole nor reflect adversely on the witnesses' credibility. All three prosecution witnesses identified appellants as the perpetrators of the crime. Not only were they identified, the witnesses also testified as to their roles and their specific deeds in the killing. The Court also ruled that the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend. The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence. The victim in case at bar sustained fifteen hack and stab wounds. Said wounds belied appellant Vicente Batuto's assertion that he was only defending himself.

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENT OF UNLAWFUL AGGRESSION.— When the accused invokes self-defense, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. Self-defense as a justifying circumstance is present when the following concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. It contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of weapon. Of all the elements, unlawful aggression, *i.e.*, the sudden unprovoked attack on the person defending himself, is indispensable. A threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material aggression.

2. ID.; ID.; ID.; ID.; NUMBER OF STAB WOUNDS SUSTAINED BY VICTIM BELIED APPELLANT'S ASSERTION THAT HE WAS ONLY DEFENDING HIMSELF.— In the case at bar, the trial court found that Vicente came out of his hiding place and hacked the unsuspecting Antonio on the head. Antonio could not have been the aggressor. Moreover, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend. The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence. In this case, Antonio sustained fifteen hack and stab wounds. These wounds more than belie Vicente's assertion that he was defending himself. Besides, the trial court also found that when Antonio was already down, Vicente asked, "Are you still alive?" After taunting him, Vicente delivered the *coup de grace* by thrusting his bolo into his sprawled body. A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased.

3. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; INFERRED FROM THE ACTS OF APPELLANT AND HIS CO-ACCUSED.— The trial court correctly found that there was conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In the absence of direct proof of conspiracy, it may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest. In this case, Vicente admitted the killing. Susano's participation in the killing was proven by his acts of handing the bolo to Vicente and beating Antonio up with a blunt instrument.

4. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; SHOWN BY APPELLANT'S SUDDEN AND UNEXPECTED ATTACK IN ORDER TO ENSURE THE SUCCESSFUL DELIVERY OF THE FIRST BLOW.— The trial court also correctly held that treachery attended the killing of Antonio. There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked. As observed by the trial court, "consciously, Vicente Batuto hid in the 'San Francisco' plants and shrubs near the store to create an ambush on the presence of Antonio Silvano." The fact that he hid behind the plants showed his intention to surprise Antonio and ensure that he would be able to successfully deliver the first blow. We, therefore, affirm appellants' conviction for the crime of murder.

5. REMEDIAL LAW; EVIDENCE; DEFENSES OF ALIBI AND DENIAL; CANNOT PREVAIL OVER THE DETAILED NARRATION OF APPELLANT'S PARTICIPATION AS ONE OF THE PERPETRATORS.— As to Susano's denial that he participated in the killing, the trial court observed that "plainly, if Susano Pateo was not a participant, no witness would point to him." In fact, their other two drinking companions were not pointed to as perpetrators and impleaded as accused.

Moreover, the trial court found that the fifteen wounds sustained by Antonio were apparently caused by two instruments: a sharp and a blunt instrument. The defense of denial, like alibi, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. Furthermore, all three of the prosecution witnesses pointed to him as one of the perpetrators and in fact narrated in detail his participation in the killing of Antonio.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Redentor C. Villordon for accused-appellants.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Appellants Susano Pateo *y* Garcia *alias* "Sanok" and Vicente Batuto *y* Japay were charged with the crime of murder in an information[1] which reads:

That on or about the 01st day of October 2000, at Sitio Picas, Brgy. Caraycaray, Naval, Biliran Province, Philippines, and within the jurisdiction of this Honorable Court, said accused, with malice aforethought, and with deliberate intent to take the life of ANTONIO SILVANO, conspiring with, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously and treacherously attack the former, first, from behind by co-accused Vicente Batuto who hid behind the flowering plants in front of the store of Susano Pateo *alias* Sanok, and thereafter, by Susano Pateo who went out of his store and strike (*sic*) the head of Antonio Silvano with the use of a lead pipe, and later, to (*sic*) the other parts of the victim's body, and while accused Vicente Batuto and victim Antonio Silvano grappled for the possession of the short knife, co-accused Susano Pateo continuously hack (*sic*) said Antonio Silvano hitting him to (*sic*) the different parts of his body which caused his direct and immediate death thereafter.

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[1] Records, p. 27.

Appellants pleaded "not guilty." Trial on the merits thereafter ensued.

At around 6:30 in the evening of October 1, 2000, appellants Susano Pateo and Vicente Batuto were having a drinking binge together with Olimpio Narrido and Zosimo Paculan at the yard near Susano's store located at Sitio Picas, Brgy. Caraycaray, Naval, Biliran. When they were inebriated, they began to talk loudly and became unruly. Their neighbor, Antonio Silvano, could not sleep due to the noise. He and his wife sent their daughter, Ana Marie, to ask the group twice to tone down their voices, but the request was ignored.

A short while later, Antonio went out of his house to buy candies from Susano's store with Ana Marie in tow. He brought with him a knife hidden behind his waist. When he saw Antonio approaching, Susano handed a bolo to Vicente, who then hid behind some shrubs near the store.

After Antonio got his candies, Vicente suddenly emerged from his hiding place and hacked the former at the back of his head. Immediately thereafter, Vicente successively hacked Antonio on different parts of his body. Antonio fought for possession of the bolo from Vicente. He was able to draw his knife and stab Vicente on the abdomen, chest and left arm.

Seeing the tide shifting in Antonio's favor, Susano ran out of his store and repeatedly struck Antonio on different parts of his body with a blunt instrument, forcing the latter to release his hold on Vicente and drop his knife. Antonio ran towards his mother's house while Vicente pursued him. Vicente caught up with him and repeatedly hacked him on different parts of his body with the bolo.

After Antonio fell to the ground, Susano went back to his house. Vicente, however, who had a grudge against Antonio, tauntingly asked, "Are you still alive?" He then delivered the *coup de grace* and thrust his bolo into Antonio's body, which caused his death.

Dr. Salvacion Salas, Municipal Health Officer of Naval, Biliran, examined Antonio's cadaver and came up with the following findings:

1. Hacking wound at the occipital region of the head which measures to 7 cm. width respectively, involving only the skin.
2. Hacking wound at the frontal area of the head involving the skin exposing the bone. The wound measures L-9 cm. & w-2 cm. respectively. No brain tissues noted.
3. Hacking wound at the left portion of the face involving at the upper left eyebrow passing thru the left ear involving the left portion of the neck. It involved the skin up to the bone of the skull but no brain tissues noted. The wound measures L-19 cm. & W-3 cm.
4. Hacking wound at the right portion of the right ear through the right side of the forehead. It measures L-6.5 cm. & W-2 cm. Involving only the skin and Muscle.
5. Lacerated wound at the back of the right ear measuring 3 cm. in length; and 1 cm. in width.
6. Wound at the back portion of the head; just adjacent to the 1st wound, involving only the skin. It measures L-6 cm.; W-1 cm.
7. Lacerated wound at the left cheek bone area with a Measurement L-2.5 cm; W-0.5 cm.
8. Lacerated wound at the right face — measuring L-11 cm. & W-6.5 cm. respectively.
9. Lacerated wound at the chain just below the lower lip Measuring 4 cm. in length; and 2 cm. wide.
10. Lacerated wound at the left arm just below the right axilla measuring 2 cm. long; and 1 cm. wide.
11. Stab wound at the left chest — 5 cm. from the left nipple. The wound measures 3 cm. long; 0.7 cm. wide; and 24 cm. deep directing downward penetrating the chest cavity.
12. Stab wound at the abdomen just 3.5 cm. from umbilicus. The wound measures 2 cm. length; 0.5 cm. wide & 3.5 cm. deep involving the skin up to muscle.
13. Lacerated wound at the back of the right thigh measuring to 3 cm. long; 2 cm. wide & 6 cm. deep.

14. Lacerated wound at the back of the right leg just below the knee joint measuring to 5 cm. long; 1 cm. wide & 5 cm. deep involving the skin up to the muscle.

15. Lacerated wound at the right hand measuring 1 cm. long & 4 cm. wide.

Cause of Death: Cardiac Respiratory Arrest due to Severe Internal & External hemorrhage secondary to Multiple Hacking and Stab wounds.[2]

Appellant Vicente interposed self-defense. He alleged that a drunk and armed Antonio went to Susano's store looking for him. When Antonio found him outside the store, he stabbed the latter with the knife. Vicente fought back with his bolo. In the ensuing struggle, Antonio fell and died of his wounds.

For his part, Susano denied striking Antonio with a lead pipe. He claimed that he just stayed in his store during the fight and took no part in the fighting.

The trial court gave credence to the prosecution's evidence and rendered a decision,[3] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing considerations, this Court finds the accused SUSANO PATEO *Y* GARCIA *alias* "Sanok" and VICENTE BATUTO *Y* JAPAY *GUILTY* beyond reasonable doubt of the crime of Murder, hereby imposing upon them the penalty of *Reclusion Perpetua* and with all the necessary penalties provided by law.

Both accused shall solidarily pay the legal heirs an indemnity on the life of the deceased Antonio Silvano in the amount of ₱50,000.00. With costs.

SO ORDERED.

Hence, this appeal based on the following assignment of errors:

1. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES ANA

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[2] Exhibit "A", Records, pp. 7-8.

[3] Penned by Judge Enrique C. Asis, Records, pp. 110-132.

MARIE SILVANO, ERIC SILVANO, AND TERESA MALLEN INSPITE OF THEIR GROSSLY INCONSISTENT AND CONTRADICTORY STATEMENTS.

2. THE TRIAL COURT ERRED IN CONVICTING ACCUSED SUSANO PATEO OF THE CRIME CHARGED.

3. THE TRIAL COURT ERRED IN NOT APPRECIATING INCOMPLETE SELF-DEFENSE IN FAVOR OF VICENTE BATUTO.[4]

In particular, appellants point out that Ana Marie failed to expressly mention that Susano struck her father with a lead pipe. Also, she could not have witnessed the incident as she testified that she went to sleep after she returned from the store. These are all contrary to Eric Silvano's and Teresa Mallen's testimonies. In addition, Ana Marie candidly admitted that she was coached by her lawyer as to what she will do during the trial.

Witnesses cannot be expected to give a flawless testimony all the time. Although there may be inconsistencies in minor details, the same do not impair the credibility of the witnesses, where, as in this case, there is no inconsistency in relating the principal occurrence and the positive identification of the assailant. Minor discrepancies do not damage the essential integrity of the evidence in its material whole nor reflect adversely on the witnesses' credibility. We have previously held in fact that minor inconsistencies, far from detracting from the veracity of the testimony, even enhance the credibility of the witnesses, for they remove any suspicion that the testimony was contrived or rehearsed.[5] In this case, all three prosecution witnesses identified appellants as the perpetrators of the crime. Not only were they identified, the witnesses also testified as to their roles and their specific deeds in the killing.

It has been held that a witness testifying about the same nerve-wracking event can hardly be expected to be correct in

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[4] *Rollo*, p. 63.

[5] *People v. Bustamante*, G.R. Nos. 140724-26, 12 February 2003.

every detail and consistent with other witnesses in every respect, considering the inevitability of differences in perception, recollection, viewpoint or impressions, as well as in their physical, mental, emotional and psychological states at the time of the reception and recall of such impressions. After all, no two persons are alike in powers of observation and recall. Total recall or perfect symmetry is not required as long as witnesses concur on material points.[6]

As to allegations that Ana Marie's lawyer coached her to cry, it should be noted that she was only nine years old when she testified. Even without the lawyer coaching her, she was the daughter of the victim and she personally witnessed how her father was killed. She would naturally cry if forced to remember how her father died. In any case, we deem this episode too immaterial to affect her credibility.

It is well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility; thus, his findings will not be disturbed on appeal in the absence of any clear showing that he overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of appellants.[7] The circumstances pointed out by appellants are too trivial to affect the assessment and the eventual findings of the trial court that appellant committed the crime.

Moreover, when the accused invokes self-defense, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. Self-defense as a justifying circumstance is present when the following concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.[8] Unlawful

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[6] *People v. Aliben*, G.R. No. 140404, 27 February 2003.

[7] *Id*.

[8] *Id*.

aggression is a condition *sine qua non* for the justifying circumstance of self-defense. It contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of weapon. Of all the elements, unlawful aggression, *i.e.*, the sudden unprovoked attack on the person defending himself, is indispensable.[9] A threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material aggression.[10]

In the case at bar, the trial court found that Vicente came out of his hiding place and hacked the unsuspecting Antonio on the head. Antonio could not have been the aggressor.

Moreover, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend. [11] The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence.[12] In this case, Antonio sustained fifteen hack and stab wounds. These wounds more than belie Vicente's assertion that he was defending himself.

Besides, the trial court also found that when Antonio was already down, Vicente asked, "Are you still alive?" After taunting him, Vicente delivered the *coup de grace* by thrusting his bolo into his sprawled body. A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased.[13]

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[9] *People v. Rubiso*, G.R. No. 128871, 18 March 2003.

[10] *Id*.

[11] *People v. Aliben, supra*.

[12] *People v. Astudillo*, G.R. No. 141518, 29 April 2003.

[13] *People v. Carriaga*, G.R. No. 135029, 12 September 2003.

As to Susano's denial that he participated in the killing, the trial court observed that "plainly, if Susano Pateo was not a participant, no witness would point to him."[14] In fact, their other two drinking companions were not pointed to as perpetrators and impleaded as accused. Moreover, the trial court found that the fifteen wounds sustained by Antonio were apparently caused by two instruments: a sharp and a blunt instrument.[15] The defense of denial, like alibi, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. Furthermore, all three of the prosecution witnesses pointed to him as one of the perpetrators and in fact narrated in detail his participation in the killing of Antonio.

The trial court correctly found that there was conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In the absence of direct proof of conspiracy, it may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.[16] In this case, Vicente admitted the killing. Susano's participation in the killing was proven by his acts of handing the bolo to Vicente and beating Antonio up with a blunt instrument.

The trial court also correctly held that treachery attended the killing of Antonio. There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[17] As observed by the trial court, "consciously, Vicente

[14] Decision, Records, p. 128.

[15] *Id*., p. 130.

[16] *People v. Aliben, supra*.

[17] *People v. Bustamante, supra*.

Batuto hid in the 'San Francisco' plants and shrubs near the store to create an ambush on the presence of Antonio Silvano."[18] The fact that he hid behind the plants showed his intention to surprise Antonio and ensure that he would be able to successfully deliver the first blow. We, therefore, affirm appellants' conviction for the crime of murder.

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. The two penalties being both indivisible, and there being no mitigating nor aggravating circumstance in this case, the lesser of the two penalties, which is *reclusion perpetua*, should be imposed pursuant to the second paragraph of Article 63 of the Revised Penal Code.[19]

The trial court correctly awarded civil indemnity in the amount of ₱50,000.00[20] which is awarded without need of proof.

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Naval, Biliran, Branch 16, in Criminal Case No. N-2093, finding appellants, Susano Pateo y Garcia @ "Sanok" and Vicente Batuto *y* Japay, guilty beyond reasonable doubt of the crime of murder, sentencing them to suffer the penalty of *reclusion perpetua* and ordering them, jointly and severally, to pay the heirs of the deceased Antonio Silvano, civil indemnity, in the amount of ₱50,000.00, is *AFFIRMED in toto***.**

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman)*, Panganiban, Carpio,* and *Azcuna, JJ.,* concur.

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[18] Decision, Records, p. 131.

[19] *People v. Hormina*, G.R. No. 144383, 16 January 2004.

[20] *People v. Berdin*, G.R. No. 137598, 28 November 2003.

FIRST DIVISION

[G.R. No. 157269. June 3, 2004.]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JAIME "JIMBOY" ANTONIO *y* MACARIO,** *appellant*.

SYNOPSIS

Appellant Jaime "Jimboy" Antonio *y* Macario was convicted of rape by the Regional Trial Court of Zamboanga City and was sentenced to suffer the penalty of *reclusion perpetua*. In his appeal before the Court, appellant contended that the trial court erred in concluding that the elements of the crime of rape are present because there was no threat nor intimidation nor was offended party deprived of reason or is otherwise unconscious.

The Supreme Court affirmed appellant's conviction. According to the Court, the force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape. The degree of force which may not suffice when the victim is an adult, may be more than enough if employed against a person of tender age. In case at bar, appellant employed that amount of force sufficient to consummate rape. The Court noted that at the time of the incident, the victim, AAA was only 13 years old. Her size and strength was no match against appellant, who was already an adult in the prime of his life. Appellant's allegation that there was no force because AAA did not suffer injuries and her clothes were not torn was also rejected by the Court. The absence of bruises, scratches or abrasions on AAA's body or tear in her clothing does not diminish her credibility or rule out rape. The lack of such telltale signs of force is not necessarily inconsistent with AAA's testimony regarding the manner by which appellant succeeded in satisfying his lust, for proof thereof is not an essential element of the crime of rape.

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENT OF CARNAL KNOWLEDGE BY FORCE AND INTIMIDATION; ADEQUATELY PROVEN IN CASE AT BAR.— The *gravamen* of the offense is carnal knowledge of a woman against her will or without her consent. In convicting appellant, we agree with the trial court that the evidence on record adequately proves carnal knowledge by force and intimidation. It held: Under this premise, the court lent credence to the testimony of the offended party that she was pushed to the bed by the accused after the latter closed the door. And on the bed, she was raped by the accused. This act of pushing the offended party to the bed may not be that force that cannot be resisted. However, considering the tender years of the offended party, coupled with the undue influence that the accused exercised over her, the accused being the brother of Rowena Balber who generously took her in after she ran away from her sister, the act of pushing suffices. Force or intimidation is not limited to physical force. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point. xxx Repeating for emphasis, the offended party in the case at bar is only a little over thirteen (13) years of age. At that point in time, she was not in the possession and exercise of sufficient mental capacity to make an intelligent decision whether to submit herself to sexual intercourse that will bring dishonor to herself and her family. At that age, the offended party was not in the right mind to balance, with deliberation, the good or evil effect of submitting to such sexual act.

2. ID.; ID.; ID.; THE DEGREE OF FORCE WHICH MAY NOT SUFFICE WHEN THE VICTIM IS AN ADULT, MAY BE MORE THAN ENOUGH IF EMPLOYED AGAINST A PERSON OF TENDER AGE.— The force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape. The degree of force which may not suffice when the victim is an adult, may be more than enough if employed against a person of tender age. In the case at bar, appellant employed that amount

of force sufficient to consummate rape. It must be stressed that at the time of the incident, AAA was only 13 years old. Her size and strength was no match against the appellant, who was already an adult in the prime of his life. She testified that she was pushed to the bed by appellant and her hands were tightly pinned down, making it impossible for her, considering her build, to ward off the sexual assaults of the appellant. Moreover, appellant's allegation that there was no force because AAA did not suffer injuries and her clothes were not torn is not well taken. The absence of bruises, scratches or abrasions on AAA's body or tear in her clothing does not diminish her credibility or rule out rape. The lack of such telltale signs of force is not necessarily inconsistent with AAA's testimony regarding the manner by which appellant succeeded in satisfying his lust, for proof thereof is not an essential element of the crime of rape.

3. ID.; ID.; ID.; "SWEETHEART THEORY"; NOT SUPPORTED BY DOCUMENTARY, TESTIMONIAL AND OTHER EVIDENCE.— The "sweetheart theory" appellant proffers is effectively an admission of carnal knowledge of the victim and consequently places on him the burden of proving the supposed relationship by substantial evidence. To be worthy of judicial acceptance, such a defense should be supported by documentary, testimonial or other evidence. The record shows that, other than his self-serving assertions, the appellant had nothing to support his claim. No love letter, memento, or picture was presented to prove that such romantic relationship existed. His story that the night before the incident, he and AAA slept in the same bed and kissed each other, is highly incredible. There is no other indication that AAA was of ill repute or loose morals so as to readily consent to have intimate relations with him.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS NO STANDARD FORM OF REACTION FOR A WOMAN, MUCH MORE A MINOR WHEN FACING A SHOCKING AND HORRIFYING EXPERIENCE SUCH AS A SEXUAL ASSAULT.— We cannot agree with appellant's contention that AAA's failure to shout for help was tantamount to a submission to his sexual advances. There is no standard form of reaction for a woman, much more a minor, when facing a shocking and horrifying experience such

as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion. Her failure to shout could be attributed to the shock and horror which she felt as a result of appellant's sexual assault.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Juan Climaco P. Elago II for accused-appellant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is an appeal from the decision[1] of the Regional Trial Court of Zamboanga City, Branch 15, in Criminal Case No. 17134, finding appellant Jaime Antonio *y* Macario @ "Jimboy" guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua* with all its accessory penalties, and ordering him to pay the victim ₱100,000.00 as moral damages and the costs of suit.

The Information against appellant reads:

That on or about September 4, 2000, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force or intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, a 12 year old girl, against her will.

CONTRARY TO LAW.[2]

When arraigned, appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

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[1] Penned by Judge Vicente L. Cabatingan, *Rollo*, pp. 23-28.

[2] *Rollo*, p. 9.

The facts of the case are as follows:

Complainant AAA, a grade four drop out, left her home to work as a household helper with the Balber family at the Fishing Port Complex, Sangali, Zamboanga City. She was born on June 10, 1987 and, at the time of the rape, was only 13 years old. Appellant, the brother of Rowena Balber, was 34 years old. Appellant was visiting at the house of his sister when the alleged rape happened.

On September 4, 2000, at around 7:00 a.m., AAA and appellant were the only ones left in the house since Rowena Balber and her husband left for work and their children were in school. While AAA was folding the washed clothes, appellant suddenly shut the door and pushed her towards the bed. He removed her shorts and panties. He took off his clothes and, while pinning down AAA's hand on the bed, inserted his penis into her vagina. AAA felt pain. After satisfying his lust, appellant warned her not to tell anyone and left towards the fishing port.

AAA went to the house of her friend Sharmaine Salazar, and together they proceeded to the Sangali Police Station to report the incident. Her report was blottered at around 9:20 a.m. Thereafter, she was brought to the Zamboanga City Medical Center for medical examination. Since then, AAA remained in the custody of the DSWD at the Lingap Center, San Roque, Zamboanga City.[3]

Dr. Ritzi Apiag, a Medico-Legal Officer of Zamboanga City Medical Center, testified that on September 4, 2000, at around 12:45 p.m., she conducted a physical examination on AAA, which yielded the following results:

Physical Findings:	Breasts:	Developed with age
	Skin:	(-) bruises
	Mons pubis:	Hair sparsely distributed
	Labia majora & minora:	Slightly gaping

[3] TSN, November 28, 2000, pp. 2-12.

Hymen:	(+) healed incomplete lacerations at 8 o'clock position
Introitus:	Admits 2 fingers with ease

Sperm Analysis: (+)[4]

For his part, appellant admitted that he had sexual intercourse with AAA, but claimed it was voluntary and out of mutual consent. He alleged that they were lovers and that they were planning to live together but were waiting for the proper time to tell his sister. On the night before the alleged rape, appellant slept over at the house of his sister with AAA beside him. They kissed each other while they were together in bed. The following morning, when they were left alone in the house, AAA asked him to close the door. They both took off their clothes and AAA lay on the bed. Appellant made love to her while in a standing position. The sexual congress lasted for about 15 minutes. Appellant then left to buy fish. When he returned, AAA was crying because a neighbor saw what happened. AAA went out of the house while appellant cooked the fish for breakfast. After eating and washing the dishes, he went back to sleep. Later, policemen arrived and arrested him for the alleged rape of AAA.[5]

On July 11, 2002, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, the Court finds JAIME "JIMBOY" ANTONIO *y* MACARIO guilty beyond a reasonable doubt of the crime of RAPE, as principal and as charged, and in the absence of any aggravating or mitigating circumstance attendant in the commission of the offense, does hereby sentence him to suffer the penalty of a *RECLUSION PERPETUA*, with its accessory penalties, to indemnify the offended party the sum of One Hundred Thousand Pesos (₱100,000.00), Philippine Currency, in moral damages, and to pay the costs.

SO ORDERED.[6]

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[4] Records, p. 7.

[5] TSN, September 26, 2001, pp. 11-23.

[6] *Rollo*, p. 28.

Hence, this appeal based on the following assignment of errors:

I. THE LOWER COURT ERRED IN CONCLUDING THAT THE ELEMENTS OF THE CRIME OF RAPE ARE PRESENT.

A. THERE WAS NO THREAT OR INTIMIDATION NOR WAS OFFENDED PARTY DEPRIVED OF REASON OR IS OTHERWISE UNCONSCIOUS (*sic*).

B. THERE WAS NO FRAUDULENT MACHINATION OR GRAVE ABUSE OF AUTHORITY.

C. THE OFFENDED PARTY IS ABOVE TWELVE (12) YEARS OLD AND IS NOT DEMENTED.

II. THAT THE EVIDENCE PRESENTED SHOWED THAT THE ACCUSED MIGHT HAVE COMMITTED ANOTHER CRIME.[7]

A thorough appraisal of the evidence on record sustains the finding of guilt by the trial court. It is at once manifest from the testimonies of both the complainant and the appellant that the latter's "sweetheart theory" cannot persuade.

Once again, we reiterate the rule that findings of fact of the trial court carry great weight and are entitled to respect on appeal absent any strong and cogent reason to the contrary, since it is in a better position to decide the question of credibility of witnesses. In the determination of the veracity of the testimony, the assessment by the trial court is accorded the highest degree of respect and will not be disturbed on appeal unless it is seen to have acted arbitrarily or with evident partiality.[8] None of the exceptions exists in the case at bar.

In rape, the *gravamen* of the offense is carnal knowledge of a woman against her will or without her consent.[9] In convicting appellant, we agree with the trial court that the evidence on record adequately proves carnal knowledge by force and intimidation. It held:

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[7] *Rollo*, pp. 40-48.

[8] *People v. Gregorio*, G.R. No. 153781, 24 September 2003.

[9] *People v. Gabawa*, G.R. No. 139833, 28 February 2003.

Under this premise, the court lent credence to the testimony of the offended party that she was pushed to the bed by the accused after the latter closed the door. And on the bed, she was raped by the accused. This act of pushing the offended party to the bed may not be that force that cannot be resisted. However, considering the tender years of the offended party, coupled with the undue influence that the accused exercised over her, the accused being the brother of Rowena Balber who generously took her in after she ran away from her sister, the act of pushing suffices. Force or intimidation is not limited to physical force. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point.

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Repeating for emphasis, the offended party in the case at bar is only a little over thirteen (13) years of age. At that point in time, she was not in the possession and exercise of sufficient mental capacity to make an intelligent decision whether to submit herself to sexual intercourse that will bring dishonor to herself and her family. At that age, the offended party was not in the right mind to balance, with deliberation, the good or evil effect of submitting to such sexual act.[10]

The force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape.[11] The degree of force which may not suffice when the victim is an adult, may be more than enough if employed against a person of tender age.

In the case at bar, appellant employed that amount of force sufficient to consummate rape. It must be stressed that at the time of the incident, AAA was only 13 years old. Her size and strength was no match against the appellant, who was already an adult in the prime of his life. She testified that she was pushed to the bed by appellant and her hands were tightly pinned

[10] *Rollo*, p. 27.

[11] *People v. Del Ayre*, G.R. Nos. 139788 & 139827, 3 October 2002.

down,[12] making it impossible for her, considering her build, to ward off the sexual assaults of the appellant.

Moreover, appellant's allegation that there was no force because AAA did not suffer injuries and her clothes were not torn is not well taken. The absence of bruises, scratches or abrasions on AAA's body or tear in her clothing does not diminish her credibility or rule out rape. The lack of such telltale signs of force is not necessarily inconsistent with AAA's testimony regarding the manner by which appellant succeeded in satisfying his lust, for proof thereof is not an essential element of the crime of rape.[13]

The conduct of the victim immediately following the alleged assault is of utmost importance in establishing the truth or falsity of the charges of rape.[14] Here, AAA's actuations immediately after the rape were clear indications of the veracity of her statements. She went to the house of her friend Sharmaine Salazar to ask for help. Together they promptly reported the incident to the police. She was taken thereafter to the Zamboanga City Medical Center to undergo medical examination.

We cannot agree with appellant's contention that AAA's failure to shout for help was tantamount to a submission to his sexual advances. There is no standard form of reaction for a woman, much more a minor, when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion.[15] Her failure to shout could be attributed to the shock and horror which she felt as a result of appellant's sexual assault.

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[12] TSN, November 28, 2000, pp. 5-6.

[13] *People v. Balleno*, G.R. No. 149075, 7 August 2003.

[14] *People v. Torres*, G.R. No. 134766, 16 January 2004.

[15] *People v. Pastorete*, G.R. No. 133827, 27 November 2002.

The "sweetheart theory" appellant proffers is effectively an admission of carnal knowledge of the victim and consequently places on him the burden of proving the supposed relationship by substantial evidence. To be worthy of judicial acceptance, such a defense should be supported by documentary, testimonial or other evidence.[16] The record shows that, other than his self-serving assertions, the appellant had nothing to support his claim. No love letter, memento, or picture was presented to prove that such romantic relationship existed. His story that the night before the incident, he and AAA slept in the same bed and kissed each other, is highly incredible. There is no other indication that AAA was of ill repute or loose morals so as to readily consent to have intimate relations with him.

It is culturally instinctive for young and decent Filipinas to protect their honor and obtain justice for the wicked acts committed on them. Thus, it is difficult to believe that rape victims would fabricate a tale of defloration, allow the embarrassing examination of their private parts, reveal the shame to the small rural town where they grew up and permit themselves to be subjected to a humiliating public trial if they had not in fact been really ravished. When the offended parties are young and immature girls from 12 to 16, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the public humiliation to which they would be exposed by court trial if their accusation were not true.[17]

Lastly, we are not persuaded by appellant's allegation that he and AAA were going to live together as he was going to propose marriage to her. Such an illusion, observed by the trial court, was simply unthinkable. AAA, barely in her teens, is obviously too naive in the ways of the world to be confronted with a complicated situation like marriage with the appellant who was three times her age.

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[16] *People v. Sinoro*, G.R. Nos. 138650-58, 22 April 2003.

[17] *People v. Pascua*, G.R. Nos. 128159-62, 14 July 2003.

All told, appellant is guilty beyond reasonable doubt of the crime of rape through force or intimidation. The trial court, therefore, correctly imposed on him the penalty of *reclusion perpetua*, pursuant to Articles 266-A and 266-B of the Revised Penal Code, as amended. A slight modification in the award of damages however is in order. The trial court did not award civil indemnity in favor of the complainant. Civil indemnity is mandatory upon the finding of the fact of rape. It is automatically imposed upon the accused without need of proof other than the fact of the commission of rape.[18] Thus, complainant should be awarded ₱50,000.00 as civil indemnity.

The award of moral damages is correct. It is automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award. However, it must be reduced from ₱100,000.00 to ₱50,000.00 based on prevailing jurisprudence.[19] Moral damages are separate and distinct from civil indemnity.[20]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Zamboanga City, Branch 15, in Criminal Case No. 17134, finding the appellant guilty beyond reasonable doubt of the crime of rape and *sentencing* him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with the *MODIFICATION* that appellant is ordered to pay the complainant the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman)*, Panganiban, Carpio,* and *Azcuna, JJ.,* concur.

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[18] *People v. Talavera*, G.R. Nos. 150983-84, 21 November 2003.

[19] *People v. Guambor*, G.R. No. 152183, 22 January 2004.

[20] *People v. David*, G.R. Nos. 121731-33, 12 November 2003.

FIRST DIVISION

[G.R. No. 158314. June 3, 2004]

SAMAHAN NG MAGSASAKA SA SAN JOSEP, represented by DOMINADOR MAGLALANG, *petitioner, vs.* **MARIETTA VALISNO, ADELA, AQUILES, LEANDRO, HONORIO, LUMEN, NICOLAS, all surnamed VALISNO; RANDY V. WAGNER, MARIA MARTA B. VALISNO, NOELITO VALISNO, MARY ANN L. VALISNO, PHILIP V. BRANZUELA and BRENDON V. YUJUICO; MA. CRISTINA VALISNO, BENEDICTO V. YUJUICO, GREGORIO V. YUJUICO and LEONORA V. YUJUICO,** *respondents*.

SYNOPSIS

The subject 57-hectare property, situated in La Fuente, Sta. Rosa, Nueva Ecija, was formerly registered in the name of Dr. Nicolas Valisno, Sr. under Transfer Certificate of Title No. NT-38406. Dr. Valisno mortgaged 12 hectares of his property to Renato and Angelito Banting. After the mortgage on the 12 hectare portion was foreclosed and the property sold at public auction, four grandchildren of Dr. Nicolas Valisno, namely: Maria Cristina F. Valisno, daughter of Romulo D. Valisno; and Leonora Valisno Yujuico, Benedicto Valisno Yujuico and Gregorio Valisno Yujuico, children of Marietta Valisno redeemed the same from the mortgagees. At the time of the redemption, Maria Cristina, Leonora and Gregorio were all minors; only Benedicto was of legal age, being then 26 years old. Subsequently, the entire 57-hectare property became the subject of expropriation proceedings before the Department of Agrarian Reform ("DAR"). The Valisno heirs filed a Consolidated Application for Retention and Award under RA 6657. Petitioner Samahan ng Magsasaka sa San Josep, the beneficiaries under the Comprehensive Agrarian Land Reform Law (CARL), through Dominador Maglalang, opposed the Consolidated Application for Retention, specifically objecting to the award in favor of the Grandchildren-Awardees because they are not actually tilling nor directly managing the land in question as required by law. The DAR Regional Director granted

the application for retention of the heirs of Dr. Valisno but denied the request for award to the children of the heirs. On appeal the DAR Secretary affirmed the Order of the Regional Director denying the award to the heirs of the children of the late Dr. Valisno. The Court of Appeals, however, reversed the Orders of the DAR Secretary, granting the award of one hectare each for the seven Grandchildren-Awardees, and affirmed the retention rights of the Redemptioner-Grandchildren over three hectares each, or a total of 12 hectares. Hence, the present petition. Petitioner contended that the Court of Appeals erred in ruling that the redemptioners were entitled to retention rights as landowners despite the fact that the redemption was done by their parents in their name and for their benefit.

The Supreme Court found the petition unmeritorious. The relevant laws governing the minors' redemption in 1973 are the general Civil Code provisions on legal capacity to enter into contractual relations. Article 1327 of the Civil Code provides that minors are incapable of giving consent to a contract. Article 1390 provides that a contract where one of the parties is incapable of giving consent is voidable or annullable. Thus, the redemption made by the minors in 1973 was merely voidable or annullable, and was not void *ab initio*, as petitioners argue. The action to annul the minors' redemption in 1973 was one that could only have been initiated by the minors themselves, as the victims or the aggrieved parties in whom the law itself vests the right to file suit. The said action was never initiated by the minors. The transfer of the titles to the two 6-hectare properties in 1972 removed the parcels of land from the entire Valisno estate. The evidence clearly demonstrates that Renato Banting and Angelito Banting became the registered owners of the property in 1972. The two separate properties were then transferred to the Redemptioner-Grandchildren in 1973. Regardless of the source of their funds, and regardless of their minority, they became the legal owners of the property in 1973. As owners in their own right of the questioned properties, Redemptioner-Grandchildren enjoyed the right of retention granted to all landowners.

SYLLABUS

1. CIVIL LAW; CONTRACTS; REQUISITES; CONSENT; REDEMPTION MADE BY MINORS IN 1973 WAS MERELY VOIDABLE OR ANNULLABLE AND NOT VOID

***AB INITIO*; CASE AT BAR.—** The relevant laws governing the minors' redemption in 1973 are the general Civil Code provisions on legal capacity to enter into contractual relations. Article 1327 of the Civil Code provides that minors are incapable of giving consent to a contract. Article 1390 provides that a contract where one of the parties is incapable of giving consent is voidable or annullable. Thus, the redemption made by the minors in 1973 was merely *voidable* or annullable, and was *not* void *ab initio,* as petitioners argue.

2. ID.; ID.; ID.; ID.; THE ACTION TO ANNUL THE REDEMPTION IN 1973 COULD ONLY HAVE BEEN INITIATED BY THE MINORS THEMSELVES AS THE VICTIMS OR THE AGGRIEVED PARTIES IN WHOM THE LAW VESTS THE RIGHT TO FILE THE SUIT; SAID ACTION WAS NEVER INITIATED BY THE MINORS.— Any action for the annulment of the contracts thus entered into by the minors would require that: (1) the plaintiff must have an interest in the contract; and (2) the action must be brought by the victim and not the party responsible for the defect. Thus, Article 1397 of the Civil Code provides in part that "[t]he action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted." The action to annul the minors' redemption in 1973, therefore, was one that could only have been initiated by the minors themselves, as the victims or the aggrieved parties in whom the law itself vests the right to file suit. This action was never initiated by the minors. We thus quote with approval the ratiocination of the Court of Appeals: Respondents contend that the redemption made by the petitioners was simulated, calculated to avoid the effects of agrarian reform considering that at the time of redemption the latter were still minors and could not have resources, in their own right, to pay the price thereof. We are not persuaded. While it is true that a transaction entered into by a party who is incapable of consent is voidable, however such transaction is valid until annulled. The redemption made by the four petitioners has never been annulled, thus, it is valid.

3. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; COVERAGE; RETENTION LIMITS; AS OWNERS IN THEIR OWN RIGHT OF THE

QUESTIONED PROPERTIES, THE REDEMPTIONER-GRANDCHILDREN ENJOYED THE RIGHT OF RETENTION GRANTED TO ALL LANDOWNERS.— The transfer of the titles to the two 6-hectare properties in 1972 removed the parcels of land from the entire Valisno estate. The evidence clearly demonstrates that Renato Banting and Angelito Banting became the registered owners of the property in 1972. These two separate properties were then transferred to the Redemptioner-Grandchildren in 1973. Regardless of the source of their funds, and regardless of their minority, they became the legal owners of the property in 1973. Moreover, although Maria Cristina, Leonora and Gregorio were all minors in 1973, they were undoubtedly of legal age in 1994, when SMSJ initiated the petition for coverage of the subject landholding under the CARL, and of course were likewise of legal age in 1997, when all the Valisno heirs filed their Consolidated Application for Retention and Award under RA 6657. As owners in their own right of the questioned properties, Redemptioner-Grandchildren enjoyed the right of retention granted to all landowners. This right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process. In the landmark case of *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, we held that landowners who have not yet exercised their retention rights under PD 27 are entitled to the new retention rights under RA 6657. This section defines the nature and incidents of a landowner's right of retention. For as long as the area to be retained is compact or contiguous and it does not exceed the retention ceiling of five hectares, a landowner's choice of the area to be retained must prevail. Each of the four Redemptioner-Grandchildren is thus entitled to retain a parcel of land with a ceiling of five hectares, for a total of 20 hectares. The parcels of land in question total only 12 hectares, or only three hectares each, which is well within the statutory retention limits.

APPEARANCES OF COUNSEL

Delfin B. Samson for petitioner.
Leandro D. Valisno for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The sole issue in this petition for review on *certiorari* is whether or not the grandchildren of the late Dr. Nicolas Valisno Sr. are entitled to retention rights as landowners under Republic Act No. 6657, or the Comprehensive Agrarian Reform Law (hereafter, "CARL").

The original 57-hectare property, situated in La Fuente, Sta. Rosa, Nueva Ecija, was formerly registered in the name of Dr. Nicolas Valisno, Sr. under Transfer Certificate of Title No. NT-38406. Before the effectivity of Presidential Decree No. 27,[1] the land was the subject of a judicial ejectment suit, whereby in 1971, the Valisnos' tenants were ejected from the property.[2] Among these tenants was Dominador Maglalang, who represents the SMSJ in the instant proceedings.

Meanwhile, on October 20 and 21, 1972, Dr. Valisno mortgaged 12 hectares of his property to Renato and Angelito Banting.[3] Thereafter, the property was subdivided into ten lots and on November 8, 1972, individual titles were issued in the name of the eight children of Nicolas, Angelito Banting, and Renato Banting.[4]

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[1] "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor," which took effect on 21 October 1972.

[2] *Rollo*, pp. 27-29.

[3] CA Records, p. 31.

[4] The ten individual lots are as follows:

Title	Registered Owner	Area (ha.)	Location
NT-118440	Adela Valisno	6	La Fuente, Sta. Rosa, N.E.
NT-118441	Aquiles Valisno	6	La Fuente, Sta. Rosa, N.E.

After the mortgage on the 12 hectare portion was foreclosed and the property sold at public auction, four grandchildren of Dr. Nicolas Valisno, namely: Maria Cristina F. Valisno, daughter of Romulo D. Valisno; and Leonora Valisno Yujuico, Benedicto Valisno Yujuico and Gregorio Valisno Yujuico, children of Marietta Valisno redeemed the same from the mortgagees.[5] At the time of the redemption, Maria Cristina, Leonora and Gregorio were all minors; only Benedicto was of legal age, being then 26 years old.[6] The redemption was made on October 25, 1973, but the titles to the land were not transferred to the redemptioners until November 26, 1998.[7]

Subsequently, the entire 57-hectare property became the subject of expropriation proceedings before the Department of Agrarian Reform ("DAR"). In 1994, Dominador Maglalang, in behalf of the SMSJ, filed a petition for coverage of the subject landholding under the CARL, which petition was dismissed for want of jurisdiction.[8] On June 14, 1995, Rogelio Chaves, DAR Provincial Agrarian Reform Officer ("PARO"), issued a Memorandum stating that the property had been subdivided among the heirs of Dr. Nicolas Valisno Sr. before the issuance of PD 27 into tracts of approximately six hectares each.[9] Nevertheless, PARO Chaves

NT-118442	Leandro Valisno	6	La Fuente, Sta. Rosa, N.E.
NT-118443	Honorio Valisno	6	La Fuente, Sta. Rosa, N.E.
NT-118444	Lumen Valisno	6	La Fuente, Sta. Rosa, N.E.
NT-118445	Nicolas Valisno, Jr.	6	La Fuente, Sta. Rosa, N.E.
NT-118446	Marietta Valisno	6	La Fuente, Sta. Rosa, N.E.
NT-118447	Angelito Banting	6	La Fuente, Sta. Rosa, N.E.
NT-118448	Renato Banting	6	La Fuente, Sta. Rosa, N.E.
NT-118449	Romulo Valisno	3.7849	La Fuente, Sta. Rosa, N.E.

[5] CA Records, p. 31.

[6] *Id*., p. 51.

[7] *Id*.

[8] *Rollo*, p. 30.

[9] It appears that seven of the eight children of Dr. Valisno received six hectares each. The remaining child, Romulo D. Valisno, received a share of only 3.7849 hectares. His share was reduced because of a money debt to his father. *Narrative Investigative Report on the Property of Dr. Valisno, Sr.,* DAR Region III Municipal Agrarian Reform Office, CA Records, p. 31.

added that the excess over the five-hectare retention limit could still be covered under RA 6657.[10]

On appeal, the Office of the Regional Director issued an Order dated January 2, 1996, declaring the Valisno property exempt from the coverage of PD 27 and RA 6657.[11] This was reversed by then Secretary Garilao, who held that the property is covered by the Comprehensive Agrarian Reform Program, subject to the retention rights of the heirs of Nicolas, Sr. The Valisno heirs filed a motion for reconsideration of the said order, but the same was denied.

On September 25, 1997, the Valisno heirs filed a Consolidated Application for Retention and Award under RA 6657. Specifically, the petition was filed by (1) Adela, Aquiles, Leandro, Honorio, Lumen, Nicolas and Marietta Valisno, seven children of Nicolas Valisno, Sr., who applied for retention rights as landowners; (2) Randy V. Wagner, Maria Marta B. Valisno, Noelito Valisno, Mary Ann L. Valisno, Philip V. Branzuela and Brendon V. Yujuico, grandchildren of Nicolas Sr. (hereafter collectively the "Grandchildren-Awardees"), who applied to be considered qualified child-awardees; and (3) Ma. Cristina Valisno, Benedicto V. Yujuico, Gregorio V. Yujuico and Leonora V. Yujuico, likewise grandchildren of Nicolas Sr. (hereafter collectively the "Redemptioner-Grandchildren"), who applied for retention rights as landowners over the 12-hectare portion of the property alleged to have been mortgaged by Nicolas Sr. in 1972 to Angelito and Renato Banting.

The SMSJ, through Dominador Maglalang, opposed the Consolidated Application for Retention, specifically objecting to the award in favor of the Grandchildren-Awardees because they are not actually tilling nor directly managing the land in question as required by law.

On November 4, 1998, Regional Director Renato F. Herrera issued an Order which pertinently reads:

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[10] *Rollo*, p. 30.

[11] *Id*., p. 99; CA Records, p. 206.

WHEREFORE, premises considered, an ORDER is hereby issued as follows:

1. GRANTING the application for retention of the heirs of Dr. Nicolas Valisno, Sr., namely: Marietta Valisno; Honorio Valisno; Leandro Valisno; Adela Valisno; Nicolas Valisno, Jr.; Aquiles Valisno; and Lumen Valisno of not more than five (5) hectares each or a total of 35 hectares covered by Title Nos. 118446, 118443, 118442, 118440, 118445, 118441 and 118444, respectively, all located at La Fuente, Sta. Rosa, Nueva Ecija;

2. PLACING the excess of 19.0 hectares, more or less, under RA 6657 and acquiring the same thru Compulsory Acquisition for distribution to qualified farmer-beneficiaries taking into consideration the basic qualifications set forth by law;

3. DENYING the request for the award to children of the applicants for utter lack of merit; and

4. DIRECTING the applicants-heirs to cause the segregation and survey of the retained area at their own expense and to submit within thirty (30) days the final approved survey plan to this Office.

SO ORDERED.[12]

On appeal, the DAR Secretary affirmed the Order of the Regional Director with the following relevant ratiocination:

In the second assignment of error, appellants faulted the Regional Director for not giving due consideration to the two (2) mortgages constituted by the original owner over a portion of his landholding in 1972 and redeemed by the latter's grandchildren in 1973, when the 12-hectare land subject of the mortgages were ordered to be distributed to CARP beneficiaries.

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The alleged redemption of the mortgaged property by the four (4) grandchildren of Nicolas Valisno, Sr., namely Ma. Cristina, Leonora, Gregorio and Benedicto, is not likewise worthy of any credence. The mortgaged property was allegedly redeemed on October 25, 1973. From the evidence on record, three (3) of the alleged redemptioners represented to be of legal age in the Discharge

[12] *Id*., p. 33.

of Mortgage were still minors, hence, without any legal capacity at the time the redemption was made.[13]

On June 23, 2000, the motion for reconsideration filed by the heirs of Dr. Valisno was denied.[14]

Respondent heirs filed a petition for review with the Court of Appeals, arguing that the Secretary of Agrarian Reform erred (1) in disallowing the award of one hectare to each of the seven Grandchildren-Awardees of Dr. Nicolas Valisno, as qualified children-awardees under the CARL; and (2) in not recognizing the redemption made by the four grandchildren of Dr. Nicolas Valisno over the 12-hectare riceland mortgaged to Renato and Angelito Banting.[15]

On March 26, 2002, the Court of Appeals reversed the Orders of the DAR Secretary, granted the award of one hectare each for the seven Grandchildren-Awardees, and affirmed the retention rights of the Redemptioner-Grandchildren over three hectares each, or a total of 12 hectares.[16]

Petitioners filed a partial motion for reconsideration, assailing the right of retention of the four Redemptioner-Grandchildren over the 12-hectare property, and praying that an amended decision be rendered placing the 12 hectares under the coverage of the CARP.[17] This motion was denied on March 25, 2003.[18]

Hence, this appeal, on the sole assignment of error:

> THE HONORABLE COURT OF APPEALS ERRED WHEN, IN EFFECT, IT RULED THAT THE REDEMPTIONERS (GRANDCHILDREN OF THE DECEASED NICOLAS VALISNO, SR.) WERE ENTITLED TO RETENTION RIGHTS AS LANDOWNERS UNDER THE AGRARIAN REFORM LAW

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[13] CA Records, pp. 50-53.

[14] *Id.*, pp. 55-57.

[15] *Rollo*, p. 37.

[16] *Id.*, p. 44.

[17] CA Records, p. 233.

[18] *Id.*, p. 264.

DESPITE THE FACT THAT THE REDEMPTION WAS DONE BY THEIR PARENTS (CHILDREN OF THE DECEASED) ONLY IN THEIR NAME AND FOR THEIR BENEFIT.[19]

The appeal lacks merit.

The Court of Appeals found the following facts relevant: *First*, that the mortgages were constituted over a 12-hectare portion of Dr. Valisno's estate in 1972. *Second*, that the titles to the property were transferred to the names of the mortgagees in 1972, *viz*., TCT No. NT-118447, covering a 6-hectare property in La Fuente, Sta. Rosa, Nueva Ecija, issued in the name of Angelito Banting; and TCT No. NT-118448, likewise covering a 6-hectare property in La Fuente, Sta. Rosa, Nueva Ecija, issued in the name of Renato Banting. *Third*, these properties were redeemed by the Redemptioner-Grandchildren on October 25, 1973, at the time of which redemption three of the four Redemptioner-Grandchildren were minors.

It is a well-settled rule that only questions of law may be reviewed by the Supreme Court in an appeal by *certiorari*.[20] Findings of fact by the Court of Appeals are final and conclusive and cannot be reviewed on appeal to the Supreme Court.[21] The only time this Court will disregard the factual findings of the Court of Appeals (which are ordinarily accorded great respect) is when these are based on speculation, surmises or conjectures or when these are not based on substantial evidence.[22]

In the case at bar, no reason exists for us to disregard the findings of fact of the Court of Appeals. The factual findings are borne out by the record and are supported by substantial evidence.

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[19] *Rollo*, pp. 15-16.

[20] RULES OF COURT, Rule 45, Sec. 1; *Solangon v. Salazar*, G.R. No. 125944, 29 June 2001, 360 SCRA 379; *Fuentes v. Court of Appeals*, G.R. No. 109849, 26 February 1997, 268 SCRA 703.

[21] *Titong v. Court of Appeals*, G.R. No. 111141, 6 March 1998, 287 SCRA 102; *Atillo III v. Court of Appeals,* G.R. No. 119053, 23 January 1997, 266 SCRA 596.

[22] *Milestone Realty & Co., Inc. and William Perez v. Court of Appeals*, G.R. No. 135999, 19 April 2002.

Given these settled facts, the resolution of the sole issue in this case hinges on (1) the validity of the redemption in 1973, made when three of the Redemptioner-Grandchildren were minors; and (2) if the redemption was valid, the determination of the retention rights of the Redemptioner-Grandchildren, if any, under RA 6557.

The relevant laws governing the minors' redemption in 1973 are the general Civil Code provisions on legal capacity to enter into contractual relations. Article 1327 of the Civil Code provides that minors are incapable of giving consent to a contract. Article 1390 provides that a contract where one of the parties is incapable of giving consent is voidable or annullable. Thus, the redemption made by the minors in 1973 was merely *voidable* or annullable, and was *not* void *ab initio*, as petitioners argue.

Any action for the annulment of the contracts thus entered into by the minors would require that: (1) the plaintiff must have an interest in the contract; and (2) the action must be brought by the victim and not the party responsible for the defect.[23] Thus, Article 1397 of the Civil Code provides in part that "[t]he action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted." The action to annul the minors' redemption in 1973, therefore, was one that could only have been initiated by the minors themselves, as the victims or the aggrieved parties in whom the law itself vests the right to file suit. This action was never initiated by the minors. We thus quote with approval the ratiocination of the Court of Appeals:

> Respondents contend that the redemption made by the petitioners was simulated, calculated to avoid the effects of agrarian reform considering that at the time of redemption the latter were still minors and could not have resources, in their own right, to pay the price thereof.
>
> We are not persuaded. While it is true that a transaction entered into by a party who is incapable of consent is voidable, however

[23] 4 *Tolentino, CIVIL CODE OF THE PHILIPPINES,* 604-05.

such transaction is valid until annulled. The redemption made by the four petitioners has never been annulled, thus, it is valid.[24]

The transfer of the titles to the two 6-hectare properties in 1972 removed the parcels of land from the entire Valisno estate. The evidence clearly demonstrates that Renato Banting and Angelito Banting became the registered owners of the property in 1972. These two separate properties were then transferred to the Redemptioner-Grandchildren in 1973. Regardless of the source of their funds, and regardless of their minority, they became the legal owners of the property in 1973.

Moreover, although Maria Cristina, Leonora and Gregorio were all minors in 1973, they were undoubtedly of legal age in 1994, when SMSJ initiated the petition for coverage of the subject landholding under the CARL, and of course were likewise of legal age in 1997, when all the Valisno heirs filed their Consolidated Application for Retention and Award under RA 6657.

As owners in their own right of the questioned properties, Redemptioner-Grandchildren enjoyed the right of retention granted to all landowners. This right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature.[25] It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner.[26] A retained area, as its name denotes, is land which is not supposed to leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process.

In the landmark case of *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[27] we

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[24] CA Records, p. 264.

[25] CONST., Art. XIII, Sec. 4.

[26] *Cabatan v. Court of Appeals*, G.R. Nos. L-44875-76, L-45160 and L-46211-12, 22 January 1980, 95 SCRA 323; *Dequito v. Llamas*, G.R. No. L-28090, 4 September 1975, 66 SCRA 504.

[27] 175 SCRA 343 (1989).

held that landowners who have not yet exercised their retention rights under PD 27 are entitled to the new retention rights under RA 6657.[28] The retention rights of landowners are provided in Sec. 6 of RA 6657, which reads in relevant part:

SECTION 6. *Retention Limits*. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm; *Provided*, That landowners whose land have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, *Provided further*, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner. Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a lease-holder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

This section defines the nature and incidents of a landowner's right of retention. For as long as the area to be retained is compact or contiguous and it does not exceed the retention

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[28] *Id*. at 392.

ceiling of five hectares, a landowner's choice of the area to be retained must prevail.

Each of the four Redemptioner-Grandchildren is thus entitled to retain a parcel of land with a ceiling of five hectares, for a total of 20 hectares. The parcels of land in question total only 12 hectares, or only three hectares each, which is well within the statutory retention limits.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. SP No. 59752 dated March 26, 2002, and Resolution of the Court of Appeals dated March 25, 2003, which upheld the retention rights of respondents Ma. Cristina Valisno, Benedicto V. Yujuico, Gregorio V. Yujuico and Leonora V. Yujuico, are *AFFIRMED*.

SO ORDERED.

Davide, Jr., C.J. (Chairman)*, Panganiban, Carpio,* and *Azcuna, JJ.,* concur.

FIRST DIVISION

[G.R. No. 158846. June 3, 2004]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **TEODOSIO CUANANG, represented by MARC DENNIS CUANANG,** *respondent*.

SYNOPSIS

Carmen T. Cuanang, deceased wife of respondent Marc Dennis Cuanang, was formerly employed as a teacher in the Division of City Schools, Manila. She applied for early optional retirement on November 9, 1998, after completing almost

twenty six years of government service. Carmen Cuanang died on May 7, 2000 at the age of 65. The immediate cause of her death was determined to be Cardio Pulmonary Arrest with Acute Myocardial Infarction as the antecedent cause, and Bronchial Asthma and Hypertension as underlying causes. Respondent filed with petitioner GSIS a claim for death benefits under PD 626, as amended. Petitioner denied the said claim arguing that the "Death due to Myocardial Infarction is not compensable under PD 626 since it occurred after retirement and beyond PPD period." Respondent then appealed the denial of his claim to the Employees' Compensation Commission (ECC). The ECC affirmed the denial by the GSIS of the respondent's claim. Undeterred, respondent filed with the Court of Appeals a petition for review. The Court of Appeals set aside the assailed decision of the ECC and ordered the Government Service Insurance System (GSIS) to pay respondent's claim for death benefits under the Employee's Compensation Act. The appellate court ruled that the degree of proof required under PD 626 is merely substantial evidence, which means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The claimant must show, at least, by substantial evidence that the development of the disease is brought largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not direct causal connection. Hence, the present petition. Petitioner contended that the ailments which brought about the death of respondent's wife, Carmen Cuanang, do not fall within the ambit of the coverage of PD 626, considering that when they occurred she had long retired from government service.

The Supreme Court rejected petitioner's contention and affirmed the ruling of the Court of Appeals. In denying the petition, the Court took its bearing from its pronouncements in the case of *Consorcia F. Manuzon v. Employees' Compensation Commission, et al.* In said case, Court overturned the Employees' Compensation Commission's denial of petitioner's claim because the cause of death of her husband, an assistant professor at the Mindanao State University, which was myocardial infarction, came four and one half years after his retirement. In the instant case, the wife of the respondent died a year after her retirement. Clearly, the period between her retirement and demise was less than one year. Indeed, if

a death which occurred almost four and one half years after retirement was held to be within the coverage of the death benefits under PD 626, as in the *Manuzon* case, with more reason should a death which occurred within one year after retirement be considered as covered under the same law. The Court also found the substantial evidence presented to support respondent's claim satisfied the degree of proof required under PD 626. The expert opinion is fully supported by the facts leading to Carmen Cuanang's deteriorating health condition, and ultimately, her death. When the deceased joined the government service on October 1, 1972, she was in perfect health. It was only in 1997, while she was still in the service, that her condition started to worsen. The Court stressed that claims falling under the Employees' Compensation Act should be liberally resolved to fulfill its essence as a social legislation designed to afford relief to the working man and woman in our society. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code, which states that all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations should be resolved in favor of labor.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION ACT; COMPENSABILITY; MAY BE PROVEN BY MERE SUBSTANTIAL EVIDENCE; PROBABILITY AND NOT ULTIMATE DEGREE OF CERTAINTY IS THE TEST IN COMPENSATION PROCEEDINGS.— We agree with the pronouncements of the Court of Appeals that there was substantial evidence to support respondent's claim. Hence, the degree of proof required under PD 626 was satisfied, *i.e.,* "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Probability and not ultimate degree of certainty is the test of proof in compensation proceedings. In the case at bar, the requisite substantial evidence came from the expert opinion of Dr. Arsenio A. Estreras Jr., a Diplomate in Internal Medicine who issued the Death Certificate. The aforequoted expert opinion deserves credence considering that we have previously held that no physician, who is aware of the far

reaching and serious effects that his statement would cause on a money claim filed with a government agency, would issue a certification indiscriminately without even minding his own interests and protection. Moreover, this expert opinion is fully supported by the facts leading to Carmen Cuanang's deteriorating health condition, and ultimately, her death. When the deceased joined the government service on October 1, 1972, she was in perfect health. It was only in 1997, while she was still in the service, that her condition started to worsen. Her fragile condition necessitated her confinement at the University of the East Ramon Magsaysay Medical Center from September 14, 1997 to September 18, 1997 for Bronchial Asthma and Pneumonia; Rheumatic Heart Disease and Mitral Stenosis.

2. ID.; ID.; ID.; ID.; AN EMPLOYEE NEED NOT PRESENT ANY PROOF OF CAUSATION; EMPLOYER HAS THE BURDEN TO PROVE THAT THE ILLNESS OR INJURY DID NOT ARISE OUT OF OR IN THE COURSE OF EMPLOYMENT.— Myocardial Infarction, also known as coronary occlusion or just a "coronary," is a life threatening condition. Predisposing factors for myocardial infarction are the same for all forms of Coronary Artery Disease, and these factors include stress. Stress appears to be associated with elevated blood pressure. It is of common knowledge that the job of a teacher can be very stressful. Carmen Cuanang's responsibilities were never limited to the four corners of the classroom. Aside from teaching students, she also prepared lesson plans, attend seminars, conferences and other school activities, within and outside the school premises, such as tree planting for the beautification of the school premises and the community, sportsfest programs and parades, year after year throughout her almost 26 years in government service. During election periods, she was also deputized by the Commission on Elections to act as an election registrar. In addition, in going to and from the school, she was constantly exposed to the ravages of the natural elements such as heat, rain and dust. Needless to say, the collective effect of all these factors can indeed be very stressful especially for someone afflicted with Rheumatic Heart Disease as Carmen Cuanang. It goes without saying that all these conditions contributed much to the deterioration of her already precarious health. The first law on workmen's compensation in the Philippines was Act No. 3428, otherwise known as the Workmen's Compensation Act, which took effect

on June 10, 1928. This Act works upon the presumption of compensability which means that if the injury or disease arose out of and in the course of employment, it is presumed that the claim for compensation falls within the provisions of the law. Simply put, the employee need not present any proof of causation. It is the employer who should prove that the illness or injury did not arise out of or in the course of employment.

3. ID.; ID.; ID.; ID.; IF THE CLAIMANT'S DISEASE IS NOT THE RESULT OF AN OCCUPATION DISEASE OR ILLNESS, HE MUST THEN PROVE THAT THE RISK OF CONTRACTING THE ILLNESS OR DISEASE WAS INCREASED BY HIS WORKING CONDITIONS IN ORDER TO BE ENTITLED TO COMPENSATION.— P.D. No. 626 further amended Title II of Book IV on the ECC and State Insurance Fund of the Labor Code of the Philippines (P.D. No. 442, as amended). This law abandoned the presumption of compensability and the theory of aggravation under the Workmen's Compensation Act. For the sickness and resulting disability or death to be compensable, the claimant must prove that: (a) the sickness must be the result of an occupational disease listed under Annex "A" of the Rules on Employees' Compensation, or (b) the risk of contracting the disease was increased by the claimant's working conditions. In other words, if the claimant's illness or disease is not included in the said Annex "A", then he is entitled to compensation only if he can prove that the risk of contracting the illness or disease was increased by his working conditions. The present system is also administered by social insurance agencies — the Government Service Insurance System and Social Security System — under the Employees' Compensation Commission. The intent was to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability.

4. ID.; ID.; ID.; ID.; CLAIMS FALLING UNDER THE EMPLOYEES' COMPENSATION ACT SHOULD BE LIBERALLY RESOLVED TO FULFILL ITS ESSENCE AS A SOCIAL LEGISLATION DESIGNED TO AFFORD RELIEF TO THE WORKING MAN AND WOMAN IN OUR SOCIETY.— Notwithstanding the abandonment of the presumption of compensability established by the old law, the

present law has not ceased to be an employees' compensation law or a social legislation; hence, the liberality of the law in favor of the working man and woman still prevails, and the official agency charged by law to implement the constitutional guarantee of social justice should adopt a liberal attitude in favor of the employee in deciding claims for compensability, especially in light of the compassionate policy towards labor which the 1987 Constitution vivifies and enhances. Elsewise stated, a humanitarian impulse, dictated by no less than the Constitution itself under the social justice policy, calls for a liberal and sympathetic approach to legitimate appeals of disabled public servants. Verily, the policy is to extend the applicability of the law on employees' compensation to as many employees who can avail of the benefits thereunder. Therefore, claims falling under the Employees' Compensation Act should be liberally resolved to fulfill its essence as a social legislation designed to afford relief to the working man and woman in our society. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code, which states that all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations should be resolved in favor of labor.

APPEARANCES OF COUNSEL

Ma. Teresita S. Baluis for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision[1] of the Court of Appeals, dated November 21, 2002, in CA-G.R. SP No. 69305, which set aside the decision[2] dated December 4, 2001 of the Employees'

[1] Penned by Justice Godardo A. Jacinto and concurred in by Justices Martin S. Villarama, Jr. and Mario L. Guarina III. *Rollo*, pp. 42-52.

[2] *Rollo*, pp. 35-40.

Compensation Commission (ECC) in ECC Case No. MG-11995-1200.

Carmen T. Cuanang, deceased wife of respondent Marc Dennis Cuanang, was formerly employed as a teacher in the Division of City Schools, Manila. She was first appointed on October 1, 1972, as Elementary Grade Teacher. She was later promoted to Teacher I on July 1, 1989 and later on to Teacher II. Carmen Cuanang served as Teacher II until she applied for early optional retirement on November 9, 1998, after completing almost twenty six years of government service.[3]

From September 14 to September 18, 1997, Carmen Cuanang was confined at the University of the East Ramon Magsaysay Memorial Medical Center, for Bronchial Asthma and Pneumonia, Rheumatic Heart Disease (RHD) and Mitral Stenosis.[4] She filed a claim with the Government Service Insurance System (GSIS) for sickness benefits under Presidential Decree 626, as amended.[5] The GSIS awarded her Temporary Total Disability (TTD) benefits from November 14-25, 1998. Subsequently, Cuanang was also granted Permanent Partial Disability benefits equivalent to nine months.

Carmen Cuanang died on May 7, 2000 at the age of 65. The immediate cause of her death[6] was determined to be Cardio Pulmonary Arrest with Acute Myocardial Infarction as the antecedent cause, and Bronchial Asthma and Hypertension as underlying causes.

Consequently, respondent filed with petitioner GSIS a claim for death benefits under PD 626, as amended. Petitioner denied the said claim in its letter of July 20, 2000,[7] the pertinent portion of which reads:

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[3] *Id*., p. 43.

[4] Original Records, pp. 36-37.

[5] *Id*., p. 35.

[6] Based on Carmen Cuanang's Death Certificate issued on May 9, 2000; Original Records, p. 54.

[7] *Id*., p. 55.

After a careful study, the Medical Evaluation and Underwriting Department, submitted its findings and recommendations as follows:

> "Death due to Myocardial Infarction is not compensable under PD 626 since it occurred after retirement and beyond PPD period."

Based on the recommendation of our Medical Department, this office regrets to inform you that your claim cannot be favorably considered. xxx.

Respondent sought a re-evaluation of his claim, which the GSIS denied in a letter dated September 5, 2000.[8]

Respondent then appealed the denial of his claim to the ECC. In its December 4, 2001 decision,[9] the ECC affirmed the denial by the GSIS of the respondent's claim, thus:

The ailment Acute Myocardial Infarction (AMI) can not be considered work-connected since it is a complication of Rheumatic Heart Disease, which is a result of her (Carmen Cuanang's) Rheumatic Fever, acquired during childhood. In the same vein, Bronchial Asthma can not be given due course since Cuanang's death took place beyond the PPD period. Moreover, the fact that Hypertension was developed after Cuanang's retirement negates compensability since it may be due to factors other than her work or working conditions.

Undeterred, respondent filed with the Court of Appeals a petition for review under Rule 43 of the Rules of Court, challenging the above decision of the ECC. On November 21, 2002, the Court of Appeals made the following findings:

The degree of proof required under PD 626 is merely substantial evidence, which means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The claimant must show, at least, by substantial evidence that the development of the disease is brought largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not direct causal connection. It is enough that the hypothesis on

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[8] Original Records, pp. 57-58.

[9] *Id*., pp. 27-32. Decision certified as correct by Elmer D. Juridico, Executive Director of the ECC.

which the workmen's claim is based is probable. Medical opinion to the contrary can be disregarded, especially where there is some basis in the fact for inferring work connection. Probability, not certainty is the touchstone.[10]

Hence, the Court of Appeals set aside the assailed decision of the ECC and ordered the Government Service Insurance System (GSIS) to pay respondent's claim for death benefits under the Employee's Compensation Act.

The basic question presented in this petition is whether the resulting death of Carmen Cuanang is compensable under Presidential Decree No. 626, as amended.

We hold in the affirmative.

Petitioner contends that the ailments which brought about the death of respondent's wife, Carmen Cuanang, do not fall within the ambit of the coverage of PD 626, considering that when they occurred she had long retired from government service.

We are not persuaded.

We take our bearings from our pronouncements in the case of *Consorcia F. Manuzon v. Employees' Compensation Commission, et al.*[11] In said case, the Employees' Compensation Commission denied petitioner's claim because the cause of death of her husband, an assistant professor at the Mindanao State University, which was myocardial infarction, came four and one half years after his retirement. We held:

We believe otherwise. The evidence clearly shows that during his employment, the deceased suffered from a stroke, a cardio vascular accident. It was caused by thrombosis or blockage of the arteries. He had to retire because of paralysis caused by that cardio vascular attack or myocardial infarction. Stated otherwise, the cause of his compulsory retirement due to paralysis arising from cardio vascular accident is closely related to the cause of his death, which was also

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[10] Page 5 of the Assailed Decision, citing *Salmone v. Employees' Compensation Commission*, G.R. No. 142392, 6 September 2000; *Rollo*, p. 46.

[11] G.R. No. 88573, 25 June 1990, 186 SCRA 738.

a cardio vascular attack or myocardial infarction. That heart disease developed when he was still working as a professor. It caused his paralysis and his total permanent disability. The disease was work oriented because of the nature of his employment as a professor. The same disease eventually caused his death, contrary to the conclusion of both the GSIS and the Employees' Compensation Commission. The Court holds that the heirs of Mr. Manuzon are entitled to the benefits they are claiming.[12]

In the instant case, the wife of the respondent died a year after her retirement. Clearly, the period between her retirement and demise was less than one year. Indeed, if a death which occurred almost four and one half years after retirement was held to be within the coverage of the death benefits under PD 626, as in the *Manuzon* case, with more reason should a death which occurred within one year after retirement be considered as covered under the same law. A claim for benefit for such death cannot be defeated by the mere fact of separation from service.[13]

Further, we agree with the pronouncements of the Court of Appeals that there was substantial evidence to support respondent's claim. Hence, the degree of proof required under PD 626 was satisfied, *i.e*., "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[14] Probability and not ultimate degree of certainty is the test of proof in compensation proceedings.[15]

In the case at bar, the requisite substantial evidence came from the expert opinion of Dr. Arsenio A. Estreras Jr., a Diplomate in Internal Medicine who issued the Death Certificate, thus:

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[12] *Supra* note 11 at p. 744.

[13] *Aniano Ijares v. Court of Appeals*, G.R. No. 105854, 26 August 1999, 313 SCRA 141.

[14] *Sarmiento v. Employees' Compensation Commission*, 228 Phil. 400 (1986), citing *Cristobal v. Employees' Compensation Commission*, G.R. No. L-49280, 26 February 1981, 103 SCRA 329; *Acosta v. Employees' Compensation Commission*, G.R. No. L-55464, 12 November 1981, 109 SCRA 209.

[15] *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, G.R. No. 123891, 28 February 2001, 335 SCRA 47.

Acute Myocardial Infarction generally occurs with the abrupt decrease in coronary blood flow that follows a thrombotic occlusion of a coronary artery previously narrowed by astherosclerosis. It is common knowledge among medical practitioners that hypertension is one major risk factor among multiple coronary risk factors that can precipitate an acute coronary acclusion. (Harrison's *Principle of Internal Medicine*, 14th ed., pp. 1066, 1110) Mrs. Carmen Cuanang was hypertensive and also had bronchial asthma. Therefore Acute Myocardial Infarction which she suffered can be a consequence also of her chronic hypertension *vis-à-vis* her rheumatic heart disease.[16]

The aforequoted expert opinion deserves credence considering that we have previously held that no physician, who is aware of the far reaching and serious effects that his statement would cause on a money claim filed with a government agency, would issue a certification indiscriminately without even minding his own interests and protection.[17]

Moreover, this expert opinion is fully supported by the facts leading to Carmen Cuanang's deteriorating health condition, and ultimately, her death. When the deceased joined the government service on October 1, 1972, she was in perfect health. It was only in 1997, while she was still in the service, that her condition started to worsen. Her fragile condition necessitated her confinement at the University of the East Ramon Magsaysay Medical Center from September 14, 1997 to September 18, 1997 for Bronchial Asthma and Pneumonia; Rheumatic Heart Disease and Mitral Stenosis.[18]

Myocardial Infarction, also known as coronary occlusion or just a "coronary," is a life threatening condition. Predisposing factors for myocardial infarction are the same for all forms of Coronary Artery Disease, and these factors include stress. Stress appears to be associated with elevated blood pressure.[19] It is of

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[16] Original Records, p. 54.

[17] *Vicente v. Employees' Compensation Commission*, G.R. No. 85024, 23 January 1991, 193 SCRA 190.

[18] *Rollo*, p. 66.

[19] Luckman and Sorensen, *Medical-Surgical Nursing*, 3rd Edition, pp. 929, 934.

common knowledge that the job of a teacher can be very stressful. Carmen Cuanang's responsibilities were never limited to the four corners of the classroom. Aside from teaching students, she also prepared lesson plans, attend seminars, conferences and other school activities, within and outside the school premises, such as tree planting for the beautification of the school premises and the community, sportsfest programs and parades, year after year throughout her almost 26 years in government service. During election periods, she was also deputized by the Commission on Elections to act as an election registrar. In addition, in going to and from the school, she was constantly exposed to the ravages of the natural elements such as heat, rain and dust.[20] Needless to say, the collective effect of all these factors can indeed be very stressful especially for someone afflicted with Rheumatic Heart Disease as Carmen Cuanang. It goes without saying that all these conditions contributed much to the deterioration of her already precarious health.

The first law on workmen's compensation in the Philippines was Act No. 3428, otherwise known as the Workmen's Compensation Act, which took effect on June 10, 1928. This Act works upon the presumption of compensability which means that if the injury or disease arose out of and in the course of employment, it is presumed that the claim for compensation falls within the provisions of the law. Simply put, the employee need not present any proof of causation. It is the employer who should prove that the illness or injury did not arise out of or in the course of employment.[21]

P.D. No. 626 further amended Title II of Book IV on the ECC and State Insurance Fund of the Labor Code of the Philippines (P.D. No. 442, as amended). This law abandoned the presumption of compensability and the theory of aggravation under the Workmen's Compensation Act.[22] For the sickness and resulting

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[20] *Supra* note 18.

[21] *Norma Orate v. Court of Appeals*, G.R. No. 132761, 26 March 2003.

[22] *Employees' Compensation Commission v. Court of Appeals*, G.R. No. 121545, 14 November 1996, 264 SCRA 248, citing *Naval v. Employees' Compensation Commission*, G.R. No. 83568, 18 July 1991, 199 SCRA 388.

disability or death to be compensable, the claimant must prove that: (a) the sickness must be the result of an occupational disease listed under Annex "A" of the Rules on Employees' Compensation, or (b) the risk of contracting the disease was increased by the claimant's working conditions.[23] In other words, if the claimant's illness or disease is not included in the said Annex "A", then he is entitled to compensation only if he can prove that the risk of contracting the illness or disease was increased by his working conditions.[24]

The present system is also administered by social insurance agencies — the Government Service Insurance System and Social Security System — under the Employees' Compensation Commission. The intent was to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability.[25]

Notwithstanding the abandonment of the presumption of compensability established by the old law, the present law has not ceased to be an employees' compensation law or a social legislation; hence, the liberality of the law in favor of the working man and woman still prevails, and the official agency charged by law to implement the constitutional guarantee of social justice should adopt a liberal attitude in favor of the employee in deciding claims for compensability,[26] especially in light of the compassionate policy towards labor which the 1987 Constitution vivifies and enhances.[27] Elsewise stated, a humanitarian impulse, dictated by no less than the Constitution itself under the social justice

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[23] Section 167(l), Labor Code of the Philippines; Section 1, Amended Rules on Employees' Compensation. See also *GSIS v. Court of Appeals*, G.R. No. 115243, 1 December 1995, 250 SCRA 491.

[24] *Supra*, note 22 at p. 256.

[25] *Supra*, note 21.

[26] *Nitura v. Employees' Compensation Commission*, G.R. No. 89217, 4 September 1991, 201 SCRA 278.

[27] *Aris (Phils) Inc. v. NLRC*, G.R. No. 90501, 5 August 1991, 200 SCRA 246.

policy, calls for a liberal and sympathetic approach to legitimate appeals of disabled public servants.[28] Verily, the policy is to extend the applicability of the law on employees' compensation to as many employees who can avail of the benefits thereunder.[29]

Therefore, claims falling under the Employees' Compensation Act should be liberally resolved to fulfill its essence as a social legislation designed to afford relief to the working man and woman in our society. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code, which states that all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations should be resolved in favor of labor.[30]

WHEREFORE, the petition is *DENIED*. The decision of the Court of Appeals in CA-G.R. SP No. 69305 dated November 21, 2002, which set aside the decision of the Employees' Compensation Commission, is *AFFIRMED*. The claim of Teodosio Cuanang for compensation benefits for the death of his wife, Carmen Cuanang, is *GRANTED*.

SO ORDERED.

Davide, Jr., C.J. (Chairman)*, Panganiban, Carpio, and Azcuna, JJ.,* concur.

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[28] *Diopenes v. GSIS*, G.R. No. 96844, 23 January 1992, 205 SCRA 331.

[29] *Lazo v. Employees' Compensation Commission*, G.R. No. 78617, 18 June 1990, 186 SCRA 569.

[30] *Maria Buena Obra v. Social Security System*, G.R. No. 147745, 9 April 2003.

SECOND DIVISION

[G.R. No. 128938. June 4, 2004.]

RONALD SORIANO, *petitioner, vs.* **COURT OF APPEALS, and PEOPLE OF THE PHILIPPINES,** *respondents*.

SYNOPSIS

The Regional Trial Court (RTC) of Iba, Zambales, Branch 69, presided by Judge Toledano found petitioner Ronald Soriano liable for the death of Isidrino Dalusong, and convicted him of the crime of Homicide, Serious Physical Injuries and Damage to Property through Reckless Imprudence. Eschewing an appeal, Soriano instead filed an Application for probation. The RTC granted probation for a period of three to six years. Among the several terms and conditions of probation was that Soriano indemnify the heirs of Dalusong in the amount of Ninety Eight Thousand Five Hundred Sixty Pesos (₱98,560.00). Soriano failed to indemnify the heirs of Dalusong. The RTC then issued an Order, directing Soriano to explain within ten (10) days why he should not be held in contempt of Court for failure to comply with the conditions set forth in the order granting his probation and further directing him to submit his program of payment also within ten (10) days. Instead of complying with the Order, Soriano filed a "Motion for Reconsideration," alleging that he had not personally received a copy of the order, despite the fact that his counsel acknowledged its receipt on 23 June 1994. Unsatisfied with the explanation, the RTC ordered the detention of Soriano for ten (10) days for contempt of court, and the revocation of its Order granting probation. The trial court also ordered Soriano to serve the sentence originally imposed. Soriano filed a Petition for *Certiorari* before the Court of Appeals, alleging that Hon. Judge Toledano committed grave abuse of discretion in finding petitioner in contempt of court and in revoking the probation order without the benefit of a hearing. The appellate court dismissed the Petition for Certiorari, ruling that Hon. Toledano did not commit grave abuse of discretion in declaring petitioner in contempt of court and in revoking the order of probation. Hence, the present petition. Soriano simply argued before the Court that

there must be prior notice and hearing before he could be held liable for indirect contempt.

The Supreme Court found petitioner Soriano's argument meritorious and set aside the order of the trial court holding him in contempt of court. According to the Court, the third requisite laid down in Rule 71 of the Rules of Court was not complied with as no hearing was ever conducted by the RTC on the charge of indirect contempt. The Court stressed that the proceedings in indirect contempt are criminal in nature and conviction cannot be had merely on the basis of written pleadings. The contemner must be given his or her day in court to afford him the opportunity of adducing evidence in his behalf. The hearing will also allow the court a more thorough evaluation of the defense of the contemner, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or the court itself. In Soriano's case, no hearing was ever set or held. The RTC adjudged Soriano guilty based on the bare assertions contained in the pleading he filed in response to the show cause order. Such finding, according to the Court, derived as it was without any comprehensive evaluation of the arguments or of the evidence, cannot be sanctioned and should be overturned.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; KINDS OF CONTEMPT; INDIRECT CONTEMPT; REQUISITES PRIOR TO CONVICTION FOR INDIRECT CONTEMPT.— There are two kinds of contempt punishable by law: direct contempt and indirect contempt. The contempt charged against Soriano is properly classified as indirect contempt, as it consists of disobedience of or resistance to a lawful order of a court. Section 3, Rule 71 of the Revised Rules of Court provides for the following requisites prior to conviction of indirect contempt: (a) a charge in writing to be filed, (b) an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and (c) to be heard by himself or counsel.

2. ID.; ID.; ID.; ID.; ID.; ID.; THE THIRD REQUISITE LAID DOWN IN RULE 71 WAS NOT COMPLIED WITH, AS NO HEARING WAS EVER CONDUCTED BY THE TRIAL

COURT ON THE CHARGE OF CONTEMPT.— The RTC did notify Soriano in writing of the charge of indirect contempt, by way of the 15 August 1994 *Order*. That same *Order* afforded Soriano the opportunity to comment on the charge, which Soriano essentially did through his *Motion for Reconsideration*. However, the third requisite laid down in Rule 71 was not complied with, as no hearing was ever conducted by the RTC on the charge of contempt. As the Court ruled in *Balasabas v. Hon. Aquilisan:* On the proceedings for indirect contempt against the petitioner, the grave error of the respondent judge is manifest when, under the circumstances disclosed in the records, petitioner was denied his right to notice of hearing, to have his day in court and present witnesses in his behalf xxx Section 3, Rule 71 requires that there must be a hearing of the indirect contempt charge after notice thereof is validly served on the person charged with indirect contempt. As adverted to earlier, an order requiring petitioner to submit a written explanation constitutes the written charge for indirect contempt, and at the same time serves as notice of said charge. However, such notice cannot by all means, be considered as a notice of hearing itself. The two notices are different, for they have distinct object and purpose. With respect to constructive contempts or those which are committed without the actual presence of the court, it is essential that a hearing be allowed and the contemner permitted, if he so desires, to interpose a defense to the charges before punishment is imposed.

3. ID.; ID.; ID.; ID.; ID.; ID.; SINCE AN INDIRECT CONTEMPT CHARGE PARTAKES THE NATURE OF A CRIMINAL CHARGE, CONVICTION CANNOT BE HAD MERELY ON THE BASIS OF WRITTEN PLEADINGS.— The proceedings for punishment of indirect contempt are criminal in nature. The modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions. Thus, any liberal construction of the rules governing contempt proceedings should favor the accused. It can be argued that Soriano has essentially been afforded the right to be heard, as he did comment on the charge of indirect contempt against him. Yet, since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings. The contemner is assured of his or her day in court. If the contemner is served a notice of hearing, but fails to appear anyway, then that is a

different matter. A hearing affords the contemner the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing will also allow the court a more thorough evaluation of the defense of the contemner, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or the court itself.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Santos for petitioner.

D E C I S I O N

TINGA, *J.*:

The present petition arises out of the same set of facts as that in the case of *Soriano v. Court of Appeals*,[1] which the Court decided in 1999.

In a *Decision* dated 7 December 1993, the Regional Trial Court ("RTC") of Iba, Zambales, Branch 69,[2] found petitioner Ronald Soriano ("Soriano") liable for the death of Isidrino Dalusong ("Dalusong"), and convicted him of the crime of Homicide, Serious Physical Injuries and Damage to Property through Reckless Imprudence. The *Decision* was penned by Judge Rodolfo V. Toledano ("Hon. Toledano"), who sentenced Soriano to suffer imprisonment of two (2) years, four (4) months and one (1) day to six (6) years of *prision correccional*.[3]

Eschewing an appeal, Soriano instead filed on 12 January 1994 an *Application* for probation. The RTC granted probation for a period of three to six years in an *Order* dated 8 March 1994. Among the several terms and conditions of probation was that Soriano indemnify the heirs of Dalusong in the amount

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[1] 363 Phil. 573 (1999), said case docketed as G.R. No. 123936.

[2] Presided by Judge Rodolfo V. Toledano.

[3] *Rollo*, p. 10.

of Ninety Eight Thousand Five Hundred Sixty Pesos (₱98,560.00), as ordered by the RTC.[4]

On 26 April 1994, Provincial State Prosecutor Benjamin A. Fadera filed a *Motion to Cancel Probation*, on the ground that Soriano had failed to indemnify the heirs of Dalusong in the amount of Ninety Eight Thousand Five Hundred Sixty Pesos (₱98,560.00), contrary to Condition Number 11 of the *Order of Probation*. While Soriano opposed this motion, the Zambales Parole and Probation Office filed a *Comment* recommending that Soriano be allowed to continue with his probation but be required to submit a program of payment of his civil liability. The RTC, in an *Order* dated 20 June 1994, denied the *Motion to Cancel Probation*, but ordered Soriano to submit within ten (10) days from notice his program of payment of the civil liability.

A copy of the *Order* dated 20 June 1994 was received by Soriano's counsel on 23 June 1994.[5] Despite such receipt, no program of payment was submitted by Soriano, prompting the Zambales Parole and Probation Office to ask the RTC to require explanation from Soriano why he had not complied with this latest RTC *Order*. On 15 August 1994, the RTC issued an *Order*, directing Soriano to explain within ten (10) days why he should not be held in contempt of Court for failure to comply with the 20 June 1994 *Order*, and further directing him to submit his program of payment also within ten (10) days.

Instead of complying with this latest *Order*, Soriano filed a "*Motion for Reconsideration,*" alleging that he had not personally received a copy of the 20 June 1994 *Order*, despite the fact that his counsel acknowledged its receipt on 23 June 1994. He also manifested therein that he was unemployed, dependent on his parents for support of his family, and incapable of figuring out any feasible program of payment.[6]

Unsatisfied with this explanation, the RTC issued an *Order* dated 4 October 1994, ordering the detention of Soriano for

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[4] *Id.* at 11.

[5] *Rollo*, p. 32.

[6] *Id.* at 33.

ten (10) days for contempt of court, revoking the 8 March 1994 *Order* granting probation, and ordering that Soriano serve the sentence originally imposed. The RTC noted that Soriano had apparently no intention of submitting a program of payment or eventually complying with his civil obligation to the heirs of Dalusong. The RTC also took note of the fact that Soriano was able to hire two private counsels in his behalf, belying the claim of his financial hardship. These circumstances, according to the RTC, were indicative of Soriano's lack of repentance or predisposition to rehabilitate or reform, the purposes which the probation law sought to achieve.[7]

Soriano filed a *Notice of Appeal* dated 12 October 1994, specifically appealing the contempt of court judgment against him.[8] An *Order* dated 17 October 1994 was promulgated by the RTC, directing that the original records pertaining to the contempt charge be forwarded to the Court of Appeals.[9] In the same *Order*, the RTC noted that an order revoking the grant of probation or modifying the terms and conditions thereof was not appealable, hence the directives revoking probation and ordering Soriano to serve his original sentence remained unaffected.

On 26 October 1994, Soriano filed a *Petition for Certiorari* before the Court of Appeals, alleging that Hon. Judge Toledano committed grave abuse of discretion in finding petitioner in contempt of court and in revoking the probation order.[10] The petition was docketed as C.A. S.P. No. 35550 and raffled to the Eighth Division of the Court of Appeals.

In the meantime, the appeal filed by Soriano pertaining to the contempt charge was docketed as CA G.R. C.R. No. 17595. The appeal was raffled to the Tenth Division of the Court of Appeals. Soriano and the Office of the Solicitor General filed their respective briefs.

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[7] *Rollo*, pp. 34-35.

[8] Records, p. 23.

[9] *Id*. at 24.

[10] See *Rollo* in G.R. No. 123936, p. 124.

On 29 October 1995, the Court of Appeals Eighth Division promulgated its decision in C.A. S.P. No. 35550.[11] It dismissed the *Petition for Certiorari*, ruling that Hon. Toledano did not commit grave abuse of discretion in declaring petitioner in contempt of court and in revoking the order of probation. Soon thereafter, Soriano timely challenged this decision before this Court, via a *Petition for Review* that was docketed as G.R. No. 123936.

On 11 September 1996, the Court of Appeals Tenth Division denied the appeal in CA G.R. C.R. No. 17595.[12] In its *Decision*, the Court of Appeals Tenth Division emphasized that Soriano was declared in contempt of court not because he was not financially capable of paying his civil liability, but because of his contumacious failure to comply with the RTC *Orders* dated 20 June 1994 and 15 August 1994. There was no question that counsel for Soriano had, on 23 June 1994, received a copy of the 20 June 1994 *Order* requiring Soriano to submit his program of payment, and it is well settled that notice to counsel is notice to the party himself.[13] Nor did Soriano's supposed financial incapacity excuse him from not complying with the RTC *Orders*, as he could have at the very least filed a manifestation with the Court that he was not yet in a position to settle the obligation.

After Soriano's *Motion for Reconsideration* was denied by the Court of Appeals, [14] he filed a *Petition for Review on Certiorari* before this Court. Docketed as G.R. No. 128938, this latter petition is now the subject of this ruling. Soriano, in his present petition, argued that the RTC committed grave abuse of discretion in finding that there was a deliberate refusal on his part to comply with its Orders dated 20 June 1994 and 15

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[11] The Decision was penned by Justice J. de la Rama, and concurred in by Justices J. Lantin and E. Montenegro.

[12] Per *Decision* penned by Associate Justice Salome A. Montoya, and concurred in by Associate Justices Godardo A. Jacinto and Maximiano C. Asuncion. *Rollo*, pp. 30-38.

[13] *Rollo*, p. 36.

[14] Per *Resolution* dated 16 April 1997. *Rollo*, p. 40.

August 1994; and in revoking the probation order for failure to satisfy the civil liability to the heirs of the victim.[15]

On 4 March 1999, this Court rendered judgment in G.R. No. 123936.[16] In its *Decision*, the Court dismissed the petition, holding that the revocation of Soriano's probation was lawful and proper. Soriano's *Motion for Reconsideration* was denied,[17] and the judgment in G.R. No. 123936 became final on 15 June 1999.

In its 4 March 1999 *Decision* in G.R. No. 123936, the Court expressly stated that the only issue for resolution in that case was "whether or not the revocation of petitioner's probation is lawful and proper."[18] It was correct of the Court to have limited the issue in that manner, notwithstanding that Soriano also argued in his petition therein that Hon. Toledano committed grave abuse of discretion in declaring Soriano in contempt. The revocation of probation was properly assailed by Soriano through a special civil action of *certiorari*, which could not have similarly attacked the judgment of contempt. Under Section 11, Rule 71 of the 1997 Rules of Civil Procedure, Soriano's appropriate remedy from the judgment of contempt was an appeal to the proper court, as in criminal cases, and not the special civil action of *certiorari*.

Soriano correctly availed of the proper remedy from the contempt judgment by filing his *Notice of Appeal* on 12 October 1994. The proceedings arising from that appeal, and the rulings rendered therein are now for resolution in this *Decision*. Since the Court has already disposed of, with finality, the question of whether the RTC validly revoked Soriano's probation, the sole question now before us is whether or not the RTC erred in declaring Soriano in contempt.

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[15] *Rollo*, p. 16.

[16] 363 Phil. 573 (1999). Decision penned by Justice Leonardo A. Quisumbing, concurred in by Justices Josue N. Bellosillo, Reynato S. Puno, Vicente V. Mendoza, and Arturo B. Buena.

[17] In a Resolution dated 26 April 1999.

[18] 363 Phil. 573, 580 (1999).

Soriano argues herein that there must be prior notice and hearing before he could be held liable for indirect contempt, and that no hearing was conducted as to the contempt charge.[19] This contention has merit.

There are two kinds of contempt punishable by law: direct contempt and indirect contempt.[20] The contempt charged against Soriano is properly classified as indirect contempt, as it consists of disobedience of or resistance to a lawful order of a court.[21] Section 3, Rule 71 of the Revised Rules of Court provides for the following requisites prior to conviction of indirect contempt: (a) a charge in writing to be filed, (b) an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and (c) to be heard by himself or counsel.[22]

The RTC did notify Soriano in writing of the charge of indirect contempt, by way of the 15 August 1994 *Order*. That same *Order* afforded Soriano the opportunity to comment on the charge, which Soriano essentially did through his *Motion for Reconsideration*. However, the third requisite laid down in Rule 71 was not complied with, as no hearing was ever conducted by the RTC on the charge of contempt.

As the Court ruled in *Balasabas v. Hon. Aquilisan*:[23]

> On the proceedings for indirect contempt against the petitioner, the grave error of the respondent judge is manifest when, under the circumstances disclosed in the records, petitioner was denied his right to notice of hearing, to have his day in court and present witnesses in his behalf xxx.
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> xxx xxx xxx

Section 3, Rule 71 requires that there must be a hearing of the indirect contempt charge after notice thereof is validly served on

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[19] *Rollo*, p. 20.

[20] See Sections 1 and 3, Rule 71, Revised Rules of Court.

[21] See Section 3(b), Rule 71, Revised Rules of Court.

[22] Section 3, Rule 71, Revised Rules of Court.

[23] 193 Phil. 639 (1981).

the person charged with indirect contempt. As adverted to earlier, an order requiring petitioner to submit a written explanation constitutes the written charge for indirect contempt, and at the same time serves as notice of said charge. However, such notice cannot by all means, be considered as a notice of hearing itself. The two notices are different, for they have distinct object and purpose.[24]

With respect to constructive contempts or those which are committed without the actual presence of the court, it is essential that a hearing be allowed and the contemner permitted, if he so desires, to interpose a defense to the charges before punishment is imposed.[25]

The proceedings for punishment of indirect contempt are criminal in nature.[26] The modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions.[27] Thus, any liberal construction of the rules governing contempt proceedings should favor the accused. It can be argued that Soriano has essentially been afforded the right to be heard, as he did comment on the charge of indirect contempt against him. Yet, since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings. The contemner is assured of his or her day in court. If the contemner is served a notice of hearing, but fails to appear anyway, then that is a different matter. A hearing affords the contemner the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing will also allow the court a more thorough evaluation of the defense of the contemner, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or the court itself.

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[24] *Balasabas v. Hon. Aquilisan*, 193 Phil. 639, 650 (1981).

[25] V. Francisco, IV-B *The Revised Rules of Court in the Philippines* 390, citing 12 Am. Jur., 437.

[26] *Rustia v. People*, 74 Phil. 105, 107 (1943).

[27] See *Garcia v. Court of Appeals*, 330 Phil. 420, 439 (1996); citing *Lee Yick Hon v. Collector of Customs*, 41 Phil. 548 (1921); *Benedicto v. Cañada*, 21 SCRA 1066 (1967); *Delgra v. Gonzales*, 31 SCRA 237 (1970).

In Soriano's case, no hearing was ever set or held. Soriano's claim was that he had no knowledge of the *Order* requiring him to submit the program of payment. This is a defense that is susceptible to ratification by testimonial evidence at the very least. Soriano should have been afforded the chance to prove his side by presenting evidence in his behalf in open court. However, the RTC denied Soriano the opportunity to adduce evidence in his behalf through a hearing, or at least explain his side or substantiate his defense through any opportunity which the RTC could have provided him. Instead, the RTC adjudged him guilty based on the bare assertions contained in the pleading he filed in response to the show cause order which is the 15 August 1994 *Order* of the RTC. Such finding, derived as it was without any comprehensive evaluation of the arguments or of the evidence, cannot be sanctioned by this Court and should be overturned.

The practical effects of this ruling may seem negligible considering the relative gravity of the ruling against Soriano in G.R. No. 123936. Yet, it is still important for this Court to reiterate that contempt proceedings, particularly for indirect contempt, take on the character of criminal proceedings. Judges are enjoined to extend to an alleged contemner the same rights accorded to an accused.

WHEREFORE, the *Petition* is granted. The *Order* dated 4 October 1994 is set aside insofar as it declared petitioner Ronald Soriano in contempt of court.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 138984. June 4, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DENNIS TORPIO *y* ESTRERA,** *appellant.*

SYNOPSIS

Appellant Dennis Torpio *y* Estrera was convicted of murder by the Regional Trial Court of Ormoc City and was sentenced to suffer the penalty of *reclusion perpetua.* In his appeal before the Court, appellant contended that treachery was not attendant when he killed the victim because he did not consciously adopt a mode of attack to ensure the accomplishment of his criminal purpose without any risk to himself arising from the defense that the victim might offer. He submitted that his act of stabbing the victim was preceded by a quarrel between them; hence, the victim had been forewarned of the danger to his life and limb. Appellant also asserted that evident premeditation was not, likewise, attendant because the prosecution failed to prove that he had planned and prepared any plot to kill the victim. He argued that he is guilty only of homicide as defined in Article 249 of the Revised Penal Code, as amended.

The Supreme Court found appellant's appeal meritorious. The Court found the record of the case barren of evidence showing any method or means employed by the appellant in order to ensure his safety from any retaliation that could be put up by the victim. The appellant acted to avenge the victim's felonious acts of mauling and stabbing him. Although the appellant bled from his stab wound, he ran home, armed himself with a knife and confronted the victim intentionally. When the latter fled, appellant ran after him and managed to stab and kill the victim. The Court also rejected the trial court's conclusion that evident premeditation attended the commission of the crime. The prosecution failed to establish that, in killing the victim, appellant had definitely resolved to commit the offense and had reflected on the means to bring about the execution following an appreciable length of time. Appellant's father testified that the former told him, "I have to kill somebody, '*Tay*, because I was boxed." To the Court's mind, the utterance is not sufficient to show that the crime was a product of serious

and determined reflection. The interval between the time when the appellant made this statement and when he actually stabbed the victim was not sufficient or considerable enough as to allow him to reflect upon the consequences of his act. There was no sufficient interregnum from the time the appellant was stabbed by the victim, when the appellant fled to their house and his arming himself with a knife, and when he stabbed the victim. Without any proof of any circumstance that would qualify the killing. Appellant was held liable only for the crime of homicide.

SYLLABUS

1. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT APPLICABLE IN CASE AT BAR; RECORD IS BARREN OF EVIDENCE SHOWING ANY METHOD OR MEANS EMPLOYED BY APPELLANT IN ORDER TO ENSURE HIS SAFETY FROM ANY RETALIATION THAT COULD BE PUT UP BY THE VICTIM.—** There is treachery when the offender employs means, methods or forms in the execution of the crime which tends directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. There must be evidence showing that the mode of attack was consciously or deliberately adopted by the culprit to make it impossible or difficult for the person attacked to defend himself or retaliate. Further, the essence of treachery is the swift and unexpected attack without the slightest provocation by the victim. In this case, the record is barren of evidence showing any method or means employed by the appellant in order to ensure his safety from any retaliation that could be put up by the victim. The appellant acted to avenge Anthony's felonious acts of mauling and stabbing him. Although the appellant bled from his stab wound, he ran home, armed himself with a knife and confronted Anthony intentionally. When the latter fled, the appellant ran after him and managed to stab and kill the victim.

2. **ID.; ID.; ID.; EVIDENT PREMEDITATION; NO EVIDENT PREMEDITATION WHEN THE FRACAS WAS THE RESULT, NOT OF A DELIBERATE PLAN BUT OF RISING TEMPERS, OR WHEN THE ATTACK WAS MADE IN THE HEAT OF ANGER.—** The qualifying circumstance of evident premeditation requires that the execution of the criminal act

by the accused be preceded by *cool thought* and *reflection* upon a resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Evident premeditation needs proof of the time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court. Nothing in the records supports the trial court's conclusion that evident premeditation attended the commission of the crime in this case. It was not shown by the prosecution that, in killing Anthony, the appellant had definitely resolved to commit the offense and had reflected on the means to bring about the execution following an appreciable length of time. According to Manuel, the father of the appellant, the latter told him, *"I have to kill somebody, 'Tay, because I was boxed."* To the Court's mind, this utterance is not sufficient to show that the crime was a product of serious and determined reflection. The interval between the time when the appellant made this statement and when he actually stabbed Anthony was not sufficient or considerable enough as to allow him to reflect upon the consequences of his act. There was no sufficient interregnum from the time the appellant was stabbed by the victim, when the appellant fled to their house and his arming himself with a knife, and when he stabbed the victim. In a case of fairly recent vintage, we ruled that there is no evident premeditation when the fracas was the result, not of a deliberate plan but of rising tempers, or when the attack was made in the heat of anger.

3. ID.; MITIGATING CIRCUMSTANCES; HAVING ACTED IN THE IMMEDIATE VINDICATION OF A GRAVE OFFENSE; PROPERLY APPRECIATED AS APPELLANT WAS HUMILIATED, MAULED AND ALMOST STABBED BY THE VICTIM.— The mitigating circumstance of having acted in the immediate vindication of a grave offense was, likewise, properly appreciated. The appellant was humiliated, mauled and almost stabbed by the deceased. Although the unlawful aggression had ceased when the appellant stabbed Anthony, it was nonetheless a grave offense for which the appellant may be given the benefit of a mitigating circumstance. But the mitigating circumstance of sufficient provocation cannot

be considered apart from the circumstance of vindication of a grave offense. These two circumstances arose from one and the same incident, *i.e.*, the attack on the appellant by Anthony, so that they should be considered as only one mitigating circumstance.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

This is an appeal from the Decision[1] of the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case No. 5217-0, finding appellant Dennis Torpio *y* Estrera guilty beyond reasonable doubt of murder. The trial court sentenced him to suffer *reclusion perpetua* and ordered him to pay the victim's heirs the total amount of ₱200,000 as civil indemnity, actual damages and attorney's fees.

The appellant and his father Manuel Torpio were charged with murder for the killing of Anthony Rapas in an Amended Information that reads:

That on or about the 11th day of October 1997, at around 12:00 o'clock midnight at Zone 3, Brgy. Camp Downes, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused: *DENNIS TORPIO y* Estrera and *MANUEL TORPIO*, *conspiring together, confederating with and mutually helping and aiding one another*, with treachery, evident premeditation and intent to kill, did then and there wilfully, unlawfully and feloniously stab, hit and wound the victim herein ANTHONY RAPAS, without giving the latter sufficient time to defend himself, thereby inflicting upon said Anthony Rapas mortal wounds which caused his instantaneous death. Autopsy report is hereto attached.

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[1] Penned by Judge Fortunito L. Madrona.

In violation of Article 248, RPC, as amended by RA 7659.Ormoc City, November 4, 1987.[2]

At their arraignment, the two accused, assisted by counsel, pleaded not guilty to the charge. Trial ensued.

The Case for the Prosecution

As culled by the trial court from the evidence on record, the case for the prosecution is as follows:

As found by the Court, it was October 11, 1997 in Zone 3, Barangay Camp Downes, Ormoc City. A family of seven, Manuel Torpio and wife included, together with an old woman visitor named Fausta Mariaca, were taking their supper. Anthony Rapas knocked and asked for Dennis Torpio who, after eating, went and left home with Anthony upon the latter's invitation for a drinking spree. They have (*sic*) some round of drinks at a nearby store together with another companion. Not contented, they left and proceeded to the seashore where in a cottage there were people also drinking. Joining the group, Anthony and Dennis again drank. Later, the two and their companion transferred to another cottage and there they again drank now with gin liquor except Dennis who did not anymore drink. For one reason or another, because Dennis did not drink, Anthony got angry and he then bathed Dennis with gin, and boxed or mauled him and tried to stab him with a *batangas* knife but failed to hit Dennis as the latter was crawling under the table. He got up and ran towards home. His family was awaken[ed], his mother shouted as Dennis was taking a knife and appearing (*sic*) bloodied. Manuel Torpio woke up and tried to take the knife from Dennis but failed and, in the process, wounded or cut himself in his left hand. Dennis left with the knife, passed by another route towards the seashore and upon reaching the cottage where Anthony and their companion Porboy Perez were, looked for Anthony. Anthony upon seeing Dennis sensed danger and he fled by taking the seashore. But Dennis, being accustomed to the place and having known the terrain despite the dark (*sic*) knew, upon being suggested by somebody whom Dennis claimed to be Rey Mellang, that there is only one exit Anthony could make and, thus, he went the other way through the nipa plantation and he was able to meet and block Anthony. Upon seeing the shining knife of Dennis, Anthony tried to

[2] Records, p. 16.

evade by turning to his left and Dennis thus hit the back portion of Anthony. Anthony ran farther but he was caught in a fishing net across the small creek and he fell on his back. It is at this juncture (*sic*) Dennis mounted on (*sic*) Anthony and continued stabbing the latter. He left the place but did not proceed to (*sic*) home, instead, he went to the grassy meadow near the camp and there slept until morning. He then went to a certain police officer to whom he voluntarily surrendered and together they went to the police headquarters.[3]

The case for the accused is, likewise, summarized by the trial court in its decision based on the evidence, as follows:

. . . [O]n October 11, 1997 at about 7:00 o'clock in the evening, while he and his family, Manuel, his father and mother and an old woman visitor named Fausta Mariaca included, were having dinner, Anthony Rapas knocked at their door. Anthony invited Dennis for a drinking spree. Both left after dinner, went to the store of a certain Codog and there started drinking. The store was about 70 meters away from Dennis' house, in Barangay Camp Downes, Ormoc City. They consumed a half gallon of *tuba*, drinking with a companion named Porboy Perez. Two small bottles of Red Horse beer were added, after which the three proceeded to the seashore, in a cottage of a beach resort there named Shoreline. Arriving there, there were some people drinking also and they offered them drinks and the two obliged. Afterwards, they went to a cottage and later Porboy arrived bringing with him a liquor gin. Dennis did not drink the gin, only Anthony and Porboy did. [T]hen after drinking the gin, Anthony tried to let Dennis drink the gin and as the latter still refused, Anthony allegedly bathed Dennis with gin and mauled him several times. Dennis crawled beneath the table and Anthony tried to stab him with a 22 fan knife but did not hit him. Dennis got up and ran towards their home. Upon reaching home, he got a knife and as his mother was alarmed and shouted, a commotion ensued. Manuel, his father, awoke and tried to scold Dennis and confiscate from him the knife but he failed, resulting to Manuel's incurring a wound on his hand (see TSN of October 8, 1998, p. 7 *et seq*.). He went back to the cottage by another route and upon arrival Porboy and Anthony were still there. Upon seeing Dennis, Anthony allegedly avoided Dennis and ran by passing the shore towards the creek. Rey Mellang went out of his house at this time and said "meet him 'Den,'" alluding to Anthony

[3] *Id*. at 286-287.

and to Dennis, respectively (TSN of October 8, 1998, p. 31 *et seq*.). Dennis did meet him, virtually blocked him and stabbed him. When he was hit, Anthony ran but then he got entangled with a fishing net beside the creek and Anthony fell on his back, and Dennis mounted on (*sic*) him and continued stabbing him. After stabbing (*sic*), Dennis left and went to the grassy meadow at Camp Downes and slept there. At about 7:00 in the morning, he went to a known police officer named Boy Estrera in San Pedro Street, Ormoc City and to whom he voluntarily surrendered. He was later turned over to the police headquarters (TSN, *supra*, pp. 31-38).[4]

The trial court rendered judgment acquitting accused Manuel Torpio but convicting the appellant of murder qualified by treachery or evident premeditation and appreciating in his favor the following mitigating circumstances: (a) sufficient provocation on the part of the offended party (the deceased Anthony) preceded the act; (b) the accused acted to vindicate immediately a grave offense committed by the victim; and, (c) voluntary surrender. The decretal portion of the decision reads:

> Wherefore, from all of the foregoing, the Court finds the accused Dennis Torpio guilty beyond reasonable doubt of the crime of murder and hereby sentences him after appreciating the existence of mitigating circumstances, to the imprisonment of forty (40) years *reclusion perpetua*, and to pay the offended party ₱50,000.00 as indemnity, ₱100,000.00 as actual damages, ₱50,000.00 for and as attorney's fees. If said accused is detained, [the] period of imprisonment shall be credited to him in full if he abides in writing by the term for convicted prisoners, otherwise, for only four-fifths (4/5) thereof.
>
> On the accused Manuel Torpio, the Court finds him not guilty of the crime charged and hereby acquits him therefrom. If he is detained, he shall be discharged immediately from prison unless he is held for other lawful cause.
>
> SO ORDERED.[5]

Dennis Torpio, now the appellant, appealed the judgment of the trial court alleging as sole error that —

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[4] *Id*. at 285.

[5] *Id*. at 289.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME, THUS, QUALIFYING THE SAME TO MURDER.[6]

According to the appellant, treachery was not attendant when he killed the victim because he did not consciously adopt a mode of attack to ensure the accomplishment of his criminal purpose without any risk to himself arising from the defense that the victim might offer. He posits that his act of stabbing Anthony was preceded by a quarrel between them; hence, the victim had been forewarned of the danger to his life and limb.

The appellant asserts that evident premeditation was not, likewise, attendant because the prosecution failed to prove that he had planned and prepared any plot to kill the victim. Further, no direct and positive evidence had been shown that sufficient time had elapsed between his determination to commit the crime and its execution to enable him to reflect upon the consequences of his act. He argues that he is guilty only of homicide as defined in Article 249 of the Revised Penal Code, as amended.

The appeal is meritorious.

Significantly, apart from its statement that "[f]rom the evidence adduced, the Court is of the considered opinion that the killing of Anthony by Dennis Torpio was attended with treachery and evident premeditation as to qualify it to murder,"[7] the trial court did not state the factual basis for its conclusion.

It is axiomatic that qualifying and aggravating circumstances, like treachery and evident premeditation, must be proven with equal certainty as the commission of the crime charged.[8] Such circumstances cannot be presumed; nor can they be based on mere surmises or speculations.[9] In case of doubt, the same should be resolved in favor of the accused.[10]

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[6] *Rollo*, p. 63.

[7] Records, p. 288.

[8] *People v. Loterono*, 391 SCRA 593 (2002).

[9] See *People v. Matore*, 387 SCRA 603 (2002).

[10] See *People v. Mahilum*, 390 SCRA 91 (2002).

There is treachery when the offender employs means, methods or forms in the execution of the crime which tends directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[11] There must be evidence showing that the mode of attack was consciously or deliberately adopted by the culprit to make it impossible or difficult for the person attacked to defend himself or retaliate.[12] Further, the essence of treachery is the swift and unexpected attack without the slightest provocation by the victim.[13]

In this case, the record is barren of evidence showing any method or means employed by the appellant in order to ensure his safety from any retaliation that could be put up by the victim. The appellant acted to avenge Anthony's felonious acts of mauling and stabbing him. Although the appellant bled from his stab wound, he ran home, armed himself with a knife and confronted Anthony intentionally. When the latter fled, the appellant ran after him and managed to stab and kill the victim.

To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites:

> . . . (a) the time when the offender [was] determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[14]

The qualifying circumstance of evident premeditation requires that the execution of the criminal act by the accused be preceded by *cool thought* and *reflection* upon a resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[15] Evident premeditation needs proof of the

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[11] *People v. Caloza, Jr.,* 396 SCRA 329 (2003).

[12] *Ibid*.

[13] *People v. Adoc*, 330 SCRA 626 (2000).

[14] *People v. Baldogo*, 396 SCRA 31 (2003).

[15] *People v. Recepcion*, 391 SCRA 558 (2002).

time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court.[16]

Nothing in the records supports the trial court's conclusion that evident premeditation attended the commission of the crime in this case. It was not shown by the prosecution that, in killing Anthony, the appellant had definitely resolved to commit the offense and had reflected on the means to bring about the execution following an appreciable length of time.

According to Manuel, the father of the appellant, the latter told him, *"I have to kill somebody, 'Tay, because I was boxed."* To the Court's mind, this utterance is not sufficient to show that the crime was a product of serious and determined reflection. The interval between the time when the appellant made this statement and when he actually stabbed Anthony was not sufficient or considerable enough as to allow him to reflect upon the consequences of his act. There was no sufficient interregnum from the time the appellant was stabbed by the victim, when the appellant fled to their house and his arming himself with a knife, and when he stabbed the victim. In a case of fairly recent vintage, we ruled that there is no evident premeditation when the fracas was the result, not of a deliberate plan but of rising tempers, or when the attack was made in the heat of anger.[17]

Without any proof of any circumstance that would qualify it, the killing could not amount to murder. The appellant should, thus, be held liable only for homicide for the death of Anthony.

The Court agrees with the trial court that mitigating circumstances should be considered in the appellant's favor.

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[16] *Ibid*.

[17] *People v. Guerrero, Jr.,* 389 SCRA 389 (2002).

However, only two out of the three mitigating circumstances[18] considered by the trial court can be credited to the appellant. The trial court properly appreciated the mitigating circumstance of voluntary surrender as it had been established that the appellant, after he killed Anthony, lost no time in submitting himself to the authorities by going to Boy Estrera, a police officer.

The mitigating circumstance of having acted in the immediate vindication of a grave offense was, likewise, properly appreciated. The appellant was humiliated, mauled and almost stabbed by the deceased. Although the unlawful aggression had ceased when the appellant stabbed Anthony, it was nonetheless a grave offense for which the appellant may be given the benefit of a mitigating

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[18] In appreciating the mitigating circumstances, the trial court ratiocinated, thus:

. . . [T]he Court considers for appreciation the following (see Art. 13, nos. 4, 5, and 7, Revised Penal Code): (1) that sufficient provocation on the part of the offended party (the deceased Anthony Rapas) preceded the act, this is shown by the mauling of Dennis, his being bathed with liquor, and the deceased's having tried to stab Dennis at the cottage before Dennis went home and got his knife. The prosecution failed to rebut, refute, or destroy this particular testimonial evidence of the defense in this respect. They could have presented Porboy Perez in order to refute or rebut the testimony of Dennis on this point. For having thus failed, the quantum of proof shifted to the prosecution and the weight of evidence tilts against them; (2) the act of killing was committed in the immediate vindication of a grave offense to the one committing the felony (in this case, Dennis Torpio). "Immediate" means proximate and, hence, an interval of time may lapse from the commission of the grave offense to the crime in vindication thereof (*People vs. Parano*, 64 Phil. 331, cited in Antonio Gregorio, *Fundamentals of Criminal Law Review*, 1971 Third Edition, Quezon City: Central Lawbook Publishing Co., p. 57). This was proven by the wrong done on Dennis by Anthony prior to the stabbing incident. The injury he sustained, the mauling, the humiliation he suffered, the near attempt at killing Dennis, these constitute some grave offense and an interval of time elapsed before the accused returned and did the commission (*sic*) of a felon which is killing. (3) [T]he voluntary act of surrender to a person in authority, as shown by Dennis' act of going to a police officer named Boy Estrera and to the police headquarters supported not only by testimony but also by documentary evidence, the certification of the excerpt of police blotter (Exhibit "E" for the prosecution and adopted as Exhibit "I" for the defense). (Records, pp. 287-288.)

circumstance.[19] But the mitigating circumstance of sufficient provocation cannot be considered apart from the circumstance of vindication of a grave offense. These two circumstances arose from one and the same incident, *i.e.*, the attack on the appellant by Anthony, so that they should be considered as only one mitigating circumstance.[20]

Under Article 249 of the Revised Penal Code, homicide is punishable by *reclusion temporal*. However, considering that there are two mitigating circumstances and no aggravating circumstance attendant to the crime, the imposable penalty, following Article 64(5)[21] of the Revised Penal Code, is *prision mayor*, the penalty next lower to that prescribed by law, in the period that the court may deem applicable. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the medium period of *prision mayor*, while the minimum shall be taken from within the range of the penalty next lower in degree, which is *prision correccional*. Hence, the imposable penalty on the appellant is imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

It is, likewise, necessary to modify the damages awarded by the trial court. The award of ₱100,000 as actual damages

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[19] *David v. Court of Appeals*, 290 SCRA 727 (1998).

[20] *Ibid*.

[21] The provision reads in part:

> Art. 64. *Rules for the application of penalties which contain three periods*. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:
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> . . . .
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> 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

representing funeral and wake expenses should be deleted as there were no receipts or any other tangible documents presented to support the said award.[22] However, the award of attorney's fees in the amount of ₱50,000 is proper considering that the records showed that the heirs of the victim engaged the services of a private prosecutor. The recovery of attorney's fees in the concept of actual or compensatory damages is allowed under the circumstances provided in Article 2208 of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[23] The award of ₱50,000 as civil indemnity[24] to the heirs of Anthony, as well as ₱25,000 as temperate damages,[25] is, likewise, warranted pursuant to prevailing jurisprudence.

WHEREFORE, the Decision dated March 18, 1999 of the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case No. 5217-0 is *AFFIRMED WITH MODIFICATIONS*. The appellant Dennis Torpio *y* Estrera is found guilty beyond reasonable doubt of Homicide under Article 249 of the Revised Penal Code and is sentenced to suffer an indeterminate penalty from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum. He is further ordered to pay the heirs of the said victim, the amounts of Fifty Thousand Pesos (₱50,000) as civil indemnity, Twenty-Five Thousand Pesos (₱25,000) as temperate damages and Fifty Thousand Pesos (₱50,000) as attorney's fees.

SO ORDERED.

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

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[22] *People v. Diaz*, 395 SCRA 52 (2003).

[23] *People v. Bergante*, 286 SCRA 629 (1998).

[24] *People v. Aposaga*, G.R. No. 127153, October 23, 2003.

[25] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003.

SECOND DIVISION

[G.R. No. 139284. June 4, 2004]

ASUNCION MACIAS, SANTIAGO CORSAME, SEVERINA PIS-AN *VDA*. DE MACIAS, RUFINA MACIAS, MARIONITO MACIAS, CERTERIA AMIL, GIL-MO MACIAS, NIDA CORDURA, PASCUAL MACIAS, LIZEL CATUBAY, SANTIAGO MACIAS, MAGDALENA MACIAS, SANNY DATO-ON, JAIME MACIAS, VICTORIO MACIAS, TEODORA MACIAS, PRIMITIVO MACIAS, MA. LOURDES P. MACIAS, ZOSIMA MACIAS, BENJAMIN UNTO, DAVID UNTO, MILA VAILOCES, ROBERTO UNTO DAVID, ROSALINDA UNTO, EUSEBIO UNTO, AVELINA UNTO, RAFAELA UNTO, CARLOS BUENAVISTA, ALEXANDER UNTO, & CONIE UNTO, *petitioners, vs.* **MARIANO LIM, and his wife, LEONORA MACIAS, THE BANK OF THE PHILIPPINE ISLANDS, THE CENTRAL SAVINGS AND LOAN ASSOCIATION,** *respondents*.

SYNOPSIS

Herein petitioners contend that the five-year period under Section 6, Rule 39 of the Rules of Court was superseded by the implementation of the Intermediate Appellate Court (IAC) decision by the original parties in Civil Case No. 4823, causing the subdivision of the property into Lots 1496-A, 1496-B, 1496-C and 1496-D, corresponding to the shares of the parties. Thus, the parties took possession of their respective shares. The petitioners posit that they had not been disturbed in their possession of the property until respondent Mariano Lim filed his Manifestation and Motion to Stay Execution in Civil Case No. 4823. They also allege that the delay in the enforcement of the IAC decision was caused by the financial difficulties of the defendants in Civil Case No. 4823.

The Supreme Court dismissed the petition. According to the Court, the ten-year period within which an action for revival of a judgment commences to run from the date of finality of the judgment, and not from the expiration of the five-year period

within which the judgment may be enforced by mere motion. In case at bar, the entry of judgment of the IAC decision sought to be enforced was made on August 19, 1984. Plaintiffs Joaquin Unto and Victoriana Unto *Vda*. de Macias, or their respective heirs or their successors-in-interest, had until August 19, 1989 within which to enforce the IAC Decision by mere motion. They failed to file such motion. They also failed to revive the judgment by an ordinary action within the ten-year period. They waited for thirteen long years before they sought to have the 1984 IAC Decision enforced. Worse, they did so only on November 28, 1997, by a mere motion for the issuance of a special order for the enforcement of paragraph 6 of the IAC decision. Such a motion is not an action to revive the judgment of the IAC within the contemplation of Section 6, Rule 39 of the Rules of Court, as amended. That the delay in the execution of the judgment was due to the financial difficulties of the defendants in Civil Case No. 4823 is irrelevant. It is the prevailing party who is entitled, as a matter of right, to a writ of execution in its favor. It is not an option of the losing party to file a motion for the execution of the judgment to compel the winning party to take the judgment. The petitioners, as the prevailing parties in the judgment sought to be enforced, can file their motion or independent action within the periods therefor notwithstanding any financial difficulties of the losing party. They should only concern themselves with the execution of the judgment. Otherwise, their inaction may be construed as a waiver. Herein petitioners slept on their rights for thirteen years; perforce, they must suffer the consequences of their gross inaction.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; BARE ALLEGATION OF PETITIONERS THAT THEY ARE THE HEIRS AND ARE CO-OWNERS OF THE PROPERTY WILL NOT SUFFICE TO PROVE THAT THEY ARE THE REAL PARTIES-IN-INTEREST.— The bare allegation of the petitioners that they are the heirs and are co-owners of the property subject of the IAC decision will not suffice. There must be competent preponderant proof that they are, indeed, heirs of the original plaintiffs and co-owners of the property subject of the IAC decision. Absent such evidence, it cannot be argued that the petitioners are the real parties-in-

interest, as parties-plaintiffs in Civil Case No. 4823, as the petitioners in the Court of Appeals and in this Court. It bears stressing that a review by *certiorari* under Rule 45 of the Rules of Court is a matter of discretion. Where, as in this case, there is no sufficient showing that the petitioners are the real parties-in-interest as petitioners in the Court of Appeals and in this Court, their petition may be dismissed.

2. ID.; ID.; EXECUTION OF JUDGMENTS; EXECUTION BY MOTION OR BY INDEPENDENT ACTION, EXPLAINED.— The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights. Generally, once a judgment becomes final and executory, the execution thereof becomes a ministerial duty of the court. The prevailing party can have it executed as a matter of right by mere motion within five years from date of entry of the judgment. If the prevailing party fails to have the decision enforced by a mere motion after the lapse of five (5) years from the date of its entry, the said judgment is reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all ordinary actions, by the institution of a complaint in a regular form. Thus, the recourse left for the petitioners is to revive the judgment through an independent action which must be filed within ten (10) years from the time the judgment became final. The ten-year period within which an action for revival of a judgment should be brought, commences to run from the date of finality of the judgment, and not from the expiration of the five-year period within which the judgment may be enforced by mere motion.

3. ID.; ID.; ID.; MERE MOTION FOR THE ISSUANCE OF A SPECIAL ORDER FOR THE ENFORCEMENT OF PARAGRAPH 6 OF THE INTERMEDIATE APPELLATE COURT DECISION IS NOT AN ACTION TO REVIVE WITHIN THE CONTEMPLATION OF SECTION 6, RULE 39 OF THE RULES OF COURT, AS AMENDED.— In the case at bar, the entry of judgment of the IAC decision sought to be enforced was made on August 19, 1984. Plaintiffs Joaquin Unto and Victoriana Unto *Vda*. de Macias, or their respective heirs or their successors-in-interest, had until August 19, 1989 within which to enforce the IAC Decision by mere motion. They failed to file such motion. They also failed to revive the judgment by an ordinary action within the ten-year period. They

waited for thirteen long years before they sought to have the 1984 IAC Decision enforced. Worse, they did so only on November 28, 1997, by a mere motion for the issuance of a special order for the enforcement of paragraph 6 of the IAC decision. Such a motion is not an action to revive the judgment of the IAC within the contemplation of Section 6, Rule 39 of the Rules of Court, as amended.

4. ID.; ID.; ID.; PETITIONERS SLEPT ON THEIR RIGHTS FOR THIRTHEEN YEARS AND MUST SUFFER THE CONSEQUENCES OF THEIR GROSS INACTION.— That the delay in the execution of the judgment was due to the financial difficulties of the defendants in Civil Case No. 4823 is irrelevant. It is the prevailing party who is entitled, as a matter of right, to a writ of execution in its favor. It is not an option of the losing party to file a motion for the execution of the judgment to compel the winning party to take the judgment. The petitioners, as the prevailing parties in the judgment sought to be enforced, can file their motion or independent action within the periods therefor notwithstanding any financial difficulties of the losing party. They should only concern themselves with the execution of the judgment. Otherwise, their inaction may be construed as a waiver. The petitioners slept on their rights for thirteen years; perforce, they must suffer the consequences of their gross inaction.

APPEARANCES OF COUNSEL

Leo B. Diocos for petitioners.
Francisco Yap for BPI.
Eleazer Boycillo for CESLA.
Raymund Mercado for Sps. Lim.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 48188 which affirmed

[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Godardo A. Jacinto and Renato C. Dacudao, concurring.

the Order[2] of the Regional Trial Court of Dumaguete City, Branch 31, denying the petitioners' *Urgent Omnibus Petition*, for the enforcement of the Intermediate Appellate Court's decision in AC-G.R. CV No. 58863-R and the resolution of the appellate court denying the motion for reconsideration of the petitioners.

The Antecedents

Potenciana Unto was the owner, in fee simple, of a parcel of land located in Dumaguete, identified as Lot No. 1496 of the Dumaguete Cadastre. Upon her death, the property was inherited by her daughter, Josefa Unto-Mendez, which in turn was later inherited by the latter's children, Ignacia, Fructuoso, Pio, Alfonso, all surnamed Mendez and one acknowledged natural child, Matias Unto. Ignacia Mendez died and was survived by her children, Domingo Lumakad and Eugenia Lumakad, who inherited her share of the property. Upon the death of Pio Mendez, his share was inherited by his children, Edmundo, Apolinario, Justiniano, Francisco, Conceda, Saturnino and Pilagia, all surnamed Mendez.

The property was titled in the names of Josefa Mendez and Matias Unto's children and grandchildren, under Original Certificate of Title (OCT) No. 23. Domingo Lumakad sold his share to Eugenia Mendez, the mother of Joaquin Unto, while Julian Mendez sold his share to Joaquin Unto and Victoriana Unto. Marciano Lumakad, another son of Domingo Lumakad, sold his share to Victoriana Unto and Melanio Unto. Francisco Mendez and Eugenia Lumakad, through her son, Leonardo Limpalu, sold their share to Matias Unto. The deeds of sale covering the transactions were not registered in the Office of the Register of Deeds, nor annotated at the back of OCT No. 23.

Sometime in 1968, Catalina Macias, the daughter of Alfonso Mendez, and her siblings Julian Mendez, Guillermo Macias, Nicasio Macias, Gualberto Macias, Leonora Macias, Asuncion and Teopista Macias, acquired the property through a deed of extrajudicial settlement executed by the owner of the property

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[2] CA *Rollo*, p. 129.

which was duly registered in the Register of Deeds. OCT No. 23 was cancelled by TCT No. 2714 which, in turn, was cancelled by TCT No. 2833 under the names of the buyers as owners of the property.

On August 21, 1968, Catalina Macias, for herself and acting for and in behalf of Guillermo, Nicasio, Gualberto, Leonora, Asuncion and Teopista, all surnamed Macias, executed a real estate mortgage over the property with the Central Savings & Loan Association (CSLA), as security for a loan of ₱3,800.00. The instrument was annotated at the dorsal portion of TCT No. 2833 as Entry No. 8049.[3]

On August 27, 1968, Julian Mendez, through his attorney-in-fact, mortgaged his undivided share of the above property also with the CSLA, as security for a loan of ₱1,000.00. The real estate mortgage was annotated as Entry No. 8074 at the dorsal portion of the said title.[4]

On September 18, 1968, Joaquin Unto and Victoriana Unto *Vda*. de Macias (plaintiffs, for brevity) filed a complaint for reconveyance and cancellation of TCT No. 2833 covering Lot No. 1496 against Catalina Macias, Guillermo Macias, Nicasio Macias, Gualberto Macias, Leonora Macias, Teopista Macias and the CSLA with the then Court of First Instance of Negros Occidental, Branch 1.[5] The plaintiffs alleged, *inter alia*, in their complaint that they were the owners of 5/8 portion of Lot No. 1496 of the Dumaguete Cadastre with an area of 13,282 square meters covered by OCT No. 23, and were in actual possession thereof. They also alleged that the real estate mortgages executed by the private individuals in favor of the CSLA were fraudulent; hence, void. The plaintiffs prayed that, after due hearing, judgment be rendered in their favor, thus:

WHEREFORE, for the foregoing consideration, the Honorable Court is respectfully prayed to render judgment for plaintiffs and against the defendants, *viz*:

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[3] *Rollo*, p. 71.

[4] *Ibid*.

[5] *Id*. at 50.

(1) Declaring the series of fraudulent transfer made by Catalina Macias for portions of Lot No. 1496 previously sold to plaintiff as null and void;

(2) Ordering defendant Catalina Macias to reconvey to plaintiffs the five-eighths (5/8) shares of Lot No. 1496 owned by them which were sold to them by the original owners;

(3) Ordering the cancellation of the mortgage by defendant to the Central Loans and Savings Association;

(4) Ordering defendant Catalina Macias to pay to plaintiffs the sum of ₱10,000.00 for moral damages and such exemplary damages as the Honorable Court may award;

(5) Ordering defendant Catalina Macias to pay to plaintiffs the sum of ₱1,000.00 for attorney's fees and the costs of suit;

(6) Granting unto plaintiffs such other relief as the Honorable Court may deem proper and just under the premises.[6]

The case was docketed as Civil Case No. 4823.

On November 13, 1968, the plaintiffs caused the annotation of a Notice of *Lis Pendens* relating to Civil Case No. 4823, Entry No. 8465, at the dorsal portion of TCT No. 2833.[7]

In the meantime, Catalina Macias, *et al*., paid their loan to the CSLA. As a result, Entry No. 8049 on TCT No. 2833 was cancelled on August 14, 1969. However, Julian Mendez failed to pay his loan. Thus, the mortgagee caused the extrajudicial foreclosure of the real estate mortgage over his undivided share of the property. A sheriff's certificate of sale was executed by the sheriff in favor of CSLA. The deed was annotated on May 20, 1971 at the dorsal portion of TCT No. 2833, as Entry No. 12801.[8]

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[6] Records, pp. 7-8.

[7] *Rollo*, p. 71.

[8] *Id*. at 72.

On November 10, 1975, the court rendered its Decision[9] in Civil Case No. 4823 dismissing the complaint, the decretal portion of which reads as follows:

FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the defendants and against the plaintiffs:

1) Dismissing plaintiffs' complaint;

2) Declaring defendants, surnamed Macias, the true and lawful owners of three-fourths (3/4) undivided shares of Lot No. 1496 of the Cadastral Survey of Dumaguete City, as registered in their respective names in Transfer Certificate of Title No. 2833; and ordering the plaintiffs to deliver the possession thereof to said defendants, and to vacate the premises;

3) Condemning the plaintiffs, severally and solidarily, to pay to the defendants the sums of:

(a) — FIVE THOUSAND PESOS (₱5,000.00) as actual damages;

(b) — ONE THOUSAND PESOS (₱1,000.00) as attorney's fees;

and

(c) — the costs of suit.

SO ORDERED.[10]

The plaintiffs appealed the decision to the then Intermediate Appellate Court (IAC).[11] The appeal was docketed as AC-G.R. CV No. 58863-R.

Meanwhile, the entire property, Lot No. 1496, was subdivided. One of the lots was Lot 1496-B with an area of 2,114 square meters. On October 5, 1976, TCT No. 2833 covering an area of 13,282 square meters[12] was cancelled by TCT No. 9383

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[9] *Id*. at 79-89.

[10] *Id*. at 88-89.

[11] First Civil Cases Division, Penned by Associate Justice Ma. Rosario Quetulio-Losa, with Associate Justices Ramon G. Gaviola, Jr. (Acting Presiding Justice) and Eduardo Caguioa, concurring.

[12] *Rollo*, p. 71.

covering Lot 1496-B, which was issued in the name of Catalina Macias.[13] Entry No. 8465 was carried over in the said title. On November 10, 1975, Catalina Macias filed an *Urgent Supplemental Motion* in Cad. Case No. 5 (LRC Cad. Rec. No. 144) with the then Court of First Instance (CFI), Branch III,[14] for the cancellation of Entry No. 8465 relating to the notice of *lis pendens* annotated at the dorsal portion of TCT No. 9383, in Civil Case No. 4823. The court granted her motion[15] on October 11, 1976, although the defendants therein had appealed the decision to the Intermediate Appellate Court. Thereafter, the Register of Deeds cancelled Entry No. 8465, in compliance with the order of the CFI.[16]

Catalina Macias executed a real estate mortgage over the property covered by TCT No. 9383 in favor of the Bank of the Philippine Islands (BPI) as security for a loan on December 15, 1976.[17] Upon failure to pay her loan, the bank foreclosed the mortgage and caused the sale of the property at public auction. The BPI was the highest bidder for ₱90,250.74. A sheriff's certificate of sale was executed on June 18, 1982, in favor of the BPI. The certificate of sale was annotated at the dorsal portion of TCT No. 9383.[18] As Catalina Macias failed to redeem the property within the redemption period, the bank consolidated its title over the property. Thus, on December 29, 1983, TCT No. 9383 was cancelled by TCT No. 14229 in the name of the Bank.[19]

On June 29, 1984, the Intermediate Appellate Court (IAC) rendered its Decision in AC-G.R. CV No. 58863-R, reversing the lower court's decision and entering another one in favor of

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[13] *Id*. at 91.

[14] Presided by Judge Cipriano Vamenta, Jr.

[15] *Rollo*, p. 90.

[16] *Id*. at 91.

[17] Entry No. 25983, at the back of TCT No. 9383, *Rollo*, p. 91.

[18] Entry No. 36179, *Rollo*, p. 92.

[19] *Rollo*, p. 92.

the plaintiffs-appellants therein, declaring them and the defendant-appellee Catalina Macias as co-owners of the property. The decretal portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and another one entered.
>
> 1) Declaring plaintiff-appellant Joaquin Unto as the absolute owner of 1/2 of the 1/4 share pertaining to Eugenia Lumacad and Domingo Lumacad of Lot No. 1496;
>
> 2) Declaring Victoriana Unto as the absolute owner of the other 1/8 share of the Lumacad heirs of the same parcel of land;
>
> 3) Declaring plaintiffs-appellants Joaquin Unto and Victoriana Unto as the absolute owners *pro indiviso* of the 1/4 share pertaining to Julian Mendez;
>
> 4) Declaring plaintiff-appellant Victoriana Unto as the absolute owner of the 1/4 share of the late Alfonsa Mendez of the lot in question;
>
> 5) Declaring defendant-appellee Catalia (*sic*) Macias as the absolute owner of the 1/4 share of the Heirs of Pio Mendez of Lot No. 1496; and
>
> 6) Ordering the Register of Deeds of Dumaguete City to cancel Transfer Certificates of Title Nos. 2714 and 2833 covering Lot No. 1496 and to restore Original Certificate of Title No. 23, deleting all the inscriptions appearing on the back thereof, the same being declared herein as null and void.
>
> Without any pronouncement as to attorney's fees and costs.
>
> SO ORDERED.[20]

On August 19, 1984, the Decision of the IAC became final and executory in due course.[21]

Six years thereafter, or on September 25, 1990, David Unto, who claimed to be an heir of the plaintiffs, submitted the 1984 IAC Decision with the Office of the Register of Deeds-Dumaguete

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[20] *Id*. at 107-108.

[21] *Id*. at 109.

City for the enforcement of paragraph 6 of the decision which reads:

> 6) Ordering the Register of Deeds of Dumaguete City to cancel Transfer Certificates of Title Nos. 2714 and 2833 covering Lot No. 1496 and to restore Original Certificate of Title No. 23, deleting all the inscriptions appearing on the back thereof, the same being declared herein as null and void.

However, David Unto failed to surrender to the Register of Deeds the owner's duplicate of TCT No. 2833 because the same had already been cancelled. The Register of Deeds told him that the decision could not be implemented on the following grounds:

> a) Non-surrender of the owner's duplicate of Transfer Certificate of Title No. 2833,
>
> b) The Court Decision promulgated on June 29, 1984 does not order the Register of Deeds of Dumaguete City to cancel the mortgage under Entry No. 8074 executed in favor of the Central Savings and Loan Association and the corresponding Sheriff's Certificate of Sale under Entry No. 12801, and Transfer Certificate of Title No. 14229 registered in the name of the Bank of the Philippine Islands covering Lot No. 1496-B under subdivision plan No. Psd-248462. Transfer Certificate of Title No. 14229 is a transfer from TCT No. 9383 issued in favor of Catalina Macias with an area of about 7,114 square meters.[22]

The matter was elevated by the Register of Deeds to the Land Registration Authority (LRA) through a *consulta*. On September 22, 1992, the LRA, through Consulta No. 1974, directed the Register of Deeds-Dumaguete City to refer the matter to the Court of Appeals for its resolution. The Register of Deeds complied by means of a "Manifestation" in the Court of Appeals.

The Court of Appeals required the parties to file their comment on the matter but they failed to do so. In a Resolution dated June 8, 1993, the Court of Appeals simply noted the Manifestation

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[22] Records, p. 293.

filed by the Register of Deeds of Dumaguete City and the Resolution of the Land Registration Authority, *without prejudice to any further action that the parties-in-interest in the case before it may take on the matter*.[23]

On November 28, 1997, thirteen (13) years after the IAC decision had become final and executory, Asuncion Macias-Corsame, Rufina Macias-Ramirez, Ma. Lourdes Partosa-Macias, Alexander Unto and David Unto, who alleged to be the co-heirs of the plaintiffs, filed an *Urgent Omnibus Petition*[24] in Civil Case No. 4823, with the Regional Trial Court of Negros Oriental, Branch 31,[25] praying that the Register of Deeds be ordered to implement the Decision of the IAC:

WHEREFORE, this Honorable Court of origin, is respectfully prayed:

1. To order the Register of Deeds for Dumaguete City to fully implement and/or execute the "Decision" of the Intermediate Appellate Court, Manila, dated June 29, 1984 and made final and executory on August 29, 1984 in this case, especially concerning the dispositive portions of paragraphs 1-5, inclusive as to the absolute ownership of the property and paragraph 6 of the same ordering the Register of Deeds of Dumaguete City to cancel TCT Nos. *2714 and 2833* covering Lot No. *1496* and restore the OCT No. 23 deleting *all the inscriptions appearing on the back thereof, the same being declared null and void"* (Italics ours), and further ordering the same Register of Deeds to register and annotate in OCT No. 23 after its restoration and the sharing of the absolute ownerships of the parties-in-interest concerned which are the portions of the said decsion (*sic*) that have not been implemented in so far as registration of the same decision is concerned up to this late date;

2. That, if and when the Register of Deeds for Dumaguete still refuses to implement and/or execute the said portions of the decision, he be declared in Indirect *Contempt of Court* under Sec. 3 (b) of Rule 71 of the Revised Rules of Court for disobeying and/or refusing

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[23] *Id*. at 295-301.

[24] *Id*. at 287.

[25] Presided by Judge Rogelio L. Carampatan.

to implement and/or execute a legitimate and lawful judicial order or decision of the *Honorable Intermediate Appellate Court,* Manila; and order the proper sanctions to the officer or officers concerned who may have made such apparent violation or violations; and if possible furnish a copy of the Order to the Office of the Ombudsman, Visayas Area, Cebu City, Philippines; and

3. That the herein petitioners as Co-Heirs of the late JOAQUIN UNTO and VICTORIANA UNTO-MACIAS be granted any other relief or remedy under the given premises.[26]

The five movants alleged, *inter alia*, that the Consulta of the Register of Deeds cannot prevail over the decision of the IAC and that the parties in Civil Case No. 4823 and the movants themselves, after the death of the original parties in the said cases, had agreed to implement the decision of the IAC. However, the agreement was not filed and registered in the Office of the Register of Deeds. Acting on the motion, the court granted the petition and ordered the issuance of the corresponding writ of execution on December 11, 1997.[27]

Mariano Lim (herein respondent) filed a *Manifestation*[28] on December 23, 1997 informing the court that he had purchased Lot No. 1496-B covered by TCT No. 4229 from the BPI in good faith and for value; Branch 41 of the Regional Trial Court had issued a Writ of Possession in his favor on October 6, 1997; and, the *Urgent Omnibus Petition* filed by the co-heirs of Joaquin Unto and Victoriana Unto-Macias partook of a motion for the issuance of a writ of execution for an already stale IAC decision. He also alleged that the movants were guilty of forum shopping.

On December 24, 1997, Lim filed a *Motion to Stay Execution*[29] in Civil Case No. 4823 on the ground that the decision of the IAC sought to be implemented had become final and executory on October 5, 1984; hence, the said decision could no longer

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[26] Records, pp. 290-291.

[27] *Rollo*, p. 112.

[28] Records, p. 325.

[29] *Id*. at 342.

be enforced by motion considering that the prescriptive period therefor had long lapsed. On January 8, 1998, the court issued an Order[30] declaring that Lim had no personality to intervene in the case as he was not one of the litigants in the IAC case. However, the court reconsidered its December 11, 1997 Order and denied the motion of the movants, on the ground that the said motion was filed beyond the five-year period from the date of finality of the IAC decision.

The movants filed on April 7, 1998 their *Motion for Reconsideration* of the January 8, 1998 Order alleging that the original parties in Civil Case No. 4823 had implemented the IAC decision by causing the subdivision of Lot No. 1496 into four (4) lots, Lot 1496-A, 1496-B, 1496-C and 1496-D,[31] and that Lot 1496-A was occupied by the heirs of Joaquin Unto, Lot No. 1496-B and Lot No. 1496-D were occupied by the heirs of Victoriana Macias, and Lot 1496-C was occupied by the heirs of Catalina Macias. They also filed a *Supplemental Motion*[32] on April 13, 1998 praying, *inter alia*, that they be substituted as parties-plaintiffs in lieu of the original plaintiffs, who had already died *pendente lite*. They also alleged that the heirs of Catalina Macias had executed a deed waiving their rights over the property in their favor, which waiver was filed in Civil Case No. 7999 pending at the RTC of Negros Oriental, Branch V.

On April 27, 1998, the trial court issued an Order denying the motion for reconsideration and the supplemental motion of the movants, reiterating that their omnibus motion was filed beyond the five-year period provided for in Section 6, Rule 39 of the Rules of Court, as amended:

> Considering the allegations and the arguments in the plaintiffs' motion for reconsideration as well as the supplemental motion, and considering that the decision of the Court of Appeals which has been final for 13 years and it was only after the 13th year of its

[30] *Rollo*, p. 113.

[31] Records, p. 363.

[32] *Id*. at 352.

finality that plaintiffs appeared and moved for the execution of said judgment, notwithstanding the decision of the Supreme Court allowing in certain cases late execution of final judgment even beyond the period of five (5) years not however, exceeding ten (10) years, the said motion for reconsideration is hereby denied for lack of merit.

SO ORDERED.[33]

The movants and twenty-five others, who alleged to be the co-heirs of the original plaintiffs, filed a complaint, on April 27, 1998 against CSLA, BPI, Leonora Macias and the Sheriff, docketed as Civil Case No. 12212 for quieting of title, reconveyance and damages. In addition, they filed, on July 22, 1998, a petition for *certiorari* and *mandamus* under Rule 65 with the Court of Appeals[34] assailing the lower court's Orders dated January 8, 1998, and April 27, 1998, alleging that the trial court issued the same with grave abuse of discretion amounting to excess or lack of jurisdiction. The petitioners alleged, *inter alia*, in their petition that:

(A) IN REVERSING ITS OWN ORDER DATED DECEMBER 11, 1997, WITHOUT THE PROPER MOTION TO THAT EFFECT, IN EXCESS OF JURISDICTION, TANTAMOUNT TO A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION;

(B) IN NOT CONSIDERING THE FACT THAT THE PREVAILING PARTY CONTINUED OCCUPATION, POSSESSION AND ENJOYMENT OF THE PROPERTY IN QUESTION FROM 1984 UP TO THE PRESENT TIME, WITHOUT THE OBJECTION OF THE DEFENDANTS, EXCEPT IN NOVEMBER 1997 WHEN LIM, WHO IS NOT A PARTY IN THE CASE, CLAIMED TO HAVE BOUGHT THE LAND FROM BPI; THUS, THE CA DECISION WAS ALREADY SUBSTANTIALLY SATISFIED; AND IT IS NOT ANYMORE COVERED BY THE PRESCRIPTIVE 5-YEAR PERIOD;

(C) IN NOT CONSIDERING THAT THE TORRENS SYSTEM DOES NOT SHIELD ANY TITLE FRAUDULENTLY PROCURED.[35]

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[33] *Rollo*, p. 114.

[34] Penned by Associate Justice Godardo A. Jacinto (Chairman) with Associate Justices Roberto A. Barrios and Renato C. Dacudao, concurring.

[35] CA *Rollo*, p. 017.

The petitioners asserted that: (a) before their deaths, the original parties in Civil Case No. 4823 had implemented the decision of the IAC and had taken possession of the portions of the property allotted to them under the said decisions; (b) the delay of the implementation of the decision of the IAC was caused by the financial difficulties of the original defendants in Civil Case No. 4823 and not the fault of the petitioners; (c) TCT No. 14229 in the name of respondent BPI is void because the bank acquired the property in bad faith; (d) the cancellation of the notice of *lis pendens* by the CFI acting as a cadastral court in LRC Case No. 5, despite the pendency of the appeal of the petitioners from the decision of the RTC is illegal because the cadastral court had no jurisdiction to resolve the said motion of Catalina Macias relating to Civil Case No. 4823; (d) Lim had no personality to intervene in Civil Case No. 4823; and, (e) the trial court had no authority to set aside, *ex parte*, its December 11, 1997 Order.

In his comment on the petition, the respondent Lim averred that the petitioners were guilty of forum shopping because the issues raised by the petitioners in their petition were, likewise, the subject of their appeal to the Court of Appeals from the Order[36] of the RTC of Negros Oriental, Branch 41, in LRC Case No. 2000, and of the complaint of the petitioners against the respondents filed in the RTC of Negros Oriental with a prayer for a writ of preliminary injunction, docketed as Civil Case No. 12212 wherein they prayed that, after due proceedings, judgment be rendered in their favor, thus:

> WHEREFORE, it is most respectfully prayed of this Honorable Court that (a) after due hearing, a writ of preliminary mandatory injunction be immediately issued in accordance with Rule 58 of the new Civil Procedure, enjoining the defendants Lims to take off the guardhouse, the guards, and enclosing fence they put up in Lot 1496 of Lot 1496-B;

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[36] In the said Order, the court granted Lim's motion for a writ of possession over the property covered by TCT No. 14229 under the name of respondent BPI.

(b) After trial, the inexistence of instruments — (1) the Order of October 11, 1976 in a cadastral motion, Cad. Case No. 5, cancelling the annotation of *lis pendens* in Entry No. 25538 of TCT 9383, (2) the Real Estate Mortgage by a non-owner, with the BPI, the Sheriff's Sale dated June 18, 1971, (3) the annotation of Entry No. 12801 of TCT No. 14229 in the name of the Bank of the Philippine Islands, Dumaguete; (4) the Real Estate Mortgage by a non-owner with the CESLA; (5) the Sheriff's Certificate of Sale dated May 20, 1971, in Entry No. 12801 of TCT No. 2833, — be all declared null and void insofar as the plaintiffs are concerned;

(c) The defendants being in bad faith, be ordered to pay plaintiffs the amount of ₱200,000.00, as moral damages;

(d) The adjudication in the dispositive portion of the CA Decision, as stated on page 3 hereof (*sic*) be followed;

(e) And the defendants be ordered to reimburse plaintiffs ₱50,000.00 incurred for attorney's fees, docketing fees, and other incidental expenses.[37]

In its comment on the petition, the respondent BPI alleged that whether or not it acted in bad faith when it purchased the property at public auction covered by TCT No. 14229 is a factual issue, and, under Rule 65 of the Rules of Court, not the proper subject of a petition for *certiorari* and prohibition. Hence, the Court of Appeals should dismiss the petition.

On March 31, 1999, the Court of Appeals rendered judgment dismissing the petition. The appellate court held that the petitioners' Omnibus Motion was barred, citing Section 6, Rule 39 of the Revised Rules of Civil Procedure. The CA did not rule on the validity of the sale of the subject property by respondent bank to respondent Lim and its other related issues since these are now the subject of the complaint filed by the petitioners against the respondents in the RTC of Negros Oriental docketed as Civil Case No. 12212, an action for quieting of title, declaration of inexistence of instrument and damages filed by the petitioners against the respondents.

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[37] CA *Rollo*, pp. 112-113.

The Issues

In the present recourse, the petitioners assigned the same errors assigned by them in their petition for *certiorari* in the Court of Appeals, thus:

(A) IN VIOLATING THE DEEPLY EMBEDDED SUPREME COURT DOCTRINE IN COMPUTING THE TIME LIMIT FOR SUING OUT AN EXECUTION;

(B) IN DECIDING WITHOUT DUE PROCESS, AS THE PETITIONERS WOULD HAVE PRESENTED EVIDENCE THAT THE PREVAILING PARTY CONTINUED OCCUPATION, POSSESSION AND ENJOYMENT OF THE PROPERTY IN QUESTION FROM 1984 UP TO THE PRESENT TIME, WITHOUT THE OBJECTION OF THE DEFENDANTS, EXCEPT IN NOVEMBER 1997 WHEN LIM, WHO IS NOT A PARTY IN THE CASE, CLAIMED TO HAVE BOUGHT THE LAND FROM BPI; THUS, THE CA DECISION WAS ALREADY SUBSTANTIALLY SATISFIED; AND IT IS NOT ANYMORE COVERED BY THE PRESCRIPTIVE 5-YEAR PERIOD;

(C) IN DECIDING AGAINST THE TORRENS SYSTEM LAW THAT IT DOES NOT SHIELD ANY TITLE FRAUDULENTLY PROCURED.[38]

The petitioners contend that the five-year period under Section 6, Rule 39 of the Rules of Court was superseded by the implementation of the IAC decision by the original parties in Civil Case No. 4823, causing the subdivision of the property into Lots 1496-A, 1496-B, 1496-C and 1496-D, corresponding to the shares of the parties. Thus, the parties took possession of their respective shares. The petitioners posit that they had not been disturbed in their possession of the property until Mariano Lim filed his Manifestation and Motion to Stay Execution in Civil Case No. 4823. They also allege that the delay in the enforcement of the IAC decision was caused by the financial difficulties of the defendants in Civil Case No. 4823.

The petitioners submit that the cancellation by the CFI, Branch III, in LRC Case No. 5 of Entry No. 8465 annotated at the

[38] *Rollo*, p. 19.

dorsal portion of TCT No. 9383 despite the appeal of the decision of the trial court in Civil Case No. 4823, the execution by the Sheriff of the Certificate of Sale over a portion of the property in favor of respondent BPI, the cancellation of TCT No. 9383 and the issuance of TCT No. 14229 in the name of respondent BPI and the sale by the latter of the said property to respondent Mariano Lim would not preclude the enforcement of the IAC decision for the cancellation of TCT No. 2833 and the restoration of OCT No. 23. They argue that the Sheriff, respondents BPI/CSLA and Lim had knowledge of the pendency of the appeal from the decision of the RTC in Civil Case No. 4823. They assert that the cancellation by the cadastral court of Entry No. 8465 annotated at the dorsal portion of TCT No. 9383 is null and void for the added reason that the then Court of First Instance, Branch III, as a cadastral court, had limited jurisdiction and have had no authority to cancel the said entry relating to the pendency of Civil Case No. 4823.

In his comment on the petition, respondent Mariano Lim asserts that the Court of Appeals did not commit any abuse of its discretion, as it only applied the correct law and jurisprudence on the matter.[39] He claims that the petitioners are guilty of forum shopping since an identical case had been filed by them in the RTC of Negros Oriental, docketed as Civil Case No. 12212.

Respondent CSLA, for its part, maintains that no mutual or oral agreement was entered into by the original parties of the case to satisfy the 1984 IAC Decision; otherwise, the petitioners would not have filed the present petition. It asserts that Lot 1496-A which it purchased from the Sheriff, only a small portion thereof is being occupied by one of the petitioners;[40] and that it is not incumbent upon the respondent to enforce the 1984 IAC Decision.[41] It maintains that the respondent court did not commit any error in its assailed decision; and that a motion to

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[39] *Rollo*, p. 129.

[40] *Id*. at 160.

[41] *Id*. at 161.

execute the judgment, which had become final and executory thirteen (13) years earlier, is already barred by laches and prescription.[42]

On the other hand, respondent BPI asserts that it is a mortgagee in good faith and did not, in any manner, act in collusion with co-respondents. As such, it contends, the petitioners had no cause of action for damages against it. It points out that the petition is not verified by all the petitioners and that the certification of non-forum shopping is, likewise, not signed by all of them. It also claims that the petition was filed out of time.[43]

The issues for resolution in the petition at bar are (a) whether the petitioners have a cause of action against the respondents for the nullification of the January 8, 1998 and April 7, 1998 Orders of the RTC in Civil Case No. 4823; and, (b) if, in the affirmative, whether the court *a quo* committed grave abuse of discretion amounting to excess or lack of jurisdiction in denying the Omnibus Petition of petitioners Asuncion Macias-Corsame, Rufina Macias Ramirez, Maria Lourdes Parton-Macias, David Unto and Alexander Unto.

The Court's Ruling

The petition is bereft of merit.

Although the first issue was not raised by the parties in the Court of Appeals and in this Court, we may still take cognizance of the said issue and resolve the same, such issue being intertwined with the issues raised by the parties and necessary in arriving at a just decision of the case.[44]

Rule 65, Sections 1 and 2, of the Rules of Court, as amended, provides that a petition for prohibition and *certiorari* may be filed only by the aggrieved party/parties. The person aggrieved referred to in the said sections pertains to one who was a party

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[42] *Id*. at 163.

[43] *Id*. at 180-181.

[44] *Servicewide Specialists, Inc. vs. Court of Appeals,* 257 SCRA 643 (1996).

in the proceedings before the lower court. If a petition for *certiorari* or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order.[45] The Court notes that the only movants in the Urgent Omnibus Petition filed in Civil Case No. 4823 were the petitioners Asuncion Corsame, Rufina Ramirez, Ma. Lourdes Macias, Alexander Unto and David Unto, who alleged that they were the co-heirs of the plaintiffs in the said civil case. In their supplemental motion, they prayed that they be substituted as parties-plaintiffs in lieu of the original plaintiffs. However, the trial court failed to resolve the said motion. Neither did the movants (petitioners) reiterate their plea for substitution in their motion for reconsideration of the court's January 8, 1998 Order. Neither did they file a petition for *mandamus* in the Court of Appeals to compel the RTC to resolve their supplemental motion for their substitution as parties-plaintiffs, in lieu of the original plaintiffs. The twenty-five other petitioners in the Court of Appeals and in this Court never filed any motion for their substitution as parties-plaintiffs before the lower court. It was only in the Court of Appeals that they alleged, for the first time, that they were heirs of the original plaintiffs in Civil Case No. 4823. They were, likewise, unable to show, at least *prima facie*, that they are the only heirs of the original plaintiffs in the said civil case, both in the appellate court and in this Court. We also note that, although the petitioners alleged in their supplemental motion that Victoriana Unto died on November 8, 1989, and that Joaquin Unto died on March 8, 1978, the movants failed to append certified copies of the Certificates of Death of the said plaintiffs, or to adduce proof that the said plaintiffs were already dead, and that they were survived by their heirs, the movants therein, and by the other fourteen (14) petitioners in the Court of Appeals for that matter. This would have enabled either the appellate or trial court to order the proper substitution, conformably to Rule 3, Section 16 of the Rules of Court.

SEC. 16. *Death of a party; duty of counsel*. — Whenever a party to a pending action dies, and the claim is not thereby

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[45] *Tang vs. Court of Appeals*, 325 SCRA 394 (2000).

extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.[46]

The bare allegation of the petitioners that they are the heirs and are co-owners of the property subject of the IAC decision will not suffice. There must be competent preponderant proof that they are, indeed, heirs of the original plaintiffs and co-owners of the property subject of the IAC decision. Absent such evidence, it cannot be argued that the petitioners are the real parties-in-interest, as parties-plaintiffs in Civil Case No. 4823, as the petitioners in the Court of Appeals and in this Court.

It bears stressing that a review by *certiorari* under Rule 45 of the Rules of Court is a matter of discretion. Where, as in this case, there is no sufficient showing that the petitioners are the real parties-in-interest as petitioners in the Court of Appeals and in this Court, their petition may be dismissed.[47]

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[46] *Supra*.

[47] *Tang vs. Court of Appeals, supra*.

The trial court cannot be faulted for issuing the January 8, 1998 Order which set aside its December 11, 1997 Order, and, in effect, denied the Urgent Omnibus Petition of the five (5) petitioners; and its Order dated April 27, 1998, denying the movants' (petitioners') motion for reconsideration of the same.

Section 6, Rule 39 of the Revised Rules of Court provides:

> SEC. 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.[48]

Generally, once a judgment becomes final and executory, the execution thereof becomes a ministerial duty of the court.[49] The prevailing party can have it executed as a matter of right by mere motion within five years from date of entry of the judgment. If the prevailing party fails to have the decision enforced by a mere motion after the lapse of five (5) years from the date of its entry, the said judgment is reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all ordinary actions, by the institution of a complaint in a regular form.[50] Thus, the recourse left for the petitioners is to revive the judgment through an independent action which must be filed within ten (10) years from the time

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[48] *Camacho vs. Court of Appeals*, 287 SCRA 611 (1998).

[49] *Buaya vs. Stronghold Insurance Co., Inc.,* 342 SCRA 576 (2000).

[50] See *Caiña vs. Court of Appeals*, 239 SCRA 252, 261-262 (1994) citing *Compania General de Tabacos vs. Martinez*, 24 Phil. 515, 520-21 (1915). See also *Estonina vs. Southern Marketing Corp*., 167 SCRA 605 (1988).

the judgment became final.[51] The ten-year period within which an action for revival of a judgment should be brought, commences to run from the date of finality of the judgment, and not from the expiration of the five-year period within which the judgment may be enforced by mere motion.[52]

In the case at bar, the entry of judgment of the IAC decision sought to be enforced was made on August 19, 1984.[53] Plaintiffs Joaquin Unto and Victoriana Unto *Vda*. de Macias, or their respective heirs or their successors-in-interest, had until August 19, 1989 within which to enforce the IAC Decision by mere motion. They failed to file such motion. They also failed to revive the judgment by an ordinary action within the ten-year period. They waited for thirteen long years before they sought to have the 1984 IAC Decision enforced. Worse, they did so only on November 28, 1997, by a mere motion for the issuance of a special order for the enforcement of paragraph 6 of the IAC decision. Such a motion is not an action to revive the judgment of the IAC within the contemplation of Section 6, Rule 39 of the Rules of Court, as amended.

That the delay in the execution of the judgment was due to the financial difficulties of the defendants in Civil Case No. 4823 is irrelevant. It is the prevailing party who is entitled, as a matter of right, to a writ of execution in its favor. It is not an option of the losing party to file a motion for the execution of

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[51] New Civil Code provides:

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

. . . . . .

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

[52] *Philippine National Bank vs. Dells*, 32 SCRA 266, 272 (1970).

[53] *Rollo*, p. 109.

the judgment to compel the winning party to take the judgment.[54] The petitioners, as the prevailing parties in the judgment sought to be enforced, can file their motion or independent action within the periods therefor notwithstanding any financial difficulties of the losing party. They should only concern themselves with the execution of the judgment. Otherwise, their inaction may be construed as a waiver. The petitioners slept on their rights for thirteen years; perforce, they must suffer the consequences of their gross inaction.

We have ruled that the running of the five-year period may be interrupted should there be an agreement of the parties to defer or suspend the enforcement of the judgment.[55] However, the petitioners failed to prove in the court *a quo* that the original parties in Civil Case No. 4823 had any agreement to enforce the IAC decision and that they had already implemented the same. They failed to adduce in evidence any written agreement executed by the parties in the court *a quo*. Bare allegations, without more, do not meet the quantum of evidence needed to establish the same as a fact. We agree with the following disquisitions of the Court of Appeals:

> The Untos' argument that this case is an exception to the said five year period limitation is untenable. In the first place it is based on bare allegations unsupported by hard evidence. In the absence of sufficient proof, We cannot just accept as is their claims that the interruption or delay in the execution was due to arrangements they have entered into and also that the financial difficulties of the Maciases was a cause for the delay. Assuming hypothetically that the litigants had made arrangements among themselves, this could not have included Paragraph 6 of the dispositive portion which is directed on the Register of Deeds and who is the petitioners' target for their prayer for compliance and execution.[56]

While it is true that Lot No. 1496 was subdivided and that one of the subdivision lots is Lot No. 1496-B covered by TCT

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[54] *AFP Mutual Benefit Association, Inc. vs. Court of Appeals*, 364 SCRA 768 (2001).

[55] See *Trouble vs. de Los Angeles*, 96 SCRA 69 (1980) citing *Lancet vs. Magbanua*, 117 Phil. 39 and *MRR vs. CIR*, 117 Phil. 192 (1961).

[56] *Rollo*, p. 119.

No. 9383 under the name of Catalina Macias, the petitioners failed to prove that the subdivision of the property was based on the agreement of the parties in Civil Case No. 4823 to implement the IAC decision.

It is incredible that the original parties implemented the IAC decision by causing the subdivision of the property and by taking possession of their respective shares therein, and yet failed to file any motion in the trial court to enforce paragraph 6 of the IAC decision. Even the request of David Unto for the Register of Deeds to implement paragraph 6 of the IAC decision was made only on September 25, 1990, more than six years after the entry of judgment of the IAC decision was made. The plaintiffs in Civil Case No. 4823 (the petitioners herein) even failed to file in the Court of Appeals their Comment on the matter despite the order of the appellate court.

IN THE LIGHT OF ALL THE FOREGOING DISQUISITIONS, the petition is hereby *DENIED* due course. The Decision dated March 31, 1999 and the resolution dated June 23, 1999 of the Court of Appeals in CA-G.R. SP No. 48188 are *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 143935. June 4, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **WILLIAM ANCHETA, EDGARDO AREOLA, ANTOS DACANAY, LITO DE LA CRUZ, FELIPE ULEP @ BOY ULEP AND ELY CALACALA,** *accused*. **FELIPE ULEP @ BOY ULEP,** *appellant*.

SYNOPSIS

Appellant Felipe Ulep @ Boy Ulep was convicted of robbery with homicide by the Regional Trial Court of Cabanatuan City and was sentenced to suffer the penalty of *reclusion perpetua*. In his appeal before the Court, appellant alleged that the trial court erred in admitting as evidence the testimonies of the prosecution witnesses despite the failure of the prosecution to make a formal offer thereof in violation of Rule 132, Section 34 of the Rules of Court. Appellant also contended that the prosecution failed to prove the special complex crime of robbery with homicide. He insisted that there was no showing that the perpetrators killed the victims in order to steal the *palay*.

The Supreme Court affirmed appellant's conviction. According to the Court, while the prosecution failed to formally offer the questioned testimonies of witnesses Alfredo Roca and Virgilita Roca-Laureaga, appellant waived the procedural error by failing to make a timely objection when the ground for objection became reasonably apparent. Appellant even impliedly acquiesced to the materiality, competence and relevance of the prosecution witnesses' testimonies by cross-examining them. Since appellant failed to raise before the trial court the issue of the prosecution's failure to formally offer the testimonies of its witnesses, an objection on that score raised for the first time on appeal will no longer be entertained. The Court was also convinced that the prosecution adequately proved the direct relation between the robbery and the killing. Immediately after shooting the victims, the assailants loaded the sacks of *palay* onto the trailer of the jeep. As they did so, no conversation took place and there was no hesitation on their part, indicating that they were proceeding from a common, preconceived plan. The series of overt acts executed by appellant and his companions, in their totality, showed that their intention was not only to kill but to rob as well. The group tried to kill all the members of the Roca family to ensure lack of resistance to their plan to take Alfredo's *palay*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WITNESS' TESTIMONY DESERVES FULL FAITH AND CREDIT WHERE THERE EXISTS NO

EVIDENCE TO SHOW ANY IMPROPER MOTIVE WHY HE SHOULD TESTIFY FALSELY AGAINST THE ACCUSED OR WHY HE SHOULD IMPLICATE THE ACCUSED IN A SERIOUS OFFENSE.— We find the trial court's evaluation of the facts and its conclusions fully supported by the evidence. Alfredo and Virgilita were straightforward and categorical in their narration of how appellant and his cohorts killed Marjun, Febe and Benita, and thereafter took 35 cavans of *palay* from their farm. Despite the grueling cross-examination, they never wavered in their testimonies regarding the details of the crime. What made their testimonies even more credible was the fact that both Alfredo and Virgilita had no ill-motive to testify against appellant and his co-accused. It has been our consistent ruling that a witness' testimony deserves full faith and credit where there exists no evidence to show any improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense. Further, the relationship of Alfredo and Virgilita to the victims all the more bolstered their credibility as they naturally wanted the real culprits to be punished. It would be unnatural for the relatives of the victims in search of justice to impute the crime to innocent persons and not those who were actually responsible therefor.

2. ID.; ID.; ID.; DISPARITIES DO NOT NECESSARILY TAINT THE WITNESSES' CREDIBILITY AS LONG AS THEIR SEPARATE VERSIONS ARE SUBSTANTIALLY SIMILAR OR AGREE ON MATERIAL POINTS.— The alleged discrepancies in the testimonies of Alfredo and Virgilita referred only to minor matters. There was no inconsistency as far as the principal occurrence and the positive identification of the assailants were concerned. Both Alfredo and Virgilita positively identified appellant's group as the persons who attacked and robbed them. The court *a quo* correctly cited the case of *People vs. Fabros* where we held that: Inconsistencies among witnesses testifying on the same incident may be expected because different persons may have different impressions or recollections of the same incident. One may remember a detail more clearly than another. Witnesses may have seen that same detail from different angles or viewpoints. That same detail may be minimized by one but considered important by another. Nevertheless, these disparities do not necessarily taint the witnesses' credibility as long as their

separate versions are substantially similar or agree on the material points. Thus, although it may be conceded that there are some variations in the separate testimonies xxx, these do not, in our view, detract from the integrity of their declarations. On the contrary, they represent a believable narration, made more so precisely because of their imperfections, of what actually happened. xxx

3. ID.; ID.; DEFENSE OF ALIBI; CANNOT PREVAIL OVER POSITIVE ASSERTIONS OF PROSECUTION'S WITNESSES; WEAKENED BY MAJOR INCONSISTENCIES BETWEEN ACCUSED'S TESTIMONY AND HIS CORROBORATING WITNESS.— Appellant also interposes the defense of alibi. The time-tested rule is that alibi cannot prevail over the positive assertions of prosecution witnesses, more so in this case where appellant failed to prove that he was at another place at the time of the commission of the crime and that it was physically impossible for him to be at the crime scene. Appellant's claim that he was in Edgardo Areola's farm from 10:30 a.m. to 5:00 p.m. did not negate the possibility that he had gone to Alfredo's farm between 10:30 a.m. and 5:00 p.m. to commit the crime, considering the fact that Areola's farm was just beside Alfredo's farm, the scene of the crime. It was, on the contrary, appellant's alibi that was considerably weakened by the major inconsistencies between his and Federico Catalan's supposedly corroborating testimony. While appellant testified that he did not hear any gunshot the entire day on March 20, 1987, Catalan contradicted this by attesting that he heard a gunshot at about 1:00 p.m. Likewise, appellant claimed that after working in the farm, he proceeded to the house of his in-laws in Bicos and only went home to Villa Paraiso the next day. Catalan, on the other hand, stated that after work that same day, they went home to Villa Paraiso together.

4. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; ROBBERY WITH HOMICIDE; ESTABLISHED IN CASE AT BAR; SHOWN BY THE FACT THAT IMMEDIATELY AFTER SHOOTING THE VICTIMS, APPELLANT TOGETHER WITH THE OTHER ASSAILANTS LOADED SACKS OF *PALAY* ONTO THEIR TRAILER TRUCKS.— The Court is convinced that the prosecution adequately proved the direct relation between the robbery and the killing. Immediately after shooting the victims, the assailants loaded the sacks of *palay*

onto the trailer of the jeep. As they did so, no conversation took place and there was no hesitation on their part, indicating that they were proceeding from a common, preconceived plan. In fact, why would they bring a trailer if their only purpose was to massacre the Roca family? The series of overt acts executed by appellant and his companions, in their totality, showed that their intention was not only to kill but to rob as well. The group tried to kill all the members of the Roca family to ensure lack of resistance to their plan to take Alfredo's *palay*. Whenever homicide is perpetrated with the sole purpose of removing opposition to the robbery or suppressing evidence thereof, the crime committed is robbery with homicide. Further, in order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself. A review of the entire records of this case leads us to conclude that robbery was established beyond reasonable doubt. As long as the killing is perpetrated as a consequence or on the occasion of the robbery, the special complex crime of robbery with homicide is committed.

5. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPLIED TO THE CONSTITUENT CRIME OF "HOMICIDE" AND NOT TO THE CONSTITUENT CRIME OF "ROBBERY" OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.— There was treachery as the events narrated by the eyewitnesses pointed to the fact that the victims could not have possibly been aware that they would be attacked by appellant and his companions. There was no opportunity for the victims to defend themselves as the assailants, suddenly and without provocation, almost simultaneously fired their guns at them. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked. We deem it necessary to reiterate the principle laid down by the Court *en banc* in the case of *People vs. Escote, Jr.* on the issue of whether treachery may be appreciated in robbery with homicide which is classified as a crime against property. This Court held: xxx (t)reachery is a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime. xxx *In fine, in the application of treachery as a generic aggravating circumstance to robbery with homicide, the law looks at the constituent crime of homicide which is a crime against persons*

and not at the constituent crime of robbery which is a crime against property. Treachery is applied to the constituent crime of "homicide" and not to the constituent crime of "robbery" of the special complex crime of robbery with homicide. The crime of robbery with homicide does not lose its classification as a crime against property or as a special complex and single and indivisible crime simply because treachery is appreciated as a generic aggravating circumstance. Treachery merely increases the penalty for the crime conformably with Article 63 of the Revised Penal Code absent any generic mitigating circumstance. xxx In sum then, treachery is a generic aggravating circumstance in robbery with homicide when the victim of homicide is killed by treachery.

6. ID.; ID.; CRIME COMMITTED BY A BAND; SIX ARMED ASSAILANTS, INCLUDING APPELLANT, TOOK PART IN THE EXECUTION OF THE ROBBERY WITH HOMICIDE.— The offense was also proven to have been executed by a band. A crime is committed by a band when at least four armed malefactors act together in the commission thereof. In this case, all six accused were armed with guns which they used on their victims. Clearly, all the armed assailants, including appellant, took direct part in the execution of the robbery with homicide.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CORONA, *J.*:

This is an appeal from the decision[1] dated October 16, 1998 of the Regional Trial Court of Cabanatuan City, Branch 30, convicting the appellant Felipe "Boy" Ulep of the crime of robbery with homicide and sentencing him to suffer the penalty of *reclusion perpetua*.

[1] Penned by Judge Federico B. Fajardo, Jr., *Rollo*, pp. 94-120.

Appellant, together with William Ancheta, Edgardo "Liling" Areola, Antos Dacanay, Lito dela Cruz and Ely Calacala, was charged with the crime of robbery with multiple homicide and frustrated murder in an Information dated November 2, 1987:

> That on or about the 20th day of March, 1987, at 12:00 o'clock to 1:00 o'clock in the afternoon, at Manggahan, Bicos, Rizal, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously, through force and intimidation upon persons, take, rob and carry away thirty (30) cavans of clean *palay* valued at ₱4,500.00 belonging to Alfredo Roca, to his damage and prejudice, and in order to successfully carry out the robbery, the above-named accused, pursuant to the same conspiracy, wilfully, unlawfully and feloniously, with evident premeditation and with treachery, and with intent to kill, fired their guns at Marjun Roca, which caused his death, shot at Benita Avendaño Roca and Febe Roca and hurled a grenade against them and both of them died as consequence of the wounds they sustained; and also fired upon Alfredo Roca with their firearms, thus performing all the acts of execution which would produce the crime of murder as a consequence but which, nevertheless, did not produce it by reason of the timely running for cover by the said Alfredo Roca.
>
> That in the commission of the crime, the generic aggravating circumstances of treachery, disregard of the respect due the deceased Febe Roca and Benita Avendaño Roca on account of their age and sex and that the crime was committed by a band.
>
> ALL CONTRARY TO LAW.[2]

All of the accused remain at large to this day except for appellant who was arrested on January 5, 1990. He pleaded not guilty during arraignment on January 25, 1990. In order to expedite the hearing of his case, appellant was granted a separate trial.

The prosecution presented Alfredo Roca, Virgilita Roca-Laureaga, Dr. Aurora Belsa and Emilio Roca as its witnesses. The prosecution anchored its case principally on the testimony of Alfredo Roca who saw how appellant and his companions

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[2] *Rollo*, p. 16.

robbed them of 35 sacks of *palay* after killing his son Marjun Roca, his wife Benita Roca and his mother Febe Roca.

Alfredo Roca testified that between 12:00 noon and 1:00 p.m. of March 20, 1987, he was in his farm in Manggahan, Rizal, Nueva Ecija to thresh *palay*. With him at that time were Marjun Roca, Benita Roca, Febe Roca and daughter Virgilita Roca-Laureaga. He, Benita and Febe were about to take their lunch inside his hut. Marjun and Virgilita were done eating and were standing outside. At this point, Alfredo noticed the arrival of an owner-type jeep with trailer which stopped at a spot not far from his hut. He recognized the occupants as accused Antos Dacanay, Edgardo "Liling" Areola, William Ancheta, Lito de la Cruz, Ely Calacala and appellant Felipe "Boy" Ulep who all alighted from the jeep. Dacanay, Areola and Ancheta stood on one side of the irrigation canal facing Marjun Roca who was standing on the other side. From a distance of 10 to 12 meters, Alfredo saw Dacanay suddenly pull out a gun and shoot Marjun on the head, causing the latter to fall to the ground. As he lay on the ground, Marjun was again shot, this time by Areola and Ancheta. Thereafter, Ulep, de la Cruz and Calacala started firing at Alfredo's hut. Alfredo was not hit, however, because he was able to get out of the hut and dive into the irrigation canal in the nick of time. However, Benita and Febe were fatally hit by the initial volley of gunfire. The assailants fired at Alfredo in the canal but they did not hit him. Ancheta then hurled a grenade which exploded near the hut. When the group ran out of bullets, Alfredo emerged from the canal and hid inside his hut. He saw the group load onto the trailer 35 sacks of *palay*, each containing an average of 50 kilos valued at ₱4.50 per kilo. Alfredo owned the stolen *palay*. Appellant Ulep and his companions then boarded their jeep and left.

Virgilita Roca-Laureaga corroborated the eyewitness account of her father Alfredo Roca. She declared that, from a distance of 10 meters, she saw her brother Marjun fall to the ground after being shot by Dacanay. Following the grenade explosion, Areola aimed his gun at her and pulled the trigger but the gun did not fire because he had apparently run out of bullets. She also saw appellant Ulep fire his gun at her father's hut.

Dr. Aurora Belsa, assistant provincial health officer of Rizal, Nueva Ecija, conducted the autopsy on the bodies of Marjun, Benita and Febe. Her report showed that: (1) Marjun sustained gunshot wounds in the head, stomach and chest; (2) Benita suffered gunshot wounds that punctured her small and large intestines and (3) Febe's gunshot wounds in her chest damaged her lungs, heart and liver. Dr. Belsa declared that all the gunshot wounds sustained by the victims were fatal, causing their immediate death.

Emilio Roca, 81 years old and husband of Febe Roca, testified on the civil aspect of the case. He stated that, as a result of the death of Febe, Marjun and Benita, the family incurred expenses for the wake and funeral in the amount of ₱85,000. Likewise, the death of his wife, sister-in-law and grandson caused him to suffer a fit of depression. He lived in fear and was forced to sell his house. He transferred residence because the perpetrators might return to kill him.

The defense had a different story.

Appellant Ulep, a *cogon*-gatherer in the farm of Edgardo Areola, alleged that at around 10:30 a.m. on March 20, 1987, he went to Areola's farm to check whether the *palay* crops had adequate water. The farm was located just beside Alfredo Roca's. When he saw that the crops were almost withered, appellant diverted the flow of water from Alfredo's farm to that of Areola's. While he was beside the irrigation ditch, he noticed 10 male strangers in the vicinity of Alfredo's hut. He saw Alfredo attempting to throw a grenade at the other side of the canal but two women prevented him from doing so by embracing him. As a result of the struggle, Alfredo dropped the grenade. Whereupon Alfredo immediately jumped into the irrigation canal to take cover. The grenade then exploded. He never saw his co-accused in the vicinity nor did he hear any gunshots. After witnessing these events, appellant walked away and continued irrigating Areola's farm.

At about 1:00 p.m., he had lunch in the house of his in-laws in Bicos, Rizal, Nueva Ecija and returned to the farm at 2:00 p.m. He worked until 5:00 p.m. and spent the night in the house

of his in-laws. The next morning, he went home to Villa Paraiso, Rizal, Nueva Ecija.

Federico Catalan, appellant's neighbor and a *barangay* captain, testified that at around 11:00 a.m. on March 20, 1987, he went to his farm which was about 100 meters away from Edgardo Areola's farm. Between 12:00 noon and 12:30 p.m., he saw appellant walking towards the irrigation canal and joined him to go there. At 1:00 p.m., they both went home to eat lunch and later returned to continue irrigating their farms up to 5:00 p.m. After work, they proceeded home to Villa Paraiso. He also testified that the wife of appellant was his niece. On cross-examination, he declared that he heard a gunshot at around 1:00 p.m.

On October 16, 1998, the trial court found appellant guilty beyond reasonable doubt of the crime of robbery with homicide. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing consideration and finding that the accused, FELIPE ULEP, is guilty of the special complex crime of ROBBERY WITH HOMICIDE, he is hereby sentenced to suffer imprisonment of *RECLUSION PERPETUA*; to indemnify the heirs of Marjun Roca, Benita Avendaño-Roca and Febe Roca ₱50,000.00 each for their deaths; to pay the sum of ₱50,000.00 for expenses incurred for the burial of Marjun Roca and Benita Avedaño-Roca; to pay the sum of ₱50,000.00 to Emilio Roca for burial expenses incurred; and to pay the heirs of Marjun Roca, Benita Avendaño-Roca and Febe Roca, ₱50,000.00 each by way of moral damages; to pay Alfredo Roca the sum of ₱7,877.00 for the 35 cavans of *palay* taken on the occasion of the robbery; and to pay the cost of this suit.
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> SO ORDERED.[3]

Thus, the instant appeal based on the following assignments of error:

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[3] *Rollo*, p. 120.

I

THE COURT *A QUO* GRAVELY ERRED IN ADMITTING AND GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES DESPITE THE FAILURE OF THE PROSECUTION TO MAKE A FORMAL OFFER BEFORE THEY (WITNESSES) TESTIFIED.

II

THE COURT *A QUO* ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

III

THE COURT *A QUO* ERRED IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.[4]

In the first assignment of error, appellant alleges that the trial court erred in admitting as evidence the testimonies of the prosecution witnesses despite the failure of the prosecution to make a formal offer thereof in violation of Rule 132, Section 34 of the Rules of Court:

> Sec. 34. *Offer of Evidence* — The Court shall consider no evidence which has not been formally offered. xxx.

Corollarily, Section 35 of the same Rule 132 states that:

> Sec. 35. *When to make offer*. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

This formal offer of testimonial evidence is necessary in order to enable the court to rule intelligently on any objections to the questions asked. As a general rule, the proponent must show its relevance, materiality and competence. Where the proponent offers evidence deemed by counsel of the adverse party to be inadmissible for any reason, the latter has the right to object. But such right can be waived. Necessarily, the objection must

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[4] Appellant's Brief, pp. 1-2.

be made at the earliest possible time lest silence, when there is an opportunity to speak, operates as a waiver of the objection.[5]

The records show that the prosecution failed to formally offer the questioned testimonies of witnesses Alfredo Roca and Virgilita Roca-Laureaga. However, appellant waived this procedural error by failing to make a timely objection, *i.e.*, when the ground for objection became reasonably apparent the moment said witnesses were called to testify without any prior offer having been made by the proponent. He even impliedly acquiesced to the materiality, competence and relevance of the prosecution witnesses' testimonies by cross-examining them. Since appellant failed to raise before the trial court the issue of the prosecution's failure to formally offer the testimonies of its witnesses, an objection on this score raised for the first time on appeal will not be entertained.

The second and third assignments of error, being interrelated, shall be discussed jointly.

Appellant assails the testimonies of prosecution witnesses, Alfredo and Virgilita, for being unbelievable and contrary to human nature. According to appellant, the natural tendency of a person being fired at is to take cover. Thus, it was inconceivable for Alfredo to still attempt to take a look at his assailants as he was at risk of being shot and killed. Besides, he could not have witnessed the killing of Marjun if he himself was being attacked at the same time.

It is apparent that appellant's defense rests mainly on the credibility of the prosecution witnesses. It is settled, however, that, when the issue of credibility of a witness is involved, the appellate courts will generally not disturb the findings of the trial court, considering that the latter was in a better position to resolve the matter, having heard the witness and observed his deportment during trial, unless certain facts of value were plainly ignored, which if considered might affect the result of the case.[6]

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[5] *Catuira vs. Court of Appeals*, 236 SCRA 398 [1994].

[6] *People vs. Rama*, 374 SCRA 447 [2002].

We find the trial court's evaluation of the facts and its conclusions fully supported by the evidence. Alfredo and Virgilita were straightforward and categorical in their narration of how appellant and his cohorts killed Marjun, Febe and Benita, and thereafter took 35 cavans of *palay* from their farm. Despite the grueling cross-examination, they never wavered in their testimonies regarding the details of the crime.

What made their testimonies even more credible was the fact that both Alfredo and Virgilita had no ill-motive to testify against appellant and his co-accused. It has been our consistent ruling that a witness' testimony deserves full faith and credit where there exists no evidence to show any improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.[7] Further, the relationship of Alfredo and Virgilita to the victims all the more bolstered their credibility as they naturally wanted the real culprits to be punished. It would be unnatural for the relatives of the victims in search of justice to impute the crime to innocent persons and not those who were actually responsible therefor.

Appellant also points out the glaring inconsistencies in the testimonies of Alfredo and Virgilita. Appellant cites the testimony of Virgilita that the assailants waited for about five minutes after they stopped firing at Marjun before they started shooting at her father Alfredo. This, according to appellant, contradicted Alfredo's testimony that the perpetrators started firing at him immediately after Marjun was killed. Likewise, while Virgilita declared that Ancheta threw the grenade before her father jumped into the irrigation canal, Alfredo testified that Ancheta threw the grenade when he was already in the canal. Appellant insists that these inconsistencies tainted the credibility of both Alfredo and Virgilita.

The alleged discrepancies in the testimonies of Alfredo and Virgilita referred only to minor matters. There was no inconsistency as far as the principal occurrence and the positive identification of the assailants were concerned. Both Alfredo and Virgilita

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[7] *People vs. Merino*, 321 SCRA 199 [1999].

positively identified appellant's group as the persons who attacked and robbed them. The court *a quo* correctly cited the case of *People vs. Fabros*[8] where we held that:

> Inconsistencies among witnesses testifying on the same incident may be expected because different persons may have different impressions or recollections of the same incident. One may remember a detail more clearly than another. Witnesses may have seen that same detail from different angles or viewpoints. That same detail may be minimized by one but considered important by another. Nevertheless, these disparities do not necessarily taint the witnesses' credibility as long as their separate versions are substantially similar or agree on the material points. Thus, although it may be conceded that there are some variations in the separate testimonies xxx, these do not, in our view, detract from the integrity of their declarations. On the contrary, they represent a believable narration, made more so precisely because of their imperfections, of what actually happened. xxx

Moreover, the testimonies of Alfredo and Virgilita were supported by the medical findings of Dr. Belsa. The presence of gunshot wounds in the bodies of the victims materially corroborated the prosecution witnesses' testimonies that appellant and his co-accused repeatedly fired their guns at their hapless victims.

Appellant also interposes the defense of alibi. The time-tested rule is that alibi cannot prevail over the positive assertions of prosecution witnesses,[9] more so in this case where appellant failed to prove that he was at another place at the time of the commission of the crime and that it was physically impossible for him to be at the crime scene. Appellant's claim that he was in Edgardo Areola's farm from 10:30 a.m. to 5:00 p.m. did not negate the possibility that he had gone to Alfredo's farm between 10:30 a.m. and 5:00 p.m. to commit the crime, considering the fact that Areola's farm was just beside Alfredo's farm, the scene of the crime.

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[8] 214 SCRA 694 [1992].

[9] *People vs. Aliben*, 398 SCRA 255 [2003].

It was, on the contrary, appellant's alibi that was considerably weakened by the major inconsistencies between his and Federico Catalan's supposedly corroborating testimony. While appellant testified that he did not hear any gunshot the entire day on March 20, 1987, Catalan contradicted this by attesting that he heard a gunshot at about 1:00 p.m. Likewise, appellant claimed that after working in the farm, he proceeded to the house of his in-laws in Bicos and only went home to Villa Paraiso the next day. Catalan, on the other hand, stated that after work that same day, they went home to Villa Paraiso together.

Appellant also contends that the prosecution failed to prove the special complex crime of robbery with homicide. He insists that there was no showing that the perpetrators killed the victims in order to steal the *palay*.

There is robbery with homicide when there is a direct relation or an intimate connection between the robbery and the killing, whether the killing takes place prior or subsequent to the robbery or whether both crimes are committed at the same time.[10]

Based on the facts established, the Court is convinced that the prosecution adequately proved the direct relation between the robbery and the killing. Immediately after shooting the victims, the assailants loaded the sacks of *palay* onto the trailer of the jeep. As they did so, no conversation took place and there was no hesitation on their part, indicating that they were proceeding from a common, preconceived plan. In fact, why would they bring a trailer if their only purpose was to massacre the Roca family? The series of overt acts executed by appellant and his companions, in their totality, showed that their intention was not only to kill but to rob as well. The group tried to kill all the members of the Roca family to ensure lack of resistance to their plan to take Alfredo's *palay*. Whenever homicide is perpetrated with the sole purpose of removing opposition to the robbery or suppressing evidence thereof, the crime committed is robbery with homicide.[11]

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[10] *People vs. Hernandez*, 46 Phil. 48 [1924].

[11] *People vs. Madrid*, 88 Phil. 1 [1951].

Further, in order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself.[12] A review of the entire records of this case leads us to conclude that robbery was established beyond reasonable doubt. As long as the killing is perpetrated as a consequence or on the occasion of the robbery, the special complex crime of robbery with homicide is committed.

Of the aggravating circumstances alleged in the information,[13] only treachery and band were established.

There was treachery as the events narrated by the eyewitnesses pointed to the fact that the victims could not have possibly been aware that they would be attacked by appellant and his companions. There was no opportunity for the victims to defend themselves as the assailants, suddenly and without provocation, almost simultaneously fired their guns at them. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[14]

We deem it necessary to reiterate the principle laid down by the Court *en banc* in the case of *People vs. Escote, Jr.*[15] on the issue of whether treachery may be appreciated in robbery with homicide which is classified as a crime against property. This Court held:

> xxx (t)reachery is a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime. xxx
>
> xxx xxx xxx
>
> *In fine, in the application of treachery as a generic aggravating circumstance to robbery with homicide, the law looks at the constituent crime of homicide which is a crime against persons*

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[12] *People vs. Rubio*, 257 SCRA 528 [1996].

[13] Treachery, evident premeditation, that the crime was committed by a band and in disregard of the respect due to the age and sex of the victims.

[14] *People vs. Sebastian*, 378 SCRA 557 [2002], citing *People vs. Lascota*, 275 SCRA 591[1997].

[15] 400 SCRA 603[2003].

and not at the constituent crime of robbery which is a crime against property. Treachery is applied to the constituent crime of "homicide" and not to the constituent crime of "robbery" of the special complex crime of robbery with homicide.

The crime of robbery with homicide does not lose its classification as a crime against property or as a special complex and single and indivisible crime simply because treachery is appreciated as a generic aggravating circumstance. Treachery merely increases the penalty for the crime conformably with Article 63 of the Revised Penal Code absent any generic mitigating circumstance.

xxx xxx xxx

In sum then, treachery is a generic aggravating circumstance in robbery with homicide when the victim of homicide is killed by treachery.

The offense was also proven to have been executed by a band. A crime is committed by a band when at least four armed malefactors act together in the commission thereof. In this case, all six accused were armed with guns which they used on their victims. Clearly, all the armed assailants, including appellant, took direct part in the execution of the robbery with homicide.

Under Article 294 (1) of the Revised Penal Code, the crime of robbery with homicide carries the penalty of *reclusion perpetua* to death. Inasmuch as the crime was committed on March 20, 1987 which was prior to the effectivity of RA 7659 on December 31, 1993, the penalty of death cannot be imposed even if the aggravating circumstances of treachery and band attended its commission. Only the single indivisible penalty of *reclusion perpetua* is imposable on appellant.

With respect to damages, we affirm the award of ₱50,000 as civil indemnity each for the death of Marjun, Febe and Benita Roca. In addition, moral damages must be granted in the amount of ₱50,000 for each of the deceased victims. The amount of ₱7,875 is also due to Alfredo Roca as reparation for the 35 sacks of *palay* stolen from him, each valued at ₱225. The heirs of the victims are likewise entitled to exemplary damages in the sum of ₱20,000 for each of the three victims due to the aggravating circumstances that attended the commission of the

crime. However, the award of burial expenses cannot be sustained because no receipts were presented to substantiate the same. Nonetheless, the victims' heirs are entitled to the sum of ₱25,000 as temperate damages in lieu of actual damages, pursuant to the case of *People vs. Abrazaldo*.[16]

WHEREFORE, the decision of the Regional Trial Court of Cabanatuan City, Branch 30, convicting appellant Felipe "Boy" Ulep of the crime of robbery with homicide and sentencing him to suffer the penalty of *reclusion perpetua* is hereby *AFFIRMED* with *MODIFICATION*. Appellant is also ordered to pay the heirs of the victims: (1) ₱50,000 as civil indemnity for each of the three victims; (2) ₱50,000 as moral damages for each of the three victims; (3) ₱7,875 as reparation for the 35 stolen sacks of *palay*; (4) ₱20,000 as exemplary damages for each of the three victims and (5) ₱25,000 as temperate damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 145542. June 4, 2004]

ELENA S. ONG, *petitioner, vs.* **HON. FRANCISCO V. MAZO as Presiding Judge, Regional Trial Court, Guiuan, Eastern Samar, Branch 3, ELVIRA C. LANUEVO and CHARITO A. TOMILLOSO,** *respondents*.

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[16] 397 SCRA 618 [2003].

SYNOPSIS

Respondents Elvira C. Lanuevo and Charito A. Tomilloso filed a complaint for damages against petitioner along with Iluminado J. Caramoan before the Regional Trial Court (RTC) of Guiuan, Eastern Samar. The complaint arose from a vehicular accident whereby a bus owned by petitioner and driven by Caramoan allegedly bumped a jeep owned and driven by respondent Lanuevo, with respondent Tomilloso as her passenger at the time. Petitioner served written interrogatories upon respondents and filed a "Manifestation and Omnibus Motion" seeking, among other things, an order from the trial court directing respondents to answer the interrogatories. The trial court denied the motion to compel respondents to answer the interrogatories upon the ground that it constituted a "fishing expedition" which would be more properly ventilated in a pre-trial conference. Petitioner filed with the Court of Appeals a petition captioned as "Petition for *Certiorari*" assailing the above twin orders of the trial court as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court dismissed petitioner's Petition for *Certiorari* on the ground that it was belatedly filed. Hence, the present petition, petitioner insisted that the appellate court erred in treating her petition as an ordinary appeal to thus lead it to conclude that it was belatedly filed. Petitioner also invoked the Court's plenary power to resolve not only the issue of the appellate court's dismissal of her petition but also the question of whether the trial court gravely abused its discretion in disallowing the written interrogatories.

The Supreme Court granted the petition. According to the Court, a petition for *certiorari* is still considered seasonably filed even if filed past the 60-day period under Section 4, Rule 65, as amended by Circular No. 39-98 as long as it is filed on time under the new amendment in A.M. No. 00-2-03-SC. Since petitioner's petition for *certiorari* was filed with the appellate court on August 4, 2000, after receipt on July 18, 2000 by petitioner of the order of the trial court denying her motion for reconsideration from which latter date the 60-day period should be reckoned and applying retroactively Sec. 4 of Rule 65, as amended by A.M. No. 00-2-03-SC, the petition is still considered seasonably filed. It was thus error for the trial court to dismiss the same. The Court also found the orders disallowing

petitioner's written interrogatories patently erroneous, hence, resort to *certiorari* is warranted. The Court reiterated that it has long espoused the policy of encouraging the availment of the various modes or instruments of discovery as embodied in Rules 24 to 29 of the Revised Rules of Court. The thrust of the Rules is to even make the availment of the modes of discovery depositions, interrogatories and requests for admissions without much court intervention since leave of court is not necessary to put into motion such modes after an answer to the complaint has been served. The rationale behind the recognition accorded the modes of discovery is that they enable a party to discover the evidence of the adverse party and thus facilitate an amicable settlement or expedite the trial of the case. Thus, to deny a party the liberty to have his written interrogatories answered by his opponent, as what the trial court did, on the premise that the interrogatories were a "fishing expedition," is to disregard the categorical pronouncement in the case of *Republic vs. Sandiganbayan* that the time-honored cry of 'fishing expedition' can no longer provide a reason to prevent a party from inquiring into the facts underlying the opposing party's case through the discovery procedures.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PETITIONER'S PETITION CONSIDERED SEASONABLY FILED; SECTION 4, RULE 65 OF THE RULES OF COURT AS AMENDED BY A.M. NO. 00-2-03-SC GIVEN RETROACTIVE EFFECT.— On August 4, 2000, when petitioner filed her petition for *certiorari* before the appellate court, Section 4 of Rule 65, as amended by Circular No. 39-98. Under the foregoing rule, when petitioner's counsel received on July 18, 2000 the trial court's order of July 4, 2000 denying her motion for reconsideration of the Order of May 6, 1999, she still had 15 days left of the 60-day period to file the petition for *certiorari.* Section 4 of Rule 65 was subsequently further amended, however, by A.M. No. 00-2-03-SC which took effect on September 1, 2000 as follows: SEC. 4. *When and where petition filed.* — The petition shall 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. (Italics supplied) In *Systems Factors Corporation v. NLRC* and *Unity Fishing Development Corp. v. Court of Appeals,* this Court applied *retroactively* the above-quoted amended rule on a fresh *60-day period* for the filing of *certiorari* petitions *from notice of the denial of the motion for reconsideration.* Thus, a petition for *certiorari* admittedly filed past the 60-day period under Section 4, Rule 65, as amended by Circular No. 39-98, but filed on time where considered under the amendment in A.M. No. 00-2-03-SC, was held to be seasonably filed. Applying retroactively to Sec. 4 of Rule 65, as amended by A.M. No. 00-2-03-SC, since petitioner's petition for *certiorari* was filed with the appellate court on August 4, 2000, after receipt on July 18, 2000 by petitioner of the order of the trial court denying her motion for reconsideration from which latter date the 60-day period should be reckoned, the petition was seasonably filed. It was thus error for the trial court to dismiss the same.

2. ID.; ID.; ID.; ID.; OVERRIDING INTEREST OF JUSTICE COMPELLED THE COURT TO RESOLVE THE ISSUE AS IF RAISED VIA A SPECIAL CIVIL ACTION FOR *CERTIORARI*.— Contrary then to petitioner's protestation that the appellate court erred in treating her petition for *certiorari* as an appeal which was filed beyond the 15-day reglementary period, as reflected above, the 15-day period left for petitioner to file the petition referred to the remaining number of days left after computation of the 60-day period in Section 4 of Rule 65 of the Rules of Court, as *then* amended by Circular No. 39-98. With the setting aside of the appellate court's questioned orders, the resolution of the present petition should have been accomplished. Nonetheless, considering that the relatively simple case for damages, which was instituted by respondents against petitioner way back in 1996 or eight long years ago, had virtually come to a halt due to the lingering legal issue respecting the trial court's order stopping petitioner from availing of her written interrogatories as a mode of discovery, instead of remanding this case to the appellate court as anyway both parties have advanced and argued the sole issue which is purely one of law, in the overriding interest of justice, this Court shall now resolve the issue as if it had been raised via a special civil action for *certiorari* with this Court.

3. ID.; ID.; ID.; RESORT TO *CERTIORARI* IS WARRANTED IN CASE AT BAR; THE ASSAILED ORDERS DISALLOWING PETITIONER'S WRITTEN INTERROGATORIES ARE PATENTLY ERRONEOUS.— No doubt, the twin orders denying the written interrogatories were interlocutory in nature for they leave something more to be done on the merits of the case. And the extraordinary writ of *certiorari* is generally not available to challenge an interlocutory order of a trial court, the proper remedy in such cases being an ordinary appeal from an adverse judgment where incorporated in said appeal are the grounds for assailing the interlocutory order. Nonetheless, this by no means is an absolute rule. If the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, *certiorari* may be allowed as a mode of redress. This Court finds that the orders disallowing petitioner's written interrogatories are patently erroneous, hence, the resort to *certiorari* is warranted.

4. ID.; CIVIL PROCEDURE; AVAILMENT OF THE VARIOUS MODES OF DISCOVERY WILL ENABLE A PARTY TO DISCOVER THE EVIDENCE OF THE ADVERSE PARTY AND FACILITATE AN AMICABLE SETTLEMENT OR EXPEDITE THE TRIAL OF THE CASE.— This Court has long espoused the policy of encouraging the availment of the various modes or instruments of discovery as embodied in Rules 24 to 29 of the Revised Rules of Court. Thus, in *Republic v. Sandiganbayan*, it held: . . . Indeed it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The thrust of the Rules is to even make the availment of the modes of discovery — depositions, interrogatories and requests for admissions — without much court intervention since leave of court is not necessary to put into motion such modes after an answer to the complaint has been served. The rationale behind the recognition accorded the modes of discovery is that they enable a party to discover the evidence of the adverse party and thus facilitate an amicable settlement or expedite the trial of the

case. Thus, to deny a party the liberty to have his written interrogatories answered by his opponent, as what the trial court did, on the premise that the interrogatories were a "fishing expedition," is to disregard the categorical pronouncement in aforementioned case of *Republic vs. Sandiganbayan* that the time-honored cry of 'fishing expedition' can no longer provide a reason to prevent a party from inquiring into the facts underlying the opposing party's case through the discovery procedures. The trial court's orders, not being in accordance with law and jurisprudential dictum, are therefore correctible by writ of *certiorari.*

APPEARANCES OF COUNSEL

Beltran & Reyes-Beltran for petitioner.
Marlo V. Destura for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed in the present petition for review is the Court of Appeals August 17, 2000 Resolution dismissing the petition for *certiorari* of petitioner Elena S. Ong and October 10, 2000 Resolution denying her motion for reconsideration of the dismissal.

The facts originative of the petition are as follows:

Respondents Elvira C. Lanuevo (Lanuevo) and Charito A. Tomilloso (Tomilloso) filed a complaint for damages against petitioner along with Iluminado J. Caramoan (Caramoan) before the Regional Trial Court (RTC) of Guiuan, Eastern Samar,[1] docketed as Civil Case No. 887. The complaint which was raffled to Branch 3 of the RTC, arose from a vehicular accident whereby a bus owned by petitioner and driven by Caramoan allegedly bumped a jeep owned and driven by respondent Lanuevo, with respondent Tomilloso as her passenger at the time.

[1] Records at 1-5.

After petitioner filed her Answer with Counterclaim,[2] and later a motion to dismiss[3] the complaint, respondents filed a motion[4] for leave of court to file an amended complaint[5] which was granted.[6]

On November 14, 1996, petitioner served written interrogatories[7] upon respondents and on November 21, 1996, she filed a "Manifestation and Omnibus Motion"[8] seeking, among other things, an order from the trial court directing respondents to answer the interrogatories.

To the motion bearing on the written interrogatories, respondents filed their objection.[9]

By Order of May 6, 1999,[10] the trial court denied the motion to compel respondents to answer the interrogatories upon the ground that it constituted a "fishing expedition" which would be more properly ventilated in a pre-trial conference.

Following petitioner's receipt on May 26, 1999[11] of said May 6, 1999 Order, she filed on July 19, 1999[12] a motion for reconsideration thereof where she also manifested that her original answer to the complaint would serve as her answer to the amended complaint. The motion for reconsideration was denied by Order of July 4, 2000.[13]

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[2] *Id*. at 23-30.

[3] Records at 37-43.

[4] *Id*. at 47-49.

[5] *Id*. at 50-54.

[6] *Id*. at 61.

[7] *Id*. at 72-83.

[8] *Id*. at 85-88.

[9] *Id*. at 90-92.

[10] *Id*. at 109-110.

[11] Court of Appeals (CA) *Rollo* at 3.

[12] Records at 111-114.

[13] *Id*. at 139.

After her receipt on July 18, 2000[14] of the aforesaid July 4, 2000 Order, petitioner filed on August 4, 2000 with the Court of Appeals a petition captioned as "Petition for *Certiorari*"[15] assailing the above twin orders of the trial court as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

By the now assailed Resolution of *August 17, 2000*,[16] the appellate court dismissed petitioner's Petition for *Certiorari* on the ground that it was belatedly filed. Read the Resolution:

> An examination of the petition for certiorari shows that the assailed order dated May 6, 1999 was *received on May 26, 1999 and that* petitioner *filed a motion for reconsideration on July 10, 1999,* hence petitioner had only *15 days left from receipt of the order denying the motion for reconsideration on July 18, 2000* or until August 2, 2000 within which to file the petition. When the instant petition was filed on August 4, 2000, the same was late by two (2) days without any explanation being made by petitioner.
>
> WHEREFORE, premises considered, the instant petition is hereby dismissed.
>
> SO ORDERED. (Italics supplied)

Petitioner moved to reconsider the appellate court's dismissal of her petition, arguing that what was filed was a special civil action for *certiorari* under Rule 65 of the Rules of Court, not an appeal, which special civil action was timely brought within the 60-day reglementary period.[17]

By Resolution of October 10, 2000, the appellate court denied petitioner's motion for reconsideration.[18]

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[14] CA *Rollo* at 11.

[15] *Id*. at 2-8.

[16] *Rollo* at 17.

[17] CA *Rollo* at 62-64.

[18] *Rollo* at 18.

Hence, the present petition, petitioner insisting that the appellate court erred in treating her petition as an ordinary appeal to thus lead it to conclude that it was belatedly filed.[19]

To the present petition, respondents filed their Comment,[20] explaining that the appellate court considered petitioner's petition thereat as an appeal because it found the assailed orders of the trial court as not warranting the remedy of the special civil action of *certiorari*.

On the denial by the trial court of petitioner's motion to direct respondents to answer the written interrogatories, respondents justified the same, it contending that the trial court had jurisdiction to pass upon the propriety of such mode of discovery under Section 3, Rule 26 of the Rules of Court and that the remedy of *certiorari* is unavailing since what is traversed is an error of law or fact that is properly the subject of an appeal.

Insisting that the trial court erred in refusing to compel respondents to answer her written interrogatories, petitioner, in her Reply[21] to respondents' Comment, invokes this Court's plenary power to resolve not only the issue of the appellate court's dismissal of her petition but also the question of whether the trial court gravely abused its discretion in disallowing the written interrogatories.

In their respective memoranda,[22] both parties raise the issue of the propriety of availment of written interrogatories.

Meanwhile, on February 28, 2001, the trial court suspended indefinitely the proceedings in the initiatory civil case between the parties in light of petitioner's appeal before this Court.[23]

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[19] *Id*. at 10-16.

[20] *Id*. at 95-99.

[21] *Id*. at 106-108.

[22] *Id*. at 120-124, 129-133.

[23] Records at 231.

The appeal is impressed with merit.

On August 4, 2000, when petitioner filed her petition for *certiorari* before the appellate court, Section 4 of Rule 65, as amended by Circular No. 39-98 read:

> SEC. 4. *Where petition filed.* — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, *the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from such notice of denial.* No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Italics supplied)

Under the foregoing rule, when petitioner's counsel received on July 18, 2000 the trial court's order of July 4, 2000 denying her motion for reconsideration of the Order of May 6, 1999, she still had 15 days left of the 60-day period to file the petition for *certiorari*.

Section 4 of Rule 65 was subsequently further amended, however, by A.M. No. 00-2-03-SC which took effect on September 1, 2000 as follows:

> SEC. 4. *When and where petition filed.* — The petition shall 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*. (Italics supplied)

In *Systems Factors Corporation v. NLRC* [24] and *Unity Fishing Development Corp. v. Court of Appeals*,[25] this Court applied *retroactively* the above-quoted amended rule on a fresh *60-day period* for the filing of certiorari petitions *from notice of the denial of the motion for reconsideration.* Thus, a petition for *certiorari* admittedly filed past the 60-day period under Section 4, Rule 65, as amended by Circular No. 39-98, but filed on time where considered under the amendment in A.M. No. 00-2-03-SC, was held to be seasonably filed.

Applying retroactively to Sec. 4 of Rule 65, as amended by A.M. No. 00-2-03-SC, since petitioner's petition for *certiorari* was filed with the appellate court on August 4, 2000, after receipt on July 18, 2000 by petitioner of the order of the trial court denying her motion for reconsideration from which latter date the 60-day period should be reckoned, the petition was seasonably filed. It was thus error for the trial court to dismiss the same.

Contrary then to petitioner's protestation that the appellate court erred in treating her petition for *certiorari* as an appeal which was filed beyond the 15-day reglementary period, as reflected above, the 15-day period left for petitioner to file the petition referred to the remaining number of days left after computation of the 60-day period in Section 4 of Rule 65 of the Rules of Court, as *then* amended by Circular No. 39-98.

With the setting aside of the appellate court's questioned orders, the resolution of the present petition should have been accomplished. Nonetheless, considering that the relatively simple case for damages, which was instituted by respondents against petitioner way back in 1996 or eight long years ago, had virtually come to a halt due to the lingering legal issue respecting the trial court's order stopping petitioner from availing of her written interrogatories as a mode of discovery, instead of remanding this case to the appellate court as anyway both parties have advanced and argued the sole issue which is purely one of law,

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[24] 346 SCRA 149 (2000).

[25] 351 SCRA 140 (2001).

in the overriding interest of justice, this Court shall now resolve the issue as if it had been raised via a special civil action for *certiorari* with this Court.[26]

No doubt, the twin orders denying the written interrogatories were interlocutory in nature for they leave something more to be done on the merits of the case.[27] And the extraordinary writ of *certiorari* is generally not available to challenge an interlocutory order of a trial court, the proper remedy in such cases being an ordinary appeal from an adverse judgment where incorporated in said appeal are the grounds for assailing the interlocutory order.[28] Nonetheless, this by no means is an absolute rule. If the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, *certiorari* may be allowed as a mode of redress.[29]

This Court finds that the orders disallowing petitioner's written interrogatories are patently erroneous, hence, the resort to *certiorari* is warranted. In denying petitioner's availment of interrogatories, the trial court was of the view that —

> . . . in as much that the written interrogatories is (sic) a sort of fishing expedition, said questions and answer would be properly ventilated in a pre-trial conference for which this court direct the defendant Elena Ong to file her answer to the amended complaint anent thereto, both parties are required to file their respective pre-trial briefs after which this case will be calendared for pre-trial conference.[30]

This Court has long espoused the policy of encouraging the availment of the various modes or instruments of discovery as

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[26] See *San Luis v. Court of Appeals*, 365 SCRA 279 [2001], where the facts therein were very similar to the case at bar, with the Court instead of remanding the case to the Court of Appeals resolved the same on the merits.

[27] *Miranda v. Court of Appeals*, 71 SCRA 295 (1976).

[28] *Salcedo-Ortañez v. Court of Appeals*, 235 SCRA 111 (1994).

[29] *Casil v. Court of Appeals*, 285 SCRA 264 (1998); *Go v. Court of Appeals*, 297 SCRA 574 (1998).

[30] Records at 110.

embodied in Rules 24 to 29 of the Revised Rules of Court. Thus, in *Republic v. Sandiganbayan*,[31] it held:

> . . . Indeed it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29.

The thrust of the Rules is to even make the availment of the modes of discovery — depositions, interrogatories and requests for admissions — without much court intervention since leave of court is not necessary to put into motion such modes after an answer to the complaint has been served.[32] The rationale behind the recognition accorded the modes of discovery is that they enable a party to discover the evidence of the adverse party and thus facilitate an amicable settlement or expedite the trial of the case.[33]

Thus, to deny a party the liberty to have his written interrogatories answered by his opponent, as what the trial court did, on the premise that the interrogatories were a "fishing expedition," is to disregard the categorical pronouncement in aforementioned case of *Republic vs. Sandiganbayan* that the time-honored cry of 'fishing expedition' can no longer provide a reason to prevent a party from inquiring into the facts underlying the opposing party's case through the discovery procedures.[34]

The trial court's orders, not being in accordance with law and jurisprudential dictum, are therefore correctible by writ of *certiorari*.

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[31] 204 SCRA 212 (1991).

[32] RULES OF COURT, Rule 24, Sec. 1; Rule 25, Sec. 1; Rule 26, Sec. 1.

[33] *Koh v. Intermediate Appellate Court*, 144 SCRA 259 (1986).

[34] *Supra*, footnote 31 at 224.

WHEREFORE, the Resolutions of the Court of Appeals dated August 17, 2000 and October 10, 2000 are hereby *SET ASIDE* as are the orders of Branch 3 of the Regional Trial Court of Guiuan, Eastern Samar in Civil Case No. 887. The Presiding Judge of said branch of the court is *ORDERED* to *REQUIRE* respondents to serve their answers to petitioner's written interrogatories and to proceed with dispatch the disposition of said case.

SO ORDERED.

Vitug (Chairman)*, Sandoval-Gutierrez,* and *Corona, JJ.,* concur.

SECOND DIVISION

[G.R. No. 147196. June 4, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDGAR DUMADAG *y* CAGADAS,** *appellant*.

SYNOPSIS

Appellant was found guilty of murder qualified by treachery. Allegedly, he suddenly stabbed his unsuspecting victim one Ondo Prudente after the latter refused his offer of a drink of Tanduay.

While the Court found no reason to reverse the findings of the trial court, it ruled that treachery was not present. A sudden attack is treachery if deliberately adopted with the purpose of depriving the victim of a chance to fight or retreat. It is not so where the attack was not preconceived but merely triggered by infuriation of accused on an act made by the victim, as in case at bar. Hence, the Court ruled that the crime committed was homicide only and not murder.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACTS OF THE TRIAL COURT, RESPECTED.— Time and again, we have consistently ruled that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, as well as its conclusions on its findings, are accorded high respect if not conclusive effect. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and deportment of the witnesses as they testify. In this case, the trial court gave credence and probative weight to the testimony of Jovy Baylin. After a careful review of the records of this case, we find no cogent reason to overrule the trial court's findings that the appellant stabbed the victim.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF A SINGLE WITNESS IS SUFFICIENT TO CONVICT.— As long as it is positive, clear and credible, the testimony of a single prosecution witness on which judgment of conviction is anchored, is sufficient. Corroborative or cumulative evidence is not a prerequisite to the conviction of the accused. Truth is established not by the number of witnesses but by the quality of their testimonies.

3. ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY AND CONSIDERING THAT IT WAS NOT PHYSICALLY IMPOSSIBLE FOR ACCUSED TO BE AT THE SCENE OF CRIME AT THE TIME OF CRIME.— The trial court found Baylin to be a credible witness. The denial and alibi of appellant cannot prevail over the positive identification and eyewitness account of Baylin. It is settled that for the defense of alibi to prosper, the appellant must prove with clear and convincing evidence not only that he was some place else when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity when the crime was committed. The appellant failed to prove that it was physically impossible for him to be at the scene of the crime, considering his claim that he was only a few kilometers away when the stabbing occurred.

4. ID.; SPEEDY TRIAL ACT OF 1998 (RA NO. 8493); EFFECT OF PRE-TRIAL STIPULATIONS APPROVED BY THE COURT. — Under Section 5 of Republic Act No. 8493, otherwise known as "The Speedy Trial Act of 1998," stipulations

entered into during the pre-trial which were approved by the Court shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial, unless modified by the court to prevent manifest injustice.

5. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELUCIDATED.— Treachery is not presumed. Treachery must be proven as clearly and as cogently as the crime itself. There is treachery (*alevosia*) 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. Two conditions must concur for treachery to be present, *viz*: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and, (2) the said means of execution were deliberately or consciously adopted. Treachery cannot be appreciated if it has not been proved beyond reasonable doubt that the assailant did not make any preparation to kill the victim in such a manner as to insure the killing or to make it impossible or difficult for the victim to defend himself. The prosecution must prove that the killing was premeditated or that the assailant chose a method of attack directly and specially to facilitate and insure the killing without risk to himself. The mode of attack must be planned by the offender and must not spring from the unexpected turn of events.

6. ID.; ID.; ID.; ID.; NOT PRESENT WHERE ATTACK NOT PRECONCEIVED BUT MERELY TRIGGERED BY INFURIATION.— In the case at bar, the trial court merely relied on the suddenness of the attack on the unarmed and unsuspecting victim to justify treachery. As a general rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply if the attack was not preconceived but merely triggered by infuriation of the appellant on an act made by the victim. In the present case, it is apparent that the attack was not preconceived. It was triggered by the appellant's anger because of the victim's refusal to have a drink with the appellant and his companions.

7. ID.; HOMICIDE; CRIME COMMITTED IN THE ABSENCE OF TREACHERY AS QUALIFYING CIRCUMSTANCE; PROPER PENALTY.— For failure of the prosecution to prove beyond reasonable doubt the attendance of the qualifying circumstance of treachery, the appellant can only be convicted of homicide. The penalty of homicide under Article 249 of the Revised Penal Code is *reclusion temporal.* There being no mitigating or aggravating circumstances attendant, the maximum of the indeterminate penalty shall be taken from the medium period of *reclusion temporal.* The minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, namely, *prision mayor.* Thus, the appellant may be sentenced to an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor,* in its medium period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period, as maximum.

8. ID.; ID.; PROPER CIVIL PENALTIES.— The trial court correctly awarded ₱50,000 by way of civil indemnity to the heirs of the victim Fernando "Ondo" Prudente. However, the award of ₱50,000 for moral damages should be deleted, there being no proof that the heirs of the victim suffered wounded feelings, mental anguish, anxiety and similar injury. The said heirs are, instead, entitled to an award of ₱25,000 as temperate damages, conformably to current jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us on appeal is the Decision[1] of the Regional Trial Court of the City of Malaybalay, Bukidnon, Branch 8, finding appellant Edgar Dumadag *y* Cagadas, guilty beyond reasonable

[1] Penned by Judge Vivencio P. Estrada, Records, pp. 57-60.

doubt of murder; sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of the victim ₱50,000 as civil indemnity and ₱50,000 as moral damages.

The Indictment

The appellant was charged with murder in an Information filed before the Regional Trial Court of Malaybalay, the accusatory portion of which is herein quoted:

> That on or about the 24th day of June 1999, in the afternoon, at Barangay Impalutao, Municipality of Impasugong, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery, armed with a sharp bladed weapon, did then and there willfully, unlawfully and criminally attack, assault and stab FERNANDO PRUDENTE, inflicting upon the latter a mortal stab wound which caused the instantaneous death of FERNANDO PRUDENTE, to the damage and prejudice of the legal heirs of FERNANDO PRUDENTE in such amount as may be allowed by law.[2]

The Evidence of the Prosecution[3]

June 24, 1999 was the feast of St. John. Fernando "Ondo" Prudente, with his friends, including Marlyn Meliston, agreed to meet at the Gantungan swimming pool in Impalutao, Impasugong, Bukidnon, to celebrate the occasion.[4] At about 5:00 p.m., Ondo and his friends headed back home. By then, there was heavy downpour. They decided to take shelter at the store of a certain Mr. Salvaña. Jovy Baylin, who had just come from the house of his sister, Enecita Abacajin, approximately one hundred (100) kilometers away, was also in the store.[5] Two men, one of whom was the appellant, were having some drinks.[6] When they saw Ondo, the appellant and his friend offered

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[2] Records, p. 26.

[3] The prosecution presented only one witness, Jovy Baylin.

[4] Records, p. 15.

[5] TSN, 27 April 2000, p. 3.

[6] *Id.* at 4.

him a drink of Tanduay.[7] Ondo, declined, saying "*Bay*, I am not drinking now."[8] Thereafter, Ondo left. The appellant was peeved. He rose from his seat and followed Ondo. The appellant then took hold of Ondo's right shoulder, took out a stainless knife and stabbed the latter on the breast.[9] The appellant left the scene, walking towards the direction of the lower area of Cagayan de Oro.[10] Jovy Baylin, who was about five meters from the scene of the crime, was stunned, and was unable to do anything.[11] Ondo's companions saw the stabbing and immediately flagged down a vehicle.

Mortally wounded, Ondo ran towards the vehicle and fell inside it.[12] Ondo's companions brought him to the Bethel Baptist Hospital, Inc., in Malaybalay City, where he was pronounced dead on arrival.[13] Dr. Leslie Joan M. Arcadio signed Ondo's death certificate and indicated that the cause of death was "*stab wound, right chest*."[14]

The Evidence of the Appellant[15]

The appellant denied the charge. He testified that in the afternoon of June 23, 1999, he was at Vista Villa, Sumilao, Bukidnon,[16] looking for some way to get money. He saw Richard Masicampo, Sr., the owner of a 2.5 hectare riceland in the same *sitio* and borrowed money from him.[17] The latter agreed,

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[7] *Id.* at 5.

[8] *Id.* at 6.

[9] *Id.*

[10] *Id.* at 10.

[11] *Id.* at 8.

[12] *Id.* at 7.

[13] Exhibit "A", Records, p. 5.

[14] *Ibid.*

[15] The defense presented the appellant and Richard Masicampo, Sr. as witnesses.

[16] TSN, 5 July 2000, pp. 3-4.

[17] TSN, 20 June 2000, p. 3.

but required the appellant to cut the grass in his riceland the next day.

On the aforesaid date, the appellant, along with Richard, cut grass in the ricefield. At around 11:00 a.m., they stopped and had lunch in Richard's house.[18] Because it rained the whole afternoon, they were unable to go back to the ricefield. They stayed in the house and had drinks.[19] After consuming five (5) bottles of "fighter wine," the appellant fell asleep. At 5:30 p.m., he woke up and went home. He returned the next day to finish the job.[20]

The appellant was arrested in his house on July 4, 1999. He denied knowing Ondo and Jovy Baylin.[21]

On November 21, 2000, the trial court rendered judgment, the dispositive portion of which reads:

> WHEREFORE, judgment is entered (*sic*) finding accused Edgar Dumadag guilty beyond reasonable doubt of the offense of murder qualified by treachery. Accordingly, he is hereby sentenced to suffer the penalty of *reclusion perpetua*, and to indemnify the heirs of his victim Fernando Prudente the sum of ₱50,000.00 and moral damages of ₱50,000.00.[22]

The Present Appeal

On appeal, the appellant asserts that:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT FOR THE CRIME OF MURDER AND IN DISREGARDING ACCUSED-APPELLANT'S DEFENSE OF ALIBI BECAUSE IN THE WORDS OF THE TRIAL COURT "ALIBI IS ONE OF THE WEAKEST DEFENSE AND EASY TO CONCOCT."

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[18] *Id*. at 4.

[19] *Id*.

[20] *Id*. at 5-6.

[21] TSN, 5 July 2000, p. 5; Records, p. 20.

[22] Records, p. 60.

II

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED IS GUILTY FOR THE DEATH OF FERNANDO PRUDENTE, THE TRIAL COURT ERRED IN CONVICTING HIM OF THE CRIME OF MURDER INSTEAD OF SIMPLE HOMICIDE.[23]

The appellant insists that the prosecution failed to prove his guilt for the crime charged beyond reasonable doubt. He asserts that although his defense of alibi is weak, he should be acquitted because the evidence of the prosecution is also weak.

The appellant, likewise, contends that, assuming that he is guilty of the crime charged, he can only be convicted of homicide because the prosecution failed to prove beyond reasonable doubt the qualifying circumstance of treachery. He avers that he could not have deliberately and consciously adopted a plan to kill the victim because they never knew each other. Citing our ruling in *People vs. Aguiluz*,[24] the appellant points out that where the sudden attack is not preconceived and intended as the means, but is merely triggered by the sudden infuriation on the part of the accused because of an act of the victim, or where the meeting is purely accidental, the killing would not be attended by treachery.

The Office of the Solicitor General (OSG) avers that the prosecution, through Baylin's direct and straightforward testimony, proved that the appellant stabbed the victim to death. The OSG asserts that the appellant's defense of denial and alibi are weak and cannot be given probative weight in light of Baylin's testimony, and that the admission made by the appellant during the pre-trial that he was at the scene of the crime belied his alibi.

The OSG, however, agrees that the appellant is guilty only of homicide because the prosecution failed to prove the qualifying circumstance of treachery. It posits that the altercation between the appellant and the victim that preceded the commission thereof forestalled the attendance of treachery.

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[23] Brief for the Accused-Appellant, p. 1.

[24] 207 SCRA 187 (1992).

We agree with the trial court that the appellant stabbed the victim.

Time and again, we have consistently ruled that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, as well as its conclusions on its findings, are accorded high respect if not conclusive effect.[25] This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and deportment of the witnesses as they testify.[26] In this case, the trial court gave credence and probative weight to the testimony of Jovy Baylin. After a careful review of the records of this case, we find no cogent reason to overrule the trial court's findings that the appellant stabbed the victim.

As long as it is positive, clear and credible, the testimony of a single prosecution witness on which judgment of conviction is anchored, is sufficient. Corroborative or cumulative evidence is not a prerequisite to the conviction of the accused. Truth is established not by the number of witnesses but by the quality of their testimonies.[27]

The trial court found Baylin to be a credible witness. The denial and alibi of appellant cannot prevail over the positive identification and eyewitness account of Baylin.[28] Baylin testified, thus:

ASST. PROS. TORIBIO: (continuing)
Q: After Edgar Dumadag invited Ondo Prudente to have a drink of Tanduay, what did Ondo Prudente do, if any?
A: He declined the offer.

Q: How did Ondo Prudente decline the offer of Dumadag?
A: He said, "*Bay*, I am not drinking now," and then he left.

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[25] *People v. Alex Flores*, G.R. Nos. 143435-36, November 28, 2003.

[26] *People v. Jerryvie Gumayao*, G.R. No. 138933, October 28, 2003.

[27] *People v. Sibonga*, G.R. No. 95901, June 16, 2003.

[28] *People v. Bienvenido dela Cruz*, G.R. No. 140513, November 18, 2003.

Q: After Ondo Prudente left, what happened next, if any?
A: Dumadag followed Prudente, held his right shoulder and stabbed him.

Q: Now, how many time[s] did this Dumadag stabbed (*sic*) Ondo Prudente?
A: Once.

Q: Was Prudente hit?
A: Yes.

COURT: (to the witness)
Q: What part of his body?
A: On his breast.

Q: What did the accused use in stabbing?
A: A stainless knife.

ASST. PROS. TORIBIO
Q: Now, when this Dumadag followed Ondo Prudente after he declined the offer, did you see already Dumadag carrying with him a knife (*sic*)?
A: No, he was running.

Q: When for (*sic*) the first time you saw the knife of Dumadag?
A: When he held the shoulder (*sic*).

Q: Where did he get the knife?

. . . . . .

A: From his side.[29]

On the other hand, the appellant's alibi is weak. It is settled that for the defense of alibi to prosper, the appellant must prove with clear and convincing evidence not only that he was some place else when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity when the crime was committed.[30] To prove his alibi, the appellant testified as follows:

Q: Mr. Dumadag, you said that you borrowed money from Richard Masicampo, [Sr.] from where is this Richard Masicampo?

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[29] TSN, 27 April 2000, pp. 6-7.

[30] *People v. Marcos Gialolo*, G.R. No. 152135, October 23, 2003.

A: From our *sitio*.

Q: Meaning to say at Kibenton?
A: No, from our place.

Q: What place?
A: Kilabong.

Q: Vista Villa, Sumilao, Bukidnon?
A: Yes.

Q: Mr. Dumadag, from Kilabong, Vista Villa going to Impalutao, how many minutes or hours it will (*sic*) take you when you ride?
A: I do not know because the distance is far.

Q: Can you not estimate thirty (30) minutes or one hour?
A: No.

Q: Even two hours?
A: I do not know.

Q: From Vista Villa to Dalirig, how many kilometers?
A: Six (6) kilometers, more or less.

Q: From Dalirig to Impalutao, how many kilometers?
A: I do not know.[31]

However, the appellant failed to prove that it was physically impossible for him to be at the scene of the crime, considering his claim that he was only a few kilometers away when the stabbing occurred.

Moreover, during the pre-trial conference held on November 4, 1999, the appellant, assisted by his counsel, admitted that he was at the place of the incident at the time of the commission of the crime. The same was reduced into writing, signed by the appellant, approved by the trial court and formed part of the records of the case.[32] Under Section 5 of Republic Act No. 8493, otherwise known as "The Speedy Trial Act of 1998," stipulations entered into during the pre-trial which were approved

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[31] TSN, 5 July 2000, pp. 6-7.

[32] Records, p. 34.

by the Court shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial, unless modified by the court to prevent manifest injustice.[33]

The Crime Committed by the Appellant

We agree with the appellant and the OSG that the prosecution failed to prove treachery in the commission of the crime.

Treachery is not presumed.[34] Treachery must be proven as clearly and as cogently as the crime itself.[35] There is treachery (*alevosia*) when the offender commits any of the crimes against the person, employing means, methods or forms in the execution

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[33] The pertinent provisions of Rep. Act No. 8493, are as follows:

Sec. 2. *Mandatory Pre-Trial in Criminal Case*. — In all criminal cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the *Sandiganbayan*, the justice or judge shall, after arraignment, order a pre-trial conference to consider the following:

(a) Plea Bargaining;

(b) Stipulation of facts;

(c) Marking for identification of evidence of parties;

(d) Waiver of objections to admissibility of evidence; and

(e) Such other matters as will promote a fair and expeditious trial.

Sec. 3. *Pre-Trial Agreement*. — All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise, the same shall not be used in evidence against the accused. The agreements in relation to matters referred to in Section 2 hereof is subject to the approval of the court. *Provided*, that the agreement on the plea of the accused to a lesser offense may only be revised, modified, or annulled by the court when the same is contrary to law, public morals, or public policy.

xxx xxx xxx

Sec. 5. *Pre-Trial Order*. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial, unless modified by the court to prevent manifest injustice.

[34] *People v. Percival Gonza*, G.R. No. 138612, November 11, 2003.

[35] *People v. Real*, 308 SCRA 244 (1999).

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] Two conditions must concur for treachery to be present, *viz*: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and, (2) the said means of execution were deliberately or consciously adopted.[37] Treachery cannot be appreciated if it has not been proved beyond reasonable doubt that the assailant did not make any preparation to kill the victim in such a manner as to insure the killing or to make it impossible or difficult for the victim to defend himself.[38] The prosecution must prove that the killing was premeditated or that the assailant chose a method of attack directly and specially to facilitate and insure the killing without risk to himself.[39] The mode of attack must be planned by the offender and must not spring from the unexpected turn of events.[40]

In the case at bar, the trial court merely relied on the suddenness of the attack on the unarmed and unsuspecting victim to justify treachery. As a general rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply if the attack was not preconceived but merely triggered by infuriation of the appellant on an act made by the victim.[41] In the present case, it is apparent that the attack was not preconceived. It was triggered by the appellant's anger because of the victim's refusal to have a drink with the appellant and his companions.

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[36] *People v. Oscar Perez*, G.R. No. 134485, October 23, 2003.

[37] *People v. Percival Gonza, supra*.

[38] *People v. Alex Flores, supra*.

[39] *People v. Abalos*, 84 Phil. 771 (1949).

[40] *People v. Santillana*, 308 SCRA 104 (1999).

[41] *People v. Academia*, 307 SCRA 229, 234 (1999).

For failure of the prosecution to prove beyond reasonable doubt the attendance of the qualifying circumstance of treachery, the appellant can only be convicted of homicide. The penalty of homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. There being no mitigating or aggravating circumstances attendant, the maximum of the indeterminate penalty shall be taken from the medium period of *reclusion temporal*. The minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, namely, *prision mayor*. Thus, the appellant may be sentenced to an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor*, in its medium period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period, as maximum.[42]

Civil Liabilities of the Appellants

The trial court correctly awarded ₱50,000 by way of civil indemnity to the heirs of the victim Fernando "Ondo" Prudente. However, the award of ₱50,000 for moral damages should be deleted, there being no proof that the heirs of the victim suffered wounded feelings, mental anguish, anxiety and similar injury. The said heirs are, instead, entitled to an award of ₱25,000 as temperate damages, conformably to current jurisprudence.[43]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of the City of Malaybalay, Bukidnon, Branch 8, is *AFFIRMED WITH MODIFICATIONS*. The appellant Edgar Dumadag y Cagadas is found *GUILTY* beyond reasonable doubt of Homicide under Article 249 of the Revised Penal Code, as amended by Rep. Act No. 7659 and is sentenced to suffer the indeterminate penalty of from Eight (8) years and One (1) day of *prision mayor* in its medium period, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day of *reclusion temporal* in its medium period, as maximum. The appellant is *ORDERED* to pay Fifty Thousand Pesos (₱50,000)

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[42] *People v. Roger dela Cruz*, G.R. No. 152176, October 1, 2003.

[43] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003.

as civil indemnity and Twenty-Five Thousand (₱25,000) as temperate damages to the heirs of the victim. The award of moral damages is deleted.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 149417. June 4, 2004]

GLORIA SANTOS DUEÑAS, *petitioner, vs.* **SANTOS SUBDIVISION HOMEOWNERS ASSOCIATION,** *respondent*.

SYNOPSIS

The Housing and Land Use Regulatory Board (HLURB) dismissed the case filed by respondent SSHA against petitioner daughter of the late Cecilio Santos who owns the Santos Subd. SSHA was asking petitioner to provide within the subdivision an open space for recreational and community activities, in accordance with PD 957 as amended by PD 1216. On appeal to the Court of Appeals (CA), the HLURB decision was reversed. Hence, this petition.

While petitioner alleged that respondent should have appealed the HLURB decision to the Office of the President and not to the CA, the Court ruled that the principle of non-exhaustion of administrative remedies was inapplicable. The questions posed were purely legal and the SSHA had initially sought relief from the Office of the President but the case was forwarded to the HLURB. Nonetheless, the Court noted that SSHA failed to show that it was an association duly organized under the

Philippine law and hence, devoid of any legal capacity to institute any action. Finally, the Court ruled that PD 957, amended by PD No. 1216 was a later law and cannot be applied retroactively, in the absence of provision therefore.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES; NOT APPLICABLE IN CASE AT BAR. –** The principle of non-exhaustion of administrative remedies is, under the factual circumstances of this case, inapplicable. While this Court has held that before a party is allowed to seek intervention of the courts, it is a pre condition that he avail himself of all administrative processes afforded him, nonetheless, said rule is not without exceptions. The doctrine is a relative one and is flexible depending on the peculiarity and uniqueness of the factual and circumstantial settings of each case. In the instant case, the questions posed are purely legal. Moreover, the Court of Appeals found that the Santos Subdivision Homeowners Association (SSHA) had sought relief from the Office of the President, but the latter forwarded the case to the Housing And Land Use Regulatory Board (HLURB). In view of the foregoing, we find that in this particular case, there was no need to SSHA to exhaust all administrative remedies before seeking judicial relief.

2. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; JURIDICAL PERSONS. –** Under Section 1, Rule 3 of the Revised Rules of Court, only natural or juridical persons, or entities authorized by law may be parties in a civil action. Article 44 of the Civil Code enumerates the various classes of juridical persons. Under said Article, an association is considered a juridical person if the law grants it a personality separate and distinct from that of its members. The records of the present case are bare of any showing by SSHA that it is an association duly organized under Philippine law. Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. Hence, for failing to show that it is a juridical entity, endowed by law with capacity to bring suits in its own

name, SSHA is devoid of any legal capacity, whatsoever, to institute any action.

3. CIVIL LAW; APPLICATION OF LAWS; NO RETROACTIVE APPLICATION IN THE ABSENCE OF EXPRESS PROVISION THEREOF. – P.D. No. 957, as amended, cannot be applied retroactively in view of the absence of any express provision on its retroactive application. Basic is the rule that no statute, decree, ordinance, rule or regulation shall be given retrospective effect unless explicitly stated.

APPEARANCES OF COUNSEL

Domingo Z. Legaspi for petitioner.
Domingo B. Floresta for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] dated December 29, 2000, of the Court of Appeals in CA-G.R. SP No. 51601, setting aside the Decision[2] of the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. REM-A-980227-0032 which earlier affirmed the Decision[3] of the HLURB-NCR Regional Field Office in HLURB Case No. REM-070297-9821. Said Regional Field Office dismissed the petition of herein respondent Santos Subdivision Homeowners Association (SSHA) seeking to require herein petitioner, Gloria Santos Dueñas, to provide for an open space in the subdivision for recreational and community activities. In its assailed decision, the CA remanded the case to the HLURB for determination of a definitive land area for open space.[4] Petitioner assails also the Court of Appeals'

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[1] *Rollo*, pp. 22-33. Penned by Associate Justice Ramon Mabutas, Jr., with Associate Justices Roberto A. Barrios and Eriberto U. Rosario, Jr., concurring.

[2] *Id*. at 49-52.

[3] *Id*. at 36-40.

[4] *See* PRESIDENTIAL DECREE NO. 1216, Section 1. For purposes of this Decree, the term "open space" shall mean an area reserved exclusively

Resolution[5] dated July 31, 2001, denying her motion for reconsideration.

The facts of this case are as follows:

Petitioner Gloria Santos Dueñas is the daughter of the late Cecilio J. Santos who, during his lifetime, owned a parcel of land with a total area of 2.2 hectares located at General T. De Leon, Valenzuela City, Metro Manila. In 1966, Cecilio had the realty subdivided into smaller lots, the whole forming the Cecilio J. Santos Subdivision (for brevity, Santos Subdivision). The then Land Registration Commission (LRC) approved the project and the National Housing Authority (NHA) issued the required Certificate of Registration and License to Sell. At the time of Cecilio's death in 1988, there were already several residents and homeowners in Santos Subdivision.

Sometime in 1997, the members of the SSHA submitted to the petitioner a resolution asking her to provide within the subdivision an open space for recreational and other community activities, in accordance with the provisions of P.D. No. 957,[6]

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for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, *barangay* centers and other similar facilities and amenities.

[5] *Rollo*, p. 35.

[6] The "Subdivision and Condominium Buyers' Protective Decree of 1976." The *proviso* in question reads:

SEC. 31. *Donation of roads and open spaces to local government.* — The registered owner or developer of the subdivision or condominium project, upon completion of the development of said project may, at his option, convey by way of donation the roads and open spaces found within the project to the city or municipality wherein the project is located. Upon acceptance of the donation by the city or municipality concerned, no portion of the area donated shall thereafter be converted to any other purpose or purposes unless after hearing, the proposed conversion is approved by the Authority.

P.D. No. 1216, SEC. 2. Section 31 of Presidential Decree No. 957 is hereby amended to read as follows:

SECTION 31. *Roads, Alleys, Sidewalks and Open Spaces.* — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or

as amended by P.D. No. 1216.[7] Petitioner, however, rejected the request, thus, prompting the members of SSHA to seek redress from the NHA.

On April 25, 1997, the NHA General Manager forwarded the SSHA resolution to Romulo Q. Fabul, Commissioner and Chief Executive Officer of the HLURB in Quezon City.[8]

In a letter dated May 29, 1997, the Regional Director of the Expanded NCR Field Office, HLURB, opined that the open space requirement of P.D. No. 957, as amended by P.D. No. 1216, was not applicable to Santos Subdivision.[9]

SSHA then filed a petition/motion for reconsideration,[10] docketed as HLURB Case No. REM-070297-9821, which averred

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developer shall reserve thirty percent (30%) of the gross area for open space. Such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:

a. 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare).

b. 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).

c. 3.5% of gross area low-density or open market housing (20 family lots and below per gross hectare).

These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes.

[7] The Decree is entitled "Defining 'Open Space' in Residential Subdivisions and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use."

[8] *Rollo*, pp. 86, 99.

[9] *Id*. at 101.

[10] *Id*. at 36.

among others that: (1) P.D. No. 957 should apply retroactively to Santos Subdivision, notwithstanding that the subdivision plans were approved in 1966 and (2) Gloria Santos Dueñas should be bound by the verbal promise made by her late father during his lifetime that an open space would be provided for in Phase III of Santos Subdivision, the lots of which were at that time already for sale.

Petitioner denied any knowledge of the allegations of SSHA. She stressed that she was not a party to the alleged transactions, and had neither participation nor involvement in the development of Santos Subdivision and the sale of the subdivision's lots. As affirmative defenses, she raised the following: (a) It was her late father, Cecilio J. Santos, who owned and developed the subdivision, and she was neither its owner nor developer; (b) that this suit was filed by an unauthorized entity against a non-existent person, as SSHA and Santos Subdivision are not juridical entities, authorized by law to institute or defend against actions; (c) that P.D. No. 957 cannot be given retroactive effect to make it applicable to Santos Subdivision as the law does not expressly provide for its retroactive applicability; and (d) that the present petition is barred by laches.

On January 14, 1998, HLURB-NCR disposed of HLURB Case No. REM-070297-9821 in this wise:

> In view of the foregoing, the complaint is hereby dismissed.
>
> It is So Ordered.[11]

In dismissing the case, the HLURB-NCR office ruled that while SSHA failed to present evidence showing that it is an association duly organized under Philippine law with capacity to sue, nonetheless, the suit could still prosper if viewed as a suit filed by all its members who signed and verified the petition. However, the petition failed to show any cause of action against herein petitioner as (1) there is no evidence showing Santos-Dueñas as the owner/developer or successor-in-interest of Cecilio Santos, who was the owner/developer and sole proprietor of

[11] *Id*. at 40.

Santos Subdivision; (2) the LRC-approved subdivision plan was bereft of any *proviso* indicating or identifying an open space, as required by P.D. No. 957, as amended, hence there was no legal basis to compel either Cecilio or his daughter Santos-Dueñas, as his purported successor, to provide said space; and (3) the alleged verbal promise of the late Cecilio Santos was inadmissible as evidence under the dead man's statute.[12]

SSHA then appealed the NCR office's ruling to the HLURB Board of Commissioners. The latter body, however, affirmed the action taken by the HLURB-NCR office, concluding thus:

> WHEREFORE, premises considered, the Petition for Review is hereby DISMISSED and the decision of the Office below is hereby AFFIRMED *IN TOTO*.
>
> SO ORDERED.[13]

The HLURB Board decreed that there was no basis to compel the petitioner to provide an open space within Santos Subdivision, inasmuch as the subdivision plans approved on July 8, 1966, did not provide for said space and there was no law requiring the same at that time. It further ruled that P.D. No. 957 could not be given retroactive effect in the absence of an express provision in the law. Finally, it found the action time-barred since it was filed nine (9) years after the death of Cecilio. The Board noted that SSHA sought to enforce an alleged oral promise of Cecilio, which should have been done within the six-year prescriptive period provided for under Article 1145[14] of the Civil Code.

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[12] *RULES OF COURT*, Rule 130, Sec. 23. *Disqualification by reason of death or insanity of adverse party*. — Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

[13] *Rollo*, p. 52.

[14] Art. 1145. The following actions must be commenced within six years:

(1) Upon an oral contract;

(2) Upon a quasi-contract.

Dissatisfied, respondent sought relief from the Court of Appeals via a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. The petition, docketed as CA-G.R. SP No. 51601, was decided by the appellate court in this manner:

> WHEREFORE, the petition is GRANTED — and the decision, dated January 20, 1999, of the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. REM-A-980227-0032 is hereby REVERSED and SET ASIDE. Accordingly, this case is ordered REMANDED to the HLURB for the determination of the definitive land area that shall be used for open space in accordance with law and the rules and standards prescribed by the HLURB. No pronouncement as to costs.
>
> SO ORDERED.[15]

In finding for SSHA, the appellate court relied upon *Eugenio v. Exec. Sec. Drilon*,[16] which held that while P.D. No. 957 did not expressly provide for its retroactive application, nonetheless, it can be plainly inferred from its intent that it was to be given retroactive effect so as to extend its coverage even to those contracts executed prior to its effectivity in 1976. The Court of Appeals also held that the action was neither barred by prescription nor laches as the obligation of a subdivision developer to provide an open space is not predicated upon an oral contract, but mandated by law, hence, an action may be brought within ten (10) years from the time the right of action accrues under Article 1144[17] of the Civil Code. Moreover, the equitable principle of laches will not apply when the claim was filed within the reglementary period.

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[15] *Rollo*, p. 33.

[16] G.R. No. 109404, 22 January 1996, 322 Phil. 112, 116.

[17] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

Petitioner duly moved for reconsideration, which the Court of Appeals denied on July 31, 2001.

Hence, this petition grounded on the following assignment of errors:

I. THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW BY TAKING COGNIZANCE OF RESPONDENTS' PETITION (WHICH ASSAILS THE DECISION OF THE BOARD OF COMMISSIONERS OF THE HLURB) WHEN JURISDICTION THEREON IS WITH THE OFFICE OF THE PRESIDENT, AS CLEARLY MANDATED BY *SEC. 2, RULE XVIII OF THE 1996 RULES OF PROCEDURE OF THE HOUSING AND LAND USE REGULATORY BOARD*.

II. IT WAS GRAVE ERROR FOR THE COURT OF APPEALS TO HAVE ASSUMED JURISDICTION OVER THE PETITION BELOW WHEN RESPONDENTS CLEARLY FAILED TO EXHAUST THE ADMINISTRATIVE REMEDIES AVAILABLE TO THEM UNDER THE LAW.

III. THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT RESPONDENT SANTOS SUBDIVISION HOMEOWNERS ASSOCIATION, A NON-REGISTERED ORGANIZATION, LACKED THE LEGAL PERSONALITY TO SUE.

IV. THE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT RESPONDENT SANTOS SUBDIVISION HOMEOWNERS ASSOCIATION HAS NO CAUSE OF ACTION AGAINST PETITIONER; NEITHER WAS SANTOS SUBDIVISION, A NON-ENTITY, POSSESSED WITH CAPACITY TO BE SUED NOR IS PETITIONER GLORIA SANTOS-DUEÑAS A PROPER PARTY TO THE CASE, THE LATTER NOT BEING THE OWNER OR DEVELOPER OF SANTOS SUBDIVISION.

V. THE COURT OF APPEALS SERIOUSLY ERRED IN SUBSTITUTING ITS FINDINGS WITH THAT OF THE ADJUDICATION BOARD AND BOARD OF COMMISSIONERS OF THE HLURB WHEN THEIR DECISION IS BASED ON SUBSTANTIAL EVIDENCE AND NO GRAVE ABUSE OF DISCRETION CAN BE ATTRIBUTED TO THEM.

VI. THE COURT OF APPEALS DEVIATED FROM THE EXISTING LAW AND JURISPRUDENCE WHEN IT RULED THAT P.D. 957 HAS RETROACTIVE APPLICATION — WHEN THE LAW ITSELF DOES NOT PROVIDE FOR ITS RETROACTIVITY AND THE EXISTING JURISPRUDENCE THEREON CLEARLY PRONOUNCED THAT IT HAS NO RETROACTIVE APPLICATION. TO PROVIDE RETROACTIVITY TO P.D. 957 WOULD CAUSE IMPAIRMENT OF VESTED RIGHTS.

VII. WHILE AS A GENERAL RULE, THE FACTUAL FINDINGS OF THE COURT OF APPEALS IS BINDING ON THE SUPREME COURT, THE SAME IS NOT TRUE WHEN THE FORMER'S CONCLUSION IS BASED ON SPECULATION, SURMISES AND CONJECTURES, THE INFERENCE MADE IS MANIFESTLY MISTAKEN OR ABSURD, THERE IS GRAVE ABUSE OF DISCRETION, JUDGMENT IS BASED ON MISAPPREHENSION OF FACTS CONTRARY TO THOSE OF THE ADMINISTRATIVE AGENCY CONCERNED, AND IT WENT BEYOND THE ISSUES OF THE CASE AND THE SAME IS CONTRARY TO THE ADMISSIONS OF BOTH PARTIES.[18]

To our mind, the foregoing may be reduced into the following issues: (1) the applicability of the doctrine of non-exhaustion of administrative remedies; (2) the legal capacity of respondent to sue the petitioner herein; and (3) the retroactivity of P.D. No. 957, as amended by P.D. No. 1216.

On the *first issue*, the petitioner contends that the filing of CA-G.R. SP No. 51601 was premature as SSHA failed to exhaust all administrative remedies. Petitioner submits that since Section 1,[19] Rule 43 of the 1997 Rule of Civil Procedure does

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[18] *Rollo*, pp. 8-9.

[19] SECTION 1. *Scope*. — This Rule shall apply 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 its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration,

not mention the HLURB, the respondent should have appealed the decision of the HLURB Board in HLURB Case No. REM-A-980227-0032 to the Office of the President prior to seeking judicial relief. In other words, it is the decision of the Office of the President,[20] and not that of the HLURB Board, which the Court of Appeals may review.

We find petitioner's contentions bereft of merit. The principle of non-exhaustion of administrative remedies is, under the factual circumstances of this case, inapplicable. While this Court has held that before a party is allowed to seek intervention of the courts, it is a pre condition that he avail himself of all administrative processes afforded him,[21] nonetheless, said rule is not without exceptions.[22] The doctrine is a relative one and is flexible depending

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Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[20] *Rollo*, p. 10.

[21] *Province of Zamboanga del Norte v. Court of Appeals*, G.R. No. 109853, 11 October 2000, 342 SCRA 549, 557.

[22] The doctrine will not apply when: [1] there is a violation of due process (*Quisumbing v. Gumban*, G.R. No. 85156, 5 February 1991, 193 SCRA 520); [2] the issue involved is a purely legal question (*Eastern Shipping Lines, Inc. v. POEA*, No. L-76633, 18 October 1988, 166 SCRA 533); [3] the administrative action is patently illegal amounting to want or excess of jurisdiction (*Industrial Power Sales, Inc. v. Duma Sinsuat*, No. L-29171, 15 April 1988, 160 SCRA 19); [4] there is estoppel on the part of the administrative agency concerned (*Vda. de Tan v. Veterans Backpay Commission*, No. L-12944, 30 March 1959, 105 Phil. 377); [5] there will be irreparable injury (*Lara, Jr., et al. v. Cloribel, et al*., No. L-21653, 31 May 1965, 121 Phil. 1062); [6] the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter (*Demaisip v. The Court of Appeals, et al*., No. L-13000, 25 September 1959, 106 Phil. 237; *Bartulata v. Peralta, Jr.*, No. L-23155, 9 September 1974, 59 SCRA 7); [7] to require exhaustion of administrative remedies would be unreasonable (*Cipriano v. Marcelino and Hon. Dela Cruz, etc*., No. L-27793, 28 February 1972, 150 Phil. 336); [8] it would amount to a nullification of a claim (*Alzate, etc. v. Aldana, etc., et al*., No. L-14407,

on the peculiarity and uniqueness of the factual and circumstantial settings of each case.[23]

In the instant case, the questions posed are purely legal, namely: (1) whether the respondent had any right to demand an open space and the petitioner had any legal obligation to provide said open space within Santos Subdivision under P.D. No. 957, as amended by P.D. No. 1216, and (2) whether the action had already prescribed under Article 1145 of the Civil Code. Moreover, the Court of Appeals found that SSHA had sought relief from the Office of the President, but the latter forwarded the case to the HLURB. In view of the foregoing, we find that in this particular case, there was no need for SSHA to exhaust all administrative remedies before seeking judicial relief.

On the *second issue*, the petitioner claims that respondent SSHA failed to present any evidence showing that it is a legally organized juridical entity, authorized by law to sue or be sued in its own name. Thus, pursuant to Section 1, Rule 3[24] of the 1997 Rules of Civil Procedure, it has no legal capacity to file this suit before the HLURB and the Court of Appeals.

SSHA counters that it has the capacity to sue as an association, since it is a member of the Federation of Valenzuela Homeowners Association, Inc., which is registered with the Securities and Exchange Commission. In the alternative, the individual members

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29 February 1960, 107 Phil. 298); [9] the subject matter is a private land in land case proceedings (*Soto v. Jareno*, No. L-38962, 15 September 1986, 228 Phil. 117); [10] the rule does not provide a plain, speedy, and adequate remedy, and [11] the circumstances of the case indicate the urgency of judicial intervention (*Quisumbing v. Gumban, supra*).

[23] *Supra*, note 21 at 558.

[24] SECTION 1. *Who may be parties; plaintiff and defendant*. — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, *etc*.) — party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, *etc*.) — party defendant.

of SSHA who signed both the resolution and the complaint in this case may, as natural persons, pursue the action.

There is merit in petitioner's contention. Under Section 1, Rule 3 of the Revised Rules of Court, only natural or juridical persons, or entities authorized by law may be parties in a civil action. Article 44[25] of the Civil Code enumerates the various classes of juridical persons. Under said Article, an association is considered a juridical person if the law grants it a personality separate and distinct from that of its members.[26] The records of the present case are bare of any showing by SSHA that it is an association duly organized under Philippine law. It was thus an error for the HLURB-NCR Office to give due course to the complaint in HLURB Case No. REM-070297-9821, given the SSHA's lack of capacity to sue in its own name. Nor was it proper for said agency to treat the complaint as a suit by all the parties who signed and verified the complaint. The members cannot represent their association in any suit without valid and legal authority. Neither can their signatures confer on the association any legal capacity to sue. Nor will the fact that SSHA belongs to the Federation of Valenzuela Homeowners Association, Inc., suffice to endow SSHA with the personality and capacity to sue. Mere allegations of membership in a federation are insufficient and inconsequential. The federation itself has a separate juridical personality and was not impleaded as a party in HLURB Case No. REM-070297-9821 nor in this case. Neither was it shown that the federation was authorized to represent SSHA. Facts showing the capacity of a party to sue or be sued

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[25] Art. 44. The following are juridical persons:

(1) The State and its political subdivisions;

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

[26] *Board of Optometry v. Hon. Colet*, G.R. No. 122241, 30 July 1996, 328 Phil. 1187, 1202.

or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred.[27] Hence, for failing to show that it is a juridical entity, endowed by law with capacity to bring suits in its own name, SSHA is devoid of any legal capacity, whatsoever, to institute any action.

Anent the *third issue*, the petitioner ascribes error to the appellate court for holding that P.D. No. 957 has retroactive application. She points out that there is no retroactivity provision in the said decree. Hence, it cannot be applied retroactively pursuant to Article 4[28] of the Civil Code of the Philippines. The same holds true for P.D. No. 1216, which amended Section 31 of P.D. No. 957 and imposed the open space requirement in subdivisions. Petitioner stresses that P.D. No. 1216 only took effect on October 14, 1977 or more than ten (10) years after the approval of the subdivision plans of Cecilio Santos.

Although it may seem that this particular issue, given our ruling on the first issue regarding the lack of capacity of SSHA to bring any action in its name, is now moot and academic, we are constrained to still address it.

This petition was brought to us not by respondent SSHA but by Gloria Santos Dueñas who assails the appellate court's finding that our ruling in *Eugenio v. Exec. Sec. Drilon*[29] allows P.D. No. 957, as amended, to apply retroactively.

We find merit in petitioner's contention.

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[27] RULES OF COURT, Rule 8, Sec. 4. *Capacity*. — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

[28] Art. 4. Laws shall have no retroactive effect, unless the contrary is provided.

[29] G.R. No. 109404, 22 January 1996, 322 Phil. 112, 118.

Eugenio v. Exec. Sec. Drilon is inapplicable. It is not on all fours with the instant case. The issue in *Eugenio* was the applicability of P.D. No. 957 to purchase agreements on lots entered into prior to its enactment where there was non-payment of amortizations, and failure to develop the subdivision. We held therein that although P.D. No. 957 does not provide for any retroactive application, nonetheless, the intent of the law of protecting the helpless citizens from the manipulations and machinations of unscrupulous subdivision and condominium sellers justify its retroactive application to contracts entered into prior to its enactment. Hence, we ruled that the non-payment of amortizations was justified under Section 23 of the said decree in view of the failure of the subdivision owner to develop the subdivision project.

Unlike *Eugenio*, non-development of the subdivision is not present in this case, nor any allegation of non-payment of amortizations. Further, we have held in a subsequent case[30] that P.D. No. 957, as amended, cannot be applied retroactively in view of the absence of any express provision on its retroactive application. Thus:

> . . . Article 4 of the Civil Code provides that laws shall have no retroactive effect, unless the contrary is provided. Thus, it is necessary that an express provision for its retroactive application must be made in the law. There being no such provision in both P.D. Nos. 957 and 1344, these decrees cannot be applied to a situation that occurred years before their promulgation. . . .

At any rate, our principal concern in this case is Section 31 of P.D. No. 957, an amendment introduced by P.D. No. 1216. Properly, the question should focus on the retroactivity of P.D. No. 1216 and not P.D. No. 957 *per se.*

We have examined the text of P.D. No. 1216 and nowhere do we find any clause or provision expressly providing for its retroactive application. Basic is the rule that no statute, decree, ordinance, rule or regulation shall be given retrospective effect

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[30] *People's Industrial and Commercial Corp. v. Court of Appeals*, G.R. No. 112733, 24 October 1997, 346 Phil. 189, 201-202.

unless explicitly stated.[31] Hence, there is no legal basis to hold that P.D. No. 1216 should apply retroactively.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 51601 are *REVERSED* and *SET ASIDE*. The Decision of the HLURB dated January 20, 1999 sustaining that of its Regional Office is *AFFIRMED* and *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 149428. June 4, 2004]

EDNA MARIS SOCORRO C. BRUAN, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent*.

SYNOPSIS

Edna Bruan filed a petition for the declaration of nullity of her marriage to Walter Bruan, the father of her daughter, Kimberly Ann. Edna and Walter arranged the latter's visitation rights to their daughter and agreed that violator thereof will be liable for contempt of court. Later, Walter filed a Motion to allow him to travel with Kimberly Ann to Germany for a study vacation for a period of four months. Edna was ordered to bring Kimberly Ann to the court but failed to comply with

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[31] *Republic of the Phils. v. Sandiganbayan*, G.R. No. 119292, 31 July 1998, 355 Phil. 181, 198.

the same. Later, Edna was found guilty of indirect contempt. Edna, however, alleged that she was denied of her right to due process as she was not served with the formal charge for contempt and the summons.

Edna, through her sister and through her counsel, was served with copies of Walter's petition for indirect contempt. She was notified of the hearings of the petition, one through counsel and the other by registered mail, but still failed to appear before the trial court. Edna cannot, therefore, claim that she was denied her right to due process.

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; PROCEDURAL REQUISITES. – Section 3, Rule 71 of the Rules of Court specifically outlines the procedural requisites before the accused may be punished for indirect contempt: (1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and (2) an opportunity for the person charged to appear and explain his conduct. All that the law requires is that there be a charge in writing duly filed in court and an opportunity given to the person charged to be heard by himself or counsel. What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses. This is due process which must be observed at all times. Criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved. It bears stressing that indirect contempt proceedings partake of the nature of a criminal prosecution. Thus, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed. A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a formal answer similar to that in ordinary civil actions, the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the charge.

On the date and time of the hearing, the court shall proceed to investigate the charges and consider such answer or testimony as the respondent may make or offer. The mode of procedure and rules of evidence therein are assimilated to criminal prosecutions. If he fails to appear on that date after due notice without justifiable reason, the court may order his arrest, just like the accused in a criminal case who fails to appear when so required. The court does not declare the respondent in a contempt charge in default.

APPEARANCES OF COUNSEL

Elizabeth A. Andres for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, of the Decision[1] of the Court of Appeals which affirmed the Regional Trial Court of Manila, Branch 37, finding the herein petitioner guilty of indirect contempt, and sentencing her to imprisonment of six months and to pay a fine of ₱30,000.

The antecedents are as follows:

The herein petitioner, Edna Maris Socorro Bruan married Walter Andreas B. Bruan in Lindenberg, Germany, on December 1, 1989. They have one child, Kimberly Ann Bruan, who was born on August 21, 1993 in Talisay, Batangas.

However, the marriage failed. On December 19, 1995, the petitioner left the conjugal abode in Talisay, Batangas, bringing Kimberly Ann with her. She filed a petition with the Regional Trial Court of Manila against Walter for the declaration of the nullity of their marriage, docketed as Special Proceedings No.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino concurring.

95-76402 raffled to Branch 37 of the court. On May 24, 1996, the parties entered into an agreement concerning Walter's visitation rights, wherein the latter shall fetch Kimberly Ann from Edna's house every Tuesday at 8:00 p.m. and return her to Edna every Friday at 8:00 p.m. The parties also agreed that any failure of the parties to abide by the agreement will hold him/her liable for contempt of court.

On February 4, 1997, Walter filed a Motion to Allow Him to Travel with Kimberly Ann to Germany for a "study vacation" for a period of four months, or until July 1997. On motion of Walter, the trial court conducted an ocular inspection of the conjugal house of the parties in Talisay, Batangas. Thereafter, Walter presented testimonial evidence, including the testimony of their househelper Esterlina Tonog and the social worker of the Department of Social Welfare and Development (DSWD) in the Batangas City Field Office. On March 7, 1997, the court issued an order directing Edna to bring Kimberly Ann to the court on March 14, 1997. The petitioner failed to comply with said order. Instead, she filed on March 17, 1997 a Notice of Withdrawal of Appearance of Counsel with Motion to Dismiss the Case. On March 18, 1997, Walter filed an *ex parte* motion to order the sheriff and/or the NBI to take custody of Kimberly Ann and to deliver her to Walter.

On March 21, 1997, Walter filed his comment on the petitioner's motion to dismiss the case. He also filed an *ex parte* motion to break open the conjugal abode and for the pick-up of Kimberly Ann. On the same day, the trial court issued an order granting the motion of Walter to bring Kimberly Ann to Germany upon a bond in the amount of ₱100,000. The court issued a separate order directing the sheriff of the court, the NBI or any government agency to pick up Kimberly Ann and deliver her to the respondent, and authorizing them to break open any building or enclosure to ensure the enforcement of the order.

On April 1, 1997, Walter filed a Motion to Order the Petitioner and Her Counsel, Atty. Orlando B. Medrano to Explain Why They Should Not Be Cited in Contempt of Court for their failure

to comply with the Orders of the court dated March 7 and 21, 1997. On April 4, 1997, the trial court granted the motion. On April 14, 1997, the court issued an order directing the service of its April 4, 1997 Order on the petitioner at No. 41 Guyabano Street, Project 2, Quezon City. However, the petitioner failed to comply with the order of the court directing her to explain why she should not be cited for contempt for her failure to comply with its March 7 and 21, 1997 Orders. On April 22, 1997, Walter filed a Motion to Cite the Petitioner in Contempt of Court.

Walter filed a motion to set the case for hearing, serving a copy thereof on the petitioner. The court granted the motion, and set the hearing on April 28, 1997, but was later reset to May 5, 1997, as the petitioner and her counsel were not notified of said hearing. The sheriff tried to serve a copy of the Order of the court dated April 28, 1997 on the petitioner through Carlo Bruan, Walter's brother, but Carlo refused to receive said order for the petitioner upon the prompting of his brother and sister not to receive any papers regarding the case as they did not know the petitioner's whereabouts. The case was then submitted for the decision of the court upon the filing of the parties' respective memorandum.

On August 4, 1997, Walter filed a petition with the RTC of Manila to cite the petitioner in contempt of court entitled as *Walter Bruan v. Edna Maris Socorro C. Bruan*, docketed as Civil Case No. 97-84420. The case was raffled to Branch 47 of the court. Walter alleged in his petition that despite orders of the court in Special Proceedings No. 95-76402, the petitioner failed and refused to deliver Kimberly Ann to him. The court granted Walter's motion for the consolidation of the case with Special Proceedings No. 95-76402 pending in Branch 37 of the court. The court, thereafter, issued summons on the petitioner, directing her to file her comment on or answer to the petition within a period of fifteen days from service thereof. The sheriff tried to serve the summons and the petition on Edna on August 26 and 28, 1997. As per the sheriff's return on the service of summons and the petition on the petitioner, it states:

THIS IS TO CERTIFY that on August 26 and 28, 1997, the undersigned caused the service of Summons together with a copy of Petition upon defendant Ms. Edna Maris Socorro C. Bruan at No. 41 Guayabano (*sic*) St., Project 2, Quezon City thru her sister Ms. Gigi Bruan, a person residing thereat, of sufficient age and discretion to receive such court process who signed to acknowledge receipt thereof.

That efforts to serve the said Summons personally upon defendant Ms. Edna Maris Socorro C. Bruan were made on August 26 and 28, 1997, but the same were ineffectual and unavailing for the following reasons, that as per given information by her sister Gigi, respondent is always out of the house at the time Summons was attempted to be serve (*sic*), thus, substituted service was made in accordance with Sec. 8, Rule 14 of the Revised Rules of Court.

The original copy of the Summons is, therefore, respectfully returned DULY SERVED.[2]

The sheriff, likewise, served a copy of the petition on the petitioner through counsel, Atty. Elizabeth A. Andres, as borne by the sheriff's return, *viz*:

THIS IS TO CERTIFY that on August 28, 1997, the undersigned caused the service of Summons together with a Copy of Petition and its annexes for the defendant Ms. Edna Maris Socorro C. Bruan, c/o Atty. Elizabeth A. Andreas (*sic*) at G/F, EAA Building No. 6, Rd. 3, Project 6, Quezon City, thru Miss Jessica Carpio, secretary/ receiving clerk, after instructions from Atty. Elizabeth A. Andreas (*sic*) to have it received and she affixed her signature on the surface of the Original Summons to acknowledge receipt thereof.

Therefore, the Original copy of the Summons is, respectfully, returned DULY SERVED.[3]

On August 29, 1997, Walter filed an Urgent Motion to Set the Petition for Indirect Contempt for Hearing at 9:00 a.m. on September 1, 1997 for the issuance of a warrant of arrest against the petitioner. The motion was set for hearing on the same day (August 29, 1997) at 2:00 p.m. However, a copy thereof was

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[2] CA *Rollo*, p. 103.

[3] *Id*. at 104.

only served on the petitioner's counsel on that day at 2:10 p.m. During the hearing on September 1, 1997, there was no appearance for the petitioner. The trial court issued an order denying the motion of Walter to set case for hearing, on its finding that a copy of the petition and summons had not yet been served on the petitioner per return of the sheriff.[4]

On September 18, 1997, Walter filed a Motion for An Issuance of a Warrant of Arrest against the petitioner as provided for in Section 6, Rule 71 of the Rules of Court, as amended. Walter alleged that the petitioner violated their compromise agreement and defied the order of the court when she failed/refused to deliver their daughter Kimberly Ann to him. He prayed that the petitioner be declared in contempt of court under Section 9, Rule 71 of the Rules of Court. The motion was set for hearing at 2:00 p.m. on September 26, 1997. A copy of the motion was sent to the petitioner by registered mail at No. 41 Guyabano Street, Proj. 2, Quezon City, on September 18, 1997.

On October 1, 1997, the trial court issued an order citing the petitioner in indirect contempt of court and sentenced her to suffer imprisonment of six months and to pay a fine of ₱30,000. The court also issued a warrant for her arrest. The clerk of court issued a certificate of finality of the order on February 20, 1998. On motion of Walter, the court issued an *Alias* Warrant of Arrest on July 8, 1998.

The petitioner was arrested after a year, or on August 6, 1999. On August 12, 1999, the court promulgated its Order declaring the petitioner in contempt of court. The petitioner, thereafter, filed a motion informing the court that Kimberly Ann had already been turned over to Walter and praying that she be released on recognizance of her counsel, which motion the court granted. The petitioner later appealed the August 12, 1999 Order of the court citing her in contempt.

Before the appellate court, the petitioner posited that in finding her guilty of indirect contempt, the trial court violated her right

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[4] *Id*. at 107.

to due process. She argued that per return of the sheriff and of the Order of the court dated September 1, 1997, she was not served with the formal charge for contempt and the summons. Despite this, she was found guilty of indirect contempt.

On August 9, 2001, the Court of Appeals rendered judgment affirming the decision of the RTC *in toto*.

In the instant petition, the petitioner avers that the trial court's order adjudging her guilty of indirect contempt is illegal because it was issued in violation of her constitutional right to due process. She contends that the trial court's Order of September 1, 1997 specifically states that she was not served with summons and the petition for indirect contempt. She notes that there was no hearing conducted before the trial court issued its order finding her guilty of indirect contempt.

We do not agree with the petitioner.

Section 3, Rule 71 of the Rules of Court specifically outlines the procedural requisites before the accused may be punished for indirect contempt: (1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and (2) an opportunity for the person charged to appear and explain his conduct.[5] All that the law requires is that there be a charge in writing duly filed in court and an opportunity given to the person charged to be heard by himself or counsel. What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses.[6] This is due process which must be observed at all times. Criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.[7]

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[5] *Pacuribot v. Lim, Jr.,* 275 SCRA 543 (1997).

[6] *Remman Enterprises, Inc. v. Court of Appeals*, 268 SCRA 688 (1997).

[7] *People v. Godoy*, 243 SCRA 64 (1995).

In *Mutuc v. Court of Appeals*,[8] the Court explained what due process means in contempt proceedings, to wit:

> There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" (*Rollo*, p. 173) but due process as a constitutional precept does not always, and in all situations, require a trial-type proceeding (*Zaldivar vs. Gonzales*, 166 SCRA 316 [1988] citing the ruling in *Torres vs. Gonzales*, 152 SCRA 272 [1987]). The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense (*Tajonera vs. Lamaroza*, 110 SCRA 438 [1981] and *Richards vs. Asoy*, 152 SCRA 45 [1987]). "To be heard" does not only mean verbal arguments in court; or may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process (*Juanita Yap Say vs. IAC*, G.R. No. 73451, March 28, 1988.)

It bears stressing that indirect contempt proceedings partake of the nature of a criminal prosecution. Thus, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed.[9]

A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a formal answer similar to that in ordinary civil actions, the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the charge. On the date and time of the hearing, the court shall proceed to investigate the charges and consider such answer or testimony as the respondent may make or offer. The mode of procedure and rules of evidence therein are assimilated to criminal prosecutions.[10] If he fails to

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[8] 190 SCRA 43 (1990).

[9] *Vide*, note 4.

[10] *Paredes-Garcia v. Court of Appeals*, 261 SCRA 693 (1996).

appear on that date after due notice without justifiable reason, the court may order his arrest, just like the accused in a criminal case who fails to appear when so required. The court does not declare the respondent in a contempt charge in default.[11]

In this case, the petitioner, through her sister Gigi Bruan, and through her counsel, was served with copies of Walter's petition for indirect contempt. She was notified, through her counsel, of the hearing of the petition on September 1, 1997, but she and her counsel failed to appear for the said hearing. She was, likewise, notified of the hearing set on September 26, 1997 by registered mail, and still failed to appear before the trial court. The petitioner cannot, thus, claim that she was denied her right to due process. We agree with the following disquisition of the Court of Appeals:

> From the facts of the case, it is apparent that appellant failed to comply with the Court's Order relative to the terms and conditions of the Compromise Agreement. On several hearings, appellant failed to appear in court despite service of notice upon her. Thus, on April 4, 1997, on motion of the respondent, the Court directed appellant and her counsel to explain why they should not be cited in contempt of court for their failure to comply with the Orders dated March 7 and 21, 1997. Again, appellant did not submit any responsive pleading relative thereto.
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> Thus, respondent had no other recourse but to charge appellant in writing by filing a separate Petition for Indirect Contempt pursuant to Sec. 3, Rule 71 of the Rules of Court. Records show that appellant was given the opportunity to comment thereon when Summons was served upon her by substituted service, thru her counsel, Atty. Elizabeth Andres, and appellant's sister, Gigi Bruan. The return made by the Process Server of said Court dated August 29, 1997 states that *"efforts to serve the said Summons personally upon defendant Ms. Edna Maris Socorro C. Bruan were made on August 26 and 28, 1997, but the same were ineffectual and unavailing for the following reasons, that as per given information by her sister, Gigi, respondent is always out of the house at the time Summons was attempted to be serve (sic), thus, substituted service was made*

[11] Regalado, *Remedial Law Compendium, Civil Procedure,* Vol. 1, Seventh Edition.

in accordance with Sec. 7, Rule 14 of the Revised Rules of Court." Hence, there is no question that appellant was duly served with summons by substituted service, and this is essential in order for the court to acquire jurisdiction over her person.

In the contempt case, respondent filed an "Urgent Motion to Set Case for Hearing" dated August 29, 1997 for the issuance of a warrant of arrest against respondent, which was, however, denied by the Court in an Order dated September 1, 1997, on the ground that summons has not been served on appellant. On September 18, 1997, respondent filed a "Motion for Issuance of Warrant of Arrest" alleging, among other things, that respondent was duly served with summons by substituted service in accordance with Sec. 7 of Rule 14 of the Rules of Court, and since appellant has been in hiding with the minor child and a hearing cannot be had, a warrant of arrest should be issued against her. Finding the same to be meritorious, the lower court issued the assailed Order dated October 1, 1997.

Indeed, it is apparent that the questioned Order of the lower court dated October 1, 1997 citing appellant in contempt of court was not issued without the observance of procedural due process. On the contrary, appellant was afforded all the opportunity to appear and explain her conduct. Hence, appellant's claim that her right to a hearing was violated is unavailing considering that by her failure to appear in court since 1997 and explain her side, she is deemed to have waived her right to adduce evidence to controvert complainant's claim.

Clearly, appellant was given all the opportunity to defend herself against the charge of Indirect Contempt filed against her. If she failed to do so, the fault lies on her and not upon the court. Her actuations clearly show defiance and clear disregard of the law. As correctly found by the trial court:

> "xxx Despite the lapse of almost half a year, she had refused to share custody of their lone child with her husband, despite the finality of the Order dated August 23, 1996, in relation to the Order (*sic*) May 24, 1996. While it would seem that she initially complied with the same, she has refused obedience thereto since March 1997. It is noteworthy that the wife began throwing to the winds obedience to the Order when her husband sought permission to bring with him their lone child to Germany for a study vacation. A review of the testimony of the witnesses presented by her husband, especially Esterlina Tong (*sic*), would

> bear out the obstinate character of the respondent in this case. However, this obstinacy cannot be countenanced by this Court, as it cannot allow one party litigant to frustrate the ends of justice."

By and large, appellant's willful disregard and disobedience to the Court's Orders constitute an affront to the authority and dignity of the Court. Such conduct of appellant tends to bring the authority of the court and the administration of law into disrepute and, likewise, impedes the due administration of justice.[12]

As to the penalty imposed on the petitioner, we find the same too severe under the factual milieu of this case. The respondent (Walter) was compelled to institute the action for indirect contempt against the petitioner for not allowing him to see their minor child on several occasions, and to produce the child in court as required by the latter. As keenly observed by the trial court, the petitioner's obstinate conduct started when the husband sought permission to bring their minor child to Germany for a "study vacation." Understandably, the petitioner, as a mother, was overtaken by an instinctive fear that her daughter would be taken away and would never be returned to her. In a Motion filed on August 18, 1999, the petitioner stated that the minor child was already with Walter. Under such circumstance, we find that a fine of ₱5,000 is just and reasonable.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The decision of the Court of Appeals is *AFFIRMED WITH MODIFICATION*. The petitioner is *ORDERED* to pay a fine of Five Thousand Pesos (₱5,000) for being guilty of indirect contempt.

SO ORDERED.

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

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[12] CA *Rollo*, pp. 163-165.

SECOND DIVISION

[G.R. No. 152134. June 4, 2004]

ENDREO MAGBANUA, VALLACAR TRANSIT, INC., and its Present Corporate Official RICARDO YANSON, *petitioners, vs.* **JOSE TABUSARES, JR., EVA T. LAFIGUERA, NONA C. TABUSARES, JUN C. TABUSARES, FE C. TABUSARES and JAX C. TABUSARES,** *respondents*.

SYNOPSIS

Jury Tabusares died in a vehicular mishap involving a jeepney and a passenger bus owned and operated by petitioners. The trial court held the drivers of both vehicles solidarily liable for damages. The issue raised by petitioners was the computation of the award of damages for loss of the deceased's earning capacity.

The Court held that the formula for the computation of unearned income is: Net Earning Capacity equals life expectancy multiplied by the gross annual income less the living expenses. Life expectancy is determined in accordance with the formula: 2/3 x [80-age of deceased]. On the amount of living expenses, the Court had consistently pegged the amount at 50% of the gross annual income. Here, as there was no evidence whether the living expenses of the victim constituted a bigger or smaller percentage of his gross income, the Court deemed it fair to assume that it was 50% of his gross annual income.

SYLLABUS

1. **CIVIL LAW; DAMAGES; LOSS OF EARNING CAPACITY; ELUCIDATED. –** Article 2205 of the New Civil Code allows the recovery of damages for "loss or impairment of earning capacity in cases of temporary or permanent personal injury." Such damages covers the loss sustained by the dependents or heirs of the deceased, consisting of the support they would have received from him had he not died because of the negligent act of another. The loss is not equivalent to the entire earnings of the deceased, but only that portion that he would have used

to support his dependents or heirs. Hence, we deduct from his gross earnings the necessary expenses supposed to be used by the deceased for his own needs. Aside from the loss sustained by the heirs of the deceased, another factor considered in determining the award of loss of earning capacity is the life expectancy of the deceased which takes into account his work, lifestyle, age and state of health prior to the accident. Thus, the formula for the computation of unearned income is: Net life gross living Earning = expectancy x annual less expenses Capacity income Life expectancy is determined in accordance with the formula: 2/3 x [80 – age of deceased]

2. ID.; ID.; ID.; LIVING EXPENSES TO BE DEDUCTED FROM THE DECEASED'S GROSS ANNUAL INCOME; CONSISTENTLY PEGGED AT 50% OF THE GROSS ANNUAL INCOME. – A survey of more recent jurisprudence shows that the Court consistently pegged the amount of living expenses at 50% of the gross annual income. We held in *Smith Bell Dodwell Shipping Agency Corp. vs. Borja* that when there is no showing that the living expenses constituted a smaller percentage of the gross income, we fix the living expenses at half of the gross income. There is no evidence in the case at bar whether the living expenses of the victim, Jury Tabusares, constituted a bigger or smaller percentage of his gross income. In such case, it is fair to assume that it is 50% of his gross annual income.

APPEARANCES OF COUNSEL

Segundo Y. Chua for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

PUNO, *J.*:

The case at bar arose from the complaint for damages filed by spouses Jose Tabusares, Sr. and Rebecca Tabusares against petitioners, Endreo A. Magbanua, Vallacar Transit, Inc., and/or its corporate officials for the tragic death of their son, Jury Tabusares, in a vehicular mishap involving a Ceres Liner Bus

owned and operated by petitioners. The case was docketed as Civil Case No. 4654 before the Regional Trial Court of Negros Occidental, Branch 48, Bacolod City.

The facts, as found by the trial court, are as follows:

At about 4:30 o'clock in the afternoon of October 25, 1986, a Ceres Liner Bus No. 154 with Plate No. GVG 469, driven by Endreo Magbanua and owned and operated by Vallacar Transit, Inc., and an Amante Type Jeepney bearing Plate No. FBN 996, driven by Felipe Palacios and owned by Salvador Algara, Sr. figured in a vehicular accident along the national road at Hda. Mabuhay, Gil Montilla, Sipalay, Negros Occidental. The Ceres Liner Bus bumped the rear portion of the Amante Type Jeepney while both vehicles were running downhill on the same direction towards the town of Sipalay from the North. Due to the impact, several passengers of the Amante Type Jeepney were thrown out and ran over by the Ceres Liner Bus and died as a result of the injuries they sustained. (O)ne of those killed was Jury Tabusares, 27 years of age, single, an employee of the Maricalum Copper Mines as Oiler 2B and was then receiving ₱1,256.00 monthly salary plus ₱510.00 cost of living allowance (COLA) or a total monthly income of ₱1,766.00. Jury Tabusares was the son of the plantiffs Jose Tabusares, Sr. and Rebecca Tabusares. Immediately before the bumping accident, the Ceres Liner Bus' driver, Endreo Magbanua, was trying to overtake the Amante Type Jeepney ahead of him and he said that he did not apply his brakes because he cannot overtake if he will slow down. The Amante Type Jeepney was overloaded with 35 passengers and some of them clinging on its sides and some were riding on the roof. While the Ceres Liner (B)us was about one and a half (1½) meters from the Amante Type Jeepney, the bus driver saw that the jeepney went zigzagging on the middle of the road and since he could not control the bus anymore it bumped the rear portion of the jeep.

After a careful perusal of the circumstances of the case, the (c)ourt finds that the Amante Type Jeepney, as testified to by its own driver, Felipe Palacios, was not a passenger jeepney but a private vehicle which is used by its owner Salvador Algara, Sr., who is an ambulant peddler in his peddling business. But, although not for passengers, it was carrying 35 passengers at the time of the bumping accident on October 25, 1986 as testified to by Traffic Investigator Pfc. Praxedes Campillanos of the Sipalay Police Command, Sipalay, Negros Occidental. This jeep had a seating capacity of only 16

passengers but it was made to accommodate passengers on its roof and some were clinging on its side. This act is not only gross negligence but it was violative of the traffic rules and regulations. On the other hand, the (c)ourt also finds that the driver of the Ceres Liner Bus was driving his vehicle negligently and recklessly because Endreo Magbanua testified and admitted that while driving the bus downhill and following the Amante type Jeepney ahead of him, he did not apply his brakes because he was trying to overtake when he bumped the jeep on its rear portion. This act was negligent and reckless because Endreo Magbanua could have avoided the bumping of the jeepney had he applied his brakes considering that he has the last clear chance to prevent a collision by slowing down and reducing speed.[1]

The trial court found that the negligent acts of the drivers of both the jeepney and the Ceres Liner Bus combined in directly causing the death of Jury Tabusares. It therefore held both drivers solidarily liable for damages. The court ruled:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering and condemning the defendants Endreo A. Magbanua, Vallacar Transit, Inc., thru and represented by its corporate official Ricardo Yanson, Felipe T. Palacios and Salvador Algara, Sr. to pay jointly and severally to the plantiffs, as follows:

1. The sum of ₱50,000.00 as indemnity for the death of Jury Tabusares;

2. The amount of ₱699,336.00 as indemnity for the loss of the earning capacity of the late Jury Tabusares;

3. The amount of ₱27,600.00 as reimbursement for actual expenses in connection with the death and burial of the said deceased;

4. The amount of ₱10,000.00 as moral damages; and

5. The sum of ₱10,000.00 as reasonable attorney's fees.

The cross-claim of defendant Salvador Algara, Sr. against the defendants Endreo A. Magbanua and Vallacar Transit, Inc., represented by its corporate official Ricardo Yanson, is hereby allowed and defendants Endreo A. Magbanua and Vallacar Transit, Inc., represented

[1] Decision penned by Judge Antonio E. Arbis, Civil Case No. 4654, pp. 11-12; Original Records, pp. 360-361.

by it (*sic*) corporate official Ricardo Yanson are hereby ordered to indemnify Salvador Algara, Sr. in such amount as he may be required to pay as damages to the herein plaintiffs.

The counterclaims of the defendants against the plaintiffs are hereby dismissed for lack or merit.

SO ORDERED.[2]

Petitioners appealed to the Court of Appeals. They prayed that the decision of the trial court be reversed insofar as their liabilities are concerned.[3]

During the pendency of the appeal, Jose Tabusares, Sr. and his wife, Rebecca, passed away. On May 18, 1999, the Court of Appeals approved the substitution of the late spouses by their heirs, namely: Jose Tabusares, Jr., Eva T. Lafiguera, Nona C. Tabusares, Jun C. Tabusares, Fe C. Tabusares and Jax C. Tabusares.[4]

On March 13, 2001, the Court of Appeals rendered its decision. It affirmed the factual findings of the trial court, but modified the award of damages, reducing the amount of lost earning to ₱374,392.00. It made the following computation:

In the case at bar, the victim Jury Tabusares was twenty-seven (27) years old at the time of death. With 65 years as the given life expectancy in the Philippines, the victim was expected to live for another thirty-eight (38) years. In respect of income, the victim was receiving the amount of ₱1,766.00 as total monthly income or a gross yearly income of ₱21,192.00. Multiplied by 38, the number of years the victim is expected to continue living, the amount arrived at is ₱748,784.00 using the formula 2/3 x [80-27] x 21,192.00. From the said figure must be deducted the reasonable amount of ₱374,392.00 or 50% thereof representing the living and other necessary expenses of the deceased had he continued to live. Hence, the lost earnings of the deceased should be ₱374,392.00.[5]

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[2] Decision, Civil Case No. 4654, pp. 12-13; Original Records, pp. 361-362.

[3] Appellants' Brief, CA *Rollo*, pp. 53-112.

[4] CA *Rollo*, p. 188.

[5] Decision dated March 13, 2001 penned by Justice Rebecca De Guia-Salvador, p. 9; *Rollo*, p. 33.

Petitioners filed a partial motion for reconsideration of the decision of the Court of Appeals, praying for a reduction of the amount of damages for loss of earning capacity. The Court of Appeals denied the motion.[6] Hence, this petition.

Petitioners, while accepting the factual findings of the trial court and the appellate court, now assail the latter's computation of the award of damages for loss of earning capacity. They contend that there are varying computations used in the decisions of this Court. In *People vs. Lopez*,[7] the Court applied the following formula:

2/3 x (80-27) x ₱21,192.00 – 50%

However, the following formula was employed in *People vs. Muyco, et al.*:[8]

2/3 x (80 – 27) x ₱21,192.00 – 80%

The difference lies in the computation of the net income of the victim. In the *Lopez* case, net income was derived by deducting 50% of the gross annual income, while in the *Muyco* case, the amount deducted was 80% of the gross annual income. The Court of Appeals followed the computation in *People vs. Lopez* as it was "the prevailing case law at the time of the decision appealed from was promulgated and unmistakably more favorable to the heirs of the deceased xxx."[9] Petitioners argue that the instant case was decided by the Court of Appeals one year and six months after the promulgation of *People vs. Muyco*, therefore, the Court should apply the computation in the latter case.[10]

On the other hand, the respondents, in their comment, cite other cases decided after the *Muyco* case where the Court applied

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[6] Resolution dated January 18, 2002, *Rollo*, pp. 42-43.

[7] 312 SCRA 684 (1999).

[8] 331 SCRA 192 (2000).

[9] Resolution dated January 18, 2002, p. 2; *Rollo* p. 43.

[10] Petition, *Rollo*, pp. 15-20.

the formula in the *Lopez* case. They submit that the computation in *People vs. Lopez* should be applied in this case.[11]

The petition is devoid of merit.

Article 2205 of the New Civil Code allows the recovery of damages for "loss or impairment of earning capacity in cases of temporary or permanent personal injury." Such damages covers the loss sustained by the dependents or heirs of the deceased, consisting of the support they would have received from him had he not died because of the negligent act of another. The loss is not equivalent to the entire earnings of the deceased, but only that portion that he would have used to support his dependents or heirs. Hence, we deduct from his gross earnings the necessary expenses supposed to be used by the deceased for his own needs. The Court explained in *Villa Rey Transit, Inc. vs. Court of Appeals*[12] that:

> (the award of damages for loss of earning capacity is) concerned with the determination of the losses or damages sustained by the private respondents, as dependents and intestate heirs of the deceased, and that said damages consist, *not* of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of petitioner's agent. In fixing the amount of that support, we must reckon with the 'necessary expenses of his own living,' which should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his *net* earning capacity or his capacity to acquire money, *'less the necessary expense for his own living.'* Stated otherwise, the amount recoverable is *not* loss of the *entire* earning, but rather the loss of that *portion* of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earning are to be considered that is, the total of the earnings *less* expenses necessary in the creation of such earnings or income and less living and other incidental expenses.

Aside from the loss sustained by the heirs of the deceased, another factor considered in determining the award of loss of

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[11] Comment, *Rollo*, pp. 50-56.

[12] 31 SCRA 511 (1970).

earning capacity is the life expectancy of the deceased which takes into account his work, lifestyle, age and state of health prior to the accident.[13]

Thus, the formula for the computation of unearned income is:

Net Earning Capacity	=	life expectancy	x	gross annual income	less	living expenses

Life expectancy is determined in accordance with the formula:

2/3 x [80 – age of deceased]

The bone of contention in this case is the amount of living expenses that should be deducted from the deceased's gross annual income — whether 50% or 80%.

A survey of more recent jurisprudence shows that the Court consistently pegged the amount at 50% of the gross annual income.[14] We held in *Smith Bell Dodwell Shipping Agency Corp. vs. Borja*[15] that when there is no showing that the living expenses constituted a smaller percentage of the gross income, we fix the living expenses at half of the gross income, thus:

> In other words, only net earnings, not gross earnings, are to be considered; that is, the total of the earnings less expenses necessary in the creation of such earnings or income, less living and other incidental expenses. *When there is no showing that the living expenses constituted a smaller percentage of the gross income, we fix the living expenses at half of the gross income. To hold that one would have used only a small part of the income, with the larger part going to the support of one's children, would be conjectural and unreasonable.* (Italics supplied)

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[13] See *Pestaño vs. Sumayang*, 346 SCRA 870 (2000).

[14] See *People vs. Mataro*, 354 SCRA 27 (2001); *People vs. Laut*, 351 SCRA 93 (2001); *People vs. Aspiras*, 330 SCRA 497 (2000); *People vs. Cerbito*, 324 SCRA 304 (2000).

[15] 383 SCRA 341 (2002); See also *Negros Navigation Co., Inc. vs. Court of Appeals*, 281 SCRA 534 (1997).

There is no evidence in the case at bar whether the living expenses of the victim, Jury Tabusares, constituted a bigger or smaller percentage of his gross income. In such case, it is fair to assume that it is 50% of his gross annual income. Hence, we find that the Court of Appeals did not err in its computation of the award of loss of unearned income to petitioner.

IN VIEW WHEREOF, the petition is *DENIED*. The assailed decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 156627. June 4, 2004]

SPOUSES MANUEL and JOCELYN BARREDO, *petitioners, vs.* **SPOUSES EUSTAQUIO and EMILDA LEAÑO,** *respondents*.

SYNOPSIS

In 1979, the Barredo spouses bought a house and lot with the proceeds of a loan from the Social Security System (SSS) and the Apex Mortgage and Loans Corp. (Apex). They executed mortgages over the property in favor of SSS and the Apex. In 1987, the Barredo spouses sold their house and lot to respondent Leaño spouses by way of a Conditional Deed of Sale with Assumption of Mortgages. It was stipulated that the Leaño spouses would pay the Barredos ₱200,000, assume the mortgages and pay the monthly amortizations. Later, however, the Barredo spouses initiated a complaint for the rescission of the contract on the ground that the Leaño spouses failed to pay the mortgage amortizations.

Rescission of the contract is not proper as the assumption of mortgage debts was not a substantial condition therein. The payment of amortizations was just a collateral matter which is a natural consequence of the sale of a mortgaged property. The Leaño spouses merely bound themselves to assume the obligations. Nowhere in the agreement was it stipulated that the sale was conditioned upon the full payment of the loans. And even then, non-compliance with the said condition was just a minor breach that does not defeat the very object of the contract.

SYLLABUS

1. CIVIL LAW; CONTRACTS; INTERPRETATION; WHEN THE LANGUAGE OF THE CONTRACT IS CLEAR, IT REQUIRES NO INTERPRETATION, AND ITS TERMS SHOULD NOT BE DISTURBED. – When the language of the contract is clear, it requires no interpretation, and its terms should not be disturbed. The primary and elementary rule of construction of documents is that when the words or language thereof is clear and plain or readily understandable by any ordinary reader thereof, there is absolutely no room for interpretation or construction anymore and the literal meaning of its stipulations shall control.

2. ID.; ID.; ID.; TERMS OF AGREEMENT REDUCED TO WRITING DEEMED TO CONTAIN ALL MATTERS THAT THERE CAN BE AND PARTIES ARE BOUND THEREBY. – The "Conditional Sale with Assumption of Mortgage" provides that the Leaño Spouses "bind themselves to assume x x x the payment of the unpaid balance x x x." Hence, the Leaño Spouses merely bound themselves to assume, which they actually did upon the signing of the agreement, the obligations of the Barredo Spouses with the SSS and Apex. Nowhere in the agreement was it stipulated that the sale was conditioned upon their full payment of the loans with SSS and Apex. To include the full payment of the obligations with the SSS and Apex as a condition would be to unnecessarily stretch and put a new meaning to the provisions of the agreement. For, as a general rule, when the terms of an agreement have been reduced to writing, such written agreement is deemed to contain all the terms agreed upon and there can be, between the parties and their successors-

in-interest, no evidence of such terms other than the contents of the written agreement. And, it is a familiar doctrine in obligations and contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to, which is the law between them, the only limitation being that these stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy. Not being repugnant to any legal proscription, the agreement entered into by the parties must be respected and each is bound to fulfill what has been expressly stipulated therein.

3. ID.; ID.; RESCISSION; NOT PROPER IN NON-PAYMENT OF MORTGAGE AMORTIZATIONS IN "SALE WITH ASSUMPTION OF MORTGAGE." – But even if we consider the payment of the mortgage amortizations to the SSS and Apex as a condition on which the sale is based on, still rescission would not be available since non-compliance with such condition would just be a minor or casual breach thereof as it does not defeat the very object of the parties in entering into the contract. A cursory reading of the agreement easily reveals that the main consideration of the sale is the payment of ₱200,000.00 to the vendors within the period agreed upon. The assumption of mortgage by the Leaño Spouses is a natural consequence of their buying a mortgaged property. In fact, the Barredo Spouses do not stand to benefit from the payment of the amortizations by the Leaño Spouses directly to the SSS and Apex simply because the Barredo Spouses have already parted with their property, for which they were already fully compensated in the amount of ₱200,000.00.

4. ID.; ID.; ID.; DUTY OF PARTIES. – Art. 1385 of the Civil Code provides that "[r]escission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest. The vendor therefore obliged to return the purchase price paid to him by the buyer if the latter rescinds the sale. Thus, where a contract is rescinded, it is the duty of the court to require both parties to surrender that which they have respectively received and place each other as far as practicable in his original situation.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for respondents.

D E C I S I O N

PUNO, *J.*:

In resolving the case at bar, we hearken back to the time-honored principle in obligations and contracts enunciated by this Court some 80 years ago in *Song Fo & Co. v. Hawaiian Philippine Co.*[1] that the rescission of contracts will not be permitted for a slight or casual breach thereof.

The factual antecedents are undisputed. Sometime in 1979, petitioners spouses Manuel and Jocelyn Barredo (Barredo Spouses) bought a house and lot located along Lilac Road, Pilar Village, Las Piñas, Metro Manila, with the proceeds of a ₱50,000.00 loan from the Social Security System (SSS) which was payable in 25 years and an ₱88,400.00 loan from the Apex Mortgage and Loans Corporation (Apex) which was payable in 20 years. To secure the twin loans, they executed a first mortgage over the house and lot in favor of SSS and a second one in favor of Apex.

On July 10, 1987, the Barredo Spouses sold their house and lot to respondents Eustaquio and Emilda Leaño (Leaño Spouses) by way of a Conditional Deed of Sale with Assumption of Mortgage. The Leaño Spouses would pay the Barredo Spouses ₱200,000.00, ₱100,000.00 of which would be payable on July 15, 1987, while the balance of ₱100,000.00 would be paid in ten (10) equal monthly installments after the signing of the contract. The Leaño Spouses would also assume the first and second mortgages and pay the monthly amortizations to SSS and Apex beginning July 1987 until both obligations are fully paid.

In accordance with the agreement, the purchase price of ₱200,000.00 was paid to the Barredo Spouses who turned over the possession of the house and lot in favor of the Leaño Spouses. Two (2) years later, on September 4, 1989, the Barredo Spouses initiated a complaint before the Regional Trial Court of Las Piñas seeking the rescission of the contract on the ground that

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[1] 47 Phil. 821, 827 (1925).

the Leaño Spouses despite repeated demands failed to pay the mortgage amortizations to the SSS and Apex causing the Barredo Spouses great and irreparable damage. The Leaño Spouses, however, answered that they were up-to-date with their amortization payments to Apex but were not able to pay the SSS amortizations because their payments were refused upon the instructions of the Barredo Spouses.

Meanwhile, allegedly in order to save their good name, credit standing and reputation, the Barredo Spouses took it upon themselves to settle the mortgage loans and paid the SSS the sum of ₱27,494.00 on September 11, 1989, and ₱41,401.91 on January 9, 1990. The SSS issued a Release of Real Estate Mortgage Loan on January 9, 1990. They also settled the mortgage loan with Apex and paid the sum of ₱5,379.23 on October 3, 1989, and ₱64,000.00 on January 9, 1990. Likewise, Apex issued a Certification of Full Payment of Loan on January 12, 1990. They also paid the real estate property taxes for the years 1987 up to 1990.

On October 5, 1993, the Regional Trial Court of Las Piñas, Br. 275,[2] ruled that the assumption of mortgage debts of the Barredo Spouses by the Leaño Spouses "is a very substantial condition xxx The credit standing of the (Barredo Spouses) will be greatly prejudiced should they appear delinquent or not paying at all. This is what the (Barredo Spouses) feared so much, if foreclosure proceedings are resorted to because of their failure to pay their obligations."[3] The trial court thus rendered judgment in favor of the plaintiff, the Barredo Spouses —

WHEREFORE, and in consideration of the foregoing, by preponderance of evidence, judgment is hereby rendered in favor of the plaintiffs and against the defendants by: (1) declaring the Conditional Deed of Sale with Assumption of Mortgage entered into by the plaintiffs and the defendants on July 10, 1987, as rescinded and therefore null and void as of this date; (2) ordering the defendants jointly and severally to pay the sum of ₱15,000.00 as actual and

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[2] Judge Florentino M. Alumbres, presiding.

[3] Decision of the trial court, p. 8; *Rollo*, p. 39.

litigation expenses, and the sum of ₱25,000.00 as and by way of attorney's fees; and (3) to pay the costs.

SO ORDERED.[4]

Aggrieved, the Leaño Spouses who have turned over the possession of the subject house and lot to the Barredo Spouses appealed to the Court of Appeals. On May 21, 2002, the appellate court reversed and set aside the decision of the trial court on the ground that the payments of amortization to Apex and SSS were mere collateral matters which do not detract from the condition of paying the principal consideration.[5] The dispositive portion of the decision reads —

WHEREFORE, the questioned decision of the Regional Trial Court of Las Piñas, Branch 275, is hereby *REVERSED* and *SET ASIDE*, and another one is entered *DISMISSING* the complaint for lack of cause of action, and ordering plaintiff-appellees to:

a) execute the Deed of Absolute Sale and to deliver TCT No. S-104634 in favor of defendants-appellants upon full payment of the amounts of ₱68,895.91, ₱69,379.23 and ₱2,217.60, or a total of ₱140,492.74, subject to the legal rate of interest per annum from the time said payments were made by plaintiffs-appellees until the same are fully paid;

b) to vacate and/or turn over the said property to defendants-appellants;

c) to pay attorney's fees in the sum of ₱20,000.00 and

d) to pay the costs of litigation.

SO ORDERED.[6]

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[4] *Ibid*.

[5] Special Twelfth Division; Decision penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Mariano C. Del Castillo and Edgardo F. Sundiam.

[6] Decision of the Court of Appeals, p. 9; *Rollo*, p. 29.

On December 10, 2002, the appellate court denied the motion for reconsideration for lack of merit. Hence, this petition for review on *certiorari* on a sole assignment of error —

CONTRARY TO THE EXPRESS FINDINGS OF THE TRIAL COURT THAT THERE WAS SUBSTANTIAL AND FUNDAMENTAL BREACH BY THE RESPONDENTS OF THEIR RECIPROCAL OBLIGATIONS TO ASSUME AND PAY THE MORTGAGE OBLIGATION OF PETITIONERS WITH THE SSS AND APEX, THE COURT OF APPEALS ERRED IN HOLDING THAT THE PAYMENTS OF AMORTIZATION TO APEX AND SSS ARE MERE COLLATERAL MATTERS AND DISMISSING PETITIONERS' COMPLAINT FOR LACK OF CAUSE OF ACTION.[7]

Petitioners argue that the terms of the agreement called for the strict compliance of two (2) equally essential and material obligations on the part of the Leaño Spouses, namely, the payment of the ₱200,000.00 to them and the payment of the mortgage amortizations to the SSS and Apex. And, the Barredo Spouses undertook to execute the corresponding Deed of Absolute Sale only upon the faithful compliance by the Leaño Spouses of the conditions set forth in their agreement. Thus, the failure of the Leaño Spouses to pay the mortgage amortizations to the SSS and Apex gave rise to the right of the Barredo Spouses to refrain from executing the deed of sale and in fact ask for rescission, a right accorded to an injured party.

Respondents Leaño Spouses, however, contend that they were only obliged to assume the amortization payments of the Barredo Spouses with the SSS and Apex, which they did upon signing the agreement. The contract does not stipulate as a condition the full payment of the SSS and Apex mortgages. Granting for argument's sake that their failure to pay in full the mortgage was not a full compliance of their obligation, they could not be faulted because their payments were not accepted by the SSS since the Barredo Spouses failed to notify the SSS of the assignment of their debt. In fine, the alleged breach, if any, was only casual or slight and does not defeat the very

[7] Petition, p. 6; *Id*., p. 13.

object of the parties in entering into the agreement. Moreover, the Barredo Spouses were not and will never be injured parties since if the amortizations were not paid, it would be the Leaño Spouses who would eventually lose the house and lot. As such, rescission does not obtain.

We quote the pertinent provisions of the Conditional Deed of Sale with Assumption of Mortgage —

> 1. ONE HUNDRED THOUSAND PESOS (₱100,000.00) Philippine Currency, shall be paid by the VENDEES to the VENDORS on July 15, 1987.
>
> 2. The balance of ONE HUNDRED THOUSAND PESOS (₱100,000.00) Philippine Currency, shall be paid by the VENDEES to the VENDORS in ten (10) equal monthly installments at the VENDORS' residence, after the signing of this Contract, consisting of ten (10) post-dated checks drawn against the checking account of the VENDEES beginning August 1, 1987, and the succeeding months xxx until the amount is fully paid and the checks properly encashed xxx
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> 3. The VENDEES do hereby accept this Sale and bind themselves to assume as they hereby assume beginning on July 1, 1987, the payment of the unpaid balance of the First Mortgage indebtedness of the VENDORS with the Social Security System as of June 1, 1987 xxx and another indebtedness of the VENDORS in a 2nd Mortgage with the Apex Mortgage and Loans Corporation, as of June 1, 1987, xxx and that the herein VENDEES do hereby further agree to be bound by the precise terms and conditions therein contained.
>
> 4. That should the VENDEES well and faithfully comply with the conditions set forth in this Contract, then the VENDORS shall execute the corresponding Absolute Deed of Sale over the property herein conveyed with assumption of the mortgages aforecited, in favor of the VENDEES herein.

A careful reading of the pertinent provisions of the agreement readily shows that the principal object of the contract was the sale of the Barredo house and lot, for which the Leaño Spouses gave a down payment of ₱100,000.00 as provided for in par. 1 of the contract, and thereafter ten (10) equal monthly

installments amounting to another ₱100,000.00, as stipulated in par. 2 of the same agreement. The assumption of the mortgages by the Leaño Spouses over the mortgaged property and their payment of amortizations are just collateral matters which are natural consequences of the sale of the said mortgaged property.

Thus, par. 3 of the agreement provides that the Leaño Spouses "bind themselves to assume as they hereby assume beginning on July 1, 1987, the payment of the unpaid balance xxx" Hence, the Leaño Spouses merely bound themselves to assume, which they actually did upon the signing of the agreement, the obligations of the Barredo Spouses with the SSS and Apex. Nowhere in the agreement was it stipulated that the sale was conditioned upon their full payment of the loans with SSS and Apex. When the language of the contract is clear, it requires no interpretation,[8] and its terms should not be disturbed.[9] The primary and elementary rule of construction of documents is that when the words or language thereof is clear and plain or readily understandable by any ordinary reader thereof, there is absolutely no room for interpretation or construction anymore[10] and the literal meaning of its stipulations shall control.[11]

To include the full payment of the obligations with the SSS and Apex as a condition would be to unnecessarily stretch and put a new meaning to the provisions of the agreement. For, as a general rule, when the terms of an agreement have been reduced to writing, such written agreement is deemed to contain all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other

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[8] *Petrophil Corp. v. Court of Appeals*, G.R. No. 122796, 10 December 2001, 371 SCRA 702.

[9] *Tanguilig v. Court of Appeals*, G.R. No. 117190, 2 January 1997, 266 SCRA 78.

[10] *Leveriza v. Intermediate Appellate Court*, G.R. No. 66614, 25 January 1988, 157 SCRA 282, citing San *Mauricio Mining Co. v. Ancheta*, No. L-47859 & G.R. No. 57132, 10 July 1981, 105 SCRA 371, 418.

[11] Article 1370, Civil Code; *R & M General Merchandise, Inc. v. Court of Appeals*, G.R. No. 144189, 5 October 2001, 366 SCRA 679.

than the contents of the written agreement.[12] And, it is a familiar doctrine in obligations and contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to, which is the law between them, the only limitation being that these stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy.[13] Not being repugnant to any legal proscription, the agreement entered into by the parties must be respected and each is bound to fulfill what has been expressly stipulated therein.[14]

But even if we consider the payment of the mortgage amortizations to the SSS and Apex as a condition on which the sale is based on, still rescission would not be available since non-compliance with such condition would just be a minor or casual breach thereof as it does not defeat the very object of the parties in entering into the contract. A cursory reading of the agreement easily reveals that the main consideration of the sale is the payment of ₱200,000.00 to the vendors within the period agreed upon. The assumption of mortgage by the Leaño Spouses is a natural consequence of their buying a mortgaged property. In fact, the Barredo Spouses do not stand to benefit from the payment of the amortizations by the Leaño Spouses directly to the SSS and Apex simply because the Barredo Spouses have already parted with their property, for which they were already fully compensated in the amount of ₱200,000.00.

Thus, as adverted to in *Song Fo & Co. v. Hawaiian Philippine Co.*,[15] we ruled that a delay in the payment for a small quantity of molasses for some twenty (20) days is not such a violation of an essential condition of the contract that warrants rescission

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[12] *Llana v. Court of Appeals*, G.R. No. 104802, 11 July 2001, 361 SCRA 27.

[13] *Odyssey Park, Inc. v. Court of Appeals*, G.R. No. 107992, 8 October 1997, 280 SCRA 253; *Asset Privatization Trust v. Sandiganbayan*, G.R. No. 138598, 29 June 2001, 360 SCRA 437.

[14] *Barons Marketing Corp. v. Court of Appeals*, G.R. No. 126486, 9 February 1998, 286 SCRA 96.

[15] 47 Phil. 821, 827 (1925).

due to non-performance. *In Philippine Amusement Enterprise, Inc. v. Natividad*,[16] we declined rescission for "the occasional failure of the phonograph to operate, not frequent enough to render it unsuitable and unserviceable." In *Laforteza v. Machuca*,[17] we said that the delay of one month in payment was a mere casual breach that would not entitle the respondents to rescind the contract. In *Ang v. Court of Appeals*,[18] we held that the failure to remove and clear the subject property of all occupants and obstructions and deliver all the pertinent papers to the vendees for the registration and issuance of a certificate of title in their name were not essential conditions but merely incidental undertakings which will not permit rescission. In *Power Commercial and Industrial Corp. v. Court of Appeals*,[19] we went a step further and considered the failure of the vendor to eject the occupants of a lot sold as a "usual warranty against eviction," and not a condition that was not met, and thus, rescission was not allowed. And, in *Del Castillo v. Nanguiat*,[20] we ruled that the failure to pay in full the purchase price stipulated in a deed of sale does not *ipso facto* grant the seller the right to rescind the agreement. In all these cases, we were consistent in holding that rescission of a contract will not be permitted for a slight or casual breach, but only such substantial and fundamental breach as would defeat the very object of the parties in making the agreement.

If the Barredo Spouses were really protective of their reputation and credit standing, they should have sought the consent, or at least notified the SSS and Apex of the assumption by the Leaño Spouses of their indebtedness. Besides, in ordering rescission, the trial court should have likewise ordered the Barredo Spouses to return the ₱200,000.00 they received as purchase price plus interests. Art. 1385 of the Civil Code provides that "[r]escission

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[16] No. L-21876, 29 September 1967, 21 SCRA 284.

[17] G.R. No. 137552, 16 June 2000, 333 SCRA 643.

[18] G.R. No. 80058, 13 February 1989, 170 SCRA 286.

[19] G.R. No. 119745, 20 June 1997, 274 SCRA 597.

[20] G.R. No. 137909, 11 December 2003.

creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest."[21] The vendor is therefore obliged to return the purchase price paid to him by the buyer if the latter rescinds the sale.[22] Thus, where a contract is rescinded, it is the duty of the court to require both parties to surrender that which they have respectively received and place each other as far as practicable in his original situation.[23]

IN VIEW WHEREOF, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 44009 promulgated May 21, 2002, and its Resolution therein dated December 10, 2002, are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 156973. June 4, 2004]

SPOUSES TOMAS OCCEÑA and SILVINA OCCEÑA, *petitioners, vs.* **LYDIA MORALES OBSIANA ESPONILLA, ELSA MORALES OBSIANA SALAZAR and DARFROSA OBSIANA SALAZAR ESPONILLA,** *respondents*.

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[21] *Velarde v. Court of Appeals*, G.R. No. 108346, 11 July 2001, 361 SCRA 56, citing *Co v. Court of Appeals*, G.R. No. 112330, 17 August 1999, 312 SCRA 528.

[22] *Goldenrod, Inc. v. Court of Appeals*, G.R. No. 126812, 24 November 1998, 299 SCRA 141.

[23] Tolentino, A., *Civil Code of the Philippines*, Vol. IV (1991), pp. 180-181, citing *De Erquiaga*, G.R. No. 47206, 27 September 1989, 178 SCRA 1.

SYNOPSIS

Petitioners bought lots previously sold to the late Alberta Morales. Petitioners, however, alleged that they were buyers in good faith. The titles to the subject lots were free from liens or encumbrances when they purchased them. Further, laches and prescription had already set in.

What is material in this case was whether the second buyer first registers the second sale in good faith, *i.e.*, without knowledge of any defect in the title of the property sold. Petitioner Tomas admitted that he found houses built on the land during its ocular inspection prior to their purchase. He relied, however, on the representation of the vendor that the houses were owned by squatters. The Court ruled that petitioners should have verified from the occupants of the land the nature and authority of their possession; as petitioners did not, they could hardly be regarded as buyers in good faith and thus, cannot have preferential right over the property. As to the allegation of laches, it cannot be used to prevent the rightful owners of a property from receiving what has been fraudulently registered in the name of another. Prescription, on the other hand, does not apply when the person seeking annulment of title or reconveyance was in possession of the lot.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; WHERE IMMOVABLE PROPERTY SOLD TO DIFFERENT VENDEES; ELUCIDATED. – Article 1544 of the New Civil Code provides that in case an immovable property is sold to different vendees, the ownership shall belong: (1) to the person acquiring it *who in good faith first recorded it* in the Registry of Property; (2) should there be no inscription, the ownership shall pertain *to the person who in good faith was first in possession;* and, (3) in the absence thereof, to the person who presents the oldest title, provided there is good faith. In all cases, good faith is essential. It is the basic premise of the preferential rights granted to the one claiming ownership over an immovable. What is material is whether the second buyer first registers the second sale in good faith, *i.e.,* without knowledge of any defect in the title of the property sold. The defense of indefeasibility of a Torrens title does not extend

to a transferee who takes the certificate of title in bad faith, with notice of a flaw.

2. ID.; ID.; ID.; ID.; PURCHASER IN GOOD FAITH; NOT PRESENT WHERE BUYER FAILS TO INQUIRE ON POSSESSION OF PROPERTY BY ONE OTHER THAN THE SELLER. – A *purchaser in good faith and for value* is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property. So it is that the "honesty of intention" which constitutes good faith implies a *freedom from knowledge of circumstances which ought to put a person on inquiry.* The settled rule is that *a buyer of real property in the possession of persons other than the seller must be wary and should investigate the rights of those in possession. Without such inquiry, the buyer can hardly be regarded as a buyer in good faith and cannot have any right over the property.* A purchaser cannot simply close his eyes to facts which should put a reasonable man on his guard and then claim that he acted in good faith under the belief that there was no defect in the title of his vendor. His mere refusal to believe that such defect exists or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title will not make him an innocent purchaser for value if it later develops that the title was in fact defective, and it appears that he would have notice of the defect had he acted with that measure of precaution which may reasonably be required of a prudent man in a similar situation.

3. ID.; ID.; ID.; ID.; ID.; ID.; RELIANCE ON CLEAN TITLE NOT SUFFICIENT. – Indeed, the general rule is that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the title. He is charged with notice only of such burdens and claims as are annotated on the title. However, this principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser

in good faith. Here, having discovered that the land they intended to buy was occupied by a person other than the vendor not in actual possession thereof, it was incumbent upon the petitioners to verify the extent of the occupant's possessory rights. In sum, the general rule is that registration under the Torrens system is the operative act which gives validity to the transfer of title on the land. However, it does not create or vest title especially where a party has actual knowledge of the claimant's actual, open and notorious possession of the property at the time of his registration. A buyer in bad faith has no right over the land. As petitioner-spouses failed to register the subject land in good faith, ownership of the land pertains to respondent-heirs who first possessed it in good faith.

4. ID.; LAND TITLES; ANNULMENT OF TITLE; LACHES NOT PROPER TO PREVENT RIGHTFUL OWNERS OF PROPERTY FROM RECOVERING WHAT HAS BEEN FRAUDULENTLY REGISTERED IN THE NAME OF ANOTHER. – Laches is a creation of equity and its application is controlled by equitable considerations. Laches cannot be used to defeat justice or perpetuate fraud and injustice. Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.

5. ID.; ID.; ID.; PRESCRIPTION; NOT APPLICABLE WHERE PERSON SEEKING ANNULMENT OF TITLE IS IN POSSESSION OF THE PROPERTY. – Prescription does not apply when the person seeking annulment of title or reconveyance is in possession of the lot because the action partakes of a suit to quiet title which is imprescriptible. In this case, Morales had actual possession of the land when she had a house built thereon and had appointed a caretaker to oversee her property. Her undisturbed possession of the land for a period of fifty (50) long years gave her and her heirs a continuing right to seek the aid of a court of equity to determine the nature of the claim of ownership of petitioner-spouses. As the defrauded parties who were in actual possession of the property, an action of the respondents-heirs to enforce the trust and recover the property cannot prescribe. They may vindicate their right over the property regardless of the lapse of time. Hence, the rule that registration of the property has the effect of constructive notice to the whole world cannot be

availed of by petitioners and the defense of prescription cannot be successfully raised against respondents.

APPEARANCES OF COUNSEL

Alfredo M. Banares for petitioners.
Perpetuo A. Lotilla for respondents.

D E C I S I O N

PUNO, *J.*:

The case at bar involves a portion of the 1,198-square meter residential lot (lot no. 265) situated in Sibalom, Antique, originally owned by spouses Nicolas and Irene Tordesillas under OCT No. 1130. The Tordesillas spouses had three (3) children, namely: Harod, Angela and Rosario, the latter having been survived by her two (2) children, Arnold and Lilia de la Flor.

After the death of the Tordesillas spouses, the lot was inherited by their children Harod and Angela, and grandchildren Arnold and Lilia. In 1951, the heirs executed a *Deed of Pacto de Retro Sale* [1] *in favor of Alberta Morales covering the southwestern portion of the lot with an area of 748 square meters*.

Three (3) years later, in 1954, Arnold and Lilia executed a *Deed of Definite Sale of Shares, Rights, Interests and Participations*[2] *over the same 748 sq. m. lot in favor of Alberta Morales*. The notarized deed also attested that the lot sold by vendors Arnold and Lilia to Alberta were their share in the estate of their deceased parents.

Alberta possessed the lot as owner, constructed a house on it and appointed a caretaker to oversee her property. Thereafter, in July 1956, vendor Arnold de la Flor borrowed the OCT from Alberta covering the lot. He executed an Affidavit[3] acknowledging

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[1] Original Records, pp. 19-20.

[2] *Id*., pp. 21-24.

[3] *Id*., p. 26.

receipt of the OCT in trust and undertook to return said title free from changes, modifications or cancellations.

In 1966, Arnold and Angela, nephew and daughter respectively of the Tordesillas spouses, without the knowledge of Alberta, executed a *Deed of Extrajudicial Settlement*[4] *declaring the two of them as the only co-owners of the undivided 1,198 sq. m. lot no. 265, without acknowledging their previous sale of 748 sq. m. thereof to Alberta*. A number of times, thereafter, Alberta and her nieces asked Arnold for the OCT of the land but Arnold just kept on promising to return it.

In 1983, Arnold executed an *Affidavit of Settlement of the Estate*[5] of Angela who died in 1978 without issue, declaring himself as the sole heir of Angela and thus consolidating the title of the entire lot in his name.

In 1985, vendee *Alberta Morales died. Her nieces-heirs*, Lydia, Elsa and Dafrosa, *succeeded in the ownership of the lot*. Months later, as the heirs were about to leave for the United States, they asked Arnold to deliver to them the title to the land so they can register it in their name. Arnold repeatedly promised to do so but failed to deliver the title to them.

On December 4, 1986, after Alberta's heirs left for the States, Arnold used the OCT he borrowed from the deceased vendee Alberta Morales, *subdivided the entire lot no. 265 into three sublots, and registered them all under his name*, *viz*: lot no. 265-A (with TCT No. 16895), lot no. 265-B (with TCT No. 16896) and lot no. 265-C (with TCT No. 16897). He then paid the real estate taxes on the property.

On August 13, 1990, Arnold sold lot nos. 265-B & C to spouses Tomas and Sylvina Occeña, which included the 748 sq. m. portion previously sold to Alberta Morales. A Deed of Absolute Sale[6] over said lots was executed to the Occeña spouses and titles were transferred to their names.

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[4] *Id*., pp. 27-28.

[5] *Id*., pp. 29-30.

[6] *Id*., pp. 33-34.

In 1993, after the death of Arnold, the three (3) nieces-heirs of Alberta Morales learned about the second sale of their lot to the Occeña spouses when they were notified by caretaker Abas that they were being ejected from the land. In 1994, the heirs filed a case[7] for annulment of sale and cancellation of titles, with damages, against the second vendees Occeña spouses. In their complaint, they alleged that the Occeñas purchased the land in bad faith as they were aware that the lots sold to them had already been sold to Alberta Morales in 1954. They averred that before the sale, when Tomas Occeña conducted an ocular inspection of the lots, Morito Abas, the caretaker appointed by Alberta Morales to oversee her property, warned them not to push through with the sale as the land was no longer owned by vendor Arnold as the latter had previously sold the lot to Alberta Morales who had a house constructed thereon.

For their part, the Occeña spouses claimed that the OCT in the name of the original owners of the lots, the Tordesillas spouses, was cancelled after it was subdivided between Angela and Arnold in 1969; that new TCTs had been issued in the latter's names; that they were unaware that the subject lots were already previously sold to Morales as they denied that Tomas had a talk with caretaker Abas on the matter; that as of December 4, 1987, the TCTs covering the lots were in the name of Arnold and his wife, without any adverse claim annotated thereon; that vendor Arnold represented to them that the occupants they saw on the land were squatters and that he merely tolerated their presence; that *they did not personally investigate the alleged squatters on the land and merely relied on the representation of vendor Arnold*; that sometime in 1966-1967, Arnold and his co-heir Angela caused the survey of the original lot and subdivided it into 3 lots, without opposition from Morales or her heirs. Thus, three (3) TCTs were issued in 1969 to Arnold and Angela and, two of the lots were then sold to the Occeña spouses, again without objection from Alberta Morales.

The Occeña spouses alleged that they were buyers in good faith as the titles to the subject lots were free from liens or

[7] Docketed as Civil Case No. 2715.

encumbrances when they purchased them. They claimed that in 1989, Arnold offered to sell the subject lots to them. On August 13, 1990, after they verified with the Antique Registry of Deeds that Arnold's TCTs were clean and unencumbered, Arnold signed the instrument of sale over the subject lots in favor of the Occeñas for ₱100,000.00 and new titles were issued in their names.

The Occeñas likewise set up the defenses of laches and prescription. They argue that Alberta and plaintiffs-heirs were barred from prosecuting their action as they failed to assert their right for forty (40) years. Firstly, they point out that vendor Arnold and Angela subdivided the entire lot in 1966 and declared themselves as the only co-owners thereof in the deed of extrajudicial settlement. Alberta Morales failed to oppose the inclusion of her 748 sq. m. lot in the deed. Thus, the title to the entire lot no. 256 was transferred to the names of Arnold and Angela. Secondly, preparatory to the division of the lots, vendor Arnold had the land surveyed but Alberta again failed to oppose the same. Finally, Alberta and her heirs who are claiming adverse rights over the land based on the 1951 Deed of *Pacto de Retro* Sale and the 1954 Deed of Definite Sale of Shares failed for 40 years to annotate their adverse claims on the new titles issued to Arnold and Angela, enabling the latter to possess a clean title and transfer them to the Occeña spouses.

After trial, the lower court rendered a decision declaring the Occeña spouses as buyers in good faith and ruled that the action of the heirs was time-barred.

On appeal by Alberta's heirs, the Court of Appeals reversed the decision of the trial court. It found that the Occeñas purchased the land in bad faith and that the action filed by Alberta's heirs was not barred by prescription or laches. The dispositive portion reads:

WHEREFORE, the instant appeal is hereby *GRANTED*. Accordingly, the assailed decision is hereby *REVERSED* and *SET ASIDE* and a new one is rendered declaring the Deed of Absolute Sale dated August 13, 1990 executed between Arnold de la Flor in favor of defendants-appellees null and void and ordering the

cancellation of Transfer Certificate of Title Nos. 16896, 16897, T-18241 and T-18242.

SO ORDERED.[8]

Hence this appeal where petitioner-spouses Occeña raise the following issues:

I

WHETHER OR NOT A VERBAL INFORMATION COULD BE MADE TO PREVAIL OVER A CLEAN CERTIFICATE OF TITLE OF A REGISTERED LAND WHICH IS FREE OF ANY LIEN OR ENCUMBRANCE ANNOTATED ON ITS CERTIFICATE OF TITLE OR ANY ADVERSE CLAIM RECORDED WITH THE REGISTER OF DEEDS.

II

WHETHER OR NOT A BUYER OF A REGISTERED LAND IS OBLIGATED TO MAKE INQUIRIES OF ANY POSSIBLE DEFECT OR ADVERSE CLAIM AFFECTING ITS OWNERSHIP WHICH DOES NOT APPEAR ON THE CERTIFICATE OF TITLE.

III

WHETHER OR NOT THE PERIOD OF MORE THAN FORTY (40) YEARS WITHOUT POSITIVE ACTION TAKEN BY RESPONDENTS, AS WELL AS BY ALBERTA MORALES, TO PROTECT THEIR INTEREST CAN BE CONSIDERED LACHES AND THUS THEIR PRESENT ACTION HAS PRESCRIBED.

On the *first two issues*, petitioner-spouses claim that they were purchasers of the land in good faith as the law does not obligate them to go beyond a clean certificate of title to determine the condition of the property. They argue that a person dealing with registered land is only charged with notice of the burden on the property annotated on the title. When there is nothing on the title to indicate any cloud or vice in the ownership of the property or any encumbrance thereon, the purchaser is not required

[8] Decision dated January 17, 2003, Court of Appeals Special Second Division, Penned by Associate Justice Mariano del Castillo and concurred in by Associate Justices Teodoro P. Regino and Rebecca Guia-Salvador; *Rollo* at 41-54.

to explore further than the title in quest of any hidden defect or inchoate right that may subsequently defeat his right thereto. They claim they had every right to purchase the land despite the verbal warning made by caretaker Abas as the information was mere hearsay and cannot prevail over the title of the land which was free from any encumbrance.

Their arguments do not persuade.

The petition at bar presents a case of double sale of an immovable property. Article 1544 of the New Civil Code provides that in case an immovable property is sold to different vendees, the ownership shall belong: (1) to the person acquiring it *who in good faith first recorded it* in the Registry of Property; (2) should there be no inscription, the ownership shall pertain to *the person who in good faith was first in possession*; and, (3) in the absence thereof, to the person who presents the oldest title, provided there is good faith.

In all cases, good faith is essential. It is the basic premise of the preferential rights granted to the one claiming ownership over an immovable.[9] What is material is whether the second buyer first registers the second sale in good faith, *i.e.,* without knowledge of any defect in the title of the property sold.[10] The defense of indefeasibility of a Torrens title does not extend to a transferee who takes the certificate of title in bad faith, with notice of a flaw.[11]

The governing principle of *prius tempore*, *potior jure* (first in time, stronger in right) enunciated under Art. 1544 has been clarified, thus:

xxx Knowledge by the first buyer of the second sale cannot defeat the first buyer's rights except when the second buyer first registers in good faith the second sale (*Olivares vs. Gonzales*, 159 SCRA 33). Conversely, *knowledge gained by the second buyer of the*

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[9] *Gabriel vs. Spouses Mabanta and Colobong*, G.R. No. 142403, March 26, 2003.

[10] *Coronel vs. Court of Appeals*, 263 SCRA 15 (1996).

[11] *Baricuatro, Jr. vs. Court of Appeals*, 325 SCRA 137 (2000).

first sale defeats his rights even if he is first to register, since such knowledge taints his registration with bad faith (see also *Astorga vs. Court of Appeals*, G.R. No. 58530, 26 December 1984). In *Cruz vs. Cabaña* (G.R. No. 56232, 22 June 1984, 129 SCRA 656), it was held that *it is essential, to merit the protection of Art. 1544, second paragraph, that the second realty buyer must act in good faith in registering his deed of sale* (citing *Carbonell vs. Court of Appeals*, 69 SCRA 99 and *Crisostomo vs. CA*, G.R. No. 95843, 02 September 1992).[12]

In the case at bar, we find that petitioner-spouses failed to prove good faith in their purchase and registration of the land. A *purchaser in good faith and for value* is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property. So it is that the "honesty of intention" which constitutes good faith implies a *freedom from knowledge of circumstances which ought to put a person on inquiry*. At the trial, Tomas Occeña admitted that he found houses built on the land during its ocular inspection prior to his purchase. He relied on the representation of vendor Arnold that these houses were owned by squatters and that he was merely tolerating their presence on the land. Tomas should have verified from the occupants of the land the nature and authority of their possession instead of merely relying on the representation of the vendor that they were squatters, having seen for himself that the land was occupied by persons other than the vendor who was not in possession of the land at that time. The settled rule is that *a buyer of real property in the possession of persons other than the seller must be wary and should investigate the rights of those in possession. Without such inquiry, the buyer can hardly be regarded as a buyer in good faith and cannot have any right over the property*.[13] A purchaser cannot simply close his eyes to facts which should put a reasonable man on his guard and

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[12] *Compendium of Civil Law and Jurisprudence*, Justice Jose C. Vitug, pp. 604-605.

[13] *Spouses Castro vs. Miat*, G.R. No. 143297, February 11, 2003.

then claim that he acted in good faith under the belief that there was no defect in the title of his vendor.[14] His mere refusal to believe that such defect exists or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title will not make him an innocent purchaser for value if it later develops that the title was in fact defective, and it appears that he would have notice of the defect had he acted with that measure of precaution which may reasonably be required of a prudent man in a similar situation.

Indeed, the general rule is that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the title. He is charged with notice only of such burdens and claims as are annotated on the title. However, this principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith.[15]

The evidence of the private respondents show that when Tomas Occeña conducted an ocular inspection of the land prior to the second sale, Abas, the caretaker of the house which Alberta Morales built on the land, personally informed Tomas that the lot had been previously sold by the same vendor Arnold to Alberta Morales. With this information, the Occeñas were obliged to look beyond the title of their vendor and make further inquiries from the occupants of the land as to their authority and right to possess it. However, despite this information about a prior sale, the Occeñas proceeded with the purchase in haste. They did not inquire from Abas how they could get in touch

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[14] *Heirs of Ramon Durano, Sr. vs. Uy*, 344 SCRA 238 (2000).

[15] *Spouses Domingo vs. Roces*, G.R. No. 147468, April 9, 2003; *Dela Merced vs. Government Service Insurance System*, 365 SCRA 1 (2001).

with the heirs or representatives of Alberta to verify the ownership of the land. Neither do the records reveal that they exerted effort to examine the documents pertaining to the first sale. Having discovered that the land they intended to buy was occupied by a person other than the vendor not in actual possession thereof, it was incumbent upon the petitioners to verify the extent of the occupant's possessory rights.[16] The Occeñas did nothing and chose to ignore and disbelieve Abas' statement.

On the *third issue*, we hold that the action to annul title filed by respondents-heirs is not barred by laches and prescription. *Firstly*, laches is a creation of equity and its application is controlled by equitable considerations. Laches cannot be used to defeat justice or perpetuate fraud and injustice. Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.[17] *Secondly*, prescription does not apply when the person seeking annulment of title or reconveyance is in possession of the lot because the action partakes of a suit to quiet title which is imprescriptible.[18] In this case, Morales had actual possession of the land when she had a house built thereon and had appointed a caretaker to oversee her property. Her undisturbed possession of the land for a period of fifty (50) long years gave her and her heirs a continuing right to seek the aid of a court of equity to determine the nature of the claim of ownership of petitioner-spouses.[19] As held by this Court in *Faja vs. Court of Appeals*:[20]

xxx There is settled jurisprudence that *one who is in actual possession of a piece of land claiming to be owner thereof may wait until his possession is disturbed or his title attacked before*

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[16] *Gonzales vs. Toledo*, G.R. No. 149465, December 8, 2003; *Mathay vs. Court of Appeals*, 295 SCRA 556 (1998).

[17] *Alcantara-Daus vs. Spouses de Leon*, G.R. No. 149750, June 16, 2003.

[18] *Heirs of Santiago vs. Heirs of Santiago*, G.R. No. 151440, June 17, 2003.

[19] *Millena vs. Court of Appeals*, 324 SCRA 126 (2000).

[20] 75 SCRA 441 (1977).

taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim and its effect on his own title, which right can be claimed only by one who is in possession. xxx *The right* to quiet title to the property, seek its reconveyance and *annul any certificate of title covering it accrued only from the time the one in possession was made aware of a claim adverse to his own, and it is only then that the statutory period of prescription commences to run against such possessor*.

In the case at bar, Morales' caretaker became aware of the second sale to petitioner-spouses only in 1991 when he received from the latter a notice to vacate the land. Respondents-heirs did not sleep on their rights for in 1994, they filed their action to annul petitioners' title over the land. It likewise bears to stress that when vendor Arnold reacquired title to the subject property by means of fraud and concealment after he has sold it to Alberta Morales, a constructive trust was created in favor of Morales and her heirs. As the defrauded parties who were in actual possession of the property, an action of the respondents-heirs to enforce the trust and recover the property cannot prescribe. They may vindicate their right over the property regardless of the lapse of time.[21] Hence, the rule that registration of the property has the effect of constructive notice to the whole world cannot be availed of by petitioners and the defense of prescription cannot be successfully raised against respondents.

In sum, the general rule is that registration under the Torrens system is the operative act which gives validity to the transfer of title on the land. However, it does not create or vest title especially where a party has actual knowledge of the claimant's actual, open and notorious possession of the property at the time of his registration.[22] A buyer in bad faith has no right over the land. As petitioner-spouses failed to register the subject

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[21] *Heirs of Ermac vs. Heirs of Ermac*, G.R. No. 149679, May 30, 2003; *Juan vs. Zuñiga*, 4 SCRA 1221 (1962).

[22] *Lavides vs. Pre*, 367 SCRA 382 (2001).

land in good faith, ownership of the land pertains to respondent-heirs who first possessed it in good faith.

IN VIEW WHEREOF, the petition is DISMISSED. No costs.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.*, concur.

INDEX

INDEX

CIVIL PROCEDURE

Appeal — Court of Appeals has the power to grant an extension of time to file a petition for review. (Pajuyo *vs*. CA, G.R. No. 146364, June 3, 2004) p. 557

— Material dates to consider in determining timeliness of a motion for extension to file petition for review. (*Id*.)

— Petitioner is estopped from questioning the jurisdiction of the court. (*Id*.)

— Proper remedy where decision assailed is a final order. (Spouses Del Rosario *vs*. Montana, G.R. No. 134433, May 28, 2004) p. 125

Modes of discovery — Availment of the various modes of discovery will enable a party to discover the evidence of the adverse party and facilitate an amicable settlement or expedite the trial of the case. (Ong *vs*. Judge Mazo, G.R. No. 145542, June 4, 2004) p. 807

Summary judgment — Basic factual issues must first be established to determine whether a party is entitled to recover damages; case at bar. (Cotabato Timberland Co., Inc. *vs*. Alcantara & Sons, Inc., G.R. No. 145469, May 28, 2004) p. 259

— Genuine issue, defined and construed. (*Id*.)

— Purpose thereof; not applicable in case at bar. (*Id*.)

— Stipulation of facts may include facts which are undisputed by the parties. (*Id*.)

CIVIL SERVICE LAW

Dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service — Are grave offenses punishable by dismissal from service; mitigating and aggravating circumstances may be considered; respondent is not entitled to a lower penalty other than dismissal in case at bar. (Civil Service Commission *vs*. Cortez, G.R. No. 155732, June 3, 2004) p. 670

SPECIAL CIVIL ACTIONS

Forcible entry and unlawful detainer — Absence of title over disputed property will not divest the courts of jurisdiction to resolve issue of possession. (Pajuyo *vs*. CA, G.R. No. 146364, June 3, 2004) p. 557

— Courts must abdicate their jurisdiction to resolve the issue of physical possession because of the public need to preserve the basic policy behind the summary actions of forcible entry and unlawful detainer. (*Id*.)

— Court's ruling cannot be interpreted to condone squatting nor does it diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal unauthorized structures in accordance with existing laws. (*Id*.)

— Not a contract of *commodatum*; case at bar. (*Id*.)

— Only issue for adjudication is the physical or material possession over real property. (*Id*.)

— Petitioner is entitled to possession of the disputed property. (*Id*.)

— Principle of *pari delicto*; not applicable in ejectment cases. (*Id*.)

— Prior possession is not always a condition *sine qua non*. (*Id*.)

— Ruling on possession does not bind title to the land dispute. (*Id*.)

Indirect contempt — Procedural requisites. (Bruan *vs*. People of the Phils., G.R. No. 149428, June 4, 2004) p. 849

SPECIAL CONTRACTS

Mortgage — Became unenforceable upon failure of mortgagee to release the balance of the loan. (PNB *vs*. RBL Enterprises, Inc., G.R. No. 149569, May 28, 2004) p. 335

— Nature thereof. (*Id*.)

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

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Page

II. FOREIGN AUTHORITIES

A. BOOKS

Page

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