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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. MTJ-02-1391. June 7, 2004]
(Formerly A.M. OCA IPI No. 00-936-MTJ)

RODOLFO RAMA RIÑO, *complainant, vs.* **JUDGE ALFONSO R. CAWALING, MUNICIPAL CIRCUIT TRIAL COURT, CAJIDIOCAN, ROMBLON,** *respondent.*

SYNOPSIS

Respondent judge was found guilty of gross ignorance of the law relative to Criminal Case No. 4511 for grave threats. Allegedly, complainant was the accused in said criminal case and respondent conducted a preliminary investigation therein without due notice to him and then issued a warrant for his arrest when the same was not necessary. The Court ruled that considering the penalty prescribed for the crime of grave threats, respondent should have applied the Revised Rules on Summary Procedure. Instead, respondent applied the regular procedure. Respondent judge was fined ₱5,000.00.

SYLLABUS

1. REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE; APPLICABLE RULE FOR THE CRIME OF GRAVE THREATS. — Under the Revised Penal Code, grave threats is penalized with imprisonment of one (1) month

and one (1) day to six (6) months (*arresto mayor*) and a fine not exceeding ₱500.00, if the threat is not subject to a condition. Thus, the subject criminal cases should have been tried under the Revised Rules on Summary Procedure, considering that such rules are applicable to criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six (6) months or a fine not exceeding ₱1,000.00 or both, irrespective of other imposable penalties, accessory or otherwise or of the civil liability arising therefrom. The respondent applied the regular procedure; he issued a warrant of arrest against the complainant after making a preliminary examination of the affidavit against the latter. Hence, the complainant was constrained to post bail, which was no longer necessary considering that the charge against him was simply grave threats.

2. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; PRESENT WHERE THERE WAS FAILURE TO APPLY PROPER PROCEDURE. — Section 2 of the Revised Rules on Summary Procedure provides that "upon the filing of a civil or criminal action, the court shall issue an order declaring whether or not the case shall be governed by (the) Rule." The said provision further states that "patently erroneous determination to avoid the application of the (Rules on Summary Procedure) is a ground for disciplinary action." As we held in *Agunday v. Tresvalles*, . . . (The) provision cannot be read as applicable only where the failure to apply the rule is deliberate or malicious. Otherwise, the policy of the law to provide for the expeditious and summary disposition of cases covered by it could be easily frustrated. Hence, requiring judges to make the determination of the applicability of the rule on summary procedure upon the filing of the case is the only guaranty that the policy of the law will be fully realized. . . . It is clear then that the respondent judge ought to be sanctioned for his failure to apply the proper procedure. A judge should be the epitome of competence, integrity and independence to be able to render justice and uphold public confidence in the legal system. He must be conversant with basic legal principles and well-settled doctrines. He should strive for excellence and seek the truth with passion. The respondent failed in this regard and, by his actuations, exhibited gross ignorance of the law.

D E C I S I O N

CALLEJO, SR., *J.*:

The instant administrative complaint arose when Rodolfo Rama Riño, in a verified Letter-Complaint dated September 5, 2000, charged Judge Alfonso R. Cawaling of the Municipal Circuit Trial Court, Cajidiocan, Romblon, with bias and partiality, abuse of authority and gross ignorance of the law relative to Criminal Case No. 4511 entitled "*People of the Philippines v. Rodolfo Rama Riño*," for grave threats.[1]

The complainant alleged that he was the accused in the said case, and that the respondent judge conducted a preliminary investigation[2] on October 27, 1999 without due notice to him. According to the complainant, the respondent, prematurely and with undue haste, issued a warrant[3] for his arrest on October 28, 1999, considering that there was no necessity in placing him (the complainant) in police custody.

In his comment,[4] the respondent alleged that contrary to the allegations of the complainant, the *subpoena* was served on him at his given address and that of his witnesses, pursuant to Section 3, Rule 112 of the Revised Rules of Criminal Procedure. Thereafter, he submitted his counter-affidavit, and the case was set for preliminary investigation in the afternoon of October 27, 1999. After the preliminary investigation, a warrant for the arrest of the complainant was issued, and the latter forthwith posted his bail bond and was released. The respondent also narrated that on the scheduled arraignment of the complainant on August 16, 2000, the complainant was present and was assisted by counsel, Atty. Cecilio R. Dianco, who moved for the deferment of the arraignment and pre-trial of the case, and asked for his

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[1] Annex "A," *Rollo,* p. 7.

[2] Annex "C," *Id*. at 8-19.

[3] *Id*. at 19.

[4] *Rollo,* pp. 22-25.

inhibition on the ground that an administrative case had already been filed against the respondent before the Court. The respondent alleged that out of *delicadeza*, he inhibited himself, and that the order of inhibition was thereafter approved by Judge Placido C. Marquez.

The respondent also averred that Criminal Case No. 4511 was not covered by the Rules on Summary Procedure, the imposable penalty being higher than six months. As such, he had no alternative but to issue the warrant of arrest against the complainant.

In its Report[5] dated November 14, 2001, the Court Administrator recommended that the instant administrative complaint be re-docketed as an administrative matter and that the respondent judge be penalized to pay a fine of ₱10,000 for gross ignorance of the law, considering that the offense charged in Criminal Case No. 4511 is covered by the Rules on Summary Procedure.[6]

The case was then referred to Judge Vedasto B. Marco, Executive Judge, Regional Trial Court, Romblon, for investigation, report and recommendation.[7] In his Report and Recommendation dated January 15, 2004, the Executive Judge made the following findings:

From the foregoing, and the evidence submitted specifically the records of Criminal Case No. 4511, it appear (*sic*) that respondent judge did not violate the Rules of Procedure when he conducted the preliminary investigation of the case against Rodolfo Riño nor did he show biased (*sic*) and partiality against the latter. The complainant

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[5] *Id*. at 31-33.

[6] *Id*. at 33.

[7] In a Resolution dated February 23, 2004, the Court denied the complainant's Motion For Change Of Venue Of The Investigation of the instant administrative matter, considering that the complainant's apprehension that the outcome of the investigation may be influenced by influential politicians of Romblon was mere conjecture, with no credible evidence to prove the same.

was afforded all the rights to preliminary investigation and the warrant was issued more than a year after it was in Court.[8]

It was recommended that the respondent be absolved of any liability.

We do not agree.

Under the Revised Penal Code, grave threats is penalized with imprisonment of one (1) month and one (1) day to six (6) months (*arresto mayor*) and a fine not exceeding ₱500.00, if the threat is not subject to a condition.[9] Thus, the subject criminal cases should have been tried under the Revised Rules on Summary Procedure, considering that such rules are applicable to criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six (6) months or a fine not exceeding ₱1,000.00 or both, irrespective of other imposable penalties, accessory or otherwise or of the civil liability arising therefrom.[10] The respondent applied the regular procedure; he issued a warrant of arrest against the complainant after making a preliminary examination of the affidavit against the latter. Hence, the complainant was constrained to post bail, which was no longer necessary considering that the charge against him was simply grave threats.

Section 2 of the Revised Rules on Summary Procedure provides that "upon the filing of a civil or criminal action, the court shall issue an order declaring whether or not the case shall be governed by (the) Rule." The said provision further states that "patently erroneous determination to avoid the application of the (Rules on Summary Procedure) is a ground for disciplinary action." As we held in *Agunday v. Tresvalles*,[11]

. . . (The) provision cannot be read as applicable only where the failure to apply the rule is deliberate or malicious. Otherwise,

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[8] Report and Recommendation, p. 3.

[9] Article 282 (2).

[10] *Ortiz v. Quiroz*, 337 SCRA 258 (2000).

[11] 319 SCRA 134 (1999).

the policy of the law to provide for the expeditious and summary disposition of cases covered by it could be easily frustrated. Hence, requiring judges to make the determination of the applicability of the rule on summary procedure upon the filing of the case is the only guaranty that the policy of the law will be fully realized. . . .[12]

It is clear then that the respondent judge ought to be sanctioned for his failure to apply the proper procedure. A judge should be the epitome of competence, integrity and independence to be able to render justice and uphold public confidence in the legal system.[13] He must be conversant with basic legal principles and well-settled doctrines. He should strive for excellence and seek the truth with passion.[14] The respondent failed in this regard and, by his actuations, exhibited gross ignorance of the law.

WHEREFORE, for gross ignorance of the law, respondent Judge Alfonso R. Cawaling of the Municipal Circuit Trial Court, Cajidiocan, Romblon, is *FINED* Five Thousand Pesos (₱5,000.00), and is *STERNLY WARNED* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

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[12] *Id*. at 144-145.

[13] *Felisa Taborite and Lucy T. Gallardo vs. Judge Manuel S. Sollelsta,* A.M. No. MTJ-02-1338, August 12, 2003.

[14] *Office of the Court Administrator v. Judge Agustin T. Sardido,* 401 SCRA 583 (2003).

SECOND DIVISION

[G.R. No. 133440. June 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VIRGILIO REFORMA *y* PEDRIGAL,** *appellant***.**

SYNOPSIS

At about 11:00 p.m., Roger Ramos was awakened by a commotion. The victim Nazario and herein appellant were quarreling. Thereafter, Roger saw appellant stab Nazario on the left side of the chest. This was also witnessed by Zenaida. Nazario died and appellant was found guilty of murder. Hence, this appeal.

Appellant was guilty of homicide only. While treachery was alleged in the Information, it was not proved conclusively. The prosecution witnesses did not see how the attack was carried out and cannot testify on how it began. On the allegation of evident premeditation, none of the elements thereof was established. Finally, on the allegation of abuse of superior strength, it was not shown that appellant purposely employed the same to consummate the crime.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — The well-established rule is that, the trial court's calibration and assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as its findings, are accorded high respect, if not conclusive effect, by the appellate court because of the unique advantage of the trial court of observing and monitoring at close range the demeanor and deportment of the witnesses as they testify. Although there are exceptions, we find no justification, after our review of the records, to deviate from the findings of the trial court and its assessment of the credibility and probative weight of the testimonies of the prosecution's witnesses.

2. ID.; ID.; ID.; UPHELD IN THE ABSENCE OF ILL-MOTIVE. — The testimonies of the prosecution's witnesses are corroborated by the post-mortem report of Dr. Florante Baltazar that the victim was stabbed on the chest. The flight of the appellant from the *situs criminis*, and his throwing away of the bolo in the process, are evidence of his guilt of the crime charged. There is no evidence on record that Roger and Zenaida nurtured any ill or devious motive to pillory the appellant and falsely ascribe to him the killing of Nazario. Hence, the said witnesses are presumed to have testified in good faith and their testimony entitled to full faith and credit.

3. ID.; ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES. — The appellant's bare denial of the charge against him cannot prevail over the positive and straightforward testimonies of the prosecution's witnesses, identifying and pointing to him as the perpetrator of the crime.

4. ID.; ID.; ID.; BARE TESTIMONY WITHOUT SUFFICIENT PHYSICAL EVIDENCE, THE LATTER MUST BE UPHELD. — The appellant's and Balingit's testimony, that the appellant was mauled and hit with a lead pipe and that Rolando stabbed Nazario once when he attempted to stab the appellant, is belied by the medico-legal report of Dr. Florante Baltazar that the victim sustained one penetrating stab wound on the anterior left thorax and four (4) incised wounds and multiple abrasions. Balingit has not adduced in evidence any medical certificate that he sustained a stab wound on his left hand. As between Balingit's testimony and the physical evidence, the latter must be upheld.

5. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES; NOT APPRECIATED IN THE ABSENCE OF SUFFICIENT EVIDENCE. — There is treachery when the following conditions are present: (a) employment of means, methods or manner of execution to insure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, and, (b) deliberate adoption by the offender of such means, methods or manner of execution. Since the prosecution's witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility

cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Treachery must be proved by clear and convincing evidence, or as conclusively as the killing itself. In this case, Zenaida and Roger did not see how the attack commenced. When Roger woke up, there was already an ongoing confrontation between the appellant and the victim.

6. ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES; NOT PRESENT. — The three requisites needed to prove evident premeditation are the following: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had 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. The prosecution failed to prove any essential element of these circumstances.

7. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; NOT APPRECIATED. — We held that abuse of superior strength is considered when there is a showing that the accused purposely employed superior strength to consummate the crime; that he used purposely excessive force out of proportion to the means of defense available to the person attacked. In this case, while the appellant used a bolo, there is no evidence on record that he purposely used it precisely to commit the crime.

8. ID.; HOMICIDE; PROPER PENALTY ABSENT ANY MITIGATING OR AGGRAVATING CIRCUMSTANCE. — The appellant is guilty only of homicide under Article 249 of the Revised Penal Code. The penalty for homicide under 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 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.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Dionisio C. Maneja, Jr. 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 Quezon City, Branch 99, convicting the appellant of murder and sentencing him to suffer *reclusion perpetua.*

The Facts

Zenaida Damian-Pondibida and her brothers, Nazario, Rolando and Jaime, all surnamed Damian, Roger Ramos and the appellant had stalls in the Balintawak market, Cloverleaf Compound, Balintawak, Quezon City. Their respective stalls were near each other. The appellant was the brother-in-law of the Damians, being married to their sister, Rosenda.

At 10:00 p.m. on February 9, 1993, Roger slept side by side with Nazario in the latter's stall. Zenaida, Rolando and Jaime were also in their separate stalls. At about 11:00 p.m., Roger was awakened by a commotion. Nazario and the appellant were quarreling. Roger was aghast when he saw the appellant, who was only about four arms' length away from the stall, stab Nazario on the left side of the chest. Zenaida, who was barely an arms' length away, also saw the appellant as he stabbed Nazario on the chest. When they saw the stabbing, Rolando and Jaime rushed to the scene. Rolando wrestled with the appellant for the possession of the bolo and managed to wrest it away from the latter. The appellant fled from the scene. Rolando, Jaime, Roger and Zenaida then brought Nazario to the Quezon City General Hospital where the latter expired. Zenaida and Roger gave their respective sworn statements[2] to PO3 Carlito Canlas on February 11, 1993, relating to the stabbing incident.

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[1] Penned by Judge Felix M. De Guzman.

[2] Exhibits "A" and "G", respectively.

Dr. Florante F. Baltazar performed an autopsy on the cadaver of Nazario and signed Medico-Legal Report No. M-0237-93 which contained the following findings:

Fairly developed, fairly nourished male cadaver in rigor mortis with post-mortem lividity over the dependent portions of the body. Conjunctivae and lips were pale. Nail beds were cyanotic. There was a surgical incision at the anterior distal 3rd left forearm.

EXTERNAL INJURIES : TRUNK AND EXTREMITIES:

(1) Penetrating stab wound, anterior left thorax, 120 cms. from heel, 7 cms. from anterior midline, measuring 10 cms. x 4 cms. x 7 cms. depth, directed upwards, backwards, towards midline, fracturing the 4th left thoracic cartilage, piercing the pericardium and right ventricle of the heart.

(2) Incised wound, anterior left lower thorax, measuring 5.5 cms. x 0.2 cm. x 2 cms. from anterior midline.

(3) Incised wound, posterior left scapular region, measuring 3 cms. x 0.5 cm. (*sic*) 8 cms. from posterior midline.

(4) Incised wound, posterior right scapular region, measuring 6.5 cms. x 0.2 cm. (*sic*) 5 cms. from posterior midline.

(5) Multiple abrasions, right elbow, measuring 5 cms. x 5 cms.

(6) Incised wound, anterior distal 3rd right thigh extending to right knee, measuring 17 cms. x 0.6 cm.

INTERNAL FINDINGS:

(1) Recovered from the left thorax, 1,500 cc of blood and blood clots.

(2) Recovered from the stomach 1/4 glass of rice meal.

CONCLUSION:

Cause of death is penetrating stab wound, anterior left thorax.[3]

Dr. Baltazar also signed the victim's certificate of death.[4]

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[3] Exhibit "B," Records, p. 138.

[4] Exhibit "E," Records, p. 142.

On February 12, 1993, an Information was filed in the Regional Trial Court of Quezon City, charging the appellant with murder. The accusatory portion reads:

> That on or about the 9th day of February 1993, in Quezon City, Philippines, the above-named accused, did then and there, willfully, unlawfully and feloniously with intent to kill, with treachery, taking advantage of superior strength and evident premeditation, attack, assault and employ personal violence upon the person of NAZARIO DAMIAN, by then and there stabbing the latter with a bladed weapon (*gulok*), hitting him on the left side of his breast (*sic*), thereby inflicting upon him serious and mortal wounds which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Nazario Damian.[5]

The appellant was arraigned on March 10, 1993, assisted by counsel *de parte*, and entered a plea of not guilty.

The Defense of the Appellant

The appellant denied stabbing Nazario. He testified that at about 11:00 p.m. on February 9, 1993, his brothers-in-law, Rolando, Nazario and Jaime, all surnamed Damian, were having a drinking spree. He was in his stall at that time. After a while, his brothers-in-law invited him to join them in their drinking spree, but upon seeing that they were already drunk, the appellant refused. Rolando, Nazario and Jaime resented this rejection, and forthwith mauled the appellant, hitting him with hard objects. He lost consciousness. After about ten minutes, the appellant came to and found himself in the stall of Dioscoro Balingit. Momentarily, a policeman arrived, handcuffed him and brought him to the La Loma police station. A doctor at the Philippine Orthopedic Hospital examined his wounds and issued a Temporary Medical Certificate thereon.[6]

The appellant also testified that Rolando, Nazario and Jaime sold a coconut land in Quezon City to him for ₱30,000.00. There was, however, no document executed between them to

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[5] Records, p. 1.

[6] Exhibit "3", *Id.* at 215.

serve as evidence of the sale. Furthermore, the Damian brothers took back the property and failed to refund him of his ₱30,000.00.

On February 14, 1993, the appellant filed a criminal complaint[7] against Rolando and Jaime Damian in the Office of the City Prosecutor of Quezon City. He executed a sworn statement[8] in support thereof. Dioscoro Balingit also executed a sworn statement[9] to support the said complaint.

Dioscoro Balingit testified that he worked for the appellant as a helper for ₱150.00 a week. In the evening of February 9, 1993, he and the appellant were arranging the bananas which the latter sold for a living. A heated altercation ensued between the appellant and Rolando Damian concerning their stalls. Rolando threw a bottle at the appellant, but the latter managed to evade the bottle. Jaime and Nazario then arrived and helped Rolando maul the appellant. They hit the latter with a lead pipe and a folding bed. Dioscoro then helped the appellant to walk to his stall. Rolando then got a knife and stabbed him on the left thigh. Rolando stabbed him a second time, but as he was able to evade the blow, Nazario was hit on the chest instead. Rolando withdrew the knife, threw it away and fled. Jaime brought Nazario to the hospital. Dioscoro Balingit later executed a sworn statement[10] at the La Loma police station.

On August 27, 1997, the trial court rendered judgment convicting the accused of murder. The decretal portion of the decision reads:

WHEREFORE, premises considered, this Court finds accused VIRGILIO REFORMA *y* PEDRIGAL, GUILTY beyond reasonable doubt of the crime of MURDER penalized under Article 248 of the Revised Penal Code, without any mitigating or aggravating circumstances, and hereby sentences said accused to suffer the penalty of imprisonment of *reclusion perpetua* and to pay the heirs of the deceased victim damages in the amount of FIFTY THOUSAND PESOS

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[7] Exhibit "1", *Id.* at 213.

[8] Exhibit "2", *Id.* at 214.

[9] Exhibit "4", *Id.* at 216.

[10] *Ibid*.

(PHP50,000.00) (*People vs. Jose Adriano y Vargas*, G.R. No. 104578, 06 September 1993).

It is understood that accused shall be credited in full of his preventive imprisonment.[11]

The appellant now assails the decision, contending that:

I

THE LOWER COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE EVIDENCE OF THE PROSECUTION.

II

THE LOWER COURT GRAVELY ERRED IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

III

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED FOR THE OFFENSE CHARGED.[12]

The appellant asserts that the trial court erred in giving credence and full probative weight to the testimonies of Zenaida and Roger and in disbelieving his testimony and that of Balingit. He avers that the inconsistencies between his testimony and that of Balingit are trivial and did not render the same incredible and barren of probative weight. He contends that the trial court erred in not finding that the victim was stabbed by his brother, Rolando, and not by him. The appellant further asserts that, as shown by his injuries, he was the victim of the vicious assault by Rolando, Nazario and Jaime.

The appeal of the appellant has no merit.

In denying having stabbed and killed the victim, the appellant thereby assails the credibility of Zenaida and Roger and the credibility and probative weight of their testimonies. However, the trial court gave credence and full probative weight to the testimonies of the said witnesses. It declared that "the testimonies

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[11] Records, pp. 238-239.

[12] *Rollo*, p. 148.

of the prosecution's witnesses are clear, positive, straightforward and devoid of signs of artificiality. No ill motive could be ascribed to them, even by herein accused Reforma, to falsely incriminate the accused."[13] The well-established rule is that, the trial court's calibration and assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as its findings, are accorded high respect, if not conclusive effect, by the appellate court because of the unique advantage of the trial court of observing and monitoring at close range the demeanor and deportment of the witnesses as they testify.[14] Although there are exceptions, we find no justification, after our review of the records, to deviate from the findings of the trial court and its assessment of the credibility and probative weight of the testimonies of the prosecution's witnesses.

Zenaida testified how the appellant stabbed her brother with a bolo (*gulok*) on the chest. She was only four arms' length away from the place of the stabbing:

Q On February 9, 1993, in the evening, do you recall where you were?

A I was in our stall, Sir.

Q When you say "*puwesto*" (stall), you were at Cloverleaf Market, Balintawak, Quezon City?

A Yes, Sir.

Q At about 11:00 o'clock in the evening, on that same day, do you recall any unusual incident that happened?

A Yes, Sir.

Q What was that incident about?

A My brother was killed, Sir.

Q And who was this brother of yours?

A Nazario Damian, Sir.

Q You said your brother was killed, who killed your brother?

A Virgilio Reforma, Sir.

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[13] *Rollo*, pp. 161-162.

[14] *People of the Philippines v. Jerryvie Gumayao y Dahao*, G.R. No. 138933, October 28, 2003.

(Witness is pointing to a person wearing a white t-shirt whom when asked answered to the name Virgilio Reforma)

Q Why do you know Virgilio Reforma?

A He is the husband of my sister, Sir.

Q What is the name of your sister who is the wife of the accused?

A Rosenda Damian, Sir.

Q How did Virgilio Reforma kill your brother?

A The accused went to the place of my brother and he stabbed him.

Q When you say your brother, you are referring to Nazario Damian?

A Yes, Sir.

Q Was your brother hit?

A Yes, Sir. (Witness is pointing to her left [*sic*] chest).

Q What weapon did the accused use in stabbing your brother?

A (Witness is showing a measurement of 18 inches bladed weapon in the form of a small "*gulok*").

Q When you saw the accused stabbed (*sic*) your brother, how far were you?

A Three (3) arms' length.

Q After your brother was stabbed, what did he do, if any?

A They grappled for the possession of the weapon while the same was implanted on my brother's breast (*sic*), he fell down.

Q As your brother fell down, what did the accused do?

A I called up my two other brothers who then came out and grappled also for the possession of the weapon.

Q And who were these two brothers of yours?

A They are Rolando and Henry Damian and it was Rolando who was able to grab the possession (*sic*) of the weapon.

Q What did Rolando do after he was able to grab the possession (*sic*) of the weapon?

A He brought the weapon to the police.

Q How about Reforma, what did he do after the weapon from his hands was taken by Rolando Damian?

A He went away, Sir.

Q Where did he go, if you know?

A To his stall because he has also a stall in Cloverleaf Market.

Q How far is his stall to the place where the stabbing incident took place?

A About four (4) arms' length away, Sir.[15]

Roger testified how he was awakened by the commotion between the appellant and the victim. He saw the appellant as he stabbed the victim on the chest with a bolo, and thereafter, fled from the scene:

Q You stated that you are a vendor at (*sic*) Balintawak market, as a vendor, do you know the person of Nazario Damian?

A I know him, Sir.

Q As of February 9, 1993, how long have you known Nazario Damian?

A More or less 10 years, Sir.

Q Why do you know Nazario Damian?

A Because he is also a vendor beside my stall at (*sic*) Balintawak market, Sir.

Q Where is Nazario Damian?

A He's already dead, Sir.

Q How about Virgilio Reforma, do you know him?

A Yes, Sir.

Q How do you know him?

A I have known him first, and he is also the same vendor near my stall at Balintawak and I have known him longer than Nazario Damian, Sir.

Q If Virgilio Reforma is inside the courtroom, will you kindly point him to this Honorable Court?

A (Witness pointing to a man wearing a yellow-orange polo shirt who identified himself as Virgilio Reforma)

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[15] TSN, 17 May 1993, pp. 4-7.

Q In the evening of February 9, 1993, do you recall the time when you went to bed?

A About 10:00 in the evening, Sir.

Q Where did you sleep that night?

A At the stall of Nazario Damian, Sir.

Q Where is that stall located?

A Balintawak market, EDSA, Quezon City, Sir.

Q You went to bed at about 10:00 in the evening, what time did you wake up on that evening?

A I was waken-up (*sic*) by that incident about 11:00 in the evening, Sir.

Q And why did you wake up?

A I was waken up (*sic*) by that trouble, Sir.

Q What kind of trouble was that?

A Because Virgilio Reforma is (*sic*) stabbing Nazario Damian, Sir.

Q What was the weapon used by Reforma in stabbing the victim?

A A bolo like this (Witness is showing a length of a foot), Sir.

Q What else did you see as the accused Reforma was brandishing that bolo?

A I have seen him stabbing Nazario Damian, Sir.

Q How far were you from Virgilio Damian at that time you saw him stabbing Nazario Damian?

A About one arm's length, Sir.

Q Was Nazario Damian hit?

A Yes, Sir.

Q How many times?

A Two (2) times, Sir.

Q What part of Nazario Damian was hit?

A Here (Witness pointing to his left [*sic*] chest and his left leg), Sir.

Q And what did Nazario Damian do as he was being stabbed by the accused?

A He's (*sic*) trying to parry the stab blow but he was not able to do so, Sir.

Q How about you, what did you do when you saw Nazario Damian being stabbed?

A I step (*sic*) a little far, but when I saw that Nazario was hit, I got near them to help him and carried him, Sir.

Q How about Reforma, what did he do?

A He was held by the brothers of Nazario, Sir.

Q Who is that brother who held Reforma?

A Jimmy and Rolly Damian, Sir.

Q How is Rolly Damian related to the deceased?

A Brother, Sir.

Q What was the reaction of Reforma as he was being held by the Damian brothers, Jimmy and Rolly?

A He was trying to free himself, Sir.

Q Was he able to free himself?

A Yes, Sir.

Q Where did he go?

A That I do not know for I am now (*sic*) trying to carry Nazario Damian, Sir.

Q How about Jimmy and Rolly, what did they do as Reforma was able to extricate?

A They run (*sic*) towards me for I am (*sic*) bringing Damian and they helped me in carrying Nazario, Sir.

Q What happened afterwards?

A After I brought Nazario to the hospital, we went back to the market at Balintawak, Sir.[16]

The testimonies of the prosecution's witnesses are corroborated by the post-mortem report of Dr. Florante Baltazar that the victim was stabbed on the chest. The flight of the appellant

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[16] TSN, 21 September 1994, pp. 2-4.

from the *situs criminis,* and his throwing away of the bolo in the process, are evidence of his guilt of the crime charged. There is no evidence on record that Roger and Zenaida nurtured any ill or devious motive to pillory the appellant and falsely ascribe to him the killing of Nazario. Hence, the said witnesses are presumed to have testified in good faith and their testimony entitled to full faith and credit.[17]

The appellant's bare denial of the charge against him cannot prevail over the positive and straightforward testimonies of the prosecution's witnesses, identifying and pointing to him as the perpetrator of the crime.[18]

The appellant's and Balingit's testimony, that the appellant was mauled and hit with a lead pipe and that Rolando stabbed Nazario once when he attempted to stab the appellant, is belied by the medico-legal report of Dr. Florante Baltazar that the victim sustained one penetrating stab wound on the anterior left thorax and four (4) incised wounds and multiple abrasions. Balingit has not adduced in evidence any medical certificate that he sustained a stab wound on his left hand. As between Balingit's testimony and the physical evidence, the latter must be upheld.[19] The appellant adduced in evidence a mere machine copy of the temporary medical certificate issued to him by an unidentified doctor who did not testify. The appellant cannot, thus, rely on the said certificate to fortify his defense. While he filed a criminal complaint against Rolando and Jaime in the Office of the City Prosecutor, docketed as I.S. No. 93-2460, it is incredible that he is not even aware of what happened to his complaint.

The Crime Committed by the Appellant

The trial court convicted the appellant of murder under Article 248 of the Revised Penal Code, but failed to state any qualifying circumstance attendant to the crime. The Information alleges that the appellant killed the victim with treachery, taking advantage

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

[18] *People vs. Tabaco,* 270 SCRA 32 (1997).

[19] *Tan, Jr. vs. Court of Appeals,* 342 SCRA 643 (2000).

of superior strength and evident premeditation. However, the prosecution failed to prove any of the said circumstances beyond reasonable doubt.

There is treachery when the following conditions are present: (a) employment of means, methods or manner of execution to insure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, and, (b) deliberate adoption by the offender of such means, methods or manner of execution.[20] Since the prosecution's witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Treachery must be proved by clear and convincing evidence, or as conclusively as the killing itself.[21]

In this case, Zenaida and Roger did not see how the attack commenced. When Roger woke up, there was already an ongoing confrontation between the appellant and the victim.

The three requisites needed to prove evident premeditation are the following: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had 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.[22] The prosecution failed to prove any essential element of these circumstances.

We held that abuse of superior strength is considered when there is a showing that the accused purposely employed superior strength to consummate the crime; that he used purposely excessive force out of proportion to the means of defense available

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[20] *People vs. Santiago*, 342 SCRA 52 (2000).

[21] *Ibid*.

[22] *Id*.

to the person attacked.[23] In this case, while the appellant used a bolo, there is no evidence on record that he purposely used it precisely to commit the crime. In fine, the appellant is guilty only of homicide under Article 249 of the Revised Penal Code.

The penalty for homicide under 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 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.

Civil Liabilities of the Appellant

The trial court correctly awarded ₱50,000 by way of civil indemnity to the heirs of the victim Nazario Damian. 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, however, entitled to an award of ₱25,000 as temperate damages, conformably to current jurisprudence.[24]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Quezon City, Branch 99, is *AFFIRMED WITH MODIFICATIONS.* The appellant Virgilio Reforma *y* Pedrigal 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

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[23] *People vs. Lucena*, 356 SCRA 90 (2001).

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

ORDERED to pay Fifty Thousand Pesos (₱50,000) as civil indemnity and Twenty-Five Thousand Pesos (₱25,000) as temperate damages to the heirs of the victim.

No costs.

SO ORDERED.

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

EN BANC

[B.M. No. 1154. June 8, 2004]

IN THE MATTER OF THE DISQUALIFICATION OF BAR EXAMINEE HARON S. MELING IN THE 2002 BAR EXAMINATIONS AND FOR DISCIPLINARY ACTION AS MEMBER OF THE PHILIPPINE SHARI'A BAR, ATTY. FROILAN R. MELENDREZ, *petitioner*.

SYNOPSIS

Haron S. Meling filed his petition to take the 2000 Bar Examinations without disclosing the fact that he has three (3) pending criminal cases before the Municipal Trial Court in Cities, Cotabato City. Further, he was already using the title "Attorney" in his communications, as Secretary to the Mayor of Cotabato City, when in fact he is not yet a member of the Bar. Hence, this petition.

The Office of the Bar Confidant recommended that Meling should not be allowed to take the Lawyer's Oath and sign the Roll of Attorneys in the event that he passes the Bar Examinations. This, however, was rendered moot and academic as Meling did not pass the Bar. As to his membership in the Philippine Shari'a Bar, he was suspended until further orders from the Court.

SYLLABUS

1. **LEGAL ETHICS; PRACTICE OF LAW; REQUIRES GOOD MORAL CHARACTER. —** Practice of law, whether under the regular or the Shari'a Court, is not a matter of right but merely a privilege bestowed upon individuals who are not only learned in the law but who are also known to possess good moral character. The requirement of good moral character is not only a condition precedent to admission to the practice of law, its continued possession is also essential for remaining in the practice of law.

2. **ID.; ID.; ID.; FAILURE TO DISCLOSE PENDING CRIMINAL CASES DESPITE REQUIREMENT TO DO SO WHEN APPLYING TO TAKE THE BAR EXAMINATION IS CONCEALMENT. —** The standard form issued in connection with the application to take the 2002 Bar Examinations requires the applicant to aver that he or she "has not been charged with any act or omission punishable by law, rule or regulation before a fiscal, judge, officer or administrative body, or indicted for, or accused or convicted by any court or tribunal of, any offense or crime involving moral turpitude; nor is there any pending case or charge against him/her." Despite the declaration required by the form, Meling did not reveal that he has three pending criminal cases. His deliberate silence constitutes concealment, done under oath at that. The disclosure requirement is imposed by the Court to determine whether there is satisfactory evidence of good moral character of the applicant. The nature of whatever cases are pending against the applicant would aid the Court in determining whether he is endowed with the moral fitness demanded of a lawyer. By concealing the existence of such cases, the applicant then flunks the test of fitness even if the cases are ultimately proven to be unwarranted or insufficient to impugn or affect the good moral character of the applicant.

3. **ID.; ID.; ID.; ID.; FORFEITURE OF PRIVILEGE AS MEMBER OF THE SHARI'A BAR, PROPER. —** Meling's concealment of the fact that there are three (3) pending criminal cases against him speaks of his lack of the requisite good moral character and results in the forfeiture of the privilege bestowed upon him as a member of the Shari'a Bar. Moreover, his use of the appellation "Attorney", knowing fully well that he is not

> entitled to its use, cannot go unchecked. The judiciary has no place for dishonest officers of the court, such as Meling in this case. The solemn task of administering justice demands that those who are privileged to be part of service therein, from the highest official to the lowliest employee, must not only be competent and dedicated, but likewise live and practice the virtues of honesty and integrity. Anything short of this standard would diminish the public's faith in the Judiciary and constitutes infidelity to the constitutional tenet that a public office is a public trust.

R E S O L U T I O N

TINGA, *J.*:

The Court is here confronted with a *Petition* that seeks twin reliefs, one of which is ripe while the other has been rendered moot by a supervening event.

The antecedents follow.

On October 14, 2002, Atty. Froilan R. Melendrez (Melendrez) filed with the Office of the Bar Confidant (OBC) a *Petition*[1] to disqualify Haron S. Meling (Meling) from taking the 2002 Bar Examinations and to impose on him the appropriate disciplinary penalty as a member of the Philippine Shari'a Bar.

In the *Petition*, Melendrez alleges that Meling did not disclose in his Petition to take the 2002 Bar Examinations that he has three (3) pending criminal cases before the Municipal Trial Court in Cities (MTCC), Cotabato City, namely: Criminal Cases Nos. 15685 and 15686, both for Grave Oral Defamation, and Criminal Case No. 15687 for Less Serious Physical Injuries.

The above-mentioned cases arose from an incident which occurred on May 21, 2001, when Meling allegedly uttered defamatory words against Melendrez and his wife in front of media practitioners and other people. Meling also purportedly attacked and hit the face of Melendrez' wife causing the injuries to the latter.

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[1] *Rollo*, pp. 2-25, with Annexes.

Furthermore, Melendrez alleges that Meling has been using the title "Attorney" in his communications, as Secretary to the Mayor of Cotabato City, despite the fact that he is not a member of the Bar. Attached to the *Petition* is an indorsement letter which shows that Meling used the appellation and appears on its face to have been received by the Sangguniang Panglungsod of Cotabato City on November 27, 2001.

Pursuant to this Court's Resolution[2] dated December 3, 2002, Meling filed his *Answer* with the OBC.

In his *Answer*,[3] Meling explains that he did not disclose the criminal cases filed against him by Melendrez because retired Judge Corocoy Moson, their former professor, advised him to settle his misunderstanding with Melendrez. Believing in good faith that the case would be settled because the said Judge has moral ascendancy over them, he being their former professor in the College of Law, Meling considered the three cases that actually arose from a single incident and involving the same parties as "closed and terminated." Moreover, Meling denies the charges and adds that the acts complained of do not involve moral turpitude.

As regards the use of the title "Attorney," Meling admits that some of his communications really contained the word "Attorney" as they were, according to him, typed by the office clerk.

In its *Report and Recommendation*[4] dated December 8, 2003, the OBC disposed of the charge of non-disclosure against Meling in this wise:

> The reasons of Meling in not disclosing the criminal cases filed against him in his petition to take the Bar Examinations are ludicrous. He should have known that only the court of competent jurisdiction can dismiss cases, not a retired judge nor a law professor. In fact, the cases filed against Meling are still pending. Furthermore, granting

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[2] *Id*. at 27.

[3] *Id*. at 28-32.

[4] *Supra*, note 1 at 34-38.

arguendo that these cases were already dismissed, he is still required to disclose the same for the Court to ascertain his good moral character. Petitions to take the Bar Examinations are made under oath, and should not be taken lightly by an applicant.

The merit of the cases against Meling is not material in this case. What matters is his act of concealing them which constitutes dishonesty.

In Bar Matter 1209, the Court stated, thus:

> It has been held that good moral character is what a person really is, as distinguished from good reputation or from the opinion generally entertained of him, the estimate in which he is held by the public in the place where he is known. Moral character is not a subjective term but one which corresponds to objective reality. The standard of personal and professional integrity is not satisfied by such conduct as it merely enables a person to escape the penalty of criminal law. Good moral character includes at least common honesty.

The non-disclosure of Meling of the criminal cases filed against him makes him also answerable under Rule 7.01 of the Code of Professional Responsibility which states that "*a lawyer shall be answerable for knowingly making a false statement or suppressing a material fact in connection with his application for admission to the bar*."[5]

As regards Meling's use of the title "Attorney", the OBC had this to say:

Anent the issue of the use of the appellation "Attorney" in his letters, the explanation of Meling is not acceptable. Aware that he is not a member of the Bar, there was no valid reason why he signed as "attorney" whoever may have typed the letters.

Although there is no showing that Meling is engaged in the practice of law, the fact is, he is signing his communications as "Atty. Haron S. Meling" knowing fully well that he is not entitled thereto. As held by the Court in Bar Matter 1209, the unauthorized use of the

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[5] *Id.* at 35-36, citing Bar Matter 1209, *Petition to take the Lawyer's Oath of Caesar Distrito and Royong v. Oblena*, 7 SCRA 859.

appellation "attorney" may render a person liable for indirect contempt of court.[6]

Consequently, the OBC recommended that Meling not be allowed to take the Lawyer's Oath and sign the Roll of Attorneys in the event that he passes the Bar Examinations. Further, it recommended that Meling's membership in the Shari'a Bar be suspended until further orders from the Court.[7]

We fully concur with the findings and recommendation of the OBC. Meling, however, did not pass the 2003 Bar Examinations. This renders the Petition, insofar as it seeks to prevent Meling from taking the Lawyer's Oath and signing the Roll of Attorneys, moot and academic.

On the other hand, the prayer in the same *Petition* for the Court to impose the appropriate sanctions upon him as a member of the Shari'a Bar is ripe for resolution and has to be acted upon.

Practice of law, whether under the regular or the Shari'a Court, is not a matter of right but merely a privilege bestowed upon individuals who are not only learned in the law but who are also known to possess good moral character.[8] The requirement of good moral character is not only a condition precedent to admission to the practice of law, its continued possession is also essential for remaining in the practice of law.[9]

The standard form issued in connection with the application to take the 2002 Bar Examinations requires the applicant to aver that he or she "has not been charged with any act or omission punishable by law, rule or regulation before a fiscal, judge, officer or administrative body, or indicted for, or accused or convicted by any court or tribunal of, any offense or crime

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[6] *Id*. at 36-37, citing Section 3, Rule 71 of the Revised Rules of Court and Bar Matter 1209, *supra*.

[7] *Id*. at 38.

[8] *Tan v. Sabandal*, Bar Matter No. 44, February 24, 1992, 206 SCRA 473.

[9] *Leda v. Tabang*, Adm. Case No. 2505, February 21, 1992, 206 SCRA 395.

involving moral turpitude; nor is there any pending case or charge against him/her." Despite the declaration required by the form, Meling did not reveal that he has three pending criminal cases. His deliberate silence constitutes concealment, done under oath at that.

The disclosure requirement is imposed by the Court to determine whether there is satisfactory evidence of good moral character of the applicant.[10] The nature of whatever cases are pending against the applicant would aid the Court in determining whether he is endowed with the moral fitness demanded of a lawyer. By concealing the existence of such cases, the applicant then flunks the test of fitness even if the cases are ultimately proven to be unwarranted or insufficient to impugn or affect the good moral character of the applicant.

Meling's concealment of the fact that there are three (3) pending criminal cases against him speaks of his lack of the requisite good moral character and results in the forfeiture of the privilege bestowed upon him as a member of the Shari'a Bar.

Moreover, his use of the appellation "Attorney", knowing fully well that he is not entitled to its use, cannot go unchecked. In *Alawi v. Alauya*,[11] the Court had the occasion to discuss the impropriety of the use of the title "Attorney" by members of the Shari'a Bar who are not likewise members of the Philippine Bar. The respondent therein, an executive clerk of court of the 4th Judicial Shari'a District in Marawi City, used the title "Attorney" in several correspondence in connection with the rescission of a contract entered into by him in his private capacity. The Court declared that:

> . . . persons who pass the Shari'a Bar are not full-fledged members of the Philippine Bar, hence, may only practice law before Shari'a courts. While one who has been admitted to the Shari'a Bar, and one who has been admitted to the Philippine Bar, may both be

[10] See *In Re: Victorio D. Lanuevo,* Adm. Cases No. 1162-1164, 29 August 1975, 66 SCRA 245, 281.

[11] A.M. No. SDC-97-2-P, February 24, 1997, 268 SCRA 628.

considered "counselors," in the sense that they give counsel or advice in a professional capacity, only the latter is an "attorney." The title "attorney" is reserved to those who, having obtained the necessary degree in the study of law and successfully taken the Bar Examinations, have been admitted to the Integrated Bar of the Philippines and remain members thereof in good standing; and it is they only who are authorized to practice law in this jurisdiction.[12]

The judiciary has no place for dishonest officers of the court, such as Meling in this case. The solemn task of administering justice demands that those who are privileged to be part of service therein, from the highest official to the lowliest employee, must not only be competent and dedicated, but likewise live and practice the virtues of honesty and integrity. Anything short of this standard would diminish the public's faith in the Judiciary and constitutes infidelity to the constitutional tenet that a public office is a public trust.

In *Leda v. Tabang, supra*, the respondent concealed the fact of his marriage in his application to take the Bar examinations and made conflicting submissions before the Court. As a result, we found the respondent grossly unfit and unworthy to continue in the practice of law and suspended him therefrom until further orders from the Court.

WHEREFORE, the *Petition* is ***GRANTED*** insofar as it seeks the imposition of appropriate sanctions upon Haron S. Meling as a member of the Philippine Shari'a Bar. Accordingly, the membership of Haron S. Meling in the Philippine Shari'a Bar is hereby ***SUSPENDED*** until further orders from the Court, the suspension to take effect immediately. Insofar as the *Petition* seeks to prevent Haron S. Meling from taking the Lawyer's Oath and signing the Roll of Attorneys as a member of the Philippine Bar, the same is ***DISMISSED*** for having become moot and academic.

Copies of this Decision shall be circulated to all the Shari'a Courts in the country for their information and guidance.

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[12] *Id*. at 638-639.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. RTJ-04-1853. June 8, 2004]
(Formerly OCA-IPI No. 03-1655-RTJ)

GOV. JOSEFINA M. DELA CRUZ, Malolos, Bulacan, *complainant, vs.* **JUDGE VICTORIA VILLALON-PORNILLOS, RTC, Branch 10, Malolos, Bulacan,** *respondent.*

SYNOPSIS

Complainant charged respondent judge with abuse of authority and gross ignorance of the law. Allegedly, respondent judge issued an order restraining the implementation of a final and executory decision of the Municipal Trial Court without even conducting a hearing on the application therefor.

Whenever an application for a TRO is filed, the court may act on the application only after all parties have been notified and heard in a summary hearing. A summary hearing may not be dispensed with. This is a settled rule under Administrative Circular No. 20-95 of the Supreme Court, embodied in Section 5, Rule 58 of the 1997 Rules of Civil Procedure. The Court ruled that respondent judge failed to comply with the said rules and hence, should be meted a fine of ₱5,000.00 with stern warning against commission of similar acts in the future.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DUTIES; TO BE AWARE OF THE LAW. —** Whenever an application for a TRO is filed, the court may act on the application only after all parties have been notified and heard in a summary hearing. A summary hearing may not be dispensed with. The respondent judge is expected to be aware of this settled rule which has, in fact, been embodied in Section 5, Rule 58 of the 1997 Rules of Civil Procedure. It was her duty to apply the rule for those who wield the judicial gavel have the duty to study our laws and their latest wrinkles. They owe it to the public to be legally knowledgeable for ignorance of the law is the mainspring of injustice.

2. **ID.; ID.; ID.; IGNORANCE OF THE LAW; PROPER PENALTY IN CASE AT BAR. —** We have held that a judge's disregard of the Supreme Court's pronouncement on TROs was not just ignorance of the prevailing rule; to a large extent, it was misconduct, conduct prejudicial to the proper administration of justice, and grave abuse of authority. However, to be punishable, an act constituting ignorance of the law must not only be contradictory to existing law and jurisprudence, he must also be motivated by bad faith, fraud, dishonesty or corruption. But in this case, where the respondent displayed ignorance of the Supreme Court Circular involved to the great detriment of the Province of Bulacan where she was and is up to now holding court, seven (7) years after it was issued and five (5) years after it was incorporated in the 1997 Rules of Civil Procedure, the infraction deserves the penalty of at least a fine. WHEREFORE, Judge Victoria Villalon-Pornillos is meted a FINE in the amount of Five Thousand (₱5,000.00) Pesos for failure to comply with Administrative Circular No. 20-95. She is sternly warned that a commission of similar acts shall be dealt with more severely in the future.

APPEARANCES OF COUNSEL

Bernar D. Fajardo for complainant.

D E C I S I O N

TINGA, *J.*:

Before us is a verified *Complaint*[1] filed by Governor Josefina M. Dela Cruz of Bulacan on December 16, 2002 leveling against Judge Victoria Villalon-Pornillos[2] the charges of Abuse of Authority and Gross Ignorance of the Law.

The antecedent facts, succinctly outlined in the report[3] of the Office of the Court Administrator (OCA), are as follows:

> . . . on September 14, 1994, the Provincial Government of Bulacan, thru Engr. Castro, the Provincial Services Officer of Bulacan filed a complaint for Unlawful Detainer against Atty. Francisco Galman-Cruz and Jimmy Legaspi in the Municipal Trial Court of Malolos, Bulacan. Due to the Motion for Inhibition filed by defendant Galman-Cruz against the presiding judge of MTC Malolos, Bulacan, the Executive Judge of the RTC of Malolos, Bulacan issued Administrative Order No. 37-95 designating Hon. Ester R. Chua-Yu, presiding judge of the MTC Bulacan, Bulacan to hear and try the case. On September 5, 1997, the MTC of Bulacan, Bulacan rendered a judgment against defendant Galman-Cruz ordering the latter and all persons claiming rights under him to:
>
> (1) Vacate the leased premises and surrender possession thereof to the plaintiff.
>
> (2) x x x
>
> (3) x x x (Annex "E")
>
> The decision of the Municipal Trial Court was appealed to the Regional Trial Court. On March 3, 1999 the RTC affirmed *in toto* the decision appealed from (Annex "D"). Not satisfied, defendant Galman-Cruz filed a Petition for Review with Prayer for issuance of TRO and Preliminary Injunction with the Court of Appeals. One of the issues raised in said petition *was the alleged lack of personality of Engr. Castro to represent the Province of Bulacan*

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[1] *Rollo*, pp. 1-6.

[2] Regional Trial Court, Branch 10, Malolos, Bulacan.

[3] Dated August 14, 2003; *Rollo*, pp. 138-145.

for no specific authorization or empowerment was extended by the Province, thru its Sangguniang Panlalawigan, for the institution or prosecution of the complaint for ejectment. On February 28, 2000, the Seventh Division of the Court of Appeals promulgated decision denying the petition and affirmed the assailed decision (Annex "C"). Petitioner elevated the case to the Supreme Court by filing a Petition for Review on *Certiorari* but it was denied by the Second Division of the Supreme Court for late filing. A motion for reconsideration was filed, but the Court, "Resolved to Deny the Motion with Finality for no compelling reason have been adduced and the petitioner failed to sufficiently show that the Court of Appeals had committed any reversible error. x x x" (Annex "B-1"). As Per Entry of Judgment issued, the decision became final and executory on November 20, 2000 and was recorded in the Book of Entries of Judgment. (Annex "B")

On August 27, 2001, the Municipal Trial Court, on motion, issued an Order of Execution. (Annex "F"). Defendant Atty. Galman-Cruz filed a Motion for Reconsideration alleging that the Supreme Court has not yet finally resolved the above-entitled case (Annex "G"). On October 4, 2001, the court denied the Motion for Reconsideration (Annex "H").

In order to prevent the execution of the final and executory judgment, defendant Galman-Cruz filed with the RTC Malolos, Bulacan a Petition for *Certiorari* and *Mandamus* with Preliminary Mandatory and Prohibitory Injunction with Prayer for an issuance of a TRO. Branch 19, RTC Malolos, Bulacan where the case was raffled off denied the Petition (Annex "J").

On November 12, 2001 the Writ of Execution was issued by the Municipal Trial Court of Bulacan, Bulacan but the same was returned unsatisfied because defendant Galman-Cruz refused to comply with the writ. On August 21, 2002, the court, on motion, issued a Special Writ of Demolition. Dilatory tactics were employed by defendant Galman-Cruz to delay the implementation of the writ by filing several motions, one of which was a Motion for Inhibition of the judge from hearing the Motion for Demolition. After an *Alias* Writ of Demolition was issued by the court, defendant Galman-Cruz, filed a Petition for *Certiorari* (on the Order of Demolition) with Prayer for Issuance of a Temporary Restraining Order and Preliminary Injunction with the Regional Trial Court of Malolos, Bulacan which was raffled off to Branch 10 presided over by the respondent judge. Respondent

judge issued a TRO on November 7, 2002 and, later a preliminary injunction was issued, as prayed for by petitioner Galman-Cruz.[4]

With this factual backdrop, Governor Dela Cruz filed the instant administrative complaint averring that the respondent judge's issuance of an order restraining the implementation of a final and executory decision of the MTC without even conducting a hearing on the application therefor constitutes gross ignorance of the law particularly Administrative Circular No. 20-95 of the Supreme Court now embodied in Section 5, Rule 58 of the 1997 Rules of Civil Procedure.[5]

In her *Comment*[6] dated March 26, 2003, the respondent judge vigorously refutes the allegation that she erred when she issued the TRO on November 7, 2002. She maintains that what she did was merely to prevent the illegal and unauthorized demolition of petitioner's (defendant Atty. Francisco Galman-Cruz) properties, the Flying A Hotel and the Pinoy Gas Station, on the strength of what she considers to be a questionable *Writ of Demolition* which is the offspring of an equally ineffective *Writ of Execution*.[7] The respondent judge avers that a reading of the entire records of the case would reveal that there were vital issues which were raised by the defendants but which were left unresolved by the Special Judge (MTC Judge Ester R. Chua-Yu) who heard the case outside of her jurisdiction without any prior order or authorization to do so. She, thus, concludes that the decision is a complete nullity in itself.[8] The respondent judge further claims that when she issued the TRO in question, the facts set forth in the verified Petition of Atty. Francisco Galman-Cruz persuaded her that there were equitable grounds for interference which called for the issuance of the TRO. According to her, there was a need for her court to interfere in the civil case because the writ of demolition was allegedly hastily issued,

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[4] *Id*. at 141-143.

[5] *Id*. at 3, Complaint-Affidavit of Complainant.

[6] *Id*. at 87-129.

[7] *Id*. at 140.

[8] *Ibid*.

i.e., without first resolving the pending motions and prior to a determination by a duly licensed Geodetic Engineer of the exact metes and bounds of the 400 square meters, more or less, of the leased premises subject thereof.[9]

The respondent judge claims that a hearing was conducted on the *Motion to Quash the Temporary Restraining Order* filed by the Provincial Government of Bulacan and the application for the issuance of a writ of preliminary injunction. During the hearing, both parties were able to present testimonial and documentary evidence in support of their position. Allegedly, it was only after the hearing that she issued an order for the issuance of a writ of preliminary injunction.[10] Hence, the respondent judge stresses that she acted in accordance with the provisions of the Interim or Transitional Rules and Guidelines implementing the Judiciary Reorganization Act of 1980.[11]

In a *Reply*[12] dated April 22, 2003, Governor Dela Cruz reiterates the arguments in her *Complaint*. She admits that there is indeed an action for the annulment of the decision in the unlawful detainer case now pending before the Regional Trial Court, Branch 18 of Malolos, Bulacan.[13]

The OCA limits the issue in the instant administrative case to whether the respondent judge can be allowed to restrain or stay the execution of a final and executory judgment. According to the OCA, the respondent judge gravely abused her discretion when she issued the writ of preliminary injunction which, in effect, nullified the final and executory decision of the MTC. Correspondingly, the OCA recommends that the respondent judge be fined the amount of Five Thousand Pesos (₱5,000.00) for ignorance of the law.[14]

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[9] *Ibid.*

[10] *Id.* at 112-120.

[11] *Id.* at 106.

[12] *Id.* at 133-137.

[13] *Id.* at 134.

[14] *Id.* at 145.

A reading of the *Complaint* readily reveals that what is questioned therein is the issuance of the TRO in violation of Administrative Circular No. 20-95 and not the subsequent issuance of the writ of preliminary injunction.

Administrative Circular No. 20-95 provides:

> 1. Where an application for temporary restraining order (TRO) or a writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such complaint or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel.
>
> 2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle.
>
> 3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing on the pending application for preliminary injunction can be conducted. In no case shall the total period . . . exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge.

Clearly, whenever an application for a TRO is filed, the court may act on the application only after all parties have been notified and heard in a summary hearing. A summary hearing may not be dispensed with.[15]

The respondent judge is expected to be aware of this settled rule which has, in fact, been embodied in Section 5, Rule

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[15] *Gustilo v. Real*, A.M. No. MTJ-00-1250, February 28, 2001, 353 SCRA 1, citing *Abundo v. Manio*, A.M. RTJ-98-1416, August 6, 1999, 312 SCRA 1.

58[16] of the 1997 Rules of Civil Procedure. It was her duty to apply the rule for those who wield the judicial gavel have the duty to study our laws and their latest wrinkles. They owe it to the public to be legally knowledgeable for ignorance of the law is the mainspring of injustice.[17]

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[16] Sec. 5. *Preliminary injunction not granted without notice; exception.* — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex-parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

[17] *Bio v. Valera,* A.M. No. MTJ-96-1074, June 20, 1996, 257 SCRA 462.

The respondent judge, however, miserably failed in her duty to keep abreast of developments in law and jurisprudence. She was obviously completely unacquainted with Administrative Circular No. 20-95 and the pertinent provisions of the 1997 Rules of Civil Procedure. In her *Comment*, she even cited as authority for her issuance of a TRO the long-amended Interim or Transitional Rules and Guidelines implementing the Judiciary Reorganization Act of 1980.[18]

It is well to impress upon the respondent judge that the Circular aims to restrict the *ex parte* issuance of a TRO only to cases of extreme urgency, in order to avoid grave injustice and irreparable injury.[19] It is a reform measure intended to prevent the precipitate and improvident issuance of TROs. Had she made herself aware of the Circular, as she should, she would have been apprised of the history of the case, *i.e.*, that the MTC decision has been reviewed by the Regional Trial Court, the Court of Appeals, and this Court, and rendered final and executory.

Instead, by her own admission, the respondent judge apparently rushed the issuance of the TRO without the benefit of a summary hearing and on the same day that the petition therefor was received by her *sala* on November 7, 2002.[20] This is precisely the situation Administrative Circular No. 20-95 seeks to avoid.

We have held that a judge's disregard of the Supreme Court's pronouncement on TROs was not just ignorance of the prevailing rule; to a large extent, it was misconduct, conduct prejudicial to the proper administration of justice, and grave abuse of authority. However, to be punishable, an act constituting ignorance of the law must not only be contradictory to existing law and jurisprudence, he must also be motivated by bad faith, fraud, dishonesty or corruption.[21] But in this case, where the respondent

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[18] *Supra*, note 6 at 106.

[19] *Vda. De Sayson v. Zerna*, A.M. No. RTJ-99-1506, August 9, 2001, 362 SCRA 409.

[20] *Supra*, note 1 at 112.

[21] *Abundo v. Manio, supra* at note 15, citing *Golangco v. Villanueva*, A.M. No. RTJ-96-1355, September 4, 1997. See also *Vda. De Sayson v. Zerna, supra.*

displayed ignorance of the Supreme Court Circular involved to the great detriment of the Province of Bulacan where she was and is up to now holding court, seven (7) years after it was issued and five (5) years after it was incorporated in the 1997 Rules of Civil Procedure, the infraction deserves the penalty of at least a fine.

WHEREFORE, Judge Victoria Villalon-Pornillos is meted a **FINE** in the amount of Five Thousand (₱5,000.00) Pesos for failure to comply with Administrative Circular No. 20-95. She is sternly warned that a commission of similar acts shall be dealt with more severely in the future.

SO ORDERED.

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

EN BANC

[A.M. No. RTJ-04-1854. June 8, 2004]
(OCA-IPI No. 02-1379-RTJ)

ANA MARIA C. MANGUERRA, *complainant, vs.* **JUDGE GALICANO C. ARRIESGADO, Regional Trial Court, Branch 18, Cebu City; JUDGE ANACLETO L. CAMINADE, RTC, Branch 6, Cebu City; Clerk of Court VII JEOFFREY S. JOAQUINO, RTC-OCC, Cebu City; and Branch Clerk of Court MYRNA V. LIMBAGA, RTC, Branch 6, Cebu City,** *respondents.*

SYNOPSIS

Complainant charged respondents with Irregular Raffling of Cases, Dereliction of Duty and/or Incompetence and Falsification relative to Special Proceeding No. 1700-R. During investigation of the charge, however, complainant manifested that she was no longer interested in pursuing the case; she believed respondents

were not administratively liable and she was no longer willing to testify against respondents.

Without the testimony of the complainant and her other material witnesses, the allegations of the complaint stand unsubstantiated. The Court cannot give credence to charges based on mere suspicion and speculation. Hence, the complaint was dismissed for lack of merit.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT OFFICERS; COMPLAINANT IN ADMINISTRATIVE PROCEEDINGS HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN HIS COMPLAINTS. — In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in their complaints. As observed by the Investigating Justice, without the testimony of the complainant and her other material witnesses, the allegations of the complaint stand unsubstantiated. In the absence of contrary evidence, as in this case, what will prevail is the presumption that the respondents regularly performed their duties. . . . The Rules, even in an administrative case, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge. The judiciary to which the respondent belongs demands no less. Before any of its members could be faulted, it should only be after due investigation and after the presentation of competent evidence, especially since the charge is penal in character. The absence of any evidence showing that respondents acted culpably reduces the charges against them into a mere indictment. We cannot, however, give credence to charges based on mere suspicion and speculation.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

In a verified letter-complaint,[1] Ana Maria C. Manguerra charged respondents Executive Judge Galicano C. Arriesgado,

[1] *Rollo,* p. 1.

Judge Anacleto L. Caminade, Clerk of Court VII Jeoffrey S. Joaquino, Branch Clerk Myrna V. Limbaga, all of the Regional Trial Court of Cebu City, with Irregular Raffling of Cases, Dereliction of Duty and/or Incompetence and Falsification relative to Special Proceeding No. 1700-R entitled, "*In the Matter of the Intestate Estate of Mariano F. Manguerra*."

The complainant alleges, in sum, that Special Proceeding No. 1700-R, pending with Branch 6 of the Regional Trial Court of Cebu City, was irregularly unloaded and clandestinely re-raffled to Branch 23 of the same court. Complainant argues that the irregular raffling of Special Proceeding No. 1700-R to Branch 23 was done to favor the oppositors therein.

In their joint Comment,[2] respondents, Branch 6 Presiding Judge Anacleto L. Caminade and Branch 6 Clerk of Court Myrna V. Limbaga, averred that Special Proceeding No. 1700-R was unloaded as a consequence of the re-raffle of Special Proceeding No. 916-R, entitled, "*Intestate Estate of Vito Borromeo*" (Borromeo case) to Branch 6 in view of Judge Antonio Echavez's inhibition. Respondents explained that when a judge recuses himself from a case, it shall be assigned to another branch by regular raffle, and the branch to which it is assigned will then unload a case of similar nature and status to the judge who inhibited himself *without need of raffle*. This, according to them, is the established practice in the Cebu City Regional Trial Court. Hence, respondent Limbaga unloaded Special Proceeding No. 1700-R to Branch 8, presided by Judge Echavez in exchange for Special Proceeding No. 916-R.

Respondent Executive Judge Galicano C. Arriesgado averred in his Comment[3] that prior written notice of the date and time of re-raffle of the inhibited case is not given to the parties. A written order is also not a mandatory requirement to unload a particular case from the receiving branch of the inhibited case

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[2] *Id*., p. 110.

[3] *Id*., p. 159.

and the Presiding Judge thereof may just verbally direct his Branch Clerk to unload a case of the same kind and status. Nonetheless, if only to clear once and for all any doubts in complainant's mind, respondent Executive Judge and the Raffle Committee would be more than willing to conduct a re-raffle with prior notice to the complainant and her counsel.

The Office of the Court Administrator recommended that the administrative complaint be referred to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

In the meantime, respondent Branch Clerk Myrna V. Limbaga tendered her resignation from the service.[4] The OCA recommended that the same be accepted without prejudice to the outcome of the instant administrative complaint,[5] which recommendation was noted by the Court in a Resolution dated February 11, 2003.[6]

Subsequently, the Court, upon the recommendation of the OCA, referred this case to Associate Justice Josefina G. Salonga of the Court of Appeals for evaluation, report and recommendation.[7]

During the investigation, complainant manifested that she was no longer interested in pursuing the case and that she believed respondents are not administratively liable. She further declared that she is no longer willing to testify against respondents.

Hence, Justice Salonga recommended the dismissal of the complaint against respondents.

We agree.

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[4] *Id*., p. 194.

[5] *Id*., p. 193.

[6] *Id*., p. 192.

[7] *Id*., p. 197.

In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in their complaints.[8] As observed by the Investigating Justice, without the testimony of the complainant and her other material witnesses, the allegations of the complaint stand unsubstantiated. In the absence of contrary evidence, as in this case, what will prevail is the presumption that the respondents regularly performed their duties.[9]

> . . . The Rules, even in an administrative case, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge.[10] The Judiciary to which the respondent belongs demands no less. Before any of its members could be faulted, it should only be after due investigation and after the presentation of competent evidence, especially since the charge is penal in character.[11]

The absence of any evidence showing that respondents acted culpably reduces the charges against them into a mere indictment. We cannot, however, give credence to charges based on mere suspicion and speculation.[12]

WHEREFORE, in view of all the foregoing, the complaint is *DISMISSED* for lack of merit.

SO ORDERED.

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

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[8] *Lorena v. Encomienda,* 362 Phil. 248 (1999); *Cortes v. Agcaoili,* 335 Phil. 848 (1998).

[9] *Oniquit v. Binamira-Parcia,* 358 Phil. 1 (1998).

[10] *Raquiza v. Castaneda, Jr.,* A.M. No. 1312-CFI, 31 January 1978, 81 SCRA 235.

[11] *OCA v. Judge Filomeno Pascual,* 328 Phil. 978 (1996).

[12] *Lambino v. De Vera,* 341 Phil. 62 (1997).

SECOND DIVISION

[G.R. No. 111387. June 8, 2004]

JUSTINA ADVINCULA-VELASQUEZ, *petitioner, vs.* **COURT OF APPEALS, HON. VIVENCIO G. LIRIO and REMMAN ENTERPRISES, INC.,** *respondents*.

[G.R. No. 127497. June 8, 2004]

JUSTINA ADVINCULA-VELASQUEZ, *petitioner, vs.* **COURT OF APPEALS, and REMMAN ENTERPRISES, INC.,** *respondents*.

SYNOPSIS

Spouses Velasquez were the agricultural lessees of a riceland in Parañaque which was sold to Delta Motors Corp., mortgaged to Philippine National Bank, and subsequently, sold to respondent corporation. While Velasquez was trying to redeem the subject property under PD No. 27, the same had been reclassified as low density residential zone. Nonetheless, the Court had ruled that Velasquez may redeem the property. Respondent, for its part, received a favorable decision in its case for unlawful detainer against Velasquez and eventually, as the decision became final, a writ of execution was subsequently issued. Thereafter, Velasquez filed a complaint for redemption before the Provincial Agrarian Reform Adjudicator (PARAD) and also filed a petition for *certiorari* and prohibition with the Court of Appeals (CA) for the nullification of the issued writ of execution. The CA dismissed the petition on the ground of violation of the hierarchy of courts. Hence, the petition.

The Court ruled that while the RTC and the CA may have concurrent jurisdiction to issue writs for *certiorari* and prohibition, the hierarchy of courts must be respected. Thus, the CA decision was affirmed. The PARAD, on the other hand, ruled that it had no jurisdiction over non-agricultural lands. Velasquez countered that the conversion of the property from agricultural into non-agricultural was made without approval of the Department of Agrarian Reform (DAR). The Court ruled:

since the reclassification of property was properly made before the effectivity of the Comprehensive Agrarian Reform Law, there was no need for a *post-facto* approval from the DAR. Thus, the PARAD had no jurisdiction over Velasquez' petition for redemption. As there was no appeal of the PARAD decision, the same had become final and executory.

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; CONCURRENT JURISDICTION OF COURTS TO ISSUE WRITS OF *CERTIORARI* AND PROHIBITION; HIERARCHY OF COURTS MUST BE OBSERVED. — We agree that under B.P. Blg. 129, the RTC and the Court of Appeals, in the exercise of its original jurisdiction or in aid of its appellate jurisdiction, have concurrent jurisdiction to issue writs of *certiorari* and prohibition. However, in *People vs. Cuaresma*, we emphasized that this concurrence of jurisdiction is not to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefore will be directed. We added that: 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") court should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. In *Santiago v. Vasquez*, we took particular note that: . . . [T]he propensity of litigants and lawyers to disregard the hierarchy of courts must be put to a halt, not only because of the imposition upon the precious time of this Court, but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court, the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. . . We agree that the compliance with the hierarchy of courts may be relaxed for special and important reasons, clearly and specifically set out in the petition. However, so such reasons were set forth in the petition in CA-G.R. SP No. 30727 to justify the petitioner's filing thereof in the Court of Appeals instead of

the RTC. That the latter court had decided her appeal in Civil Case No. 16553 and affirmed the decision of the MTC in Civil Case No. 7223 which, in turn, ordered the eviction of the petitioner from the property, is not a justification to bypass the RTC and file the petition for *certiorari* in the Court of Appeals.

2. LABOR AND SOCIAL LEGISLATION; CLASSIFICATION OF LAND; LANDHOLDING PROPERLY RECLASSIFIED FROM AGRICULTURAL TO RESIDENTIAL BEFORE THE EFFECTIVITY OF THE COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); NO *POST FACTO* APPROVAL FROM THE DEPARTMENT OF AGRARIAN REFORM REQUIRED. — The records show that as early as 1981, the landholding in issue was reclassified as a low density zone under Metro Manila Zoning Ordinance No. 81-01, Series of 1981 before Rep. Act No. 6657 took effect on June 15, 1998. The HSRC issued a preliminary approval and location clearance, as well as a development permit on December 2, 1986 to the respondent. On January 15, 1987, the HSRC, likewise, issued a license in favor of the respondent to sell the 1,086 subdivision lots. In the said permit and license, the property was classified as a second class housing project. The Commission also declared therein that such housing project conformed to B.P. Blg. No. 220 and its implementing standards, rules and regulations. In fact, in *Velasquez v. Nery*, this Court declared that the land is located in Parañaque, surrounded by residential subdivisions and industrial firms near the south diversion road. Since the property was already reclassified as residential by the Metro Manila Commission and the HSRC before the effectivity of Rep. Act No. 6657, there was no need for the private respondent to secure any *post facto* approval thereof from the DAR.

3. REMEDIAL LAW; PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD); JURISDICTION; LANDHOLDING ALREADY CLASSIFIED AS RESIDENTIAL PROPERTY, NOT INCLUDED. — With our finding that the landholding had been classified as residential property since 1981, we agree with the ruling of the Court of Appeals that the PARAD had no jurisdiction over the petitioner's petition for redemption of the property from the respondent.

4. ID.; CIVIL PROCEDURE; APPEAL; FAILURE THERETO RENDERS ASSAILED DECISION FINAL AND

EXECUTORY AND COULD NO LONGER BE ALTERED. — As correctly found by the CA, upon the petitioner's failure to appeal the decision of the PARAD, the said decision had become final and executory. Since the decision of the PARAD had become final and executory, the same could no longer be altered, much less, reversed by the DARAB. Hence, the DARAB had no appellate jurisdiction over the petitioner's appeal. A substantial modification of a decision of a quasi-judicial agency which had become final and executory is utterly void.

5. **LABOR LAW AND SOCIAL LEGISLATION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) RULES; APPEAL; NONE PERFECTED IN CASE AT BAR.** — The PARAD erred in treating the petitioner's "Motion for Clarification and/or Second Motion for Reconsideration" as an appeal of its decision to the DARAB. A motion for clarification and/or second motion for reconsideration is not equivalent to a notice of appeal. The requirements for the perfection of an appeal are provided in Section 5 of the Rules. In this case, no appeal, whether oral or written, was perfected by the petitioner, as provided for in the DARAB Rules.

6. **ID.; ID.; *CERTIORARI* TO THE COURT OF APPEALS; WHERE ADMINISTRATIVE BODY ALLEGEDLY HAD NO APPELLATE JURISDICTION OVER APPEAL.** – What should apply is Section 54 of Rep. Act No. 6657, the provision of which is now embodied in Rule XIV, Section 1 of the DARAB rules, *viz*: ***SECTION 1, Certiorari to the Court of Appeals.*** Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*. Notwithstanding an appeal to the Court of Appeals, the decision of the Board appealed from shall be immediately executory pursuant to Section 54, Republic Act No. 6657. The petition is one for *certiorari* under Rule 65 of the Rules of Court, as amended, because the respondent alleged therein that the DARAB had no appellate jurisdiction over the petitioner's appeal. The thirty (30)-day period under Section 54 of Rep. Act No. 6657 is extendible, but such extension should not exceed the

period now provided for in Section 4, Rule 65 of the Rules of Court, as amended, which is 60 days.

APPEARANCES OF COUNSEL

Marcelo C. Amiana for petitioner.
Diosdado P. Peralta and *Emiliano S. Samson* for Remman Ent.

D E C I S I O N

CALLEJO, SR., *J.*:

Before this Court are two (2) consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, as amended.

G.R. No. 111387

This is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 30727 dismissing petitioner Justina Advincula-Velasquez' petition for *certiorari* and prohibition; and for the nullification of the *alias* writ of execution issued by the Metropolitan Trial Court of Parañaque, Branch 78,[2] in Civil Case No. 7223 for unlawful detainer.

G.R. No. 127497

This is a petition for the reversal and setting aside of the Decision[3] of the Court of Appeals in CA-G.R. SP No. 40423 granting the private respondent's petition for *certiorari* and prohibition; and for the reinstatement of the Department of Agrarian Reform Adjudication Board (DARAB) decision in DARAB Case No. 228.

The Antecedents

The spouses Jose Velasquez and Justina Velasquez were the agricultural lessees of a riceland with an area of 51,538

[1] Penned by Associate Justice Pedro A. Ramirez, with Associate Justices Cezar D. Francisco and Corona Ibay-Somera, concurring.

[2] Presided by Judge Zosimo Z. Angeles.

[3] Penned by Associate Justice Maximiano C. Asuncion, with Associate Justices Salome A. Montoya and Godardo A. Jacinto, concurring.

square meters, located in Sitio Malaking Kahoy, Bo. Ibayo, Parañaque, Metro Manila. The subject property was originally possessed and claimed by Martin Nery. In an action for annulment and reconveyance, the court finally decided in 1972 that the spouses Martin and Leoncia de Leon Nery, Salud Rodriguez, Gertrudes de Leon, and Rosario, Mariano, Pacifico, Onofre, Loloy, Trinidad, Dionisio, Perfecto, Maria Rebecca, Asuncion, Mauro and Lourdes, all surnamed Lorenzo, were co-owners of the property. They later filed with the Court of First Instance (CFI) of Rizal a petition for confirmation of title over the property, which the court in due course granted. Consequently, Transfer Certificate of Title (TCT) No. 64132 was issued to and under their names.[4]

In 1978, the Lorenzo siblings filed an action for partition against their co-owners, Martin and Leoncia Nery, before the CFI of Rizal, Pasay City Branch, which was docketed as Civil Case No. 5313-P. The parties later submitted a compromise agreement where they agreed to sell the said land to the Delta Motors Corporation.

On August 24, 1979, Jose S. Velasquez, in his capacity as agricultural leasehold tenant, filed an action before the then Court of Agrarian Relations, docketed as CAR Case No. 42, 6th Regional District, Branch 1, Quezon City, for the redemption of the subject property under Presidential Decree No. 27. He claimed that he had information that the property had been offered for sale.

On January 25, 1980, Delta Motors Corporation purchased the subject property for ₱2,319,210.00, evidenced by a Deed of Sale. The Register of Deeds of Metro Manila issued TCT No. 20486 on March 4, 1980 in favor of the corporation. By then, the property was already surrounded by residential subdivisions and industrial firms, as well as diversion roads.

Jose S. Velasquez impleaded the Delta Motors Corporation as party respondent in his complaint with the CAR, praying that he be allowed to redeem the property for the amount of only ₱8,800.00 from the said corporation. He anchored his right

[4] *Velasquez v. Nery*, 211 SCRA 28 (1992).

under Presidential Decree No. 27. On June 16, 1980, the Velasquez Spouses caused the annotation of a notice of *lis pendens* at the dorsal portion of the said title. The CAR, thereafter, rendered judgment against Jose S. Velasquez on October 20, 1981, the decretal portion of which reads:

> Foregoing premises considered, judgment is hereby rendered:
>
> 1. Dismissing the instant motion for lack of interest on plaintiff's part to redeem the land in question at its acquisition price in the amount of ₱2,319,210.00, which we find reasonable;
>
> 2. Directing defendants to maintain plaintiff as agricultural lessee in the peaceful possession and enjoyment of the land subject matter of this litigation containing an area of 51,538 square meters, more or less, covered by TCT No. 64132 and to respect the rights accorded to him by law.
>
> 3. Directing the Clerk of Court, this Court (*sic*) to return to plaintiff the amount of ₱600.00 which he consigned with the Court as part of the redemption price for the land in question covered by OR No. 2402912 dated June 13, 1980.
>
> 4. Dismissing all other claims and counterclaims for lack of evidence in support thereof.[5]

The CAR ruled that the property was not covered by the Operation Land Transfer.

Jose Velasquez and the defendants appealed the decision to the then Intermediate Appellate Court (IAC) which rendered a decision[6] affirming that of the CAR, the decretal portion of which reads:

> IN VIEW WHEREOF, the appeals interposed by the plaintiffs and the defendants Martin Nery, Leoncia de Leon Nery, Dionisio, Perfecto, Maria Rebecca, Lourdes, Asuncion and Mauro, all surnamed Lorenzo, are both dismissed for lack of merit. We affirm *in toto* the Decision in CAR Case No. 42.

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[5] *Ibid*.

[6] Penned by Justice Reynato Puno, with Associate Justices Nestor Alampay and Carolina Griño-Aquino (all of whom became Associate Justices of the Supreme Court) concurring.

The Spouses Velasquez filed their petition for review with the Court, docketed as G.R. No. L-64284, which directed the issuance of a temporary restraining order as prayed for, enjoining the execution of the CAR's decision pending the outcome of the petition.

As it was, the property had been reclassified as low density residential zone as early as 1981 under Comprehensive Zoning Ordinance No. 81-01. The ordinance was prepared by the Metro Manila Commission and the Housing and Land Use Regulatory Board (HLURB), and approved in March 1981 by the then Metropolitan Manila Authority.

In the meantime, the subject property was mortgaged by Delta Motors Corporation to the Philippine National Bank (PNB) as security for its obligation with the latter. The corporation failed to pay its account, which impelled the bank to extrajudicially foreclose the mortgage. On July 30, 1986, the PNB executed a deed of sale with mortgage for ₱11,868,000.00 in favor of respondent Remman Enterprises, Inc. Thus, TCT No. 111759 was later issued in its favor. The notice of *lis pendens* annotated on TCT No. 20486 was carried over and annotated on TCT No. 111759.

The respondent decided to develop the property into a residential subdivision as part of its socialized housing project. The corporation secured a development and building permit on December 9, 1986 from the Human Settlements Regulatory Commission (HSRC),[7] and a preliminary approval and location clearance for the subdivision. It also applied for and secured a permit to develop the property,[8] and was, likewise, granted License to Sell No. 87-01-154 on January 15, 1987.[9] It secured building permits for the construction of residential houses over the property. Thereafter, the corporation commenced its development of the area into a residential subdivision. However, the Velasquez

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[7] Now known as the Housing and Land Use Regulatory Board (HLURB).

[8] B.P. Blg. 220 Development Project.

[9] *Rollo*, pp. 385-387 (G.R. No. 111387).

Spouses vehemently opposed the development of the property and refused to vacate the same pending the disposition of G.R. No. L-64284.

The respondent filed on January 20, 1987 a Complaint for Unlawful Detainer with the Metropolitan Trial Court (MTC) of Parañaque, Branch 78, against the Velasquez Spouses, docketed as Civil Case No. 7223. It alleged that the subject property had been reclassified and converted from agricultural to a non-agricultural land. However, the corporation's petition for a writ of preliminary injunction was denied by the MTC. The Spouses filed their Answer with a Motion to Dismiss in which they alleged, *inter alia*, that the MTC had no jurisdiction over the case, considering that they were agricultural tenants over an agricultural land. When the case was called for pre-trial conference, only the plaintiff's counsel and its representative appeared, and moved that the Spouses Velasquez be declared in default, and that it be allowed to present its evidence *ex parte*, which the court granted.

On March 12, 1987, the MTC rendered a Decision in favor of the respondent. The decretal portion reads:

> PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff and against defendants:
>
> 1. Making the preliminary injunction enjoing (*sic*) defendants to desist from harassing plaintiff's men and issued on January 23, 1987 permanent;
>
> 2. Ordering defendants and all other persons claiming right under them to vacate the subject premises;
>
> 3. Considering the deposit made in Court of the amount of ₱61,250.00 for account of defendants as valid consignation;
>
> 4. Ordering defendants to pay the costs of suit.
>
> SO ORDERED.[10]

Aggrieved, the Spouses Velasquez appealed to the Regional Trial Court of Makati, Branch 58, docketed as Civil Case No. 16553, and alleged the following:

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[10] *Id*. at 124.

1. That the lower court has no jurisdiction to take cognizance, try and decide this case; and

2. That this case is barred by the decision in CAR No. 42-PAR-179 now pending decision in the Supreme Court, entitled *Spouses Jose S. Velasquez, et al., v. Remman Enterprises, Inc.*[11]

Meanwhile, the respondent subdivided the property into 487 subdivision lots covered by a Subdivision Plan dated April 17, 1987. It also requested the Register of Deeds to cancel TCT No. 111759 and to issue 487 new titles, covering each subdivision lot. The Register of Deeds granted the request. TCT No. 121248 to TCT No. 121501 were issued under the name of the respondent corporation for the said lots.

The RTC affirmed[12] the decision of the MTC in Civil Case No. 7223. The decretal portion reads:

WHEREFORE, premises considered, the Court hereby affirms the lower court's decision with the modification that the plaintiff should be awarded the attorney's fees adjudged in the decision.

SO ORDERED.[13]

The RTC ruled that the case before the MTC was only one for unlawful detainer, and as such, was within the exclusive jurisdiction of the court. It also held that the case was not barred by the pendency of G.R. No. L-64284 before this Court, as the sole issue before the MTC was the prior physical possession of the property.

The Spouses Velasquez opted not to file any petition for the review of the decision of the RTC. In due course, the said decision became final and executory. However, the trial court did not issue a writ for the execution of its decision, in light of the temporary restraining order earlier issued by the Court in G.R. No. L-64284.

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[11] *Id*. at 125.

[12] *Id*. at 125-127.

[13] Penned by Judge Zosimo Z. Angeles.

On July 3, 1992, this Court rendered a Decision in G.R. No. L-64284 dismissing the petition of the Spouses Velasquez, and affirming the decision of the then IAC, which had, in turn, affirmed the decision of the defunct Court of Agrarian Relations. This Court held that the case had become moot and academic with regard to petitioners' claim against Delta Motors Corporation considering that the property was extrajudicially foreclosed by the PNB and had been sold to the respondent. The Court declared, however, that the Spouses may redeem the property from the PNB and its transferees, subject to the 1975 Revised Charter of the said bank.

Relying on the Court's pronouncement, Jose Velasquez, offered to redeem the property in a Letter to the respondent dated October 2, 1992. The respondent, for its part, rejected the offer and moved for the issuance of an *alias* writ of execution with the MTC in Civil Case No. 7223, for the eviction of the Spouses Velasquez. On January 4, 1993, the MTC issued an order granting the motion for a writ of execution and issued an *alias* writ therefor.

The Spouses Velasquez filed motions for reconsideration of the said orders. However, the MTC denied the same in its Orders dated February 19, 1993 and March 30, 1993.

In the meantime, the Decision of the Court in G.R. No. L-64284 became final and executory. The records were remanded to the Provincial Agrarian Reform Adjudicator (PARAD) docketed as PARAD Case No. IV-MM-0054-93. By this time, Jose Velasquez had died. His widow, petitioner Justina Velasquez, filed a motion to deposit/consign the amount of ₱2,319,210.00 as the reasonable redemption price. On January 21, 1993, the PARAD issued an Order, the decretal portion of which reads:

WHEREFORE, premises considered, order is hereby issued:

1. Directing the substitution of the late Jose S. Velasquez by his surviving spouse Justina Advincula-Velasquez as party-Plaintiff;

2. Directing the aforesaid substitute Plaintiff to:

a) refile anew a Petition for redemption impleading the present titled owner Remman Enterprises, Inc.;

b) upon the filing thereof, consign with this Office thru the DAR Regional Cashier, Pasig, Metro Manila, the amount of Two Million Three Hundred Nineteen Thousand and Two Hundred Ten Pesos (₱2,319,210.00) representing the reasonable redemption price of the property subject of litigation;

3. Directing the Cashier of the DAR Regional Office, Pasig, Metro Manila, to issue an official receipt covering the consigned amount and deposit the same as a Trust Fund/Account with the nearest LBP (Land Bank of the Philippines) Branch;

4. Directing Provincial Sheriff Arturo R. Hilao to personally serve summons upon all the parties-defendants within a period of five (5) days from receipt of the Petition mentioned in Paragraph 2 hereof.[14]

In compliance with the said order, the petitioner filed before the PARAD of Pasig, Metro Manila, a complaint for redemption against the respondent, citing a portion of the Court's Decision in G.R. No. L-64284. Thus:

Because of the extra-judicial foreclosure of the mortgage over the subject property by the Philippine National Bank, the present case has become moot and academic with regard to petitioner's claim against Delta Motors Corporation. *It is now the PNB or its subsequent transferees from whom the petitioners must redeem, if and when PNB decides to sell or alienate the subject property in the future, and of course subject to the provisions of the 1975 Revised Charter of the Philippine National Bank.*[15]

The petitioner also prayed that the MTC be enjoined to cease and desist from enforcing the *alias* writ of execution issued in Civil Case No. 7223, and that after due proceedings, judgment be rendered in her favor, thus:

WHEREFORE, petitioner, by and through counsel, most respectfully prays that reliefs be granted him as follows:

a. Ordering the Metropolitan Trial Court, Branch LXXVIII of Parañaque, M.M., the respondent and all persons claiming rights under it to cease and desist from enforcing the *Alias* Writ of Execution in

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[14] *Rollo*, p. 212 (G.R. No. 111387).

[15] *Id*. at 53. (Italics supplied)

C.C. No. 7223 of said court for the ejectment of petitioner and the members of her household, her helpers and/or representatives from the parcel of land in question and/or from dispossessing said parties of said property, or disturbing in any manner, howsoever, their peaceful possession and enjoyment thereof with the corresponding order for the purpose to be issued immediately and *ex parte*;

b. Ordering respondent Remman Enterprises, Inc., to surrender to this Honorable Office of the Provincial Agrarian Reform Adjudicator, Pasig, Metro Manila, within ten (10) days from notice, TCTs Nos. 121248 to 121300/T-577, 121301 to 121500/T-578, 121501 to 121700/T-579 and 121701 to 121745/T-580, all of the Parañaque Registry of Deeds, M.M., and all other TCTs emanating from mother title TCT No. 111759 of the same Registry of Deeds, embracing subject property, with the warning that in the event said respondent fails to comply with the aforesaid order within the period stated, the aforesaid TCTs shall be considered void and/or cancelled;

c. Ordering the Register of Deeds of Parañaque, M.M., to cancel all the TCTs aforementioned after the lapse of the ten-day period aforestated and to issue new titles or TCTs in the name of petitioner, embracing subject property, after payment of the required fees and/or charges; and

d. Granting unto petitioner such further reliefs as may be deemed just and equitable under the premises.[16]

The respondent filed a motion to dismiss[17] the complaint, on the ground that the PARAD had no jurisdiction over the case. It alleged, *inter alia*, that the subject property was no longer agricultural, as it had long been reclassified as a low density residential zone under Comprehensive Zoning Ordinance No. 81-01. It averred that, as opined by the Department of Justice, the power to re-categorize land and land use for taxation purposes prior to the effectivity of the agrarian reform laws was lodged exclusively with the HLURB and the Department of Finance, respectively. It was also alleged that the PARAD had no power to issue a writ of injunction against the judiciary. Finally, it

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[16] *Rollo*, pp. 100-101 (G.R. No. 127497).

[17] *Id*. at 143.

pointed out that the Supreme Court, in G.R. No. L-64284 already nullified the petitioner's right of redemption when it unqualifiedly affirmed the decision of the CAR dismissing the first redemption case for the Velasquez Spouses' lack of interest to redeem the land in question at its acquisition price of ₱2,319,210.00 from the Delta Motors Corporation.

While her petition with the PARAD was pending, the petitioner filed a petition for *certiorari* and prohibition with the Court of Appeals for the nullification of the writ of execution issued by the MTC in Civil Case No. 7223, with a prayer for a restraining order and/or preliminary injunction, docketed as CA-G.R. SP No. 30727.[18] The petitioners alleged that the MTC committed a grave abuse of discretion in issuing an *alias* writ of execution despite the decision of the Court in G.R. No. L-64284 which granted her husband the right to redeem the property and to remain in possession thereof as an agricultural lessee. She prayed that judgment be rendered in her favor, as follows:

a. That a temporary restraining order be issued immediately enjoining (*sic*) respondents and all persons acting for and in their behalf to desist from enforcing the *Alias* Writ of Execution, dated 04 January 1993, as reiterated in public respondent's orders, dated 19 February 1993 and 30 March 1993, respectively, for the ejectment of petitioner and the immediate members of her farm household from the property in question, issued by public respondent in Civil Case No. 7223 and/or a writ of preliminary injunction for the same purpose and with the same effect for a period until further orders of this Honorable Court;

b. That after due process, judgment be rendered annulling the orders of public respondent, dated 04 January 1993, 19 February 1993 and 30 March 1993, respectively, and permanently prohibiting respondents and all persons acting for and in their behalf from enforcing the aforementioned orders of public respondent and/or issuing further orders of like effect, or otherwise from evicting petitioner and the immediate members of her farm household from the property in question; and

[18] CA *Rollo*, pp. 1-68.

c. That such further reliefs as may be just and equitable under the premises be, likewise, granted to petitioner.[19]

The petitioner justified her filing the petition with the CA instead of the RTC as follows:

b. That this petition may be filed before, and/or given cognizance by, this Honorable Court as expressly provided in paragraph 14 of the Interim or Transitional Rules and Guidelines which reads:

"14. Exercise of original jurisdiction. — The Intermediate Appellate Court (now Court of Appeals) may entertain petitions for *mandamus*, prohibition, *certiorari, habeas corpus, quo warranto*, and issue auxiliary writs or processes, whether or not in aid of its appellate jurisdiction."[20]

On May 20, 1993, the Court of Appeals rendered its Decision[21] in CA-G.R. SP No. 30727. It dismissed the petition on the ground that in filing her petition with the CA, the petitioner violated the principle of hierarchy of courts. The CA ruled, however, that the dismissal of the petition was without prejudice to the filing of a similar petition in the proper RTC, opining, thus:

Besides, it is best that the matter be litigated in the Regional Trial Court before which evidence may be adduced by the parties as to the alleged change in their condition and of the environment in the parcel of land in question from agricultural to residential.[22]

The petitioner, thereafter, filed her petition for review with this Court, *docketed as G.R. No. 111387*, for the reversal of the decision of the CA and for the issuance of a temporary restraining order, which this Court granted in its Resolution[23] dated September 6, 1993.

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[19] *Id*. at 10-11.

[20] *Id*. at 9.

[21] *Supra* at note 1.

[22] *Rollo*, p. 194 (G.R. No. 111387).

[23] *Id*. at 225.

On June 1, 1993, the PARAD issued an Order dismissing the petition, ruling that it had no jurisdiction over the same. It also ruled that it had, likewise, no jurisdiction over the subject property, as the latter had been reclassified as a residential zone even before June 15, 1988. The PARAD took judicial notice that Parañaque, the place where the property is located, is part of Metro Manila, whose respective Comprehensive Development Plan and its Accompanying Zoning Ordinance No. 81-01 was issued in conformity with P.D. No. 933, Letter of Instructions No. 729 and Executive Order No. 648 as set out in the Memorandum of Agreement between the Metro Manila Commission (Metro Manila Authority) and the HSRC. It also ruled that the petition was not barred by the judgment of the Court in G.R. No. L-64284. According to the PARAD, the Court's statement therein, that the property may be redeemed from the transferees of the PNB, could not be relied upon by the petitioner as it was merely an *obiter dictum*. Hence, the PARAD directed the MTC to issue a writ of execution. The decretal portion of the order reads:

> WHEREFORE, premises considered, order is hereby issued:
>
> 1. Granting the subject Motion and dismissing the instant Petition;
>
> 2. *Motu proprio* directing the immediate issuance of a writ of execution to enforce the final and executory judgment rendered by the Supreme Court in G.R. No. L-64284 (*Spouses Jose S. Velasquez and Justina Advincula Velasquez v. Spouses Martin Nery, et. al.*), DISMISSING the petition for review on *certiorari* and AFFIRMING the appealed decision of the then Intermediate Appellate Court which affirmed the decision of the defunct Court of Agrarian Relations, conformably to Section 2, Rule XII of the DARAB Revised Rules of Procedure.
>
> SO ORDERED.[24]

The petitioner was served a copy of the order on June 11, 1993 and filed a motion for reconsideration of the said order, contending that the conversion of the property into a non-

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[24] Penned by Provincial Adjudicator Fe Arche-Manalang, *Rollo*, p. 223 (G.R. No. 111387).

agricultural property was made without the approval of the DAR as mandated by Rep. Act No. 3894, and as further amended by Rep. Act No. 6389. The PARAD issued an Order dated July 13, 1993, denying the said motion, on the ground that no new arguments were presented to warrant the reconsideration thereof. The petitioner received the order on July 28, 1993.

The petitioner filed a motion for clarification and/or second motion for reconsideration[25] dated August 2, 1993. The PARAD ruled that the said motion was a prohibited pleading under Section 16, Rule VIII of the DARAB Revised Rules of Procedure, and considered the same as a *notice of appeal*. It issued an Order dated January 5, 1994 directing that the case be forwarded to the DARAB. On January 18, 1994, the petitioner remitted her appeal fee of ₱500.00. The appeal was docketed as DARAB Case No. 2288.

The respondent sought the dismissal of the petition contending, *inter alia*, that the decision of the PARAD had become executory on account of the failure of the appellant (herein petitioner) to appeal on time. On February 1, 1996, the DARAB rendered a Decision[26] in favor of the petitioner, reversing and setting aside the assailed orders of the PARAD. The decretal portion reads:

> WHEREFORE, premises considered, the appealed order, dated June 1, 1993, together with the order, dated July 13, 1993, are hereby SET ASIDE and accordingly, Defendant-Appellee's Motion to Dismiss, dated March 29, 1992 (*sic*), is denied for lack of merit and a new decision is rendered as follows:
>
> 1. Declaring Plaintiff-Appellant's appeal to have been validly perfected;
>
> 2. Declaring Plaintiff-Appellant a *bona fide* agricultural lessee and as such she is entitled to her security of tenure and, by reason thereof, Defendant-Appellee is hereby ordered to reinstate and maintain said Plaintiff-Appellant to her peaceful possession and cultivation on the subject farmholding.

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[25] *Rollo*, p. 215 (G.R. No. 127497).

[26] *Id*. at 270.

3. Declaring Plaintiff-Appellant to have validly exercised her right of redemption and the Register of Deeds of Parañaque, Metro Manila is hereby ordered to cancel the titles issued to Defendant-Appellee and in lieu thereof, the corresponding certificate of title be issued to said Plaintiff-Appellant after acceptance of the redemption price by Defendant-Appellee who is hereby ordered to accept the same; and

4. Declaring that there was no valid conversion of the subject farmholding into residential purposes pursuant to and in compliance with the existing applicable laws and implementing guidelines therefore.

SO ORDERED.[27]

The DARAB ruled that it was the Department of Agrarian Reform (DAR), not the HLURB and the Department of Finance, which had the power and authority to approve or disapprove any application for the conversion of tenanted private agricultural land into a non-agricultural land. The DARAB also held that the only power of the HLURB was to promulgate zoning and other land use control standards and guidelines, which govern land use plans and zoning ordinances of local governments, and that the respondent had not secured any prior authority from the DAR to convert the subject property from agricultural to non-agricultural. The DARAB noted that in the Decision of the Court in G.R. No. L-64284, the petitioner was granted the right to redeem the property. The DARAB further ruled that the petitioner interposed her appeal to the DARAB within the reglementary period therefor.

To stave off the immediate execution of the decision of the DARAB, the respondent filed on May 22, 1996, a petition with the Court of Appeals under Rule 45 and Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 40423, for the reversal of the decision of the DARAB. The respondent, likewise, prayed for the issuance of a writ of preliminary injunction to enjoin the implementation of the writ of execution issued by the DARAB. The Court of Appeals considered the petition as filed under

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[27] *Id*. at 293-294.

Rule 65 of the Rules of Court and granted the plea for a writ of preliminary injunction.

The court synthesized the issues for resolution as follows: (a) whether the subject land was still agricultural in nature; (b) if so, whether petitioner Justina Velasquez was entitled to redeem the subject property at the offered amount of ₱2,319,210.00 by virtue of the decision of the Court in G.R. No. L-64284; and, (c) whether the DARAB had appellate jurisdiction over the PARAD Order of June 1, 1993, based on the PARAD's treatment of the motion for clarification and/or second motion for reconsideration as a notice of appeal.

The Ruling of the Court of Appeals

The CA rendered judgment in favor of the respondent and reversed the decision of the DARAB.

Anent the first issue, the appellate court ruled that under Executive Order No. 129-A, Rep. Act No. 2264, B.P. Blg. 332 and LOI No. 729, the HLURB had the authority to convert agricultural property to non-agricultural. It also relied on the Decision of the Court in *Natalia Realty, Inc., et al. v. Department of Agrarian Reform*,[28] and found that respondent Remman Enterprises, Inc. and Natalia Realty, Inc. were similarly situated:

> The Court finds Remman and Natalia Realty, Inc. to be *similarly situated*. The properties involved are devoted for human settlements, and were reclassified or converted by the appropriate government housing and land use agency (HSRC) before June 15, 1988.
>
> Considering the doctrinal value of *Natalia*, DARAB, as a quasi-judicial entity, was duty-bound to apply it in this case after its attention had been called by Remman (Annex "K"). The Supreme Court's pronouncements command respect and obedience being "law" by their own rights because they interpret what laws say or mean (*Philippine Veterans Affairs Office v. Segundo*, 164 SCRA 365). Despite Natalia's determinative finding in a similar issue, DARAB's conclusion that conversion is exclusively vested in the DAR even

[28] 225 SCRA 278 (1993).

before June 15, 1988 (Annex "L", p. 8) mocks if not defies the law and the Supreme Court.[29]

On the second issue, the appellate court ruled that due to the conversion of the subject property from agricultural to residential, the petitioner could no longer claim the right of redemption under Section 10 of Rep. Act No. 3844, as amended, in relation to Rep. Act No. 6389. According to the CA, while the Court's decision in *Velasquez v. Nery* (G.R. No. L-64284) recognized the petitioner's right to redeem the property, it could only be given effect if the subject property had retained its classification as agricultural. The CA further ruled that the motion for clarification/ second motion for reconsideration filed by the petitioner with the PARAD was a prohibited pleading under Section 12, Rule VIII of the DARAB Revised Rules of Procedure; hence, the PARAD erred when it considered the said motion as a notice of appeal. Furthermore, the DARAB's rules of procedure require parties to file a notice of appeal. Considering that the petitioner failed to do so, the assailed order of the PARAD had attained finality. The CA emphasized that the perfection of an appeal in the manner and within the period prescribed by law is not only a mandatory requirement, but also jurisdictional, and that the failure to perfect an appeal as required by the Rules had the effect of rendering the judgment final and executory.

Thus, the Court of Appeals restored the PARAD Order dated June 1, 1993, with modification:

> WHEREFORE, premises considered, the petition is given DUE COURSE and the same is GRANTED. Accordingly, the assailed DARAB Decision and Resolution (Annexes "L" and "N", Petition) are set aside. The PARAD Order of 1 June 1993 (Annex "D") is restored and declaring the same final and unappealable but expunging therefrom the *motu propio* order of execution.
>
> No pronouncements as to costs.
>
> SO ORDERED.[30]

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[29] CA *Rollo*, pp. 461-462 (CA-G.R. SP No. 40423).

[30] *Supra* at note 3; *Id*. at 464.

Aggrieved, the petitioner filed with this Court a petition for review under Rule 45 of the Rules of Court as amended, docketed as *G.R. No. 127497*.

In a Resolution dated April 28, 1997, the Court resolved to consolidate the two petitions.

The Ruling of the Court

The issues for resolution are procedural and substantive, *viz*:

1) Whether the CA erred in dismissing the petition for *certiorari* and prohibition in CA-G.R. SP No. 30727;

2) Whether the reclassification of the landholding, from agricultural to residential is valid;

3) Whether the petitioner is entitled to redeem the property from the respondent Remman Enterprise, Inc.;

4) Whether the PARAD had jurisdiction over the complaint for redemption filed by the petitioner;

5) Whether the appeal of the petitioner from the June 1, 1993 Order of the PARAD dismissing the complaint for redemption of the petitioner and the July 13, 1993 Order denying the motion for reconsideration of the June 1, 1993 Order was timely;

6) Whether the DARAB had appellate jurisdiction over the appeal of the petitioner from the assailed order of the PARAD;

7) Whether the petition of the respondent in the Court of Appeals in CA-G.R. SP No. 40423 was proper and timely.

On the first issue, the petitioner avers that under B.P. Blg. 129, the Court of Appeals has jurisdiction over petitions for *certiorari* and prohibition, whether or not in aid of its appellate jurisdiction. She posits that the CA has no other alternative but to exercise its jurisdiction over the petition, prescinding from the doctrine of hierarchy of courts. She asserts that the doctrine of hierarchy of courts admits of exceptions for special and important reasons. According to the petitioner, she opted to file her petition for *certiorari* and prohibition in the CA for the

nullification of the assailed orders of the MTC instead of filing the same in the RTC. Thus:

> a) The decision of respondent court ejecting petitioner-appellant from the property in question has been previously affirmed by the very Regional Trial Court of Makati, Metro Manila (Annex 2 of Annex "E" hereof) in which the petition for *certiorari* and prohibition is to be filed as ruled by the Honorable Court of Appeals; and
>
> b) The ejectment of petitioner-appellant from the property in question has been finally rejected or disauthorized by this Honorable Court (G.R. No. [L-]64284).[31]

The petitioner posits that since the RTC already rendered its decision in Civil Case No. 16553, the court could not be expected to act contrary thereto; hence, the filing of the petition with the same court would be an exercise in futility. According to the petitioner, there was no need to adduce evidence that her landholding had been reclassified into residential property, since the character of the landholding as agricultural had been passed upon and upheld by this Court in *Velasquez v. Nery* (G.R. No. L-64284).

We are not in full accord with the petitioner. We agree that under B.P. Blg. 129, the RTC and the Court of Appeals, in the exercise of its original jurisdiction or in aid of its appellate jurisdiction, have concurrent jurisdiction to issue writs of *certiorari* and prohibition. However, in *People v. Cuaresma*,[32] we emphasized that this concurrence of jurisdiction is not to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. We added that:

> 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") court should be filed with the

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[31] *Rollo*, p. 15 (G.R. No. 111387).

[32] 172 SCRA 415 (1989).

Regional Trial Court, and those against the latter, with the Court of Appeals.[33]

In *Santiago v. Vasquez,* [34] we took particular note that:

> . . . [T]he propensity of litigants and lawyers to disregard the hierarchy of courts must be put to a halt, not only because of the imposition upon the precious time of this Court, but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court, the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts . . .[35]

We agree that the compliance with the hierarchy of courts may be relaxed for special and important reasons, clearly and specifically set out in the petition. However, no such reasons were set forth in the petition in CA-G.R. SP No. 30727 to justify the petitioner's filing thereof in the Court of Appeals instead of the RTC. That the latter court had decided her appeal in Civil Case No. 16553 and affirmed the decision of the MTC in Civil Case No. 7223 which, in turn, ordered the eviction of the petitioner from the property, is not a justification to bypass the RTC and file the petition for *certiorari* in the Court of Appeals.

First. The petitioner's fear that the RTC would prejudge her petition simply because Civil Case No. 16553 was decided against her is merely speculative. She assumed that her petition for *certiorari* would be raffled to the same branch of the RTC which decided Civil Case No. 16553, Branch 58. It bears stressing that her petition would be raffled to a different branch of the court. Even assuming that the petition would be raffled to Branch 58, this would not bar the petitioner from moving that the case be re-raffled, on the ground that the civil case being executed was decided by the same court.

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[33] *Ibid*.

[34] 217 SCRA 633 (1993), cited in *Tano v. Socrates*, 278 SCRA 154 (1997).

[35] *Ibid*.

Second. The issue raised by the petitioner in her petition for *certiorari* is whether the MTC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in ordering the enforcement of its decision. She alleged that the court erred in ordering her eviction from the property despite the decision of the Court of Agrarian Relations, which was affirmed by the Court of Appeals and this Court in *Velasquez v. Nery* (G.R. No. L-64284) and the pendency of her petition in the PARAD. According to the petitioner, such issue may well be resolved by the RTC in the exercise of its appellate jurisdiction over the MTC after hearing the petition.

On the second issue, the petitioner avers that this Court had already declared in its decision in G.R. No. L-64284[36] that the subject property is agricultural. The decision of this Court, the petitioner asserts, is conclusive on the PARAD and the Court of Appeals. Thus, any conversion of agricultural property to residential property without the approval of the DAR is void. She avers that even the respondent saw the need for a DAR approval considering that it requested the DAR on December 21, 1988 to approve the conversion of the property. The petitioner insists that the CA misapplied the DOJ opinion and the ruling of this Court in *Natalia Realty, Inc., et al. v. DAR, et al.*,[37] in light of the ruling of this Court in *Velasquez v. Nery* (G.R. No. L-64284). The petitioner argues that despite the conversion of the property to residential land, her right to redeem the property from the respondent remains, as provided for in Section 12 of Republic Act No. 6389, and the ruling of this Court in *Velasquez v. Nery* (G.R. No. L-64284).

We are not in full accord with the petitioner. The records show that as early as 1981, the landholding was reclassified as a low density zone under Metro Manila Zoning Ordinance No. 81-01, Series of 1981[38] before Rep. Act No. 6657 took effect on June 15, 1998. The HSRC issued a preliminary approval

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[36] *Supra*.

[37] 225 SCRA 278 (1993).

[38] *Rollo*, pp. 151-165 (G.R. No. 127497).

and location clearance, as well as a development permit on December 2, 1986 to the respondent.[39] On January 15, 1987, the HSRC, likewise, issued a license in favor of the respondent to sell the 1,086 subdivision lots.[40] In the said permit and license, the property was classified as a second class housing project. The Commission also declared therein that such housing project conformed to B.P. Blg. No. 220 and its implementing standards, rules and regulations. In fact, in *Velasquez v. Nery*,[41] this Court declared that the land is located in Parañaque, surrounded by residential subdivisions and industrial firms near the south diversion road.[42] Since the property was already reclassified as residential by the Metro Manila Commission and the HSRC before the effectivity of Rep. Act No. 6657, there was no need for the private respondent to secure any *post facto* approval thereof from the DAR.

In *Natalia Realty, Inc. and Estate Developers and Investors Corp. v. Department of Agrarian Reform, et al.*,[43] we held, thus:

> We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural lands," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land.* The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands.*"
>
> Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as "agricultural lands." These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion

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[39] *Id.* at 161.

[40] *Id.* at 164.

[41] *Supra.*

[42] *Id.* at 33.

[43] *Supra.* (Italics supplied)

in the Lungsod Silangan Reservation. Even today, the areas in question continued to be developed as a low-cost housing subdivision, albeit at a snail's pace. This can readily be gleaned from the fact that SAMBA members even instituted an action to restrain petitioners from continuing with such development. The enormity of the resources needed for developing a subdivision may have delayed its completion but this does not detract from the fact that these lands are still residential lands and outside the ambit of the CARL.

Indeed, lands not devoted to agricultural activity are outside the coverage of CARL. *These include lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than respondent DAR.* In its Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses, DAR itself defined "agricultural land" thus —

> "x x x *Agricultural land refers* to those devoted to agricultural activity as defined in R.A. 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, **and *not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential,* commercial or industrial use."**

Our ruling in the *Natalia* case was reiterated in *National Housing Authority v. Allarde.*[44]

The Court of Appeals' reliance on DOJ Opinion No. 44, Series of 1990, is in order. In the said opinion, the Secretary of Justice declared, *viz*:

> Based on the foregoing premises, we reiterate the view that with respect to conversions of agricultural lands covered by R.A. No. 6657 to non-agricultural uses, the authority of DAR to approve such conversions may be exercised from the date of the law's effectivity on June 15, 1988. This conclusion is based on a liberal interpretation of R.A. No. 6657 in the light of DAR's mandate and the extensive coverage of the agrarian reform program.[45]

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[44] 318 SCRA 22 (1999).

[45] CA *Rollo*, p. 142 (CA-G.R. SP No. 30727).

Following the DOJ opinion, the DAR issued Administrative Order No. 6, Series of 1994, stating that lands already classified as non-agricultural before the enactment of Rep. Act No. 6657 no longer needed any conversion clearance:

I. *Prefatory Statement*

In order to streamline the issuance of exemption clearances, based on DOJ Opinion No. 44, the following guidelines are being issued for the guidance of the DAR and the public in general.

II. *Legal Basis*

Sec. 3(c) of RA 6657 states that agricultural lands refers to the land devoted to agricultural activity as defined in this act and not classified as mineral, forest, residential, commercial or industrial land.

Department of Justice Opinion No. 44, series of 1990 has ruled that, with respect to the conversion of agricultural lands covered by RA No. 6657 to non-agricultural uses, the authority of DAR to approve such conversion may be exercised from the date of its effectivity, on June 15, 1988. Thus, all lands that are already classified as commercial, industrial, or residential before 15 June 1988 no longer need any conversion clearance.

Contrary to the petitioner's contention, the ruling of this Court in the *Natalia* case is not confined solely to agricultural lands located within townsite reservations, but applies also to lands converted to non-agricultural prior to the effectivity of the CARL, where such conversion was made by government agencies other than the DAR, including the HLURB and its predecessor, namely, the HSRC.[46]

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[46] *Section 5. Powers and Duties of the Commission.*

a) Promulgate zoning and other land use control standards and guidelines which shall govern land use plans and zoning ordinances of local governments; the zoning components of civil works and infrastructure projects of the national, regional and local governments; subdivision or estate development projects of both the public and private sectors; and urban renewal plans, programs and projects; Provided that the zoning and other land use control standards and guidelines to be promulgated hereunder shall respect the classification of public lands for forest purposes is certified by the Ministry of Natural Resources.

On the rest of the issues, we agree with the Court's pronouncement in *Velasquez v. Nery*, that the petitioner and her husband, Jose Velasquez, were agricultural lessees of the landholding. However, we do not agree with the petitioner's contention that such pronouncement is conclusive of the nature of the property as agricultural. It bears stressing that the complaint of the Velasquez Spouses for the redemption of the property from the Delta Motor Corporation was filed on August 24, 1979 in the Court of Agrarian Relations, *before the Metro Manila Commission approved Zoning Ordinance No. 81-01 which reclassified properties, including the subject landholding, as residential.* The parties never raised this issue in the CAR or in the Intermediate Appellate Court, the only issue therein being whether the Velasquez Spouses had the right to redeem the property under P.D. No. 27 or Section 12 of Rep. Act No. 6389 and, if so, the reasonable price therefor. The CAR dismissed the complaint of the Spouses on its finding that they had waived their right to redeem the property. The IAC affirmed the dismissal. This Court, likewise, affirmed the decision of the IAC. To repeat, this Court even declared in

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b) Review, evaluate and approve or disapprove comprehensive land use development plans and zoning ordinances of local governments; and the zoning components of civil works and infrastructure projects of national, regional and local governments, subdivision, condominiums or estate development projects including industrial estates, of both the public and private sectors and urban renewal plans, programs and projects; Provided, that the Land Use Development Plans and Zoning Ordinances of Local Governments herein subject to review, evaluation and approval of the Commission shall respect the classification of public lands for forest purposes as certified by the Ministry of Natural Resources; Provided, further that the classification of specific alienable and disposable lands by the Bureau of Lands shall be in accordance with its own classification scheme subject to the condition that the classification of these lands may be subject to the condition that the classification of these lands may be subsequently changed by the local governments in accordance with their particular zoning ordinances which may be promulgated later.

c) Issue rules and regulations to enforce the land use policies and human settlements as provided for in Presidential Decrees Nos. 339, 815, 933, 957, 1216, 1344, 1396, 1517, Letter of Instructions Nos. 713, 729, 833, 935, and other related laws regulating the use of land including the regulatory aspects of the Urban Land Reform Act and all decrees relating to regulation of the value of land and improvements, and their rental.

said case that "the land is located in Parañaque, surrounded by residential subdivisions and industrial firms near the south diversion road." In effect, the landholding is residential, although the Court did not so declare expressly.

In affirming the ruling of the PARAD and rejecting the petitioner's claim that she had the right to redeem the landholding based on the statement of this Court in *Velasquez v. Nery*, the Court of Appeals ruled, *viz*:

> A close analysis of Nery discloses that the issue determined and adjudged therein is not so much the right of the Velasquez spouses to redeem the subject land as *the reasonableness of the redemption price* tendered by them. The Supreme Court found, affirming the decision of the defunct CAR and of this Court (then IAC), that the reasonable redemption price for the subject land was ₱2,319,210.00, Delta Motor Corporation's cost of acquisition, as borne out by the evidence adduced therein.
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> The statement relied upon in *Nery* is an *obiter dictum*. It was merely a suggested course of action. It was an opinion of the court upon a question which was not necessary to the decision of the case before it (*Auyong Hian v. Court of Tax Appeals*, 59 SCRA 120). It was an opinion uttered by the way, not upon the point or question pending, as if turning aside from the main topic of the case to collateral subjects, or it does not embody its determination and is made without argument or full consideration of the point, and is not professed deliberate determination of the judge himself (*People v. Macadaeg, et al.*, 91 Phil. 410). If deleted from the judgment, the rationale of the Nery decision is neither affected not (*sic*) altered since from whom redemption may be subsequently made is settled by whosoever owns the property at the time the right is exercised. Hence, no right was produced thereby nor any derived therefrom, quoted as it were out of context.[47]

We agree with the Court of Appeals. The statement of this Court in *Velasquez v. Nery* relied upon by the petitioner reads:

> Because of the extra-judicial foreclosure of the mortgage over the subject property by the Philippine National Bank, the present case has become moot and academic with regard to petitioner's claim against

[47] *Rollo*, p. 456 (G.R. No. 127497).

Delta Motor Corporation. It is now the PNB or its subsequent transferees from whom the petitioners must redeem, if and when PNB decides to sell or alienate the subject property in the future, and of course, subject to the provisions of the 1975 Revised Charter of the Philippine National Bank.[48]

In *Quiño v. Court of Appeals*,[49] we held that the aforequoted statement of this Court is, indeed, an *obiter dictum*:

. . . By way of *obiter dictum* we stated —

Because of the extra-judicial foreclosure of the mortgage over the subject property by the Philippine National Bank, the present case has become moot and academic with regard to petitioners' claim against Delta Motor Corporation. It is now the PNB or its subsequent transferees from whom the petitioners must redeem, if and when PNB decides to sell or alienate the subject property in the future x x x[50]

With our finding that the landholding had been classified as residential property since 1981, we agree with the ruling of the Court of Appeals that the PARAD had no jurisdiction over the petitioner's petition for redemption of the property from the respondent. As correctly found by the CA, upon the petitioner's failure to appeal the decision of the PARAD, the said decision had become final and executory:

Petitioner assails herein the validity of DARAB's decision on the appeal of Velasquez from PARAD's order (Annex "D") and resolution (Annex "G"), contending that PARAD's Order treating the Velasquez Motion for Clarification and/or for Second Motion for Reconsideration as a notice of appeal (Annex "I") did not have any legal basis under the DARAB rules.

The revised DARAB rules states that:

x x x appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from

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[48] *Supra*.

[49] 291 SCRA 249 (1998).

[50] *Id*. at 258.

receipt of the order, resolution of the decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing (Sec. 1, Rule XIII)

No oral or written notice of appeal was filed by Velasquez. The Court subscribes to Remman's submission that the omission is a fatal defect that deprived DARAB of the power to assume appellate jurisdiction over the appeal of Velasquez.

The filing of a notice of appeal is no idle ceremony. Its office is to elevate the case on appeal to DARAB without which appellate jurisdiction is not conferred. Neither PARAD nor DARAB is permitted to enlarge the constricted manner by which an appeal is perfected. Liberal construction of DARAB rules is unavailable to produce the effect of a perfected appeal.

Perfection of an appeal in the manner and within the period prescribed by law is not only *mandatory* but also *jurisdictional*, and failure to perfect an appeal as required by the Rules had the effect of rendering the judgment final and executory. This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice (*Filcon Manufacturing Corp. v. NLRC*, 199 SCRA 814). And nothing is more settled in the law than that when a final judgment becomes executory, it thereby becomes immutable and unalterable (*Nuñal v. Court of Appeals*, 221 SCRA 26; *Garbo v. Court of Appeals*, 226 SCRA 250). Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. This principle applies to judgments of courts and of *quasi-judicial agencies* (*Vega v. Workmen's Compensation Commission*, 89 SCRA 140).

PARAD's error in treating the Velasquez' second motion for reconsideration as (*sic*) a notice of appeal became inexcusable by its awareness that the motion was a *prohibited motion* under Section 12, Rule VIII, DARAB Revised Rules of Procedure. As such, the motion had no legal standing as a substitute notice of appeal. Hence, it did not serve to interrupt the period of appeal.

PARAD's Order (Annex "D") then *ipso facto* became final and unappealable without the requisite notice of appeal filed within the reglementary period. It is a settled that a judgment becomes final and executory by *operation of law* without the need of intervention by anyone (*Cachola, Sr. v. Court of Appeals*, 208 SCRA 429; *Paramount Insurance v. Japson*, 211 SCRA 897; *Adez Realty, Inc.*

v. Court of Appeals, 212 SCRA 623; *Manning International Corp. v. NLRC*, G.R. No. 83018, Mar. 13, 1991).[51]

Since the decision of the PARAD had become final and executory, the same could no longer be altered, much less, reversed by the DARAB. Hence, the DARAB had no appellate jurisdiction over the petitioner's appeal.[52] A substantial modification of a decision of a quasi-judicial agency which had become final and executory is utterly void.[53]

The PARAD erred in treating the petitioner's "Motion for Clarification and/or Second Motion for Reconsideration" as an appeal of its decision to the DARAB. A motion for clarification and/or second motion for reconsideration is not equivalent to a notice of appeal.

Rule XIII, Section 1 of the 1994 DARAB Rules provides as follows:

SECTION 1. Appeal to the Board. — a) An appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from the receipt of the order, resolution or decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing.

b) An oral appeal shall be reduced into writing by the Adjudicator to be signed by the appellant, and a copy thereof shall be served upon the adverse party within ten (10) days from the taking of the oral appeal.

The requirements for the perfection of an appeal are provided in Section 5 of the Rules:

SECTION 5. Requisites and Perfection of the Appeal. — a) The Notice of Appeal shall be filed within the reglementary period as provided for in Section 1 of this Rule. It shall state the date when the appellant received the order or judgment appealed from and the proof of service of the notice to the adverse party; and

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[51] *Rollo*, pp. 492-493 (G.R. No. 111387).

[52] *Republic of the Philippines v. Court of Appeals*, 313 SCRA 376 (1999).

[53] *Fortich v. Corona*, 289 SCRA 624 (1998).

b) An appeal fee of Five Hundred Pesos (₱500.00) shall be paid by the appellant within the reglementary period to the DAR Cashier where the Office of the Adjudicator is situated. A pauper litigant shall, however, be exempt from the payment of the appeal fee.

Non-compliance with the above-mentioned requisites shall be a ground for the dismissal of the appeal.

In this case, no appeal, whether oral or written, was perfected by the petitioner, as provided for in the DARAB Rules.

The petitioner asserts that the petition of the respondent in CA-G.R. SP No. 40423 was filed beyond the period therefor. She avers that the respondent was granted an extension of only until May 8, 1996, but instead of filing its petition for review on the said date, it filed, on May 7, 1996, another motion for extension of fifteen days within which to file its petition, or until May 22, 1996. Without such motion for extension being granted, the respondent filed its petition on May 22, 1996, docketed as CA-G.R. SP No. 40423. The petitioner argues that the petition was filed out of time because Section 60 of Rep. Act No. 6657 allows only one extension of fifteen days.

In its comment on the petition, the respondent avers that the Court of Appeals admitted its petition to obviate any question of the timeliness of its filing. It notes that the CA resolved to grant the Manifestation and Motion filed on May 7, 1996. The private respondent further avers that under Section 4 of SC Revised Administrative Circular No. 1-95 (Revised Circular No. 1-91), a party may be granted two extensions, not to exceed thirty days, to file a petition.

We do not agree with the contention of the petitioner that Section 60 of Rep. Act No. 6657 applies in this case. Neither do we agree with the respondent's contention that SC Revised Administrative Circular No. 1-95 is applicable.

Section 60 of Republic Act No. 6657 reads:

SECTION 60. *Appeals.* — An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within fifteen (15) days from receipt of notice of the decision; otherwise, the decision shall become final.

The provision refers to an appeal from the decisions of the Special Agrarian Courts.

What should apply is Section 54 of Rep. Act No. 6657, which reads:

SECTION 54. *Certiorari*. — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from receipt of a copy thereof.

The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

The provision is now embodied in Rule XIV, Section 1 of the DARAB rules, *viz*:

SECTION 1. Certiorari to the Court of Appeals. — Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*. Notwithstanding an appeal to the Court of Appeals, the decision of the Board appealed from shall be immediately executory pursuant to Section 54, Republic Act No. 6657.

The petition is one for *certiorari* under Rule 65 of the Rules of Court, as amended, because the respondent alleged therein that the DARAB had no appellate jurisdiction over the petitioner's appeal.

On the other hand, the original action under Rule 65 raises questions of jurisdiction emanating from the acts of public respondent, DAR Adjudication Board (DARAB), of capriciously and arbitrarily assuming appellate jurisdiction over the final and executory resolution of the Rizal Provincial Adjudicator (PARAD) and rendering a decision thereon which constituted grave abuse of discretion amounting to lack of jurisdiction. DARAB compounded it by totally and literally ignoring the decision of the Supreme Court in a parallel case.[54]

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[54] *Rollo*, pp. 54-55 (G.R. No. 127497).

In *Fortich v. Corona*,[55] we held that in such a case, Rule 65 and not Rule 43 (formerly Revised Circular No. 1-91) will apply:

> However, we hold that, in this particular case, the remedy prescribed in Rule 43 is inapplicable considering that the present petition contains an allegation that the challenged resolution is "patently illegal" and was issued with "grave abuse of discretion" and "beyond his (respondent Secretary Renato C. Corona's) jurisdiction" when said resolution substantially modified the earlier OP Decision of March 29, 1996 which had long become final and executory. In other words, the crucial issue raised here involves an error of jurisdiction, not an error of judgment which is reviewable by an appeal under Rule 43. Thus, the approximate remedy to annul and set aside the assailed resolution is an original special civil action for *certiorari* under Rule 65, as what the petitioners have correctly done. . . .

The thirty (30)-day period under Section 54 of Rep. Act No. 6657 is extendible, but such extension should not exceed the period now provided for in Section 4, Rule 65 of the Rules of Court, as amended. Thus:

> 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 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.

IN LIGHT OF ALL THE FOREGOING, the petitions are *DENIED* due course and are *DISMISSED*. Costs against the petitioner.

SO ORDERED.

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

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[55] *Supra*.

THIRD DIVISION

[G.R. No. 124346. June 8, 2004]

YOLLY TEODOSIO *y* BLANCAFLOR, *petitioner, vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

Petitioner was arrested for selling and delivering *shabu* in a buy-bust operation conducted by the police. The trial court convicted petitioner of violating the Dangerous Drugs Act, and the Court of Appeals affirmed the same. Petitioner, however, insisted that he was a victim of frame-up. Hence, this petition.

The Court found no reason to reverse the conviction of appellant. The police officers were clear and categorical in their narration of how the entrapment operation was conducted. There was evidence beyond reasonable doubt that appellant was engaged in drug-dealing. What is material in the prosecution of the offense of illegal sale of prohibited drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JURISDICTION; COURT OF APPEALS; WHERE PENALTY IMPOSED ON APPEALED CASE IS LOWER THAN *RECLUSION PERPETUA*. — In view of the imposition of the penalty of life imprisonment, the appeal was originally brought to us. However, the Second Division of this Court ordered the transfer of this case to the Court of Appeals in accordance with our ruling in *People vs. Simon y Sunga* wherein we held that RA 7659 which amended RA 6425, effective December 31, 1993, should be given retroactive application in so far as the amended and reduced imposable penalties provided therein are favorable to the appellant. Section 17 of RA 7659 states that the penalty shall range from *prision correccional* to *reclusion perpetua,* depending on the quantity of the drug. In the present case, the amount of *shabu* sold by

appellant was only 0.73 grams, thus the penalty of *reclusion perpetua* could not be imposed. Such being the case, the appeal should have been filed in the Court of Appeals and not in this Court because we can only exercise exclusive appellate jurisdiction over criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

2. **ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED. —** Well-settled is the rule that findings of trial courts which are factual in nature and which involve the credibility of witnesses are to be respected when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gleaned from such findings. Such findings carry even more weight if they are affirmed by the Court of Appeals, as in the case at bar. The alleged flaws pointed out by appellant are not enough for us to reverse the factual findings of the courts *a quo*.

3. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF PROHIBITED DRUGS; IMPORTANT ELEMENT. —** In the prosecution of the offense of illegal sale of prohibited drugs, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

4. **REMEDIAL LAW; EVIDENCE; FRAME UP; WEAK DEFENSE THAT REQUIRES STRONG EVIDENCE. —** Frame-up, a usual defense of those accused in drug-related cases, is viewed by the Court with disfavor since it is an allegation that can be made with ease. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that the arresting policemen performed their duties in a regular and proper manner.

5. **ID.; ID.; POLICE BLOTTER; NO SIGNIFICANT PROBATIVE VALUE. —** Unfortunately for appellant, the police blotter does not support his version because entries in police blotters, although done in the regular course of the performance of official duty, are not conclusive proof of the truth stated in such entries and should not be given undue significance or probative value. They are usually incomplete and inaccurate. Sometimes they are based on partial suggestion or inaccurate reporting and hearsay, untested in the context of a trial on the merits.

6. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DISCREPANCIES BETWEEN THE AFFIDAVIT OF WITNESS AND HIS TESTIMONY IN COURT. — The established rule is that discrepancies between the affidavit of a witness and his testimony in court do not necessarily discredit him because it is a matter of judicial experience that affidavits, being taken *ex-parte*, are almost always incomplete and often inaccurate. Besides, the testimonial discrepancies may be due to the natural fickleness of memory; this in fact tends to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony.

7. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES. — Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood and they often bolster the probative value of the testimony.

8. ID.; CRIMINAL PROCEDURE; ARREST WITHOUT WARRANT; ARREST MADE AFTER ENTRAPMENT DOES NOT REQUIRE WARRANT. — On the argument that the officers had four days to secure a warrant but did not get one, the evidence was that the four-day period was not enough to establish probable cause for the issuance of a warrant. All that the police authorities knew about appellant was the information gathered from the informer and their surveillance of the area. Furthermore, no warrant was needed considering that the mission was not a search but an entrapment. An arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of court. Any search resulting from a lawful warrantless arrest is valid because the accused committed a crime in *flagrante delicto*, that is, the person arrested (appellant in this case) committed a crime in the presence of the arresting officers.

9. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST SELF-INCRIMINATION; NOT VIOLATED WHEN ACCUSED SUBJECTED TO ULTRA-VIOLET POWDER TEST WITHOUT THE PRESENCE OF A LAWYER. — [A]ppellant alleges that his right against self-incrimination was violated when he was subjected to ultra-violet powder test without the presence of a lawyer. We disagree. In *People vs. Gallarde*, we held that: The constitutional right of an accused

against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act.

10. CRIMINAL LAW; DANGEROUS DRUGS ACT; PROPER PENALTIES, CLARIFIED. — In the 1994 case of *People vs. Simon y Sunga*, the proper penalties for drug-related crimes under RA 6425, as amended by RA 7659, were clarified. The appropriate penalty is *reclusion perpetua* if the quantity of the drug weighs 750 grams or more. If the drug weighs less than 250 grams, the penalty to be imposed is *prision correccional*; from 250 grams to 499 grams, *prision mayor*; and, from 500 grams to 749 grams, *reclusion temporal*.

11. ID.; ID.; ILLEGAL SALE OF .73 GRAMS OF *SHABU*; PROPER PENALTY ABSENT ANY MODIFYING CIRCUMSTANCES AND APPLYING THE INDETERMINATE SENTENCE LAW. — Since appellant was caught selling 0.73 grams of *shabu* only, the proper penalty should be no more than *prision correccional.* There being neither generic mitigating nor aggravating circumstances, the penalty of *prision correccional* shall be imposed in its medium period. And applying the Indeterminate Sentence Law, the minimum period shall be within the range of the penalty next lower in degree which is *arresto mayor.* No fine is imposable in this case because appellant's penalty is not *reclusion perpetua* or death. Pursuant to our jurisprudence on the sale of less than 1 gram of *shabu*, we therefore impose the penalty of 6 months of *arresto mayor*, as minimum to 4 years and 2 months of *prision correccional* as maximum.

APPEARANCES OF COUNSEL

Arturo M. De Castro for petitioner.
The Solicitor General for public respondents.

D E C I S I O N

CORONA, *J.*:

Before us is a petition for review of the decision[1] dated February 28, 1995 of the Court of Appeals[2] affirming with modification the decision[3] dated January 18, 1993 of the Regional Trial Court (RTC) of Pasay City, Branch 109, convicting herein appellant Yolly Teodosio of violation of Section 15, Article III of RA 6425 (The Dangerous Drugs Act of 1972), as amended.

Appellant was charged with selling and delivering regulated drugs in an Information that read:

> That on or about the 6th day of August 1992, in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused Yolly Teodosio *Y* Blancaflor, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another Methamphetamine Hydrochloride (*shabu*), a regulated drug.
>
> Contrary to law.[4]

During his arraignment on August 19, 1992, appellant pleaded not guilty.

The prosecution presented the following witnesses: SPO1 Jeffrey Inciong, SPO1 Emerson Norberte, Julita de Villa and Marita Sioson.

The evidence of the prosecution showed that, after four days of surveillance on the house of appellant, at around 8:00 p.m. on August 5, 1992, Chief Inspector Federico Laciste ordered a

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[1] Penned by Associate Justice Fidel P. Purisima (former Associate Justice of the Supreme Court), and concurred in by Associate Justices Jainal D. Rasul and B.A. Adefuin-de la Cruz; *Rollo*, pp. 37-47.

[2] Special Second Division.

[3] Penned by Judge Lilia C. Lopez, Regional Trial Court Records, pp. 389-406.

[4] Regional Trial Court Records, p. 1.

team from the PNP Regional Office Intelligence Unit to conduct a buy-bust operation on appellant who was suspected of peddling regulated drugs known as *shabu* (methamphetamine hydrochloride). The team was headed by SPO1 Emerson Norberte and composed of SPO1 Jeffrey Inciong, SPO3 Roberto Samoy, SPO3 Pablo Rebaldo and SPO1 Rolando Llanes.[5]

About midnight, the team and their informer proceeded to the appellant's house in Solitaria Street, Pasay City. SPO1 Jeffrey Inciong and the informer entered the open gate of appellant's compound and walked to his apartment while the rest of the team observed and waited outside. At 12:10 a.m., the informer introduced Inciong to the appellant as a *shabu* buyer. Appellant told them that a gram of *shabu* cost ₱600. When Inciong signified his intention to buy, appellant went inside his apartment while Inciong and the informer waited outside. A few minutes later, appellant came out and said "*Swerte ka, mayroon pang dalawang natira* (You are lucky. There are two [grams] left)." When Inciong told appellant that he only needed one gram, the latter gave him one plastic packet. In turn, Inciong handed to appellant ₱600 or six pieces of ₱100 bills earlier treated with ultraviolet powder. After verifying the contents of the packet as *shabu*,[6] Inciong gave the signal to the other police officers who witnessed the transaction. After introducing himself as a police officer, Inciong, together with his companions, arrested appellant.[7]

The marked money bills,[8] the other packet of *shabu* [9] recovered from appellant's right front pants-pocket and the buy-bust *shabu* were brought to the PNP Crime Laboratory for examination by forensic chemists Julita de Villa and Marita Sioson. Appellant was also taken to the said laboratory to determine the presence of ultraviolet fluorescent powder. The results were positive in appellant's hands, the marked money bills and the right front

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[5] TSN, October 19, 1992, pp. 3-4, 10.

[6] Exhibit "N-2."

[7] TSN, September 2, 1992, pp. 2-7; TSN, September 19, 1992, pp. 5-9.

[8] Exhibits "A", "A-1", "A-3", "A-4" and "A-5".

[9] Exhibit "N-3".

pocket of his pants[10] The buy-bust *shabu* and the contents of the other packet recovered from appellant were also confirmed to be methamphetamine hydrochloride.[11]

For his defense, appellant, a driver by profession, claims that police officers raided his house without a search or arrest warrant. When they found no drugs, they took a bag containing a large sum of money. To support his defense, the following witnesses were presented: the appellant himself, Ulysses Ramos (appellant's neighbor), Marilyn Teodosio (appellant's wife) and Paul Teodosio (appellant's 10-year-old son).

Appellant, Marilyn Teodosio and Paul Teodosio alleged that, on August 5, 1992, they were sleeping in their bedroom on the second floor of their apartment when they were suddenly awakened by a noise downstairs. Appellant went down and, while on the third step of the stairs, he met three policemen on their way up. Their guns were pointed at him. One of the three inquired from him where he kept his *shabu* but he denied having any. The three then searched appellant's room on the second floor but did not find any *shabu*. Instead, they took an overnight bag from a locked cabinet which they forcibly opened. The bag contained $7,260 and approximately ₱40,000 belonging to the appellant's niece who was scheduled for a heart operation. After appellant was arrested by six police officers, he was dragged, slapped and punched in the stomach. As he was being forcibly taken out of his apartment, SPO3 Samoy fired a gun near his ear. On their way to his detention cell in Bicutan, Taguig, his hands were handcuffed behind his back. Appellant felt and saw the police officers rubbing ₱100 bills on his hands.[12]

Defense witness Ulysses Ramos testified that, after the arrest of appellant, his wife called for police assistance. Two police officers responded while appellant's son Paul took pictures[13]

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[10] TSN, September 14, 1992, pp. 3-8.

[11] Exhibits "L" and "M"; TSN, September 17, 1992, pp. 2-6.

[12] TSN, November 24, 1992, pp. 2-8; TSN, November 24, pp. 24-30; TSN, November 25, 1992, pp. 2-7; TSN, December 3, 1992, pp. 9-14.

[13] Exhibits "5", "6" and "7".

of the broken door and their ransacked apartment. Thereafter, his wife and Marilyn Teodosio went to the police station and formally reported the incident.[14]

On January 18, 1993, the RTC rendered a decision, the dispositive portion of which read:

> IN VIEW OF ALL THE FOREGOING, the Court finds the accused Yolly Teodosio guilty beyond reasonable doubt for (*sic*) violation of Section 15, Art. III of RA 6425 as amended and hereby sentences him to life imprisonment.
>
> The methamphetamine hydrochloride is hereby forfeited in favor of the government and the Clerk of Court of this Branch is hereby ordered to transmit the same to the Dangerous Drugs Board thru the National Bureau of Investigation for proper disposition.
>
> SO ORDERED.
>
> Pasay City, January 18, 1993.[15]

In convicting appellant, the trial court relied on the credibility of the testimonies of the prosecution witnesses who were officers of the law without any ill-motive to testify falsely against him. In the absence of proof to the contrary, there was a presumption of regularity in the performance of their official functions. The trial court gave no credence to the claim that the police officers stole a bag containing a large sum of money, considering the failure of appellant's niece to file a case or even complain against the officers. Also, for the reason that they were biased witnesses, the trial court junked the claim of appellant's wife and son that the police officers illegally raided their apartment.

Ramos' testimony was given little weight because he did not actually see the police officers go in and out of the apartment. Furthermore, the trial court dismissed appellant's claim of a frame-up because this defense, like alibi, could be fabricated with facility and was therefore an inherently weak defense unless proven by clear and convincing evidence. The court also wondered

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[14] TSN, November 24, 1992, p. 29.

[15] Regional Trial Court Records, p. 406.

how the appellant could have seen the officers rubbing money on his handcuffed hands behind his back. It also took note of the fact that the appellant, a driver by profession, attempted to cover up his ownership of the 190 square-meter lot and the three-door apartment thereon worth about ₱300,000.[16]

In view of the imposition of the penalty of life imprisonment, the appeal was originally brought to us. However, the Second Division of this Court ordered the transfer of this case to the Court of Appeals in accordance with our ruling in *People vs. Simon y Sunga*[17] wherein we held that RA 7659 which amended RA 6425, effective December 31, 1993, should be given retroactive application in so far as the amended and reduced imposable penalties provided therein are favorable to the appellant. Section 17 of RA 7659[18]

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[16] Regional Trial Court Records, pp. 402-405.

[17] 243 SCRA 555 [1994].

[18] SEC. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

"SEC. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;
2. 40 grams or more of morphine;
3. 200 grams or more of *shabu* or methylamphetamine hydrochloride;
4. 40 grams or more of heroin;
5. 750 grams or more of indian hemp or *marijuana*;
6. 50 grams or more of *marijuana* resin or *marijuana* resin oil;
7. 40 grams or more of cocaine or cocaine hydrochloride; or
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity.

states that the penalty shall range from *prision correccional* to *reclusion perpetua*, depending on the quantity of the drug. In the present case, the amount of *shabu* sold by appellant was only 0.73 gram, thus the penalty of *reclusion perpetua* could not be imposed. Such being the case, the appeal should have been filed in the Court of Appeals and not in this Court because we can only exercise exclusive appellate jurisdiction over criminal cases in which the penalty imposed is *reclusion perpetua* or higher.[19]

The Court of Appeals, in a decision dated February 28, 1995, affirmed the judgment of the trial court convicting the appellant but modified the penalty imposed, as follows:

> Finally, even as We agree on the findings of the lower court on the guilt of the appellant for a Violation of Section 15, Article III, Republic Act 6425, as amended, considering the application of Section 17 of RA 7659, the penalty imposed should be reduced to Ten (10) years of *Prision Mayor*, as minimum, to Twenty (20) Years of *Reclusion Temporal*, as maximum.
>
> WHEREFORE, except for the modification of the penalty, as above indicated (*sic*), the appealed Decision is hereby AFFIRMED, in all other respects. No pronouncement as to costs.[20]

Agreeing with the factual findings of the trial court, the Court of Appeals gave more weight to the prosecution's claim that the entrapment operation in fact took place outside the appellant's apartment. The appellate court gave no merit to appellant's assertion that no warrant was secured despite four days of surveillance. It described as minor the appellant's observations of alleged inconsistencies in the prosecution's version of events.

Hence, this appeal based on the following assignment of errors:

I

THE TRIAL COURT AND THE COURT OF APPEALS OVERLOOKED CERTAIN MATERIAL AND UNDISPUTED FACTS IN ERRONEOUSLY CONCLUDING THAT THE ALLEGED BUY-BUST OPERATION CONDUCTED WITHOUT A SEARCH

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[19] Art. VIII, Sec. 5, Constitution.

[20] *Rollo*, p. 47.

WARRANT OR WARRANT OF ARREST TOOK PLACE OUTSIDE THE RESIDENCE OF THE PETITIONER.

II

BOTH THE TRIAL COURT AND THE COURT OF APPEALS ERRED AS A MATTER OF LAW AND THE CONSTITUTION IN ADMITTING THE PROSECUTION'S EVIDENCE WHICH WAS EITHER PROCURED FROM AN ILLEGAL WARRANTLESS RAID OR FABRICATED BY THE RAIDING POLICEMEN.

III

THE LOWER COURT AND THE COURT OF APPEALS ERRED IN NOT FINDING THAT SUBJECTION OF PETITIONER TO ULTRA-VIOLET POWDER TEST WITHOUT ASSISTANCE OF COUNSEL IS VIOLATIVE OF HIS CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION.

IV

THE HONORABLE COURT OF APPEALS, SAD TO SAY, DISREGARDED AND IGNORED THE INHERENT AND NATURAL BIAS AND PREJUDICE OF THE TRIAL JUDGE, HER HONOR, JUDGE LILIA LOPEZ, AGAINST PERSONS CHARGED OF (*sic*) DRUG OFFENSES AS DULY NOTED BY THE SUPREME COURT IN *PEOPLE VS . SILLO*, 214 SCRA 74.

V

THE ACCUSED IS ENTITLED TO AN ACQUITTAL BASED ON REASONABLE DOUBT BECAUSE THE EVIDENCE OF THE PROSECUTION IS NOT SUFFICIENT TO WARRANT CONVICTION.[21]

In short, appellant insists that the police officers forcibly entered and searched his house without a warrant. When they did not find any regulated drug, they instead took a bag containing a large sum of money. They also showed their brutality by slapping him and punching him in the stomach. Thereafter, they framed up appellant by wiping ultraviolet powder on his palms.

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[21] *Rollo*, pp. 14, 20, 22, 23, 24.

We affirm appellant's conviction.

Well-settled is the rule that findings of trial courts which are factual in nature and which involve the credibility of witnesses are to be respected when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gleaned from such findings.[22] Such findings carry even more weight if they are affirmed by the Court of Appeals, as in the case at bar. The alleged flaws pointed out by appellant are not enough for us to reverse the factual findings of the courts *a quo*.

The police officers were clear and categorical in their narration of how the entrapment operation was conducted. SPO1 Inciong, acting as a poseur-buyer, was introduced by the informer to appellant in front of the latter's apartment. Thereafter, appellant went inside his apartment and came back with two packets of *shabu*. Inciong handed to appellant six pieces of ₱100 bills treated with ultra-violet powder in exchange for one packet of *shabu*. Immediately after, Inciong gave the signal to the other policemen who then entered the compound and effected appellant's arrest. Recovered from appellant was the other packet of *shabu* and the six pieces of marked money. The tests conducted on these pieces of evidence, appellant's hands and right front pants-pocket showed that appellant was the same person who sold the drugs to police officer Inciong. There was strong evidence therefore, certainly beyond reasonable doubt, that appellant was engaged in drug-dealing.

The elements of the crime were duly proven. In the prosecution of the offense of illegal sale of prohibited drugs, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[23]

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[22] *People vs. Mirafuentes*, 349 SCRA 204 [2001]; *People vs. Flores*, 252 SCRA 31 [1996]; *People vs. Bahuyan*, 238 SCRA 330 [1994]; *People vs. Sanchez*, 250 SCRA 14 [1995].

[23] *People vs. San Juan*, 377 SCRA 13 [2002]; *People vs. Bay*, 222 SCRA 723 [1993]; *People vs. Castro*, 274 SCRA 115, 122 [1997]; *People vs. Lacerna*, 278 SCRA 561 [1997]; *People vs. Lacbanes*, 270 SCRA 201 [1997].

On the other hand, appellant insists he was framed up for possession of *shabu* after the search in his apartment produced no illegal drugs. Frame-up, a usual defense of those accused in drug-related cases, is viewed by the Court with disfavor since it is an allegation that can be made with ease. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that the arresting policemen performed their duties in a regular and proper manner.[24]

However, appellant was unable to prove he was the victim of a frame up. First, appellant failed to show any motive why the police officers would illegally raid his house. Thus, the presumption of regularity in the performance of official duty by the persons in authority was never overcome. Second, if indeed they broke into his apartment and took an overnight bag containing a hefty amount, appellant or any of his family members should have filed a criminal complaint against the supposed malefactors but they did not. This weakened the defense's story that the police officers stormed and robbed appellant's apartment. Third, appellant testified that, after the search for *shabu* proved futile, the police officers dragged and slapped him, and punched him in the stomach. However, appellant never filed a case for physical injuries against the arresting officers. No medical certificate was presented to show his alleged injuries. He never even complained about it to anybody.

To prove his allegation that the arresting officers raided his apartment, appellant quoted officer Inciong's testimony that "his (Inciong's) informant introduced him to Yolly Teodosio specifically *at the house of Yolly Teodosio.*" Appellant's argument is misplaced. The preposition "at" merely signifies that Inciong was within the vicinity of appellant's apartment. There is nothing in it from which we can infer that Inciong entered appellant's abode. Moreover, the statement must be taken in conjunction

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[24] *People vs. Zheng Bai Hui*, 338 SCRA 420, 478 [2000]; *People vs. Boco, et al*. 309 SCRA 42, 65 [1999]; *People vs. Clapano*, 227 SCRA 598, 604, [1993].

with the rest of his testimony which unequivocally showed that the transaction happened in front of the door of appellant's apartment, not inside.

Appellant also cites in his defense the police blotter of the Investigation Branch of the Pasay City Police Station:[25]

x x x x x x x x x.

It was learned that on or about 11:45 p.m. 05 August 1992, a group of RPIU Operatives headed by SPO3 Emerson Norberte went inside the room of 421-C Apartment by forcing to open it and the owner/ occupant was brought with them, who was identified as YOLLY TEODOSIO.

x x x x x x x x x.

Unfortunately for appellant, the police blotter does not support his version because entries in police blotters, although done in the regular course of the performance of official duty, are not conclusive proof of the truth stated in such entries and should not be given undue significance or probative value. They are usually incomplete and inaccurate. Sometimes they are based on partial suggestion or inaccurate reporting and hearsay, untested in the context of a trial on the merits.[26]

Appellant furthermore points out the discrepancies in the testimonies and the joint affidavit of arrest executed by officers Inciong and Norberte. First, the affidavit stated that the second packet of *shabu* was recovered from appellant's pants-pocket but the officers' testimony in court was that it was recovered from appellant's hands. Second, the affidavit stated that the informer acted as the poseur-buyer but the policemen testified in court that Inciong was the poseur-buyer.

The established rule is that discrepancies between the affidavit of a witness and his testimony in court do not necessarily discredit him because it is a matter of judicial experience that affidavits,

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[25] Exh. 8, Records, p. 370.

[26] *People vs. Rendoque*, 322 SCRA 622 [2000].

being taken *ex-parte*, are almost always incomplete and often inaccurate. Besides, the testimonial discrepancies may be due to the natural fickleness of memory; this in fact tends to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony.[27]

In an attempt to weaken the prosecution's case, appellant also cites several inconsistencies in the narration of events.

According to appellant, SPO1 Norberte testified that it was SPO1 Inciong who knocked at the door, contrary to Inciong's own testimony that it was the informer who knocked at the door. This is, however, a minor matter that does not affect the substance of the testimonies of the prosecution witnesses. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood and they often bolster the probative value of the testimony.[28]

Also, according to appellant, the prosecution witnesses testified that the total weight of the confiscated *shabu* was 2 grams but its actual weight was only 0.73 grams. It must be remembered that during the drug deal, it was appellant who led officer Inciong to believe that each packet of *shabu* he was selling weighed 1 gram. Inciong, under the circumstances, had no opportunity to verify the actual weight of the drug. Thus, the discrepancy did not in anyway weaken the credibility of Inciong's testimony that appellant was selling a prohibited drug.

Appellant likewise attacks SPO1 Norberte's credibility. Norberte claimed that he wrote the serial numbers of the marked money bills *after* the operation; however, he later declared that he listed the numbers in the logbook *before* the buy-bust operation. There is no contradiction. Norberte never said that he wrote the serial numbers *after* the operation. On the contrary, what he said was that he wrote the numbers *prior* to the buy-bust.[29]

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[27] *People vs. Molina*, 311 SCRA 517, 526 [1999].

[28] *Ibid*.

[29] TSN, October 19, 1992, p. 20.

Appellant likewise points out several instances of improbable behavior in the prosecution's version of the facts. Appellant believes it is not a discreet and wary behavior of a pusher to bring two packets of *shabu* after closing a deal for only one packet with an unknown, newly-introduced buyer. Likewise, it is unnatural for a drug pusher to shout while being arrested. His natural tendency is to hush things up so as not to attract the neighbors' attention. Appellant also swears that he could not have held the money bills because the traces of the powder were only in the thumb and forefinger. This means that he held some sort of a cylindrical object but not money. Moreover, it was unnatural for SPO1 Inciong to be the poseur-buyer instead of the informant considering the caution practiced by pushers in selling only to customers known to them. And, contrary to standard procedure, the police officers did not issue any receipt for the *shabu* and money bills confiscated from appellant. Lastly, the police authorities had four days to secure a search and arrest warrant but they did not get one.

We dismiss all of appellant's observations as pure nonsense and inanity that did not in anyway affect the clear and unequivocal testimonies of the prosecution witnesses. No physical or testimonial evidence was presented during the trial to support his allegations. If there was anything such gratuitous statements proved, it was that appellant appeared to be extremely familiar with the intricacies and practices of drug dealers.

As to his allegation that he never held any money bills treated with ultra-violet powder, we note his failure to rebut the unimpeached testimony of forensic chemist Julita de Villa that the *yellow* ultraviolet powder in the money bills was the same *yellow* powder found in his fingers.

His argument that the prosecution's case was weakened by the fact that the police officers did not issue a receipt for the confiscated drugs and money bills, is stretching things too far. Issuing such a receipt is not essential to establishing a criminal case for selling drugs as it is not an element of the crime.

On the argument that the officers had four days to secure a warrant but did not get one, the evidence was that the four-day period was not enough to establish probable cause for the issuance of a warrant. All that the police authorities knew about appellant was the information gathered from the informer and their surveillance of the area. Furthermore, no warrant was needed considering that the mission was not a search but an entrapment. An arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court.[30] Any search resulting from a lawful warrantless arrest is valid because the accused committed a crime in *flagrante delicto*, that is, the person arrested (appellant in this case) committed a crime in the presence of the arresting officers.[31]

On another constitutional issue, appellant alleges that his right against self-incrimination was violated when he was subjected to ultra-violet powder test without the presence of a lawyer. We disagree. In *People vs. Gallarde*,[32] we held that:

> The constitutional right of an accused against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. (*People vs. Olvis, et al.*, 154 SCRA 513 [1987]) The essence of the right against self-incrimination is testimonial compulsion, that

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[30] SEC. 5. *Arrest without a warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person:

x x x x x x x x x

(b) When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

x x x x x x x x x

[31] *People vs. de Leon*, 391 SCRA 682 [2002].

[32] 325 SCRA 835 [2000].

is, the giving of evidence against himself through a testimonial act. (*People vs. Casinillo*, 213 SCRA 777 [1992]; *People vs. Tranca*, 235 SCRA 455 [1994]; *People vs. Rondero*, 320 SCRA 383 [1999]) Hence, it has been held that a woman charged with adultery may be compelled to submit to physical examination to determine her pregnancy; (*Villaflor vs. Summers*, 41 Phil. 62 [1920]) and an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim;(*U.S. vs. Tan Teng*, 23 Phil. 145 [1912]) to expel morphine from his mouth; (*U.S. vs. Ong Siu Hong*, 36 Phil. 735 [1917]) to have the outline of his foot traced to determine its identity with bloody footprints; (U.S. *vs. Salas*, 25 Phil. 337 [1913]; *U.S. vs. Zara*, 42 Phil. 308 [1921]) and to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done.(*People vs. Otadora, et al*., 86 Phil. 244 [1950])

Appellant also questions the impartiality of Judge Lilia Lopez who allegedly had an inherent bias against persons facing drug charges. We seriously doubt the fairness of the accusation. Nevertheless, it is now too late for the appellant to raise this defense because the good judge's impartiality was never questioned during the trial and the appeal to the Court of Appeals. Moreover, no evidence was presented on any specific act manifesting partiality against appellant.

We now determine whether the appellate court imposed the proper penalty on appellant. In the 1994 case of *People vs. Simon y Sunga*,[33] the proper penalties for drug-related crimes under RA 6425, as amended by RA 7659, were clarified. The appropriate penalty is *reclusion perpetua* if the quantity of the drug weighs 750 grams or more. If the drug weighs less than 250 grams, the penalty to be imposed is *prision correccional*; from 250 grams to 499 grams, *prision mayor*; and, from 500 grams to 749 grams, *reclusion temporal*.[34]

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[33] *Supra*, Note 17.

[34] *People vs. Concepcion*, 361 SCRA 716 [2001]; *People vs. Elamparo*, 329 SCRA 404 [2000], citing *People vs. Simon, supra*.

Since appellant was caught selling 0.73 grams of *shabu* only, the proper penalty should be no more than *prision correccional*. There being neither generic mitigating nor aggravating circumstances, the penalty of *prision correccional* shall be imposed in its medium period. And applying the Indeterminate Sentence Law, the minimum period shall be within the range of the penalty next lower in degree which is *arresto mayor*. No fine is imposable in this case because appellant's penalty is not *reclusion perpetua* or death.[35] Pursuant to our jurisprudence on the sale of less than 1 gram of *shabu*,[36] we therefore impose the penalty of 6 months of *arresto mayor*, as minimum to 4 years and 2 months of *prision correccional* as maximum.

WHEREFORE, the decision dated February 28, 1995 of the Court of Appeals convicting herein appellant Yolly Teodosio for the sale of 0.73 grams of *shabu* is hereby *AFFIRMED*, with the *MODIFICATION* that the penalty of imprisonment imposable on appellant should be the indeterminate sentence of 6 months of *arresto mayor* as minimum to 4 years and 2 months of *prision correccional* as maximum.

SO ORDERED.

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

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[35] *Ibid*.

[36] *De Leon vs. Court of Appeals*, 262 SCRA 690 [1996]; *People vs. Piasidad*, 262 SCRA 752 [1996]; *People vs. Manalo*, 245 SCRA 492 [1995]; *Danao vs. Court of Appeals*, 243 SCRA 494 [1995].

EN BANC

[G.R. No. 130488. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LINO CLORES, JR.,** *appellant.*

SYNOPSIS

Appellant was found guilty of rape and sentenced to death. Hence, this automatic review of the decision.

While the Court affirmed the findings of the trial court, it ruled that the presiding judge manifested gross ignorance of the law: for imposing the death penalty to appellant who was then a minor offender, and applying PD No. 603 by suspending the proceedings and committing appellant to the DSWD when the same was not applicable. Further, appellant was guilty only of simple rape and entitled to the privileged mitigating circumstance of minority.

SYLLABUS

1. **CRIMINAL LAW; RAPE; WHERE VICTIM'S TESTIMONY WAS CORROBORATED BY PHYSICIAN'S FINDING OF PENETRATION IN RAPE THERE IS SUFFICIENT FOUNDATION TO CONCLUDE THE EXISTENCE OF THE ESSENTIAL REQUISITE OF CARNAL KNOWLEDGE. —** It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; VALUE OF RAPE VICTIM'S TESTIMONY. —** When the victim in this case stated that she was sexually abused, there can be no other conclusion than that she was raped. In *People v. Mabunga,* this Court has declared that what is important is the victim's testimony that the appellant had sexually abused her. The Court has consistently held that when a woman, more so if she is a minor, says that she has

been raped, she says in effect all that is necessary to show that rape was committed. The rationale therefore is that no woman would weave a tale of sexual assaults to her person, open herself to the examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.

3. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY. — In *People v. Corral*, it was declared that as between a positive and categorical testimony which has the ring of truth on one hand and a bare denial on the other, the former is generally held to prevail. We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime. In the present recourse, the victim categorically identified the appellant as the one who raped her. Moreover, the appellant failed to prove with clear and convincing evidence that it was impossible for him to be at the place where AAA was raped, which was approximated to be less than a kilometer away from his grandfather's house, where he alleged he was staying at the time. Such failure renders the appellant's defense of alibi incredible.

4. ID.; ID.; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. — In this jurisdiction, it is doctrinally settled that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal.

5. CRIMINAL LAW; WHERE OFFENDER SENTENCED TO DEATH PENALTY WAS STILL A MINOR; CASE AT BAR. — Since the appellant was a minor at the time of the commission of the offense, the judge is proscribed under Article 47 of the Revised Penal Code from imposing the death penalty. He should have applied Article 68 of the Revised Penal Code instead of sentencing him to suffer the death penalty. Under Section 192 of PD No. 603, the suspension of sentence of the accused, as well as the proceedings, and his commitment to the DSWD shall be proper only if he has not been sentenced to life imprisonment, *reclusion perpetua*, or death. Furthermore, the accused must file with the trial court an application for suspension of sentence so as to put into operation the benevolent provisions of P.D.

No. 603. In this case, the appellant did not make such application, and instead appealed the decision. We are not impervious of Section 5, Republic Act No. 8369, otherwise known as the Family Courts Act, which took effect on November 23, 1997. It provides that the sentence of the youthful offender shall be suspended without need of application pursuant to P.D. No. 603. As a general rule, the said provision may be applied retroactively, considering that it is favorable to the accused. However, we can no longer do so because the appellant is by now, more than twenty-four (24) years old.

6. ID.; RAPE; PROPER PENALTY WHERE OFFENDER HAS A PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY. — We agree with the trial court that the appellant is guilty of simple rape under Article 335 of the Revised Penal Code, as amended, punishable by *reclusion perpetua.* When the appellant committed the crime, he was only sixteen (16) years old. Under Article 13, paragraph 2, in relation to Article 68 of the Revised Penal Code, as amended, minority is a privileged mitigating circumstance. Since the appellant was a minor when he committed the crime, *reclusion perpetua* should be reduced by one degree, namely, *reclusion temporal,* in its full range. In the absence of any other modifying circumstances, the maximum period of the indeterminate penalty shall be taken from *reclusion temporal,* in its medium period. To determine the minimum of the indeterminate penalty, *reclusion temporal* has to be reduced by one degree, which is *prision mayor*. From the full range of *prision mayor* shall be taken the minimum period of the indeterminate penalty. Consequently, the appellant may be sentenced to an indeterminate penalty of from eight (8) years and one (1) day of *prision mayor*, in its medium period, as minimum, to fifteen (15) years of *reclusion temporal,* in its medium period, as maximum. The award of ₱50,000.00 for civil indemnity is correct, and pursuant to prevailing jurisprudence, the victim is also entitled to ₱50,000.00 as moral damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Rosalito B. Apoya for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

This is an automatic review of the Decision[1] of the Regional Trial Court of Masbate, Branch 44, in Criminal Case No. 7810 convicting the appellant Lino Clores, Jr. of rape, sentencing him to suffer the supreme penalty of death and ordering him to pay damages to the victim in the amount of ₱50,000.00.

On July 31, 1995, an Information was filed charging Lino Clores, Jr. with rape. The accusatory portion of the Information reads:

> That on or about the 4th day of May 1995, in the evening thereof, at Barangay x x x, Municipality of x x x, Province of x x x, Philippines, within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA a girl of 15 years old, against the latter's will.
>
> CONTRARY TO LAW.[2]

Upon arraignment, the appellant, assisted by counsel, entered a plea of not guilty. Trial, thereafter, ensued.

The Evidence for the Prosecution

The Spouses BBB and CCC and their seven children, including AAA, resided in Barangay x x x, x x x, x x x. Their son, BBB, lived with his family in the same *barangay*, about a kilometer away. At around 7:00 p.m. on May 4, 1995, AAA, one of the couple's children, was sent by her father to bring some cooking oil to her elder brother BBB. AAA, who was then wearing a pair of shorts, passed by the house of her friend, Eleanor Buhay, and asked the latter to accompany her to her brother's house. Eleanor replied that they should first wait for her mother so that she could ask for permission. However, Eleanor's mother did not allow Eleanor to leave the house when she arrived some thirty minutes later. By that time, it was starting to get dark.

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[1] Penned by Judge Felimon C. Abelita III.

[2] Records, p. 1.

AAA proceeded to her brother's house by her lonesome. There were no houses along the way. Momentarily, AAA noticed that the appellant was close by, at a distance of about five (5) meters, and seemed to be following her. Nevertheless, she walked on. The appellant then overtook AAA, grabbed her by her shoulders and covered her mouth to prevent her from shouting. He kissed her and dragged her to the nearby riverbank. AAA punched and kicked the appellant, but her efforts proved futile. The cooking oil she was carrying spilled from its container. Upon reaching the river bank, the accused pushed her to the ground and removed her shorts and panty. The appellant stepped on AAA's forearms and removed his jogging pants and underwear. He then mounted her. He told AAA that whatever happens, he would marry her. AAA kept on punching and kicking the appellant until she weakened and lost consciousness. The appellant then had sexual intercourse with her. When she came to her senses, the appellant was gone.

AAA was able to get up and proceeded to her brother's house. It was already late in the evening. When she arrived at the house, she saw her sister-in-law, Suhita, and spontaneously told the latter that she was not able to arrive early as she was sexually abused along the way by the appellant. The next day, Suhita accompanied AAA back to their house and reported the incident to her parents. Upon instructions of BBB, CCC accompanied AAA to the police station and reported the incident. AAA and her mother then proceeded to the Moises R. Espinosa, Sr. Memorial Municipal Hospital at Dimasalang, Masbate, where she was examined by Dr. Levi B. Osea, Jr. who prepared a Medico-Legal Report which contained the following findings:

1) + Linear Erythematous Skin 7 cm. (R) shoulder area.

2) + Erythematous Skin:

   a) 5 mm x 1 cm (R) lateral neck.

   b) 5 mm x 1 cm Mid-upper neck.

   c) 5 mm x 1 cm Mid lower neck.

   d) 5 mm x 1 cm (L) lateral neck.

3) + Linear Erythematous Skin 8 cm D/3rd lateral aspect (L) forearm.

4) + Linear Erythematous Skin 5 cm D/3rd dorsum (R) forearm.

5) + Shallow punctured wound 1 mm x 1 mm hypogastric area.

6) Perineal Examination:

External: Negative Finding

Internal: (+) small fresh hymenal laceration at 5 o'clock position.[3]

The Case for the Appellant

The appellant was born on November 3, 1979. He denied raping AAA. He testified that he was at the house of his *Lolo* Seloy in the evening of May 4, 1995. He opined that AAA filed the rape case against him probably because she liked him. He added that the parents and brothers of AAA wanted him to marry the latter, but he refused, saying that she was ugly. Because of such refusal on his part, AAA and her family pushed through with the filing of the rape case against him.

Numeriano Villacorta testified that at 4:30 p.m. on May 4, 1995, he was at the house of the appellant's grandfather, Marcelo (Seloy) Clores. At around 6:00 p.m., Villacorta had supper together with the occupants of the house, including the appellant. After dinner, Villacorta spent the night at the said house and slept beside the appellant. He stated that the appellant never left his side during the night and both of them woke up at around 5:00 a.m. the next day.

Jose Monterde testified that he was at the house of Marcelo Clores on May 4, 1995. He had supper with the appellant and other people who were also present therein. He spent the night in the copra dryer which was adjacent to the house of Marcelo.

After trial, the court rendered judgment finding the appellant guilty of rape and sentenced him to death. It also suspended further proceedings, on its finding that the appellant was a youthful

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[3] Exhibit "B", Records, p. 49.

offender. The court, likewise, ordered the commitment of the appellant to the care and custody of the Department of Social Welfare and Development (DSWD). The decretal portion of the decision reads:

> All told, the court finds the accused Lino Clores, Jr. guilty beyond reasonable doubt of the crime of rape which is punishable by death. The court also finds the accused civilly liable to the victim, AAA in the sum of FIFTY THOUSAND (₱50,000.00) PESOS.
>
> Lino Clores, Jr. is a youthful offender at the time of the commission of the offense as defined under Presidential Decree No. 603 otherwise known as the Child and Youth Welfare Code. Lino was then fifteen (15) years, six (6) months and one (1) day old, having been born on November 3, 1979.
>
> WHEREFORE, pursuant to the provisions of Presidential Decree No. 603, the court hereby suspends all further proceedings in this case and hereby commits the accused, Lino Clores, Jr. to the care and custody of the Department of Social Welfare and Development through Miss Perseverancia Rey or any other responsible person in coordination with Miss Rey until the accused reaches the age of twenty-one years.
>
> Lino Clores, Jr. shall be subject to visitation and supervision by Miss Rey or any of her duly authorized representative if Lino's care and custody is entrusted to other responsible individual and in any event, he or she under whose care Lino Clores, Jr. is committed shall submit to the court every four (4) months a written report on the conduct of Lino Clores, Jr. as well as the intellectual, physical, moral, social and emotional progress made by him.
>
> IT IS SO ORDERED.[4]

The Present Appeal

The appellant, avers that the trial court erred as follows:

1. In convicting the accused-appellant without sufficient evidence to warrant such conviction;

2. In not acquitting the accused-appellant on the ground of reasonable doubt; and

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[4] Records, pp. 67-68.

3. In imposing upon the accused-appellant the penalty of death instead of *reclusion temporal*.

Anent the first and second assigned errors, the appellant asserts that it was impossible for him to have raped AAA because he was at the house of his grandfather, Marcelo Clores, at the time the rape was supposed to have occurred. He contends that the testimony of AAA is weak, because she did not even shout when she was raped and did not even try to escape. He asserts that AAA agreed to have sexual intercourse with him because he had promised to marry her. He argues that since the evidence of the prosecution is weak, the trial court should have found his defenses of denial and alibi meritorious. He should, thus, have been acquitted of the crime charged.

The Court's Ruling

We find the contention of the appellant to be bereft of merit.

AAA narrated to the trial court, when she testified, how the appellant succeeded in raping her. The testimony reads:

Q And what happened when the accused dragged you out at the bank of the river?

A He kissed me and when I could not do anything he abused me.

Q In what way were you abused?

A He turned (*sic*) my short and my panty.

Q Did he successfully turned (*sic*) your short and panty?

A Yes, Sir.

Q And were you naked completely (*sic*) after your short and panty were taken up (*sic*)?

A Yes, Sir.

Q And what did the accused do when you were already naked?

A He abused me.

Q In what way you were (*sic*) abused?

A He placed (*sic*) on top of me.

Q And while he was lying on top of you, what happened?

A He abused me and after succeeding his abuse (sic) he went home.

Q Can you tell the court what is meant by you were abused by the accused?

PROS. ALFORTE

manifesting)

I move that the persons present inside the court be ordered to go outside the courtroom.

COURT

All persons inside the courtroom are hereby ordered to go outside except the accused.

PROS. ALFORTE

continuing)

Q Please tell the court in what way were you abused by the accused?

A He sexually abused me.[5]

AAA's testimony is corroborated by the Medico-Legal Report of Dr. Levi B. Osea, Jr. that when he examined AAA on May 5, 1995, barely a day after she was raped by the appellant, he found a "fresh laceration in the hymen at 5 o'clock position."[6] It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[7]

When the victim in this case stated that she was sexually abused, there can be no other conclusion than that she was raped. In *People v. Mabunga*,[8] this Court has declared that

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[5] TSN, 16 October 1996, p. 10-11.

[6] Exhibit "B," *supra*.

[7] *People v. Montemayor*, 396 SCRA 159 (2003).

[8] 215 SCRA 694 (1992).

what is important is the victim's testimony that the appellant had sexually abused her. The Court has consistently held that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[9] The rationale therefor is that no woman would weave a tale of sexual assaults to her person, open herself to the examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.[10]

AAA wanted to shout for help but the appellant covered her mouth and dragged her to the riverbank:

Q Now, what did you do when you were dragged by the accused to the bank of the river?

A I wanted myself to free (*sic*) from his hold and he held (*sic*) my mouth so that I could not shout.

Q Did the accused successfully able to (*sic*) drag you to the bank of the river?

A Yes, Sir.

Q And in what manner (*sic*) you desisted from the accused for you to set free?

A I boxed and kicked him.[11]

AAA tenaciously resisted and tried to extricate herself from the appellant's hold by kicking him, but the appellant succeeded in raping her after she weakened because of her tenacious resistance:

Q Now, did you not resist when the accused was sexually abusing you?

A I resisted.

Q And in what way you tried (*sic*) to resist?

A I kept on kicking him.

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[9] *People v. Perez*, 397 SCRA 12 (2003); *People v. Dulay*, 381 SCRA 346 (2002).

[10] *People v. Sarazan*, 395 SCRA 611 (2003).

[11] TSN, 16 October 1996, p. 10.

Q Now, when you kept on kicking him, how come that (*sic*) he was able to abuse you?

A Because I lose (*sic*) strength.

Q Do you mean that you were also helpless and lose our (*sic*) sight when you were sexually abuse (*sic*) by the accused?

A Yes, Sir.[12]

That AAA sustained injuries as she resisted the appellant is evidenced by the Medico-Legal Report of Dr. Osea, Jr., thus:

Findings:

1) + Linear Erythematous Skin 7 cm. (R) shoulder area.

2) + Erythematous Skin:
   a) 5 mm x 1 cm (R) lateral neck.
   b) 5 mm x 1 cm Mid-upper neck.
   c) 5 mm x 1 cm Mid lower neck.
   d) 5 mm x 1 cm (L) lateral neck.

3) + Linear Erythematous Skin 8 cm D/3rd lateral aspect (L) forearm.

4) + Linear Erythematous Skin 5 cm D/3rd dorsum (R) forearm.[13]

In *People v. Corral*,[14] it was declared that as between a positive and categorical testimony which has the ring of truth on one hand and a bare denial on the other, the former is generally held to prevail. We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime.[15] In the present recourse, the victim categorically identified the appellant as the one who raped her.[16]

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[12] *Id*. at 11.

[13] Exhibit "B", *supra*.

[14] 398 SCRA 494 (2003).

[15] *People v. Bragas*, 315 SCRA 216 (1999).

[16] TSN, 16 October 1996, p. 11.

Moreover, the appellant failed to prove with clear and convincing evidence that it was impossible for him to be at the place where AAA was raped, which was approximated to be less than a kilometer away from his grandfather's house, where he alleged he was staying at the time. Such failure renders the appellant's defense of alibi incredible.

The appellant cannot rely on the testimony of Numeriano Villacorta and Jose Monterde, two of his grandfather's friends, to prove his alibi. Even the trial court disbelieved the testimonies of Villacorta and Monterde, thus:

> The testimony of the defense witnesses Numeriano Villacorta and Jose Monterde deserved scant consideration. Their testimony apart from being inconsistent with what Lino testified in court like their eating together in the evening of the incident, they were also not in harmony as to the companions of Lino when he slept that fateful evening.[17]

In this jurisdiction, it is doctrinally settled that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal.[18]

The presiding judge of the trial court[19] manifested his gross and deplorable ignorance of the law when he ruled as follows: (a) sentenced the appellant, who was a minor when he committed the crime, to suffer the death penalty; (b) suspended further proceedings under P.D. No. 602, as amended, despite the death sentence meted on the appellant, and without the latter's filing a motion for the suspension of the sentence and the proceedings, and moving for his commitment to the DSWD; and, (c) gave due course to the appeal of the appellant and ordered the records to be elevated to this Court, despite his Order suspending further proceedings.

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[17] Records, p. 67.

[18] *People v. Invencion*, 398 SCRA 592 (2003).

[19] Judge Felipe Abelita III was dismissed from the service per the Court's decision in *Lao v. Hon. Felimon Abelita III*, 295 SCRA 267 (1998).

Since the appellant was a minor at the time of the commission of the offense, the judge is proscribed under Article 47 of the Revised Penal Code from imposing the death penalty. He should have applied Article 68 of the Revised Penal Code instead of sentencing him to suffer the death penalty. Section 2 of P.D. No. 602, as amended, reads:

> ART. 192. *Suspension of Sentence and Commitment of Youthful Offender*. — If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court upon application of the youthful offender and if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible persons under whose care he has been committed.
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> Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.
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> The youthful offender shall be subject to visitation and supervision by the representative of the Department of Social Welfare and Development or government training institution as the court may designate subject to such conditions as it may prescribe.
>
> The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals. (*As amended by P.D. Nos. 1179 and 1210, October 11, 1978.*)

It is clear and plain as day that the suspension of sentence of the accused, as well as the proceedings, and his commitment

to the DSWD shall be proper only if he has not been sentenced to life imprisonment, *reclusion perpetua*, or death. Furthermore, the accused must file with the trial court an application for suspension of sentence so as to put into operation the benevolent provisions of P.D. No. 603.[20] In this case, the appellant did not make such application, and instead appealed the decision.[21]

We are not impervious of Section 5, Republic Act No. 8369, otherwise known as the Family Courts Act, which took effect on November 23, 1997. It provides that the sentence of the youthful offender shall be suspended without need of application pursuant to P.D. No. 603:

> Sec. 5. *Jurisdiction of Family Courts*. — The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:
>
> > a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense: *Provided*, That if the minor, if found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. *The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the "Child and Youth Welfare Code;" . . .*

As a general rule, the said provision may be applied retroactively, considering that it is favorable to the accused. However, we can no longer do so because the appellant is by now, more than twenty-four (24) years old. In *People v. Ga*,[22] we held that:

> Regarding the penultimate assigned error on the entitlement of the appellant to the benefits under Presidential Decree No. 603,

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[20] *People v. Del Rosario*, 282 SCRA 178 (1997).

[21] Under Article 47 of the Revised Penal Code, the review by the Supreme Court of the decision of the trial court is automatic and mandatory when the accused is sentenced to death.

[22] 186 SCRA 790 (1990).

otherwise known as the Child and Youth Welfare Code, suffice it to say that, in any event, recourse to the benefit of a suspended sentence as a youthful offender in accordance with said law has become moot and academic inasmuch as appellant is now above 21 years of age, and the rule is that if an accused reaches the age of majority during appeal, he is no longer entitled to a suspended sentence.[23]

We agree with the trial court that the appellant is guilty of simple rape under Article 335 of the Revised Penal Code, as amended, punishable by *reclusion perpetua*. When the appellant committed the crime, he was only sixteen (16) years old, having been born on November 3, 1979. Under Article 13, paragraph 2,[24] in relation to Article 68 of the Revised Penal Code, as amended, minority is a privileged mitigating circumstance:

Art. 68. *Penalty to be imposed upon a person under eighteen years of age*. — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempt from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

Since the appellant was a minor when he committed the crime, *reclusion perpetua* should be reduced by one degree, namely,

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[23] *Id*. at 803.

[24] Art. 13. *Mitigating circumstances*. — The following are mitigating circumstances:

x x x x x x x x x

2. That the offender is under eighteen years of age or over seventy years. In the case of a minor, he shall be proceeded against in accordance with the provisions of Article 80.

x x x x x x x x x

reclusion temporal, in its full range. In the absence of any other modifying circumstances, the maximum period of the indeterminate penalty shall be taken from *reclusion temporal*, in its medium period. To determine the minimum of the indeterminate penalty, *reclusion temporal* has to be reduced by one degree, which is *prision mayor*. From the full range of *prision mayor* shall be taken the minimum period of the indeterminate penalty. Consequently, the appellant may be sentenced to an indeterminate penalty of from eight (8) years and one (1) day of *prision mayor*, in its medium period, as minimum, to fifteen (15) years of *reclusion temporal*, in its medium period, as maximum.

In its decision, the trial court awarded the amount of ₱50,000.00 to the victim as civil indemnity, but failed to award moral damages. The award of ₱50,000.00 for civil indemnity is correct.[25] Pursuant to prevailing jurisprudence, the victim is also entitled to ₱50,000.00 as moral damages.[26]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Masbate, Branch 44, in Criminal Case No. 7810 is *AFFIRMED with MODIFICATIONS.* The appellant Lino Clores, Jr. is found *GUILTY* beyond reasonable doubt of simple rape under Article 335 of the Revised Penal Code, as amended, and is hereby sentenced to suffer an indeterminate penalty of from Eight (8) years and One (1) day of *prision mayor*, in its medium period, as minimum, to Fifteen (15) years of *reclusion temporal*, in its medium period, as maximum. The said appellant is *ORDERED* to pay the offended party, AAA, ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. No costs.

SO ORDERED.

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

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[25] *People v. Invencion, supra.*

[26] *People v. Cultura*, 397 SCRA 368 (2003).

EN BANC

[G.R. No. 132124. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROLANDO LEONOR *Y* ANDANTE,** *appellant*.

SYNOPSIS

Appellant was found guilty of qualified rape for raping his own six-year-old daughter. He was sentenced to suffer the penalty of death and hence, this automatic review of the decision.

The Court found no reason to reverse the conclusions reached by the trial court. The young victim testified on the crime in a positive, spontaneous, straightforward and consistent manner. This prevails as against the defense foisted by appellant that the victim was coached by her mother to conceal the latter's alleged illicit relationship with her stepfather. Also, the victim's testimony was corroborated by the findings of the physician. Thus, the concurrence of the victim's minority and her relationship to the accused, both having been alleged in the Information and proven beyond reasonable doubt, the trial court correctly imposed the penalty of death, with the proper civil indemnity of ₱75,000 and exemplary damages of ₱25,000.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES. — At the outset, we reiterate the well-constructed rule that in reviewing rape cases, the appellate court is guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) 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. Consequently, it is the primordial duty of the prosecution to present its case with

clarity and persuasion to the end that conviction becomes the only logical conclusion.

2. ID.; ID.; FINDINGS OF TRIAL COURT, GENERALLY RESPECTED; EXCEPTION. — The legal aphorism is that the findings of the trial court, its calibration and assessment of the testimonial evidence of the witnesses, and its conclusion based on its findings, are accorded by the appellate court high respect, if not conclusive effect. This is so because the trial judge, having seen and heard the witnesses and observed their behavior and manner of testifying, is in a better position to determine their credibility. An exception to this rule is when the trial court overlooked, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.

3. CRIMINAL LAW; RAPE; HOW 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 (12) years of age. Even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present, the gravamen of rape is carnal knowledge of a woman against her will or without her consent.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF CHILD-VICTIM OF RAPE, UPHELD AS AGAINST UNSUBSTANTIATED ILL MOTIVE. — The defense foisted by the appellant on the Court, that AAA was coached by her mother to conceal the latter's alleged illicit relationship with her stepfather, has been unsubstantiated. Motives such as feuds, resentment or revenge have never swayed us from giving full credence to the testimony of a minor complainant. In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. The testimony of AAA is replete with details such that she could not have testified the way she did even if she was coached.

5. ID.; ID.; ID.; ID.; VICTIM'S TESTIMONY UPHELD WHERE THE SAME WAS CORROBORATED BY PHYSICIAN'S FINDINGS. — AAA's testimony was even corroborated by the findings of Dr. Jaime Barron that he found a laceration in her hymen at 1:00 o'clock position when he examined her. We have ruled that when the victim's testimony is corroborated by the physician's findings of penetration, as when the hymen is no longer intact, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Mere touching by the male's organ of the *labia* of the *pudendum* of the female's private part is sufficient to consummate rape.

6. ID.; ID.; DENIAL AND ALIBI, CANNOT PREVAIL OVER POSITIVE TESTIMONIES. — The trial court was correct in brushing aside appellant's denial and alibi. As a rule, these defenses are negative and self-serving and are always received with caution – not only because they are inherently weak and unreliable, but also because they are easy to fabricate. Lack of defense cannot prevail over and are worthless in the face of the positive and categorical statements of the victim. To be believed, these weak defenses must be buttressed by strong evidence of innocence, otherwise, they are considered self-serving and of no evidentiary value. The appellant's convoluted testimony on the illicit affair between his wife and the latter's stepfather has not been corroborated.

7. CRIMINAL LAW; QUALIFIED RAPE; VICTIM'S MINORITY AND HER RELATIONSHIP TO THE ACCUSED; PROPER PENALTY. — The trial court correctly ruled that the appellant is guilty of qualified rape under Article 335 of the Revised Penal Code, as amended by Republic Act 7659. The concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt. In the present case, the Information alleges that the victim was six (6) years old at the time of the commission of the crime and that the perpetrator is her father. The prosecution adduced in evidence a certified true copy of AAA's birth certificate showing that she was born on October 25, 1990 and that her father is the appellant. She was just a little over six (6) years of age on February 1, 1997, when she was raped by the appellant. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth

of such party. It is also a *prima facie* evidence of filiation. Thus, the prosecution was able to prove beyond reasonable doubt the victim's minority and her relationship to the appellant. As such, the trial court correctly imposed the death penalty.

8. ID.; ID.; CIVIL LIABILITIES; MORAL AND EXEMPLARY DAMAGES, AWARDED. — The trial court correctly awarded moral and exemplary damages to the victim, AAA. However, the award of moral damages should be increased to ₱75,000.00, conformably to current jurisprudence, while the award of exemplary damages should be reduced to ₱25,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jose B. Alvarez for accused-appellant.

D E C I S I O N

PER CURIAM:

This is an automatic review of the Decision[1] of the Regional Trial Court of San Pedro, Laguna, Branch 31, finding appellant Rolando Leonor *y* Andante guilty beyond reasonable doubt of rape, sentencing him to suffer the death penalty and ordering him to pay the victim AAA the sums of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages.

The Indictment

On July 11, 1997, an Information charging Rolando Leonor with rape was filed in the Regional Trial Court of San Pedro, Laguna, docketed as Criminal Case No. 0456-SPL. The accusatory portion of the Information reads:

That on or about February 1, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction

[1] Penned by Judge Stella Cabuco Andres.

of this Honorable Court, said accused being the father of 6-year-old AAA, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with said AAA.

CONTRARY TO LAW.[2]

On July 17, 1997, the appellant, duly assisted by Atty. Jose Imbang, was arraigned and pleaded not guilty to the crime charged.[3]

The Case for the Prosecution[4]

The Spouses BBB and Rolando Leonor were residents of Brgy. x x x, x x x.[5] They had four children: AAA, who was born on October 25, 1990;[6] CCC; DDD; and, EEE.[7] To support themselves and their children, Rolando worked as a taxi driver,[8] while BBB worked as a beautician who rendered home service manicure in the neighborhood.[9] BBB often caught Rolando sniffing prohibited drugs.[10] Every time she confronted Rolando, he mauled her.[11] Worse, in July 1996, Rolando stopped giving financial support to his children.[12] When she could not take

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[2] Records, p. 1.

[3] *Id*. at 56.

[4] The prosecution presented the following witnesses: Emily Pajo Leonor, Priscilla Pajo, Lovely Faith Leonor and Dr. Jaime A. Barron.

[5] Exhibit "B"; Records, p. 110.

[6] Exhibit "C", *Id*. at 111.

[7] TSN, 6 August 1997, pp. 5-6. At the time Emily Pajo Leonor testified, Lovely Faith was six (6) years old; Emmanuel was five (5) years old, April Jay was three (3) years old and Jesus Jay was eight months old.

[8] TSN, 14 August 1997, p. 8.

[9] TSN, 6 August 1997, p. 6.

[10] TSN, 22 August 1997, p. 3.

[11] TSN, 14 August 1997, p. 13; Exhibits "C-1" to "C-2", Records, pp. 112-113.

[12] *Id*. at 5.

to the house of her mother, Priscilla Pajo and the latter's husband, Romy Pabelando.[13] Rolando lived in his mother's house, which was just adjacent to Priscilla's house. Rolando often visited BBB and the children. At times he would sleep with them in Priscilla's house.[14]

At or about 1:30 p.m. on February 1, 1997, after BBB had to service a customer, Rolando went to the house of Priscilla. The latter was cooking food in the kitchen.[15] CCC, who was five (5) years old, was seated on the bench in the sala with AAA. They were watching television. Rolando went near his children, unzipped his pants and pulled up ("*nilislis*") AAA's shorts and panties. He then inserted his penis inside her vagina. Unable to make a full penetration, Rolando withdrew his penis and inserted his middle finger inside AAA's vagina. Priscilla heard AAA crying, "*Aray ko, Nanay, sinundot na naman ako ni Papa*."[16] Priscilla rushed to the sala and saw AAA crying as she held her private part.[17] Priscilla also noticed that AAA's shorts were pulled down up to her thigh, while Rolando held the front part of his pants and ran away.[18] AAA spontaneously told her grandmother that her father had sexually abused her previously, five times. She also told Priscilla that she did not tell her mother about it because her father threatened to kill her and her mother if she told anyone of the incidents.[19] Immediately, Priscilla had Rolando arrested by the Barangay Tanods.[20] She also accompanied AAA to the police station

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[13] *Id*. at 9.

[14] *Id*. at 11.

[15] TSN, 22 August 1997, p. 7.

[16] *Id*. at 8.

[17] *Id*. at 12.

[18] *Id*. at 12-13.

[19] *Id*. at 18.

[20] *Id*. at 16.

where Priscilla executed a sworn statement regarding the incident. Dr. Jaime A. Barron, Chief of the Department of Public Health and Services of San Pedro, Laguna, conducted a medico-legal examination on AAA and found a healed laceration in her hymen at 1:00 o'clock position.[21]

When BBB returned home at 5:00 p.m., CCC told her, "*Mama, si Ate binaboy ni Papa*."[22] BBB looked for AAA, and CCC told her that Priscilla brought her to town. BBB immediately went to the police station of San Pedro, Laguna, and saw AAA beside Priscilla. AAA told her story that Rolando had inserted his penis into her vagina and that when he was unable to fully penetrate her vagina, he withdrew his penis and inserted his finger instead. AAA also told her mother that Rolando had done "*kababuyan*" to her five times[23] but she did not say anything because her father had threatened to kill her, her mother, and grandmother, if she told anyone of his sexual assaults on her. AAA related to her mother that Rolando always used a knife to threaten her.[24]

On February 3, 1997, AAA executed a Sworn Statement identifying her father, the appellant, as the perpetrator of the crime charged.[25] A similar sworn statement was executed by BBB.[26] A complaint for rape against the appellant was, thereafter, filed by AAA, with the assistance of her mother, BBB.[27]

The Case for the Appellant[28]

Rolando denied the charge against him. He testified that on

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[21] Exhibit "E"; Records, p. 115.

[22] TSN, 6 August 1997, p. 7.

[23] *Id*. at 10.

[24] TSN, 6 August 1997, p. 9.

[25] Records, p. 18.

[26] Exhibit "F", Records, p. 15.

[27] Exhibit "A", *Id*. at 12.

[28] The defense presented the following witnesses: Isidro Blacer, Rolando Leonor and Lucita Leonor.

[29] TSN, 10 October 1997, p. 2.

January 31, 1997,[29] he arrived at the house of BBB and opened the room of Romy Pabelando, his wife's stepfather, and found the two "on top of each other." His mother-in-law, Priscilla, was also inside the room, acting as a "*bugaw*" (pimp).[30] At 11:00 a.m. on February 1, 1997, he went to Priscilla's house to bring pork viand to his children. Priscilla, who was tending her store, let him in. Inside the house, some of his children were sleeping. AAA was in the sala watching over her youngest brother. He kissed AAA on the cheek and embraced her. He noticed that AAA was wearing pajamas and seemed to be sick.[31] He was later surprised that a complaint for rape was filed against him by his own daughter. He suspected that AAA was coached by her mother, grandmother and his wife's stepfather and paramour, Romy Pabelando.[32]

Lucita Leonor, the appellant's sister, testified that the appellant was a responsible father and that he supported his children through his earnings as a taxi driver.[33] Even when he and BBB separated, he brought food to his children in the house of his mother-in-law. On February 1, 1997, the appellant went to her, crying, and revealed that his wife was having an affair with her stepfather.[34] She saw Rolando in the afternoon of that day as he went to the house of his mother-in-law to bring pork viand to his children. She was later surprised that a complaint for rape was filed against him.

Ruling of the Trial Court

On November 7, 1997, the trial court promulgated a Decision finding Rolando guilty beyond reasonable doubt of raping his six-year-old daughter. The dispositive portion of the decision read:

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[30] TSN, 8 October 1997, p. 8.

[31] *Id*. at 18-19.

[32] *Id*. at 10.

[33] TSN, 10 October 1997, p. 5.

[34] *Id*. at 11.

IN VIEW OF THE FOREGOING, the Court finds that the prosecution assisted by Assistant Prosecutor Melchorito Lomarda has duly established beyond reasonable doubt the guilt of Rolando Leonor *y* Andante for the crime of rape defined and penalized in Article 335 of the Revised Penal Code, as amended by RA 7659. To the mind of the Court, incestuous rape is indeed repugnant and outrageous not only to a civilized but also to a barbaric society. Indeed, accused has descended himself to a level lower than a beast when he perpetuated his lascivious design on his own flesh and blood.

WHEREFORE, the Court hereby sentences accused Rolando Leonor *y* Andante to suffer the penalty of death, to pay the private complainants the sums of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱50,000 as exemplary damages, and to pay the costs.[35]

The trial court gave probative value to the "unshaken, unflawed and consistent"[36] testimony of AAA that she was raped by her father. The trial court disbelieved the appellant's claim that AAA was coached by her mother, BBB, whom he allegedly caught in an uncompromising situation with her own stepfather. It also found that the appellant's defense of denial was weak and could not prevail over the positive assertions of AAA, especially since the latter's testimony was corroborated by the medico-legal findings of Dr. Jaime Barron.

The appellant assails the decision of the trial court contending that the crime lodged against him was a concoction of his wife and mother-in-law to cover up the illicit relationship between his wife, BBB, and her stepfather, Romy Pabelando.

The Office of the Solicitor General (OSG), for its part, asserts that the trial court correctly found that AAA, a six-year-old naive girl, lacked ill-motive to testify falsely against her own father. It also contends that the appellant's defenses of alibi and denial are weak and cannot prevail over the positive, straightforward and sincere testimony of AAA.

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[35] Records, pp. 151-152.

[36] *Id*. at 151.

However, the Office of the Solicitor General contends that the trial court erred in awarding only ₱50,000.00 as civil indemnity to the victim and asserts that the amount should be increased to ₱75,000.00.

The Court's Ruling

The appellant's contentions have no merit.

At the outset, we reiterate the well-constructed rule that in reviewing rape cases, the appellate court is guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) 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.[37] Consequently, it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that conviction becomes the only logical conclusion.[38]

The legal aphorism is that the findings of the trial court, its calibration and assessment of the testimonial evidence of the witnesses, and its conclusion based on its findings, are accorded by the appellate court high respect, if not conclusive effect.[39] This is so because the trial judge, having seen and heard the witnesses and observed their behavior and manner of testifying, is in a better position to determine their credibility.[40] An exception to this rule

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[37] *People of the Philippines vs. Joselito Pascua*, G.R. No. 15185, November 27, 2003.

[38] *People of the Philippines vs. Bobby Sanchez*, G.R. No. 135563, September 18, 2003.

[39] *People of the Philippines vs. Exequiel Mahinay*, G.R. No. 139609, November 24, 2003.

[40] *People of the Philippines vs. Benjamin Lopez*, G.R. No. 149808, November 27, 2003.

is when the trial court overlooked, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.[41]

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 (12) years of age. Even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present, the gravamen of rape is carnal knowledge of a woman against her will or without her consent.[42]

After careful review of the records, we find no reason to reverse the findings of the trial court. AAA, who was only six (6) years old when the appellant ravished her, testified in a positive, spontaneous, straightforward and consistent manner that the appellant satisfied his bestial desires, *viz*:

Q: On that day of February 1, 1997, did you see your father in the house of your *Lola*?

A: Yes, Sir.

Q: Where was your *Lola* on that date, AAA?

A: She was in the kitchen, Sir.

Q: What was your *Lola* doing in the kitchen?

A: She was cooking, Sir.

Q: When your father arrived on February 1, 1997, where were you?

A: In our long bench, Sir.

Q: Were you alone, AAA?

A: No, Sir.

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[41] *People of the Philippines vs. Exequiel Mahinay, supra.*

[42] *People of the Philippines vs. Teofilo Madronio*, G.R. Nos. 137587 and 138329, July 29, 2003.

Q: Who was your companion?
A: My younger brother, Sir.

Q: Who else aside from your younger brother?
A: No more, Sir.

Q: After the arrival of your father in your house, what happened next, AAA?
A: He removed his zipper, Sir.

COURT:

Q: Zipper of what, AAA?
A: Of his pants, Ma'am.

PROS. LOMARDA:

Q: What did your father do after he unzipped his pants?
A: *"Nilislis po ang shorts ko at ipinasok po ang titi niya."*

Q: AAA, when you said "*nilislis*," what actually did your father do, will you please demonstrate.
A: (Witness demonstrating by pulling up her shorts.)

Q: Were you wearing panty at that time?
A: Yes, Sir.

Q: What did your father do with your panty?
A: *"Nilislis din po niya."*

COURT:

Q: AAA, stand up again, how was your panty "*lislis*," by your father?
A: It was pulled up, Ma'am.

PROS. LOMARDA:

Q: After your father "*lislis*" your panty and your shorts, what did he do to you?
A: He inserted his penis *("Ipinasok po ang titi niya.")*

Q: Where did your father insert his penis?
A: (Witness demonstrating by pointing to her private part.)

Q: What happened after your father inserted his penis into your private part?

A: *"Dumikit lang po ang titi niya"* and when he was not able to insert it, he used his finger, Sir.

Q: AAA, you have 5 fingers, which of the 5 fingers did he use?

A: The middle finger, Sir. (Witness showing her middle finger.)

Q: How many times did your father insert his middle finger into your private part?

A: Five (5) times, Sir.

COURT:

Q: On that same occasion?

A: No, Ma'am.

Q: You mean prior to February 1, 1997, your father had already inserted his finger into your private part for five (5) times?

A: Yes, Ma'am.

Q: In that same house?

A: No, Ma'am.

Q: Where?

A: The first, second, third and fourth, it happened in the house of his mother, my grandmother, and the 5th was in the house of my maternal grandmother.[43]

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Q: Do you love your mother?

A: Yes, Ma'am.

Q: Your grandmother, the mother of your mother?

A: Yes, Ma'am.

Q: Your father?

A: No, Ma'am.

Q: Why? Why don't you love your father?

A: *"Kasi po, binaboy niya ako."*

Q: What do you mean by "*binaboy*?"

A: He inserted his finger into my private part, Ma'am.

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[43] TSN, August 28, 1997, pp. 7-10.

Q: Are you telling us the truth, AAA?
A: Yes, Ma'am.

Q: Do you know, AAA, that if the court finds that your father really did that thing to you, he will be put in jail?
A: Yes, Ma'am.

Q: Do you like your father to be put to jail?
A: Yes, Ma'am.

Q: Why?
A: *"Kasi po binaboy niya ako."*

Q: Don't you pity your father if he will be put to jail?
A: No, Ma'am.[44]

x x x x x x x x x

Q: When you were asked by the Honorable Judge last time, that was August 28, 1997, and the Honorable Judge asked you, "do you love your father?" and your answer is (*sic*) "No, Ma'am." Is that right?
A: Yes, Sir.

Q: And in the following question by the Honorable Judge who asked you, "Why don't you love your father? And the answer you have given is (*sic*) that: "*kasi po binaboy niya ako."* Is that right?
A: Yes, Sir.

Q: And the following question by the Presiding Judge, the question is, what do you mean by "*binaboy*" and your answer: "he inserted his finger on my private part, Ma'am," is that right?
A: Yes, Sir.

Q: I ask you now, by your testimony when you said "*binaboy ka*," what your father did to you is that he inserted his finger on your private part and nothing more, nothing less?
A: No, Sir. ("*Hindi po*.")

Q: What do you mean by "*hindi po*?"

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[44] *Id.* at 10-11.

A: He also inserted his penis, Sir.

COURT:

Q: Where did he insert his penis?

A: Into my vagina, Ma'am.

ATTY. ALVAREZ:

Q: And you also stated, if I remember right that when he "*lislis*" your short, he inserted his penis inside your shorts?

PROS. LOMARDA:

A: No, he inserted his penis not in her short, it is in her private part.

ATTY. ALVAREZ:

I withdraw that.

Q: Did your father try to insert his private part on your private part or in your shorts?

A: He inserted his private part into my private part, Sir.

Q: Were you wearing panty at that time?

A: Yes, Sir.

Q: And your father did not remove your panty?

A: He also "*lislis*" my panty, Sir.

COURT:

Q: And because of what your father did to you, are you mad at him?

A: Yes, Ma'am.

ATTY. ALVAREZ:

Q: When you were asked last time what happened after your father inserted his penis into your private part, your answer is (*sic*) that "*dumikit lang po,*" is that right?

A: Yes, Sir.

Q: I ask you, how many times did your father inserted his finger on your private part?

A: Five (5) times, Sir.

Q: Was that on one single occasion?

A: No, Sir.

Q: Do you remember if you could the month and the date your father did those 5 times that he inserted his finger into your private part?

A: No more, Sir.

COURT:

Q: Did you not tell your mother or your *Lola* about the act of your father in inserting his finger on your private part, did you not tell them?

A: No, Ma'am.

Q: Why?

A: Because he was poking a knife at me and he told me that if I will report to my mother, he will kill my mother and my grandmother, Ma'am.[45]

The defense foisted by the appellant on the Court, that AAA was coached by her mother to conceal the latter's alleged illicit relationship with her stepfather, has been unsubstantiated. Motives such as feuds, resentment or revenge have never swayed us from giving full credence to the testimony of a minor complainant.[46]

In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. The testimony of AAA is replete with details such that she could not have testified the way she did even if she was coached.[47]

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[45] TSN, 5 September 1997, pp. 4-7.

[46] *People of the Philippines vs. Martin Alejo*, G.R. No. 149370, September 23, 2003.

[47] *People of the Philippines vs. Felix Montes*, G.R. Nos. 148743-45, November 18, 2003.

AAA was so devastated by the sexual assaults by her own father that when asked in open Court if she wanted to go near her father and embrace and kiss him, she obstinately refused:

Q: Where is AAA? You want to go near your father? You want to kiss your father?

PROS. LOMARDA:

We would like to make it of record that each time the Honorable Court asks question do you want to kiss your father, the child just simply shakes her head.

COURT: (to AAA)

AAA, you answer to (*sic*) the question of the court.

Q: Do you want to go near your father?
A: *"Ayoko po."* (I don't want.)

Q: Do you want to kiss your father?
A: *"Ayoko po."*

Q: Do you want to embrace your father?

A: *"Ayoko po."*

Q: Do you want to talk to your father?

A: *"Ayoko po."*[48]

AAA's testimony was even corroborated by the findings of Dr. Jaime Barron that he found a laceration in her hymen at 1:00 o'clock position when he examined her. We have ruled that when the victim's testimony is corroborated by the physician's findings of penetration, as when the hymen is no longer intact, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[49] Mere touching by the male's organ of the *labia*

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[48] TSN, 8 October 1997, pp. 27-28.

[49] *People of the Philippines vs. Felix Montes, supra.*

of the *pudendum* of the female's private part is sufficient to consummate rape.[50]

The trial court was correct in brushing aside appellant's denial and alibi. As a rule, these defenses are negative and self-serving and are always received with caution — not only because they are inherently weak and unreliable, but also because they are easy to fabricate. Lack of defense cannot prevail over and are worthless in the face of the positive and categorical statements of the victim.[51] To be believed, these weak defenses must be buttressed by strong evidence of innocence, otherwise, they are considered self-serving and of no evidentiary value.[52] The appellant's convoluted testimony on the illicit affair between his wife and the latter's stepfather has not been corroborated.

The Crime Committed by the Appellant

The trial court correctly ruled that the appellant is guilty of qualified rape under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, *viz*:

> ART. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.
>
> The crime of rape shall be punished by *reclusion perpetua*.

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[50] *People of the Philippines vs. Dionisio Rote*, G.R. No. 146188, December 11, 2003.

[51] *People of the Philippines vs. Felix Montes, supra*.

[52] *People of the Philippines vs. Ernesto Alvarez*, G.R. Nos. 140388-91, November 11, 2003.

Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be, likewise, death.

When by reason or on occasion of the rape, a homicide is committed, the penalty is death.

The death penalty shall also be imposed if the crime 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.

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The concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt.[53] In the present case, the Information alleges that the victim was six (6) years old at the time of the commission of the crime and that the perpetrator is her father. The prosecution adduced in evidence a certified true copy of AAA's birth certificate showing that she was born on October 25, 1990 and that her father is the appellant. She was just a little over six (6) years of age on February 1, 1997, when she was raped by the appellant. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.[54] It is also a *prima facie* evidence of filiation.[55]

Thus, the prosecution was able to prove beyond reasonable doubt the victim's minority and her relationship to the appellant. As such, the trial court correctly imposed the death penalty.

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[53] *People of the Philippines vs. Martin Alejo, supra*.

[54] *Ibid*.

[55] *Heirs of Pedro Cabais vs. Court of Appeals*, 316 SCRA 338 (1999).

The Civil Liabilities of the Appellant

The trial court correctly awarded moral and exemplary damages to the victim, AAA. However, the award of moral damages should be increased to ₱75,000.00, conformably to current jurisprudence,[56] while the award of exemplary damages should be reduced to ₱25,000.00.[57]

Three Justices of the Court maintain their position 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 in the case at bar.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, convicting the appellant Rolando Leonor *y* Andante of qualified rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing him to suffer the death penalty is *AFFIRMED*, with the *MODIFICATION* that the award for civil indemnity is increased to Seventy-Five Thousand Pesos (₱75,000.00), and the award for exemplary damages is reduced to Twenty-Five Thousand Pesos (₱25,000.00). No 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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[56] *People vs. Antonio Mendoza*, G.R. Nos. 15289 and 152758, October 24, 2003.

[57] *People vs. Degamo*, 402 SCRA 133 (2003).

THIRD DIVISION

[G.R. No. 144282. June 8, 2004]

SK REALTY, INC., BAN HUA U. FLORES, LEONARDO U. FLORES, LILY UY, LILIAN UY, LILEN UY, BAN HA U. CHUA, STEPHANIE U. CHUA, MELODY U. CHUA and GLORIA U. CHAN, *petitioners, vs.* **JOHNNY KH UY and UBS MARKETING CORPORATION,** *respondents*.

SYNOPSIS

Parties here were formerly interlocking stockholders and officers of UBS Marketing Corp. and Soon Kee Commercial, Inc. Later, when they divided their businesses, respondents filed with the Securities and Exchange Commission (SEC) a complaint against petitioners, docketed as SEC Case No. 3328, for accounting and recovery of UBS books and records and properties, alleging that petitioners simulated the transfer of eight parcels of land to SK Realty, Inc. Ruling was rendered in favor of respondents but was set aside by the SEC *En Banc* and the same affirmed by the Court of Appeals. Hence, a petition for review was filed with the Court. While the said case was pending in the SEC *En Banc*, however, respondents also filed with the Regional Trial Court (RTC) a complaint, docketed as Civil Case No. 95-9051, for reconveyance of properties and cancellation of titles of the same eight (8) parcels of land, damages and accounting against petitioners. Respondent then filed with the Office of the Register of Deeds a notice of *lis pendens* on the titles of the subject properties.

Whether the filing of the case in the RTC by respondents constituted forum-shopping, the Court ruled it was. Whether the cancellation of the notice of *lis pendens* was proper, the Court also ruled it was, as the annotation by respondents was done in bad faith.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; PRESENT IN CASE AT BAR. — The SEC Hearing Officer

rendered a decision in favor of respondents. However, it was reversed by the SEC *En Banc.* Hence, they filed with the Court of Appeals a petition for *certiorari*, and later, a petition for review on *certiorari* with this Court. Meanwhile, although respondents' petition was still pending before the SEC *En Banc*, they filed with the RTC Civil Case No. 95-9051 against petitioners. In doing so, respondents' intention was to obtain a favorable decision in another forum. Apparently, they filed Civil Case No. 95-9051 on the supposition that they would win in this case. It bears emphasis that when respondents filed Civil Case No. 95-9051 for reconveyance of properties and cancellation of titles, they knew that there was a similar case between the same parties pending before the SEC *En Banc* (later elevated to the Court of Appeals and this Court). Clearly, respondents resorted to forum-shopping. As we held in *Republic of the Philippines vs. Carmel Development, Inc.*, respondent's act of "*willful and deliberate forum-shopping is a ground for summary dismissal of the case*, and constitutes direct contempt of court."

2. ID.; CIVIL PROCEDURE; LAND TITLES; NOTICE OF *LIS PENDENS*; CANCELLATION THEREOF PROPER WHERE ANNOTATION WAS DONE IN BAD FAITH. — Anent the cancellation of the notice of *lis pendens* on the titles of the subject properties, we find no reason to reverse the Order of the RTC dated December 8, 1995, finding that the annotation was for the purpose of molesting herein petitioners and that it was done by the respondents in bad faith.

APPEARANCES OF COUNSEL

Reynaldo C. Depasucat for SK Realty, Inc. and Ban Hua U. Flores.
William O. Su for L. Flores, Jr., Lily Uy, Lilian Uy and Lilen Uy.
Oscar C. Fernandez and *Raul R. Estrella* for respondents.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing

the Decision[1] dated January 14, 2000 and Resolution[2] dated June 30, 2000 of the Court of Appeals in CA-G.R. CV No. 57171, entitled "*Johnny K. H. Uy and UBS Marketing Corporation vs. SK Realty, Inc., Ban Hua U. Flores, Leonardo U. Flores, Gloria U. Chan, Lily Uy, Lilian Uy, Lilen Uy, Ban Ha Chua, Stephanie Chua, Melody Chua, Wee Kiat Y. Tan, Theresa Regalado and Yolanda Kilayko.*"

The factual antecedents as borne by the records are:

The above-named petitioners and respondent Johnny KH Uy are members of the Uy family of Bacolod City and interlocking stockholders and/or officers of UBS Marketing Corporation and Soon Kee Commercial, Inc.

Subsequently, the parties had a serious disagreement and conflict on the operation and management of their businesses and properties. Thus, during conciliation meetings before the Board of Mediators, both parties, on June 5, 1987, executed several deeds of assignment wherein respondent Johnny KH Uy and his wife assigned all their stockholdings in Soon Kee Commercial, Inc. to petitioners in exchange for the latter's stockholdings in UBS Marketing Corporation. The parties then obligated themselves to render a complete accounting of their respective businesses. They also agreed that eight (8) parcels of land (covered by Transfer Certificates of Title (TCT) Nos. T-141057 to T-141064) situated at Bacolod City, owned by respondents Johnny KH Uy and UBS Marketing Corporation, shall be transferred to petitioners in exchange for their thirteen (13) parcels of land in Quezon City, Caloocan City and Baguio City.

On July 1, 1987, the parties formalized the division of their businesses and the other terms of their settlement.

However, respondent Johnny KH Uy claimed that petitioners reneged in their obligation to render an accounting and turn over corporate records, books and properties of UBS Marketing

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[1] Annex "A" of the Petition for Review on *Certiorari*, *Rollo* at 47-64.

[2] Annex "B", *id*. at 66-80.

Corporation, and that petitioners formed and incorporated SK Realty, Inc. and simulated the transfer to it of eight (8) parcels of land (earlier mentioned) through a Deed of Absolute Sale dated July 2, 1987.

Thus, on April 6, 1988, respondent filed with the Securities and Exchange Commission (SEC) a complaint for the recovery of UBS Marketing Corporation's corporate books and records, books of accounts, funds and properties; and for an accounting, docketed as SEC Case No. 3328. Impleaded as respondents therein were Ban Hua Uy-Flores, Ban Ha Uy-Chua (two of herein petitioners), Roland King and Soon Kee Commercial, Inc.

In due course, the SEC Hearing Officer rendered a Decision dated May 3, 1995 in favor of respondents Johnny KH Uy and UBS Marketing Corporation. The dispositive portion of the Decision reads:

"WHEREFORE, considering the foregoing, judgment is hereby rendered as follows:

1. Commanding the respondents (*petitioners herein*) to produce and immediately turn over to petitioners (respondents Johnny KH Uy and UBS Marketing Corporation) the Books of Account of Soon Kee Commercial, Inc. and UBS Marketing Corporation from 1981 to 1987.

2. Commanding the respondents to immediately render a full and complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee (from 1981 to 1991) and UBS (from 1981 to 1987) respectively.

3. Commanding the respondents to pay the petitioners ten percent (10%) of the entire actual income (from 1988 to 1993) of Soon Kee Commercial, Inc. in the amount of ₱13 Million as damages.

4. To grant and pay petitioners the amount of ₱48 Million equivalent to 31.183 percent of the actual income from 1981 to 1987.

5. Canceling and annulling the Transfer Certificates of Title in the name of Soon Kee Commercial, Inc., if any, the Certificates

of Title in the name of SK Realty, Inc., if any, and the Certificates of Title in the name of New Challenge Resources, Inc., if still there is, and all the properties formerly belonging to and in the name of UBS, presently totaling (8) lots covered by TCT No. T-141057, TCT No. T-141058, TCT No. T-141059, TCT No. T-141060, TCT No. T-141061, TCT No. T-141062, TCT No. T-141063, TCT No. T-141064, and reverting them back to UBS Marketing Corporation.

6. Ordering the respondents to return and/or execute the Deed of Conveyance of all the properties in the name of Soon Kee Commercial, Inc., SK Realty, Inc., New Challenge Resources, Inc. which was previously in the name of UBS in favor of the latter/Johnny KH Uy.

7. Ordering the respondents to pay the separation pay of Johnny KH Uy plus interest amounting to ₱946,455.31.

8. Ordering the respondents to return/pay the petitioners contingency fund representing 31.183% of ₱3M plus interest in the amount of ₱1,957,280.86.

9. Ordering the respondents to turn over to the petitioners the Nissan or Isuzu Truck in good condition or the value thereof in the amount of ₱500,000.00.

10. Ordering respondent Ban Hua Flores to return to petitioner Johnny KH Uy the Hong Kong property in Northpoint Metropole Flat 1121 previously owned by Johnny KH Uy.

11. Ordering respondents to pay ₱600,000.00 as attorney's fees.

12. Making the Writ of Preliminary Mandatory Injunction permanent.

SO ORDERED."

Upon appeal, the *SEC En Banc*, in an Order dated December 21, 1995,[3] *set aside* the Hearing Officer's Decision. Hence,

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[3] "WHEREFORE, premises considered, the Decision of the Hearing Officer, save and except paragraph 2 of the dispositive portion thereof is concerned, should be as it is hereby SET ASIDE. The hearing officer, is by this ORDER, directed to oversee and enforce his order directing a full and complete accounting of all the assets, properties and receivables of Soon Kee Commercial, Inc. and UBS Marketing Corporation.

SO ORDERED."

respondents filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 41198. In its Decision dated August 21, 1997, the Appellate Court *affirmed the Order of the SEC En Banc*, prompting respondents to file with this Court, on October 10, 1997, a petition for review on *certiorari*, docketed as G.R. No. 130328, which is still pending resolution.

On September 18, 1995, while the case was pending in the SEC *En Banc*, respondents filed with the Regional Trial Court (RTC), Branch 43, Bacolod City, a complaint for reconveyance of properties and cancellation of titles of the same eight (8) parcels of land, damages and accounting against petitioners, docketed as Civil Case No. 95-9051. Respondents also filed with the Office of the Register of Deeds a notice of *lis pendens*.

Immediately, petitioners filed a motion to dismiss the complaint on the following grounds: (1) the cause of action has prescribed or is barred by the statute of limitations; (2) the claim has been waived or abandoned; (3) failure of respondents to attach to their complaint an actionable document; (4) *litis pendentia*; and (5) forum shopping.

On November 9, 1995, the trial court promulgated a Resolution *dismissing the complaint for forum shopping.* And in an Order dated December 8, 1995, the trial court *granted petitioners' motion to cancel the notice of lis pendens.* Respondents then filed an urgent motion to recall the Order but was denied.

On appeal, the Court of Appeals, in a Decision dated January 14, 2000, reversed and set aside the trial court's assailed Resolution dismissing the complaint on the ground of forum-shopping and the Orders canceling the notice of *lis pendens*, thus:

"Premised on all the foregoing —

(a) The Resolution dated November 9, 1995, and Orders dated December 8, 1995 (canceling the notice of *lis pendens*) and January 4, 1996, all issued in Civil Case No. 95-9051 of the Regional Trial Court of Negros Occidental, Bacolod City, are hereby reversed and set aside.

(b) The appellants' notice of *lis pendens* dated September 18, 1995 filed before the Register of Deeds, Bacolod City, is allowed to remain in full force and effect.

(c) The Regional Trial Court of Negros Occidental, Bacolod City, is hereby ordered to admit appellants' complaint therein; after appropriate proceedings, to conduct a trial on the merits and thereafter decide the aforesaid case.

No costs.

SO ORDERED."

The Appellate Court, in holding that respondents did not violate the rule against forum-shopping, emphasized that SEC Case No. 3328 and Civil Case No. 95-9051 involve different parties and raise distinct causes of action.

From the said Decision, petitioners filed a motion for reconsideration but was denied.

Hence, this petition for review on *certiorari*. Petitioners contend that the Court of Appeals erred (1) in declaring that respondents have not violated the rule against forum-shopping; and (2) in not ordering the cancellation of the notice of *lis pendens*.

The decisive issue posed by petitioners is whether respondents' filing of the complaint for reconveyance of properties, cancellation of titles (TCT Nos. T-141057 to T-141064), damages and accounting, docketed as Civil Case No. 95-9051 in the RTC, Branch 43, Bacolod City, constitutes forum-shopping. It bears stressing that prior to the filing of this civil case, the same respondents filed with the SEC a complaint against petitioners for recovery of the same parcels of lands, books of accounts and funds. This SEC case finally reached this Court as G.R. No. 130328 now pending resolution.

This very issue has been resolved by this Court in Adm. Case No. 4500,[4] entitled "*Ban Hua U. Flores vs. Atty. Enrique S. Chua,*" wherein respondent was declared guilty, among others,

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[4] 306 SCRA 465 (1999).

of forum-shopping and ordered disbarred from the practice of law. In our *Per Curiam* Decision, we sustained not only the charges of falsification, forgery of a deed of sale, and unprofessional conduct against him, but also of forum-shopping. He was the former counsel of the respondents in the instant case. Although he knew that his clients had filed SEC Case No. 3328 for recovery of corporate books, funds and properties, he still filed Civil Case No. 95-9051 for reconveyance of the same properties and cancellation of titles against petitioners. We adopted the finding of the IBP Investigating Commissioner that he (Atty. Chua) is guilty of forum-shopping, thus:

"Indeed, while it would appear that respondent Chua was not the counsel of the petitioners in SEC Case No. 3328, his action to have a notice of *lis pendens* annotated at the Register of Deeds and his appeal to the LRC indicate his clear knowledge of the pending action. Clearly, while there is no sufficient basis to hold respondent liable for the charge of committing fraud in the filing of notice of *lis pendens* in relation to the SEC case, or for falsification of page one of the SEC petition as attached to the notice, respondent not being privy thereto, *we are not prepared, however, to say that he is 'off the hook' on the forum shopping charge. As we have earlier pointed out, the pleadings in the SEC case and in Civil Case No. 95-9051 may appear to have different causes of action and parties. But here is the catch. The SEC rendered a decision dated May 3, 1995, which directed, among others, the cancellation and annulment of 'the transfer certificates of title in the name of Soon Kee Commercial, Inc., if any, the certificates of title in the name of SK Realty, Inc., if any, and the certificates of title in the name of New Challenge Resources, if still there is, and all the properties formerly belonging to and in the name of UBS, presently totaling eight (8) lots covered by TCT No. 141057, TCT No. 141058, TCT No. 141059, TCT No. I41060, TCT No. 141061, TCT No. 141062, TCT No. 141063, TCT No. 141064, and reverting them back to UBS Marketing Corporation.'* The decision was published and even quoted in the Visayan Daily Star, the issue of June 6, 1995, at respondent Chua's behest and expense. The decision was later appealed to the SEC Commission *en banc*. Respondent Chua was undoubtedly aware that while the SEC petition did not make any references to the real properties, the decision of the SEC gave reliefs in relation

thereto. *Therefore, when respondent filed a complaint, Civil Case No. 95-9051 (Annex "Q", Disbarment complaint), on September 18, 1995, he was aware that the forum-shopping prohibition could be violated and yet he submitted a 'Verification' in his civil complaint, which was for reconveyance and cancellation of titles, that there is no 'prior action or proceedings involving the same issues, as herein raised, has been filed with the Court of Appeals or Supreme Court or any other tribunal or agency.' He knew that the controversy on the properties was pending with the SEC, or was pending appeal, initiated by SK Realty and New Challenge Resources, Inc., with the Court of Appeals (CA-G.R. No. 37541) and SEC Case No. 520). The fact that the relief granted by the SEC hearing officer has not yet been set aside when respondent instituted the civil case and that he was aware of this fact should be enough reason for him to be made answerable for making false representation and forum-shopping.* It is also worth noting the fact that when the civil complaint was filed on September 18, 1995, the appeal in Consulta No. 2334, with respect to the notice of *Lis Pendens*, was still unresolved. The decision of the LRC Administrator came only on September 21, 1995 (Annex "K", Disbarment Case). Ignorance of a pending action on the properties subject of the SEC case cannot, therefore, be invoked by respondent. Respondent is answerable for misconduct under Canon 12.02."

Going back to the instant case, it may be recalled that the SEC Hearing Officer rendered a decision in favor of respondents. However, it was reversed by the SEC *En Banc*. Hence, they filed with the Court of Appeals a petition for *certiorari*, and later, a petition for review on *certiorari* with this Court.

Meanwhile, although respondents' petition was still pending before the SEC *En Banc*, they filed with the RTC Civil Case No. 95-9051 against petitioners. In doing so, respondents' intention was to obtain a favorable decision in another forum. Apparently, they filed Civil Case No. 95-9051 on the supposition that they would win in this case.

It bears emphasis that when respondents filed Civil Case No. 95-9051 for reconveyance of properties and cancellation of titles, they knew that there was a similar case between the same parties pending before the SEC *En Banc* (later elevated to the Court of Appeals and this Court).

Clearly, respondents resorted to forum-shopping, one of the reasons why Atty. Enrique S. Chua, their former counsel, was disbarred from the practice of law. Indeed, the trial court was correct in dismissing respondents' complaint in Civil Case No. 95-9051 on the ground of forum-shopping.

In *Biñan Steel Corporation vs. Court of Appeals*,[5] we held:

"A party is guilty of forum-shopping where he repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by some other court."

As we held in *Republic of the Philippines vs. Carmel Development, Inc.,* respondent's act of "*willful and deliberate forum-shopping is a ground for summary dismissal of the case,* and constitutes direct contempt of court."[6]

Finally, anent the cancellation of the notice of *lis pendens* on the titles of the subject properties, we find no reason to reverse the Order of the RTC dated December 8, 1995, finding that the annotation was for the purpose of molesting herein petitioners and that it was done by the respondents in bad faith, thus:

"This Court is of the considered view that it cannot uphold plaintiffs' contention that the evidence introduced by defendant SK Realty in support to its motion to cancel notice of *lis pendens* is immaterial and impertinent, for this Court, after an examination of the evidence on record, believes that the said evidence underpins defendant's stand that the notice inscribed on their property by

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[5] G.R. Nos. 142013 and 148430, October 15, 2002, 391 SCRA 90, 104, citing *Gatmaytan vs. Court of Appeals*, 267 SCRA 487 (1997).

[6] G.R. No. 142572, February 20, 2002, 377 SCRA 459, cited in *Santos vs. COMELEC*, G.R. No. 155618, March 26, 2003, 399 SCRA 611, 620.

reason of the institution of the instant case is for the purpose of molesting and harassing the said defendant.

The motion in controversy is meritorious as shown by the fact that plaintiffs, after failing on several attempts to annotate notice of *lis pendens* on the properties of defendant SK Realty, filed the case at bar, which finally caused the annotation, despite plaintiffs' knowledge of the pendency of another case in the Court of Appeals involving substantially and practically the same facts, circumstances and parties with that of the present case, which is obviously an indication of bad faith on their (plaintiffs') part."

Section 14, Rule 13 of the 1997 Rules of Civil Procedure, as amended, provides:

"Sec. 14. *Notice of lis pendens*. — x x x

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded."

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated January 14, 2000 and Resolution dated June 30, 2000 of the Court of Appeals in CA-G.R. CV No. 57171 are *REVERSED*. The Resolution dated November 9, 1995 and Order dated December 8, 1995 of the Regional Trial Court, Branch 43, Bacolod City dismissing respondents' complaint and ordering the cancellation of the notice of *lis pendens* are *AFFIRMED*.

SO ORDERED.

Vitug (Chairman), Corona and *Carpio Morales, JJ.*, concur.

SECOND DIVISION

[G.R. No. 146019. June 8, 2004]

ARMANDO M. LASCANO, *petitioner, vs.* **UNIVERSAL STEEL SMELTING CO., INC., REYNALDO U. LIM and HON. REGIONAL TRIAL COURT OF QUEZON CITY,** *respondents*.

SYNOPSIS

Petitioner ordered and received steel bars from respondent USSCI valued at ₱104,268.00, but refused to pay the same and even denied having transacted with respondent. Thus, the USSCI filed a criminal complaint for estafa against petitioner and the trial court ordered petitioner to pay USSCI the value of the steel bars. The Court affirmed the ruling. As to the award of damages, the Court ruled that moral damages should be paid to respondent Lim as petitioner unjustifiably refused to pay a just debt. It follows, therefore, that the adjudication of exemplary damages was also in order.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PERIOD; SC CIRCULAR 56-2000 APPLIED RETROACTIVELY. — The Supreme Court Circular No. 56-2000, which took effect on September 1, 2000 provides: 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 the said motion.* The 60-day period within which to file the special civil action for *certiorari* starts to run from receipt of notice of the denial of the motion for reconsideration. However, it bears stressing, at the time of petitioner's filing of the special civil action for *certiorari* with the Court of Appeals on July 31, 2000, SC Circular No. 56-2000 was not yet in effect. In the case of *San Luis v. Court of Appeals*, petitioner's special civil action for *certiorari* was

filed with the Court of Appeals on January 7, 2000, long before SC Circular No. 56-2000 took effect. Nonetheless, we applied the circular retroactively and held that the appellate court erred in dismissing the special civil action for *certiorari* on the ground of late filing. We see no reason why we should treat the instant case differently.

2. ID.; CIVIL PROCEDURE; APPEALS; SETTLEMENT OF THE ENTIRE CONTROVERSY IN A SINGLE PROCEEDING TO AVOID DELAY, PROPER. — Considering the circumstances in this case, we could direct the Court of Appeals to decide on the merits the issues raised in petitioner's special civil action for *certiorari*. However, that would only result in further delay before resolution of this case. In our view, it is preferable to settle the entire controversy now in a single proceeding, leaving no root or branch to bear the seeds of future litigation. Following the *San Luis* decision, if based on the records including the pleadings and the evidence, the dispute could be resolved by us, we will do so to serve the ends of justice, instead of remanding the case to the lower court for further proceedings.

3. CIVIL LAW; DAMAGES; MORAL DAMAGES; PROPER WHERE THERE WAS UNJUSTIFIED REFUSAL TO PAY A JUST DEBT. — Petitioner misses the point that the court *a quo* ordered the payment of moral damages not because he filed the complaint in bad faith, but because of his unjustified refusal to pay a just debt. Article 2220 of the Civil Code provides: ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. *The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.* When payment on the delivered steel bars was demanded, petitioner, instead of complying with his obligation, denied having transacted with private respondents. Such cold refusal to pay a just debt amounts to a breach of contract in bad faith, as contemplated by the aforecited provision. Hence, the order to pay moral damages is in accordance with law, but only with regard to respondent individual (Reynaldo Lim) and not to respondent corporation (USSCI). A corporation cannot suffer nor be entitled to moral damages.

4. ID.; ID.; EXEMPLARY DAMAGES; PROPER WHERE MORAL DAMAGES WERE AWARDED. — As to exemplary damages, although the same cannot be recovered as a matter of right, they need not be proved. But before considering whether exemplary damages should be awarded, it must first be shown that an award of moral, temperate or compensatory damages obtain. In the instant case, as the order to pay moral damages to private individual respondent is proper, it follows that the adjudication of exemplary damages on that basis is also in order.

5. REMEDIAL LAW; CIVIL PROCEDURE; COMPULSORY COUNTERCLAIMS; NON-PAYMENT OF DOCKET FEES THEREFOR DOES NOT AFFECT JURISDICTION OF TRIAL COURT TO RULE THEREON. — Before the trial court may acquire jurisdiction over permissive counterclaims, docket fees thereon must first be paid. However, we find that the counterclaims herein are not permissive, but compulsory. On this point, Section 7, Rule 6 of the Revised Rules of Civil Procedure is pertinent: SEC. 7. *Compulsory counterclaim.* – A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount. The alleged malicious filing of *estafa* against petitioner is necessarily connected with the non-payment of the value of steel bars delivered to petitioner. The resolution of the latter issue does not require the presence of third parties of whom the court *a quo* cannot acquire jurisdiction. Therefore, the counterclaim raised by private respondents are clearly compulsory in nature. Thus, non-payment of docket fees does not affect the jurisdiction of the trial court to rule thereon.

APPEARANCES OF COUNSEL

Romeo A. Ignacio, Jr. for petitioner.
Ma. Yvette O. Navarro for respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review are (1) the resolution[1] dated August 7, 2000 of the Court of Appeals in CA-G.R. SP No. 59972, which dismissed petitioner's special civil action for *certiorari* because of late filing; and (2) the resolution[2] of November 15, 2000, denying petitioner's motion for reconsideration. In the interest of the speedy administration of justice, we shall also inquire into the merits of said special civil action.

The antecedent facts are as follows:

Sometime in 1990, petitioner Armando Lascano had a construction project at No. 18 Dalsol Street, GSIS Village, Project 8, Quezon City. This project required a number of steel bars of various grades, which petitioner ordered from private respondent Universal Steel Smelting Co., Inc. (USSCI). On August 30, 1990, the steel bars valued at ₱104,268 were received by petitioner's representative, Rolando Nanquil. When the amount due thereon was not paid, USSCI demanded payment. Instead of complying, petitioner denied that he ordered the steel bars from USSCI.

Upon advice of its lawyer, USSCI filed a criminal complaint for *estafa* against petitioner with the Quezon City Prosecutor's Office. The complaint was dismissed on September 5, 1991. USSCI's motion for reconsideration was denied on November 14, 1991 and its petition for review filed with the Department of Justice was also dismissed per resolution dated June 19, 1992.

In the meantime, the *Manila Bulletin* in its August 23, 1991 issue, published a news item entitled "School Owner in QC Sued." On August 27, 1991, another news item, "School Owner

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[1] *Rollo*, pp. 36-37. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Conchita Carpio Morales (now a member of this Court) and Mercedes Gozo-Dadole concurring.

[2] *Id*. at 38-39.

Faces Rap," was published, this time by *Tempo*. In both news items, the school owner referred to was petitioner Armando Lascano.

Hence, on August 25, 1992, petitioner filed with public respondent Regional Trial Court of Quezon City, Branch 93, a complaint for damages against private respondents USSCI and its Vice-President Reynaldo Lim, for alleged malicious prosecution and allegedly causing the publication in two (2) newspapers of general circulation, that he was being sued for *estafa*.

The case was docketed as Civil Case No. Q-92-13212 and on December 27, 1994, the trial court dismissed the complaint, thus:

> WHEREFORE, premises considered, the Court hereby dismisses the complaint for failure of plaintiff to establish his causes of action by preponderant evidence.
>
> On the counterclaim, the Court orders plaintiff to pay the defendants the following:
>
> 1. ₱104,268.00 with interest thereon at 14% per annum from August 30, 1990 until fully paid;
> 2. ₱100,000.00 for moral damages;
> 3. ₱50,000.00 for exemplary damages;
> 4. ₱35,000.00 as and for reasonable attorney's fees; and
> 5. Costs of suit.
>
> SO ORDERED.[3]

Petitioner received said Decision on January 16, 1995. Petitioner's counsel then filed a Notice of Appeal on January 20, 1995, which was approved by the trial court in an Order dated January 25, 1995. However, the Court of Appeals dismissed the appeal in its Resolution dated August 13, 1998, in this wise:

> Pursuant to Section 1 (c), Rule 50 in relation to Section 4 of Rule 41 of the 1997 Rules of Civil Procedure, as amended, the instant appeal is hereby *DISMISSED* for failure of the appellant to pay the docket and other lawful fees.

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[3] *Id*. at 53.

SO ORDERED.[4]

On September 5, 1998, said Resolution became final and executory and the Court of Appeals issued an entry of judgment thereon. Private respondents then promptly filed on January 10, 2000 a motion for execution of the December 27, 1994 judgment, which the court *a quo* granted on February 9, 2000. On March 15, 2000, petitioner filed a motion for reconsideration of the trial court's Order granting the motion for execution, but the same was denied on April 28, 2000.

Thus, on July 31, 2000, petitioner filed a special civil action for *certiorari* with the Court of Appeals. However, the Court of Appeals, in its Resolution of August 7, 2000, dismissed said petition on the ground of late filing. Petitioner then filed a motion for reconsideration, which was denied in the appellate court's Resolution dated November 15, 2000.

Hence, the instant petition ascribing to the appellate court the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN STRICTLY APPLYING THE RULES IN THE FILING OF PETITION FOR *CERTIORARI* CONTRARY TO THE LIBERAL CONSTRUCTION RULE AS ECHOED IN SEVERAL SUPREME COURT DECISIONS.

II

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE RULE ON INTEREST OF JUSTICE AND EQUITY IN FAVOR OF TECHNICALITY WHERE THE RTC DECISION SUBJECT OF EXECUTION WAS UNJUST AND VOID HAVING BEEN RENDERED ON PURE SPECULATION AND CONJECTURE WITHOUT CITATION OF SPECIFIC EVIDENCE.[5]

On the procedural aspect, we find merit in the petition.

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[4] *Id*. at 87. Penned by Associate Justice Presbitero J. Velasco, Jr., with Associate Justices Angelina Sandoval-Gutierrez (now a member of this Court) and B.A. Adefuin-de la Cruz concurring.

[5] *Id*. at 25.

In finding that the special civil action for *certiorari* was filed out of time, the Court of Appeals applied Supreme Court Circular No. 39-98,[6] which took effect on September 1, 1998. Said circular amended Section 4, Rule 65 of the 1997 Rules of Civil Procedure as follows:

> Sec. 4. *Where and when petition to be 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 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 notice of such denial. No extension of time to file petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.* (Italics ours).

Records show that petitioner received on March 3, 2000 a copy of respondent trial court's February 9, 2000 Order granting the motion for execution of the December 27, 1994 judgment. He filed the motion for reconsideration on March 15, 2000 or twelve (12) days after notice of the assailed Order. Thus, consistent with SC Circular No. 39-98, the original 60-day period was interrupted when petitioner filed a motion for reconsideration. Since the motion was denied, petitioner had the remaining period of forty-eight (48) days within which to file the special civil action for *certiorari* with the Court of Appeals.

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[6] Bar Matter No. 803-Re: Correction of Clerical Errors in and Adoption of Amendments to the 1997 Rules of Civil Procedure.

Evidence on record shows petitioner received on June 1, 2000 a copy of the trial court's April 28, 2000 Order denying his motion for reconsideration. Therefore, conformably with SC Circular No. 39-98, the filing of the special civil action for *certiorari* with the Court of Appeals on July 31, 2000, or on the 60th day, was twelve (12) days beyond the reglementary period.

We must point out, however, that Supreme Court Circular No. 56-2000,[7] which took effect on September 1, 2000 further amended Section 4 of Rule 65 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 the said motion.* (Italics ours).

Under the second amendment, the 60-day period within which to file the special civil action for *certiorari* starts to run from receipt of notice of the denial of the motion for reconsideration. However, it bears stressing, at the time of petitioner's filing of the special civil action for *certiorari* with the Court of Appeals on July 31, 2000, SC Circular No. 56-2000 was not yet in effect. Therefore, the sole issue for our consideration in this case is whether or not said circular may be applied retroactively.

The present question does not pose a novel issue. In an analogous case, *San Luis v. Court of Appeals*,[8] the Court of Appeals likewise reckoned the counting of the 60-day period from petitioner's receipt of a copy of the assailed Order, considered the interruption of the running of the period by the filing of the motion for reconsideration, and held that the remaining

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[7] A.M. No. 00-2-03-SC-Re: Amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure.

[8] G.R. No. 142649, 13 September 2001, 365 SCRA 279, 284.

period resumed to run on the date petitioner received the Order denying his motion for reconsideration.

In said case of *San Luis*, petitioner's special civil action for *certiorari* was filed with the Court of Appeals on January 7, 2000, long before SC Circular No. 56-2000 took effect. Nonetheless, we applied the circular retroactively and held that the appellate court erred in dismissing the special civil action for *certiorari* on the ground of late filing. We said therein:

> Settled is the rule that remedial statutes or statutes relating to remedies or modes of procedure, which do not create new rights or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the purview of the general rule against the retroactive operation of statutes. Procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. As a general rule, the retroactive application of procedural laws cannot be considered violative of any personal rights because no vested right may attach to nor arise therefrom.[9]

We see no reason why we should treat the instant case differently. Thus, pursuant to SC Circular No. 56-2000, petitioner's 60-day period to file the special civil action for *certiorari* should be counted from his receipt on June 1, 2000 of the Order of April 28, 2000, denying his motion for reconsideration. Hence, the special civil action for *certiorari* having been filed on July 31, 2000, or the last day before the reglementary period expired, the Court of Appeals should not have dismissed the same on the ground of late filing.

Considering the circumstances in this case, we could direct the Court of Appeals to decide on the merits the issues raised in petitioner's special civil action for *certiorari*. However, that would only result in further delay before the resolution of this case. In our view, it is preferable to settle the entire controversy now in a single proceeding, leaving no root or branch to bear the seeds of future litigation. Following the *San Luis* decision,

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[9] *Id.* at 285.

if based on the records including the pleadings and the evidence, the dispute could be resolved by us, we will do so to serve the ends of justice, instead of remanding the case to the lower court for further proceedings.[10]

In the petition for *certiorari*, petitioner assigns the following errors to the trial court:

I

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN GRANTING THE ISSUANCE OF WRIT OF EXECUTION.

II

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THAT IT IS THE MINISTERIAL DUTY THE (*sic*) COURT TO ISSUE THE WRIT OF EXECUTION.

III

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THAT THE EXECUTION OF WHATEVER JUDGMENT THAT MAY HAVE BEEN RENDERED WILL PUT THE (*SIC*) REST THE CONTROVERSY BETWEEN PARTY LITIGANTS.

IV

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN DISREGARDING THE RULE THAT A WRIT OF EXECUTION MAY BE DISALLOWED ON EQUITABLE GROUNDS.[11]

Petitioner contends that the December 27, 1994 judgment is devoid of factual and legal bases. He protests the order to pay private respondents ₱104,268 representing the value of the steel bars delivered to him. According to petitioner, he transacted business with LNG Marketing, not with private respondents. He claims that LNG Marketing was a dealer of private respondents, but that both could not compete for one client.[12]

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[10] *Id*. at 286.

[11] CA *Rollo*, p. 5.

[12] *Id*. at 6.

In our view, that petitioner transacted with LNG Marketing for the purchase of steel bars might well be true, but it did not preclude the fact that private respondents had delivered steel bars to petitioner. The fact of delivery to petitioner of the subject steel bars is evidenced by delivery receipts signed by one Rolando Nanquil acting as petitioner's agent. While petitioner denied knowing said Rolando Nanquil, the delivery receipts of LNG Marketing were signed by the same Rolando Nanquil, as duly authorized agent of petitioner. Delivery of subject steel bars to petitioner having been established by preponderance of evidence, we could not conclude that the trial court erred when it ordered petitioner to pay private respondents the value of said steel bars.

Petitioner questions the trial court's order to pay private respondents ₱100,000 and ₱50,000 as moral and exemplary damages, respectively. He maintains that he filed the complaint in good faith, which is inconsistent with the order to pay moral damages; and that there was no proof he acted in a wanton, fraudulent, reckless, oppressive and malevolent manner, as to justify exemplary damages.

Petitioner misses the point that the court *a quo* ordered the payment of moral damages not because he filed the complaint in bad faith, but because of his unjustified refusal to pay a just debt. Article 2220 of the Civil Code provides:

> ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. *The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.* (Italics ours).

When payment on the delivered steel bars was demanded, petitioner, instead of complying with his obligation, denied having transacted with private respondents. Such cold refusal to pay a just debt amounts to a breach of contract in bad faith, as contemplated by the aforecited provision. Hence, the order to pay moral damages is in accordance with law, but only with regard to respondent individual (Reynaldo Lim) and not to

respondent corporation (USSCI). A corporation cannot suffer nor be entitled to moral damages.[13]

As to exemplary damages, although the same cannot be recovered as a matter of right, they need not be proved. But before considering whether exemplary damages should be awarded, it must first be shown that an award of moral, temperate or compensatory damages obtains.[14] In the instant case, as the order to pay moral damages to private individual respondent is proper, it follows that the adjudication of exemplary damages on that basis is also in order.

As to the amount of damages, the court *a quo* ordered payment of ₱100,000 for moral damages and ₱50,000 for exemplary damages. However, considering the amount of the unpaid debt at issue in this case, we are of the considered view that ₱10,000 as moral damages and ₱5,000 in exemplary damages would suffice under the circumstances.

Finally, petitioner argues private respondents' counterclaims are merely permissive, which require payment of docket fees. Indeed, before the trial court may acquire jurisdiction over permissive counterclaims, docket fees thereon must first be paid.[15] However, we find that the counterclaims herein are not permissive, but compulsory.[16] On this point, Section 7, Rule 6 of the Revised Rules of Civil Procedure is pertinent:

SEC. 7. *Compulsory counterclaim*. — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third

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[13] *Prime White Cement Corp. v. Intermediate Appellate Court*, G.R. No. 68555, 19 March 1993, 220 SCRA 103, 113-114.

[14] *Tiongco v. Atty. Deguma*, G.R. No. 133619, 26 October 1999, 375 Phil. 978, 993-994.

[15] *Alday v. FGU Insurance Corporation*, G.R. No. 138822, 23 January 2001, 350 SCRA 113, 123.

[16] *Id*. at 120-121.

parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount.

The alleged malicious filing of *estafa* against petitioner is necessarily connected with the non-payment of the value of steel bars delivered to petitioner. The resolution of the latter issue does not require the presence of third parties of whom the court *a quo* cannot acquire jurisdiction. Therefore, the counterclaims raised by private respondents are clearly compulsory in nature. Thus, non-payment of docket fees does not affect the jurisdiction of the trial court to rule thereon.

In sum, we find no error nor grave abuse of discretion on the part of public respondent in rendering the assailed judgment dismissing the complaint. But the award to private respondents of damages as part of their counterclaims against the petitioner, particularly with regard to damages as herein elucidated, ought to be modified accordingly.

WHEREFORE, the resolutions of the appellate court dated August 7, 2000 and November 15, 2000 in CA-G.R. SP No. 59972 are *SET ASIDE*. The assailed decision of the Regional Trial Court of Quezon City, Branch 93, in Civil Case No. Q-92-13212, dated December 27, 1994, is *AFFIRMED*, except as to the amounts of moral and exemplary damages, which are *MODIFIED* and reduced to only ₱10,000.00 and ₱5,000.00, respectively. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 146890. June 8, 2004]

LILIAN CAPITLE, SOFRONIO CORREJADO, ARTEMIO CORREJADO, VICENTE CORREJADO, CECILIA CORREJADO, GLORIA *VDA. DE* BEDUNA, ROGELIA CORREJADO, MANUEL CORREJADO, RODOLFO CORREJADO, TERESITA C. AMARANTE, JUANITA CORREJADO and JULIETA C. PEREGRINO, *petitioners, vs.* **JULIETA *VDA. DE* GABAN, JULIA CORREJADO and HERMINIGILDO CORREJADO,** *respondents*.

SYNOPSIS

Fabian Correjado, who inherited the two parcels of land here in issue, died in 1919 and was survived by his children Julian, Zacarias, Francisco and Manuel. Julian, who occupied the lands until his death in 1950, was survived by three children, herein respondents. Petitioners, on the other hand, were the heirs of the late Francisco (who died in 1960) and Zacarias (who died in 1984). In 1986, petitioners filed a complaint for partition of property and damages against respondents. Respondents, on the other hand, alleged that Francisco and Zacarias were illegitimate children of Fabian and hence, not entitled to inherit under the old Civil Code. The trial court, however, dismissed the case on the grounds of prescription and laches.

The Court ruled on the assumption that Francisco and Zacarias were legitimate children of Fabian and, therefore, co-owners of the property with Julian. Thus, from the moment Julian occupied the lands in 1919 and claimed to be the absolute and exclusive owner of the property and denied his brothers any share therein up to the time of his death in 1950, the question involved was no longer one of partition but of ownership in which case imprescriptibility of the action for partition can no longer be invoked. The adverse possession by Julian and his successors-in-interest, herein respondents, as exclusive

owner of the property having entailed a period of about 67 years at the time of the filing of the case at bar in 1986, ownership by prescription had vested in them. Estoppel by laches, on the other hand, was not applicable in case at bar. Petition was dismissed.

SYLLABUS

1. **CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; WHERE ADVERSE POSSESSION WAS UNINTERRUPTED FOR 67 YEARS. —** Article 1137 of the New Civil Code provides that Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith. Here, from the moment co-owner Julian occupied in 1919 and claimed to be the absolute and exclusive owner of the property and denied his brothers any share therein up to the time of his death in 1950, the question involved is no longer one of partition but of ownership in which case imprescriptibility of the action for partition can no longer be invoked. The adverse possession by Julian and his successors-in-interest — herein respondents as exclusive owner of the property having entailed a period of about 67 years at the time of the filing of the case at bar in 1986, ownership by prescription had vested in them.

2. **ID.; ESTOPPEL BY LACHES; NOT APPLICABLE IN CASE AT BAR. —** *As for estoppel by laches* which is a creation of equity, since laches cannot interfere with the running of the period of prescription, absent any conduct of the parties operating as estoppel, in light of the prescription of petitioners' action, discussion thereof is dispensed with. Suffice it to state that while laches may not be strictly applied between near relatives, under the facts and circumstances of the case, especially the uncontroverted claim of respondents that their father Julian, and the documented claim of respondent Julieta, had paid realty taxes on the property as exclusive owner, as well as the admission of petitioner Rogelia that, as quoted above, she and her co-petitioners "never benefited" or were "deprived" of any benefits from the property since 1919 up to the time of the filing of the case in 1986 before the RTC or for a period

of 67 years, despite demands therefor, even an extremely liberal application of laches would bar the filing of the case.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Geocadin Sabig & Vinco Law Offices and *Teodulo C. Cario, Jr.* for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Fabian Correjado (Fabian) inherited from his father Santos Correjado two parcels of land subject of the case at bar, Lot No. 1782-B of the Pontevedra Cadastre and Lot No. 952 of the Hinigaran Cadastre containing 26,728 sq. m. and 55,591 sq. m., respectively.

Fabian died intestate in 1919. He was survived by four children, namely: Julian, Zacarias, Francisco and Manuel, all surnamed Correjado.

After Fabian's death in 1919, his son Julian occupied and cultivated the two subject parcels of land (the property) until his death in 1950. He was survived by three children, namely, herein respondents Julieta *vda. de* Gaban (Julieta), Julia Correjado (Julia) and Hermegildo Correjado.

Julian's brother Francisco died in 1960. He was survived by herein petitioners Manuel Correjado, Teresita C. Amarante, Juanita Correjado, Rodolfo Correjado, and Jileta Peregrino.

Julian's brother Zacarias died in 1984. He was survived by the other petitioners herein, Aurora P. *vda. de* Correjado, Lilia Capitle, Artemio Correjado, Cecilia Correjado, Rogelia Correjado (Rogelia), Sofronio Correjado, Vicente Correjado and Gloria *vda. de* Beduna.

On November 26, 1986, petitioners filed a complaint[1] for partition of the property and damages before the Regional Trial Court (RTC) of La Carlota City against respondents, alleging that Fabian contracted two marriages, the first with Brigida Salenda who was the mother of Julian, and the subsequent one with Maria Catahay (Maria) who was the mother of Zacarias, Manuel and Francisco; that the property remained undivided even after the death of Julian in 1950, his children-herein respondents having arrogated unto themselves the use and enjoyment of the property, to the exclusion of petitioners; and that respondents refused to deliver petitioners' share in the property despite demands therefor and for partition.

To the Complaint respondents countered in their Answer[2] that in the proceedings in the intestate estate of their great grandfather Santos Correjado, petitioners were not adjudicated any share in the property, for Maria, the mother of petitioners' respective fathers Francisco and Zacarias, was just a mistress of Fabian, hence, Francisco and Zacarias (as well as Manuel) were illegitimate who were not entitled to inherit under the old Civil Code (Spanish Civil Code of 1889).

By Decision of December 29, 1992,[3] Branch 63 of the La Carlota City RTC dismissed the complaint upon the grounds of prescription and laches.

On appeal to the Court of Appeals wherein petitioners raised as sole error of the trial court its dismissal of the complaint "without basis in fact and in law," the appellate court, by Decision of August 29, 2000,[4] dismissed the appeal and affirmed the decision of the trial court.

In affirming the decision of the trial court, appellant passed upon the issue of legitimacy of the brothers Francisco and Zacarias

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[1] Original Records at 4-8.

[2] *Id*. at 49-50.

[3] *Id*. at 184-191.

[4] CA *Rollo* at 74-84.

(as well as of their brother Manuel) in order to determine whether they co-owned the property with Julian, illegitimate children not being entitled to inherit under the Spanish Civil Code of 1889[5] which was in force when the brothers' father Fabian died in 1919.

The appellate court found that respondents failed to discharge the onus of proving that Francisco and Zacarias were illegitimate. But it too found that petitioners also failed to prove that Zacarias and Francisco were legitimate.

Upon the disputable presumption, however, that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage,[6] the appellate court presumed that Fabian and Maria were lawfully married, hence, their children Zacarias and Francisco (as well as Manuel) — predecessors-in-interest of petitioners were legitimate children and, therefore, they co-owned with Julian the property.

Its finding of co-ownership of the property by the predecessors-in-interest of the parties notwithstanding, the appellate court held that, as did the trial court, prescription and laches had set in, ratiocinating as follows:

> It is a hornbook doctrine that the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them so much so that each co-owner may demand at anytime the partition of the common property and that this implies that an action to demand partition is imprescriptible or cannot be barred by laches (*Salvador vs. Court of Appeals*, 243 SCRA 23; *De Castro vs. Echarri*, 20 Phil. 23).
>
> While the right of action to demand partition does not prescribe, *acquisitive prescription may set in where one of the co-owners openly and adversely occupies the property without recognizing the co-ownership* (*Cordova vs. Cordova*, 102 Phil. 1182; *Heirs of Segunda Manungding vs. Court of Appeals*, 276 SCRA 601), The statute of limitations operates, as in other cases, from the moment

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[5] Arts. 807 and 939.

[6] Sec. 3(aa), Rule 131, Revised Rules of Court.

such adverse title is asserted by the possessor of the property (*Ramos vs. Ramos*, 45 Phil. 362; *Bargayo vs. Camumot*, 40 Phil. 857).

The elements constituting adverse possession by a co-owner against another *co-owner or cestui que trust* are: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or other co-owners; (ii) that such positive acts of repudiation have been made known to the *cestui que trust* or the other co-owners; and (iii) that the evidence thereon must be clear and convincing (*Salvador vs. Court of Appeals, supra*).

Granting that appellants, as well as their predecessors-in-interest, were initially co-owners of the disputed property, nevertheless, *acquisitive prescription in favor of appellees had already set in. Appellees had performed unequivocal acts of repudiation.* This is shown by the unrebutted testimony of [herein respondent] Julia who declared that her brother Atilano (deceased) introduced improvements on the disputed property and the fact that appellees and their *father Julian paid the realty taxes thereon as exclusive owners thereof.* Moreover, applicants admitted in paragraph 12 of the Complaint that *after Julian's death (in 1950), appellees arrogated unto themselves the use and enjoyment of the disputed property, to the exclusion of appellants.* This admission is bolstered by [herein petitioner] Rogelia's testimony, as follows:

Q By the way you said that you are going to recover this 1/6 share from Julieta *vda. de* Gaban. Why, is she in possession of this land?

A Yes, sir.

Q She is presently in possession of the said lot?

A Yes, sir.

Q Can you tell us since when did she possess that land?

A 1980.

Q Previous to that, can you tell us if she was in possession of the said land?

A Yes, sir. She has been in possession of the said lot before 1980.

Q Was there a period of years that you have been in possession of the said land?

[A No, sir. We have never been in possession of the said land.]

x x x x x x x x x

Q *Were you able to gather benefits from that land?*

A *We never benefited.*

Q *Since when have you not benefited from that land?*

A *Since 1919.*

x x x x x x x x x

Q *By the way, can you tell us since when you have been deprived of that land, from what year?*

A *From 1919 to 1990."* (TSN, January 9, 1990, pp. 51-55). (Italics supplied)[7]

Petitioners filed a motion for reconsideration[8] of the appellate court's decision upon the ground that "THIS CASE HAS BEEN OVERTAKEN BY EVENTS, PARTICULARLY ART. 19 OF THE [NEW] CIVIL CODE" which reads:

ART. 19. Every person, must be in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith,

citing some cases in support thereof.

Finding the invocation of Art. 19 misplaced, the appellate court, by Resolution of February 7, 2001,[9] denied the Motion for Reconsideration, hence, the present petition[10] proffering the following:

ISSUES FOR RESOLUTION

I

WHETHER OR NOT RELIANCE ON ART. 19 OF THE CIVIL CODE IS MISPLACED.

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[7] *Rollo* at 62-64a.

[8] *Id*. at 66-69.

[9] CA *Rollo* at 98.

[10] *Rollo* at 10-21.

II

WHETHER IN RESOLVING CASES, THE ISSUE OF MORALITY OF THE ACT DOES NOT COME INTO PLAY.

III

WHETHER OR NOT LACHES IS APPLICABLE IN THE CASE AT BAR.[11]

Petitioners contend that "[t]here is such a thing as morality that comes into play," as after all, the appellate court found the parties to be first cousins and, therefore, following Art. 19 of the Civil Code, petitioners should get their share in the property.

Petitioners further contend that "laches is not strictly applied when it comes to close relations," citing *Gallardo v. IAC,* 155 SCRA 248.

The petition fails.

Article 19 of the Civil Code in Chapter 2 on Human Relations is a statement of principle that supplements but does not supplant a specific provision of law.

With respect to rights to the inheritance of a person who died before the effectivity on August 30, 1950 of the Civil Code like Fabian who died in 1919:

Art. 2263, New Civil Code

ART. 2263. Rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court. x x x

ART. 807, Spanish Civil Code of 1889

ART 807. The following are forced heirs:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;

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[11] *Id*. at 17.

2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

The widower or widow, natural children legally acknowledged, and the father or the mother of the latter, in the manner and to the extent established by Articles 834, 835, 836, 837, 840, 841, 842, and 846.

ART. 939, Spanish Civil Code of 1889,

ART. 939. In the absence of legitimate descendants and ascendants, the natural children legally acknowledged and those legitimated by royal concession shall succeed to the entire estate of the deceased.

With respect to prescription:

Art. 1134, New Civil Code

ART. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1137, New Civil Code

ART. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

Assuming *arguendo* that petitioners' respective fathers Francisco and Zacarias were legitimate and, therefore, were co-owners of the property: From the moment co-owner Julian occupied in 1919 and claimed to be the absolute and exclusive owner of the property and denied his brothers any share therein up to the time of his death in 1950, the question involved is no longer one of partition but of ownership in which case imprescriptibility of the action for partition can no longer be invoked. The adverse possession by Julian and his successors-in-interest- herein respondents as exclusive owner of the property having entailed a period of about 67 years at the

time of the filing of the case at bar in 1986, ownership by prescription had vested in them.[12]

As for estoppel by laches which is a creation of equity,[13] since laches cannot interfere with the running of the period of prescription, absent any conduct of the parties operating as estoppel,[14] in light of the prescription of petitioners' action, discussion thereof is dispensed with. Suffice it to state that while laches may not be strictly applied between near relatives, under the facts and circumstances of the case, especially the uncontroverted claim of respondents that their father Julian, and the documented claim of respondent Julieta, had paid realty taxes on the property as exclusive owner, as well as the admission of petitioner Rogelia that, as quoted above, she and her co-petitioners "never benefited" or were "deprived" of any benefits from the property since 1919 up to the time of the filing of the case in 1986 before the RTC or for a period of 67 years, despite demands therefor, even an extremely liberal application of laches would bar the filing of the case.

WHEREFORE, the petition is hereby *DISMISSED* and the decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Vitug (Chairman), Sandoval-Gutierrez and *Corona, JJ.*, concur.

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[12] *Dela Calzada-Cierras v. CA*, 212 SCRA 390, 396 (1992); *Delima v. CA*, 201 SCRA 641 (1991); *Arradaza v. CA*, 170 SCRA 12,20 (1989).

[13] *Central Azucarera de Danao v. CA*, 137 SCRA 295 (1985).

[14] *Inton v. Quintana*, 81 Phil. 97, 104 (1948).

SECOND DIVISION

[G.R. No. 147724. June 8, 2004]

LORENZO SHIPPING CORP., *petitioner, vs.* **CHUBB AND SONS, INC., GEARBULK, LTD. and PHILIPPINE TRANSMARINE CARRIERS, INC.,** *respondents***.**

SYNOPSIS

Petitioner was the carrier of 581 bundles of ERW black steel pipes which were damaged by seawater while in transit. The consignee of the subject shipment, Sumitomo Corp. of San Francisco, California, claimed insurance therefor with respondent insurer, Chubb and Sons, Inc., who, in turn, filed a complaint against petitioner. The trial court and the appellate court both ruled in favor of respondent insurer and hence, this appeal.

On the issue of respondent insurer's capacity to sue, the Court ruled that Sumimoto Corp. may be a foreign corporation doing business in the Philippines without a license, but, it does not follow that respondent, as lawful subrogee to the claim of Sumimoto Corp. against petitioner, has no capacity to sue in our jurisdiction. Respondent insurer had alleged that it is not doing business in the Philippines but is suing under an isolated transaction. The law does not prohibit this. Foreign corporations need no license to perform a single act of business. On the issue of petitioner's negligence in the care and custody of the consignee's goods, the Court ruled that it was sufficiently established that petitioner had failed to keep its vessel in seaworthy condition. The tank top of the vessel was rusty, thinning and with several holes at different places.

SYLLABUS

1. COMMERCIAL LAW; INSURANCE; SUBROGATION; ELUCIDATED. — Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies

or securities. The principle covers the situation under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means which the creditor could employ to enforce payment. The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted – he cannot acquire any claim, security, or remedy the subrogor did not have. In other words, a subrogee cannot succeed to a right not possessed by the subrogor. A subrogee in effect steps into the shoes of the insured and can recover only if insured likewise could have recovered. However, when the insurer succeeds to the rights of the insured, he does so only in relation to the debt. The person substituted (the insurer) will succeed to all the rights of the creditor (the insured), having reference to the debt due the latter. In the instant case, the rights inherited by the insurer, respondent Chubb and Sons, pertain only to the payment it made to the insured Sumitomo as stipulated in the insurance contract between them, and which amount it now seeks to recover from petitioner Lorenzo Shipping which caused the loss sustained by the insured Sumitomo. The capacity to sue of respondent Chubb and Sons could not perchance belong to the group of rights, remedies or securities pertaining to the payment respondent insurer made for the loss which was sustained by the insured Sumitomo and covered by the contract of insurance.

2. CIVIL LAW; PERSONS; CIVIL PERSONALITIES; CAPACITY TO SUE; ELUCIDATED. — Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any other disqualifications of a party.

3. COMMERCIAL LAW; CORPORATIONS; FOREIGN CORPORATIONS DOING BUSINESS IN THE PHILIPPINES WITHOUT LICENSE DEPRIVED FROM

BRINGING ACTION; ISOLATED TRANSACTION NOT INCLUDED. — The law on corporation is clear in depriving foreign corporations which are doing business in the Philippines without a license from bringing or maintaining actions before, or intervening in Philippine courts. Art. 133 of the Corporation Code states: *Doing business without a license.* – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. The law does not prohibit foreign corporations from performing single acts of business. A foreign corporation needs no license to sue before Philippine courts on an isolated transaction. As held by this Court in the case of *Marshall-Wells Company vs. Elser & Company:* The object of the statute (Secs. 68 and 69, Corporation Law) was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts . . . the implication of the law (being) that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business for the Philippines, from seeking redress in the Philippine courts. Likewise, this Court ruled in *Universal Shipping Lines, Inc. vs. Intermediate Appellate Court* that: . . . The private respondent may sue in the Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country, for it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license, which bars a foreign corporation from access to our courts.

4. ID.; ID.; ID.; ID.; ISOLATED TRANSACTION; ELUCIDATED. — We reject the claim of petitioner Lorenzo Shipping that respondent Chubb and Sons is not suing under an isolated transaction because the steel pipes, subject of this case, are covered by two (2) bills of lading; hence, two transactions. The stubborn fact remains that these two (2) bills of lading spawned from the single marine insurance policy that

respondent Chubb and Sons issued in favor of the consignee Sumitomo, covering the damaged steel pipes. The execution of the policy is a single act, an isolated transaction. This Court has not construed the term "isolated transaction" to literally mean "one" or a mere single act. In *Eriks Pte. Ltd. vs. Court of Appeals*, this Court held that: . . . What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase *"isolated transaction*" has a definite and fixed meaning, *i.e. a transaction or series of transactions* set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions. In the case of *Gonzales vs. Raquiza, et al.,* three contracts, hence three transactions were challenged as void on the ground that the three American corporations which are parties to the contracts are not licensed to do business in the Philippines. This Court held that "one single or isolated business transaction does not constitute *doing business* within the meaning of the law. Transactions which are occasional, incidental, and casual — not of a character to indicate a purpose to engage in business — do not constitute the doing or engaging in business as contemplated by law. Where the three transactions indicate no intent by the foreign corporation to engage in a continuity of transactions, they do not constitute doing business in the Philippines."

5. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST; INSURER BY RIGHT OF SUBROGATION. — Rule 3, Section 2 of the 1997 Rules of Civil Procedure defines a real party in interest as one who is entitled to the avails of any judgment rendered in a suit, or who stands to be benefited or injured by it. Where an insurance company as subrogee pays the insured of the entire loss it suffered, the insurer-subrogee is the only real party in interest and must sue in its own name to enforce its right of subrogation against the third party which caused the loss. This is because the insurer in such case having fully compensated its insured,

which payment covers the loss in full, is subrogated to the insured's claims arising from such loss. The subrogated insurer becomes the owner of the claim and, thus entitled to the entire fruits of the action. It then, thus possesses the right to enforce the claim and the significant interest in the litigation. In the case at bar, it is clear that respondent insurer was suing on its own behalf in order to enforce its right of subrogation.

6. CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; "CLEAN BILL OF LADING"; ELUCIDATED. — A bill of lading, aside from being a contract and a receipt, is also a symbol of the goods covered by it. A bill of lading which has no notation of any defect or damage in the goods is called a "clean bill of lading." A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.

7. ID.; ID.; ID.; VIGILANCE OVER GOODS; PRESUMPTION OF NEGLIGENCE IN CASE OF DAMAGE; CASE AT BAR. — The case law teaches us that mere proof of delivery of goods in good order to a carrier and the subsequent arrival in damaged condition at the place of destination raises a *prima facie* case against the carrier. In the case at bar, M/V Lorcon IV of petitioner Lorenzo Shipping received the steel pipes in good order and condition, evidenced by the clean bills of lading it issued. When the cargo was unloaded from petitioner Lorenzo Shipping's vessel at the Sasa Wharf in Davao City, the steel pipes were rusted all over. M/V San Mateo Victory of respondent Gearbulk, Ltd, which received the cargo, issued Bills of Lading covering the entire shipment, all of which were marked "ALL UNITS HEAVILY RUSTED." R.J. Del Pan Surveyors found that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was rusty, thinning and perforated, thereby exposing the cargo to sea water. There can be no other conclusion than that the cargo was damaged while on board the vessel of petitioner Lorenzo Shipping, and that the damage was due to the latter's negligence. In the case at bar, not only did the legal presumption of negligence attach to petitioner Lorenzo Shipping upon the occurrence of damage to the cargo. More so, the negligence of petitioner was sufficiently established. Petitioner Lorenzo Shipping failed to keep its vessel in seaworthy condition. R.J. Del Pan Surveyors found the tank top of M/V Lorcon IV to be "rusty, thinning, and with several holes at different places." Significantly, petitioner Lorenzo

Shipping did not even attempt to present any contrary evidence. Neither did it offer any proof to establish any of the causes that would exempt it from liability for such damage. It merely alleged that the: (1) packaging of the goods was defective; and (2) claim for damages has prescribed.

8. COMMERCIAL LAW; COMMON CARRIERS; PRESCRIPTION OF CLAIM FOR DAMAGES. — Art. 366 of the Code of Commerce states: Within the twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average, which may be found therein upon the opening of the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such package, in which case the claim shall be admitted only at the time of the receipt. After the periods mentioned have elapsed, or transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. The twenty-four-hour period prescribed by Art. 366 of the Code of Commerce within which claims must be presented does not begin to run until the consignee has received such possession of the merchandise that he may exercise over it the ordinary control pertinent to ownership. In other words, there must be delivery of the cargo by the carrier to the consignee at the place of destination.

9. ID.; ID.; LAW ON PLACE OF DESTINATION APPLIES. — We find no merit to the contention of respondents Gearbulk and Transmarine that American law governs the contract of carriage because the U.S.A. is the country of destination. Petitioner Lorenzo Shipping, through its M/V Lorcon IV, carried the goods from Manila to Davao City. Thus, as against petitioner Lorenzo Shipping, the place of destination is Davao City. Hence, Philippine law applies.

APPEARANCES OF COUNSEL

Roberto A. Abad for petitioner.

Castillo Laman Tan Pantaleon and San Jose for Chubbs & Sons, Inc.

D E C I S I O N

PUNO, *J.*:

On appeal is the Court of Appeals' August 14, 2000 Decision[1] in CA-G.R. CV No. 61334 and March 28, 2001 Resolution[2] affirming the March 19, 1998 Decision[3] of the Regional Trial Court of Manila which found petitioner liable to pay respondent Chubb and Sons, Inc. attorney's fees and costs of suit.

Petitioner Lorenzo Shipping Corporation (Lorenzo Shipping, for short), a domestic corporation engaged in coastwise shipping, was the carrier of 581 bundles of black steel pipes, the subject shipment, from Manila to Davao City. From Davao City, respondent Gearbulk, Ltd., a foreign corporation licensed as a common carrier under the laws of Norway and doing business in the Philippines through its agent, respondent Philippine Transmarine Carriers, Inc. (Transmarine Carriers, for short), a domestic corporation, carried the goods on board its vessel M/V San Mateo Victory to the United States, for the account of Sumitomo Corporation. The latter, the consignee, is a foreign corporation organized under the laws of the United States of America. It insured the shipment with respondent Chubb and Sons, Inc., a foreign corporation organized and licensed to engage in insurance business under the laws of the United States of America.

The facts are as follows:

On November 21, 1987, Mayer Steel Pipe Corporation of Binondo, Manila, loaded 581 bundles of ERW black steel pipes worth US$137,912.84[4] on board the vessel M/V Lorcon IV, owned by petitioner Lorenzo Shipping, for shipment to Davao City. Petitioner Lorenzo Shipping issued a clean bill of lading

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[1] CA *Rollo*, pp. 148-158.

[2] *Id.*, p. 190.

[3] Records, vol. 2, pp. 591-593.

[4] Exhibit "D," Records, vol. 2, p. 108.

designated as Bill of Lading No. T-3[5] for the account of the consignee, Sumitomo Corporation of San Francisco, California, USA, which in turn, insured the goods with respondent Chubb and Sons, Inc.[6]

The M/V Lorcon IV arrived at the Sasa Wharf in Davao City on December 2, 1987. Respondent Transmarine Carriers received the subject shipment which was discharged on December 4, 1987, evidenced by Delivery Cargo Receipt No. 115090.[7] It discovered seawater in the hatch of M/V Lorcon IV, and found the steel pipes submerged in it. The consignee Sumitomo then hired the services of R.J. Del Pan Surveyors to inspect the shipment prior to and subsequent to discharge. Del Pan's Survey Report[8] dated December 4, 1987 showed that the subject shipment was no longer in good condition, as in fact, the pipes were found with rust formation on top and/or at the sides. Moreover, the surveyor noted that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was "rusty, thinning, and with several holes at different places." The rusty condition of the cargo was noted on the mate's receipts and the checker of M/V Lorcon IV signed his *conforme* thereon.[9]

After the survey, respondent Gearbulk loaded the shipment on board its vessel M/V San Mateo Victory, for carriage to the United States. It issued Bills of Lading Nos. DAV/OAK 1 to 7,[10] covering 364 bundles of steel pipes to be discharged at Oakland, U.S.A., and Bills of Lading Nos. DAV/SEA 1 to 6,[11] covering 217 bundles of steel pipes to be discharged at Vancouver, Washington, U.S.A. All bills of lading were marked "ALL UNITS HEAVILY RUSTED."

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[5] Exhibit "F," Records, vol. 2, p. 109.

[6] Exhibits "J" to "J-1-A," Chubb Marine Policy No. JO 37000, Records, vol. 2, pp. 32-37.

[7] Exhibit "5," Records, vol. 2, p. 347.

[8] Exhibit "Y," Records, vol. 3, p. 50.

[9] Records, vol. 2, pp. 551-552.

[10] Exhibits "G-1" to "G-7," Records, vol. 2, pp. 9-15.

[11] Exhibits "N" to "N-5," Records, vol. 3, pp. 323-328.

While the cargo was in transit from Davao City to the U.S.A., consignee Sumitomo sent a letter[12] of intent dated December 7, 1987, to petitioner Lorenzo Shipping, which the latter received on December 9, 1987. Sumitomo informed petitioner Lorenzo Shipping that it will be filing a claim based on the damaged cargo once such damage had been ascertained. The letter reads:

> Please be advised that the merchandise herein below noted has been landed in bad order ex-Manila voyage No. 87-19 under B/L No. T-3 which arrived at the port of Davao City on December 2, 1987.
>
> The extent of the loss and/or damage has not yet been determined but apparently all bundles are corroded. We reserve the right to claim as soon as the amount of claim is determined and the necessary supporting documents are available.
>
> Please find herewith a copy of the survey report which we had arranged for after unloading of our cargo from your vessel in Davao.
>
> We trust that you shall make everything in order.

On January 17, 1988, M/V San Mateo Victory arrived at Oakland, California, U.S.A., where it unloaded 364 bundles of the subject steel pipes. It then sailed to Vancouver, Washington on January 23, 1988 where it unloaded the remaining 217 bundles. Toplis and Harding, Inc. of San Francisco, California, surveyed the steel pipes, and also discovered the latter heavily rusted. When the steel pipes were tested with a silver nitrate solution, Toplis and Harding found that they had come in contact with salt water. The survey report,[13] dated January 28, 1988 states:

x x x x x x x x x

> We entered the hold for a close examination of the pipe, which revealed moderate to heavy amounts of patchy and streaked dark red/orange rust on all lifts which were visible. Samples of the shipment were tested with a solution of silver nitrate revealing both positive and occasional negative chloride reactions, indicating pipe had come in contact with salt water. In addition, all tension applied metal straps

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[12] Exhibit "1," Records, vol. 2, p. 342.

[13] Exhibit "I," Records, vol. 2, pp. 28-32.

were very heavily rusted, and also exhibited chloride reactions on testing with silver nitrate.

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It should be noted that subject bills of lading bore the following remarks as to conditions of goods: "ALL UNITS HEAVILY RUSTED." Attached herein is a copy of a survey report issued by Del Pan Surveyors of Davao City, Philippines dated, December 4, 1987 at Davao City, Philippines, which describes conditions of the cargo as sighted aboard the vessel "LORCON IV," prior to and subsequent to discharge at Davao City. Evidently, the aforementioned rust damages were apparently sustained while the shipment was in the custody of the vessel "LORCON IV," prior to being laden on board the vessel "SAN MATEO VICTORY" in Davao.

Due to its heavily rusted condition, the consignee Sumitomo rejected the damaged steel pipes and declared them unfit for the purpose they were intended.[14] It then filed a marine insurance claim with respondent Chubb and Sons, Inc. which the latter settled in the amount of US$104,151.00.[15]

On December 2, 1988, respondent Chubb and Sons, Inc. filed a complaint[16] for collection of a sum of money, docketed as Civil Case No. 88-47096, against respondents Lorenzo Shipping, Gearbulk, and Transmarine. Respondent Chubb and Sons, Inc. alleged that it is not doing business in the Philippines, and that it is suing under an isolated transaction.

On February 21, 1989, respondents Gearbulk and Transmarine filed their answer[17] with counterclaim and cross-claim against petitioner Lorenzo Shipping denying liability on the following grounds: (a) respondent Chubb and Sons, Inc. has no capacity to sue before Philippine courts; (b) the action should be dismissed on the ground of *forum non conveniens*; (c) damage to the steel pipes was due to the inherent nature of the goods or to the insufficiency

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[14] Records, vol. 1, p. 4.

[15] Exhibits "A" and "B," Records, vol. 2, pp. 6-7.

[16] Records, vol. 1, pp. 1-4.

[17] Records, vol. 1, pp. 25-30.

of packing thereof; (d) damage to the steel pipes was not due to their fault or negligence; and, (e) the law of the country of destination, U.S.A., governs the contract of carriage.

Petitioner Lorenzo Shipping filed its answer with counterclaim on February 28, 1989, and amended it on May 24, 1989. It denied liability, alleging, among others: (a) that rust easily forms on steel by mere exposure to air, moisture and other marine elements; (b) that it made a disclaimer in the bill of lading; (c) that the goods were improperly packed; and, (d) prescription, laches, and extinguishment of obligations and actions had set in.

The Regional Trial Court ruled in favor of the respondent Chubb and Sons, Inc., finding that: (1) respondent Chubb and Sons, Inc. has the right to institute this action; and, (2) petitioner Lorenzo Shipping was negligent in the performance of its obligations as a carrier. The dispositive portion of its Decision states:

> **WHEREFORE**, the judgment is hereby rendered ordering Defendant Lorenzo Shipping Corporation to pay the plaintiff the sum of US$104,151.00 or its equivalent in Philippine peso at the current rate of exchange with interest thereon at the legal rate from the date of the institution of this case until fully paid, the attorney's fees in the sum of ₱50,000.00, plus the costs of the suit, and dismissing the plaintiff's complaint against defendants Gearbulk, Ltd. and Philippine Transmarine Carriers, Inc., for lack of merit, and the two defendants' counterclaim, there being no showing that the plaintiff had filed this case against said defendants in bad faith, as well as the two defendants' cross-claim against Defendant Lorenzo Shipping Corporation, for lack of factual basis.[18]

Petitioner Lorenzo Shipping appealed to the Court of Appeals insisting that: (a) respondent Chubb and Sons does not have capacity to sue before Philippine courts; and, (b) petitioner Lorenzo Shipping was not negligent in the performance of its obligations as carrier of the goods. The appellate court denied the petition and affirmed the decision of the trial court.

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[18] Records, vol. 2, p. 596.

The Court of Appeals likewise denied petitioner Lorenzo Shipping's Motion for Reconsideration[19] dated September 3, 2000, in a Resolution[20] promulgated on March 28, 2001.

Hence, this petition. Petitioner Lorenzo Shipping submits the following issues for resolution:

(1) Whether or not the prohibition provided under Art. 133 of the Corporation Code applies to respondent Chubb, it being a mere subrogee or assignee of the rights of Sumitomo Corporation, likewise a foreign corporation admittedly doing business in the Philippines without a license;

(2) Whether or not Sumitomo, Chubb's predecessor-in-interest, validly made a claim for damages against Lorenzo Shipping within the period prescribed by the Code of Commerce;

(3) Whether or not a delivery cargo receipt without a notation on it of damages or defects in the shipment, which created a *prima facie* presumption that the carrier received the shipment in good condition, has been overcome by convincing evidence;

(4) Assuming that Lorenzo Shipping was guilty of some lapses in transporting the steel pipes, whether or not Gearbulk and Transmarine, as common carriers, are to share liability for their separate negligence in handling the cargo.[21]

In brief, we resolve the following issues:

(1) whether respondent Chubb and Sons has capacity to sue before the Philippine courts; and,

(2) whether petitioner Lorenzo Shipping is negligent in carrying the subject cargo.

Petitioner argues that respondent Chubb and Sons is a foreign corporation not licensed to do business in the Philippines, and is not suing on an isolated transaction. It contends that because

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[19] CA *Rollo,* pp. 162-181.

[20] *Id*., p. 190.

[21] *Rollo,* pp. 16-17.

the respondent Chubb and Sons is an insurance company, it was merely subrogated to the rights of its insured, the consignee Sumitomo, after paying the latter's policy claim. Sumitomo, however, is a foreign corporation doing business in the Philippines without a license and does not have capacity to sue before Philippine courts. Since Sumitomo does not have capacity to sue, petitioner then concludes that, neither the subrogee-respondent Chubb and Sons could sue before Philippine courts.

We disagree with petitioner.

In the first place, petitioner failed to raise the defense that Sumitomo is a foreign corporation doing business in the Philippines without a license. It is therefore estopped from litigating the issue on appeal especially because it involves a question of fact which this Court cannot resolve. Secondly, assuming *arguendo* that Sumitomo cannot sue in the Philippines, it does not follow that respondent, as subrogee, has also no capacity to sue in our jurisdiction.

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities.[22] The principle covers the situation under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy.[23] It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means which the creditor could employ to enforce payment.[24]

The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted

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[22] *Black's Law Dictionary* (6th ed., 1990).

[23] *Id.*, (7th ed., 1999).

[24] *Riemer vs. Columbia Medical Plan, Inc.*, 358 Md. 222, 747 A.2d 677 (2000).

— he cannot acquire any claim, security, or remedy the subrogor did not have.[25] In other words, a subrogee cannot succeed to a right not possessed by the subrogor.[26] A subrogee in effect steps into the shoes of the insured and can recover only if insured likewise could have recovered.

However, when the insurer succeeds to the rights of the insured, he does so only in relation to the debt. The person substituted (the insurer) will succeed to all the rights of the creditor (the insured), having reference to the debt due the latter.[27] In the instant case, the rights inherited by the insurer, respondent Chubb and Sons, pertain only to the payment it made to the insured Sumitomo as stipulated in the insurance contract between them, and which amount it now seeks to recover from petitioner Lorenzo Shipping which caused the loss sustained by the insured Sumitomo. The capacity to sue of respondent Chubb and Sons could not perchance belong to the group of rights, remedies or securities pertaining to the payment respondent insurer made for the loss which was sustained by the insured Sumitomo and covered by the contract of insurance. Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any other disqualifications of a party.[28] Respondent Chubb and Sons who was plaintiff in the trial court does not possess any of these disabilities. On the contrary, respondent Chubb and Sons has

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[25] *Heritage Mut. Ins. Co. vs. Truck Ins. Exchange*, 184 Wis. 2d 247, 516 N.W.2d 8 (Ct. App. 1994).

[26] *Ohio Mut. Ins. Assn., United Ohio Ins. Co. v. Warlaumont*, 124 Ohio App. 3d 473, 706 N.E.2d 793 (12th Dist. Brown County 1997).

[27] *Home Owners' Loan Corp. vs. Henson*, 217 Ind. 554, 29 N.E.2d 873 (1940).

[28] *Columbia Pictures, Inc. vs. Court of Appeals*, 261 SCRA 144 (1996).

satisfactorily proven its capacity to sue, after having shown that it is not doing business in the Philippines, but is suing only under an isolated transaction, *i.e.*, under the one (1) marine insurance policy issued in favor of the consignee Sumitomo covering the damaged steel pipes.

The law on corporations is clear in depriving foreign corporations which are doing business in the Philippines without a license from bringing or maintaining actions before, or intervening in Philippine courts. Art. 133 of the Corporation Code states:

> *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The law does not prohibit foreign corporations from performing single acts of business. A foreign corporation needs no license to sue before Philippine courts on an isolated transaction.[29] As held by this Court in the case of *Marshall-Wells Company vs. Elser & Company*:[30]

> The object of the statute (Secs. 68 and 69, Corporation Law) was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts . . . the implication of the law (being) that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business for the Philippines, from seeking redress in the Philippine courts.

Likewise, this Court ruled in *Universal Shipping Lines, Inc. vs. Intermediate Appellate Court*[31] that:

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[29] *Eastboard Navigation Ltd. vs. Juan Ismael & Co., Inc.*, 102 Phil 1 (1957); *Aetna Casualty & Surety Co. vs. Pacific Star Lines*, 80 SCRA 635 (1977); *Facilities Management Corp. vs. De la Osa*, 89 SCRA 131 (1979); *Hatibhai Bulakhidas vs. Navarro*, 142 SCRA 1 (1986).

[30] 46 Phil. 70, 74 (1924).

[31] 188 SCRA 170 (1990).

> . . . The private respondent may sue in the Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country, for it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license, which bars a foreign corporation from access to our courts.

We reject the claim of petitioner Lorenzo Shipping that respondent Chubb and Sons is not suing under an isolated transaction because the steel pipes, subject of this case, are covered by two (2) bills of lading; hence, two transactions. The stubborn fact remains that these two (2) bills of lading spawned from the single marine insurance policy that respondent Chubb and Sons issued in favor of the consignee Sumitomo, covering the damaged steel pipes. The execution of the policy is a single act, an isolated transaction. This Court has not construed the term "isolated transaction" to literally mean "one" or a mere single act. In *Eriks Pte. Ltd. vs. Court of Appeals*, this Court held that:[32]

> . . . What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "*isolated transaction*" has a definite and fixed meaning, *i.e. a transaction or series of transactions* set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions. [Italics supplied.]

In the case of *Gonzales vs. Raquiza, et al.*,[33] three contracts, hence three transactions were challenged as void on the ground that the three American corporations which are parties to the contracts are not licensed to do business in the Philippines. This

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[32] 267 SCRA 567 (1997); 13 Words and Phrases, Permanent Edition 195 *citing Brandtjen & Kluge vs. Nanson*, 115 P2d 731, 733, 9 Wash. 2d 362.

[33] 180 SCRA 254 (1989), *citing Antam Consolidated, Inc. v. Court of Appeals*, 143 SCRA 288 (1986).

Court held that "one single or isolated business transaction does not constitute *doing business* within the meaning of the law. Transactions which are occasional, incidental, and casual — not of a character to indicate a purpose to engage in business — do not constitute the doing or engaging in business as contemplated by law. Where the three transactions indicate no intent by the foreign corporation to engage in a continuity of transactions, they do not constitute doing business in the Philippines."

Furthermore, respondent insurer Chubb and Sons, by virtue of the right of subrogation provided for in the policy of insurance,[34] is the real party in interest in the action for damages before the court *a quo* against the carrier Lorenzo Shipping to recover for the loss sustained by its insured. Rule 3, Section 2 of the 1997 Rules of Civil Procedure defines a real party in interest as one who is entitled to the avails of any judgment rendered in a suit, or who stands to be benefited or injured by it. Where an insurance company as subrogee pays the insured of the entire loss it suffered, the insurer-subrogee is the only real party in interest and must sue in its own name[35] to enforce its right of subrogation against the third party which caused the loss. This is because the insurer in such case having fully compensated its insured, which payment covers the loss in full, is subrogated to the iAnsured's claims arising from such loss. The subrogated insurer becomes the owner of the claim and, thus entitled to the entire fruits of the action.[36] It then, thus possesses the right to enforce the claim and the significant interest in the litigation.[37] In

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[34] Exhibit "J," Records, vol. 2, p. 55.

[35] *United States v. Aetna Casualty & Surety Co., 338 U.S.* 366, 380-81, 70 S.Ct. 207, 215, 94 L.Ed. 171 (1949); *Frank Briscoe Co. v. Georgia Sprinkler Co*. (1983, CA11 Ga) 713 F2d 1500; *Royal Ins. Co. of America v. U.S.*, 998 F. Supp. 351 (S.D.N.Y. 1998).

[36] *Land v. Tall House Bldg. Co*., 563 S.E.2d 8 (N.C. App. 2002), *citing Burgess v. Trevathan*, 236 N.C. 157, 160, 72 S.E.2d 231, 233 (1952); *Metropolitan Property & Cas. v. Harper*, 7 P.3d 541, 168 Or. App. 358 (Or. App. 2000); *Shambley v. Jobe-Blackley Plumbing and Heating Co*., 142 S.E.2d 18, 264 N.C. 456, 13 A.L.R.3d 224 (N.C. 1965).

[37] *Virginia Elec. & Power Co. v. Westinghouse Elec. Corp.*, 485 F.2d 78, 83 (4th Cir. 1973).

the case at bar, it is clear that respondent insurer was suing on its own behalf in order to enforce its right of subrogation.

On the second issue, we affirm the findings of the lower courts that petitioner Lorenzo Shipping was negligent in its care and custody of the consignee's goods.

The steel pipes, subject of this case, were in good condition when they were loaded at the port of origin (Manila) on board petitioner Lorenzo Shipping's M/V Lorcon IV en route to Davao City. Petitioner Lorenzo Shipping issued clean bills of lading covering the subject shipment. A bill of lading, aside from being a contract[38] and a receipt,[39] is also a symbol[40] of the goods covered by it. A bill of lading which has no notation of any defect or damage in the goods is called a "clean bill of lading."[41] A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.[42]

The case law teaches us that mere proof of delivery of goods in good order to a carrier and the subsequent arrival in damaged condition at the place of destination raises a *prima facie* case against the carrier.[43] In the case at bar, M/V Lorcon IV of petitioner Lorenzo Shipping received the steel pipes in good order and condition, evidenced by the clean bills of lading it issued. When the cargo was unloaded from petitioner Lorenzo Shipping's vessel at the Sasa Wharf in Davao City, the steel pipes were rusted all over. M/V San Mateo Victory of respondent Gearbulk, Ltd, which received the cargo, issued Bills of Lading

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[38] Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* vol. IV, 1987 ed., p. 119, citing *Government vs. Ynchausti & Co.,* 40 Phil. 219 (1919).

[39] 28 Am Jur 2d 264.

[40] Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* vol. IV, 1987 ed., p. 119, citing *Williston on Contracts,* Sec. 405 b.

[41] *Id.,* p. 121, *citing* 2 *Williston on Sales,* Sec. 405 c.

[42] *Westway Coffee Corp. vs. M/V Netuno,* 675 F.2d 30, 32 (1982).

[43] *Coastwise Lighterage Corp. vs. Court of Appeals,* 245 SCRA 796 (1995).

Nos. DAV/OAK 1 to 7 and Nos. DAV/SEA 1 to 6 covering the entire shipment, all of which were marked "ALL UNITS HEAVILY RUSTED." R.J. Del Pan Surveyors found that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was rusty, thinning and perforated, thereby exposing the cargo to sea water. There can be no other conclusion than that the cargo was damaged while on board the vessel of petitioner Lorenzo Shipping, and that the damage was due to the latter's negligence. In the case at bar, not only did the legal presumption of negligence attach to petitioner Lorenzo Shipping upon the occurrence of damage to the cargo.[44] More so, the negligence of petitioner was sufficiently established. Petitioner Lorenzo Shipping failed to keep its vessel in seaworthy condition. R.J. Del Pan Surveyors found the tank top of M/V Lorcon IV to be "rusty, thinning, and with several holes at different places." Witness Captain Pablo Fernan, Operations Manager of respondent Transmarine Carriers, likewise observed the presence of holes at the deck of M/V Lorcon IV.[45] The unpatched holes allowed seawater, reaching up to three (3) inches deep, to enter the flooring of the hatch of the vessel where the steel pipes were stowed, submerging the latter in sea water.[46] The contact with sea water caused the steel pipes to rust. The silver nitrate test, which Toplis and Harding employed, further verified this conclusion.[47] Significantly, petitioner Lorenzo Shipping did not even attempt to present any contrary evidence. Neither did it offer any proof to establish any of the causes that would exempt

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[44] Article 1735, Civil Code. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733.

[45] Deposition, Pablo M. Fernan, 16 April 1996, pp. 94-95.

[46] Deposition, Edgar C. Aduna, 20 February 1990, pp. 7-8, 32; Deposition, Segundo Grande, 15 April 1996, pp. 8-10.

[47] Deposition, Bernard Wormgoor, 05 December 1989, pp. 16-17, 33-34.

it from liability for such damage.[48] It merely alleged that the: (1) packaging of the goods was defective; and (2) claim for damages has prescribed.

To be sure, there is evidence that the goods were packed in a superior condition. John M. Graff, marine surveyor of Toplis and Harding, examined the condition of the cargo on board the vessel San Mateo Victory. He testified that the shipment had superior packing "because the ends were covered with plastic, woven plastic. Whereas typically they would not go to that bother . . . Typically, they come in with no plastic on the ends. They might just be banded, no plastic on the ends . . ."[49]

On the issue of prescription of respondent Chubb and Sons' claim for damages, we rule that it has not yet prescribed at the time it was made.

Art. 366 of the Code of Commerce states:

> Within the twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average, which may be found therein upon the opening of the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such package, in which case the claim shall be admitted only at the time of the receipt.

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[48] Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act or omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.

[49] Deposition, John M. Graff, 05 December 1989, pp. 12-13, 36.

After the periods mentioned have elapsed, or transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

A somewhat similar provision is embodied in the Bill of Lading No. T-3 which reads:[50]

NOTE: No claim for damage or loss shall be honored twenty-four (24) hours after delivery.

(Ref. Art. 366 C Com.)

The twenty-four-hour period prescribed by Art. 366 of the Code of Commerce within which claims must be presented does not begin to run until the consignee has received such possession of the merchandise that he may exercise over it the ordinary control pertinent to ownership.[51] In other words, there must be delivery of the cargo by the carrier to the consignee at the place of destination.[52] In the case at bar, consignee Sumitomo has not received possession of the cargo, and has not physically inspected the same at the time the shipment was discharged from M/V Lorcon IV in Davao City. Petitioner Lorenzo Shipping failed to establish that an authorized agent of the consignee Sumitomo received the cargo at Sasa Wharf in Davao City. Respondent Transmarine Carriers as agent of respondent Gearbulk, Ltd., which carried the goods from Davao City to the United States, and the principal, respondent Gearbulk, Ltd. itself, are not the authorized agents as contemplated by law. What is clear from the evidence is that the consignee received and took possession of the entire shipment only when the latter reached the United States' shore. Only then was delivery made and completed. And only then did the 24-hour prescriptive period start to run.

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[50] Exhibit "2," Records, vol. 2, p. 343.

[51] Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* vol. IV, 1987 ed., p. 138, *citing Cordoba vs. Warner, Barnes and Co.*, 1 Phil 7, 10 (1901).

[52] *Ibid., citing New Zealand Ins. Co., Ltd. vs. Choa Joy*, 97 Phil. 646 (1955).

Finally, we find no merit to the contention of respondents Gearbulk and Transmarine that American law governs the contract of carriage because the U.S.A. is the country of destination. Petitioner Lorenzo Shipping, through its M/V Lorcon IV, carried the goods from Manila to Davao City. Thus, as against petitioner Lorenzo Shipping, the place of destination is Davao City. Hence, Philippine law applies.

IN VIEW THEREOF, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 61334 dated August 14, 2000 and its Resolution dated March 28, 2001 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 148233. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUISITO D. BUSTINERA,** *appellant*.

SYNOPSIS

Appellant was hired as taxi driver of ESC Transport and assigned to drive a Daewoo Racer with plate no. PWH-266. On December 25, 1996, appellant reported for work and drove the taxi but failed to return it on the same day as he was supposed to. The taxi was later recovered on January 9, 1997 in Lagro, Quezon City. The trial court ruled appellant guilty of qualified theft and hence, this appeal.

Appellant was guilty of carnapping under a special law, RA 6539, and not qualified theft under the Revised Penal Code. Carnapping is defined as the taking, with intent to gain, of a

motor vehicle belonging to another without the latter's consent x x x. Here, while the nature of appellant's possession of the taxi was initially lawful, his act of not returning it to its owner, which is contrary to company practice and against the owner's consent, transformed the character of the possession into an unlawful one. And the mere use of the thing unlawfully taken constitutes gain. Thus, in conformity with RA 6539, the Court properly sentenced appellant to an indeterminate penalty of 14 years and 8 months, as minimum, to 17 years and 4 months, as maximum.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; WHOLE CASE OPEN FOR REVIEW. —** It is settled that an appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment even if they have not been specifically assigned.

2. **STATUTORY CONSTRUCTION; RULE WHEN STATUTES ARE IN *PARI MATERIA*.—** When statutes are in *pari materia* or when they relate to the same person or thing, or to the same class of persons or things, or cover the same specific or particular subject matter, or have the same purpose or object, the rule dictates that they should be construed together — *interpretare et concordare leges legibus, est optimus interpretandi modus*. Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence, as this Court explained in *City of Naga v. Agna, viz:* x x x *In construing them the old statutes relating to the same subject matter should be compared with the new provisions and if possible by reasonable construction, both should be so construed that effect may be given to every provision of each. However, when the new provision and the old relating to the same subject cannot be reconciled the former shall prevail as it is the latter expression of the legislative will. . .*

3. **CRIMINAL LAW; THEFT; ELEMENTS. —** The elements of the crime of theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done

with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

4. ID.; QUALIFIED THEFT; ELEMENTS. — Theft is qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant; (2) the theft is committed with grave abuse of confidence; (3) the property stolen is either a *motor vehicle*, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

5. ID.; RA NO. 6539 ON CARNAPPING; DISTINGUISHED FROM QUALIFIED THEFT. — Appellant was convicted of qualified theft under Article 310 of the Revised Penal Code, as amended for the unlawful taking of a motor vehicle. However, *Article 310 has been modified, with respect to certain vehicles*, by Republic Act No. 6539, as amended, otherwise known as "AN ACT PREVENTING AND PENALIZING CARNAPPING." Section 2 of Republic Act No. 6539, as amended defines "carnapping" as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." The elements of carnapping are thus: (1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain. Carnapping is essentially the robbery or theft of a motorized vehicle, the concept of unlawful taking in theft, robbery and carnapping being the same. It is to be noted, however, that while the anti-carnapping law penalizes the unlawful taking of motor vehicles, it excepts from its coverage certain vehicles such as roadrollers, trolleys, street-sweepers, sprinklers, lawn mowers, amphibian trucks and cranes if not used on public highways, vehicles which run only on rails and tracks, and tractors, trailers and tractor engines of all kinds and used exclusively for agricultural purposes. By implication, the theft or robbery of the foregoing vehicles would

be covered by Article 310 of the Revised Penal Code, as amended and the provisions on robbery, respectively. From the foregoing, since appellant is being accused of the unlawful taking of a Daewoo sedan, it is the anti-carnapping law and not the provisions of qualified theft which would apply as the said motor vehicle does not fall within the exceptions mentioned in the anti-carnapping law.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; FACTS ALLEGED IN THE INFORMATION, NOT THE DESIGNATION OF OFFENSE, THAT DETERMINES THE REAL NATURE OF THE CRIME. — The designation in the information of the offense committed by appellant as one for qualified theft notwithstanding, appellant may still be convicted of the crime of carnapping. For while it is necessary that the statutory designation be stated in the information, a mistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect as it is not the designation that is controlling but the facts alleged in the information which determines the real nature of the crime. In the case at bar, the information alleges that appellant, with intent to gain, took the taxi owned by Cipriano without the latter's consent. Thus, the indictment alleges every element of the crime of carnapping, and the prosecution proved the same.

7. CRIMINAL LAW; RA NO. 6539 ON CARNAPPING; UNLAWFUL TAKING. — That appellant brought out the taxi on December 25, 1996 and did not return it on the same day as he was supposed to is admitted. Unlawful taking, or *apoderamiento,* is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. While the nature of appellant's possession of the taxi was initially lawful as he was hired as a taxi driver and was entrusted possession thereof, his act of not returning it to its owner, which is contrary to company practice and against the owner's consent transformed the character of the possession into an unlawful one. Appellant himself admits that he was aware that his possession of the taxi was no longer with Cipriano's consent as the latter was already demanding its return.

8. ID.; ID.; ID.; INTENT TO GAIN. — Intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain. In *Villacorta v. Insurance Commission* which was reiterated in *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co., Inc.*, Justice Claudio Teehankee (later Chief Justice), interpreting the theft clause of an insurance policy, explained that, when one takes the motor vehicle of another without the latter's consent *even if the motor vehicle is later returned*, there is theft, there being intent to gain as the use of the thing unlawfully taken constitutes gain.

9. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT, RESPECTED. — The rule is well-entrenched that findings of fact of the trial court are accorded the highest degree of respect and will not be disturbed on appeal absent any clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and significance which, if considered, would alter the result of the case. The reason for the rule being that trial courts have the distinct advantage of having heard the witnesses themselves and observed their deportment and manner of testifying or their conduct and behavior during the trial.

10. ID.; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; TO HAVE COMPULSORY PROCESS ISSUED TO SECURE THE PRODUCTION OF EVIDENCE ON HIS BEHALF. — While appellant maintains that he signed on January 5, 1997 the record book indicating that he returned the taxi on the said date and paid Cipriano the amount of ₱4,500.00 as partial payment for the boundary fee, appellant did not produce the documentary evidence alluded to, to substantiate his claim. That such alleged record book is in the possession of Cipriano did not prevent him from producing it as appellant has the right to have compulsory process issued to secure the production of evidence on his behalf.

11. CRIMINAL LAW; RA NO. 6539 ON CARNAPPING; APPLICATION OF PENALTY DIFFERENT FROM QUALIFIED THEFT. — The trial court having convicted appellant of qualified theft instead of carnapping, it erred in the imposition of the penalty. While the information alleges that the crime was attended with grave abuse of confidence, the same cannot be appreciated as the suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of said Code, cannot be invoked when there is a legal impossibility of application, either by express provision or by necessary implication. Moreover, when the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules, for the application of penalties under the said Code or by other relevant statutory provisions are based on or applicable only to said rules for felonies under the Code.

12. ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR. — Appellant being then culpable for carnapping under the first clause of Section 14 of Republic Act No. 6539, as amended, the imposable penalty is imprisonment for not less than 14 years and 8 months, not more than 17 years and 4 months, the provisions of the Revised Penal Code cannot be applied suppletorily and, therefore, the alleged aggravating circumstance of grave abuse of confidence cannot be appreciated. Applying Section 1 of Act No. 4103 as amended, otherwise known as the Indeterminate Sentence Law, if the offense is punishable by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same – the penalty imposed being a range.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

From the decision[1] of the Regional Trial Court, Branch 217, Quezon City finding appellant Luisito D. Bustinera guilty beyond reasonable doubt of qualified theft[2] for the unlawful taking of a Daewoo Racer GTE Taxi and sentencing him to suffer the penalty of *reclusion perpetua*, he comes to this Court on appeal.

In an information[3] dated June 17, 1997, appellant was indicted as follows:

> The undersigned accuses LUISITO D. BUSTINERA of the crime of Qualified Theft, committed as follows:
>
> That on or about the 25th day of December up to the 9th day of January, 1997, in Quezon City, Philippines, the said accused being then employed as one [of] the taxi Drivers of Elias S. Cipriano, an Operator of several taxi cabs with business address at corner 44 Commonwealth Avenue, iliman (*sic*), this City, and as such has free access to the taxi he being driven, did then and there willfully, unlawfully and feloniously with intent to gain, with grave abuse of confidence reposed upon him by his employer and without the knowledge and consent of the owner thereof, take, steal and carry away a Daewoo Racer GTE Taxi with Plate No. PWH-266 worth ₱303,000.00, Philippine Currency, belonging to Elias S. Cipriano, to the damage and prejudice of the said offended party in the amount of ₱303,000.00.
>
> CONTRARY TO LAW.

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[1] Records at 90-94.

[2] ART. 310. *Qualified theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is *motor vehicle*, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis and italics supplied)

[3] Records at 1-2.

Upon arraignment[4] on March 27, 2000, appellant, assisted by counsel *de oficio*, entered a plea of not guilty. Thereafter, trial on the merits ensued.

From the evidence for the prosecution, the following version is established.

Sometime in 1996, Edwin Cipriano (Cipriano), who manages ESC Transport, the taxicab business of his father, hired appellant as a taxi driver and assigned him to drive a Daewoo Racer with plate number PWH-266. It was agreed that appellant would drive the taxi from 6:00 a.m. to 11:00 p.m., after which he would return it to ESC Transport's garage and remit the boundary fee in the amount of ₱780.00 per day.[5]

On December 25, 1996, appellant admittedly reported for work and drove the taxi, but he did not return it on the same day as he was supposed to.

Q: Now, Mr. Witness, on December 25, 1996, did you report for work?

A: Yes, sir.

Q: Now, since you reported for work, what are your duties and responsibilities as taxi driver of the taxi company?

A: *That we have to bring back the taxi at night with the boundary.*

Q: How much is your boundary?

A: ₱780.00, sir.

Q: *On December 25, 1996, did you bring out any taxi?*

A: *Yes, sir.*

Q: Now, when ever (*sic*) you bring out a taxi, what procedure [do] you follow with that company?

A: That we have to bring back the taxi to the company and before we leave we also sign something, sir.

Q: What is that something you mentioned?

A: On the record book and on the daily trip ticket, sir.

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[4] *Id*. at 36.

[5] Transcript of Stenographic Notes (TSN), July 10, 2000 at 8.

Q: You said that you have to return your taxi at the end of the day, what is then the procedure reflect (*sic*) by your company when you return a taxi?

A: To remit the boundary and to sign the record book and daily trip ticket.

Q: So, when you return the taxi, you sign the record book?

A: Yes, sir.

Q: *You mentioned that on December 25, 1996, you brought out a taxi?*

A: *Yes, sir.*

Q: *What kind of taxi?*

A: *Daewoo taxi, sir.*

Q: *Now did you return the taxi on December 25, 1996?*

A: *I was not able to bring back the taxi because I was short of my boundary, sir.*[6]

The following day, December 26, 1996, Cipriano went to appellant's house to ascertain why the taxi was not returned.[7] Arriving at appellant's house, he did not find the taxi there, appellant's wife telling him that her husband had not yet arrived.[8] Leaving nothing to chance, Cipriano went to the Commonwealth Avenue police station and reported that his taxi was missing.[9]

On January 9, 1997, appellant's wife went to the garage of ESC Transport and revealed that the taxi had been abandoned in Regalado Street, Lagro, Quezon City. [10] Cipriano lost no time in repairing to Regalado Street where he recovered the taxi.[11]

Upon the other hand, while appellant does not deny that he did not return the taxi on December 25, 1996 as he was short

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[6] TSN, October 9, 2000 at 5-8.

[7] TSN, July 10, 2000 at 14.

[8] *Id*. at 9.

[9] *Ibid*.

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

[11] *Id*. at 10.

of the boundary fee, he claims that he did not abandon the taxi but actually returned it on January 5, 1997;[12] and that on December 27, 1996, he gave the amount of ₱2,000.00[13] to his wife whom he instructed to remit the same to Cipriano as payment of the boundary fee[14] and to tell the latter that he could not return the taxi as he still had a balance thereof.[15]

Appellant, however, admits that his wife informed him that when she went to the garage to remit the boundary fee on the very same day (December 27, 1996),[16] Cipriano was already demanding the return of the taxi.[17]

Appellant maintains though that he returned the taxi on January 5, 1997 and signed the record book,[18] which was company procedure, to show that he indeed returned it and gave his employer ₱2,500.00[19] as partial payment for the boundary fee covering the period from December 25, 1996 to January 5, 1997.

Continuing, appellant claims that as he still had a balance in the boundary fee, he left his driver's license with Cipriano;[20] that as he could not drive, which was the only work he had ever known, without his driver's license, and with the obligation to pay the balance of the boundary fee still lingering, his wife started working on February 18, 1997 as a stay-in maid for Cipriano, with a monthly salary of ₱1,300.00,[21] until March

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[12] TSN, October 9, 2000 at 8.

[13] *Ibid*. On cross-examination however, appellant later claimed that the amount he gave was ₱2,500.00.

[14] TSN, October 9, 2000 at 18.

[15] *Id*. at 8.

[16] *Id*. at 21.

[17] *Id*. at 20.

[18] *Id*. at 9.

[19] *Ibid*.

[20] *Id*. at 26.

[21] *Id*. at 29.

26, 1997 when Cipriano told her that she had worked off the balance of his obligation;[22] and that with his obligation extinguished, his driver's license was returned to him.[23]

Brushing aside appellant's claim that he returned the taxi on January 5, 1997 and that he had in fact paid the total amount of ₱4,500.00, the trial court found him guilty beyond reasonable doubt of qualified theft by Decision of May 17, 2001, the dispositive portion of which is quoted *verbatim*:

> **WHEREFORE**, judgment is hereby rendered finding accused guilty beyond reasonable doubt as charged, and he is accordingly sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the costs.
>
> In the service of his sentence, accused is ordered credited with four-fifths (4/5) of the preventive imprisonment undergone by him there being no showing that he agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.
>
> **SO ORDERED.**[24] (Emphasis and italics in the original)

Hence, the present appeal anchored on the following assigned errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONCLUDING WITHOUT CONCRETE BASIS THAT THE ACCUSED-APPELLANT HAS INTENT TO GAIN WHEN HE FAILED TO RETURN THE TAXI TO ITS GARAGE.

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED THEFT.[25]

It is settled that an appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of the

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[22] *Id*. at 30.

[23] *Ibid*.

[24] Records at 93.

[25] *Rollo* at 40.

appellate court to correct such errors as may be found in the judgment even if they have not been specifically assigned.[26]

Appellant was convicted of qualified theft under Article 310 of the Revised Penal Code, as amended for the unlawful taking of a motor vehicle. However, *Article 310 has been modified, with respect to certain vehicles*,[27] by Republic Act No. 6539, as amended, otherwise known as "AN ACT PREVENTING AND PENALIZING CARNAPPING."

When statutes are in *pari materia*[28] or when they relate to the same person or thing, or to the same class of persons or things, or cover the same specific or particular subject matter,[29] or have the same purpose or object,[30] the rule dictates that they should be construed together — *interpretare et concordare leges legibus, est optimus interpretandi modus*.[31] Every statute

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[26] *People v. Salvador*, 398 SCRA 394, 412 (2003); *People v. Napalit*, 396 SCRA 687, 699 (2003); *People v. Galigao*, 395 SCRA 195, 204 (2003).

[27] Section 2 of Republic Act No. 6539 as amended defines motor vehicle as follows:

"Motor vehicle" is any vehicle propelled by any power other than muscular power using the public highways, *but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracts, and tractors, trailers and reaction engines of all kinds used exclusively for agricultural purposes.* Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating. (Emphasis and italics supplied)

[28] Statutes which are in *pari materia* may be independent or amendatory in form; they may be complete enactments dealing with a single, limited subject matter or sections of a code or revision; or they may be a combination of these. [2B N. SINGER, SUTHERLAND STATUTORY CONSTRUCTION 140 (5th ed., 1992)]

[29] *Natividad v. Felix*, 229 SCRA 680, 687 (1994).

[30] *Philippine Global Communications, Inc. v. Relova*, 145 SCRA 385, 394 (1986); *City of Naga v. Agna*, 71 SCRA 176, 184 (1976).

[31] *Black's Law Dictionary* (6th ed., 1990) translates the maxim as "to interpret, and [in such a way as] to harmonize laws with laws, is the best mode of interpretation."

must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence,[32] as this Court explained in *City of Naga v. Agna*,[33] *viz*:

> . . . When statutes are in *pari materia*, the rule of statutory construction dictates that they should be construed together. This is because enactments of the same legislature on the same subject matter are supposed to form part of one uniform system; that later statutes are supplementary or complimentary to the earlier enactments and in the passage of its acts the legislature is supposed to have in mind the existing legislation on the same subject and to have enacted its new act with reference thereto. Having thus in mind the previous statutes relating to the same subject matter, whenever the legislature enacts a new law, it is deemed to have enacted the new provision in accordance with the legislative policy embodied in those prior statutes unless there is an express repeal of the old and they all should be construed together. **In construing them the old statutes relating to the same subject matter should be compared with the new provisions and if possible by reasonable construction, both should be so construed that effect may be given to every provision of each. However, when the new provision and the old relating to the same subject cannot be reconciled the former shall prevail as it is the latter expression of the legislative will . . .**[34] (Emphasis and italics supplied; citations omitted)

The elements of the crime of theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[35]

Theft is qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant;

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[32] *Loyola Grand Villas Homeowners (South) Association, Inc. v. Court of Appeals*, 276 SCRA 681, 696 (1997); *Natividad v. Felix, supra; Corona v. Court of Appeals*, 214 SCRA 378, 392 (1992).

[33] 71 SCRA 176 (1976).

[34] *Id*. at 184.

[35] *People v. Sison*, 322 SCRA 345, 363-364 (2000).

(2) the theft is committed with grave abuse of confidence; (3) the property stolen is either a *motor vehicle*, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[36]

On the other hand, Section 2 of Republic Act No. 6539, as amended defines "carnapping" as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." The elements of carnapping are thus: (1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain.[37]

Carnapping is essentially the robbery or theft of a motorized vehicle,[38] the concept of unlawful taking in theft, robbery and carnapping being the same.[39]

In the 2000 case of *People v. Tan*[40] where the accused took a Mitsubishi Gallant and in the later case of *People v. Lobitania*[41] which involved the taking of a Yamaha motorized tricycle, this Court held that the unlawful taking of motor vehicles is now covered by the anti-carnapping law and not by the provisions on qualified theft or robbery.

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[36] *Id*. at 364.

[37] *People v. Napalit, supra* at 700; *People v. Calabroso,* 340 SCRA 332, 342 (2000).

[38] *People v. Lobitania,* 388 SCRA 417, 432 (2002).

[39] *People v. Fernandez,* G.R. No. 132788, October 23, 2003; *People v. Sia,* 370 SCRA 123, 134 (2001); *People v. Santos,* 333 SCRA 319, 334 (2000).

[40] 323 SCRA 30 (2000).

[41] 388 SCRA 417 (2002).

There is no arguing that the anti-carnapping law is a special law, different from the crime of robbery and theft included in the Revised Penal Code. It particularly addresses the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. But a careful comparison of this special law with the crimes of robbery and theft readily reveals their common features and characteristics, to wit: unlawful taking, intent to gain, and that personal property belonging to another is taken without the latter's consent. **However, the anti-carnapping law particularly deals with the theft and robbery of motor vehicles.** Hence a motor vehicle is said to have been carnapped when it has been taken, with intent to gain, without the owner's consent, whether the taking was done with or without the use of force upon things. **Without the anti-carnapping law, such unlawful taking of a motor vehicle would fall within the purview of either theft or robbery which was certainly the case before the enactment of said statute.** [42] (Emphasis and italics supplied; citations omitted.)

It is to be noted, however, that while the anti-carnapping law penalizes the unlawful taking of motor vehicles, it excepts from its coverage certain vehicles such as roadrollers, trolleys, street-sweepers, sprinklers, lawn mowers, amphibian trucks and cranes if not used on public highways, vehicles which run only on rails and tracks, and tractors, trailers and tractor engines of all kinds and used exclusively for agricultural purposes. By implication, the theft or robbery of the foregoing vehicles would be covered by Article 310 of the Revised Penal Code, as amended and the provisions on robbery, respectively.[43]

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[42] *People v. Lobitania*, 388 SCRA 417, 432 (2002); *People v. Tan*, 323 SCRA 30, 39 (2000).

[43] *Vide Izon v. People*, 107 SCRA 118, 123 (1981) where this Court said the following:

> From the definition cited by the Government which petitioners admit as authoritative, highways are always public, free for the use of every person. There is nothing in the law that requires a license to use a public highway to make the vehicle a "motor vehicle" within the definition given the anti-carnapping law. If a vehicle uses the streets with or without the required license, same comes within the protection of the law, for the severity of the offense is not to be measured by what kind of streets or

From the foregoing, since appellant is being accused of the unlawful taking of a Daewoo sedan, it is the anti-carnapping law and not the provisions of qualified theft which would apply as the said motor vehicle does not fall within the exceptions mentioned in the anti-carnapping law.

The designation in the information of the offense committed by appellant as one for qualified theft notwithstanding, appellant may still be convicted of the crime of carnapping. For while it is necessary that the statutory designation be stated in the information, a mistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect as it is not the designation that is controlling but the facts alleged in the information which determines the real nature of the crime.[44]

In the case at bar, the information alleges that appellant, with intent to gain, took the taxi owned by Cipriano without the latter's consent.[45] Thus, the indictment alleges every element of the crime of carnapping,[46] and the prosecution proved the same.

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highway the same is used; but by the very nature of the vehicle itself and the use to which it is devoted. *Otherwise, cars using the streets but still unlicensed or unregistered as when they have just been bought from the company, or only on test runs, may be stolen* **without the penal sanction of the anti-carnapping statute, but only as simple robbery punishable under the provision of the Revised Penal Code.** *This obviously, could not have been the intention of the anti-carnapping law.*

Going over the enumerations of excepted vehicle, it would readily be noted that any vehicle which is motorized using the streets which are public, not exclusively for private use, comes within the concept of motor vehicle. *A tricycle which is not included in the exception, is thus deemed to be that kind of motor vehicle as defined in the law the stealing of which comes within its penal sanction.* (Emphasis and italics supplied)

[44] *People v. Bali-balita*, 340 SCRA 450, 469 (2000); *People v. Banihit*, 339 SCRA 86, 94 (2000); *People v. Elamparo*, 329 SCRA 404, 416 (2000); *People v. Diaz*, 320 SCRA 168, 175 (1999).

[45] Records at 1-2.

[46] It should be noted that appellant cannot be charged with *estafa* as it was not alleged in the information that he had juridical possession of the

Appellant's appeal is thus bereft of merit.

That appellant brought out the taxi on December 25, 1996 and did not return it on the same day as he was supposed to is admitted.[47]

Unlawful taking, or *apoderamiento*, is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[48]

While the nature of appellant's possession of the taxi was initially lawful as he was hired as a taxi driver and was entrusted possession thereof, his act of not returning it to its owner, which is contrary to company practice and against the owner's consent

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motor vehicle. In *Santos v. People*, 181 SCRA 487, 492 (1990), this Court distinguished between theft and *estafa* to wit:

> Theft should not be confused with *estafa*. According to Chief Justice Ramon C. Aquino in his book on the Revised Penal Code, "The principal distinction between the two crimes is that in theft the thing is taken while in *estafa* the accused receives the property and converts it to his own use or benefit. *However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or de facto possession of the thing, his misappropriation of the same constitutes theft,* **but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa.** (Emphasis and italics supplied; citation omitted)

Moreover, in *People v. Isaac*, 96 Phil. 931 (1955), this Court convicted a jeepney driver of theft and not *estafa* when he did not return the jeepney to its owner since the motor vehicle was in the juridical possession of its owner, although physically held by the driver. The Court reasoned that the accused was not a lessee or hirer of the jeepney because the Public Service Law and its regulations prohibit a motor vehicle operator from entering into any kind of contract with any person if by the terms thereof it allows the use and operation of all or any of his equipment under a fixed rental basis. The contract with the accused being under the "boundary system," legally, the accused was not a lessee but only an employee of the owner. Thus, the accused's possession of the vehicle was only an extension of the owner's.

[47] TSN, October 9, 2000 at 5-8.

[48] *People v. Ellasos*, 358 SCRA 516, 527 (2001).

transformed the character of the possession into an unlawful one.[49] Appellant himself admits that he was aware that his possession of the taxi was no longer with Cipriano's consent as the latter was already demanding its return.

> Q: Also you said that during your direct testimony that when you gave your wife the ₱2,500.00, you also told her to go to the company to ask the company for permission for you to use the taxi since you were then still short of the boundary. Alright, after telling that to your wife and after seeing your wife between December 27, 1996 and January 5, 1997, did you ask your wife what was the answer of the company to that request of yours?
>
> A: He did not allow me, sir, and he even [got] angry with me.
>
> Q: So, when did you learn that the company was not agreeable to your making use of the taxicab without first returning it to the company?
>
> A: Before the new year, sir.
>
> Q: When you said new year, you were referring to January 1, 1997?
>
> A: Either December 29 or December 30, 1996, sir.
>
> Q: *So, are you telling us that* **even if you knew already that the company was not agreeable to your making use of the taxicab continually (sic) without returning the same to the company,** *you still went ahead and make (sic) use of it and returned it only on January 5, 1997.*
>
> A: *Yes, sir.*[50] (Emphasis and italics supplied)

Appellant assails the trial court's conclusion that there was intent to gain with the mere taking of the taxi without the owner's consent. He maintains that his reason for failing to return the taxi was his inability to remit the boundary fee, his earnings that day not having permitted it; and that there was no intent to

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[49] *Vide People v. Isaac, supra*, where this Court convicted Isaac, who was hired as a temporary driver of a public service vehicle — a jeepney — of the crime of theft when he did not return the same.

[50] TSN, October 9, 2000 at 22-23.

gain since the taking of the taxi was not permanent in character, he having returned it.

Appellant's position does not persuade.

Intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle.[51] Actual gain is irrelevant as the important consideration is the intent to gain.[52] The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed.[53] Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.[54]

In *Villacorta v. Insurance Commission*[55] which was reiterated in *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co., Inc.*,[56] Justice Claudio Teehankee (later Chief Justice), interpreting the theft clause of an insurance policy, explained that, when one takes the motor vehicle of another without the latter's consent *even if the motor vehicle is later returned,* there is theft, there being intent to gain as the use of the thing unlawfully taken constitutes gain:

Assuming, despite the totally inadequate evidence, **that the taking was "temporary"** and for a "joy ride", the Court sustains as the better view[57] that which holds that when a person, either with the

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[51] *People v. Ellasos, supra*; *People v. Gulinao*, 179 SCRA 774, 780 (1989).

[52] *Venturina v. Sandiganbayan*, 193 SCRA 40, 46 (1991); *People v. Seranilla*, 161 SCRA 193, 207 (1988).

[53] 3 R. Aquino & C. Grino-Aquino, *THE REVISED PENAL CODE* 206 (1997).

[54] *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co, Inc*., 124 SCRA 618, 620-621 (1983); *Villacorta v. Insurance Commission*, 100 SCRA 467, 474-475 (1980).

[55] 100 SCRA 467 (1980).

[56] 124 SCRA 618, 620-621 (1983).

[57] According to Justice Florenz Regalado [F. *REGALADO, CRIMINAL LAW CONSPECTUS* 543-544 (2003)], historically, opinion as to whether or not the unlawful taking of the personal property belonging to another must

object of going to a certain place, or learning how to drive, or enjoying a free ride, takes possession of a vehicle belonging to another, without the consent of its owner, **he is guilty of theft** because by taking possession of the personal property belonging to another and using it, **his intent to gain is evident since he derives therefrom utility, satisfaction, enjoyment and pleasure. Justice Ramon C. Aquino cites in his work Groizard who holds that the use of a thing constitutes gain and Cuello Calon who calls it "hurt de uso."**[58] (Emphasis and italics supplied; citation omitted)

Besides, the trial court did not believe appellant's claim that he in fact returned the taxi on January 5, 1997.

The Court can not (*sic*) believe accused's assertion that he returned the subject vehicle on January 5, 1997 to the garage and that he had in fact paid the amount of ₱4,500.00 in partial payment of his unremitted "boundary" for ten (10) days. He could not even be certain of the exact amount he allegedly paid the taxicab owner. On direct-

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be coupled with the intent of the offender to permanently deprive the owner of the said property has been divided:

(1) In one robbery case, it was held that there must be permanency in the taking, or in the intent for the asportation, of the stolen property (*People v. Kho Choc*, CA, 50 O.G. 1667).

(2) In several theft cases, there were divided opinions, one line of cases holding that the intent of the taking was to permanently deprive the owner thereof (*People v. Galang*, CA, 43 O.G. 577; *People v. Rico*, CA, 50 O.G. 3103, cf. *People v. Roxas*, CA-G.R. No. 14953, Oct. 31, 1956). *The contrary group of cases argued that there was no need for permanency in the taking or in its intent, as the mere disturbance of the proprietary rights of the owner was already apoderamiento* (*People v. Fernandez*, CA, 38 O.G. 985; *People v. Martisano*, CA, 48 O.G. 4417).

(3) *The second line of cases holding that there need be no intent to permanently deprive the owner of his property was later adopted by the Supreme Court*, in construing the theft clause in an insurance policy, and ruling that there was criminal liability for theft even if the car was taken out only for a joyride but without the owner's knowledge or consent. (*Villacorta v. Insurance Comm., et al.*, G.R. No. 54171, Oct. 28, 1980; *Ass'n of Baptists for World Evangelism v. Fieldmen's Ins. Co, Inc.*, G.R. No. L-28772, Sept. 21, 1983). (Italics supplied)

[58] *Villacorta v. Insurance Commission, supra*.

examination, he claimed that he paid Edwin Cipriano on December 27, 1996 the amount of ₱2,000.00 and it was his wife who handed said amount to Cipriano, yet on cross-examination, he claimed that he gave ₱2,500.00 to his wife on that date for payment to the taxicab owner.[59]

The rule is well-entrenched that findings of fact of the trial court are accorded the highest degree of respect and will not be disturbed on appeal absent any clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and significance which, if considered, would alter the result of the case.[60] The reason for the rule being that trial courts have the distinct advantage of having heard the witnesses themselves and observed their deportment and manner of testifying or their conduct and behavior during the trial.[61]

Other than his bare and self-serving allegations, appellant has not shown any scintilla of evidence that he indeed returned the taxi on January 5, 1997.

Q: You said that you returned the taxi on January 5, 1997, correct?

A: Yes, sir.

Q: *Now, Mr. Witness, did you sign any record when you returned the taxi?*

A: *Yes, sir.*

Q: *Do you have any copy of that record?*

A: *They were the one (sic) in-charge of the record book and I even voluntarily left my driver's license with them, sir.*

Q: You said that you did not return the taxi because you were short of (*sic*) boundary, did you turn over any money to your employer when you returned the taxi?

A: I gave them [an] additional ₱2,500.00, sir.

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[59] Records at 93.

[60] *People v. Muros*, G.R. No. 142511, February 16, 2004.

[61] *Ibid*.

Q: At the time when you returned the taxi, how much was your short indebtedness (*sic*) or short boundary (*sic*)?

A: I was short for ten (10) days, and I was able to pay ₱4,500.00.

Q: *Do you have any receipt to show receipt of payment for this ₱4,500.00?*

A: *They were the ones having the record of my payment, and our agreement was that I have to pay the balance in installment*.[62] (Italics supplied)

While appellant maintains that he signed on January 5, 1997 the record book indicating that he returned the taxi on the said date and paid Cipriano the amount of ₱4,500.00 as partial payment for the boundary fee, appellant did not produce the documentary evidence alluded to, to substantiate his claim. That such alleged record book is in the possession of Cipriano did not prevent him from producing it as appellant has the right to have compulsory process issued to secure the production of evidence on his behalf.[63]

The trial court having convicted appellant of qualified theft instead of carnapping, it erred in the imposition of the penalty. While the information alleges that the crime was attended with grave abuse of confidence, the same cannot be appreciated as

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[62] TSN, October 9, 2000 at 9-10.

[63] Rules of Court, Rule 115, Sec. 1, par. (g); Vide *People v. Woolcock*, 244 SCRA 235, 255-256 (1995), where this Court said the following:

> Just like appellant Williams, she sought to buttress her aforesaid contention by lamenting the alleged failure of the State to present in the trial court her baggage declaration and the confiscation receipt involving these pieces of her baggage. In the first place, it was not the duty of the prosecution to present these alleged documents on which she relies for her defense. **And, just as in the case of appellant Williams, it is a source of puzzlement why she never sought to compel either the prosecutors to produce the aforesaid documents which were allegedly in the possession of the latter or the customs office where such declarations are on file.** *Contrary to her argument hereon, since such pieces of evidence were equally available to both parties if sought by subpoena duces tecum, no presumption of suppression of evidence can be drawn, and these considerations likewise apply to the thesis of appellant Williams.* (Emphasis and italics supplied; citation omitted)

the suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of said Code, cannot be invoked when there is a legal impossibility of application, either by express provision or by necessary implication.[64]

Moreover, when the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules, for the application of penalties under the said Code or by other relevant statutory provisions are based on or applicable only to said rules for felonies under the Code.[65]

Thus, in *People v. Panida*[66] which involved the crime of carnapping and the penalty imposed was the indeterminate sentence of 14 years and 8 months, as minimum, to 17 years and 4 months, as maximum, this Court did not apply the provisions of the Revised Penal Code suppletorily as the anti-carnapping law provides for its own penalties which are distinct and without reference to the said Code.

The charge being simple carnapping, the imposable penalty is imprisonment for not less than 14 years and 8 months and not more than 17 years and 4 months. **There can be no suppletory effect of the rules for the application of penalties under the Revised Penal Code or by other relevant statutory provisions based on, or applicable only to, the rules for felonies under the Code. While it is true that the penalty of 14 years and 8 months to 17 years and 4 months is virtually equivalent to the duration of the medium period of *reclusion temporal*, such technical term under the Revised Penal Code is not given to that penalty for carnapping. Besides, the other penalties for carnapping attended by the qualifying circumstances stated in the law do not correspond to those in the Code.** The rules on penalties in the Code, therefore, cannot suppletorily apply to Republic Act No. 6539 and special laws of the same formulation. For this reason, we hold that the proper penalty to be imposed on each of accused-appellants is an indeterminate sentence of 14 years and 8 months, as minimum, to 17 years and 4 months, as

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[64] *People v. Simon*, 234 SCRA 555, 574 (1994).

[65] *Id.* at 576.

[66] 310 SCRA 66 (1999).

maximum.[67] (Emphasis and italics supplied; citations omitted)

Appellant being then culpable for carnapping under the first clause of Section 14 of Republic Act No. 6539, as amended, the imposable penalty is imprisonment for not less than 14 years and 8 months, not more than 17 years and 4 months,[68] for, as discussed above, the provisions of the Revised Penal Code cannot be applied

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[67] *Id*. at 99-100. It should be noted, however, that the passage of Republic Act No. 7659, otherwise known as "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," introduced three amendments to the anti-carnapping law: (1) the change of the penalty of life imprisonment to *reclusion perpetua*, (2) the inclusion of rape, and (3) the change of the phrase "in the commission of the carnapping" to "in the course of the commission of the carnapping or on the occasion thereof." [*People v. Latayada*, G.R. No. 146865, February 18, 2004; *People v. Santos*, *supra* at 333; *People v. Paramil*, 329 SCRA 456, 464 (2000); *People v. Mejia*, 275 SCRA 127, 153 (1997)] With the amendment of the penalty to life imprisonment to *reclusion perpetua,* the provisions of the Revised Penal Code can be suppletorily applied in qualified carnapping or carnapping in an aggravated form as defined in Section 14 of Republic Act No. 6539, as amended by Section 20 of Republic Act No. 7659 — whenever the owner, driver or occupant of the carnapped vehicle is killed in the course of the commission of the carnapping or on the occasion thereof. In *People v. Simon* [234 SCRA 555, 574 (1994)], this Court said that when an offense is defined and punished under a special law but its penalty is taken from the Revised Penal Code, then the provisions of the said Code would apply suppletorily. In the case at bar however, appellant is not being charged with qualified or aggravated carnapping, but only carnapping under the first clause of the anti-carnapping law. Since the imposable penalty is imprisonment for not less than 14 years and 8 months and not more than 17 years and 4 months, the provisions of the Revised Penal Code cannot be applied suppletorily.

[68] SEC. 14. *Penalty for Carnapping*. — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished *by imprisonment for* **not less than fourteen years and eight months and not more than seventeen years and four months,** *when the carnapping is committed without violence or intimidation of persons, or force upon things,* and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or

suppletorily and, therefore, the alleged aggravating circumstance of grave abuse of confidence cannot be appreciated.

Applying Section 1 of Act No. 4103,[69] as amended, otherwise known as the Indeterminate Sentence Law, if the offense is punishable by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same — the penalty imposed being a range.[70]

WHEREFORE, the judgment of the Regional Trial Court of Quezon City, Branch 217, in Crim. Case No. Q-97-71956, finding appellant *Luisito D. Bustinera* guilty beyond reasonable doubt of qualified theft, is *REVERSED* and *SET ASIDE*, and another judgment entered in its place, finding him guilty beyond reasonable doubt of the crime of carnapping under Republic Act No. 6539, as amended and sentencing him to an indeterminate penalty of Fourteen (14) Years and Eight (8) Months, as minimum, to Seventeen (17) Years and Four (4) Months, as maximum.

SO ORDERED.

Vitug (Chairman), Sandoval-Gutierrez and *Corona, JJ.*, concur.

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occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof. (Emphasis and italics supplied)

[69] SECTION 1. Hereinafter, in imposing a prison sentence for an offense punishable by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and *if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence,* **the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.** (Emphasis and italics supplied).

[70] *People v. Panida*, 310 SCRA 66, 99 (1999).

EN BANC

[G.R. No. 149811. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODOLFO TUVERA *y* NERI,** *appellant.*

SYNOPSIS

The Court affirmed the conviction of appellant to the crime of murder qualified by treachery. The prosecution adduced proof beyond reasonable doubt that the appellant shot the victim while the latter was urinating, impervious of appellant's plan to kill him. Prosecution witness Arturo Gumangan testified that he saw appellant follow the victim and shoot the latter from behind. The attack was sudden and unexpected, leaving the victim with no means to defend himself or to avert the appellant's attack; that even as the victim fled from the place where he was shot, the appellant followed him and left only after the victim had fallen to the ground, on the verge of death. Hence, the proper penalty of *reclusion perpetua*. The mitigating circumstance of voluntary surrender was appreciated in favor of appellant while the use of unlicensed firearm which was neither alleged nor proved by the prosecution cannot be considered against appellant.

SYLLABUS

1. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED IN CASE AT BAR. — The appellant killed the victim with treachery. The victim was urinating, impervious of the appellant's plan to kill him. The appellant approached the victim from behind and shot him, hitting the latter on the left side of the back. The victim sustained no less than nine wounds. The attack was sudden and unexpected, leaving the victim with no means to defend himself or to avert the appellant's attack. The appellant adopted a mode of attack to insure the consummation of the crime by shooting the victim from behind. The appellant's claim that the victim owned the gun is flimsy. If the claim of the appellant were true, he should have surrendered the gun to the police authorities. He did not.

He threw away the gun. Moreover, Pajarit testified that shortly before the appellant shot the victim, the appellant went home and returned shortly afterwards. The appellant must have purposely done so to get his gun; and, shortly thereafter, shot the victim. In sum then, the appellant is guilty of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery.

2. ID.; PENALTIES; WHERE PENALTY IMPOSED FOR THE CRIME CONSISTS OF TWO INDIVISIBLE PENALTIES. — Where the penalty imposed by law for the crime consists of two indivisible penalties, the trial court must apply Article 63 of the Revised Penal Code. The trial court ignored the provision and sentenced the appellant to suffer "*reclusion perpetua* to death" despite the presence of the generic mitigating circumstance of voluntary surrender. Even if the appellant is not entitled to any mitigating circumstance, the correct penalty should only be *reclusion perpetua*, absent any generic aggravating circumstance attendant to the crime. Trial judges must bear in mind that, as important as the duty to determine the guilt or innocence of the accused, is the duty to impose the correct penalty on the accused especially in those cases where the imposable penalty is *reclusion perpetua,* or life imprisonment, or the death penalty. Penalties of imprisonment involve the liberty of the accused. For the trial court to deprive the accused of his liberty without legal basis is a travesty.

3. ID.; MURDER; WHERE USE OF UNLICENSED FIREARM NOT ALLEGED IN THE INFORMATION NOR PROVED BY THE PROSECUTION; PROPER PENALTY. — The felony of murder is punishable by *reclusion perpetua* to death. The appellant is entitled to the mitigating circumstance of voluntary surrender. While the Information alleges that the appellant had no license to possess the firearm. Neither did the prosecution prove that the appellant had no such license to possess the firearm. Being an element of the crime of unlawful possession of a firearm and a qualifying circumstance in murder or homicide, such circumstance must be alleged in the Information as mandated by Section 8, Rule 10 of the Rules of Court and proved by the prosecution. Hence, the use by the appellant of an unlicensed firearm to kill the victim should not be considered against him. Consequently, the appellant should be sentenced to suffer the penalty of *reclusion perpetua,* conformably to Article 63 of the Revised Penal Code.

4. ID.; ID.; PROPER CIVIL PENALTIES. — The trial court correctly ordered the appellant to pay ₱50,000.00 as civil indemnity to the heirs of the victim. The trial court is, likewise, correct in not ordering the appellant to pay moral damages to the victim's heirs. The prosecution failed to present any witness to prove the factual basis for such award. However, the trial court should have awarded temperate damages to the heirs of the victim. The records show that the parties stipulated that the heirs of the victim spent ₱19,000.00 for his burial. Since the amount of actual damages proved is less than ₱25,000.00, the heirs are entitled to ₱25.000.00 as temperate damages conformably with current jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellant.
Anacleto O. Obille 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 Balaoan, La Union, Branch 34, in Criminal Case No. 2440 convicting appellant Rodolfo Tuvera *y* Neri of murder, imposing upon him the penalty of "*reclusion perpetua* to death" and ordering him to indemnify the heirs of the victim Orlando Tabafunda *y* Orfiano in the amount of ₱50,000.00.

Rodolfo Tuvera was charged of murder in an Information, the accusatory portion of which reads:

That on or about the 1st day of March 1995 at about 3:00 o'clock in the afternoon in Barangay Nagsabaran Sur, Municipality of Balaoan, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a short firearm Orlando Tabafunda *y* Orfiano thereby

[1] Penned by Judge Senecio O. Tan.

inflicting multiple gunshot wounds on said victim which cause[d] his death, to the damage and prejudice of the heirs of the same victim.

CONTRARY TO LAW.[2]

The appellant, with the assistance of counsel, pleaded not guilty to the crime charged.[3]

The Case for the Prosecution

At 3:00 p.m. on March 1, 1995, Pedro Pajarit, a farmer, left his house at Barangay Oya-oy, Bacnotan, La Union, and proceeded to Barangay Nagsabaran, Bacnotan, La Union to visit his friend Ricardo Obaña. Pajarit found Obaña in front of the Day Care Center with Cornelio Ablao, Carlito Obaña, Orlando Tabafunda and Arturo Gumangan. They decided to have a drinking spree and seated themselves in a round table, with Pajarit facing the east. Obaña bought San Miguel gin and half a gallon of the local wine "*basi*." Pajarit noticed the appellant seated nearby, and invited him to join the group. The appellant obliged and drank wine. He offered a drink to Tabafunda but the latter refused. Momentarily, the appellant left and went to their house, which was only about fifty (50) meters away. He returned shortly, and seated himself near where Pajarit, Tabafunda and their friends were drinking.

Meanwhile, Tabafunda left the table and walked towards the direction of the north, only about four to five meters, to urinate. Tabafunda was on the northwestern side of Pajarit. The appellant, who was now armed with a handgun, stood up, followed Tabafunda. Gumangan could only watch as the appellant shot Tabafunda from behind. Pajarit turned towards where the gunshot came from and saw the appellant lowering his hand holding a firearm.[4] Pajarit, likewise, saw Tabafunda running away. The appellant, still holding his gun, followed Tabafunda but left when the latter fell to the ground, face down, blood oozing from the left side of his back below his shoulder.[5]

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[2] Records, p. 1.

[3] *Id*. at 16.

[4] Exhibit "B," Records, p. 208.

[5] *Ibid*.

The matter was reported to Barangay Captain Pepito Onido, who reported the incident to the Bacnotan police station. Municipal Health Officer Felicidad Ledda performed an autopsy on the cadaver of the victim and signed a post-mortem examination report containing the following findings:

1. Gunshot wound, multiple (#9), upper back, L MCL in cluster approximately about 1-1.5 cms. apart, with a wound entrance measuring approximately 0.7 cm., with an average depth of about 2 cms.

The other 2, with a wound entrance measuring about 1.5 cms. with a depth of 1.5 cms. directed to the front and slightly downwards, injuring the left lower lobe, lung.

2. Hemothorax, L, massive.

Note: 3 slugs were recovered inside L thoracic cavity.

Conclusion: The cause of death is hemorrhage sec. to multiple GSW.[6]

The Case for the Appellant

The appellant testified that Pajarit, Tabafunda and himself, along with several other companions, were having a drinking spree. They invited Tabafunda to join them, but he refused. Momentarily, Tabafunda stood up and urinated nearby. Tabafunda then called the appellant and told the latter that he wanted to say something. When the appellant approached Tabafunda, the latter faced him, put his right hand on his shoulder and, with his left hand, poked a gun at the appellant. The appellant then held Tabafunda's right hand which held the gun, and grappled for the possession of the weapon. Tabafunda then punched him on the face. The appellant managed to wrest the gun away, and when Tabafunda turned his back, the gun accidentally fired once. The appellant did not know if someone was hit, but he heard Tabafunda cry in pain and saw him run away. The appellant then threw away the gun. When he saw that Tabafunda's companions had stood up, he became afraid that he would be attacked. The appellant fled from the place, towards the direction where Tabafunda had earlier run.

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[6] Exhibit "F," Records, p. 211.

The appellant also recounted that he surrendered to the police authorities on March 3, 1995 in the company of Barangay Captain Pepito Onido. He claimed that he had no misunderstanding with Tabafunda and with those with whom he was drinking; hence, he had no motive to kill the victim.

After trial, the court rendered judgment convicting the appellant of murder qualified by treachery. The decretal portion of the decision reads:

> WHEREFORE, in the light of the foregoing, the Court hereby renders judgment declaring the accused RODOLFO TUVERA *y* NERI guilty beyond reasonable doubt of the crime of MURDER as defined and penalized in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, Sec. 6, and thereby sentences said accused to suffer the penalty of *RECLUSION PERPETUA* TO DEATH, and indemnify the heirs of the victim in the amount of ₱50,000.00.
>
> SO ORDERED.[7]

The Present Appeal

The accused, now the appellant, assails the decision of the trial court contending that:

I

THE LOWER COURT ERRED IN FINDING THAT THERE WAS TREACHERY IN THE COMMISSION OF THE CRIME.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER.[8]

The appellant contends that the prosecution failed to prove that he shot the victim and that even if he did so, the prosecution failed to prove the qualifying circumstance of treachery. He asserts that, as gleaned from the testimony of Pajarit and Gumangan, they did not actually see the appellant shoot the victim. He avers that the victim started the fight by poking his

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[7] *Rollo*, p. 49.

[8] *Id*. at 33.

gun at him after he refused the victim's invitation to drink because the latter was insulted by his rejection. The bare fact that the gunshot wound was at the back of the victim is not conclusive proof of treachery. He avers that the victim was shot at the back because immediately after he (the appellant) wrested possession of the gun, the victim suddenly turned his back towards him and the gun suddenly fired.

For its part, the Office of the Solicitor General (OSG) asserts that the prosecution was able to prove treachery, thus:

> First, prosecution witness Arturo Gumangan was firm in his assertion that appellant shot the victim at the back while the latter was urinating (TSN, September 17, 1997, pp. 8-9).
>
> Second, the aforementioned attack from behind the victim is supported by the Post Mortem Examination Report issued by Dr. Felicidad Ledda who found that the victim's cause of death was due to a gunshot wound at the back (Exh. "F").
>
> Third, the attack on the victim was without the slightest provocation on his part.
>
> Fourth, to insure the execution of the act complained of, appellant launched the attack from behind and even appellant's companions were caught off-guard [*People v. Carpio,* 282 SCRA 23 (1997)]. What is decisive in the mode of attack from behind made it impossible for the victim to defend himself or to retaliate [*People v. Jose,* 324 SCRA 197 (2000)].[9]

The Court's Ruling

The contentions of the appellant have no merit.

The prosecution adduced proof beyond reasonable doubt that the appellant shot the victim while the latter was urinating. Arturo Gumangan testified that he saw the appellant follow the victim and shoot the latter from behind, at a distance of about seven (7) meters. Even as the victim fled from the place where he was shot, the appellant followed him and left only after the victim had fallen to the ground, on the verge of death. The testimony of Gumangan reads:

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[9] *Id*. at 72-73.

Q And while you were drinking as you said, do you recall if there was an unusual thing that happened?

A There was, Sir.

Q What was that?

A The thing that happened to Orlando Tabafunda.

Q What do you mean that happened to Orlando Tabafunda?

A He was shot, Sir.

Q Where exactly, at what place was Orlando shot?

A On the north side, Sir.

Q How far was he in the table around you, where Orlando Tabafunda was shot?

A From here up to the western wall of the courtroom, a distance of about seven (7) meters, more or less.

Q Where did Orlando Tabafunda go when you said that he was shot seven (7) meters from the table?

A He went to urinate, Sir.

Q In relation of (*sic*) the table, where was Orlando Tabafunda shot?

A Northwest, Sir.

Q And you said that Orlando Tabafunda went to urinate, what did he do to you when he went to urinate, what actually did he do?

A I saw him actually urinated.

Q In relation to the table, where did you position yourself?

A On the eastern part of the table, Sir.

Q When you said east somewhere north, to what direction were you facing?

A I was facing northwest, Sir.

Q And you said that Orlando Tabafunda was urinating, to what direction was he facing at the time?

A Northwest, Sir.

Q How about the accused Rodolfo Tuvera, in relation to the place where Orlando Tabafunda was urinating, where was he?

A He was then sitting here. (Witness pointing to the south of the table)

Q What did Rodolfo Tuvera do, if any, when Orlando Tabafunda went to urinate?

A There was, Sir.

Q Could you tell the Court what he did?

A He shot Orlando Tabafunda, Sir.

Q Alright, where was Rodolfo Tuvera in relation to Orlando who was then urinating when you said Rodolfo Tuvera shot Orlando?

A Behind Orlando Tabafunda, Sir.

Q And when Rodolfo Tuvera went behind Orlando, did you see him?

A Yes, Sir.

Q And could you demonstrate to the Court how Rodolfo Tuvera positioned himself at the back of Orlando Tabafunda when he shot him?

A Yes, Sir.

COURT INTERPRETER:

Like this, witness standing right to the west raises his right hand extend forward in front parallel to the ground.

FISCAL TECAN:

Q How many times did Rodolfo Tuvera shoot Orlando Tabafunda?

A Once only, Sir.

Q Did you notice the weapon that was used in shooting Orlando Tabafunda?

A Yes, Sir.

Q Could you describe it to the Court?

A I don't know the kind but as long as this, Sir. [Witness indicating a foot (*sic*).]

Q Did you notice the barrel, long or what?

A It was long, the barrel was big.

Q What part of the body of Orlando Tabafunda was hit?

A His back, Sir.

Q What particular part of the back was hit?

A On the left side, Sir. (Witness touching the left side at the back)

Q At the time Rodolfo Tuvera raised his gun and fired to this Orlando Tabafunda, what was Orlando Tabafunda actually doing at that time?

A He was urinating, Sir.

Q Sitting down or what?

A Standing, Sir.

Q To what direction was he facing at the time Orlando Tabafunda was urinating?

A Northwest, Sir.

Q What did Rodolfo Tuvera say, if any, before he shot Orlando Tabafunda?

A None, Sir.

Q How about this Orlando Tabafunda, what did he say, if any, before he was shot?

A None, Sir.

Q When Orlando Tabafunda was shot, what happened next?

A He ran, Sir.

Q To what direction was Orlando Tabafunda running?

A [He] proceeded westward then to the south.

Q How about you, what did you do when you saw Rodolfo Tuvera shot Orlando Tabafunda and Orlando Tabafunda ran away?

A We went to follow them because Rodolfo Tuvera was chasing him, Sir.

Q So, you are trying to tell the Court that when Orlando Tabafunda was shot and he ran, he was followed by Rodolfo Tuvera?

A Yes, Sir.

Q And what did Rodolfo Tuvera do aside from running after Orlando?

A No more, he just went to see Orlando Tabafunda, Sir.

Q You mean, Rodolfo Tuvera was able to catch up with Orlando Tabafunda?

A Yes, because Orlando Tabafunda tripped and fell on his face.

Q From the place where he was chased to the place where he fell when he was chased by Rodolfo Tuvera, how far?

A From the place where he was shot and to the place where Orlando Tabafunda was urinating, from here up to the national road. The distance is about 40 meters, more or less.

FISCAL TECAN:

May we know if the counsel for the defense will admit.

ATTY. LAUDENORIO:

Yes.

FISCAL TECAN:

Q You said that if you take the distance in (*sic*) straight way, how did Orlando Tabafunda run, was it straight or what?

A He was running in a zigzagging manner directly west and later turned to the south, Sir.

Q And were you able to reach the two?

A Yes, Sir.

Q What did Rodolfo Tuvera do when you were able to reach them?

A He just looked at Orlando Tabafunda who was then shaking, Sir.

Q Do you know why Orlando Tabafunda was shaking at that time?

A I know, Sir.

Q Why?

A Because of his gunshot wound and he was dying at the time.

Q After looking at Orlando Tabafunda lying and trembling, what did he do?

A He ran away, Sir.

Q To what direction did he run?
A North, Sir.[10]

For his part, Pajarit testified that he heard a gunshot and when he looked in the direction where the gunfire emanated from, he saw the appellant lowering his hand, which held a gun:

Q And you said that you were there at the Day Care Center at Brgy. Nagsabaran Sur, Balaoan, La Union, what were you doing there?
A We were drinking, Sir.
Q Drinking what?
A The local *basi* and the San Miguel Gin, Sir.
Q Now, when did you start drinking wine at the Day Care Center?
A 3:00 o'clock in the afternoon, Sir.
Q Now, while you were there at the Day Care Center at around 3:00 o'clock of March 1, 1995, do you recall if there was anything unusual that happened?
A Yes, Sir. There was, Sir.
Q What was that unusual incident that happened, will you please tell the Court?
A A shooting, Sir.
Q And where exactly did the shooting happen?
A At the side of the Day Care Center, Sir.
Q And you said, shooting. What was the cause of the shooting or what was used in the shooting?
A Well, it was a shot, Sir.
Q Where were you exactly when you heard the shot?
A I was in front of the Day Care Center, Sir.
Q You were sitting, standing up or what?
A I was sitting, Sir.

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[10] TSN, 17 September 1997, pp. 7-12.

Q While sitting there, to what direction were you facing?
A At the east, Sir.

Q And you heard the shot which emanated, as you said, at the side of the Day Care Center. In relation to you, where is (*sic*) that shot that you heard?
A It came from the northwest, Sir.

Q And what did you do when you heard the shot?
A I looked to see because I was taken aback, Sir.

Q And to what direction did you look?
A Northwest, Sir.

Q And what did you see, if any?
A Rodolfo Tuvera was already lowering down with (*sic*) his gun, Sir.

[Witness with his right hand on the label (*sic*) of his waist, puts it down or lower (*sic*) it]

Q And you said that Rodolfo Tuvera, do you know personally this person to whom you said you saw lowering his gun?
A Yes, Sir. He is my friend, Sir.

Q And for how long has he been your friend?
A For a long time already, Sir.

Q Could you say 20 years?
A No, Sir.

Q 10 years?
A 10 years, Sir.

Q And do you know from where is this Rodolfo Tuvera?
A Yes, Sir.

Q Where, from where is he?
A From Nagsabaran Sur, Balaoan, La Union, Sir.

Q If this Rodolfo Tuvera is shown to you now, could (*sic*) you be able to identify him?
A Yes, Sir.

Q Could you please look round inside the courtroom if he is in Court now?

A That one, Sir. (Witness pointing to someone and said that one in green shirt according to him)

COURT:

You are pointed to (*sic*) as Rodolfo Tuvera.

INTERPRETER:

Somebody was pointed by the witness and ask (*sic*) to point if he knows Rolando Tuvera and the Honorable Presiding Judge asked said man as pointed to by the witness to stand up and identify himself and Court Interpreter asked his name and he identified himself as Rodolfo Tuvera, Your Honor.

FISCAL TECAN:

Q Aside from being a friend, are you related to Rodolfo Tuvera?

A No, Sir.

Q When you saw Rodolfo Tuvera lowering his gun as you said, what happened next?

A The one who was shot ran in a zigzag manner, Sir.

Q Who is this person whom you said was shot and was running in a zigzag manner?

A Orlando Tabafunda, Sir.

Q You said that Orlando Tabafunda was shot, why do you say that?

A Well, his back was already bloodied, that was what I saw, Sir.

Q The first time that you saw Orlando Tabafunda, what was his position?

A He was urinating facing northwest, Sir.

Q And how about this Rodolfo Tuvera, the first time that you saw him, where was he in relation to Orlando Tabafunda?

A He was at the back of Orlando Tabafunda, Sir.

Q Could you please stand up?

A (Witness demonstrates to the Court, taking the Court Interpreter as Orlando Tabafunda and you are Rodolfo Tuvera)

Q Could you please show to the Court the relative position at the time that you saw them for the first time?

A (Witness positioned the Court Interpreter to face the northwest as he is standing taking the role of Orlando Tabafunda. Witness now positioned himself obliquely a little to the back of Orlando Tabafunda just farther away, just a little farther away than one meter to the back when I looked at them, Rodolfo Tuvera was already lowering his gun from a parallel position to a perpendicular position with his right hand pointing towards the northwest)

ATTY. CABADING:

May we request the Court Interpreter to correct, Your Honor, to interpret only what has been said. Now, the witness mentioned that he lowered his gun, "*imbabana*." That is all, Your Honor.

FISCAL TECAN:

In the demonstration, he was directly (*sic*) the arm towards Orlando Tabafunda and then he lowered it, Your Honor. So he is just stating the demonstration, Your Honor. [11]

The appellant admitted, when he testified, that after taking possession of the gun from the victim, the latter turned his back towards him and, at that instance, the gun he (the appellant) was holding had fired, hitting the victim who fled. The appellant also fled and threw the gun away:

FISCAL TECAN:

Q What was the reason why, if you know that Orlando Tabafunda turned his back to you at the time you were in possession of the gun?

A Maybe the gun (*sic*) was already in my possession, he must have been afraid, Sir.

Q How far was Orlando Tabafunda at the time the gun fired?

A Maybe just more than a meter away.

Q You were holding a firearm at the time?

A Yes, Sir.

Q Will you tell the Court what was your position when the gun fired?

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[11] TSN, 2 October 1996, pp. 5-11.

FISCAL TECAN:

He was still thinking.

A Maybe it is only like this: I was able to grab it from him, I must have been holding this way. (Witness with his left hand holding the lower part of the left hand holding the gun and a position a little bit slanting towards the ground).

Q We understand from you that you were holding the handle of the firearm at the time?

FISCAL TECAN:

The witness is again thinking it over.

A Maybe, Sir.

Q You are very sure of the pointing (*sic*) is slanting towards the ground at the time the gun fired?

A I don't know, Sir.

Q How many times did the gun fire?

A Only once, Sir.

Q What happened with Orlando Tabafunda at the time the gun fired?

A He said, "*annay ko*" and then ran away.

Q But the firearm you were holding, you keep (*sic*) it into your waist, is it not?

A No, Sir.

Q What did you do with it?

A I threw it near us the (*sic*) place, Sir.

Q After that, you ran away?

A Yes, Sir.[12]

The testimonies of Pajarit and Gumangan are corroborated by the post-mortem report of Dr. Felicidad Ledda[13] showing that the nine entrance wounds sustained by the victim were

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[12] TSN, 13 January 1999, pp. 9-10.

[13] Exhibit "F," *supra*.

located on his back. [14] The appellant must have used an automatic gun because the victim sustained nine wounds. The doctor recovered three slugs from the body of the victim.

We agree with the trial court and the OSG that the appellant killed the victim with treachery. The victim was urinating, impervious of the appellant's plan to kill him. The appellant approached the victim from behind and shot him, hitting the latter on the left side of the back. The victim sustained no less than nine wounds. The attack was sudden and unexpected, leaving the victim with no means to defend himself or to avert the appellant's attack. The appellant adopted a mode of attack to insure the consummation of the crime by shooting the victim from behind. The appellant's claim that the victim owned the gun is flimsy. If the claim of the appellant were true, he should have surrendered the gun to the police authorities. He did not. He threw away the gun. Moreover, Pajarit testified that shortly before the appellant shot the victim, the appellant went home and returned shortly afterwards. The appellant must have purposely done so to get his gun; and, shortly thereafter, shot the victim. In sum then, the appellant is guilty of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery.

The Proper Penalty

The trial court manifested its gross ignorance of the law in sentencing the appellant to "*reclusion perpetua* to death" for murder. Where the penalty imposed by law for the crime consists of two indivisible penalties, the trial court must apply Article 63 of the Revised Penal Code which reads:

> Art. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

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[14] *Ibid.*

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

The trial court ignored the above-cited provision and sentenced the appellant to suffer "*reclusion perpetua* to death" despite the presence of the generic mitigating circumstance of voluntary surrender. Even if the appellant is not entitled to any mitigating circumstance, the correct penalty should only be *reclusion perpetua*, absent any generic aggravating circumstance attendant to the crime. Trial judges must bear in mind that, as important as the duty to determine the guilt or innocence of the accused, is the duty to impose the correct penalty on the accused especially in those cases where the imposable penalty is *reclusion perpetua*, or life imprisonment, or the death penalty. Penalties of imprisonment involve the liberty of the accused. For the trial court to deprive the accused of his liberty without legal basis is a travesty.

The felony of murder is punishable by *reclusion perpetua* to death. The appellant is entitled to the mitigating circumstance of voluntary surrender. While the Information alleges that the appellant used a firearm to kill the victim, it does not allege that the appellant had no license to possess the firearm. Neither did the prosecution prove that the appellant had no such license to

possess the firearm. Being an element of the crime of unlawful possession of a firearm and a qualifying circumstance in murder or homicide, such circumstance must be alleged in the Information as mandated by Section 8, Rule 10 of the Rules of Court and proved by the prosecution.[15] Hence, the use by the appellant of an unlicensed firearm to kill the victim should not be considered against him. Consequently, the appellant should be sentenced to suffer the penalty of *reclusion perpetua*, conformably to Article 63 of the Revised Penal Code.

The Civil Liabilities of the Appellant

The trial court correctly ordered the appellant to pay ₱50,000.00 as civil indemnity to the heirs of the victim. The trial court is, likewise, correct in not ordering the appellant to pay moral damages to the victim's heirs. The prosecution failed to present any witness to prove the factual basis for such award. However, the trial court should have awarded temperate damages to the heirs of the victim. The records show that the parties stipulated that the heirs of the victim spent ₱19,000.00 for his burial. Since the amount of actual damages proved is less than ₱25,000.00, the heirs are entitled to ₱25,000.00 as temperate damages conformably with current jurisprudence.[16]

IN LIGHT OF ALL THE FOREGOING, the appellant Rodolfo Tuvera *y* Neri is found *GUILTY* beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua*. The appellant is *ORDERED* to pay the heirs of the victim Orlando Tabafunda the amount of ₱50,000.00 as civil indemnity, and ₱25,000.00 as temperate damages. No costs.

Let a copy of this Decision be furnished to the Court Administrator for possible administrative charges against Judge Senecio O. Tan.

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[15] SEC. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[16] Per Court deliberations on October 14, 2003.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 151005. June 8, 2004]

PEOPLE OF THE PHILIPPINES and HEIRS OF ESTEBAN LIM JR., *petitioners, vs.* **THE HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT of MUNTINLUPA CITY (Branch 276) and RICARDO TOBIAS,** *respondents*.

SYNOPSIS

Private respondent was found guilty of the crime "qualified illegal possession of firearm used in murder" under PD No. 1866. He was also charged with murder. After serving his sentence in his earlier conviction, he was granted bail for the murder case. The Court, however, ruled the same invalid. A person charged with a capital offense or an offense punishable by *reclusion perpetua* shall not be admitted to bail when the evidence of guilt is strong. Here, no separate bail hearing was conducted to determine the strength of evidence against private respondent; the order granting the bail has no actual summary of evidence; it has no conclusion on whether the evidence of guilt was strong; and finally, the Court noted that the evidence of private respondent's guilt was actually strong. On the issue of whether private respondent may still be charged with murder after his conviction of qualified illegal possession of firearm under PD 1866, the Court ruled in the positive. That the use of unlicensed firearm is now a mere aggravating circumstance in murder under RA 8294, the Court ruled that it is the illegal

possession of firearm that has been decriminalized. Murder has not been decriminalized and is completely different from the crime which private respondent was convicted.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL. —** As a general rule, a person "in custody shall, before final conviction, be entitled to bail as a matter of right." Bail is a security given for the release of a person under custody of the law, as a guarantee for his or her appearance before any court as required under specified conditions. The right to bail flows from the presumption of innocence.

2. **ID.; ID.; ID.; WHERE ACCUSED CHARGED FOR MURDER; BAIL DEPENDENT ON THE STRENGTH OF EVIDENCE OF GUILT DETERMINED IN A HEARING CALLED FOR THE PURPOSE. —** In the present case, private respondent is undergoing trial for murder. Is he entitled to bail? His case falls within the exception to the general rule on bail: When evidence of guilt is strong, a person shall not be admitted to bail if charged with a capital offense; or with an offense that – under the law – is punishable with *reclusion perpetua* at the time of its commission and at the time of the application for bail. At the time private respondent allegedly committed the felony in 1990, "[m]urder . . . was a crime punishable by *reclusion perpetua*." With the passage of RA 7659, murder is now punishable with *reclusion perpetua* to death. Consequently, depending on the strength of the evidence of the prosecution, bail is merely discretionary, not a matter of right. Judicial discretion in granting bail may be exercised only after the evidence of guilt is submitted to the court during the bail hearing.

3. **ID.; ID.; ID.; ORDER GRANTING OR REFUSING BAIL MUST CONTAIN A SUMMARY OF THE EVIDENCE PRESENTED BY THE PROSECUTION. —** "We have repeatedly stressed that the order granting or refusing the bail must contain a summary of the evidence presented by the prosecution." The Court, as it had done many times, patiently discussed the reasons for this requirement, thus: "There are two corollary reasons for the summary. First, the summary of the evidence in the order is an extension of the hearing proper,

thus, a part of procedural due process wherein the evidence presented during the prior hearing is formally recognized as having been presented and most importantly, considered. The failure to include every piece of evidence in the summary presented by the prosecution in their favor during the prior hearing would be tantamount to not giving them the opportunity to be heard in said hearing, for the inference would be that they were not considered at all in weighing the evidence of guilt. Such would be a denial of due process, for due process means not only giving every contending party the opportunity to be heard but also for the Court to consider *every piece of evidence presented in their favor*. Second, the summary of the evidence in the order is the basis for the judge's exercising his judicial discretion. Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion. x x x. "Based on the above-stated reasons, the summary should necessarily be a complete compilation or restatement of all the pieces of evidence presented during the hearing proper."

4. ID.; ID.; ID.; ID.; VIOLATED IN CASE AT BAR. — The assailed September 26, 2001 Order granting Bail was sorely defective in both form and substance. It had no summary of the evidence, but merely a curt one-sentence description of the evidence for the prosecution. Neither did the Order have a conclusion on whether the evidence of guilt was strong. Without such conclusion, there was no basis for granting bail. Thus, the Order cannot be sustained, allowed to stand, or given any semblance of validity. It was patently a product of whim, caprice, and outright arbitrariness. For the same reasons, we cannot also sustain the subsequent Orders, which are rooted in the invalid September 26, 2001 Order.

5. ID.; ID.; ID.; NOT PROPER WHERE ACCUSED CHARGED FOR MURDER AND EVIDENCE OF GUILT IS STRONG; CASE AT BAR. — The arbitrariness of the trial judge is compounded by her failure to take into account this Court's Decision in GR No. 114185, which found the presence of treachery and directed the filing of an information for murder. Aside from being unrebutted by the accused, the ruling is reinforced by the clear and convincing proof adduced by the

prosecution through Eyewitnesses Pacita Recto and Clarita Lim, who both affirmed that private respondent had killed Esteban "Jojo" Lim Jr. Clearly then, the evidence of private respondent's guilt was strong; hence, bail should not have been allowed. In the interest of substantial justice and a speedy disposition of the case for murder, we now cancel his bail bond and direct the proper authorities to effect his arrest as soon as possible, so that he may continue to stand trial for the crime charged.

6. CRIMINAL LAW; MURDER; KILLING WITH THE USE OF UNLICENSED FIREARM PRIOR TO RA 8294, LIABLE FOR THE SEPARATE CRIMES OF MURDER UNDER THE REVISED PENAL CODE AND AGGRAVATED ILLEGAL POSSESSION OF FIREARM UNDER PD 1866; NO DOUBLE JEOPARDY. — Under previous rulings of this Court, prior to RA 8294 "one who kills another with the use of an unlicensed firearm commits two separate offenses of (1) . . . murder under the [Revised Penal Code], and (2) aggravated illegal possession of firearm under the [second] paragraph of Section 1 of [PD] 1866 x x x." In the present case, the filing of an Information for murder, after conviction for violation of Section 1 of PD 1866 – a special law – was in order. There was no violation of the constitutional rule proscribing double jeopardy.

7. ID.; RA 8294; USE OF UNLICENSED FIREARM WAS CONSIDERED MERELY AN AGGRAVATING CIRCUMSTANCE IN KILLING. — When RA 8294 took effect on July 6, 1997, the use of an unlicensed firearm was considered merely an aggravating circumstance, if murder or homicide or any other crime was committed with it. Hence, the use of an unlicensed firearm in killing a person "may no longer be the source of a separate conviction for the crime of illegal possession of a deadly weapon." Only one felony may be charged — murder in this instance.

8. ID.; PD 1866; RESPONDENT CONVICTED OF QUALIFIED ILLEGAL POSSESSION OF FIREARMS THEREIN PRIOR TO RA 8294 MAY STILL BE PROSECUTED FOR MURDER. — Private respondent was convicted of qualified illegal possession of firearms used in murder under PD 1866, not of murder under the Revised Penal Code. To repeat, under RA 8294, the use of an unlicensed firearm is a mere aggravating

circumstance in a charge for murder. In the prosecution thereof, the illegal possession of firearms has been explicitly decriminalized. *Nullum crimen, nulla poena sine lege.* True, private respondent has been convicted of illegal possession of firearm. But his sentence has been effectively cancelled when the trial court reduced the penalty therefore. Hence, he was effectively given the benefit of the new law which decriminalized his offense. However, private respondent may still be prosecuted for murder — a crime that has not been decriminalized and is completely different from that for which he was convicted earlier. Evidently, the requisites of double jeopardy, which are (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have terminated; (3) the second jeopardy must be for the same offense as that in the first, are not present here.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ester S. Dalisay for Heirs of Lim.
Isidro T. Hildawa for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

An order granting bail in a capital offense must contain a summary showing the strength or the weakness of the prosecution evidence, as well as the trial judge's assessment thereof. Absent such summary and assessment, the order would not stand appellate scrutiny and must be struck down.

The Case

Before us is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court, seeking to annul the September 26, 2001 Order,[2] the September 27, 2001 Order of Release,[3] and the November

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[1] *Rollo*, pp. 3-13.
[2] *Id.*, p. 24.
[3] *Id.*, p. 25.

7, 2001 Order[4] issued by the Regional Trial Court (RTC) of Muntinlupa City (Branch 276) in Criminal Case No. 1605. The assailed September 26, 2001 Order reads as follows:

"This is a PETITION FOR BAIL.

"After the Court evaluated the evidence and the testimony of the prosecution witnesses, it was shown that the victim was gunned down admittedly by Accused during a quarrel, or immediately soon after, with the quarrel still continuing.

"The Petition for Bail is therefore granted and the same is set at FIFTY THOUSAND PESOS (₱50,000.00).

"The records show that Accused [Ricardo Tobias] was sentenced for possession of a low powered firearm for which he was meted a penalty of life imprisonment. However, with the amendment of the law on Illegal Possession of Firearms, this Court granted Accused a reduction of the penalty in a Petition for Writ of *Habeas Corpus* to only 6 years imprisonment because [a] 9MM caliber firearm is considered a low caliber firearm, as provided by RA 8294. Accused has been in jail for eight (8) years, eleven (11) months and fifteen (15) days already and has completed the service of his sentence. He may now post bail for this pending offense, in light of the evidence adduced by the [p]rosecution."[5]

The assailed September 27, 2001 Order directed the release from detention of herein private respondent. On the other hand, the November 7, 2001 Order denied the prosecution's Motion for Reconsideration of the two earlier rulings.

The Facts

This case is intimately connected with the Decision of this Court in GR No. 114185 penned by then Justice, now Chief Justice, Hilario G. Davide Jr. In that earlier proceeding before the RTC of Santiago, Isabela (Branch 21), herein private respondent was charged on January 10, 1991, with "qualified illegal possession of firearm used in murder." The accusatory portion of the Information was worded as follows:

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[4] *Id*., p. 29. All Orders penned by Judge Norma C. Perello.

[5] *Id*., p. 24.

"That on or about the 5th day of October, 1990, in the [M]unicipality of Santiago, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being allowed or authorized by law to keep, possess and carry firearms, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) Browning pistol, Caliber 9MM with Serial No. RPT 3221943 without first having obtained the necessary permit and/or license therefor and on the occasion of such possession, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with the said illegally possessed firearm one Esteban Lim, Jr. *alias* Jojo, inflicting upon him gunshot wounds on the different parts of his body which directly caused his death due to severe hemorrhage."[6]

On January 11, 1994, the RTC rendered its Decision finding private respondent guilty as charged and sentencing him to life imprisonment.[7]

On appeal, this Court affirmed on January 30, 1997, the lower court's Decision, with modifications consisting mainly of a change in the penalty from life imprisonment to *reclusión perpetua*. It also directed the provincial prosecutor of Isabela to institute a criminal action for murder against private respondent.

Without the knowledge of this Court, it turned out that as early as October 15, 1993, private respondent had already been charged with murder before the RTC of Santiago, Isabela.[8] We quote the Information therein as follows:

"The undersigned Third Assistant Provincial Prosecutor of Isabela accuses [RICARDO] TOBIAS @ DING TOBIAS of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

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[6] *Id*., p. 885.

[7] *Id*., p. 892.

[8] Records, p. 1.

'That on or about October 5, 1990, in the [M]unicipality of Santiago, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with Browning Pistol Cal. .9MM bearing No. RPT-3221943, through treachery, did then and there willfully, unlawfully and feloniously sho[o]t Esteban Lim, Jr., with the use of said firearm inflicting upon the said Esteban Lim, Jr., several gunshot wounds which directly cause[d] his death.'"

He was arraigned, however, only on November 23, 1998.[9]

In the meantime, Republic Act (RA) No. 8294 was approved on June 6, 1997. It amended Presidential Decree (PD) No. 1866, for violation of which he had been convicted earlier. Relying upon RA 8294, private respondent filed a Petition for *Habeas Corpus* before the RTC of Muntinlupa City.[10]

On September 21, 2000, the trial court issued an Order declaring private respondent's Petition moot and academic on the ground that he was being validly detained for murder — a non-bailable offense — and no longer for illegal possession of firearms. Nonetheless, on the basis of the retroactive effect of the provisions of RA 8294 that were beneficial to the accused, the RTC reduced the penalty for illegal possession of firearms from *reclusion perpetua* to *prisión correccionál*. Having already served the reduced penalty, he should have been freed from detention were it not for the murder charge.

On January 26, 2001, the murder trial commenced.

On August 9, 2001, private respondent filed a Petition for Bail on the ground that evident premeditation had not been proven. Moreover, no ballistic report was submitted by the prosecution. Despite opposition to the Petition, the trial court granted bail at ₱50,000 on September 26, 2001.

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[9] *Id*., pp. 507-513.

[10] On January 18, 1999, this Court resolved to transfer the venue of the murder trial from the RTC of Santiago, Isabela to the RTC of Muntinlupa City. See January 18, 1999 Resolution; *id*., pp. 618-619.

Ruling of the Trial Court

The trial court opined that private respondent had already completed the service of his sentence in the previous case for illegal possession of a low-powered firearm. After evaluating the evidence and the testimony of the prosecution witnesses in the pending murder case, it ruled that he could post bail therein.

Thus, it ordered his release[11] from custody after he had posted the required bail bond[12] through the Wellington Insurance Company, Inc.[13]

Hence, this Petition.[14]

Issues

Petitioners aver that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted bail to the accused.[15] On the other hand, private respondent counters that he cannot be tried anew for a crime for which he has already been convicted.[16]

Simply stated, the issues are as follows: *first*, whether bail was validly granted; and *second*, whether the accused may still be prosecuted for a crime for which he has already been convicted.

The Court's Ruling

The Petition is meritorious.

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[11] *Id.*, p. 801.

[12] *Id.*, p. 792.

[13] See Order of Release dated September 27, 2001; *rollo*, p. 25.

[14] The case was deemed submitted for decision on July 12, 2002, upon receipt by this Court of private petitioner's Memorandum, which was signed by Atty. Ester S. Dalisay. Respondents' Memorandum, signed by Atty. Isidro T. Hildawa, was filed on July 11, 2002.

[15] Petitioners' Memorandum, p. 7; *rollo*, p. 63.

[16] Respondents' Memorandum, p. 7; *id.*, p. 48.

First Issue:

Propriety of Bail

As a general rule, a person "in custody shall, before final conviction, be entitled to bail as a matter of right."[17] Bail is a security given for the release of a person under custody of the law, as a guarantee for his or her appearance before any court as required under specified conditions.[18] The right to bail flows from the presumption of innocence.[19] In the present case, private respondent is undergoing trial for murder. Is he entitled to bail?

His case falls within the exception to the aforesaid general rule on bail: When evidence of guilt is strong, a person shall not be admitted to bail[20] if charged with a capital offense; or with an offense that — under the law — is punishable with *reclusion perpetua* at the time of its commission and at the time of the application for bail.[21]

At the time private respondent allegedly committed the felony in 1990, "[m]urder x x x was a crime punishable by *reclusion perpetua*."[22] With the passage of RA 7659, murder is now punishable with *reclusion perpetua* to death. Consequently, depending on the strength of the evidence of the prosecution, bail is merely discretionary, not a matter of right. In *People v. Hon. Cabral*[23] the Court explained:

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[17] *Santos v. Judge Ofilada*, 315 Phil. 11, 17, June 16, 1995, per Regalado, *J.*

[18] §1 of Rule 114 of the Revised Rules of Criminal Procedure.

[19] *Herrera, Remedial Law*, Vol. IV (2001 ed.), p. 364.

[20] §§4, 6 and 7 of Rule 114 of the Revised Rules of Criminal Procedure. See *Ocampo v. Judge Bernabe*, 77 Phil. 55, 58, August 20, 1946.

[21] §13 of Article III of the 1987 Constitution.

[22] *People v. Gako*, 348 SCRA 334, 350, December 15, 2000, per Gonzaga-Reyes, *J.*

[23] 362 Phil. 697, 709, February 18, 1999, per Romero, *J.*

"The grant or denial of an application for bail is, therefore, dependent on whether the evidence of guilt is strong which the lower court should determine in a hearing called for the purpose. The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. While the lower court would never be deprived of its mandated prerogative to exercise judicial discretion, this Court would unhesitatingly reverse the trial court's findings if found to be laced with grave abuse of discretion.

Judicial discretion in granting bail may indeed be exercised only after the evidence of guilt is submitted to the court during the bail hearing.[24] In the present case, no separate bail hearing was conducted. The Petition for Bail was filed on August 9, 2001. After the prosecution filed its Opposition, private respondent submitted a Reply. After the former had presented all its witnesses in the regular course of trial, but before it had rested its case, the Petition for Bail was deemed submitted for resolution. On the same day, the assailed September 26, 2001 Order was issued.

On its face, the one-page Order demonstrates grave abuse of discretion. "We have repeatedly stressed that the order granting or refusing the bail must contain a summary of the evidence presented by the prosecution."[25] The Court, as it had done many times, patiently discussed the reasons for this requirement, thus:

"There are two corollary reasons for the summary. First, the summary of the evidence in the order is an extension of the hearing proper, thus, a part of procedural due process wherein the evidence presented during the prior hearing is formally recognized as having been presented and most importantly, considered. The failure to include every piece of evidence in the summary presented by the prosecution in their favor during the prior hearing would be tantamount to not giving them the opportunity to be heard in said hearing, for the inference would be that they were not considered at all in weighing

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[24] Herrera, *supra*, p. 390.

[25] *Santos v. Judge Ofilada*, 315 Phil. 11, 20, June 16, 1995, per Regalado, *J*.

the evidence of guilt. Such would be a denial of due process, for due process means not only giving every contending party the opportunity to be heard but also for the Court *to consider every piece of evidence presented in their favor.* Second, the summary of the evidence in the order is the basis for the judge's exercising his judicial discretion. Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion. x x x

"Based on the above-stated reasons, the summary should necessarily be a complete compilation or restatement of all the pieces of evidence presented during the hearing proper."[26]

The assailed September 26, 2001 Order was sorely defective in both form and substance. It had no summary of the evidence, but merely a curt one-sentence description of the evidence for the prosecution. Neither did the Order have a conclusion on whether the evidence of guilt was strong. Without such conclusion, there was no basis for granting bail. Thus, the Order cannot be sustained, allowed to stand, or given any semblance of validity.[27] It was patently a product of whim, caprice, and outright arbitrariness.[28] For the same reasons, we cannot also sustain the September 27, 2001 and the November 7, 2001 Orders, which are rooted in the invalid September 26, 2001 Order.

The arbitrariness of the trial judge is compounded by her failure to take into account this Court's Decision in GR No. 114185, which found the presence of treachery and directed the filing of an information for murder, as follows:

"Treachery is present in this case, as there was a sudden attack against an unarmed victim. That the attack was preceded by a scuffle,

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[26] *People v. Hon. Cabral*, 716-717, *supra*, per Romero, *J.* Italics in the original.

[27] *Borinaga v. Tamin*, 226 SCRA 206, 217-218, September 10, 1993; *Carpio v. Maglalang*, 196 SCRA 41, 50, April 19, 1991; and *People v. Hon. San Diego*, 135 Phil. 514, 516, December 24, 1968.

[28] *Basco v. Judge Rapatalo*, 336 Phil. 214, 220-231, March 5, 1997; and *Guillermo v. Judge Reyes*, 310 Phil. 176, 182, January 18, 1995.

as pointed out by the accused, is of no moment, since treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the case at bench, the scuffle between Jojo Lim and the accused had already ended; Jojo Lim was chasing Giron, his attention was turned towards the latter, and his back was against the accused. Thus, the accused's shots were a complete surprise to Jojo Lim, and he could neither defend himself nor retaliate against the assault.

x x x x x x x x x

"WHEREFORE, x x x

"The Provincial Prosecutor for Isabela is hereby directed to institute against the accused a criminal action for the crime of murder, if none has yet been made; x x x"[29]

Aside from being unrebutted by the accused, the above-quoted ruling is reinforced by the clear and convincing proof adduced by the prosecution through Eyewitnesses Pacita Recto and Clarita Lim, who both affirmed that private respondent had killed Esteban "Jojo" Lim Jr. Clearly then, the evidence of private respondent's guilt was strong; hence, bail should not have been allowed.

Private respondent makes a mountain out of the absence of a ballistic report, but thereby fails to make even a molehill of an argument. The presentation of such a report would have been a superfluity in the determination of whether the evidence of guilt was strong. Furthermore, contrary to his contention, there is absolutely no need to adduce evidence to prove evident premeditation. Since this circumstance was not alleged in the Information, any offer of proof thereof would neither qualify nor aggravate the offense under the present Rules of Procedure.[30]

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[29] *People v. Tobias*, 334 Phil. 881, 909-911, January 30, 1997.

[30] §8 of Rule 110 of the Rules of Court.

Second Issue:

Trial Valid for Another Crime

The crime for which private respondent was convicted by the RTC was committed on October 5, 1990. The applicable law at the time was PD 1866,[31] which prescribed the death penalty if homicide or murder was committed with the use of an unlicensed firearm. The death penalty was, however, suspended by the 1987 Constitution.[32] Thus, the penalty next lower in degree — *reclusión perpetua*[33] — was imposed by this Court in G.R. No. 114185, when it affirmed private respondent's conviction for violation of Section 1 of PD 1866.[34]

Under previous rulings of this Court, "one who kills another with the use of an unlicensed firearm commits two separate offenses of (1) x x x murder under the [Revised Penal Code], and (2) aggravated illegal possession of firearm under the [second] paragraph of Section 1 of [PD] 1866 x x x"[35] In the present case, the filing of an Information for murder, after conviction for violation of Section 1 of PD 1866 — a special

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[31] This was signed into law on June 29, 1983.

[32] §19(1) of Article III of the 1987 Constitution.

[33] Article 25 of the Revised Penal Code.

[34] Besides, RA 7659 did not categorically reimpose the death penalty in PD 1866. Without such reimposition, the penalty remained suspended under the Constitution. See *People v. Arondain*, 418 Phil. 354, 370-371, September 27, 2001; and *People v. Valdez*, 347 SCRA 594, 609-610, December 11, 2000. Both cited *People v. Nepomuceno Jr.*, 368 Phil. 783, 790, June 29, 1999.

[35] *People v. Quijada*, 328 Phil. 505, 533, July 24, 1996, per Davide Jr., *CJ*.

See also *People v. Somooc*, 314 Phil. 741, 754, June 2, 1995; *People v. Fernandez*, 239 SCRA 174, 187, December 13, 1994; *People v. Tiongco*, 236 SCRA 458, 468, September 14, 1994; *People v. Jumamoy*, 221 SCRA 333, 347, April 7, 1993; *People v. Caling*, 208 SCRA 821, 826-827, May 8, 1992; *People v. Tiozon*, 198 SCRA 368, 379, June 19, 1991; and *People v. Tac-an*, 182 SCRA 601, 615-616, February 26, 1990.

law — was in order. There was no violation of the constitutional rule proscribing double jeopardy.[36]

When RA 8294 took effect on July 6, 1997[37] — nearly six months after the affirmation of private respondent's conviction under PD 1866 — the use of an unlicensed firearm was considered merely an aggravating circumstance,[38] if murder or homicide or any other crime was committed with it.[39] Hence, the use of an unlicensed firearm in killing a person "may no longer be the source of a separate conviction for the crime of illegal possession of a deadly weapon."[40] Only one felony may be charged — murder in this instance.[41]

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[36] "[T]he constitutional right against double jeopardy protects one against a second or later prosecution for the *same offense* and that when the subsequent information charges another and different offense, although arising from the same act or set of acts, there is no double jeopardy." *People v. Deunida*, 231 SCRA 520, 530, March 28, 1994, per Davide Jr., *J.* (now *CJ*).

[37] *People v. Valdez, supra*, pp. 608-609.

[38] *People v. Patoc*, GR No. 140217, February 21, 2003, pp. 17-18. See *People v. Delim*, GR No. 142773, January 28, 2003, p. 44; and *People v. Ave*, 391 SCRA 225, 247, October 18, 2002.

[39] 3rd par. of §1 of said law.

What RA 8294 did was simply to excuse the accused from prosecution for the crime of illegal possession of firearms, if another crime was committed. *Margarejo v. Hon. Escoses*, 417 Phil. 506, 512, September 13, 2001.

[40] *People v. Marquez*, 417 Phil. 516, 535, September 13, 2001, per Panganiban, *J.*

See also *People v. Macoy Jr.*, 338 SCRA 217, 229-230, August 16, 2000; *People v. Narvasa*, 359 Phil. 168, 186, November 16, 1998; *People v. Feloteo*, 356 Phil. 923, 935, September 17, 1998; and *People v. Molina*, 354 Phil. 746, 786-789, July 22, 1998.

[41] "x x x [I]f an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the 'other crime' is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense." *People v. Walpan Ladjaalam*, 340 SCRA 617, 648-649, September 19, 2000, per Panganiban, *J.*

Private respondent was convicted of qualified illegal possession of firearms used in murder under PD 1866, not of murder under the Revised Penal Code. To repeat, under RA 8294, the use of an unlicensed firearm is a mere aggravating circumstance in a charge for murder. In the prosecution thereof, the illegal possession of firearms has been explicitly decriminalized.[42] *Nullum crimen, nulla poena sine lege*.[43]

True, private respondent has been convicted of illegal possession of firearm. But his sentence has been effectively cancelled when the trial court reduced the penalty therefor.[44]

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[42] "x x x [I]f an unlicensed firearm is used in the commission of *any other crime*, there can be no separate offense of simple illegal possession of firearms." *People v. Hamton*, 395 SCRA 156, 193, January 14, 2003, *per curiam*; citing *People v Garcia*, 373 SCRA 134, 159-160, January 15, 2002; and *Evangelista v. Hon. Sistoza*, 414 Phil. 874, 881, August 9, 2001. RA 8294 merely considers now "the use of an unlicensed firearm as an aggravating circumstance in murder or homicide and not as a separate offense." *People v. Panabang*, 373 SCRA 560, 576-577, January 16, 2002, per Vitug, *J*.; citing *People v. Mendoza*, 361 Phil. 44, 60, January 18, 1999, per Melo, *J*.

See also *People v. Reyes*, 420 Phil. 343, 354, October 25, 2001; *People v. Abriol*, 419 Phil. 609, 638, October 17, 2001; *People v. Pablo*, 415 Phil. 242, 257, August 15, 2001; *People v. Cabilto*, 414 Phil. 615, 626, August 8, 2001; *People v. Montinola*, 413 Phil. 176, 189-190, July 9, 2001; *People v. Nuñez*, 353 SCRA 285, 294, March 1, 2001; *People v. Tio*, 352 SCRA 295, 304-305, February 20, 2001; *People v. Avecilla*, 351 SCRA 635, 639-640, February 15, 2001; *People v. Navarro*, 351 SCRA 462, 483, February 12, 2001; *People v. Anivado*, 348 SCRA 74, 92, December 14, 2000; *People v. Sabadao*, 344 SCRA 432, 448, October 30, 2000; *People v. Taguba*, 342 SCRA 199, 209-210, October 6, 2000; *People v. Samonte*, 341 SCRA 342, 348-350, September 29, 2000; *People v. Langit*, 337 SCRA 323, 341, August 4, 2000; *People v. Castillo*, 325 SCRA 613, 619, February 15, 2000; *People v. Ricafranca*, 323 SCRA 652, 664, January 28, 2000; *People v. Lumilan*, *supra*; pp. 182-183; *People v. Ringor, Jr.*, 378 Phil. 78, 92-93, December 9, 1999; *People v. Lazaro*, 375 Phil. 871, 885-889, October 26, 1999; *People v. Nepomuceno, Jr.*, 368 Phil. 783, 788-790, June 29, 1999; *People v. De Vera, Sr.*, 367 Phil. 344, 369, June 9, 1999; *People v. Navarro*, 357 Phil. 1010, 1034, October 7, 1998; and *People v. Bergante*, 286 SCRA 629, 644, February 27, 1998.

[43] There is no crime where there is no law punishing it. Reyes, *The Revised Penal Code*, Book I (1981 ed.), p. 34.

[44] In fact, there are reasons to believe that the trial court should not have imposed any penalty at all, but should have completely obliterated the charge.

Hence, he was effectively given the benefit of the new law which decriminalized his offense.

However, private respondent may still be prosecuted for murder — a crime that has not been decriminalized and is completely different from that for which he was convicted earlier. Evidently, the requisites[45] of double jeopardy, which are (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have terminated; (3) the second jeopardy must be for the same offense as that in the first, are not present here.

In the interest of substantial justice and a speedy disposition of this case, we now cancel his bail bond and direct the proper authorities to effect his arrest as soon as possible, so that he may continue to stand trial for the crime charged.[46]

WHEREFORE, the Petition is *GRANTED*. The challenged Orders are *ANNULLED*, and the bail bond of private respondent is *CANCELLED*.

Let copies of this Decision be furnished the director of the National Bureau of Investigation and the director-general of the Philippine National Police. Both are hereby *DIRECTED* to cause the immediate arrest of Ricardo Tobias and to inform this Court of their compliance within ten (10) days from notice. The trial judge is likewise *DIRECTED* to issue such other and further orders to take the accused into custody and to hasten the proceedings in the criminal prosecution for murder. This Decision shall be immediately executory. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[45] *People v. Nitafan*, 302 SCRA 424, February 1, 1999; *People v. Tampal*, 244 SCRA, 203, May 22, 1995.

[46] *People v. Nang*, 351 Phil. 944, 960, April 15, 1998. See *People v. Pareja*, 333 Phil. 261, 276, December 9, 1996; and *People v. Luayon*, 329 Phil. 560, 581, August 22, 1996.

EN BANC

[G.R. No. 151198. June 8, 2004]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAUL BERIBER *y* FUENTES, @ "JERRY FUENTES *y* IGNACIO," @ "GERRY BERIBER," @ "BONG," @ "RAUL FUENTES,"** *appellant.*

SYNOPSIS

Before the Court on automatic review is the decision of the Regional Trial Court of San Pablo City finding appellant guilty of robbery with homicide and imposing upon him the penalty of death. The prosecution presented six witnesses as well as documentary evidence to prove its case. The defense waived its right to cross-examine five (5) out of the six (6) prosecution witnesses. When the defense was scheduled to commence the presentation of its evidence, counsel for the appellant waived his right to present evidence. The trial court ordered both parties to submit their memoranda, but both parties failed to comply with the court's order. Thus, the trial court resolved the case on the basis only of the evidence presented by the prosecution. In this appeal, the appellant contended that the trial court convicted him on circumstantial evidence, which do not establish beyond reasonable doubt that it was he who killed the victim.

The Supreme Court set aside the decision of the trial court. The case was ordered remanded to the trial court for its proper disposition, including the conduct of further appropriate proceedings and the reception of evidence. The Court found that the alleged waiver by appellant of his right to present evidence had affected the presentation of facts in favor of the accused during the trial because only the prosecution's story of the victim's killing was heard by the trial court. The trial court had nothing other than the prosecution's evidence upon which to determine the appellant's innocence or guilt.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT OF THE ACCUSED; WAIVER OF RIGHT TO PRESENT EVIDENCE; SHOULD NEVER BE TAKEN LIGHTLY AND SHOULD ALWAYS BE SUBJECTED TO CAREFUL SCRUTINY BY THE COURT; RATIONALE.—** The Constitution ordains that due process must be observed in cases involving a possible deprivation of life, liberty or property. More important than convicting the guilty and acquitting the innocent is the courts' duty of ensuring that justice is done. Hence, courts must proceed with extreme caution and observe strictly the rules on criminal procedure in cases where the possible penalty is in its severest form; that is, death, because the execution of such a sentence is irrevocable. Any departure from the regular course of trial should be probed into to protect an accused from deprivation of liberty or worse, life itself, on the basis of evidence which cannot establish his guilt beyond reasonable doubt. Thus, a waiver by the accused of his right to present evidence should never be taken lightly and should always be subjected to careful scrutiny by the court. To be upheld as valid, it must be established that the waiver is made voluntarily, knowingly, intelligently and with sufficient awareness of the relevant circumstances and possible consequences.

2. **ID.; ID.; ID.; ID.; OUTLINE OF THE PROCEDURE TO BE OBSERVED BY THE TRIAL COURT IN INSTANCES WHERE THE ACCUSED WAIVES HIS RIGHT TO PRESENT EVIDENCE.—** The procedure to be observed by the trial court in instances where an accused waives his right to present evidence, as outlined by the Court in *People v. Bodoso,* is instructive: 1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard. 2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings. 3. During the hearing, it shall be the task of the trial court to — a. ask the defense counsel a series of questions to determine whether he had conferred with and completely explained to the accused that he had the right to

present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation. b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time for this purpose. c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver. d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

3. ID.; ID.; ID.; RIGHT TO COUNSEL AND DUTY OF A LAWYER FOR AN ACCUSED; CONSTRUED. — In *People v. Bermas*, the Court expounded on the nature of an accused's right to counsel and the corresponding duty of a lawyer for an accused: The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

The apex of criminal punishment is the extinguishment of life. Human life is so invaluable and irreplaceable that the Constitution, law and jurisprudence ensure the imposition of the death penalty only when so it should be and what could be meted is no other penalty.

Before the Court on automatic review is the *Decision* of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 12621-SP (00)[1] finding appellant Raul Beriber *y* Fuentes guilty of Robbery with Homicide and imposing upon him the penalty of death.

The *Second Amended Information* against appellant reads:

> That on or about October 3, 2000, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to gain, did then and there willfully, unlawfully and feloniously enter the premises of SPOUSES HENRY and MA. LOURDES VERGARA, located at Brgy. San Cristobal, this city, and once inside and finding an opportune time, did then and there take, steal and carry away cash money amounting to ₱2,000.00, Philippine Currency, belonging to said Spouses Henry and Ma. Lourdes Vergara, by means of violence against or intimidation of persons and by reason of or on occasion of the robbery, said accused attack and stab to death his immediate employer Ma. Lourdes Vergara with a bladed weapon with which the accused was then conveniently provided, thereby inflicting wounds upon the person of said Ma. Lourdes Vergara which caused her immediate death.

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[1] *People of the Philippines v. Raul Beriber y Fuentes @* Jerry Fuentes *y* Ignacio @ Gerry Beriber @ Bong, @ Raul Fuentes.

CONTRARY TO LAW.[2]

During his arraignment, appellant, assisted by the Atty. Nena Palencia of the Public Attorney's Office, whom the trial court appointed as appellant's counsel *de oficio*, pleaded not guilty to the charge against him. Thereafter, trial ensued.

The prosecution presented six (6) witnesses, as well as documentary evidence, to prove its case.

The first witness for the prosecution was Dr. Lucy Andal Celino (Celino), the physician who examined the remains of the victim, Lourdes Vergara. Celino is the Health Officer of San Pablo City. She testified that she conducted a necropsy of the victim on October 3, 2000 at 4:15 p.m., and that she prepared a Necropsy Report[3] which states that the victim died of shock and hemorrhage secondary to multiple stab wounds all over her body, some of which damaged her heart, lungs and liver. Celino also stated that the location stab wounds, abrasions and lacerations on the victim's body indicated that the latter struggled against her killer. The physician added that the perpetrator used two kinds of instruments in inflicting wounds on the victim: a sharp pointed instrument and a pointed rounded instrument.[4]

On cross-examination, Celino confirmed that the wounds sustained by the victim were inflicted using two different pointed instruments.[5]

The prosecution also presented police officer Armando Demejes (Demejes) who testified that while he was on duty on October

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[2] *Rollo*, p. 8.

The *Information* against appellant was amended twice to include all his *aliases*. In the original *Information* (*Rollo*, p. 6), he was identified only as "Jerry Beriber *y* Ignacio *alias* Gerry Beriber/Bong." In the *Amended Information* (*Rollo*, p. 7), he was identified "Jerry Beriber *y* Ignacio *alias* Gerry Beriber/Bong." In the *Second Amended Information*, the *alias* "Jerry Fuentes *y* Ignacio" was added to appellant's names.

[3] Exhibits "F" to "F-2".

[4] TSN, July 10, 2000, pp. 5-31.

[5] *Id*. at 33.

3, 2000, he went to the house of Henry Vergara (Henry) in Barangay San Cristobal, San Pablo City to investigate a stabbing incident which occurred thereat. When Demejes arrived at the scene of the crime, Vergara informed him that Henry's wife, Lourdes, was stabbed to death. Demejes entered the house and saw a cadaver lying on a bamboo bed. He also looked around the house and saw that the place was in disarray. In the sala, about five to six meters away from the corpse, was an open drawer containing coins,[6] and on the floor near said drawer were more coins.[7] Another drawer was pulled out from its original location and left on a couch.[8] Demejes likewise found a blue tote bag on top of the center of a table[9] and a passbook on top of the bed.[10] He also saw that the door leading to the stairs was open.[11] Demejes prepared a sketch of the crime scene to document what he saw during his investigation.[12]

Thereafter, the prosecution presented Neville Bomiel, a resident of Barangay San Cristobal, San Pablo City. Bomiel testified that he had known the appellant for less than a month prior to October 3, 2000. He knew that the appellant was working for the Vergaras and resided at the latter's rice mill. Bomiel recalled that while he was standing in front of his house in the morning of October 3, 2000, at around 10:00 a.m., he saw the appellant leave the house of the Vergaras and walk towards the direction of the school. When appellant passed by Bomiel's house, he asked the appellant where the latter was going. Appellant replied that he was on his way to Batangas for medical treatment. Bomiel noticed that appellant was wearing a yellow collared t-shirt, blue denims and shoes. Later, he saw appellant return to the house of the Vergaras and enter the place. Afterwards, appellant

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[6] Exhibit "E-2".

[7] Exhibit "E-3".

[8] Exhibit "E-6".

[9] Exhibit "E-4".

[10] Exhibit "E-9".

[11] Exhibit "E-8".

[12] Exhibit "E".

left the house and passed by Bomiel's residence a second time. Bomiel again greeted the appellant and asked him why he (appellant) had not yet left for Batangas. Appellant replied that he was still waiting for Henry. Appellant again proceeded to the direction of the school. Subsequently, Bomiel saw the appellant return to the house of the Vergaras a third time. That was the last time Bomiel saw him.[13] Bomiel observed that on that day, appellant looked restless ("*balisa at hindi mapakali*").[14]

The fourth witness for the prosecution, Rolando Aquino (Aquino), likewise a resident of Barangay San Cristobal, San Pablo City, testified that he had known appellant for less than a month on October 3, 2000. He knew that appellant was hired by the Vergaras as a helper in their rice mill. In the morning of October 3, 2000, Aquino was able to talk to the appellant at the house of a certain Lola Rosy, the victim's mother. Appellant told Aquino that he was going to Batangas that day for medical treatment. Thereafter, appellant, then wearing short pants and a t-shirt with cut-off sleeves, left the house of Lola Rosy to go to the rice mill. At around 8:30 a.m., Aquino again saw appellant at Lola Rosy's house, but appellant was already wearing a mint green-colored shirt and khaki pants. Aquino asked appellant why he had not yet left, but the latter did not answer and appeared restless. Later that morning, at around 11:30 a.m., Aquino learned that Lourdes had been killed. He rushed to the house of the Vergaras and saw the victim lying on a bamboo bed, drenched in blood. Aquino then noticed that appellant's personal belongings which were kept by appellant underneath the bamboo bed were no longer there. He further testified that he did not see appellant return to San Cristobal after October 3, 2000.[15]

Henry also testified before the trial court. He said that he and the victim hired appellant as a helper in their rice mill in September, 2000. Appellant slept in the house of Henry's mother-in-law, Rosy, but kept his personal belongings in their (the Vergaras) house,

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[13] TSN, August 2, 2001, pp. 4-15.

[14] *Id*. at 16.

[15] *Id*. at 17-25.

specifically under the bamboo bed where the Lourdes' corpse was discovered on October 3, 2000 at past 11:00 a.m.[16]

At around 5:30 in the morning of October 3, 2000, appellant asked Henry for permission to go to Batangas. Henry asked appellant to fetch a certain Junjun to be his replacement as Henry's helper in their store in Dolores, Quezon that day. Henry left their house in San Cristobal at 6:00 a.m. to tend their store in Quezon and stayed in the store until 11:00 a.m. before heading back home.[17]

When he arrived at their house in San Cristobal, he noticed that the door was slightly open. He called for Lourdes, but nobody answered. He immediately entered their house and saw that the door of their rice mill was closed. This caused him to suspect that something was wrong. He then noticed that coins were scattered on the floor. He proceeded to the kitchen and saw Lourdes lying on the bamboo bed, lifeless and bloodied in the chest and stomach areas.[18]

Henry thereafter ran to the house of his brother-in-law, Wanito Avanzado (Avanzado), who also resided in San Cristobal. Henry told Avanzado that Lourdes was already dead. Avanzado then ran to the house of the Vergaras.[19]

Henry recalled that before he left for their store in Quezon that day, he left appellant, his wife and their children in their house.[20] He also remembered that cash amounting to Two Thousand Pesos (₱2,000.00) was left inside the drawer in their rice mill. However, when he looked for the money after he discovered that his wife was killed, he could no longer find it.[21]

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[16] TSN, August 3, 2001, pp. 3-4.

[17] *Id*. at 4-5.

[18] *Id*. at 6-7.

[19] *Id*. at 8.

[20] *Id*. at 7.

[21] *Id*. at 8-10.

Henry also testified that he did not see appellant in their house when he went home from Quezon and that appellant's personal effects were no longer under the bamboo bed where appellant used to keep them. He did not see appellant anymore after he left their house on October 3, 2000.

Lastly, the prosecution presented as witness Avanzado, the brother of the victim. Avanzado testified that at around 11:00 a.m. on October 3, 2000, he saw his brother-in-law, Henry, running towards his (Avanzado's) house and shouting "*Si Aloy*", the victim's nickname. He ran to the house of the Vergaras and saw his sister's bloodied body on the bamboo bed. Avanzado tried to lift her body, but her neck was already stiff. After he was sure that Lourdes was indeed dead, he called up the police and requested them to investigate the incident. When the police arrived, they took pictures of the crime scene and conducted an investigation.[22]

Avanzado further stated that he knew that appellant was a helper of the Vergaras. He said that he was told by several residents of San Cristobal that they saw appellant leaving the scene of the crime with a bag.[23]

He also narrated that as Barangay Chairman of San Cristobal, he coordinated with the police for the apprehension of the appellant. Avanzado went with some police officers to Talisay, Batangas to search for appellant in the house of his uncle, but appellant was not there. Later, Avanzado received information that appellant was apprehended in Capiz, but was released by police authorities because the latter were worried that they would be charged with illegal detention. Avanzado then sought the assistance of the staff of *Kabalikat*, a program aired by the ABS-CBN Broadcasting Company. Appellant was subsequently apprehended and brought back to San Pablo City to face the charge against him.[24]

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[22] *Id*. at 16-18.

[23] *Id*. at 18.

[24] *Id*. at 18-22.

The defense waived its right to cross-examine Demejes, Bomiel, Aquino, Vergara and Avanzado.

On August 21, 2001, when the defense was scheduled to commence the presentation of its evidence, counsel for the appellant waived his right to present evidence.

The trial court ordered both parties to submit their respective memoranda, but both parties failed to comply with the court's order. Thus, the trial court resolved the case on the basis only of the evidence presented by the prosecution.[25]

On October 22, 2001, the RTC rendered its *Decision*, the dispositive portion of which states:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds accused RAUL BERIBER *y* FUENTES @ JERRY FUENTES *y* IGNACIO @ GERRY BERIBER @ "Bong", @ "Raul Fuentes" guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code and he is hereby sentenced the supreme and capital penalty of DEATH, with costs.
>
> He is further sentenced to pay the heirs of the deceased:
>
> a) the sum of ₱50,000.00 as death indemnity;
>
> b) the sum of ₱2,000.00 representing the stolen cash;
>
> c) the sum of ₱200,000.00 as moral and exemplary damages; and
>
> d) the sum of ₱100,000.00 representing burial and other incidental expenses of the victim.
>
> SO ORDERED.[26]

In his *Brief*, appellant assigns the following errors:

I

THE COURT *A QUO* ERRED IN FINDING ACCUSED-APPELLANT RAUL BERIBER GUILTY BEYOND REASONABLE DOUBT DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE.

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[25] *Rollo*, p. 21.

[26] *Id*. at 25.

II

THE COURT *A QUO* ERRED IN NOT ASCERTAINING THE VALIDITY OF ACCUSED-APPELLANT'S WAIVER TO CROSS-EXAMINE THE PROSECUTION'S WITNESSES AND TO PRESENT EVIDENCE.

III

THE COURT *A QUO* ERRED IN AWARDING ₱100,000.00 FOR BURIAL AND OTHER INCIDENTAL EXPENSES.[27]

Appellant contends that the trial court convicted him on the basis of circumstantial evidence which do not establish beyond reasonable doubt that it was he who killed the victim. He insists that his presence at the house of the Vergaras and the fact that his personal belongings were no longer there when Lourdes was killed does not necessarily lead to the conclusion that he killed her. Appellant points out that it was not unusual for him to be at the Vergara residence because he was working for them. Moreover, he stresses that none of the prosecution's witnesses saw him carrying a bag when he left Barangay San Cristobal on October 3, 2000; nobody saw him bloodied or carrying an instrument consistent with the description of the instruments used in taking the life of the victim.[28]

Appellant further argues that the trial court should have ascertained whether he fully understood the consequences of his decision to waive his right to cross-examine the witnesses for the prosecution.[29] He avers that the trial court should have taken steps to protect his rights, considering that his counsel *de oficio* waived his right to cross-examine five of the six prosecution witnesses.[30] Appellant likewise faults his counsel *de oficio* for failing to discharge her duty of protecting his rights by: (1) establishing, through cross-examination, his innocence considering that the only link between him and the killing of Lourdes was

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[27] *Id*. at 56-57.

[28] *Id*. at 62-65.

[29] *Id*. at 65-69.

[30] *Id*. at 70.

his presence in the house of the Vergaras hours prior to the discovery of the death of the victim; and (2) presenting evidence on his behalf, or filing a demurrer and explaining why he was not presenting evidence to prove his innocence.[31]

Finally, appellant asserts that the trial court erred in awarding the amount of One Hundred Thousand Pesos (₱100,000.00) as burial and incidental expenses in favor of the victim's heirs despite failure on the part of the prosecution to present proof of the actual damages incurred by the victim's heirs.[32]

The Office of the Solicitor General (OSG) filed a *Manifestation and Motion* in lieu of an Appellee's Brief. In its *Manifestation and Motion*, the OSG recommended that the case be remanded to the trial court for reception of evidence for the appellant.[33]

The OSG calls the Court's attention to the fact that the appellant waived his right to cross examine five out of the six prosecution witnesses although none of the witnesses saw the killing and/or robbery.[34]

The OSG also laments the absence of evidence on the part of the defense, and the absence in the records of the transcript of stenographic notes of the hearing on August 21, 2001 when appellant's counsel *de oficio* allegedly waived the appellant's right to present evidence to prove that he is innocent of the charge against him.[35]

The Court agrees with the OSG that there is a need to remand the case to the RTC for reception of evidence for the appellant.

The Constitution ordains that due process must be observed in cases involving a possible deprivation of life, liberty or

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[31] *Ibid*.

[32] *Id*. at 71.

[33] *Id*. at 111, 119-120.

[34] *Id*. at 112.

[35] *Id*. at 114.

property[36] More important than convicting the guilty and acquitting the innocent is the courts' duty of ensuring that justice is done.[37] Hence, courts must proceed with extreme caution and observe strictly the rules on criminal procedure in cases where the possible penalty is in its severest form; that is, death, because the execution of such a sentence is irrevocable.[38] Any departure from the regular course of trial should be probed into to protect an accused from deprivation of liberty or worse, life itself, on the basis of evidence which cannot establish his guilt beyond reasonable doubt.

Thus, a waiver by the accused of his right to present evidence should never be taken lightly and should always be subjected to careful scrutiny by the court. To be upheld as valid, it must be established that the waiver is made voluntarily, knowingly, intelligently and with sufficient awareness of the relevant circumstances and possible consequences.[39]

It is not clear from the records of this case whether appellant fully comprehended the consequences of his waiver of the right to present evidence. The Court notes that the transcript of stenographic notes of the trial on August 21, 2001, when the accused allegedly waived his right, does not form part of the records. Thus, it cannot determine the manner by which the alleged waiver was made and the circumstances surrounding such waiver. It cannot ascertain whether the accused understood the effects thereof, and whether the trial court made sure that the accused was apprised of and fully understood the consequences of not presenting evidence to prove his innocence, especially

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[36] Section 1, Article III of the Constitution provides:

No one shall be deprived of life, liberty or property without due process of law.

[37] *Webb v. de Leon*, G.R. Nos. 121234, 121245, 121297, August 23, 1995, 247 SCRA 652.

[38] *People v. Pastor*, G.R. No. 140208, March 12, 2002, 379 SCRA 181.

[39] *People v. Bodoso*, G.R. Nos. 149382-83, March 5, 2003, 398 SCRA 642.

considering that the imposable penalty for robbery with homicide is *reclusion perpetua* to death,[40] and that appellant pleaded not guilty to the charge against him.

Although there is no specific provision in the law requiring the trial court to conduct an inquiry into the voluntariness of an accused's waiver of the right to present evidence, the circumstances of the present case, the gravity of the imposable penalty and the plea of "not guilty" entered by the accused should have prompted the trial court to conduct a thorough inquiry into the reasons behind such waiver, the voluntariness thereof, and the sufficiency of appellant's knowledge and understanding of the effects of his waiver. The procedure to be observed by the trial court in instances where an accused waives his right to present evidence, as outlined by the Court in *People v. Bodoso*,[41] is instructive:

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.

3. During the hearing, it shall be the task of the trial court to —

a. ask the defense counsel a series of questions to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution

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[40] Article 294, Revised Penal Code.

[41] *Supra* note 39.

evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time for this purpose.

c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.[42]

There is nothing in the records to show that the trial court asked the appellant searching questions to ascertain whether he was waiving his right to present evidence voluntarily and whether he understood what such waiver meant and the consequences of his failure to present evidence.[43]

Furthermore, the defense also failed to explain why it chose to waive the right to present evidence. Neither did it file a demurrer to evidence (with leave of court) identifying the weaknesses of the prosecution's evidence.

The Court likewise notes that the defense opted not to cross-examine the prosecution's witnesses, except for Dr. Celino. This, taken together with the waiver of the right to present defense evidence, the failure to file a manifestation explaining such waiver or a demurrer to evidence, and the failure to file a memorandum for the appellant as ordered by the trial court, gives rise to the suspicion that the counsel *de oficio* assigned to the appellant did not perform her duty of protecting appellant's rights. In *People v. Bermas*,[44] the Court expounded on the nature of an accused's right to counsel and the corresponding duty of a lawyer for an accused:

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[42] *People v. Bodoso, supra*, at 653-654.

[43] See *People v. Flores*, G.R. No. 106581, March 3, 1997, 269 SCRA 62.

[44] G.R. No. 120420, April 21, 1999, 306 SCRA 135.

The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.[45]

The inadequacy of the legal assistance rendered by the counsel *de oficio* to appellant during the course of the trial is manifest from the records. Although appellant's counsel *de oficio* was aware of her client's plea of "not guilty" to the offense charged, she exerted very little effort in convincing the trial court of appellant's innocence. She subjected only one out of six prosecution witnesses to cross-examination, to test their accuracy, truthfulness and freedom from bias, and to elicit facts and information relevant to the appellant's defense. Moreover, after appellant waived his right to present evidence, presumably with Atty. Palencia's assistance, or upon her advice, she did not explain to the trial court, by way of manifestation or demurrer to evidence, why they were not presenting evidence to prove that appellant is not guilty.

That Atty. Palencia was merely counsel *de oficio* does not excuse her lack of zeal and vigor in defending appellant. The duty of a lawyer to serve his client with competence and diligence[46] applies without distinction to counsel *de parte* or *de oficio*, and becomes even more compelling when the client is accused of a grave crime and is in danger of forfeiting his life if convicted.[47]

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[45] *Id*. at 136.

[46] Canon 18, *Code of Professional Responsibility*.

[47] *People v. Sta. Teresa*, G.R. No. 130663, March 20, 2001, 354 SCRA 697.

However, the invalidity of the waiver by an accused to present evidence does not automatically vacate a finding of guilt in the criminal case and cause the remand thereof to the trial court. There must be a showing that the invalid waiver resulted in the inadequate presentation of facts by either the prosecution or the defense during the trial.[48]

In the present case, the Court finds that the alleged waiver by appellant of his right to present evidence has affected the presentation of facts in favor of the accused during the trial, because only the prosecution's story of Lourdes' killing was heard by the trial court.[49] The latter had nothing other than the prosecution's evidence upon which to determine the appellant's innocence or guilt.

The Court is therefore constrained to remand the case to the trial court for reception of the evidence of the appellant.

WHEREFORE, the *Decision* of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 12621-SP (00), is hereby VACATED and SET ASIDE, and the case REMANDED to said court for its proper disposition, including the conduct of further appropriate proceedings and the reception of evidence. For this purpose, the proper law enforcement officers are directed to TRANSFER appellant RAUL BERIBER *y* FUENTES from the New Bilibid Prison where he is presently committed to the BJMP Jail in San Pablo City, with adequate security escort, where he shall be DETAINED for the duration of the proceedings in the trial court.

The Regional Trial Court of San Pablo City, Branch 32, is directed to dispose of the case with dispatch.

SO ORDERED.

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

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[48] *People v. Bodoso, supra.*

[49] RTC Decision, *Rollo,* p. 21.

FIRST DIVISION

[G.R. No. 151834. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JUAN G. ESCOTE, JOEY VIC PERAS (Acquitted), ROLAND GARCIA (Acquitted), ANGELITO R. LISONA (Acquitted), and "BUBOY,"** *accused.* **JUAN G. ESCOTE,** *appellant.*

SYNOPSIS

Two witnesses were able to identify the appellant herein as the author of the shooting incident that resulted to the death of Carlos Dueñas. In its decision, the trial court gave full faith and credit to the said witnesses. It upheld the witnesses' positive identification of the appellant as the author of the crime and rejected the latter's defenses of denial and alibi. The trial court convicted the appellant for murder, with treachery as the qualifying circumstance.

The Supreme Court affirmed the decision of the trial court that sentenced the appellant to *reclusion perpetua*. The Court found no reason to doubt the identification by the prosecution witnesses of the appellant as the perpetrator of the crime despite the dimly lighted condition of the place where the crime was committed. Settled is the rule that when conditions of visibility are favorable and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted. The trial court properly appreciated treachery. Carlos Dueñas was completely unarmed and totally unaware of what the appellant planned to do. He was suddenly shot by Escote, causing a gunshot wound that resulted to his death.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREOF BY THE TRIAL COURT WILL NOT BE DISTURBED BY THE APPELLATE COURT; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Well-entrenched in our jurisprudence is the doctrine that the assessment of the

credibility of witnesses lies within the province and competence of trial courts. This doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh the testimony in the light of the declarant's demeanor, conduct, and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence accorded by the trial court to the testimonies of witnesses unless it is clearly shown that the trial court has overlooked or disregarded arbitrarily facts and circumstances of significance in the case. None of the exceptions was shown in the case at bar.

2. ID.; ID.; IDENTIFICATION OF THE ACCUSED; CONDITIONS OF VISIBILITY; CASE AT BAR. — Visibility is indeed a vital factor in the determination of whether an eyewitness could have identified the perpetrator of a crime. We have consistently held that the illumination produced by kerosene lamp, flashlight, wick lamps, moonlight, or starlight in proper situations is considered sufficient to allow identification of persons. In this case, the light coming from the electric bulbs of nearby houses was sufficient to illumine the place where Escote was, and to enable the eyewitness to identify him as the person who shot Carlos Dueñas. Settled is the rule that when conditions of visibility are favorable and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted.

3. ID.; ID.; CREDIBILITY OF WITNESSES; ENTITLED TO FULL FAITH AND CREDIT WHEN NOT ACTUATED BY IMPROPER MOTIVE; CASE AT BAR.— Moreover, Escote failed to offer adequate proof that the prosecution witnesses held a grudge against him or that they had a score to settle with him so as to give motive to falsely testify against him. Where there is nothing to indicate that the witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.

4. ID.; ID.; ID.; NOT AFFECTED BY MINOR DISCREPANCIES OR INCONSISTENCIES IN THE DECLARATION OF A WITNESS.— Minor discrepancies or inconsistencies in the declarations or testimonies of a witness do not affect, but even

enhance, the witness' credibility, for they remove any suspicion that the testimonies were contrived or rehearsed. What is important is that the testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole.

5. ID.; ID.; DENIAL AND ALIBI; DEFENSES THAT CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME.— Necessarily, the defenses of denial and alibi interposed by Escote must fail. We view them with disfavor for being unsubstantiated and uncorroborated. Being negative and self-serving evidence, they cannot secure worthiness more than that placed upon the testimonies of the prosecution witnesses who testified on clear and positive evidence and who positively identified Escote as the perpetrator of the crime.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, DEFINED; PRESENT IN CASE AT BAR.— Treachery was properly appreciated by the trial court. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and especially to ensure the execution of the crime without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberately without warning – done in a swift and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or to escape. Carlos Dueñas was completely unarmed and totally unaware of what Escote wanted or planned to do. He was suddenly shot by Escote, causing a gunshot wound which resulted to his death.

7. ID.; CIVIL LIABILITY; INDEMNITY FOR THE VICTIM'S DEATH IS THE SAME AS INDEMNITY *EX DELICTO*; AWARD OF BOTH IS DUPLICITOUS.— As to the civil aspect of the case, the trial court awarded in favor of the victim's heirs "the amount of ₱50,000.00 as indemnity for [the victim's death and ₱50,000.00 as indemnity *ex delicto*." Such an award is duplicitous. Article 2206 of the Civil Code authorizes an award of civil indemnity for death caused by a crime, which current jurisprudence has set at ₱50,000.00. We, therefore, modify the decision by deleting the other award of ₱50,000.00.

8. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF, WARRANTED IN THE PRESENCE OF AGRRAVATING CIRCUMSTANCE OF TREACHERY.—- However, an award of exemplary damages in the sum of ₱25,000.00 is warranted because of the presence of the aggravating circumstance of treachery. Exemplary damage is awarded when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DAVIDE, JR., *C.J.*:

Appellant Juan G. Escote appeals from the decision[1] dated 15 October 2001 of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 193-M-2000, which found him guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim ₱50,000 as death indemnity and ₱50,000 as indemnity *ex delicto.*

On 31 January 2000, Escote, together with Roland Garcia, Angelito Lisona, Joey Vic Peras, and one *alias Buboy*, was charged with Murder for the death of Carlos Dueñas. The accusatory portion of the information reads:

That on or about the 16th day of June 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and with intent to kill one Carlos Dueñas, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot

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[1] Original Record (OR), 183-189; *Rollo*, 11-17. Per Judge Gregorio S. Sampaga.

with the said firearms they were then provided the said Carlos Dueñas, hitting him in his body, thereby causing him serious physical injuries which directly caused his death.[2]

Upon their arraignment on different dates, all the accused pleaded not guilty except the one *alias Buboy* whose true name and identity were never known.

The evidence for the prosecution established the following facts:

On the evening of 16 June 1999, while Liza de la Cruz, a resident of Pandayan, Meycauyan, Bulacan, was on her way to buy bread, she noticed a gray Lancer box-type car parked alongside the Pandayan Memorial Cemetery. She became suspicious of the men inside the car, as she observed them to bow their heads whenever light from oncoming vehicles hit them. Curious, she approached the car and met the eyes of the man on the driver's seat. The man glared at her ("*pinandilatan ng mata*"). Very much intimidated, she ran away. Upon arriving home, she heard gunshots.[3]

Meanwhile, Allan Manalo was watching TV at his home. During the commercial break, he went outside and saw a gray Lancer box-type car at about eight meters away and near the Pandayan Memorial Cemetery. Suspicious that the car's engine was running while parked, he wrote down the car's plate number.[4]

At the gate of the memorial cemetery, Ricardo Caitum was having a conversation with the guard when he saw a man alight from a gray Lancer box-type car, which was parked at the side of the cemetery. The man flagged down an approaching orange Honda Civic car. When the orange car stopped, the man asked its driver to alight, but the latter refused. Using a short firearm, the man shot the driver of the orange car, who thereafter attempted

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[2] OR, 2-3.

[3] TSN, 21 November 2000, 4-6.

[4] *Id.*, 18-21.

to escape the assault by speeding away. The man, however, fired again at the driver of the orange car.[5]

The driver of the orange car was Carlos Dueñas, who died of hypovolemic shock as a result of a gunshot wound in the left lower extremity.[6]

In open court, Liza de la Cruz identified Escote as the driver of the gray Lancer box-type car who glared at her.[7] Ricardo Caitum likewise identified Escote as the person who alighted from the gray Lancer box-type car and shot the driver of the orange Honda Civic car.[8]

For its part, the defense presented Escote as its lone witness. He testified that on 19 July 1999, when the crime was committed, he was already in hiding at Camiguin Island, being an escaped death convict from the Provincial Jail of Malolos, Bulacan. He lived with his cousins and worked as a fisherman from 30 September 1998 to 18 August 1999. Unable to bear rural life, he went to Quezon City, Metro Manila, where he was arrested on 26 September 1999. He vehemently denied the charge against him. He also denied knowing the other accused prior to his arrest. He claimed that he was merely implicated by a certain Willy who was tortured by the Criminal Investigation and Detection Group.[9]

In its decision, the trial court gave full faith and credit to the witnesses for the prosecution. It upheld the witnesses' positive identification of Escote as the author of the crime and rejected his uncorroborated denial and alibi. It therefore convicted him of murder, with treachery as the qualifying circumstance. Finding no proof of the participation of the other accused in the execution of the crime, the trial court acquitted the three other named accused.[10]

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[5] TSN, 18 June 2001, 2-6.

[6] Exhibit "C," OR, 158.

[7] TSN, 21 November 2000, 5-6.

[8] TSN, 18 June 2001, 3-6.

[9] *Id*., 13-17.

[10] OR, 183-189.

Before us, Escote challenges the decision of the trial court convicting him of the murder of Carlos Dueñas on the ground of reasonable doubt. Escote would like us to believe his defenses of alibi and frame-up. He additionally contends that the darkness of the night and the dimly lighted *locus criminis* precluded a clear identification of the assailant; hence, the prosecution witnesses were merely making wild guesses. He further questions the credibility of prosecution witness Liza de la Cruz by pointing out her inconsistent statements about the assailant having a thin moustache and no moustache.[11]

The Office of the Solicitor General (OSG) maintains that Escote's guilt has been proved beyond reasonable doubt by the positive testimonies of the prosecution witnesses. They could not have erred in their identification of Escote as the assailant, since the place where the crime took place was adequately illuminated by the lights coming from the residential houses nearby. Besides, these prosecution witnesses had no improper motive to implicate him, and therefore, the finding of the trial court on the credibility of witnesses should not be disturbed. Further, the OSG asserts that Escote's defense of alibi is unsubstantiated. It also agrees with the trial court's appreciation of treachery.[12]

The appeal is without merit. We find no cogent or compelling reason to overturn the trial court's decision.

Well-entrenched in our jurisprudence is the doctrine that the assessment of the credibility of witnesses lies within the province and competence of trial courts. This doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh the testimony in the light of the declarant's demeanor, conduct, and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and

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[11] *Rollo*, 42-51.

[12] *Id.*, 66-81.

falsehood. Thus, appellate courts will not disturb the credence accorded by the trial court to the testimonies of witnesses unless it is clearly shown that the trial court has overlooked or disregarded arbitrarily facts and circumstances of significance in the case.[13] None of the exceptions was shown in the case at bar.

Verily, we find no reason to doubt the identification by the prosecution witnesses of Escote as the perpetrator of the crime despite the dimly-lighted condition of the place where the crime was committed. Visibility is indeed a vital factor in the determination of whether an eyewitness could have identified the perpetrator of a crime. We have consistently held that the illumination produced by kerosene lamp, flashlight, wick lamps, moonlight, or starlight in proper situations is considered sufficient to allow identification of persons. In this case, the light coming from the electric bulbs of nearby houses was sufficient to illumine the place where Escote was, and to enable the eyewitness to identify him as the person who shot Carlos Dueñas. Settled is the rule that when conditions of visibility are favorable and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted.[14]

Moreover, Escote failed to offer adequate proof that the prosecution witnesses held a grudge against him or that they had a score to settle with him so as to give them motive to falsely testify against him. Where there is nothing to indicate that the witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[15]

The alleged inconsistent statements of Liza de la Cruz in her sworn statement and testimony in open court are not relevant and material to overturn the positive identification of Escote. Minor discrepancies or inconsistencies in the declarations or

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[13] *People v. Bolivar*, G.R. No. 130597, 21 February 2001, 352 SCRA 438, 451.

[14] *Id*.

[15] *People v. Eribal*, 364 Phil. 829, 838 (1999).

testimonies of a witness do not affect, but even enhance, the witness' credibility, for they remove any suspicion that the testimonies were contrived or rehearsed. What is important is that the testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole.[16]

Necessarily, the defenses of denial and alibi interposed by Escote must fail. We view them with disfavor for being unsubstantiated and uncorroborated. Being negative and self-serving evidence, they cannot secure worthiness more than that placed upon the testimonies of the prosecution witnesses who testified on clear and positive evidence[17] and who positively identified Escote as the perpetrator of the crime.[18]

Treachery was properly appreciated by the trial court. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and especially to ensure the execution of the crime without risk to himself arising from the defense which the offended party might make.[19] The essence of treachery is that the attack is deliberately without warning — done in a swift and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or to escape.[20] Carlos Dueñas was completely unarmed and totally unaware of what Escote wanted or planned to do. He was suddenly shot by Escote, causing a gunshot wound which resulted to his death.

There being no other aggravating or mitigating circumstances alleged in the information and proved during the trial,[21] we sustain

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[16] See *People v. Realin*, G.R. No. 126051, 21 January 1999, 301 SCRA 495, 510-511.

[17] *People v. Alib*, 379 Phil. 103, 112 (2000).

[18] See *People v. Grefaldia*, G.R. No. 121787, 17 June 1997, 273 SCRA 591, 606.

[19] *People v. Conde*, 386 Phil. 859, 868 (2000).

[20] *People v. Galano*, 384 Phil. 206, 218-219 (2000).

[21] Art. 63, Revised Penal Code.

the penalty imposed by the trial court, which is *reclusion perpetua*, the lower of the two indivisible penalties prescribed by law for murder. Other circumstances like quasi-recidivism and the use of an unlicensed firearm were intimated in the records, but were not alleged in the information. They cannot, therefore, affect the determination of the proper penalty to be imposed upon Escote.

As to the civil aspect of the case, the trial court awarded in favor of the victim's heirs "the amounts of ₱50,000.00 as indemnity for [the victim's] death and ₱50,000.00 as indemnity *ex delicto*." Such an award is duplicitous. Article 2206 of the Civil Code authorizes an award of civil indemnity for death caused by a crime, which current jurisprudence has set at ₱50,000. We, therefore, modify the decision by deleting the other award of ₱50,000. However, an award of exemplary damages in the sum of ₱25,000 is warranted because of the presence of the aggravating circumstance of treachery.[22] Exemplary damages is awarded when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying.[23]

WHEREFORE, in view of all the foregoing, judgment is hereby rendered *AFFIRMING* the 15 October 2001 Decision of the Regional Trial Court, Malolos, Bulacan, Branch 78, in Criminal Case No. 193-M-2000, finding appellant Juan G. Escote guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* with the *MODIFICATION* that he is ordered to indemnify the heirs of the victim Carlo Dueñas ₱50,000 as death indemnity or civil indemnity *ex delicto* and ₱25,000 as exemplary damages.

SO ORDERED.

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

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[22] *People v. Astudillo*, G.R. No. 141518, 29 April 2003; *People v. Opuran, supra*.

[23] *People v. Catubig*, G.R. No. 137842, 23 August 2001, 363 SCRA 621.

FIRST DIVISION

[G.R. No. 152302. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE OGA *Y* CALUNOD,** *appellant.*

SYNOPSIS

On appeal is the conviction of a man who was sentenced to suffer the penalty of *reclusion perpetua* for the crime of rape. The alleged victim's parents caught herein atop their appellant daughter's naked body and when interrogated she denied that the appellant was her boyfriend. In his appellant's brief, the appellant posits that what took place that fateful night was consensual sex.

The Supreme Court reversed the decision of the trial court and acquitted the appellant. According to the Court, though the "sweetheart theory" does not often gain approval, the court would not hesitate to set aside the judgment of conviction where the guilt of the accused had not been proved beyond reasonable doubt. While it is true that a rape victim is not expected to resist until death, it is contrary to human experience that the alleged victim herein did not make an outcry or use her hands which must have been free most of the time to ward off the lustful advances of appellant.

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—- In reviewing rape cases, the Court has established the following principles as guides: (1) an accusation of rape can be made with facility, difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) by reason of the intrinsic nature of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and cannot draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; ELEMENTS; FORCE OR INTIMIDATION; CONSTRUED.— The force employed in rape cases may be physical and actual or psychological and addressed to the mind of the complainant. Both have the same effect on the rape victim. In the latter case, however, we have consistently held that the force or intimidation must be of such character as to create real apprehension of dangerous consequences or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance. The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. It is not necessary, therefore, that the force or intimidation employed be so great or be of such character that it can not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused. Hence, the victim need not resist unto death or sustain physical injuries in the hands of the rapist. Intimidation and coercion must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard-and-fast rule. It depends on several factors like difference in age, size, and strength of the parties, and their relationship.

3. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— No physical force was used to quell Irene's alleged resistance. Her mouth was not covered nor stuffed with any object. Except for the alleged immobility of her hands held above her shoulders by the right hand of the appellant when he was already on top of her, she was not physically restrained of her movements. Neither was intimidation employed against her. Even if she was pulled down to the bed, she was not threatened with bodily or physical harm by a knife, *bolo*, or any object or instrument that the appellant could have employed so as "to create a real apprehension of dangerous consequences or serious bodily harm." Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or *bolo*, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON OF THE TRIAL COURT ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL; EXCEPTION; PRESENT IN CASE AT BAR.— Case law often underscores the great weight and respect accorded to the factual

findings of the trial court, especially on the credibility of witnesses, which are not disturbed on appeal. The rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts. This case is an exception.

5. ID.; ID.; ID.; TEST IN DETERMINING CREDIBILITY; CASE AT BAR.— The test for determining the credibility of a witness' testimony is whether the testimony is in conformity with common knowledge and consistent with the experience of mankind and that whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance. We find that Irene's testimony failed to pass that test.

6. CRIMINAL LAW; RAPE; RESISTANCE; LACK OF RESISTANCE BELIES A CLAIM OF RAPE.— AAA claimed that she resisted the sexual molestation, but a careful reading of her testimony failed to reveal the kind of resistance she did under the circumstances. While it is true that a rape victim is not expected to resist until death, it is contrary to human experience that AAA did not even make an outcry or use her hands which must have been free most of the time to ward off the lustful advances of appellant. Further, the findings of Dr. Villena, who examined AAA only several hours after the alleged rape, showed no sign of extragenital injuries on her body. Not a piece of AAA's apparel was torn or damaged as would evince a struggle on her part. These circumstances additionally belie AAA's claim that the appellant had sexual intercourse with her without her consent.

7. ID.; ID.; INTIMIDATION; THREAT AFTER THE CONSUMMATION OF THE ACT IS OF NO MOMENT.—That AAA was allegedly threatened with death is of no moment. The threat came after the consummation of the sexual act and, as we have already observed, it was not accompanied by overt acts such as slaps, punches, kicks, and beatings or the employment of a knife, gun or any weapon. Absent any logical explanation or justification, only a willing victim would passively allow herself to be ravished and her honor tarnished simply by reason of a verbal threat of an unarmed rapist.

8. ID.; ID.; COMMISSION OF NOT SHOWN BY FAILURE OF VICTIM TO ATTEMPT TO ESCAPE; CASE AT BAR.— Indeed, AAA's demeanor was simply inconsistent with that

of an ordinary Filipina whose instinct dictates that she summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity. True, women react differently in similar situations, but it is unnatural for an intended rape victim, as in the case at bar, not to make even a feeble attempt to free herself despite a myriad of opportunities to do so. This constrained us to entertain a reasonable doubt on the guilt of the appellant. In fact, the testimony of AAA's father that he surprised Irene and appellant completely naked further increases our suspicion that what took place that fateful night, over and above the consternation of AAA's outraged and enraged parents, was consensual sex. Though the "sweetheart theory" does not often gain approval, we will not hesitate to set aside a judgment of conviction where, as in the present case, the guilt of the accused has not been proved beyond reasonable doubt. . . . Our minds cannot rest easy on the certainty of appellant's guilt. Hence, we cannot sustain his conviction for the crime of rape through force or intimidation under Article 335, paragraph (1), of the Revised Penal Code, as amended by R.A. No. 7659.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DAVIDE, JR., *C.J.*:

How would parents react if they catch their teen-aged daughter naked and lying beneath a naked man? Let us follow the travails of similarly situated parents as their domestic drama unfolds in the case at bar.

Inside a makeshift house in a construction site in x x , Metro Manila, on the evening of 9 August 1998, BBB and his wife were peacefully slumbering, thinking that their 14-year-old daughter AAA was selling cigarettes at the fish pier. At around

2:00 a.m. of the following day, they were suddenly awakened by the loud banging of corrugated GI sheet.[1]

Discovering that the banging came from the barracks of his co-construction worker which was about three meters away, Ignacio and his wife proceeded in haste only to be momentarily rooted to the ground in surprise and dismay by what they beheld inside. BBB's co-worker Jose Oga, herein appellant, was naked and in the motion of pumping his seeds into the sexual organ of their daughter AAA. Enraged, BBB's wife pushed the appellant and pulled AAA, while BBB shouted for the assistance of the guards.[2]

AAA recalled that at around 10:00 p.m. of 9 August 1999, the appellant summoned her to his barracks. Thinking that he had the usual errand for her like buying him cigarettes or liquor, she approached him. Inside his barracks, the appellant, however, suddenly pulled her and laid her on the *papag* (wooden bed). The appellant then took off her pants and panty, as well as his clothes. AAA resisted the sexual assault, but her efforts proved in vain because the appellant was strong and drunk. He pinned her down with his body, while his right hand pinned her hands above her shoulders and his left hand separated her legs. Then he inserted his penis into her vagina.[3]

It was only at around 2:00 a.m. that AAA was able to finally kick the galvanized iron that enclosed appellant's barracks. This caused much noise that prompted her parents to check appellant's barracks. There, they caught the appellant naked atop her naked body. She denied that the appellant was her boyfriend.[4]

Several hours later, at 10:20 a.m. of 10 August 1998, AAA was examined by Dr. Aurea Villena and was found to have fresh hymenal laceration, with no evident sign of extragenital

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[1] TSN, 23 September 1999, 2-3.

[2] TSN, 23 September 1999, 3-6.

[3] TSN, 3 May 1999, 1-5, 14.

[4] TSN, 9 May 1999, 2-16.

physical injuries on her body.[5] That same day, at 2:00 p.m., AAA and BBB executed before the police sworn statements[6] relative to the events that day. This led to the filing of an information charging the appellant with the crime of rape.

For its part, the defense presented as its lone witness appellant Jose Oga. He did not deny that he had sexual intercourse with AAA but interposed the "sweetheart theory." He claimed that on 10 May 1998, after one week of courtship, AAA reciprocated his love. About three months later, at around 10:30 p.m. of 10 August 1998, while he was asleep, AAA came inside his barracks and awakened him with her embraces. He stood up and ordered her to go out, but she continued embracing him and professing her love for him. AAA stripped and, while naked, laid down with him on the bed. Since he is a man, he gave in and had sex with her. Satiated, he and AAA both slept.[7]

At around 3:30 a.m. of the following day, BBB's wife barged into appellant's barracks. She pulled the mosquito net that was tied to the walls, and shouted to BBB: "BBB, *nandito ang iyong anak* (BBB, your child is here)." BBB arrived. Though outraged, AAA's parents decided that the appellant and AAA should be married. BBB, however, proposed to the appellant to sign something first at the maritime police because he might be married to another woman. But after the appellant signed a document, BBB told him that he would be charged with rape. The appellant did not know what he signed because he could not read and he only knew how to sign his name.[8]

The Regional Trial Court of Malabon City, Branch 170, to which the case, Criminal Case No. 19766-MN, was assigned, found the version of the prosecution more credible and rejected the defense's sweetheart theory. It noted that the vivid and detailed narration by AAA of the rape incident was corroborated

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[5] Exhibit "C", Original Record (OR), 50.

[6] Exh. "B," OR, 49; Exh. "D", OR, 51.

[7] TSN, 10 April 2000, 3, 5.

[8] *Id*., 4-12.

by her father's testimony and the medical findings of Dr. Villena. Hence, in a decision dated 26 December 2001,[9] the trial court convicted the appellant of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay Irene ₱50,000 by way of civil indemnity and ₱50,000 as moral damages, plus the costs of suit.

In his Appellant's Brief, the appellant posits that what took place on that fateful night was consensual sex. He points out that for a period of four to five hours from the time AAA was allegedly summoned to his barracks, there was silence therein. No scream escaped from AAA's throat notwithstanding the lack of evidence that something was stuffed into her mouth to stifle her cries. Neither is there evidence that he carried a knife or any deadly weapon to frighten and intimidate her. Her hands were not tied either. Moreover, the testimony of AAA's irate father that he found the appellant and AAA completely naked bolsters the consensual nature of the coition.

On the other hand, the Office of the Solicitor General (OSG) seeks the affirmation of the judgment of conviction. It argues that the absence of an outcry on the part of AAA should not be construed as a manifestation of consent because the appellant employed force and intimidation and that AAA offered resistance. It likewise invites the attention of this Court to the evident disparity between the physical strength of AAA, who was merely a 14-year-old lass, and the appellant, who was 24 years old and in his prime. The physical superiority of the appellant so overwhelmed and intimidated AAA that she succumbed to his carnal desires. Further, AAA's narration of the rape was clear and straightforward. Being a child victim, her testimony should be given full weight, for when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

In reviewing rape cases, the Court has established the following principles as guides: (1) an accusation of rape can be made with facility, difficult to prove but more difficult for the person

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[9] Per Judge Benjamin T. Aquino. OR, 144-147; *Rollo*, 51-54.

accused, though innocent, to disprove; (2) by reason of the intrinsic nature of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and cannot draw strength from the weakness of the evidence for the defense.[10]

Heeding these principles, we need to first take a look at the information charging the appellant with rape to determine whether the allegations stated therein were proved by the prosecution. It is alleged that the crime of rape was committed with force and intimidation under Article 335, paragraph (1), of the Revised Penal Code, as amended by Republic Act No. 7659.

The force employed in rape cases may be physical and actual or psychological and addressed to the mind of the complainant. Both have the same effect on the rape victim. In the latter case, however, we have consistently held that the force or intimidation must be of such character as to create real apprehension of dangerous consequences or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance.[11] The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. It is not necessary, therefore, that the force or intimidation employed be so great or be of such character that it can not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused.[12] Hence, the victim need not resist unto death or sustain physical injuries in the hands of the rapist.[13]

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[10] *People v. Rafales*, G.R. No. 133477, 21 January 2000, 323 SCRA 13 citing *People v. Lucas*, G.R. Nos. 108172-73, 25 May 1994, 232 SCRA 537; *People v. Excija*, G.R. No. 119069, 5 July 1996, 258 SCRA 424; *People v. De Guzman*, 333 Phil. 50 (1996).

[11] *People v. Gan*, G.R. No. L-33446, 18 August 1972, 46 SCRA 667.

[12] *People v. Delos Santos*, G.R. No. 137968, 6 November 2001, 368 SCRA 475; *People v. Bertulfo*, G. R. No. 143790, 7 May 2002, 381 SCRA 762.

[13] *People v. Dreu*, G.R. No. 126282, 20 June 2000, 334 SCRA 63.

Intimidation and coercion must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard-and-fast rule. It depends on several factors like difference in age, size, and strength of the parties, and their relationship.[14]

We disagree with the OSG that the evident disparity in the age and physical strength of AAA and the appellant manifests the futility of any resistance. This argument is not borne out by the records. The medical certificate issued by Dr. Villena only indicated Irene's height at 58 ½ cms. and weight at 99 lbs. As for the appellant, aside from the claim that he was 24 years at the time of the alleged rape and he was a construction worker, no other physical statistics were mentioned in the records, like his height, weight, and built. We cannot presume that because the appellant was older and a construction worker, he was of larger built which naturally aided him in the employment of the necessary force and intimidation to completely overwhelm and ultimately rape AAA.

As to whether force and intimidation were indeed employed by the appellant upon AAA, let us examine the evidence of the prosecution, particularly AAA's testimony on the details of the rape, *viz.*:

Q Why are you stating that he has committed rape?

A Because on August 9, 1998 at 10:00 o'clock in the evening I was called by Jose Oga in his barracks. Upon arrival there, he suddenly pulled me and laid me on the wooden bed (*papag*), sir.

Q What happened next after accused forced you to lie down on the wooden bed?

A I resisted, Your Honor.

x x x x x x x x x

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[14] *People v. Dumanon*, G.R. No. 123096, 18 December 2000, 348 SCRA 461; *People v. Ardon*, G.R. Nos. 137753–56, 16 March 2001, 354 SCRA 609.

Court

Proceed.

Pros Aliposa (witness)

Q What happened to your resistance?
A Nothing happened, sir.

Q Why?
A Because he was strong and he was drunk at that time, sir.

Q What did you do then?
A I was resisting — I continued resisting when he continued forcing to remove my pants and panty, your Honor.

Q What happened when you continued resisting?
A Nothing happened, Your Honor.

Q After nothing happened to your resistance, what did the accused do if any?
A He pinned me, Your Honor "*dinaganan ako*."

Q After that, what happened?
A He took off his clothes and he inserted his organ to my organ, Your Honor.

x x x x x x x x x

Q After he inserted his organ to your organ, what did you do next?
A He threatened me, sir.

Q What was his threat?
A He told me that I should not be mistaken in resisting, otherwise, he will kill me, sir.

Q When the penis of the accused was inserted into your vagina, where were his hands?
A His hands were holding my hands, sir.

Q Where were your hands being held by the accused, in front of your breast or at the back of your head?
A He was holding my hands above my shoulder, sir.[15]

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[15] TSN, 3 May 1999, 3-5.

After scrutinizing AAA's testimony, we find that no force or intimidation was employed by the appellant.

No physical force was used to quell AAA's alleged resistance. Her mouth was not covered nor stuffed with any object. Except for the alleged immobility of her hands held above her shoulders by the right hand of the appellant when he was already on top of her, she was not physically restrained of her movements.

Neither was intimidation employed against her. Even if she was pulled down to the bed, she was not threatened with bodily or physical harm by a knife, *bolo*, or any object or instrument that the appellant could have employed so as "to create a real apprehension of dangerous consequences or serious bodily harm." Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or *bolo*, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.[16]

The lack of force and intimidation is more evident in AAA's cross-examination, *viz*.:

Q How did he spread your legs, what movement did he do?
A He was pinning me, Your Honor.

Q Is that pinning or spreading your legs?
A Yes, Your Honor because one of his hands was on my legs.

Q And he used his hand in separating your legs?
A Yes, Your Honor.

x x x x x x x x x

Q What hand did he use in separating your legs?
A Left, sir.

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[16] *People v. Ferrer*, G.R. No. 142662, 14 August 2001, 362 SCRA 778; *People v. Aguero, Jr.*, G.R. No. 139410, 20 September 2001, 365 SCRA 503; *People v. Bation*, G.R. Nos. 134769-71, 12 October 2001, 367 SCRA 211; *People v. Añonuevo*, G.R. No. 137843, 12 October 2001, 367 SCRA 237; *People v. Cristoba*l, G.R. No. 144161, 12 March 2002, 379 SCRA 221.

Q How about his right hand, where was his right hand?
A His right hand was pinning me sir.

Q And your both hands were free at that time?
A No, Sir.

Q Why?
A My hands were pinned, sir.

Q Both hands?
A Yes sir?

Q At your back?
A Yes, Sir.

Q When he removed your pants, where you lying down or standing?
A Lying down, sir.

Q After that he removed your pants?
A He was wearing shorts at that time, sir.

Q With upper clothing?
A Yes, sir.

Q When he removed his upper clothing and his pants, how did he remove them?
A He did not remove his shirt, he only removed his shorts, sir.

Q When he removed his shorts, was he standing or lying?
A He was kneeling , sir.[17]

Clear likewise in AAA's testimony were her chances of escape; yet, she did not try to. Quite telling was her placidity when the appellant was removing his shorts in preparation for the consummation of the sexual act. She was not restrained of her movements then. Her hands were not held by the appellant. She could have screamed, ran towards the exit, and kicked or pushed him. But she stayed lying down on the "*papag*," content in watching his next move and waiting for the inevitable. Her

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[17] TSN, 3 May 1999, 14-15.

failure to even attempt to escape from her supposed assailant or at least to shout for help despite opportunities to do so casts doubt on her credibility and renders her claim of lack of voluntariness and consent difficult to believe.[18]

Corollary is the issue of AAA's credibility. Case law often underscores the great weight and respect accorded to the factual findings of the trial court, especially on the credibility of witnesses, which are not disturbed on appeal. The rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.[19]

This case is an exception. The test for determining the credibility of a witness' testimony is whether the testimony is in conformity with common knowledge and consistent with the experience of mankind and that whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.[20] We find that AAA's testimony failed to pass that test.

AAA's overall deportment during her ordeal defies comprehension and the reasonable standard of human conduct when faced with a similar situation. She was sitting outside her house at 10:00 p.m., while her parents were already sleeping. When the appellant summoned her, she immediately acceded, thinking that the former had an errand for her. Curiously, why would she be at his beck and call even at that late night when the appellant, according to Irene herself, was nothing more than her father's co-worker and drinking partner.[21] While we

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[18] *People v. Malbog*, G.R. No. 106634, 12 October 2000, 342 SCRA 620; *People v. De la Cruz*, G.R. No. 137967, 19 April 2001, 356 SCRA 704.

[19] *People v. Quejada*, G.R. Nos. 97309-10, 3 June 1993, 223 SCRA 77; *People v. Abella*, G.R. No. 127803, 28 August 2000, 339 SCRA 129; *People v. Nelson*, G.R. Nos. 139217-24, 27 June 2003.

[20] *People v. Subido*, G.R. No. 115004, 5 February 1996, 253 SCRA 196; *People v. Clemente*, G.R. No. 130202, 13 October 1999, 316 SCRA 789.

[21] TSN, 3 May 1999, 3-9.

could attribute to her naïveté and trusting nature her immediate compliance to the command of an older person, we cannot ascribe to her innocence her failure to scream or shout when the appellant suddenly pulled her and laid her down on the wooden bed. Her parents were just in another barracks about three meters away from appellant's barracks.[22] They could have easily heard her cry of help as they readily heard the banging of the galvanized GI sheet at 2:00 a.m. Her parents could have quickly assisted her as they were so prompt in inspecting the loud banging.

AAA claimed that she resisted the sexual molestation, but a careful reading of her testimony failed to reveal the kind of resistance she did under the circumstances. While it is true that a rape victim is not expected to resist until death, it is contrary to human experience that Irene did not even make an outcry or use her hands which must have been free most of the time to ward off the lustful advances of appellant.[23] Further, the findings of Dr. Villena, who examined AAA only several hours after the alleged rape, showed no sign of extragenital injuries on her body. Not a piece of AAA's apparel was torn or damaged as would evince a struggle on her part. These circumstances additionally belie AAA's claim that the appellant had sexual intercourse with her without her consent.[24]

That AAA was allegedly threatened with death is of no moment. The threat came after the consummation of the sexual act and, as we have already observed, it was not accompanied by overt acts such as slaps, punches, kicks, and beatings or the employment of a knife, gun, or any weapon. Absent any logical explanation or justification, only a willing victim would passively allow herself to be ravished and her honor tarnished simply by reason of a verbal threat of an unarmed rapist.[25]

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[22] TSN, 23 September 1999, 6.

[23] *People v. Ollamina*, G.R. No. 133185, 6 February 2002, 376 SCRA 337.

[24] *People v. Peligro*, G.R. No. 148899, 28 October 2002, 391 SCRA 309.

[25] *People v. Ollamina, supra* note 23.

Significantly, AAA remained inside appellant's barracks for about four hours from 10:00 p.m. to 2:00 a.m. It is simply incredible that the appellant would take his sweet time in raping AAA, knowing that her father was just three meters away. We ask again here the question we posed in *People v. Relorcasa*:[26] "Does a rapist have the luxury of time unless there is an active cooperation on the part of the victim?"

Indeed, AAA's demeanor was simply inconsistent with that of an ordinary Filipina whose instinct dictates that she summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity. True, women react differently in similar situations, but it is unnatural for an intended rape victim, as in the case at bar, not to make even a feeble attempt to free herself despite a myriad of opportunities to do so.[27] This constrained us to entertain a reasonable doubt on the guilt of the appellant. In fact, the testimony of AAA's father that he surprised AAA and appellant completely naked further increases our suspicion that what took place that fateful night, over and above the consternation of Irene's outraged and enraged parents, was consensual sex.

Though the "sweetheart theory" does not often gain approval, we will not hesitate to set aside a judgment of conviction where, as in the present case, the guilt of the accused has not been proved beyond reasonable doubt. Our minds cannot rest easy on the certainty of appellant's guilt. Hence, we cannot sustain his conviction for the crime of rape through force or intimidation under Article 335, paragraph (1), of the Revised Penal Code, as amended by R.A. No. 7659.

WHEREFORE, in view of all the foregoing, the appealed decision of the Regional Trial Court of Malabon City, Branch 170, dated 26 December 2001 in Criminal Case No. 19766-MN convicting appellant JOSE OGA *y* CALUNOD of simple rape under Article 335, paragraph (1), of the Revised Penal

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[26] G.R. No. 102725, 3 August 1993, 225 SCRA 59.

[27] *People v. Claudio*, G. R. No. 133694, 29 February 2000, 326 SCRA 813.

Code, as amended by R.A. No. 7659, is hereby *REVERSED*. The appellant is *ACQUITTED* and is ordered to be released from confinement unless his further detention is warranted by any other lawful cause. The Director of the Bureau of Corrections is directed to submit a report of such release within five (5) days from notice hereof.

Costs *de oficio*.

SO ORDERED.

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

EN BANC

[G.R. No. 153559. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO COMADRE, GEORGE COMADRE and DANILO LOZANO,** *appellants*.

SYNOPSIS

While Robert Agbanlog and his friends were having a drinking spree on the terrace of his father's house, three men stopped in front of the said house and one of them lobbed an object that fell on the roof of the terrace. The object, which turned out to be a hand grenade, exploded ripping a hole on the roof of the house. The grenade shrapnel hit Robert and his friends. Robert died before reaching the hospital while the others suffered injuries. The three men later were identified as the appellants herein and were charged with the crimes of murder and multiple frustrated murder. After trial, the court *a quo* gave credence to the prosecution's evidence and convicted appellants of the complex crime of murder with multiple attempted murder. The trial court imposed death penalty upon the appellants, hence,

this automatic review pursuant to Art. 47 of the Revised Penal Code, as amended.

The Supreme Court affirmed the conviction of Antonio Comadre. The other appellants herein were, however, acquitted in the absence of clear and convincing evidence to prove that conspiracy existed in the commission of the crime. Based on the witnesses' accounts it was only Antonio who was seen to have thrown the grenade while the other two merely looked on without uttering a single word of encouragement or performed any act to assist him.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES ON MINOR AND TRIVIAL MATTERS.—** Minor discrepancies might be found in their testimony, but they do not damage the essential integrity of the evidence in its material whole, nor should they reflect adversely on the witness' credibility as they erase suspicion that the same was perjured. Honest inconsistencies on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness to a crime, especially so when, as in the instant case, the crime is shocking to the conscience and numbing to the senses.

2. **ID.; ID.; ID.; WORTHY OF FULL FAITH AND CREDIT IN THE ABSENCE OF ANY SHOWING OF IMPROPER MOTIVE TO PERJURE.—** Absent evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimony is thus worthy of full faith and credit.

3. **ID.; ID.; ALIBI AS A DEFENSE; THE ACCUSED MUST PROVE HIS PHYSICAL IMPOSSIBILITY TO BE AT THE *LOCUS DELICTI* OR WITHIN ITS IMMEDIATE VICINITY.—** For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Apart from testifying with respect to the distance of their houses from that of Jaime Agbanlog's residence, appellants were unable to give any explanation and neither were they able to show that it was physically impossible for them to be at the scene of the

crime. Hence, the positive identification of the appellants by eyewitnesses Jimmy Wabe, Jaime Agbanlog, Rey Camat and Gerry Bullanday prevails over their defense of alibi and denial.

4. ID.; CRIMINAL PROCEDURE; JUDGMENTS; JUDGMENT RENDERED OTHER THAN TRYING JUDGE; RELIANCE ON THE RECORD OF THE CASE BY THE JUDGE WHO DID NOT TRY THE CASE WILL NOT RENDER THE JUDGMENT ERRONEOUS.— It is not unusual for a judge who did not try a case to decide it on the basis of the record for the trial judge might have died, resigned, retired, transferred, and so forth. As far back as the case of *Co Tao v. Court of Appeals* we have held: "The fact that the judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous." This rule had been followed for quite a long time, and there is no reason to go against the principle now.

5. CRIMINAL LAW; CONSPIRACY; MERE PRESENCE AT THE CRIME SCENE, NOT EVIDENCE OF CONSPIRACY.— Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Settled is the rule that to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. A conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the crime itself. Mere presence of a person at the scene of the crime does not make him a conspirator for conspiracy transcends companionship.

6. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; PRESENT IN CASE AT BAR.— For treachery to be appreciated two conditions must concur: (1) the means, method and form of execution employed gave the person attacked no opportunity to defend himself or retaliate; and (2) such means, methods and form of execution was deliberately and consciously adopted by the accused. Its essence lies in the adoption of ways to minimize or neutralize any resistance, which may be put up by the offended party. Appellant lobbed a grenade which fell on the roof of the terrace where the unsuspecting victims were having a drinking spree. The

suddenness of the attack coupled with the instantaneous combustion and the tremendous impact of the explosion did not afford the victims sufficient time to scamper for safety, much less defend themselves; thus insuring the execution of the crime without risk of reprisal or resistance on their part. Treachery therefore attended the commission of the crime.

7. ID.; MURDER; WHEN THE KILLING WAS PERPETRATED WITH TREACHERY AND BY MEANS OF EXPLOSIVES, THE LATTER SHALL BE CONSIDERED AS QUALIFYING CIRCUMSTANCE; RATIONALE.— It is significant to note that aside from treachery, the information also alleges the "use of an explosive" as an aggravating circumstance. Since both attendant circumstances can qualify the killing to murder under Article 248 of the Revised Penal Code, we should determine which of the two circumstances will qualify the killing in this case. When the killing is perpetrated with treachery and by means of explosives, the latter shall be considered as a qualifying circumstance. Not only does jurisprudence support this view but also, since the use of explosives is the principal mode of attack, reason dictates that this attendant circumstance should qualify the offense instead of treachery which will then be relegated merely as a generic aggravating circumstance.

8. ID.; P.D. NO. 1866 (ILLEGAL POSSESSION OF FIREARMS LAW, AS AMENDED BY R. A. NO. 8294); REDUCED PENALTIES; OBJECTIVE.— R.A. No. 8294 was a reaction to the onerous and anachronistic penalties imposed under the old illegal possession of firearms law, P.D. 1866, which prevailed during the tumultuous years of the Marcos dictatorship. The amendatory law was enacted, not to decriminalize illegal possession of firearms and explosives, but to lower their penalties in order to rationalize them into more acceptable and realistic levels. This legislative intent is conspicuously reflected in the reduction of the corresponding penalties for illegal possession of firearms, or ammunitions and other related crimes under the amendatory law. Under Section 2 of the said law, the penalties for unlawful possession of explosives are also lowered. Specifically, when the illegally possessed explosives are used to commit any of the crimes under the Revised Penal Code, which result in the death of a person, the penalty is no longer death, unlike in P.D. No. 1866, but it shall be considered only as an aggravating circumstance.

9. ID.; ILLEGAL POSSESSION OF FIREARMS; WHEN CONSIDERED AS AGGRAVATING CIRCUMSTANCE.— With the removal of death as a penalty and the insertion of the term "x x x as an aggravating circumstance," the unmistakable import is to downgrade the penalty for illegal possession of explosives and consider its use merely as an aggravating circumstance. Clearly, Congress intended R.A. No. 8294 to reduce the penalty for illegal possession of firearms and explosives. Also, Congress clearly intended R.A. No. 8294 to consider as aggravating circumstance, instead of a separate offense, illegal possession of firearms and explosives when such possession is used to commit other crimes under the Revised Penal Code. It must be made clear, however, that RA No. 8294 did not amend the definition of murder under Article 248, but merely made the use of explosives an aggravating circumstance when resorted to in committing "any of the crimes defined in the Revised Penal Code." The legislative purpose is to do away with the use of explosives as a separate crime and to make such use merely an aggravating circumstance in the commission of any crime already defined in the Revised Penal Code. Thus, RA No. 8294 merely added the use of unlicensed explosives as one of the aggravating circumstances specified in Article 14 of the Revised Penal Code. Like the aggravating circumstance of "explosion" in paragraph 12, "evident premeditation" in paragraph 13, or "treachery" in paragraph 16 of Article 14, the new aggravating circumstance added by RA No. 8294 does not change the definition of murder in Article 248.

10. ID.; COMPLEX CRIMES; IMPOSITION OF SINGLE PENALTY; RATIONALE.— The underlying philosophy of complex crimes in the Revised Penal Code, which follows the *pro reo* principle, is intended to favor the accused by imposing a single penalty irrespective of the crimes committed. The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions. The single act by appellant of detonating a hand grenade may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offender was impelled by a "single criminal impulse" which shows his lesser degree of perversity.

11. ID.; ID.; PENALTY.— Under Article 48 of the Revised Penal Code, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances, including the generic aggravating circumstance of treachery in this case. Applying the aforesaid provision of law, the maximum penalty for the most serious crime (murder) is death.

12. ID.; CIVIL LIABILITY; DAMAGES; AWARD OF ACTUAL DAMAGES, GRANTED ONLY IF DULY PROVED; AWARD OF MORAL DAMAGES, APPROPRIATE UPON PROOF OF EMOTIONAL SUFFERING.—- However, the actual damages awarded to the heirs of Robert Agbanlog should be modified, considering that the prosecution was able to substantiate only the amount of ₱18,000.00 as funeral expenses. The award of moral damages is appropriate there being evidence to show emotional suffering on the part of the heirs of the deceased, but the same must be increased to ₱50,000.00 in accordance with prevailing judicial policy. With respect to the surviving victims Jaime Agbanlog, Jimmy Wabe, Rey Camat and Gerry Bullanday, the trial court awarded ₱30,000.00 each for the injuries they sustained. We find this award inappropriate because they were not able to present a single receipt to substantiate their claims. Nonetheless, since it appears that they are entitled to actual damages although the amount thereof cannot be determined, they should be awarded temperate damages of ₱25,000.00 each.

CALLEJO, SR., *J. concurring and dissenting opinion:*

CRIMINAL LAW; PRINCIPLES; AMENDMENT OF LAW FAVORABLE TO THE ACCUSED SHOULD HAVE RETROACTIVE APPLICATION; CASE AT BAR.— When the crimes were committed by the appellants on August 6, 1995, Rep. Act No. 7659 was already in effect. But while the case was pending, Rep. Act No. 8294 was approved on June 6, 1997. Section 2 of the latter law provides that when a persons commits any of the crimes defined in the Revised Penal Code with the use of explosives, detonation agents or incendiary devices which results in the death of any person or persons, the use of such explosives, *etc*. shall be considered as an aggravating circumstance: When a person

commits any of the crimes defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance. Paragraph 3 of Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, was amended by Section 2 of Rep. Act No. 8294. Under the latter law, the use of a hand grenade in killing the victim was downgraded from being a qualifying circumstance to a mere generic aggravating circumstance. Considering that Section 2 of Rep. Act No. 8294 is favorable to the appellant, the same should be applied retroactively.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Domingo V. Pascua for accused-appellant.

D E C I S I O N

PER CURIAM:

Appellants Antonio Comadre, George Comadre and Danilo Lozano were charged with Murder with Multiple Frustrated Murder in an information which reads:

That on or about the 6th of August 1995, at Brgy. San Pedro, Lupao, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and by means of treachery and evident premeditation, availing of nighttime to afford impunity, and with the use of an explosive, did there and then willfully, unlawfully and feloniously lob a hand grenade that landed and eventually exploded at the roof of the house of Jaime Agbanlog trajecting deadly shrapnels that hit and killed one ROBERT AGBANLOG, per the death certificate, and causing Jerry Bullanday, Jimmy Wabe, Lorenzo Eugenio, Rey Camat, Emelita Agbanlog and Elena Agbanlog to suffer shrapnel wounds on their bodies, per the medical certificates; thus, to the latter victims, the accused commenced all the acts of execution

that would have produced the crime of Multiple Murder as consequences thereof but nevertheless did not produce them by reason of the timely and able medical and surgical interventions of physicians, to the damage and prejudice of the deceased's heirs and the other victims.

CONTRARY TO LAW.[1]

On arraignment, appellants pleaded "not guilty."[2] Trial on the merits then ensued.

As culled from the records, at around 7:00 in the evening of August 6, 1995, Robert Agbanlog, Jimmy Wabe, Gerry Bullanday,[3] Rey Camat and Lorenzo Eugenio were having a drinking spree on the terrace of the house of Robert's father, Barangay Councilman Jaime Agbanlog, situated in Barangay San Pedro, Lupao, Nueva Ecija. Jaime Agbanlog was seated on the banister of the terrace listening to the conversation of the companions of his son.[4]

As the drinking session went on, Robert and the others noticed appellants Antonio Comadre, George Comadre and Danilo Lozano walking. The three stopped in front of the house. While his companions looked on, Antonio suddenly lobbed an object which fell on the roof of the terrace. Appellants immediately fled by scaling the fence of a nearby school.[5]

The object, which turned out to be a hand grenade, exploded ripping a hole in the roof of the house. Robert Agbanlog, Jimmy Wabe, Gerry Bullanday, Rey Camat and Lorenzo Eugenio were hit by shrapnel and slumped unconscious on the floor.[6] They were all rushed to the San Jose General Hospital in Lupao,

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[1] *Rollo*, p. 17.

[2] Record, pp. 27-29.

[3] Also referred to as *Jerry* Bullanday in the records.

[4] TSN, October 12, 1995, p. 4; March 6, 1996, p. 3; March 21, 1996, p. 2; July 10, 1996, pp. 2-3.

[5] TSN, October 12, 1995, p. 5; March 6, 1996, pp. 2-3; July 10, 1996, pp. 2-4.

[6] TSN, October 12, 1995, pp. 5-7; March 6, 1996, pp. 4-5; March 21, 1996, p. 3; July 10, 1996, p. 3.

Nueva Ecija for medical treatment. However, Robert Agbanlog died before reaching the hospital.[7]

Dr. Tirso de los Santos, the medico-legal officer who conducted the autopsy on the cadaver of Robert Agbanlog, certified that the wounds sustained by the victim were consistent with the injuries inflicted by a grenade explosion and that the direct cause of death was hypovolemic shock due to hand grenade explosion.[8] The surviving victims, Jimmy Wabe, Rey Camat, Jaime Agbanlog and Gerry Bullanday sustained shrapnel injuries.[9]

SPO3 John Barraceros of the Lupao Municipal Police Station, who investigated the scene of the crime, recovered metallic fragments at the terrace of the Agbanlog house. These fragments were forwarded to the Explosive Ordinance Disposal Division in Camp Crame, Quezon City, where SPO2 Jesus Q. Mamaril, a specialist in said division, identified them as shrapnel of an MK2 hand grenade.[10]

Denying the charges against him, appellant Antonio Comadre claimed that on the night of August 6, 1995, he was with his wife and children watching television in the house of his father, Patricio, and his brother, Rogelio. He denied any participation in the incident and claimed that he was surprised when three policemen from the Lupao Municipal Police Station went to his house the following morning of August 7, 1995 and asked him to go with them to the police station, where he has been detained since.[11]

Appellant George Comadre, for his part, testified that he is the brother of Antonio Comadre and the brother-in-law of Danilo Lozano. He also denied any involvement in the grenade-throwing

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[7] TSN, March 21, 1996, pp. 4-6.

[8] Record, pp. 10-11.

[9] TSN, October 12, 1995, p. 10; March 6, 1996, p. 10; March 21, 1996, p. 5; July 10, 1996, pp. 6-7.

[10] Record, p. 299.

[11] TSN, August 28, 1998, pp. 7-9.

incident, claiming that he was at home when it happened. He stated that he is a friend of Rey Camat and Jimmy Wabe, and that he had no animosity towards them whatsoever. Appellant also claimed to be in good terms with the Agbanlogs so he has no reason to cause them any grief.[12]

Appellant Danilo Lozano similarly denied any complicity in the crime. He declared that he was at home with his ten year-old son on the night of August 6, 1995. He added that he did not see Antonio and George Comadre that night and has not seen them for quite sometime, either before or after the incident. Like the two other appellants, Lozano denied having any misunderstanding with Jaime Agbanlog, Robert Agbanlog and Jimmy Wabe.[13]

Antonio's father, Patricio, and his wife, Lolita, corroborated his claim that he was at home watching television with them during the night in question.[14] Josie Comadre, George's wife, testified that her husband could not have been among those who threw a hand grenade at the house of the Agbanlogs because on the evening of August 6, 1995, they were resting inside their house after working all day in the farm.[15]

After trial, the court *a quo* gave credence to the prosecution's evidence and convicted appellants of the complex crime of Murder with Multiple Attempted Murder,[16] the dispositive portion of which states:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1. Finding accused Antonio Comadre, George Comadre and Danilo Lozano GUILTY beyond reasonable doubt of the complex crime of Murder with Multiple Attempted Murder and sentencing them to suffer the imposable penalty of death;

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[12] TSN, August 5, 1998, pp. 2-8.

[13] TSN, December 3, 1998, pp. 3-10.

[14] TSN, January 7, 1999, pp. 7-8; April 9, 1999, pp. 6-8.

[15] TSN, July 30, 1999, pp. 3-5.

[16] Penned by Judge Bayani V. Vargas of the Regional Trial Court of San Jose City, Branch 39.

2. Ordering Antonio Comadre, George Comadre and Danilo Lozano to pay jointly and severally the heirs of Robert Agbanlog ₱50,000.00 as indemnification for his death, ₱35,000.00 as compensatory damages and ₱20,000.00 as moral damages;

3. Ordering accused Antonio Comadre, George Comadre and Danilo Lozano to pay jointly and severally Jimmy Wabe, Rey Camat, Gerry Bullanday and Jaime Agbanlog ₱30,000.00 as indemnity for their attempted murder.

Costs against the accused.

SO ORDERED.

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code, as amended. Appellants contend that the trial court erred: (1) when it did not correctly and judiciously interpret and appreciate the evidence and thus, the miscarriage of justice was obviously omnipresent; (2) when it imposed on the accused-appellants the supreme penalty of death despite the evident lack of the quantum of evidence to convict them of the crime charged beyond reasonable doubt; and (3) when it did not apply the law and jurisprudence for the acquittal of the accused-appellants of the crime charged.[17]

Appellants point to the inconsistencies in the sworn statements of Jimmy Wabe, Rey Camat, Lorenzo Eugenio and Gerry Bullanday in identifying the perpetrators. Wabe, Camat and Eugenio initially executed a *Sinumpaang Salaysay* on August 7, 1995 at the hospital wherein they did not categorically state who the culprit was but merely named Antonio Comadre as a suspect. Gerry Bullanday declared that he suspected Antonio Comadre as one of the culprits because he saw the latter's ten year-old son bring something in the nearby store before the explosion occurred.

On August 27, 1995, or twenty days later, they went to the police station to give a more detailed account of the incident, this time identifying Antonio Comadre as the perpetrator together with George Comadre and Danilo Lozano.

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[17] *Rollo*, pp. 67-68.

A closer scrutiny of the records shows that no contradiction actually exists, as all sworn statements pointed to the same perpetrators, namely, Antonio Comadre, George Comadre and Danilo Lozano. Moreover, it appears that the first statement was executed a day after the incident, when Jimmy Wabe, Rey Camat and Lorenzo Eugenio were still in the hospital for the injuries they sustained. Coherence could not thus be expected in view of their condition. It is therefore not surprising for the witnesses to come up with a more exhaustive account of the incident after they have regained their equanimity. The lapse of twenty days between the two statements is immaterial because said period even helped them recall some facts which they may have initially overlooked.

Witnesses cannot be expected to remember all the details of the harrowing event which unfolded before their eyes. Minor discrepancies might be found in their testimony, but they do not damage the essential integrity of the evidence in its material whole, nor should they reflect adversely on the witness' credibility as they erase suspicion that the same was perjured.[18] Honest inconsistencies on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness to a crime, especially so when, as in the instant case, the crime is shocking to the conscience and numbing to the senses.[19]

Moreover, it was not shown that witnesses Jimmy Wabe, Rey Camat, Lorenzo Eugenio and Gerry Bullanday had any motive to testify falsely against appellants. Absent evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimony is thus worthy of full faith and credit.

The trial court is likewise correct in disregarding appellants' defense of alibi and denial. For the defense of alibi to prosper, the accused must prove not only that he was at some other

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[18] *People v. Del Valle*, G.R. No. 119616, 14 December 2001, 372 SCRA 297.

[19] *People v. Patalin*, G.R. No. 125539, 27 July 1999, 311 SCRA 186; citing *People v. Agunias*, G.R. No. 121993, 12 September 1997, 279 SCRA 52.

place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[20]

Apart from testifying with respect to the distance of their houses from that of Jaime Agbanlog's residence, appellants were unable to give any explanation and neither were they able to show that it was physically impossible for them to be at the scene of the crime. Hence, the positive identification of the appellants by eyewitnesses Jimmy Wabe, Jaime Agbanlog, Rey Camat and Gerry Bullanday prevails over their defense of alibi and denial.[21]

It was established that prior to the grenade explosion, Rey Camat, Jaime Agbanlog, Jimmy Wabe and Gerry Bullanday were able to identify the culprits, namely, appellants Antonio Comadre, George Comadre and Danilo Lozano because there was a lamppost in front of the house and the moon was bright.[22]

Appellants' argument that Judge Bayani V. Vargas, the Presiding Judge of the Regional Trial Court of San Jose City, Branch 38 erred in rendering the decision because he was not the judge who heard and tried the case is not well taken.

It is not unusual for a judge who did not try a case to decide it on the basis of the record for the trial judge might have died, resigned, retired, transferred, and so forth.[23] As far back as the case of *Co Tao v. Court of Appeals*[24] we have held: "The fact that the judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case

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[20] *People v. Abundo*, G.R. No. 138233, 18 January 2001, 349 SCRA 577.

[21] *People v. Francisco*, G.R. Nos. 134566-67, 22 January 2001, 350 SCRA 55.

[22] TSN, July 10, 1996, p. 4; March 21, 1996, p. 4.

[23] *People v. Escalante*, G.R. No. L-37147, 22 August 1984, 131 SCRA 237.

[24] 101 Phil. 188, 194 (1957).

does not render the judgment erroneous." This rule had been followed for quite a long time, and there is no reason to go against the principle now.[25]

However, the trial court's finding of conspiracy will have to be reassessed. The undisputed facts show that when Antonio Comadre was in the act of throwing the hand grenade, George Comadre and Danilo Lozano merely looked on without uttering a single word of encouragement or performed any act to assist him. The trial court held that the mere presence of George Comadre and Danilo Lozano provided encouragement and a sense of security to Antonio Comadre, thus proving the existence of conspiracy.

We disagree.

Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Settled is the rule that to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.[26]

A conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the crime itself. Mere presence of a person at the scene of the crime does not make him a conspirator for conspiracy transcends companionship.[27]

The evidence shows that George Comadre and Danilo Lozano did not have any participation in the commission of the crime and must therefore be set free. Their mere presence at the scene of the crime as well as their close relationship with Antonio are insufficient to establish conspiracy considering that they performed no positive act in furtherance of the crime.

Neither was it proven that their act of running away with Antonio was an act of giving moral assistance to his criminal

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[25] *People v. Rabutin*, G.R. Nos. 118131-32, 5 May 1997, 272 SCRA 197.

[26] *People v. Tabuso*, G.R. No. 113708, 26 October 1999, 317 SCRA 454.

[27] *People v. Bolivar*, G.R. No. 108174, 28 October 1999, 317 SCRA 577.

act. The ratiocination of the trial court that "their presence provided encouragement and sense of security to Antonio," is devoid of any factual basis. Such finding is not supported by the evidence on record and cannot therefore be a valid basis of a finding of conspiracy.

Time and again we have been guided by the principle that it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[28] There being no conspiracy, only Antonio Comadre must answer for the crime.

Coming now to Antonio's liability, we find that the trial court correctly ruled that treachery attended the commission of the crime. For treachery to be appreciated two conditions must concur: (1) the means, method and form of execution employed gave the person attacked no opportunity to defend himself or retaliate; and (2) such means, methods and form of execution was deliberately and consciously adopted by the accused. Its essence lies in the adoption of ways to minimize or neutralize any resistance, which may be put up by the offended party.

Appellant lobbed a grenade which fell on the roof of the terrace where the unsuspecting victims were having a drinking spree. The suddenness of the attack coupled with the instantaneous combustion and the tremendous impact of the explosion did not afford the victims sufficient time to scamper for safety, much less defend themselves; thus insuring the execution of the crime without risk of reprisal or resistance on their part. Treachery therefore attended the commission of the crime.

It is significant to note that aside from treachery, the information also alleges the "use of an explosive"[29] as an aggravating

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[28] *People v. Capili*, G.R. No. 130588, 8 June 2000, 333 SCRA 354.

[29] Defined as — a sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. *United Life, Fire and Marine Insurance, Inc. v. Foote*, 22 Ohio St. 348, 10 Am Rep 735, cited in Bouvier's *Law Dictionary*, Third Revision, Vol. 1; also defined in *Wadsworth v. Marshall*, 88 Me 263, 34 A 30, as a "bursting with violence and loud noise, caused by internal pressure."

circumstance. Since both attendant circumstances can qualify the killing to murder under Article 248 of the Revised Penal Code,[30] we should determine which of the two circumstances will qualify the killing in this case.

When the killing is perpetrated with treachery and by means of explosives, the latter shall be considered as a qualifying circumstance. Not only does jurisprudence[31] support this view but also, since the use of explosives is the principal mode of attack, reason dictates that this attendant circumstance should qualify the offense instead of treachery which will then be relegated merely as a generic aggravating circumstance.[32]

Incidentally, with the enactment on June 6, 1997 of Republic Act No. 8294[33] which also considers the use of explosives as

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[30] Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

x x x x x x x x x

1. *Wth treachery,* taking advantage of superior strength, with aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x x x x x x

3. By means of inundation, fire, poison, *explosion*, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin. (italics supplied)

[31] *People v. Tayo*, G.R. No. 52798, 19 February 1986, 141 SCRA 393, citing *People v. Guillen*, 85 Phil. 307; *People v. Gallego and Soriano*, 82 Phil. 335; *People v. Agcaoili*, 86 Phil. 549; *People v. Francisco*, 94 Phil. 975.

[32] *People v. Tintero*, G.R. No. L-30435, 15 February 1982, 111 SCRA 704; *People v. Asibar*, G.R. No. L-37255, 23 October 1982, 117 SCRA 856.

[33] Entitled: An Act Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes."

an aggravating circumstance, there is a need to make the necessary clarification insofar as the legal implications of the said amendatory law *vis-à-vis* the qualifying circumstance of "by means of explosion" under Article 248 of the Revised Penal Code are concerned. Corollary thereto is the issue of which law should be applied in the instant case.

R.A. No. 8294 was a reaction to the onerous and anachronistic penalties imposed under the old illegal possession of firearms law, P.D. 1866, which prevailed during the tumultuous years of the Marcos dictatorship. The amendatory law was enacted, not to decriminalize illegal possession of firearms and explosives, but to lower their penalties in order to rationalize them into more acceptable and realistic levels.[34]

This legislative intent is conspicuously reflected in the reduction of the corresponding penalties for illegal possession of firearms, or ammunitions and other related crimes under the amendatory law. Under Section 2 of the said law, the penalties for unlawful possession of explosives are also lowered. Specifically, when the illegally possessed explosives are used to commit any of

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[34] Representative Roilo Golez, in his sponsorship speech, laid down two basic amendments under House Bill No. 8820, now R.A. 8294:

> 1. reduction of penalties for simple illegal possession of firearms or explosives from the existing *reclusion perpetua* to *prision correccional* or *prision mayor*, depending upon the type of firearm possessed;
>
> 2. repeal of the incongruous provision imposing capital punishment for the offense of illegal possession of firearms and explosives in furtherance of or in pursuit of rebellion or insurrection.

The same rationale was the moving force behind Senate Bill 1148 as articulated by then Senator Miriam Defensor Santiago in her sponsorship speech:

> The issue of disproportion is conspicuous not only when we make a comparison with the other laws, but also when we make a comparison of the various offenses defined within the existing law itself. Under P.D. No. 1866, the offense of simple possession is punished with the same penalty as that imposed for much more serious offenses such as unlawful manufacture, sale, or disposition of firearms and ammunition.
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> x x x x x x x x x

the crimes under the Revised Penal Code, which result in the death of a person, the penalty is no longer death, unlike in P.D. No. 1866, but it shall be considered only as an aggravating circumstance. Section 3 of P.D. No. 1866 as amended by Section 2 of R.A. 8294 now reads:

> Section 2. Section 3 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:
>
> Section 3. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives.* The penalty of *prision mayor* in its maximum period to *reclusion temporal* and a fine of not less than Fifty thousand pesos (₱50,000.00) shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess hand grenade(s), rifle grenade(s), and other explosives, including but not limited to "pillbox," "molotov cocktail bombs," "fire bombs," or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person.
>
> *When a person commits any of the crimes defined in the Revised Penal Code or special law with the use of the aforementioned explosives, detonation agents or incendiary devises, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance. (shall be punished with the penalty of death is DELETED.)*
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> x x x x x x x x x

With the removal of death as a penalty and the insertion of the term "x x x as an aggravating circumstance," the unmistakable

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It was only during the years of martial law — 1972 and 1983 — that the penalty for illegal possession made a stratospheric leap. Under P.D. No. 9 promulgated in 1972 — the first year of martial law — the penalty suddenly became the mandatory penalty of death, if the unlicensed firearm was used in the commission of crimes. Subsequently, under P.D. No. 1866, promulgated in 1983 — during the last few years of martial law — the penalty was set at its present onerous level.

The lesson of history is that a democratic, constitutional, and civilian government imposes a very low penalty for simple possession. It is only an undemocratic martial law regime — a law unto itself — which imposes an extremely harsh penalty for simple possession.

import is to downgrade the penalty for illegal possession of explosives and consider its use merely as an aggravating circumstance.

Clearly, Congress intended R.A. No. 8294 to reduce the penalty for illegal possession of firearms and explosives. Also, Congress clearly intended RA No. 8294 to consider as aggravating circumstance, instead of a separate offense, illegal possession of firearms and explosives when such possession is used to commit other crimes under the Revised Penal Code.

It must be made clear, however, that RA No. 8294 did not amend the definition of murder under Article 248, but merely made the use of explosives an aggravating circumstance when resorted to in committing "any of the crimes defined in the Revised Penal Code." The legislative purpose is to do away with the use of explosives as a separate crime and to make such use merely an aggravating circumstance in the commission of any crime already defined in the Revised Penal Code. Thus, RA No. 8294 merely added the use of unlicensed explosives as one of the aggravating circumstances specified in Article 14 of the Revised Penal Code. Like the aggravating circumstance of "explosion" in paragraph 12, "evident premeditation" in paragraph 13, or "treachery" in paragraph 16 of Article 14, the new aggravating circumstance added by RA No. 8294 does not change the definition of murder in Article 248.

Nonetheless, even if favorable to the appellant, R.A. No. 8294 still cannot be made applicable in this case. Before the use of unlawfully possessed explosives can be properly appreciated as an aggravating circumstance, it must be adequately established that the possession was illegal or unlawful, *i.e.*, the accused is without the corresponding authority or permit to possess. This follows the same requisites in the prosecution of crimes involving illegal possession of firearm[35] which is a kindred or related offense

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[35] In crimes involving illegal possession of firearm, two requisites must be established, viz.: (1) the existence of the subject firearm and, (2) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess. See: *People v. Solayao*, G.R. No. 119220, 20 September 1996; *People v. Lualhati*, 234 SCRA 325 (1994); *People v. Damaso*, 212 SCRA 547 (1992).

under P.D. 1866, as amended. This proof does not obtain in the present case. Not only was it not alleged in the information, but no evidence was adduced by the prosecution to show that the possession by appellant of the explosive was unlawful.

It is worthy to note that the above requirement of illegality is borne out by the provisions of the law itself, in conjunction with the pertinent tenets of legal hermeneutics.

A reading of the title[36] of R.A. No. 8294 will show that the qualifier "illegal/unlawful . . . possession" is followed by "of firearms, ammunition, *or* explosives or instruments. . ." Although the term ammunition is separated from "explosives" by the disjunctive word "or", it does not mean that "explosives" are no longer included in the items which can be illegally/unlawfully possessed. In this context, the disjunctive word "or" is not used to separate but to signify a succession or to conjoin the enumerated items together.[37] Moreover, Section 2 of R.A. 8294,[38] subtitled: "Section 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives", clearly refers to the *unlawful* manufacture, sale, or possession of *explosives*.

What the law emphasizes is the act's lack of authority. Thus, when the second paragraph of Section 3, P.D. No. 1866, as amended

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[36] An Act Amending the Provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and For Relevant Purposes."

[37] This follows a similar construction used in Article 344 of the Revised Penal Code which states in part that "the offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon complaint by the offended party *or* her parents, grandparents, *or* guardian, nor in any case, if the offender has been expressly pardoned by the above-mentioned persons, as the case may be." In this context, "or" has the same effect as the conjunctive term "and."

[38] Subtitled: "Section 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives" where the modifier "unlawful" describes the manufacture, sale, *etc.* of, among others, explosives.

by RA No. 8294 speaks of "the use of the aforementioned explosives, *etc*." as an aggravating circumstance in the commission of crimes, it refers to those explosives, *etc*. "unlawfully" manufactured, assembled, dealt in, acquired, disposed or possessed mentioned in the first paragraph of the same section. What is *per se* aggravating is the use of unlawfully "manufactured. . . or possessed" explosives. The mere use of explosives is not.

The information in this case does not allege that appellant Antonio Comadre had unlawfully possessed or that he had no authority to possess the grenade that he used in the killing and attempted killings. Even if it were alleged, its presence was not proven by the prosecution beyond reasonable doubt. Rule 110 of the 2000 Revised Rules on Criminal Procedure requires the averment of aggravating circumstances for their application.[39]

The inapplicability of R.A. 8294 having been made manifest, the crime committed is Murder committed "by means of explosion" in accordance with Article 248(3) of the Revised Penal Code. The same, having been alleged in the Information, may be properly considered as appellant was sufficiently informed of the nature of the accusation against him.[40]

G.R. No. 119220, 20 September 1996; *People v. Lualhati*, 234 SCRA 325 (1994); *People v. Damaso*, 212 SCRA 547 (1992).

[39] Sec. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offenses, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offenses is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[40] *People v. Manansala*, G.R. No. 147149, 9 July 2003; *People v. Paulino*, G.R. No. 148810, 18 November 2003.

The trial court found appellant guilty of the complex crime of murder with multiple attempted murder under Article 48 of the Revised Penal Code, which provides:

> Art. 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means of committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The underlying philosophy of complex crimes in the Revised Penal Code, which follows the *pro reo* principle, is intended to favor the accused by imposing a single penalty irrespective of the crimes committed. The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions.

The single act by appellant of detonating a hand grenade may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offender was impelled by a "single criminal impulse" which shows his lesser degree of perversity.[41]

Under the aforecited article, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances, including the generic aggravating circumstance of treachery in this case.[42] Applying the aforesaid provision of law, the maximum penalty for the most serious crime (murder) is death. The trial court, therefore, correctly imposed the death penalty.

Three justices of the Court, however, continue to maintain the unconstitutionality of R.A. 7659 insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the

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[41] *People v. Sakam*, 61 Phil. 27; *People v. Manantan*, 94 Phil. 831.

[42] *People v. Guillen*, G.R. No. L-1477, 18 January 1950.

majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

Finally, the trial court awarded to the parents of the victim Robert Agbanlog civil indemnity in the amount of ₱50,000.00, ₱35,000.00 as compensatory damages and ₱20,000.00 as moral damages. Pursuant to existing jurisprudence[43] the award of civil indemnity is proper. However, the actual damages awarded to the heirs of Robert Agbanlog should be modified, considering that the prosecution was able to substantiate only the amount of ₱18,000.00 as funeral expenses.[44]

The award of moral damages is appropriate there being evidence to show emotional suffering on the part of the heirs of the deceased, but the same must be increased to ₱50,000.00 in accordance with prevailing judicial policy.[45]

With respect to the surviving victims Jaime Agbanlog, Jimmy Wabe, Rey Camat and Gerry Bullanday, the trial court awarded ₱30,000.00 each for the injuries they sustained. We find this award inappropriate because they were not able to present a single receipt to substantiate their claims. Nonetheless, since it appears that they are entitled to actual damages although the amount thereof cannot be determined, they should be awarded temperate damages of ₱25,000.00 each.[46]

WHEREFORE, in view of all the foregoing, the appealed decision of the Regional Trial Court of San Jose City, Branch 39 in Criminal Case No. L-16(95) is *AFFIRMED* insofar as appellant Antonio Comadre is convicted of the complex crime of Murder with Multiple Attempted Murder and sentenced to suffer the penalty of death. He is ordered to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱50,000.00

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[43] *People v. Delim*, G.R. No. 142773, 28 January 2003.

[44] RTC Record, Vol. 1, p. 170, Exhibit 'J'; TSN, 21 March 1996, p. 10.

[45] *People v. Caballero*, G.R. Nos. 149028-30, 2 April 2003; *People v. Galvez*, G.R. No. 130397, 17 January 2002; TSN, March 21, 1996, p. 11.

[46] *People v. Abrazaldo*, G.R. No. 124392, 7 February 2003.

as moral damages and ₱18,000.00 as actual damages and likewise ordered to pay the surviving victims, Jaime Agbanlog, Jimmy Wabe, Rey Camat and Gerry Bullanday, ₱25,000.00 each as temperate damages for the injuries they sustained. Appellants George Comadre and Danilo Lozano are *ACQUITTED* for lack of evidence to establish conspiracy, and they are hereby ordered immediately *RELEASED* from confinement unless they are lawfully held in custody for another cause. Costs *de oficio*.

In accordance with Section 25 of Republic Act 7659 amending Article 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forwarded to the Office of the President for possible exercise of pardoning power.

SO ORDERED.

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

Callejo, Sr., J., pls. see my concurring and dissenting opinion.

CALLEJO, SR., *J., concurring and dissenting opinion:*

I concur with the majority that the appellant Antonio Comadre is guilty of murder for the death of Robert Agbanlog, and multiple attempted murder for the injuries sustained by the other victims. I dissent, however, from the ruling of the majority that the killing of Agbanlog is qualified by the use of explosives and not by treachery.

Under Section 3 of P.D. No. 1866 which took effect on June 29, 1983, any person who commits any of the crimes defined in the Revised Penal Code with the use of explosives, detonation agents or incendiary devices which results in the death of a person shall be sentenced to suffer the death penalty.[1]

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[1] Any person who commits any of the crime defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons shall be punished with the penalty of death.

However, with the onset of the 1987 Constitution, the imposition of the death penalty was suspended.

Under paragraph 3, Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the use of explosives in killing a person is a circumstance which qualifies the killing to murder, the imposable penalty for which is *reclusion perpetua* to death. When the crimes were committed by the appellants on August 6, 1995, Rep. Act No. 7659 was already in effect. But while the case was pending, Rep. Act No. 8294 was approved on June 6, 1977. Section 2 of the latter law provides that when a person commits any of the crimes defined in the Revised Penal Code with the use of explosives, detonation agents or incendiary devices which results in the death of any person or persons, the use of such explosives, *etc*. shall be considered as an aggravating circumstance:

> When a person commits any of the crimes defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance.

Paragraph 3 of Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, was, thus, amended by Section 2 of Rep. Act No. 8294. Under the latter law, the use of a hand grenade in killing the victim was downgraded from being a qualifying circumstance to a mere generic aggravating circumstance. Considering that Section 2 of Rep. Act No. 8294 is favorable to the appellant, the same should be applied retroactively.[2] Considering the factual milieu in this case, the generic aggravating circumstance of the use of explosives is absorbed by the qualifying circumstance of treachery.

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[2] ART. 22. *Retroactive effect of penal laws.* — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

FIRST DIVISION

[G.R. Nos. 154348-50. June 8, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PABLO DELA CRUZ,** *appellant*.

SYNOPSIS

This is an appeal from the decision of the Regional Trial Court of Dumaguete City, which found appellant herein guilty of the crimes of murder and two counts of frustrated murders. His victims who were lucky enough to survive the stab wounds delivered to them while they were on a drinking spree near a public market identified the appellant as the author of the crime. Another victim died while on his way to the hospital. The appellant was sentenced to suffer the penalty of *reclusion perpetua* for the crime of murder and to two indeterminate penalties for the two frustrated murder charges. In this appeal, the Court agreed that the appellant assailed the decision of the trial court only in its findings that treachery attended the crimes committed.

The Supreme Court ruled that the trial court correctly appreciated the elements of treachery that attended the stabbing incident. As recounted by the witnesses, the victims were drinking with two other persons when the appellant asking for a glass of "*tuba*" approached them. The group graciously accommodated him and gave him a drink. The group, therefore, were caught off-guard on the suddenness of his unprovoked attack. However, the Court modified the liability of the appellant to one of his victims to only attempted murder and not frustrated murder. The testimonies of the medical experts showed that the wound inflicted upon his victim was of such kind that would not cause instantaneous death. The Supreme Court affirmed the liabilities of the appellant on the other two decisions.

SYLLABUS

1. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS.— We have consistently ruled that there is treachery 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 offender party might make. Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.

2. ID.; FELONIES; STAGES OF EXECUTION; FRUSTRATED STAGE; DEFINED; PRESENT IN CASE AT BAR.— To be liable for the frustrated stage of a felony, the offender must perform all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator. The testimonies of the medical experts show that the wound inflicted was not of the kind which have caused instantaneous death. According to the testimony of Dr. Calumpang, the only way by which Felipe's life would have been endangered was if the wound developed a major infection. In fact, Felipe was only confined at the NOPH for a few days after which he was allowed to go home and recuperate.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office 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 Dumaguete City, Negros Oriental, Branch 34 in Criminal Case Nos. 12445, 12446 and 12452 which found appellant Pablo dela Cruz *alias* "Pablito dela Cruz" guilty of the crimes of murder and two counts of frustrated murder, respectively.

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[1] Penned by Judge Rosendo B. Bandal, Jr.

The Information[2] in Criminal Case No. 12445 charged appellant with the crime of murder committed as follows:

That on or about 11:00 o'clock in the morning of December 15, 1995, at the public market of Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously ATTACK, ASSAULT and STAB one Victoriano Francisco, a sickly old man aging 81 years, with the use of a hunting knife with which said accused provided himself at that time, thereby causing a fatal injury on the body of said Victoriano Francisco, who died instantaneously as a result thereof, to the damage and prejudice of the heirs of the same victim.

An Act defined and penalized by Article 248 of the Revised Penal Code.

In Criminal Case No. 12446, appellant is charged with the crime of frustrated murder, in an Information[3] which reads:

That on or about 11:00 o'clock in the morning of December 15, 1995, at the public market of Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously ATTACK, ASSAULT and STAB one Felipe Pajunar with the use of a hunting knife with which said accused provided himself at that time, thereby causing a fatal injury on the body of said Felipe Pajunar, 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 causes independent of the will of the perpetrator, that is, by the timely medical attendance, to the damage and prejudice of the same offended party.

An Act defined and penalized by Article 248, in relation to Article 6 and Article 50, of the Revised Penal Code.

The third Information,[4] charging appellant with the crime of frustrated murder in Criminal Case No. 12452, reads:

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[2] *Rollo*, p. 10.

[3] *Id.*, p. 12.

[4] *Id.*, p. 13.

That on December 15, 1995, at about 11:00 o'clock in the morning at Santa Catalina, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one WILLIAM TACALDO, with the use of a deadly weapon with which said accused was then armed and provided, thereby inflicting upon the latter —

1. Stab wound, left subcostal area, penetrating thoraco abdominal cavity with injury to kidney left, jejunum #1;

2. hacking wound, anterior middle third forearm 4 cm sutured —

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 medical treatment of said victim, to his damage and prejudice.

That the crime was attended by the aggravating circumstance of disregard of the respect due the offended party on account of his age who, at the time of the incident, was already an old man 68 years old.

CONTRARY TO ARTICLE 248, IN RELATION TO ARTICLE 6, SECOND PARAGRAPH OF THE REVISED PENAL CODE OF THE PHILIPPINES, AS AMENDED.

The three cases were consolidated and tried jointly upon agreement of the parties.

Felipe Pajunar, the victim in Criminal Case No. 12446, testified that on December 15, 1995, at past 11:00 o'clock in the morning, he was at the public market of Sta. Catalina to buy biscuits and candies for his child's exchange gift. When he was about to leave the market, he was summoned by his cousin, Paulino Tabuay, to join his group for a round of local wine ("*tuba*"), to which Felipe acceded. The other men in the group were Victoriano Francisco, the victim in Criminal Case No. 12445, and Agaton Rubia. All three of them were seated outside the store of a certain Julie Calidquid.[5]

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[5] TSN, 15 January 1998, pp. 3-5.

While the group was conversing, two unidentified men approached their table. One of the men, whom Felipe later identified as appellant Pablo dela Cruz, asked for a glass of "*tuba*" from Paulino. Paulino willingly obliged but appellant refused to accept the glass offered to him, saying it might contain poison. To show appellant that it did not, Paulino drank the glass of "*tuba*" he was offering and refilled it for appellant, who then drank without hesitation. Appellant joined the group and sat with Felipe on his right and Victoriano on his left. Suddenly, appellant placed his right arm around Felipe and, with his left hand, stabbed him, whispering, "*Pinaskuhan nako nimo Brod*." (This is my Christmas gift to you, Brod.) Felipe was wounded on his left chest and fell down. Immediately thereafter, appellant turned to Victoriano and stabbed him. Victoriano was rushed to the Bayawan District Hospital where he was declared dead on arrival. Felipe recalled that appellant used a hunting knife, more or less six inches long.[6] He also recalled having seen victim William Tacaldo with Juan Florencio inside the public market stall typing some documents.[7]

For his injuries, Felipe was brought to the Bayawan District Hospital where he was treated by Dr. Lydia Villaflores. He was later transferred to the Negros Oriental Provincial Hospital where he was confined for four days. Felipe learned that the name of his and Victoriano's attacker was Pablo dela Cruz. Later, he identified appellant in open court. Felipe testified that due to the incident he was unable to work for almost a year and thus lost his ₱200.00 per week income for plowing services. He also presented receipts of his expenses for medicines totaling ₱1,600.00 and claimed that he spent ₱10,000.00 for hospitalization and traveling expenses to and from the hospital.[8]

William Tacaldo, the victim in Criminal Case No. 12452, testified that he made a living from his typing services in one of the stalls of the Sta. Catalina public market. On the day of the

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[6] *Id.*, pp. 6-14.

[7] TSN, 7 July 1998, p. 11.

[8] TSN, 9 July 1998, pp. 12-15.

incident, he was typing a church program for Juan Florencio when a commotion broke out about two meters away. He continued with his typing until he was suddenly stabbed right below his heart. He stood up, pressed his wound to control the bleeding and cried for help. He was brought to the Bayawan District Hospital and was later transferred to the Negros Oriental Provincial Hospital where he was operated on.[9]

Tacaldo testified that he failed to recognize the person who stabbed him since he was concentrated on his typing when the incident happened. During the police investigation, he learned the name of his assailant. Tacaldo alleged that as a result of his injury, he lost his eyesight and could no longer type, resulting in the loss of his income of around ₱200.00 to ₱250.00 a day.[10]

Juan Florencio was also stabbed but did not file a complaint against appellant. He corroborated the testimonies of Felipe and Tacaldo. He narrated that in the morning of December 15, 1995, he was in one of the stalls of the public market dictating a document to Tacaldo. He noticed Felipe, Victoriano and two other persons drinking at a store about two meters away. Shortly after, there was a commotion in front of the store. He saw Felipe being stabbed by a person whom he later learned was appellant Pablo dela Cruz. Appellant also stabbed Victoriano, who became unconscious and fell down. Thereafter, appellant stabbed Tacaldo while he was seated in front of his typewriter.[11]

After stabbing Tacaldo, appellant turned his attention to Florencio, who then ran away. Appellant was able to catch up with Florencio and stabbed him on the back. Appellant stumbled and fell to the ground, and Florencio was able to escape from further harm. He was treated at the Bayawan District Hospital by Dr. Lydia Villaflores.[12]

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[9] TSN, 10 July 1998, pp. 3-10.

[10] *Id*., pp. 11-12.

[11] TSN, 18 September 1998, pp. 7-12.

[12] *Id*., pp. 13-19.

PO3 Rolando Gomez, who was in the vicinity of the market place, heard people shouting and saw some persons scampering away. Several by-standers told him that there was a stabbing incident and that the assailant ran away. At that instant, he saw appellant Pablo dela Cruz running away brandishing a hunting knife. He chased appellant and fired a warning shot. Instead of yielding, appellant turned around and started to attack PO3 Gomez, who shot appellant on the left thigh. PO3 Gomez confiscated the hunting knife and brought appellant to the Sta. Catalina Police Station where PO3 Louie Bantuto conducted an investigation. Subsequently, he brought appellant to Bayawan District Hospital for medical treatment.[13]

PO3 Bantuto corroborated the testimony of PO3 Gomez that an investigation was conducted when the appellant was brought to the police station. PO3 Bantuto reflected the stabbing incident in the police blotter,[14] a copy of which was presented as evidence in court.[15]

Dr. Lydia Villaflores was presented to testify on the death of Victoriano Francisco as well as the injuries suffered by Felipe Pajunar, William Tocaldo and Juan Florencio. Victoriano suffered a two-inch long incised wound at the anterior chest and a similar wound at the arm. The wound on Victoriano's chest was fatal as it damaged blood vessels in the abdomen causing a massive loss of blood. Victoriano was pronounced dead on arrival.[16]

Dr. Villaflores further testified that Felipe Pajunar suffered an incised wound on the left side of the lumbar area, which was fatal since it was located at the anterior chest. On the other hand, William Tacaldo suffered an incised wound on the anterior chest and another on the arm. The wound on the anterior chest was dangerous and could have caused instantaneous death if

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[13] TSN, 6 October 1998, pp. 19-28.

[14] Exhibit K, Records, p. 208.

[15] TSN, 6 October 1998, pp. 37-40; 4 November 1998, pp. 2-5.

[16] TSN, 13 January 1998, pp. 5-10.

left untreated. Juan Florencio sustained an incised wound on the left lumbar area.[17]

Another medical expert, Dr. Henrissa M. Calumpang, testified that she examined Felipe, and found that the latter's wound was already sutured. She opined that the wound was not fatal and could not cause instantaneous death as it was only superficial.[18] Tacaldo, on the other hand, was confined in the hospital for a longer period of time due to the stab wound he sustained at the back that also injured his left kidney. Dr. Calumpang stated that this wound was fatal since Tacaldo's abdominal and thoracic cavities were penetrated. Likewise, as a result of the accumulation of blood in his abdominal cavity, Tacaldo experienced shock due to the loss of blood.[19]

Evangeline Mira testified that she is the daughter of the deceased Victoriano Francisco who was 81 years old when he died. Their family spent ₱30,000.00 for her father's coffin and embalment, ₱1,000.00 per day of the wake which lasted for nine days, ₱6,000.00 for the burial expenses and ₱10,000.00 for the tombstone. She likewise claimed that they spent ₱6,000.00 during the last prayer for her father and ₱400.00 for the funeral mass.[20]

Appellant Pablo dela Cruz testified and admitted that he inflicted wounds on Tacaldo and another person who boxed him outside the public market of Sta. Catalina on December 15, 1995. He denied any involvement in the death of Victoriano and in the wounding of Felipe on the date of the incident, saying he did not even know them. Appellant testified that on the day of the incident, he went to the public market to buy fish. While he was there, he was boxed by a drunken person whom he could only recognize by face. This person was in the same line of work as he was and they had a previous altercation. Appellant testified further that upon being boxed by said person, he

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[17] TSN, 25 September 1998, pp. 4-15.

[18] TSN, 6 October 1998, pp. 4-8.

[19] *Id*., pp. 8-12.

[20] TSN, 27 May 1999, pp. 6-8.

immediately ducked under a table and when he came out at the other side, he saw a butcher's knife and picked it up. He used this to ward off his attackers.[21]

Dr. Angel V. Somera, a witness for the defense testified that based on his examination, appellant is essentially normal considering that no gross pathological or abnormal thought processes like delusions, hallucinations and illusions were revealed. Appellant was coherent in answering the questions Dr. Somera asked during the examination and his memory of the past as well as recent events were well within normal bounds. However, according to Dr. Somera, appellant has a certain degree of paranoia which may be attributed to his level of education. This paranoia, however, is still normal for a person who is uneducated and has been living in the mountains. Thus, appellant is non-psychotic, meaning he is not insane.[22]

The defense also recalled to the witness stand PO3 Louie Bantuto to testify on the mental condition of appellant at the time he was investigated by the police. PO3 Bantuto admitted that he indicated in the police blotter his observation that appellant was mentally ill because of appellant's appearance. He noticed that when appellant was brought to the police station, he had bottles containing oil around his waist.[23]

A decision was rendered by the trial court finding appellant guilty of the crime of Murder in Criminal Case No. 12445 and sentenced to suffer the penalty of *Reclusion Perpetua*; guilty of the crime of Frustrated Murder in Criminal Case No. 12446 and sentenced to suffer the indeterminate penalty of Eight (8) Years and One (1) Day of *Prision Mayor*, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *Reclusion Temporal*, as maximum; and guilty of the crime of Frustrated Murder in Criminal Case No. 12452 and sentenced to suffer the indeterminate penalty of Eight (8) years and One (1) Day

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[21] TSN, 29 October 1999, pp. 3-4; 10 November 1999, pp. 2-10.

[22] TSN, 15 November 2000, pp. 3-9.

[23] TSN, 7 March 2001, pp. 2-5.

of *Prision Mayor*, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *Reclusion Temporal*, as maximum. He is further ordered to pay the heirs of Victoriano Francisco the sum of ₱50,000.00 as civil indemnity, and to pay Felipe Pajunar the sum of ₱1,495.60 as actual damages.

Hence, this appeal, on a lone assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We agree with the Solicitor General's observation that while appellant assails the decision of the trial court, the discussion in the Appellant's Brief was limited to the trial court's findings that treachery attended the crimes. The defense argues that treachery was not present since the victims Victoriano and Felipe ought to have been put on guard by the appearance and actuations of appellant when the latter approached them. Tacaldo was already aware of the commotion moments before he was stabbed, giving him sufficient time to prepare and defend himself. Thus, the defense prays that appellant be found guilty of the lesser offenses of homicide, frustrated homicide and attempted homicide in the respective cases.

There is sufficient evidence on record showing that appellant Pablo dela Cruz is responsible for the death of Victoriano Francisco and the wounding of Felipe Pajunar and William Tacaldo. Felipe's recollection of the events in the morning of December 15, 1995 was direct, spontaneous and consistent. His positive identification of appellant in open court as the person who stabbed him and then later Victoriano was likewise unerring. More importantly, Felipe's testimony was corroborated in all its material points by the testimony of Juan Florencio who testified that he saw appellant stab Felipe and then Victoriano before stabbing Tacaldo and himself.

Furthermore, it has not been shown that either Felipe or Juan Florencio was motivated by any ill will to testify falsely against appellant. Felipe admitted that he did not know appellant personally

and only learned his name during the investigation. Juan Florencio, a church pastor, is not even a complainant, although he himself was injured in the incident. Nonetheless, he testified and recounted what he saw.

It appears that the only issue to be resolved is appellant's degree of culpability. The defense disputes the trial court's findings that treachery attended the stabbings or that appellant consciously adopted such mode of attack to perpetrate the crimes.[24] The prosecution, on the other hand, argues that the totality of the circumstances lead to the inevitable conclusion that all the victims were caught unaware and unable to defend themselves because appellant deliberately chose a manner of attack which insured the attainment of his violent intentions with minimum risk to him.[25]

We have consistently ruled that there is treachery 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.[26] Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[27]

In the case at bar, the trial court correctly appreciated the element of treachery that attended the stabbing incident. Indeed, the essence of treachery is the swift and unexpected attack on an unarmed victim without the slightest provocation on the part

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[24] Appellant's Brief, *Rollo*, pp. 71-76.

[25] Appellee's Brief, *Rollo*, pp. 116-120.

[26] *People v. Factao*, G.R. No. 125966, 13 January 2004; see also *People v. Mabubay*, G.R. No. 87018, 24 May 1990, 185 SCRA 675; *People v. Unarce*, G.R. No. 120549, 4 April 1997, 270 SCRA 756.

[27] *People v. Flores*, G.R. No. 137497, 5 February 2004; see also *People v. Gabitin, et al.*, G.R. No. 84730, 28 October 1991, 203 SCRA 225.

of the victim.[28] As recounted by the witnesses, victims Victoriano and Felipe were drinking with two other persons when appellant approached them asking for a glass of "*tuba*". The group graciously accommodated appellant and gave him a drink. There is nothing in the records to conclusively show that the stabbing was preceded by an altercation or that any of the victims gave the slightest provocation. Although Felipe was seated among his friends at the time he was stabbed, this did not afford him any protection since his companions were likewise caught off-guard by the suddenness of the unprovoked attack. Moreover, appellant's act of putting his right arm around Felipe's shoulder right before stabbing Felipe ensured that his victim would not be able to dodge his attack. By whispering "*Pinaskuhan nako nimo ni, Brod*." (This is my Christmas gift to you, Brod.), appellant displayed a consciousness of action uncharacteristic of one who is mentally ill as the defense would like to portray him.

The attack on Victoriano is likewise unexpected since he was still reeling from the shock at having witnessed the stabbing of Felipe. It must also be noted that Victoriano was 81 years old at the time of the stabbing and his reflexes were worn down by age and by the alcohol he had consumed. Hence, he was not in a position to ward off the attack. The same may be said of the attacks on William Tacaldo and Juan Florencio. While it is true that Tacaldo and Florencio noticed the commotion moments before they were attacked, this fact alone does not rule out the presence of treachery. We have held that while a victim may have been warned of possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[29] The case at bar typifies this doctrine for Tacaldo and Florencio had no opportunity

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[28] *People v. Jacolo*, G.R. No. 94470, 16 December 1992, 216 SCRA 631; see also *People v. Ponayo*, G.R. No. 111523, 10 August 1994, 235 SCRA 226; *People v. Lascota*, G.R. No. 113257, 17 July 1997, 217 SCRA 591; *People v. Lagarteja*, G.R. No. 127095, 22 June 1998, 291 SCRA 142; *People v. Galano, et al.*, G.R. No. 111806, 9 March 2000, 327 SCRA 462.

[29] *People v. Ronato*, G.R. No. 124298, 11 October 1999, 316 SCRA 433, citing *People v. Javier*, G.R. No. 84449, 4 March 1999, 269 SCRA 181.

to defend themselves precisely because they did not expect to be the subject of any further attack by appellant. Thus, from the evidence adduced, the stabbing, although frontal, was so unexpected and sudden that it left the victims, all unarmed, with no opportunity to put up a defense.[30]

We agree, however, with the argument of the Solicitor General that for the injuries he inflicted on Felipe Pajunar, appellant should be charged only of Attempted Murder instead of Frustrated Murder. To be liable for the frustrated stage of a felony, the offender must perform all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.[31] The testimonies of the medical experts show that the wound inflicted was not of the kind which could have caused instantaneous death. According to the testimony of Dr. Calumpang, the only way by which Felipe's life would have been endangered was if the wound developed a major infection.[32] In fact, Felipe was only confined at the NOPH for a few days after which he was allowed to go home and recuperate.

Therefore, the crime committed by appellant in Criminal Case No. 12445 involving Victoriano Francisco is Murder which is penalized under Article 248 of the Revised Penal Code with *reclusion perpetua* to death. Considering that there was no mitigating or aggravating circumstance, the imposition of the lesser penalty of the two indivisible penalties, *reclusion perpetua*, is proper.

In Criminal Case No. 12452 involving William Tacaldo, appellant was correctly found to have committed the crime of Frustrated Murder which, under Article 250 of the Revised Penal Code, is punishable by the penalty one degree lower than that which should be imposed for consummated murder; thus, *reclusion temporal* pursuant to Article 61(2) of the Revised Penal Code. The alleged

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[30] *People v. Javar*, G.R. No. 82769, 6 September 1993, 226 SCRA 103; see also *People v. Ronquillo*, G.R. No. 96125, 31 August 1995, 247 SCRA 793; *People v. Chavez*, 343 Phil. 758 (1997).

[31] Article 6 of the Revised Penal Code.

[32] TSN, 6 October 1998, p. 7.

aggravating circumstance in this case, that is, disregard of respect due the offended party on account of age, cannot be appreciated since it was not shown that appellant deliberately intended to offend or insult the age of the offended party.[33] Hence, the penalty must be applied in its medium period. Applying the Indeterminate Sentence Law, the minimum term for the indeterminate sentence shall be within the range of *prision mayor* while the maximum term of the sentence shall be within the range of *reclusion temporal* medium. Thus, we find the penalty imposed by the trial court in this case to be in order.

In Criminal Case No. 12446 involving Felipe Pajunar, appellant should be convicted of the crime of Attempted Murder which, under Article 51 of the Revised Penal Code, is punishable with the penalty two degrees lower than that prescribed for the consummated felony. Accordingly, the imposable penalty is *prision mayor*. Absent any mitigating or aggravating circumstance, the penalty should be applied in its medium period. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be within the range of *prision correccional*, and the maximum of the penalty to be imposed should be within the range of *prision mayor* in its medium period. Hence, for the crime of Attempted Murder, appellant should be sentenced to suffer the penalty of imprisonment from Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to Eight (8) years and One (1) day of *prision mayor*, as maximum.

We now turn to the issue of damages. In the case involving Victoriano Francisco, we affirm the trial court's award of ₱50,000.00 as civil indemnity *ex delicto* in favor of Victoriano's heirs, which award is mandatory and requires no proof other than the victim's death.[34] While no actual damages may be awarded because no competent evidence in the form of receipts was presented, temperate damages may be recovered under Article 2224 of the Civil Code as the Court finds that some

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[33] *People v. Taboga*, G.R. Nos. 144086-87, 6 February 2002, 376 SCRA 500.

[34] *People v. Caboquin*, G.R. No. 137613, 14 November 2001, 368 SCRA 654.

pecuniary loss has been suffered but its amount cannot be proved with certainty. Consistent with current jurisprudence, the amount of ₱25,000.00 is also awarded to Victoriano's heirs considering that it is not disputed that the family incurred expenses for the wake and burial of the victim.[35]

The award by the trial court of actual damages in the amount of ₱1,495.60 to Felipe Pajunar is supported by the evidence and must be affirmed.

WHEREFORE, in view of the foregoing, the appealed decision of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 34 in Criminal Case Nos. 12445, 12446 and 12452, is *MODIFIED*.

As modified, appellant Pablo "Pablito" dela Cruz is found guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 12445, and sentenced to suffer the penalty of *reclusion perpetua*. He is likewise adjudged to indemnify the heirs of the deceased, Victoriano Francisco, the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity *ex delicto* and Twenty Five Thousand Pesos (₱25,000.00) as temperate damages.

In Criminal Case No. 12446, appellant Pablo dela Cruz is likewise found guilty beyond reasonable doubt of the crime Attempted Murder for which he is sentenced to suffer the indeterminate penalty of imprisonment ranging from Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to Eight (8) years and One (1) day of *prision mayor*, as maximum. He is likewise ordered to indemnify victim Felipe Pajunar the sum of One Thousand Four Hundred Ninety Five Pesos and Sixty Centavos (₱1,495.60) as actual damages.

In Criminal Case No. 12452, appellant Pablo dela Cruz is found guilty beyond reasonable doubt of the crime of Frustrated Murder, and sentenced to suffer the indeterminate penalty of imprisonment ranging from Eight (8) years and One (1) day of

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[35] *People v. Tagano*, G.R. No. 133027, 4 March 2004; *People v. Lachica*, G.R. No. 131915, 3 September 2003.

prision mayor, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day of *reclusion temporal*, as maximum.

Costs *de oficio*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 155138. June 8, 2004]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPS. TEODORO and DELIA KALAW,** *respondents*.

SYNOPSIS

Challenged in this petition for review is the adjudication in favor of the respondents of a parcel of land containing 450 sq. more or less, located at Batong Malake, Los Baños, Laguna. The petitioner appealed the trial court's decision granting appellant Teodoro Kalaw's application for land registration. Petitioner alleged that Teodoro Kalaw is a citizen of the United States of America; that the original tracing cloth plan was not marked and presented in evidence; and that the respondents failed to establish open, continuous, exclusive, and notorious possession and occupation of the subject land. The Court of Appeals affirmed the decision of the trial court. Unsatisfied with the decision, petitioner filed this petition for review with the Supreme Court.

The Supreme Court granted this petition. The Court found that the subject property was admittedly a part of the public domain; hence, the applicable provision is Section 48 (b) of C.A. 141, as amended. The present version of the said law requires that the adverse and continuous possession of the property should be "since June 12, 1945, or earlier." However,

the findings of the trial court in this case revealed that the possession of the property could only be reckoned from 1960. Although the possession by the respondent and their predecessor-in-interest is more than 37 years at the time of filling the application for registration, such possession will not suffice for purposes of judicial confirmation of title. Clearly, both the trial court and the Court of Appeals gravely erred in granting the respondent's application for registration of the land in question.

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; JUDICIAL CONFIRMATION OF IMPERFECT TITLES; PERSONS QUALIFIED TO FILE APPLICATION FOR REGISTRATION OF LAND; EXPRESS REQUIREMENTS.—** In the present version of Section 48(b) of C.A. No. 141, as amended by P.D. No. 1073, the phrase "for at least thirty years" was substituted with the phrase "since June 12, 1945, or earlier." The date "12 June 1945" was reiterated in Section 14(1) of P. D. No. 1529, otherwise known as the *Property Registration Decree*, which provides: SEC. 14. Who may apply. – The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership *since June 12, 1945, or earlier.*

2. **ID.; ID.; ID.; ID.; POSSESSION; POSSESSION FOR 37 YEARS, NOT SUFFICIENT FOR PURPOSES OF JUDICIAL CONFIRMATION OF TITLE; POSSESSION SHOULD BE SINCE 12 JUNE 1945 OR EARLIER.—** Possession by the respondents may, therefore, be reckoned from 1960, as testified to by Sta. Maria. Although the possession by the respondents and their predecessor-in-interest is more than 37 years already as of the time of the filing of the application for registration, that possession will not suffice for purposes of judicial confirmation of title. What is required is open, continuous, exclusive, and notorious possession and occupation by

themselves or through their predecessors-in-interest, under a *bona fide* claim of ownership, since 12 June 1945 or earlier.

3. ID.; ID.; ID.; ID.; OBLIGED TO PROVE COMPLIANCE WITH THE REQUIREMENTS; RATIONALE.— It is doctrinally settled that a person who seeks confirmation of imperfect or incomplete title to a piece of land on the basis of possession by himself and his predecessors-in-interest shoulders the burden of proving by clear and convincing evidence compliance with the requirements of Section 48(b) of C.A. No. 141, as amended. We find that the respondents failed to discharge that burden. Clearly, both the trial court and the Court of Appeals gravely erred in granting their application for registration of the land in question. While it is an acknowledged policy of the State to promote the distribution of alienable public lands as a spur to economic growth and in line with the ideal of social justice, the law imposes stringent safeguards upon the grant of such resources lest they fall into the wrong hands to the prejudice of the national patrimony. We must not, therefore, relax the stringent safeguards relative to the registration of imperfect titles.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ronald E. Javier for respondents.

D E C I S I O N

DAVIDE, JR., *C.J.:*

Challenged in this petition for review is the adjudication in favor of the respondents of a parcel of land described as Lot 1811, Cad-450, Los Baños Cadastre, containing an area of 540 square meters, more or less, located at Batong Malake, Los Baños, Laguna.

On 3 July 1978, respondents Spouses Teodoro Kalaw and Delia Thalia-Kalaw purchased from their father Nicolas Kalaw the said parcel of land, as evidenced by a Deed of Sale of Unregistered Parcel of Land.[1] On 25 November 1997, the

[1] Exhibit "N," OR, 173-174.

respondents filed with the Regional Trial Court of Calamba, Laguna, an application[2] for the registration in their names of the said parcel of land, which was docketed as RTC LRC No. 122-97-C.

Petitioner Republic of the Philippines, represented by the Director of Lands through the Office of the Solicitor General (OSG), filed an Opposition[3] to the application on the following grounds: (1) neither the respondents nor their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land in question for thirty years; (2) the muniments of title and tax declarations of the respondents do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for, and do not appear to be genuine; (3) the respondents can no longer claim ownership in fee simple on the basis of Spanish title or grant, since they failed to file the appropriate application for registration within the period of six months from 16 February 1976, as required by Presidential Decree No. 892; and (4) the parcel of land applied for forms part of the public domain and is not subject to private appropriation.

During the initial hearing on 12 October 1998, the respondents marked and offered in evidence their exhibits proving compliance with the jurisdictional requirements. Since no opposition was presented from the public, a general default was declared by the trial court.[4]

The respondents presented as first witness Mr. Robert C. Pangyarihan, Chief of the Surveys Division, Land Management Bureau, Department of Environment and Natural Resources (DENR), Region IV-A. He identified the Advance Plan[5] for Lot 1811 and the Technical Description,[6] which were both

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[2] Exh. "A," OR, 1-2.

[3] Exh. "C," OR, 35-37.

[4] OR, 95-96.

[5] Exh. "I," OR, 6.

[6] Exh. "J," OR, 4.

verified and found correct by the former Chief of the Surveys Division, Danilo A. Arellano, as well as the Certification[7] of 27 August 1998 which he himself issued stating therein that "Lot 1811 of Cad-450, Los Baños Cadastre, covered by plan Ap-04-011535 is not a portion of, and or identical to, any previously approved isolated survey."

The second witness Rodolfo S. Gonzales, Land Management Investigator of the Community Environment and Natural Resources Office (CENRO), DENR, Los Baños, Laguna, confirmed his Report[8] dated 12 October 1998 that after conducting an ocular inspection of the land subject of the application, he found that that the property is not covered by any patent or title, but by a public land application of Nicolas Kalaw.[9]

To prove possession, the respondents presented Roberto Sta. Maria and Ignacio Nuñez. Sta. Maria, who was 69 years old when he took the witness stand, testified that he was employed in 1960 by Teodoro Kalaw as a mechanic of Chit's Theater, a movie house located at Batong Malake, Los Baños, Laguna. Since that time no person had ever made a claim over the land where the theater was located.[10] For his part, Nuñez, who was 74 years old at the time he testified, declared that Nicolas Kalaw bought the subject property from his (Ignacio's) mother, Silvina Banasihan, and thereafter took possession thereof. No person had ever claimed possession or ownership over the said property until it was sold to Teodoro Kalaw.[11]

The testimony of respondents' other witness Susan Kalaw Pua was dispensed with after the public prosecutor agreed to stipulate on the proposed testimony of the witness that (1) she was the attorney-in-fact of her father, Teodoro Kalaw, who was abroad; (2) the land in question was bought by her father from her grandfather; (3) her father had been religiously paying the real

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[7] Exh. "K," OR, 101.

[8] Exh. "L," OR, 102.

[9] TSN, 6 November 1998, 6-9.

[10] TSN, 20 November 1998, 3-4.

[11] *Id*., 6-7.

estate taxes on the subject property.[12] In lieu of her oral testimony, the respondents marked in evidence Susan's special power of attorney, certified photocopies of the deed of sale[13] executed by Nicolas Kalaw in favor of the respondents and Tax Declaration No. 005-0528[14] in their names; and certifications issued by the Treasurer's Office of Los Baños, Laguna, that the taxes due on the property had been fully paid up to December 1998[15] and that there is "no tax delinquency."[16]

On 11 February 1999 the trial court, acting on the Report[17] dated 11 January 1999 of Director Felino M. Cortez, Department on Registration, LRA, directed the Land Management Bureau of Manila, the CENRO of Los Baños, Laguna, and the Forest Management Bureau of Manila to submit a report on the status of the subject parcel of land by determining whether the said lot or any portion thereof was already covered by a land patent, and was within the area classified as alienable and disposable land of the public domain. It also ordered the Lands Management Sector to verify the discrepancy in area and boundaries pointed out by Director Cortez and to make the necessary correction.[18]

On 20 May 1999, the trial court issued an Order[19] directing the respondents to secure and submit the final report of the LRA within fifteen days from receipt of the order. No final report having been submitted, the trial court, in its Order[20] of 13 July 1999, dismissed the application for registration for insufficiency of evidence.

Subsequently, on 22 July 1999, the trial court received the Supplementary Report[21] of Director Cortez informing it of the

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[12] TSN, 4 December 1998.

[13] OR, 173-174.

[14] Exh. "P" OR, 175.

[15] Exh. "Q," OR, 179.

[16] Exh. "O," OR, 178.

[17] Exh. "R," OR, 143.

[18] OR, 149.

[19] *Id*., 185.

[20] *Id*., 186-187.

[21] *Id*., 189.

correct tie line of Lot 1811 and that when the corrected tie line was applied in the replotting of plan Ap-04-011535, Lot 1811, Cad-450, Los Baños Cadastre, "no more discrepancy exists without any change in its area and boundaries."

On 5 August 1999, the trial court rendered a decision[22] adjudicating the subject property in favor of the respondents and directing the issuance of a decree of registration once the decision becomes final and executory.

In its motion for reconsideration,[23] the petitioner, through the OSG, pointed out that the trial court did not acquire jurisdiction over the case because the tracing cloth plan, a jurisdictional requirement, was not presented.[24] The respondents opposed the motion, arguing that the polyteline cloth plan was forwarded by the Clerk of Court to the LRA, and that besides, such issue was not raised during the hearing of the petition. In its Order of 7 December 1999,[25] the trial court denied the motion on the ground that no substantial arguments were adduced to warrant the reversal of the decision.

The petitioner appealed from the decision to the Court of Appeals contending that the trial court erred in granting the application for land registration because (1) Teodoro Kalaw is a citizen of the United States of America; (2) the original tracing cloth plan was not marked and presented in evidence; and (3) the respondents failed to establish open, continuous, exclusive, and notorious possession and occupation of the subject land.

In its 23 August 2002 Decision,[26] the Court of Appeals affirmed *in toto* the decision of the trial court. It brushed aside the first assigned error for having been raised for the first time on appeal. As to the second assigned error, it pointed out that

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[22] Per Judge Antonio M. Eugenio, Jr. *Rollo*, 72-76.

[23] OR, 206-208.

[24] *Id.*, 221-222.

[25] *Id.*, 232-233.

[26] Per Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr., and Amelita G. Tolentino, concurring. *Rollo*, 51-62.

there was no need to mark and submit in evidence the original tracing cloth plan because the identity of the subject lot was sufficiently established by the documents attached to the application of the respondents. As regards the last assigned error, the Court of Appeals declared that since it is a question of fact, the trial court's evaluation of the testimonies of the witnesses is received on appeal with the highest respect and should not, therefore, be disturbed.

Obviously unsatisfied with the decision of the Court of Appeals, the petitioner came to us *via* this petition for review. It alleged that the Court of Appeals committed reversible error in not finding that the respondents failed to prove adverse and continuous possession of the property for thirty years since 12 June 1945 or earlier, and in not finding that respondent Teodoro Kalaw is not qualified to own lands in the Philippines because he is an American citizen.

In our Resolution of 18 August 2003[27] requiring the parties to submit their respective memoranda, we specifically stated:

> No new issues may be raised by a party in his/its Memorandum and the issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned.
>
> Being summations of the parties' previous pleadings, the Court may consider the Memoranda alone in deciding or resolving this petition.

In its Memorandum, the petitioner did not pursue anymore the issue of Teodoro Kalaw's citizenship. Hence, such issue is deemed abandoned conformably to the above-quoted Resolution. Moreover, the issue of non-submission of the original tracing cloth plan raised in the said Memorandum may neither be considered, it being a new issue for not having been raised as an error in the petition filed with this Court. The ruling of the Court of Appeals thereon shall stand.

What, therefore, remains to be resolved is whether the Court of Appeals erred in affirming the trial court's decision granting respondents' application for registration.

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[27] *Rollo,* 184-185.

The respondents maintain that the parcel of land subject of original registration is a private land previously owned by Silvina Banasihan, whose prior ownership and possession was never disputed. As such, its registration is authorized under Section 14, paragraph 2, of P.D. No. 1529, which does not require proof of open, adverse, and continuous possession by their predecessors since 12 June 1945 or earlier. It is sufficient that they prove open, public, and adverse possession for at least thirty years prior to the filing of the application for registration pursuant to Articles 1118, 1137, and 1138 of the Civil Code. And, that 30-year period should be reckoned not from 12 June 1945 or earlier, but from 1960 when respondents' father and predecessor-in-interest Nicolas Kalaw purchased the property from its previous owner Silvina Banasihan.

Such claim of the respondents that the land subject of their application for registration is a private land is belied by their own evidence. The sworn report[28] submitted by respondent's own witness Rodolfo Gonzales states that the subject property is "covered by FPA (IV-3) 11988 Nicolas Kalaw-applicant." In his testimony in court, Mr. Gonzales confirmed that the land in question is "covered by a public land application of a certain Nicolas Kalaw,"[29] the father of respondent Teodoro Kalaw. He also declared that such free patent application (FPA) was still pending approval in his office.[30]

With these documentary and testimonial evidence adduced by the respondents themselves showing that the subject parcel of land is covered by a public land or free patent application, they cannot now claim that the land is a private land, which can be acquired by prescription pursuant to Articles 1118, 1137, and 1138 of the Civil Code.

Neither can the respondents take refuge in the letter[31] of Isidro L. Mercado of CENRO informing the trial court's Clerk

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[28] Exh. "L," OR, 102.

[29] TSN, 6 November 1998, 7.

[30] *Id.*, 7-8.

[31] OR, 84.

of Court that the subject lot is within the disposable land under Land Classification Project No. 15 of Los Baños, Laguna, certified and declared as such on 31 December 1925. Nowhere is it stated that the said land is private and not part of the public domain.

Likewise, we find no basis in the Court of Appeals' statement that "the Supplementary Report submitted and presented by the LRA dated June 29, 1999 thru Felino Cortez, Director of the Department of Registration, states that there is no legal obstacle or impediment for the registration of the subject property, which therefore removes the same from being within the coverage and classification within the public domain."[32] After a cursory reading of that Report, we found no such statement, not even an implied one. It only recommended that "the corrected tie line of the subject lot . . . be approved."[33]

Since the subject property is admittedly part of the public domain, the applicable provision is Section 48(b) of C.A. 141, as amended.

The OSG argues that respondents failed to prove adverse and continuous possession of the property for thirty years since 12 June 1945. The OSG must have been confused by our previous decisions regarding the requirement of a 30-year period of open, adverse, and continuous possession for judicial confirmation of imperfect title. It must be pointed out that such 30-year period was based on the provisions of Section 48(b) of C.A. No. 141, as amended by Republic Act No. 1942,[34] which read:

> Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

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[32] CA Decision, 10; *Rollo*, 60.

[33] OR, 189.

[34] Effective on 22 June 1957.

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(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

However, on 25 January 1977, during the martial law regime, then President Ferdinand Marcos enacted P.D. No. 1073, whose Section 4 provides:

SEC. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or through his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945.

Thus, in the present version of Section 48(b) of C.A. No. 141, as amended by P.D. No. 1073, the phrase "for at least thirty years" was substituted with the phrase "since June 12, 1945, or earlier." The date "12 June 1945" was reiterated in Section 14(1) of P. D. No. 1529,[35] otherwise known as the *Property Registration Decree*, which provides:

SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide*

[35] Effective on 11 June 1978.

> claim of ownership *since June 12, 1945, or earlier*. (Italics supplied).

Incidentally, P.D. No. 1073 set 31 December 1987 as the deadline for judicial confirmation of imperfect and incomplete titles to alienable and disposable land of the public domain. This deadline was extended to 31 December 2000 by R.A. No. 6940. Since the application of the respondents was filed with the trial court in 1997, their application for judicial confirmation of title was thus filed on time.

The required period of possession and the time frame within which to file a petition for judicial confirmation of imperfect title having been clarified, we now proceed to determine the issue of whether the respondents were able to prove open, continuous, exclusive, and notorious possession and occupation of the subject parcel of land under a *bona fide* claim of ownership since 12 June 1945 or earlier. This issue is obviously a question of fact.

Ordinarily, we defer to the findings of facts of the trial court, especially when they are affirmed by the Court of Appeals. However, when they are not supported by the record or are so glaringly erroneous as to constitute a serious abuse of discretion, we shall not hesitate to overturn such finding.[36] We do so in this case.

In the decision rendered by the trial court, it concluded that the respondents' predecessors-in-interest were in open, continuous, public, and adverse possession of the land for more than thirty years prior to the filing of the petition. It did not state the factual basis of its finding.

The Court of Appeals, on the other hand, made the following finding of fact and conclusion:

> As emphasized, appellee Teodoro Kalaw is the son of Spouses Nicolas Kalaw and Juliana Laluces. The latter acquired the subject

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[36] *Republic v. Intermediate Appellate Court*, G.R. No. 68946, 22 May 1992, 209 SCRA 214; *Republic v. Alconaba*, G.R. No. 155012, 14 April 2004.

lot from the original owner thereof, Silvina Banasihan in 1960. And, from the time the parents (predecessor-in-interest) of Teodoro Kalaw took possession of the subject property in 1960, they erected and built a movie house known as Chit's Theater, which is popular and known to many of the residents and the neighboring areas of Brgy. Batong Malake, Los Baños, Laguna, which have been patronized by many moviegoers as it is situated in the center of business area or *poblacion*. This fact is supported by the testimonies of appellees' witnesses namely: Roberto Sta. Maria, Ignacio Nuñez and Susan Kalaw-Pua stating that the appellees were now the owners of the subject property by means of a deed of sale and that the same property has been declared for taxation purposes.[37]

This finding is not supported by the testimonies of respondents' witnesses. Roberto Sta. Maria testified as follows:

Q Mr. Sta. Maria, do you know a certain Teodoro Kalaw from Los Baños, Laguna?

A Yes, sir.

Q Why do you know Teodoro Kalaw?

A He became my employer when he was operating a movie theater, sir.

Q What is the name of this movie theater?

A Chit theater, sir.

Q And this Chit theater, where is it located?

A Batong Malake, Los Baños, Laguna.

Q And who is the owner of that land where this theater is located?

A Nicolas Kalaw, sir.

Q And what is the relation between Nicolas and Teodoro?

A Teodoro is the son of Nicolas, sir.

Q At present, who is the owner of that property or land where this Chit theater is located?

A Teodoro Kalaw, sir.

Q And from whom did Teodoro Kalaw acquire the said property?

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[37] *Rollo*, 60-61.

A From his father Nicolas Kalaw, sir.

Q Now, you said earlier that you are an employee of the Kalaws over their theater known as Chit theater situated at Batong Malake, Los Baños, Laguna please tell the Court the nature of your work as employee in the said theater?

A During the time that they were operating the whole theater I was their mechanic.

Q And please tell the Court what year was that when you started to be employed in the theater of the Kalaws?

A 1960, sir.

Q From that period of time up to the present, do you know of any person who ever made a claim over that land located at Batong Malake, Los Baños, Laguna where that Chit theater is located?

A No one, sir.

Q You said that the Kalaws are the owners of that land, why do you know that they are the owners of that land?

A Because from the time I worked with them they are the owners of that property.

ATTY. ILAGAN:

That will be all for the witness, your honor.

COURT:

Cross.

FISCAL:

Q Do you know the adjacent owner of the property subject of this petition?

A If you are going to San Pablo City and you are facing the building constructed in that property, on its right is owned by Nuñez while on the left I forgot the owner of the property.

Q Do you know how long has the applicant [been] in possession of this property?

A They were occupying the property from the time I started work with them in 1960.

Q When you first came to know this property, do you know its classification?

A As far as I know it is a commercial because a movie theater is constructed on that property.

Q And from your observation, could you describe the nature of possession of the applicants over this property?

A What I know is that that property was owned by Nicolas Kalaw and was sold to Teodoro Kalaw, his son.[38]

For his part, Ignacio Nuñez testified as follows:

Q Mr. Nuñez, do you know Nicolas Kalaw?

A Yes, sir.

Q Why do you know him?

A I came to know him from the time he bought that property from my mother, sir.

Q You mentioned about a property that was bought by Nicolas Kalaw from your mother, where is that property located?

A The property beside our property.

Q Where is that located?

A Also at Batong Malake, Los Baños, Laguna.

Q Please tell the Court the name of your mother from whom Nicolas Kalaw bought the property?

A Silvina Banasihan.

Q Now after your mother Silvina Banasihan sold that property to Nicolas Kalaw, who took possession of that property?

A Nicolas Kalaw.

Q And as of this present time, who is the owner of the property which your mother sold to Nicolas Kalaw?

A The son of Nicolas Kalaw named Teodoro.

Q Now, from the time that Nicolas bought that property until Nicolas Kalaw sold the said property to Teodoro Kalaw, his

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[38] TSN, 20 November 1998, 3-5.

son, was there any person who ever claimed possession or ownership of that property which your mother sold?

A No one, sir.[39]

Worth noting is the fact that no document was presented to prove the alleged sale of the subject property by Silvina Banasihan to Nicolas Kalaw. The Court of Appeals' finding that the property was purchased by Nicolas from Silvina Banasihan in 1960 is devoid of any factual basis. Ignacio Nuñez simply testified that her mother sold the property, but he did not state when it was allegedly sold. The year 1960 was mentioned by Roberto Sta. Maria as the year when he started working at Chit's theater, but not the year when Nicolas Kalaw acquired the property. Neither is there any evidence of the possession by Nicolas Kalaw's predecessor-in-interest, Silvina Banasihan. In fact, there is nothing on record which shows how Silvina Banasihan acquired the subject land.

The evidence presented by the respondents that may prove possession are (1) the testimony of Roberto Sta. Maria that as early as 1960, he worked as a mechanic in the movie house owned and operated by the Kalaws, which was erected on the subject lot; (2) the Deed of Sale of Unregistered Land[40] dated 3 July 1978; and (3) the Report[41] of Rodolfo Gonzales of the CENRO stating, among other things, that the subject lot was declared for taxation purposes in the name of Nicolas Kalaw for the first time in 1970. Notably, tax declarations or realty tax payments of property are good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least, constructive possession.[42]

Possession by the respondents may, therefore, be reckoned from 1960, as testified to by Sta. Maria. Although the possession

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[39] TSN, 20 November 1998, 6-7.

[40] Exh. "N," OR, 173.

[41] Exh. "L," OR, 102.

[42] *Republic v. Court of Appeals*, G.R. No. 108926, 12 July 1996, 258 SCRA 712, 720; *Republic v. Alconaba, supra* note 36.

by the respondents and their predecessor-in-interest is more than 37 years already as of the time of the filing of the application for registration, that possession will not suffice for purposes of judicial confirmation of title. What is required is open, continuous, exclusive, and notorious possession and occupation by themselves or through their predecessors-in-interest, under a *bona fide* claim of ownership, since 12 June 1945 or earlier.

It is doctrinally settled that a person who seeks confirmation of imperfect or incomplete title to a piece of land on the basis of possession by himself and his predecessors-in-interest shoulders the burden of proving by clear and convincing evidence[43] compliance with the requirements of Section 48(b) of C.A. No. 141, as amended.[44] We find that the respondents failed to discharge that burden. Clearly, both the trial court and the Court of Appeals gravely erred in granting their application for registration of the land in question.

While it is an acknowledged policy of the State to promote the distribution of alienable public lands as a spur to economic growth and in line with the ideal of social justice, the law imposes stringent safeguards upon the grant of such resources lest they fall into the wrong hands to the prejudice of the national patrimony.[45] We must not, therefore, relax the stringent safeguards relative to the registration of imperfect titles.[46]

WHEREFORE, the instant petition is *GRANTED*. The Decision of the Court of Appeals of 23 August 2002 in CA-G.R. CV No. 66620 is *REVERSED* and *SET ASIDE*. Respondents' application for registration and issuance of title to Lot 1811, Cad-450, Los

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[43] *Republic v. Court of Appeals*, G.R. No. 83995, 4 September 1992, 213 SCRA 585.

[44] *Republic v. Intermediate Appellate Court, supra* note 36.

[45] *Republic v. Court of Appeals*, G.R. No. 62680, 9 November 1988, 167 SCRA 150.

[46] *Menguito v. Republic*, G.R. No. 134308, 14 December 2000, 348 SCRA 128.

Baños Cadastre, as shown in plan Ap-04-011535, is hereby *DISMISSED* for lack of merit.

Costs against the respondents.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 156829. June 8, 2004]

RAMON D. MONTENEGRO, *petitioner, vs.* **MA. TERESA L. MONTENEGRO, for herself and as the mother and natural guardian of the minors, ANTONIO AMELO and ANA MARIA PIA ISABEL, both surnamed "MONTENEGRO,"** *respondents*.

SYNOPSIS

Respondent Teresa filed a complaint for support against her husband, petitioner herein. Four years after the filing of the complaint, petitioner and respondent Teresa entered into a compromise agreement that was approved by the trial court. For failure of petitioner to comply with the compromise agreement Teresa filed a motion for execution, which was granted by the court and a writ of execution was issued. Still petitioner failed to comply with his obligation under the compromise agreement. In several conferences held, petitioner alleged that he was no longer in a position to comply with compromise agreement because he was already insolvent. This prompted Teresa to file a motion to examine petitioner as judgment obligor, which was granted. The trial court issued an order holding petitioner guilty of indirect contempt for his repeated failure to appear at the scheduled hearings for his examination as judgment obligor and imposing on him the penalty of 3 months imprisonment and a fine of ₱20,000.00.

The petition was partially granted. The penalty of imprisonment was deleted, while the penalty of fine of ₱ 20,000.00 was affirmed. The contemptuous act in this case was the refusal of petitioner to attend a hearing for his examination as judgment obligor upon motion by Teresa. According to the Court, the purpose of Section 36 of Rule 39 is to provide the judgment obligee a remedy in case the judgment obligor continues to fail to comply with its obligation under the judgment. Petitioner's refusal to be examined, without justifiable reason, constituted indirect contempt, which is civil in nature. Petitioner's deliberate willfulness and even malice in disobeying the orders of the trial court were clearly shown in the pleadings he himself had filed before the trial court. However, the act which the trial court ordered the petitioner to do has already been performed, hence the penalty of imprisonment may no longer be imposed. Petitioner's claim of insolvency was negated by his frequent travels to Canada.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; DEFINED AND CONSTRUED.—** Contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. It is defined as "disobedience to the court by acting in opposition to its authority, justice and dignity." The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.

2. **ID.; ID.; ID.; DIRECT AND INDIRECT CONTEMPT, DISTINGUISHED.—** The Rules of Court penalizes two types of contempt, namely, direct contempt and indirect contempt. Direct contempt is committed in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, and includes disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. On the other hand, Section 3 of Rule 71 of the Rules of Court enumerates particular acts which constitute indirect contempt, thus: (a) Misbehavior of an officer

of a court in the performance of his official duties or in his official transactions; (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming to be an attorney or an officer of a court, and acting as such without authority; (f) Failure to obey a subpoena duly served; (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him. In relation to the foregoing, Section 38 of Rule 39 of the Rules of Court also provides that "a party or other person may be compelled, by an order or subpoena, to attend before the court or commissioner to testify as provided in the two preceding sections, and upon failure to obey such order or subpoena or to be sworn, or to answer as a witness or to subscribe his deposition, may be punished for contempt as in other cases." This provision relates specifically to Section 3(b) of Rule 71 of the Rules of Court.

3. ID.; ID.; ID.; INDIRECT CONTEMPT; HOW INITIATED.— Indirect contempt may either be initiated (1) *motu proprio* by the court by issuing an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt or (2) by the filing of a verified petition, complying with the requirements for filing initiatory pleadings. In the present case, the trial court initiated the proceedings for indirect contempt by issuing two orders directing the petitioner to show cause why he should not be punished for indirect contempt.

4. ID.; ID.; ID.; MAY BE CIVIL OR CRIMINAL DEPENDING ON THE NATURE AND EFFECT OF THE CONTEMPTUOUS ACT.— Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct

directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect." On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made. If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil.

5. ID.; ID.; ID.; REFUSAL TO ATTEND A HEARING CONSTITUTES INDIRECT CIVIL CONTEMPT.— In the present case, the contemptuous act was the petitioner's refusal to attend a hearing for his examination as judgment obligor, upon motion by the respondent Teresa. It must be pointed out that the purpose of Section 36 of Rule 39 is to provide the judgment obligee a remedy in case where the judgment obligor continues to fail to comply with its obligation under the judgment. Petitioner's refusal to be examined, without justifiable reason, constituted indirect contempt which is civil in nature.

6. ID.; ID.; ID.; PENALTY; APPLICATION IN CASE AT BAR.— Under Section 7 of Rule 71 of the Rules of Court, a person found guilty of contempt of court against a Regional Trial Court may be punished with a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. The penalties of imprisonment for three months and a fine of twenty thousand pesos are within the allowable penalties the trial court may impose. However, the penalties of imprisonment and fine may be imposed one at a time, or together. In the present case, the nature of the contemptuous acts committed are civil in nature. Section 7 of Rule 71 of the Rules of Court provides for indefinite incarceration in civil contempt proceedings to compel a party to comply with the order of the court. This may be resorted to where the attendant circumstances are such that the non-compliance with the court order is an utter disregard of the authority of the court which has then no other recourse but to use its coercive power. It has been held that "when a person or party is legally and validly required by a court to appear before it for a certain purpose, when that requirement is disobeyed, the only remedy left for the court is to use force to bring such person or party before it." The reason for indefinite incarceration in civil contempt proceedings, in proper cases,

is that it is remedial, preservative, or coercive in nature. The punishment is imposed for the benefit of a complainant or a party to a suit who has been injured. Its object is to compel performance of the orders or decrees of the court, which the contemnor refuses to obey although able to do so. In effect, it is within the power of the person adjudged guilty of contempt to set himself free.

APPEARANCES OF COUNSEL

Roland G. Ravina for petitioner.
Jesus V. Hinlo for respondents.

D E C I S I O N

DAVIDE, JR., *C.J.*:

In this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Ramon D. Montenegro seeks the reversal of the 8 November 2002 Order[1] in Civil Case No. 94-8467 of the Regional Trial Court, Branch 41, Bacolod City, holding him guilty of indirect contempt for his repeated failure to appear at the scheduled hearings for his examination as judgment obligor and imposing on him the penalty of three (3) months imprisonment and a fine of twenty thousand pesos (₱20,000), and of the subsequent 3 January 2003 Order[2] denying his motion for the reconsideration of the 8 November 2002 Order.

On 14 June 1994, respondent Ma. Teresa V. Lizares-Montenegro (hereinafter, respondent Teresa), for herself and as mother and guardian of her two minor children Antonio Amelo and Ana Maria Pia Isabel, filed with the trial court below a complaint for support against her husband, herein petitioner Ramon D. Montenegro. The case was docketed as Civil Case No. 94-8467. Four years after the filing of the complaint, petitioner and respondent Teresa executed a compromise agreement which

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[1] *Rollo*, 56-70. Per Judge Ray Alan T. Drilon.

[2] *Rollo*, 71-72.

was submitted to the trial court for approval on 13 October 1998. On the same date, the trial court rendered a Decision approving the compromise agreement and ordering the parties to comply with it. The parties did not appeal from the Decision; hence, it became final and executory.

Under the terms of the compromise agreement, petitioner obligated himself to:

(1) Pay the respondent the amount of One Million Pesos (₱1,000,000) representing her entire share in their conjugal partnership of gains, Five Hundred Thousand (₱500,000) of which is payable upon signing of the compromise agreement while the remaining balance of Five Hundred Thousand (₱500,000) must be paid within one (1) year from the execution of the compromise agreement.

(2) Establish a trust fund in the amount of Three Million Pesos (₱3,000,000) in favor of his children Antonio Amelo and Ana Maria Pia Isabel within sixty (60) days from the approval of the compromise agreement.

(3) Obtain an educational plan or an investment plan to cover tuition and other matriculation fees for the college education of Ana Maria Pia Isabel within one (1) year from the approval of the compromise agreement.

Since petitioner failed to comply with his obligations under the compromise agreement despite the lapse of the periods provided therein, respondent Teresa filed a motion for the execution of the judgment. The trial court granted the motion and issued a writ of execution on 15 February 1999.

A second writ of execution and a notice of garnishment, issued by the trial court on 21 May 2001 and on 28 May 2001, respectively, were returned unsatisfied.

In several conferences[3] called by the trial court, petitioner admitted his failure to comply with his obligations under the compromise agreement but alleged that he was no longer in a

[3] Conferences were held on 13 September 2001, 30 January 2002, and 6 March 2002.

position to do so as he was already insolvent. In the conference held on 6 March 2002, respondent Teresa manifested that she would file a motion for examination of petitioner as judgment obligor. The trial court gave her 30 days within which to file the appropriate motion and informed petitioner that he would have 30 days to file a comment or reply to the motion.

On 14 March 2002, respondent Teresa filed a motion to examine petitioner as judgment obligor under Sections 36 and 38 of Rule 39 of the Rules of Court. In her motion, she alleged that there is an urgency for the examination to be conducted at the earliest time since petitioner was about to migrate to Canada. Acting on the said motion, the trial court issued on 19 March 2002 an Order granting the motion for examination of petitioner as judgment obligor and setting his examination on 22 March 2002. On the same day the motion for examination was granted, petitioner filed with the court a Manifestation alleging that the grant of the motion for examination was premature because he still would have 30 days from receipt of the motion, or until April 14, 2002, within which to file a comment or opposition thereto as agreed upon during the conference on 6 March 2002.

On 22 March 2002, neither petitioner nor his counsel appeared for the scheduled hearing. On that date, the trial court issued an order re-scheduling the hearing to 10 April 2002 and requiring the petitioner to explain why he should not be held in contempt of court for disobeying the 19 March 2002 Order.

On 26 March 2002, petitioner filed a Compliance with Motion to Re-schedule Proceedings. He explained that he did not attend the 22 March 2002 hearing because he was under the impression that he still had 30 days from the filing of the motion to examine him as judgment obligor within which to respond to the motion; besides, his counsel was not available on 22 March 2002 due to previously scheduled hearings.

At the hearing on 4 April 2002 of the Compliance with Motion to Re-schedule Proceedings, counsel for petitioner manifested that his client already left for Canada on 26 March 2002 and will be unable to attend the 10 April 2002 hearing, and that

petitioner would be available for examination on the last week of July or first week of August 2002. Counsel prayed that the hearing be thus reset accordingly. The trial court denied the motion and informed the parties that the hearing scheduled on 10 April 2002 will proceed as scheduled.

On 5 April 2002, petitioner filed a manifestation reiterating that he would be unable to attend the 10 April 2002 hearing because he was already in Canada. Counsel for petitioner likewise manifested that he would also be unavailable on the said date because he would be in Manila to attend to his other cases.

On 17 June 2002, the trial court issued an Order directing the petitioner to show cause why he should not held in contempt of court for failure to appear on the 10 April 2002 hearing for his examination as judgment obligor. In his Compliance and Explanation filed on 28 June 2002, petitioner alleged that he was unable to attend the 10 April 2002 hearing because he was in Canada and had no intention to abscond from his obligation.

On 13 June 2002, the trial court issued an Order setting the case for the examination of the petitioner on 3 July 2002. A subpoena was issued against the petitioner and served at his address of record. Respondent Teresa also caused the service of the subpoena at 8051 Estrella Avenue, San Antonio Village, Makati City where petitioner is allegedly residing.

The 3 July 2002 hearing did not push through as the petitioner filed a Motion to Quash Subpoena *Ad Testificandum*[4] on 28 June 2002. In the motion, petitioner admitted that 8051 Estrella Avenue, San Antonio Village, Makati City, is his present address but alleged that Makati City is more than 100 kilometers away from Bacolod City; thus, he may not be compelled by subpoena to attend the 3 July 2002 hearing in Bacolod City. In this motion, petitioner did not allege that he was still in Canada.

In its Order of 2 September 2002, the trial court denied the Motion to Quash Subpoena *Ad Testificandum*, but re-scheduled the hearing to 23 October 2002. On 22 October 2002, the day

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[4] *Rollo*, 121-122.

before the scheduled hearing, petitioner filed a manifestation informing the trial court that he was still in Canada and would not be able to attend the 23 October 2002 hearing; however, he would be in Manila on the first week of December 2002. He moved that the hearing be re-scheduled on 9 December 2002. The manifestation, however, did not contain a notice of hearing.

On 23 October 2002, petitioner did not appear at the scheduled hearing, prompting the trial court to issue an order citing him in contempt of court.

In its Order of 8 November 2002, the trial court declared petitioner in contempt of court under Section 38 of Rule 39 of the Rules of Court[5] and imposed on him the penalty of imprisonment for three months and ordered him to pay a fine of ₱20,000. His motion for reconsideration of the Order having been denied by the trial court in its Order of 3 January 2003, petitioner filed the petition in the case at bar.

The petition raises pure questions of law. After the issues were joined, we resolved to give due course to the petition.

Having raised only questions of law, petitioner is bound by the trial court's findings of fact.

The core issue to be determined is whether, based on the facts found by the trial court, the latter erred in holding the petitioner guilty of indirect contempt for willfully disobeying the orders of the trial court requiring him to appear for examination as a judgment obligor at the hearings scheduled on 22 March 2002, 10 April 2002, and 23 October 2002.

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[5] Sec. 38. *Enforcement of attendance and conduct of examination.* — A party or other person may be compelled, by an order or subpoena, to attend before the court or commissioner to testify as provided in the two preceding sections, and **upon failure to obey such order** or subpoena or to be sworn, or to answer as a witness or to subscribe his deposition, **may be punished for contempt** as in other cases. Examinations shall not be unduly prolonged, but the proceedings may be adjourned from time to time, until they are completed. If the examination is before a commissioner, he must take it in writing and certify it to the court. All examinations and answers before a court or commissioner must be under oath, and when a corporation or other juridical entity answers, it must be on the oath of an authorized officer or agent thereof.

We rule in the negative.

The totality of petitioner's acts clearly indicated a deliberate and unjustified refusal to be examined as a judgment obligor at the time the examination was scheduled for hearing by the trial court. His acts tended to degrade the authority and respect for court processes and impaired the judiciary's duty to deliver and administer justice. Petitioner tried to impose his will on the trial court.

Contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed.[6] It is defined as "disobedience to the court by acting in opposition to its authority, justice and dignity."[7] The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.[8]

The Rules of Court penalizes two types of contempt, namely, direct contempt and indirect contempt. Direct contempt is committed in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, and includes disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so.[9]

On the other hand, Section 3 of Rule 71 of the Rules of Court enumerates particular acts which constitute indirect contempt, thus:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

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[6] *Antonio San Luis v. Court of Appeals*, 417 Phil. 598, 606 (September 13, 2001).

[7] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. Nos. 147589 and 147613, February 18, 2003.

[8] *Ibid*.

[9] Section 1, Rule 71, Rules of Court.

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

In relation to the foregoing, Section 38 of Rule 39 of the Rules of Court also provides that "a party or other person may be compelled, by an order or subpoena, to attend before the court or commissioner to testify as provided in the two preceding sections, and upon failure to obey such order or subpoena or to be sworn, or to answer as a witness or to subscribe his deposition, may be punished for contempt as in other cases." This provision relates specifically to Section 3(b) of Rule 71 of the Rules of Court.

Indirect contempt may either be initiated (1) *motu proprio* by the court by issuing an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt or (2) by the filing of a verified petition, complying with the requirements for filing initiatory pleadings.[10] In the present case, the trial court initiated the

[10] Section 4, Rule 71, Rules of Court.

proceedings for indirect contempt by issuing two orders[11] directing the petitioner to show cause why he should not be punished for indirect contempt.

Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect."[12] On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made.[13] If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil.[14]

In the present case, the contemptuous act was the petitioner's refusal to attend a hearing for his examination as judgment obligor, upon motion by the respondent Teresa. It must be pointed out that the purpose of Section 36 of Rule 39 is to provide the judgment obligee a remedy in case where the judgment obligor continues to fail to comply with its obligation under the judgment. Petitioner's refusal to be examined, without justifiable reason, constituted indirect contempt which is civil in nature.

Petitioner's deliberate willfulness and even malice in disobeying the orders of the trial court are clearly shown in the pleadings he himself had filed before the trial court.

In his Manifestation of 19 March 2002 petitioner insisted on his right to file a reply or comment on the Motion to Examine Defendant as Judgment Obligor until 14 April 2002 solely on the basis of the purported agreement at the conference on 6 March 2002. Petitioner merely brushed aside the Order of the trial court requiring him to appear on 22 March 2002 for the hearing by not appearing

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[11] 22 March 2002 and 17 June 2002 Orders.

[12] *People v. Godoy*, 312 Phil. 977, 999 (March 29, 1995).

[13] *Ibid*.

[14] *Supra*, note 7.

in court. Petitioner cannot simply assume that his manifestation would suffice for the trial court to re-schedule the 22 March 2002 hearing. That portion of the manifestation filed by petitioner on 19 March 2002, which reads:

> 3. In the meantime, we have no other option but to cancel the setting on March 22, 2002 until Respondent shall have submitted his Reply/Comment and the issue is finally laid to rest by the issuance of a final Order for that purpose.

demonstrates beyond doubt arrogance, haughtiness and disrespect. While petitioner apparently disagrees with the 19 March 2002 Order of the trial court, he did not file a motion for its reconsideration. Neither did he file a motion to reset the scheduled hearing on 22 March 2002. We have ruled that a motion for continuance or postponement is not a matter of right but is addressed to the sound discretion of the court.[15] Petitioner sought to deprive the trial court of the discretion; he took it upon himself to cancel or to order the court to cancel the 22 March 2002 scheduled hearing.

Petitioner makes a belated claim in the present petition that his failure to attend the 22 March 2002 hearing was due to the fact that he was already on his way to Manila on 22 March 2002 in preparation for his 26 March 2002 trip to Canada. However, such explanation was not stated in the 19 March 2002 Manifestation and 5 April 2002 Compliance and Motion to Re-schedule Proceedings. The explanation is either a delayed afterthought or an unguarded confession of a deliberate plan to delay or even avoid his examination as a judgment obligor.

Neither can petitioner rely on the alleged irregularity in the trial court's grant of the motion to examine him as judgment obligor before he was able to file a reply or comment. Section 36 of Rule 39 of the Rules of Court allows, as a matter of right, the plaintiff who is a judgment obligee to examine the defendant as judgment obligor, at any time after the return of the writ of execution is made. Section 36 reads as follows:

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[15] *Pepsi Cola Products Phils., Inc. v. Court of Appeals*, 359 Phil. 858, 867 (December 2, 1998).

Sec. 36. *Examination of judgment obligor when judgment unsatisfied.* — When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, ***the judgment obligee, at any time after such return is made, shall be entitled to an order from the court*** which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found. (Emphasis supplied)

Thus, the trial court committed no abuse of discretion in scheduling the examination of petitioner on 22 March 2002. On the contrary, it acted with utmost judiciousness to avoid a miscarriage of justice because petitioner was reported to be about to leave for Canada, a fact which petitioner did not refute in his Manifestation of 19 March 2002.

It is noteworthy that while petitioner insisted that he still had until 14 April 2002 to file a reply or comment on the motion for examination, he also manifested through counsel on 5 April 2002 that he already left for Canada on 26 March 2002 and will not be back until the last week of July or the first week of August 2002. It is obvious then that petitioner wanted to gain time to avoid being examined.

With respect to the 10 April 2002 hearing, it is established that petitioner was already in Canada at the time of the scheduled hearing. Nonetheless, it must be stressed that the re-scheduling of the hearing to 10 April 2002 was brought about by his unjustifiable failure to attend the 22 March 2002 hearing.

Subsequently, despite petitioner's 19 March 2002 and 5 April 2002 manifestations that he would return to the Philippines sometime during the last week of July or first week of August 2002, petitioner did not attend the 23 October 2002 hearing. Again, instead of filing a motion to reset the hearing, petitioner filed a manifestation

the day before the scheduled hearing, informing the court that he will be unable to attend the hearing and suggesting the hearing to be reset to 9 December 2002. Such manifestation to re-schedule the 23 October 2002 hearing was, for all intents and purposes, a motion to postpone the hearing , but the pleading did not contain a notice of hearing.

It is of no moment that petitioner was eventually examined as judgment obligor on 17 December 2002, nine (9) months after the original setting. His subsequent appearance at the hearing did not wipe out his contemptuous conduct.

We shall now take up the penalties imposed by the trial court.

Under Section 7 of Rule 71 of the Rules of Court, a person found guilty of contempt of court against a Regional Trial Court may be punished with a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. The penalties of imprisonment for three months and a fine of twenty thousand pesos are within the allowable penalties the trial court may impose. However, the penalties of imprisonment and fine may be imposed one at a time, or together.

In the present case, the nature of the contemptuous acts committed are civil in nature. Section 7 of Rule 71 of the Rules of Court provides for indefinite incarceration in civil contempt proceedings to compel a party to comply with the order of the court. This may be resorted to where the attendant circumstances are such that the non-compliance with the court order is an utter disregard of the authority of the court which has then no other recourse but to use its coercive power.[16] It has been held that "when a person or party is legally and validly required by a court to appear before it for a certain purpose, when that requirement is disobeyed, the only remedy left for the court is to use force to bring such person or party before it."[17]

The reason for indefinite incarceration in civil contempt proceedings, in proper cases, is that it is remedial, preservative,

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[16] *Quinio v. Court of Appeals*, 390 Phil. 852, 860 (July 13, 2000).

[17] *Ledesma v. Enriquez*, 84 Phil. 483, 489 (August 30, 1949).

or coercive in nature. The punishment is imposed for the benefit of a complainant or a party to a suit who has been injured. Its object is to compel performance of the orders or decrees of the court, which the contemnor refuses to obey although able to do so.[18] In effect, it is within the power of the person adjudged guilty of contempt to set himself free.

In the present case, however, the act which the trial court ordered the petitioner to do has already been performed, albeit belatedly and not without delay for an unreasonable length of time. As such, the penalty of imprisonment may no longer be imposed despite the fact that its non-implementation was due to petitioner's absence in the Philippines.

We are not unmindful of the nature of the judgment from which the present controversy arose. Six years have elapsed from the time the compromise agreement for the support of the children of petitioner and respondent was executed. We take judicial notice of the amount of expenses which a travel outside the country, particularly to Canada, entails, much more so when the person traveling to Canada is trying to establish himself in the said country as an immigrant. Petitioner's claim for insolvency is negated by his frequent travels to Canada. We thus exhort the parties, specifically the petitioner, to resort to all reasonable means to fully satisfy the judgment for support based on the compromise agreement, for the paramount interests of their minor children.

WHEREFORE, the petition is hereby *PARTIALLY GRANTED*. The 8 November 2002 Order of the Regional Trial Court, Branch 41, Bacolod City in Civil Case No. 94-8467 is modified. As modified, the penalty of imprisonment is deleted therefrom, while the penalty of fine of ₱20,000 is affirmed.

No costs.

SO ORDERED.

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

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[18] *Supra,* note 16.

FIRST DIVISION

[A.M. No. MTJ-04-1522. June 9, 2004]

CITY PROSECUTION OFFICE OF GENERAL SANTOS CITY, represented by ANDRES N. LORENZO, JR., 1st Asst. City Prosecutor, EDILBERTO L. JAMORA, 2nd Asst. City Prosecutor, MARIE ELLENGRID L. BALIGUAT, ANTONIO B. TAGAMI and ALEJANDRO RAMON C. ALANO, 3rd Asst. City Prosecutor, JOSE JERRY L. FULGAR, and ANTONIO GEOFFREY H. CANJA, Prosecutor I, *complainants, vs.* **JUDGE JOSE A. BERSALES, Municipal Trial Court in Cities, Branch II, General Santos City,** *respondent.*

SYNOPSIS

Instead of dismissing a complaint for illegal possession of firearm and ammunition for lack of jurisdiction, respondent MTC Judge conducted the preliminary investigation and dismissed the case on the ground that the subject firearm was inadmissible in evidence since the arrest of the accused during which the gun was seized was tainted with constitutional infirmity. The respondent judge also took custody of the subject firearm, and instead of surrendering the same to the prosecution he threatened the prosecutor with contempt proceedings and actually ordered the latter's arrest while the prosecutor was in the middle of a hearing, causing disruption of the proceedings. He then later held the prosecutor guilty of indirect contempt. Hence, complainants herein filed this administrative complaint and prayed that the respondent judge be dismissed from service.

The Office of the Court Administrator recommended that the respondent judge be ordered to turn over the custody of the subject firearm to the City Prosecutor's Office and that he be fined the amount of ₱20,000.00, to which the Supreme Court agreed. The Court found that the respondent judge had no legal basis to take custody of the handgun, much less order the direct turn over thereof to him by the NBI. Although it was an evidence in the criminal case for illegal possession of firearm, the prosecutor had not offered it, hence, it was the

prosecution who should have the legal custody and responsibility of the subject firearm.

SYLLABUS

1. **REMEDIAL LAW; JUDICIARY REORGANIZATION ACT (B.P. BLG. 129): JURISDICTION OVER CRIMINAL CASES; CASES UNDER THE REGIONAL TRIAL COURTS DISTINGUISHED FROM CASES UNDER THE METROPOLITAN TRIAL COURTS.—** Section 20 of the Judiciary Reorganization Act delineates the jurisdiction of Regional Trial Courts in criminal cases thus: SEC. 20. *Jurisdiction in Criminal Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall thereafter be exclusively taken cognizance of by the latter. On the other hand, the jurisdiction of Municipal Trial Courts is explicitly provided by Section 32 thereof: SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases.* – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise: (1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdictions; and (2) *Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years* irrespective of amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: *Provided, however,* That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

2. **ID.; EVIDENCE; JUDICIAL CUSTODY SHOULD BE WITH THE CLERK OF COURT.—** Rule 136, Section 7 of the Rules of Court states: . . . SEC. 7. *Safekeeping of property.* – The clerk shall safely keep all records, papers, files, *exhibits* and public

property committed to his charge, including the library of the court, and the seals and furniture belonging to his office. Along the same vein, Section E (2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court provides: All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated *shall be under the custody and safekeeping of the Clerk of Court.*

3. CRIMINAL LAW ILLEGAL POSSESSION OF FIREARMS; PENALTY.— The penalty for illegal possession of a high-powered firearm under the second paragraph of Section 1, P.D. No. 1866, as amended, is *prision mayor* in its minimum period which has a period of six (6) years and one (1) day to eight (8) years.

4. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; A JUDGE MUST BE TEMPERATE, PATIENT, AND COURTEOUS TO THOSE WHO APPEAR BEFORE HIS COURT.— The role of a judge in relation to those who appear before his court must be one of temperance, patience and courtesy. A judge who is commanded at all times to be mindful of his high calling and his mission as a dispassionate and impartial arbiter of justice is expected to be "a cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals."

D E C I S I O N

YNARES-SANTIAGO, *J.*:

In a verified complaint,[1] the City Prosecution Office of General Santos City charged Judge Jose A. Bersales, Presiding Judge of Branch II, Municipal Trial Court in Cities, General Santos City, with grave abuse of power, ignorance of the Rules, obstruction of justice and dishonesty.

On June 13, 2002, a complaint for Illegal Possession of Firearm and Ammunition, docketed as Criminal Case No. 44040-II[2] was

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

[2] *Id.*, p. 69.

filed against Luis Garchitorena before the Municipal Trial Court in Cities, General Santos City, Branch II, presided by respondent Judge.

After conducting preliminary investigation, respondent Judge found probable cause against Garchitorena and forwarded the records of the case to the Office of the City Prosecutor. Meanwhile, the subject firearm, a .45 caliber pistol recovered from Garchitorena, remained under the custody of the National Bureau of Investigation (NBI).

Subsequently, an Information for Illegal Possession of Firearm, docketed as Criminal Case No. 44486-II, was filed against Garchitorena. By inadvertence, however, the same was filed with the MTCC, Branch II (respondent's court), instead of the Regional Trial Court which had jurisdiction over the offense.[3]

On October 11, 2002, respondent Judge directed the NBI to turn over custody of the .45 caliber pistol to him, which the NBI complied with.

Instead of dismissing the case for lack of jurisdiction, respondent Judge conducted another preliminary investigation and dismissed the case on the ground that the subject firearm was inadmissible in evidence since the arrest of the accused, during which the gun was seized, was tainted with constitutional infirmity.

Notwithstanding the Order of respondent Judge, the Prosecution Office refiled the Information for Illegal Possession of Firearm against Garchitorena with the Regional Trial Court of General Santos, Branch 37, where it was docketed as Criminal Case No. 16600.

The prosecution also filed an Information for Direct Assault against Garchitorena with the MTCC of General Santos City, Branch III, docketed as Criminal Case No. 44880-III. Judge Oscar P. Noel, Jr. of the MTCC, Branch III issued a *Subpoena Duces Tecum*[4] directing Norma Yumang, Branch Clerk of Court

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[3] *Id.*, p. 44.

[4] *Id.*, p. 16.

of the MTCC, Branch II, to submit the firearm to the Prosecution Office inasmuch as it was evidence in the case for Direct Assault.

Norma Yumang filed a Manifestation[5] stating that the subject firearm was not in her custody because the same was directly submitted by the NBI to respondent Judge.

Upon learning that the gun was in the possession of respondent Judge, the prosecution sent a letter to him requesting the turn over of the subject firearm to the Prosecution Office. After respondent Judge ignored the letter, Prosecutor Edilberto L. Jamora issued a *Subpoena Duces Tecum*,[6] addressed to the former reiterating the demand to turn over the subject firearm to the Prosecution Office.

On April 14, 2003,[7] respondent Judge issued an Order requiring Prosecutor Jamora to show cause why he should not be cited for Indirect Contempt for issuing the subpoena against him.

Prosecutor Jamora filed his Answer[8] justifying the issuance of the subpoena and explaining his reasons therefor. At the scheduled hearing on the contempt proceedings on April 24, 2003, Prosecutor Jamora filed a Waiver of Appearance[9] stating that he had to appear before the RTC, Branch 37.

Despite the filing of the foregoing waiver, respondent Judge ordered Prosecutor Jamora's arrest[10] while he was in the middle of a hearing in RTC-Branch 37, causing a disruption of the proceedings therein.[11] Prosecutor Jamora thus verbally moved for the issuance by Judge Eddie R. Rojas, Presiding Judge, RTC-Branch 37, of a 72-hour Temporary Restraining Order, enjoining the implementation of the arrest order. Judge Rojas

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[5] *Id.*, p. 17.
[6] *Id.*, p. 20.
[7] *Id.*, pp. 21-22.
[8] *Id.*, pp. 23-26.
[9] *Id.*, p. 27.
[10] *Id.*, pp. 31-33.
[11] *Id.*, p. 126.

issued the TRO prayed for and required respondent Judge to appear before him the next day for the hearing on the Injunction.

Respondent Judge, however, failed to appear. Thus, the temporary restraining order was extended to its full term of twenty (20) days.[12]

On April 30, 2003, respondent Judge rendered a Decision[13] finding Prosecutor Jamora guilty of Indirect Contempt.

In their administrative complainant, the Prosecutors of General Santos City pray that respondent Judge be dismissed from the service.

Respondent Judge filed his Answer/Comment[14] praying that the complaint be dismissed. He avers that the issues are still under consideration because Prosecutor Jamora filed a notice of appeal from the Decision finding him liable for Indirect Contempt. Further, he alleges that Prosecutor Jamora was arrested because he disobeyed the Order for him to appear at the scheduled hearing for contempt.

With regard to the .45 caliber handgun of Luis Garchitorena, Jr., who is now deceased,[15] respondent Judge pointed out that the same was now the subject of a Motion to Release[16] filed by Garchitorena's heirs. He received the handgun from the NBI and turned over the same to his Branch Clerk, Norma C. Yumang. When Ms. Yumang received the subpoena issued by Judge Noel to surrender the gun, she became frightened and turned over the same to him. Later, he returned the gun to Yumang and eventually directed its release to Garchitorena's brother.[17]

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[12] *Id*., p. 36.

[13] *Id*., pp. 39-63.

[14] *Id*., pp. 128-134.

[15] *Id*., p. 139.

[16] *Id*., p. 174.

[17] *Id*., pp. 187-188.

However, he held in abeyance the turn over of said handgun upon the verbal directive of the Court Administrator on account of the pending administrative case against him.

Respondent Judge argues that he refused to comply with the subpoena of Judge Noel because the latter failed to acquire jurisdiction over the person of the accused and the firearm is not one of the essential elements of the crime of Direct Assault.

Both complainants[18] and respondent Judge[19] manifested their willingness to submit the case for resolution on the basis of the pleadings filed.

After evaluation, the Office of the Court Administrator recommended that respondent Judge be ordered to turn over the custody of the .45 caliber pistol to the City Prosecutor's Office and that he be fined the amount of Twenty Thousand Pesos (₱20,000.00) with a stern warning that the commission of a similar offense will be dealt with more severely.

We agree with the findings and recommendation of the OCA.

Indeed, respondent Judge displayed ignorance of the principles of jurisdiction in Criminal Procedure.

Section 20 of the Judiciary Reorganization Act delineates the jurisdiction of Regional Trial Courts in criminal cases thus:

> SEC. 20. *Jurisdiction in Criminal Cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall thereafter be exclusively taken cognizance of by the latter.

On the other hand, the jurisdiction of Municipal Trial Courts is explicitly provided by Section 32 thereof:

> SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases.*

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[18] *Id.*, p. 204.

[19] *Id.*, p. 168.

— Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdictions; and

(2) ***Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years*** irrespective of amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: *Provided, however*, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.[20] (Emphasis and italics supplied)

The penalty for illegal possession of a high-powered firearm under the second paragraph of Section 1, P.D. No. 1866, as amended, is *prision mayor* in its minimum period which has a period of six (6) years and one (1) day to eight (8) years.

Therefore, the case for Illegal Possession on Firearm was beyond the jurisdiction of respondent Judge, and it behooved him to dismiss the same upon the filing of the appropriate Information with the Regional Trial Court of General Santos City, Branch 37.

However, instead of dismissing the case, respondent Judge conducted another preliminary investigation and, in an Order dated October 21, 2002,[21] dismissed the case on the ground that the constitutional rights of the accused were allegedly violated.

Respondent Judge's insistence to conduct another preliminary investigation, coupled with the fact that his order *omitted* to mention the shooting incident which prompted the arresting officers to seize the firearm from Garchitorena, raises the suspicion that respondent Judge was prompted by less than noble motives in ordering the dismissal of the case.

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[20] As amended by R.A. No. 7691.

[21] *Rollo*, pp. 72-74.

Furthermore, respondent Judge's undue interest in the handgun is shown by his refusal to surrender custody thereof to the Prosecution Office.

Respondent Judge had no legal authority to take custody of the handgun much less order the direct turn over thereof to him[22] by the NBI. Although it was evidence in the criminal case for Illegal Possession of Firearm, the prosecutor had not offered it as evidence. Hence, it was the prosecution who should have the legal custody and responsibility of the subject firearm.[23]

Assuming *arguendo* that the handgun was under the legal custody of the court, still, respondent Judge cannot take possession of the firearm because Rule 136, Section 7 of the Rules of Court states:

> SEC. 7. *Safekeeping of property*. — The clerk shall safely keep all records, papers, files, ***exhibits*** and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office. (Emphasis and italics supplied)

Along the same vein, Section E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court provides:

> All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated ***shall be under the custody and safekeeping of the Clerk of Court.*** (emphasis and italics supplied)

Respondent Judge claims that upon receipt of the gun from the NBI, he turned over custody thereof to his Branch Clerk of Court. However, the record discloses that said gun in fact *never* passed the office of respondent Judge's Clerk of Court. No less than Norma C. Yumang, the Clerk of Court herself, disclaimed receipt of such firearm.[24] What appears on record is that the handgun was directly turned over by the NBI to respondent

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[22] *Id.*, p. 71.

[23] *OCA v. Sanchez*, A.M. No. RTJ-99-1486, 26 June 2001, 359 SCRA 577.

[24] *Rollo*, p. 17.

Judge on October 15, 2002 pursuant to his Order dated October 11, 2002.[25]

Respondent Judge knew that responsibility for the handgun belonged to the Clerk of Court. Despite such knowledge, he insisted in taking custody thereof. When he completed the preliminary investigation and forwarded his findings to the City Prosecution Office, he lost jurisdiction over the case and, necessarily, the firearm. Respondent Judge took advantage of his office in retaining possession of the .45 caliber pistol. With his obstinate refusal to turn over the gun, he effectively prevented the prosecution of accused Garchitorena in Criminal Case No. 16600, which constitutes a clear obstruction of justice.[26]

The role of a judge in relation to those who appear before his court must be one of temperance, patience and courtesy.[27] A judge who is commanded at all times to be mindful of his high calling and his mission as a dispassionate and impartial arbiter of justice[28] is expected to be "a cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals."[29]

In fine, respondent Judge not only failed to perform his judicial duties in accordance with the rules, he also acted in disregard of the law and controlling jurisprudence.

WHEREFORE, in view of the foregoing, respondent Judge Jose A. Bersales of the Municipal Trial Court in Cities of General Santos City, Branch II, is declared guilty of misconduct and is *FINED* the amount of Twenty Thousand Pesos (₱20,000.00). He is *DIRECTED* to turn over the custody of the .45 caliber

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[25] *Id.*, p. 71.

[26] *OCA v. Sanchez, supra*.

[27] See *Delgra, Jr. v. Gonzales*, G.R. No. L-24981, 30 June 1970, 31 SCRA 237; *Laguio v. Diaz*, A.M. No. (3167-V) P-2195, 29 May 1981, 104 SCRA 689; *Retuya v. Equipilag*, A.M. No. 1431-MJ, 16 July 1979, 91 SCRA 416.

[28] *Royeca v. Animas*, 162 Phil. 651 [1976].

[29] *Azucena v. Munoz*, 144 Phil. 463 [1970].

pistol to the City Prosecutor's Office of General Santos City for the proper disposition thereof. Finally, he is *STERNLY WARNED* that a repetition of similar acts will be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 133006. June 9, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOHN ISNANI *y* ILINGAN and SPO1 FREDINEL YAMUTA *y* REMOTO,** *accused,* **SPO1 FREDINEL YAMUTA *y* REMOTO,** *appellant.*

SYNOPSIS

This is an appeal from the decision of the Regional Trial Court finding appellant guilty beyond reasonable doubt of selling "*shabu*", in violation of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of *reclusion perpetua*. John Isnani and Fredinel Yamuta, the appellant herein, were arrested during a buy-bust operation conducted by the operatives of the Philippine National Police in Zamboanga City. Upon arraignment, the appellant pleaded not guilty of the crime charged while Isnani pleaded guilty. Isnani was imposed an indeterminate penalty of only up to two years, four months and one day of *prision correccional*, thus, he chose not to appeal his case.

The Supreme Court sustained the trial court's finding that the prosecution proved by evidence beyond reasonable doubt

all the elements of illegal sale of "*shabu*" and that the appellant and accused Isnani conspired to commit the crime. However, the trial court erroneously appreciated the qualifying circumstance that the appellant was a member of the PNP assigned at the Regional Intelligence Group in Zamboanga City. The prosecution failed to specifically allege in the information such circumstance, thus, appellant could not be sentenced to suffer the penalty of *reclusion perpetua*. Therefore, the court affirmed the conviction of the appellant, but modified the penalty to an indeterminate sentence of 6 months of *arresto mayor*, as minimum, to 2 years, 4 months and 1 day of *prision correcctional* in its medium period, as maximum.

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF *"SHABU"*; ELEMENTS.— Section 15 of Article III in relation to the second paragraph of Sections 20 and 21 of Article IV of Republic Act No. 6425, as amended by Section 17 of R.A. No. 7659, the elements necessary in every prosecution for the illegal sale of "*shabu*" are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

2. ID.; CONSPIRACY; DEFINED; PRESENT IN CASE AT BAR.— Appellant's contention contravenes the basic rule on collective responsibility of malefactors in a conspiracy. In *People vs. Medina*, we held: "It is elementary that when there is a conspiracy, the act of one is the act of all the conspirators, and *a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense.* In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial." Clearly, it is of no moment that appellant did not possess the seized *shabu*, or that he did not personally deliver it to PO3 Saradi and receive the monetary consideration therefor. It bears stressing that *liability exists notwithstanding appellant's non-participation in every detail in the execution of the crime.* The evidence for the prosecution clearly shows that appellant

and accused Isnani were of one mind, not only in selling the regulated drug, but more so in the manner they committed the crime. In fact, appellant's conduct confirms that he *consciously concurred* with accused Isnani in committing the crime. *Conspiracy having been adequately shown, appellant is thus liable for the illegal sale of shabu*.

3. ID.; DRUG PUSHING; TYPE OF CRIME THAT MAY BE COMMITTED AT ANY TIME AND AT ANY PLACE.— Indeed, *drug pushing when done on a small-scale* belongs to those types of crimes that *may be committed any time and at any place*. In *People vs. Paco*, we sustained the conviction of a drug pusher caught selling illegal drugs at a billiard hall. There, we held: "The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same."

4. ID.; ILLEGAL SALE OF *SHABU*; PENALTY IN CASE AT BAR.— Section 24, Article IV of the law provides that the prescribed penalty is imposed in its maximum "if those found guilty of any of the said offenses are x x x members of police agencies and the armed forces." Here, it is undisputed that appellant is a member of the PNP assigned at the Regional Intelligence Group of Cawa-Cawa Boulevard, Zamboanga City. However, the *prosecution failed to specifically allege this circumstance in the Information*. Thus, the trial court erroneously appreciated the same and appellant cannot be sentenced to suffer the penalty of *reclusion perpetua*. In *People vs. Amadeo Tira,* we held: "Under Section 15, Article III in relation to the second paragraph of Sections 20 and 21 of Article IV of Republic Act No. 6425, as amended by Section 17 of R.A. No. 7659, the imposable penalty of illegal sale of a regulated drug (*shabu*), less than 200 grams, as in this case, 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 IMPOSABLE PENALTY *Less than one (1) gram to 49.25 gram, 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*." The quantity of the *shabu* involved herein is *0.060 grams*. Pursuant to the second paragraph

of Sections 20 and 21 of Article IV of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659 (for unauthorized sale of less than 200 grams of *shabu*) and considering our ruling in the above case, the imposable penalty is *prision correccional*.

5. **REMEDIAL LAW; EVIDENCE; POSITIVE IDENTIFICATION OF THE ACCUSED PREVAILS OVER HIS WEAK DEFENSES OF DENIAL AND ALIBI.—** It bears emphasis that appellant was caught in *flagrante delicto* in a legitimate entrapment operation conducted by the police. Hence, his identity as the person who delivered the regulated drug to accused Isnani for sale and distribution, cannot be doubted anymore. Such positive identification prevails over his weak defenses of denial and alibi. In *People vs. Eleonor Julian-Fernandez*, we held: "The defenses of denial and alibi have been invariably viewed by us with disfavor for it can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Dangerous Drugs Act."

6. **ID.; ID.; CREDIBILITY OF WITNESS; NOT AFFECTED BY INCONSISTENCIES AND DISCREPANCIES ON MINOR MATTERS.—** However, *inconsistencies and discrepancies* which refer to *minor matters are irrelevant to the elements of the crime and cannot be considered as grounds for acquittal*. A close scrutiny of the transcripts of the proceedings shows that the supposed flaw or inconsistency bears on relatively minor points and, even if taken as a whole, would still fail to debunk the gravamen of the accusation that appellant and accused Isnani conspired to commit the crime.

7. **ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY PREVAILS OVER SELF-SERVING AND UNCORROBORATED DEFENSES.—** *In the absence of proof of motive* to falsely impute such a serious crime against appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated defenses.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Alfredo Jimenez for accused-appellant.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Sad as it may seem, the realities of contemporary times reveal that transactions involving drugs have transcended even the ranks of our law enforcers. There is no question that the illicit distribution of drugs is one of the most serious problems pervading our society. Drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law, that drugs are being sold even by law enforcers.

This is an appeal from the Decision[1] dated December 1, 1997 of the Regional Trial Court, Branch 13, Zamboanga City, in Criminal Case No. 3163 (13277), declaring SPO1 Fredinel Yamuta *y* Remoto, appellant, guilty beyond reasonable doubt of selling "*shabu*," in violation of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of *reclusion perpetua*. He was also adjudged to pay ₱500,000.00 as fine.

The Amended Information[2] dated July 5, 1995 charges John Isnani *y* Ilingan and SPO1 Fredinel Yamuta *y* Remoto as follows:

"That on or about June 30, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, mutually aiding and assisting one another, not being authorized by law to sell, deliver, give away to another, transport or distribute any regulated drug, did then and there, willfully, unlawfully and feloniously, sell to one PO3 Nur A. Saradi, a NARCOM *poseur-buyer*, a small plastic sachet containing *methamphetamine hydrochloride (shabu)* weighing *0.060 grams*, knowing the same to be a regulated drug.

CONTRARY TO LAW."

Upon arraignment on July 28, 1995, appellant, assisted by counsel, pleaded not guilty to the crime charged in the Amended Information.

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[1] Penned by Judge Carlito A. Eisma, *Rollo* at 13-23.

[2] Records at 12.

However, the other accused, John Isnani *y* Ilingan pleaded guilty and was imposed the penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correcional*, as maximum.

Trial ensued thereafter. The prosecution presented the following witnesses: PO3 Bonifacio C. Morados, PO3 Nur Saradi and PNP Forensic Chemist Mercedes D. Diestro. Their testimonies, woven together, established the following facts:

On June 29, 1995 at around 8:30 o'clock in the morning, the 9th Narcotics Regional Field Unit of the Philippine National Police (PNP), in Zamboanga City, was notified by a civilian informant about the drug trafficking activities of John Isnani at Ambassador Drive, Baliwasan Chico, Zamboanga City. Immediately, the PNP organized an 8-man buy-bust team composed of PO3 Nur Saradi, as the *poseur-buyer*, PO3 Bonifacio C. Morados, PO3 Louie Erica, PO3 Jesus Formento, SPO2 Abdul Mutalib, SPO2 Jovito Cabuglay, SPO2 Undangan, and SPO2 Edgar Fernandez, as the team leader, to conduct surveillance and buy-bust operation. Thereafter, they marked the ₱500.00 bill bearing serial number G947506. On the same day, PO3 Saradi and the informant proceeded to Isnani's house at Baliwasan Chico. There, the informant introduced PO3 Saradi to Isnani as a prospective buyer of *shabu*. Since he already ran out of stock, Isnani told them to come back the following day as his supplier, a certain Butch, will bring the "stuff". PO3 Saradi reported this to his team leader.

The next day, or on June 30, 1995, at around 10:45 o'clock in the morning, the team, without the informant, went to Baliwasan Chico. Upon reaching Isnani's house, PO3 Saradi, talking in Taosug dialect, told Isnani again that he want to buy *shabu*. Then, Isnani went upstairs and talked to another man, herein appellant. Through an open door and at a distance of five to six meters away, PO3 Saradi saw appellant handing over to Isnani a small plastic sachet containing white crystalline substance. Afterwards, Isnani, holding the same plastic sachet, went downstairs and delivered it to PO3 Saradi. Thereupon, PO3

Saradi paid Isnani the marked ₱500.00 bill. PO3 Saradi then made the pre-arranged signal by scratching his head with his right hand. Immediately, the back-up team headed by SPO2 Fernandez and PO3 Morados rushed in and arrested Isnani and confiscated the plastic sachet containing the white crystalline substance and the marked bill. PO3 Morados then proceeded upstairs to arrest appellant. At that instance, PO3 Morados saw appellant throwing a small plastic sachet outside the window. Subsequently, the team recovered the sachet outside the house on top of waterlily leaves. Also confiscated from appellant were the paraphernalia used for sniffing *shabu* and six (6) aluminum foils.

The arresting police officers brought appellant and Isnani to their station for investigation.

The substance contained in two plastic sachets, with a total weight of 0.10 grams, was submitted to the PNP Crime Laboratory for examination. It was positive for *methamphetamine hydrochloride* or *shabu*. While on the witness stand, Mercedes D. Diestro, PNP Forensic Chemist, confirmed her Physical Science Reports,[3] hereunder reproduced as follows:

"x x x x x x x x x

"SPECIMEN SUBMITTED:

Exh "A" — One (1) evidence transparent plastic bag containing the following:

1. One (1) small heat-sealed transparent plastic bag with white crystalline substance weighing 0.060 grams marked as Exh "A-1";

2. One (1) improvised water pipe marked as Exh "A-2";

3. Six (6) aluminum foils marked as Exh "A-3" through "A-8," respectively.

x x x x x x x x x

"FINDINGS:

Qualitative examination conducted on the above-stated specimens gave the following results:

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[3] Exhibits "D" and "H", Folder of Exhibits.

1. Exh "A-1" — POSITIVE to the test for Methamphetamine hydrochloride (*shabu*), a regulated drug;

2. Exh "A-2" through "A-8" — NEGATIVE to the test for Methamphetamine hydrochloride (*shabu*), a regulated drug.

"CONCLUSION:

Exh "A-1" contains Methamphetamine hydrochloride (*shabu*), a regulated drug.

Exh "A-2" through "A-8" do not contain Methamphetamine hydrochloride (*shabu*), a regulated drug.

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

"x x x x x x x x x

"SPECIMEN SUBMITTED:

Exh "A" — One (1) small heat-sealed transparent plastic bag with white crystalline substance weighing 0.040 grams (Recovered)

x x x x x x x x x

"FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methamphetamine hydrochloride (*shabu*), a regulated drug.

"CONCLUSION:

Exh "A" contains Methamphetamine hydrochloride (*shabu*), a regulated drug.

x x x x x x x x x."[5]

Appellant merely denied the charge. He testified that he is a member of the PNP assigned to the Regional Intelligence Group at Cawa-Cawa Boulevard, Zamboanga City. On that particular date at around 9:20 o'clock in the morning, he was in Baliwasan Chico to commission Isnani, his "asset" or informant,

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[4] Exhibit "D", Folder of Exhibits.

[5] Exhibit "H", Folder of Exhibits.

to conduct surveillance on the Abu Sayyaf Group (ASG). But Isnani was not home. So he decided to wait for Isnani at his living room. He was however surprised when, upon Isnani's arrival, the NARCOM agents immediately handcuffed and arrested him.

He also testified that he made frequent visits to Baliwasan Chico because he was courting Isnani's neighbor, Vanessa Libertad; and that PO3 Saradi harbored ill-feelings against him suspecting that he killed "Saradi's NARCOM Asset" named "Waray".

On December 1, 1997, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, this Court finds the accused SPO1 FREDINEL YAMUTA *y* REMOTO guilty beyond reasonable doubt of the offense of Violation of Section 15, Article III in relation to Section 21, Article IV of R.A. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.

The bailbond in the form of cash money, posted for the provisional liberty of the said accused is cancelled and he is hereby ordered committed to prison immediately. Upon the commitment of the accused Yamuta to prison, the bondsman, PO3 Ronaldo L. Remoto may withdraw the official receipt evidencing the deposit of the amount of the bond, upon signing a proper receipt for the same.

The two (2) heat-sealed plastic sachets containing the regulated drug known as *Methamphetamine Hydrochloride (shabu)* and introduced in evidence in this case, are hereby ordered confiscated and upon the finality of this decision, the Officer-in-Charge of this Court is directed to turn over the same to the proper authorities for disposition. Further, the Five Hundred Peso Bill used by the NARCOM agents in the buy-bust operation which to the filing of this case is ordered return to the NARCOM agents upon the signing of a proper receipt for it by either Bonifacio Morados or Nur Saradi or by any other duly authorized NARCOM agent of the same unit.

SO ORDERED."

In convicting appellant of the crime of illegal sale of "*shabu*," in violation of Republic Act No. 6425, as amended, the trial court held:

"x x x. Going over the evidence of the prosecution, it appears that it was the accused John Isnani who was the object of the buy-bust operation by the NARCOM agents. There were two attempts by the NARCOM agents to entrap John Isnani. The first attempt was made in the morning of June 29, 1995. However, this was not successful because John Isnani told poseur-buyer Nur Saradi that he had no stock to sell on that day and even told Saradi to return the following morning. The next morning, the NARCOM agents returned to the house of Isnani and it was then that the NARCOM poseur-buyer was able to buy the *shabu* which was placed in a small plastic sachet. This small plastic sachet which was sold to the NARCOM poseur-buyer was not originally in the possession of the accused Isnani, because the latter had to talk to a man who was in his house, and it was this man who turned out to be the accused Yamuta who handed the plastic sachet containing *shabu* to the accused Isnani who turned sold it to *poseur-buyer* Saradi.

After the sale of the *shabu* was completed and the accused Isnani arrested, the other NARCOM agents rushed up to the house and NARCOM agent Morados saw through the open door the man who was in the house throw an object through a window, which object landed on the leaf of a water lily containing a substance which was found positive for the presence of *shabu* upon examination at the PNP Crime Laboratory.

From these series of events, there is a very strong indication that the accused Yamuta is the source of the shabu which his co-accused Isnani sells to his customers. This is so, because the day before, or on June 29, 1995, Isnani had no *shabu* to sell to the NARCOM poseur-buyer and even suggested to the latter to return the next day. And it was only on that next day, June 30, 1995, that Isnani had the stock of *shabu* to sell, but which was handed to him by the accused Yamuta.

The accused Yamuta attributes ill-motive to the NARCOM agents for implicating him in this crime, saying that NARCOM agent Nur Saradi has a grudge against him as Saradi suspects that he killed Saradi's NARCOM asset by the name of Waray. Scrutinizing closely,

the testimonies of both NARCOM agent Nur Saradi and NARCOM agent Bonifacio Morados, there is no showing that they knew before hand the accused Yamuta. They only found out about his identity after they brought both Isnani and Yamuta to their office. Aside from his bare statement that the NARCOM agents were actuated by ill-motive, no other proof of such ill-motive, if any there was, was presented by the accused Yamuta. x x x

When NARCOM agents Saradi and Morados testified, the Court has closely observed their demeanor and manner of answering the questions that were propounded and found that they both testified in frank and straightforward manner. And though they were subjected to an intense cross-examination by the defense counsel, they have remained steadfast in their accounts of what transpired during the buy-bust operation which resulted in the filing of this case. On the other hand, the same could not be said of the accused Yamuta whose demeanor and testimony cannot inspire faith and confidence in its veracity. In view of this, Yamuta's denial cannot prevail over the detailed and unshaken testimonies of the apprehending officers (*People vs. Cerachon,* 238 SCRA 540).

The court has noted that the accused Yamuta in his testimony has emphasized the fact that he is himself a policeman, assigned with the Regional Intelligence Group and to justify his presence in the house of a confessed drug pusher, he claims that this confessed drug pusher in the person of his co-accused Isnani is his asset whom he has tasked to monitor the activities of a Muslim extremist group known as the Abu Sayyaf Group. And that aside from this, he further claims that he is courting a woman by the name of Vanessa Libertad who resides in the area.

To the mind of the court, these are all fabricated excuses which cannot prevail over the positive statements of the apprehending officers. If it were true that he had two purposes in going to the area where John Isnani resides, why did he just stay in John Isnani's house from 9:20 in the morning of June 30, 1995 up to quarter to 11:00 when Isnani was not in his house when he arrived thereat? He could have used the almost two hours he spent in Isnani's house by visiting the house of the girl he was courting and who he claims resides in the same area. This actuation would strongly suggest that the only purpose of his presence in the house of John Isnani was to conduct his illegal business of selling *shabu* together with John Isnani.

For reasons already stated, the court has no other alternative but to find the accused *SPO1 Fredinel Yamuta y Remota guilty beyond reasonable doubt of the charges* contained in the Information."

Appellant, in his brief, ascribes to the trial court the following errors:

"A. IN FINDING THE ACCUSED GUILTY OF VIOLATING SECTION 15, ARTICLE III IN RELATION TO SECTION 21, ARTICLE IV OF R.A. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED;

"B. IN WRONGLY APPRECIATING SOME FACTS AND CIRCUMSTANCES OF THE INCIDENT, AND IN RESOLVING DOUBTS AGAINST THE ACCUSED-APPELLANT WHEN SAID DOUBTS SHOULD HAVE BEEN RESOLVED IN FAVOR OF THE ACCUSED-APPELLANT; and

"C. IN IMPOSING THE PENALTY OF *RECLUSION PERPETUA* AND A FINE OF ₱500,000.00 AND CONSEQUENTLY IN ORDERING THE CANCELLATION OF THE CASH BAILBOND OF THE ACCUSED POSTED FOR HIS PROVISIONAL LIBERTY AND COMMITTING THE ACCUSED TO PRISON IMMEDIATELY."

Section 15 of Article III in relation to the second paragraph of Sections 20 and 21 of Article IV of Republic Act No. 6425, as amended by Section 17 of R.A. No. 7659, provide:

"SEC. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon *any person, who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.*

x x x x x x x x x

SEC. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.* — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved as in any of the following quantities:

x x x x x x x x x

3. 200 grams or more of *shabu* or *methamphetamine hydrochloride*:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from ***prision correccional*** *to* ***reclusion perpetua***[6] *depending upon the quantity.*

x x x x x x x x x

SEC. 21. *Attempt and Conspiracy.* — The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:

x x x x x x x x x

b) Sale, administration, delivery, distribution and transportation of dangerous drugs;

x x x x x x x x x."

Under the above provisions, the elements necessary in every prosecution for the illegal sale of "*shabu*" are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[7]

Appellant, in assailing the evidence for the prosecution, contends that: (1) the prosecution failed to establish his guilt beyond reasonable doubt considering that it was accused Isnani who sold and delivered the *shabu* to the *poseur-buyer*, and that the buy-bust operation was intended to entrap *only* accused Isnani; (2) the testimonies of PO3 Morados and PO3 Saradi that while in a public place, he handed and/or delivered to accused Isnani

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[6] In *People vs. Simon* (G.R. No. 93028, July 29, 1994, 234 SCRA 555), we held: "where the quantity of the dangerous drug involved is less than the quantities stated in the first paragraph of Section 20 of R.A. No. 6425, the penalty to be imposed shall range from *prision correccional* to *reclusion temporal*, and not *reclusion perpetua*.

[7] *People vs. Tan*, G.R. No. 129376, May 29, 2002, 382 SCRA 419, 432, citing *People vs. Zheng Bai Hui*, 338 SCRA 420 (2000).

the small plastic sachet of *shabu*, is improbable; and (3) the inconsistency in the testimonies of the prosecution witnesses impairs their credibility.

We sustain the trial court's finding that the prosecution proved by evidence beyond reasonable doubt all the elements of illegal sale of *shabu* and that appellant and accused Isnani conspired to commit the crime. PO3 Saradi, the *poseur-buyer* gave a detailed and unequivocal account of how the sale took place, from the initial negotiation that transpired on June 29, 1995, to the eventual delivery and sale of the *shabu* on June 30, 1995. His direct and straightforward account of appellant's participation in the transaction could not be any clearer, thus:

"Q And after a plan was formulated to conduct a buy-bust operation against the said accused John, and after you were furnished that buy-bust money, what did you do next being designated to pose as poseur-buyer in the operation?

A He requested me to go with the civilian informant.

Q At what place?

A At Baliwasan Chico, Zamboanga City.

Q And what is your purpose in going to that place?

A To confirm and to conduct a buy-bust.

Q And what time was that when you left the office in order to comply with the instruction of SPO2 Fernandez?

A Around 10:30 of the same day.

Q Do you have any companion when you went to that place at that time?

A Yes, as a back-up.

Q So, when for the first time did you go to that place, Baliwasan Chico?

A Around 10:30.

Q What was the date?

A 29 June.

Q Now, when you arrived in the vicinity of that place and with the information related to you by the civilian informant, what did you do?

A The civilian informant introduced me to a certain John.

Q Where was this John when he was introduced to you by the civilian informant?

A At his house.

Q How did this civilian informant introduce you to John?

A We were introduced to each other and the civilian informant informed John that I am going to buy *shabu*.

Q And what was the answer of John after you were introduced and also informed that you want to buy *shabu*?

A He answered me that as of now, he has no stock. He told me to come back in the morning of the following day.

Q Why did he request you to come back the following morning?

A Because a certain Butch will bring the stuff.

Q In accordance with the request or instruction of John for you to come back the following morning, what did you do the following morning?

A I informed my Team Leader that the suspect instructed me to come back the following morning.

x x x x x x x x x

Q And the following morning you went back there together with the other three members. What time was that when you went back to that place the following morning?

A Around 10:45 o'clock, sir.

Q How about the civilian informant?

A We did not anymore let him come with us.

Q And when you arrived at the same place, where you were on June 29, 1995, what did you do there?

A I immediately proceeded to the house of the suspect.

Q And when you were already in the house of the suspect, what transpired there?

A I talked with John in Taosug dialect.

x x x x x x x x x

Q And what were you talking about?

A I want to buy *shabu* now. Can I buy from you?

Q What was the answer of John?

A Yes.

Q And after he answered you that you can buy *shabu* at that time, what did you do next?

A He said, just wait for a while and he went upstairs of the house.

Q While John went upstairs, where were you?

A I was in the stairs, in the "*batalan*."

Q While you were there, what happened next or what did you observe?

A I saw another man converse with John.

Q When you say another man conversed with John, how far were you from them? Will you please make a reference point to where you are seated x x x?

A More or less from that wall.

ACP BELDUA

Five to six meters, your Honor.

Q And you said you saw a man talking with John. Why were you able to see him?

A Because the house is open.

x x x x x x x x x

ACP BELDUA

Q Aside from seeing them talking, what else did you observe?

A After a minute of talking or after a minute of their conversation, he handed something to John.

Q And then, after that?

A And he went downstairs and handed it to me that something which was handed to him by the other man.

Q What was handed to you by John?

x x x x x x x x x

A A small sachet-plastic containing *shabu*.

x x x x x x x x x

Q And after John handed to you something in plastic, what did you do next?

A He asked me for the payment and I gave it to John.

Q What did you give to John?

A The payment in the amount of ₱500.00, as buy-bust money.

Q And after you gave to John the buy-bust money, what did you do next?

A I gave the pre-arranged signal.

x x x x x x x x x

Q x x x, what happened next after you gave the pre-arranged signal?

A SPO2 Fernandez and the others rushed to the scene.

x x x x x x x x x

Q What happened next when the other members of your team were already in the scene?

A I held the right hand of John and I said that I am a Narcom and you are under arrest."[8]

PO3 Morados corroborated PO3 Saradi's above testimony. He also narrated the incidents surrounding the recovery of another small plastic sachet (with 0.040 grams of *shabu*) thrown by appellant outside the window, thus:

"x x x x x x x x x

Q And, after you saw that signal given by Saradi, what did you do next?

A We rushed to the scene and we were able to arrest *alias* John. I went upstairs to look for this other person and I was

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[8] Transcript of Stenographic Notes (TSN) dated September 14, 1995 at 2-10.

able to reach him in the room and saw him throwing a small plastic out of the window.

Q Because of that action of the person whom you saw inside that room, what did you do next?

A We placed him under arrest and we identified ourselves as NARCOM agents. After that, SPO2 Fernandez recovered a paraphernalia in using this *shabu*, while I went to where that small plastic was thrown.

Q Where did you find this small plastic?

A I was able to locate it on top of the water lily leaves.

Q What is the connection of the plastic bag that you have recovered on top of the water lily leaves with the one that you saw being thrown by the person inside the room?

A This is the very same item that I saw this other person inside the room throwing out of the window."

Certainly, credence should be given to the testimonies of the prosecution witnesses as they are police officers who are presumed to have performed their duties in a regular manner.[9]

However, appellant contends that the buy-bust operation was intended to entrap *only* accused Isnani. He further insists that he should not be convicted because he was not the one who actually sold and delivered the *shabu* to PO3 Saradi. Neither was he in possession of the seized *shabu*.

Appellant's contention contravenes the basic rule on collective responsibility of malefactors in a conspiracy.

In *People vs. Medina*,[10] we held:

"It is elementary that when there is a conspiracy, the act of one is the act of all the conspirators, and *a conspirator may be held as a*

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[9] *People vs. Julian-Fernandez*, G.R. Nos. 143850-53, December 18, 2001, 372 SCRA 608, 624, citing *People vs. Betty Cuba*, 336 SCRA 389 (2000).

[10] G.R. No. 127157, July 10, 1998, 292 SCRA 436, 448, citing *People vs. Paredes*, 24 SCRA 635 (1968); *Valdez vs. People*, 173 SCRA 163 (1986); *People vs. Dela Cruz*, 183 SCRA 763 (1990); and *People vs. Camaddo*, 217 SCRA 162 (1993).

principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial."

Clearly, it is of no moment that appellant did not possess the seized *shabu*, or that he did not personally deliver it to PO3 Saradi and receive the monetary consideration therefor. It bears stressing that *liability exists notwithstanding appellant's non-participation in every detail in the execution of the crime.*[11]

The evidence for the prosecution clearly shows that appellant and accused Isnani were of one mind, not only in selling the regulated drug, but more so in the manner they committed the crime. In fact, appellant's conduct confirms that he *consciously concurred* with accused Isnani in committing the crime. *Conspiracy having been adequately shown, appellant is thus liable for the illegal sale of shabu.*

To further strengthen the prosecution's evidence, the two sachets of *shabu* were presented before the trial court as Exhibits "B" to "B-3" and "I" to "I-1". The first sachet was positively identified by PO3 Saradi as the very same sachet with *shabu* sold and delivered to him by accused Isnani who obtained the same from appellant. The other sachet containing *shabu* was also positively identified by PO3 Morados as the one he recovered above the waterlily leaves after appellant threw it outside the window.

That the white crystalline substances inside the two sachets are indeed *shabu* is shown by the Physical Science Reports Nos. D-071-95 and D-072-95 prepared by PNP Forensic Chemist Mercedes D. Diestro which both yield "POSITIVE to the test for *methamphetamine hydrochloride (shabu)*, a regulated drug."

We find appellant's defenses of denial and alibi unavailing. It bears emphasis that appellant was caught in *flagrante delicto* in a legitimate entrapment operation conducted by the police. Hence,

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[11] *People vs. Medina, supra,* citing *People vs. Cabiling,* 74 SCRA 285 (1976).

his identity as the person who delivered the regulated drug to accused Isnani for sale and distribution, cannot be doubted anymore. Such positive identification prevails over his weak defenses of denial and alibi.[12]

In *People vs. Eleonor Julian-Fernandez*,[13] we held:

"The defenses of denial and alibi have been invariably viewed by us with disfavor for it can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Dangerous Drugs Act."

In his brief, appellant desperately attempts to discredit the prosecution witnesses' credibility by pointing inconsistency and flaw in their testimony. According to him, PO3 Morados and PO3 Saradi could not categorically say whether the "*batalan*" where accused Isnani delivered and handed the *shabu* is enclosed or not.

However, *inconsistencies and discrepancies* which refer to *minor matters are irrelevant to the elements of the crime and cannot be considered as grounds for acquittal.*[14]

A close scrutiny of the transcripts of the proceedings shows that the supposed flaw or inconsistency bears on relatively minor points and, even if taken as a whole, would still fail to debunk the gravamen of the accusation that appellant and accused Isnani conspired to commit the crime.

We are also not persuaded by appellant's claim that it is contrary to human experience for drug pushers to sell *shabu* "in a place visible to the entire neighborhood."

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[12] *People vs. Evangeline Ganenas*, G.R. No. 141400, September 6, 2001, 364 SCRA 582.

[13] See *Supra*.

[14] *People vs. Ayuda*, G.R. No. 128882, October 2, 2003 at 11, citing *People vs. Artemio Invencion*, G.R. No. 131636, March 5, 2003.

Indeed, *drug pushing when done on a small-scale* belongs to those types of crimes that *may be committed any time and at any place.*[15]

In *People vs. Paco,*[16] we sustained the conviction of a drug pusher caught selling illegal drugs at a billiard hall. There, we held:

"The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same."

Neither are we convinced that prosecution witnesses were impelled by an improper motive. It bears emphasis that credence shall be given to the narration of the commission of the crime by the police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary, which is not present here. *In the absence of proof of motive* to falsely impute such a serious crime against appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated defenses.[17]

In fine, the trial court correctly held that appellant is guilty of the crime of illegal sale of "*shabu*". The only remaining question is the imposable penalty.

Section 24, Article IV of the law provides that the prescribed penalty is imposed in its maximum "if those found guilty of any of the said offenses are x x x members of police agencies and the armed forces."

Here, it is undisputed that appellant is a member of the PNP assigned at the Regional Intelligence Group of Cawa-Cawa Boulevard, Zamboanga City. However, the *prosecution failed*

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[15] *People vs. Angelito Tan, supra.*

[16] G.R. No. 76893, February 27, 1989, 170 SCRA 681, 689, cited in *People vs. Alaban,* G.R. No. 97431, September 28, 1992, 214 SCRA 301.

[17] See *People vs. Ramon Chua Uy*, G.R. No. 128046, March 7, 2000, 327 SCRA 335.

to specifically allege this circumstance in the Information. Thus, the trial court erroneously appreciated the same and appellant cannot be sentenced to suffer the penalty of *reclusion perpetua*.

In *People vs. Amadeo Tira*,[18] we held:

"Under Section 15, Article III in relation to the second paragraph of Sections 20 and 21 of Article IV of Republic Act No. 6425, as amended by Section 17 of R.A. No. 7659, the imposable penalty of illegal sale of a regulated drug (*shabu*), less than 200 grams, as in this case, 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	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"*

The quantity of the *shabu* involved herein is *0.060 grams.* Pursuant to the second paragraph of Sections 20 and 21 of Article IV of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659 (for unauthorized sale of less than 200 grams of *shabu*) and considering our ruling[19] in the above case, the imposable penalty is *prision correccional*.

Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstance that attended the commission of the crime, the maximum period is *prision correccional* in its medium period which has a duration of 2

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[18] See G.R. No. 139615, May 28, 2004 at 24.

[19] See *People vs. Tira, supra; People vs. Bagares*, G.R. No. 99026, August 4, 1994, 235 SCRA 30, 38; *People vs. Cañeja*, G.R. No. 109998, August 15, 1994, 235 SCRA 328, 340; *People vs. Constantino*, G.R. No. 109119, August 16, 1994, 235 SCRA 393-394; and *People vs. Tranca*, G.R. No. 110357, August 17, 1994, 235 SCRA 455, 466.

years, 4 months and 1 day to 4 years and 2 months. The minimum period is within the range of the penalty next lower in degree which is *arresto mayor*, the duration of which is 1 month and 1 day to 6 months. Hence, appellant should be sentenced to 6 months of *arresto mayor*, as minimum, to 2 years, 4 months and 1 day of *prision correccional* in its medium period, as maximum.

As regards the fine imposed by the trial court, in view of the quantity of *shabu* confiscated in this case, we *delete the penalty of fine imposed* on appellant as the second paragraph of Section 20 of R.A. 6425, as amended by Section 17 of R.A. 7659, *provides only for the penalty of imprisonment.*[20]

WHEREFORE, the assailed Decision dated December 1, 1997 of the Regional Trial Court, Branch 13, Zamboanga City, in Criminal Case No. 3163 (13277) is hereby *AFFIRMED with MODIFICATION* in the sense that appellant FREDINEL YAMUTA is sentenced to suffer the indeterminate penalty of 6 months of *arresto mayor*, as minimum, to 2 years, 4 months and 1 day of *prision correccional* in its medium period, as maximum.

It appearing that appellant FREDINEL YAMUTA has been detained since December 1, 1997, already beyond the period of his maximum sentence of 2 years, 4 months and 1 day, his immediate release from confinement is ordered, unless he is lawfully held for some other charge or charges.

No pronouncement as to costs.

SO ORDERED.

Vitug (Chairman), Corona and *Carpio Morales, JJ.*, concur.

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[20] *People vs. Crespo*, G.R. No. 121003, April 20, 1998, 289 SCRA 255, 264.

THIRD DIVISION

[G.R. No. 138700. June 9, 2004]

MINDANAO STATE UNIVERSITY, *petitioner, vs.* **ROBLETT INDUSTRIAL AND CONSTRUCTION CORP.,** ***ET AL.,*** *respondents.*

SYNOPSIS

Petitioner Mindanao State University (MSU) twice entered into a contract of construction with Roblett Industrial and Construction Corp. (Roblett). Both constructions were delayed and eventually stopped and Roblett refused to resume their job. MSU, for its part, filed a complaint for sum of money and damages against Roblett. Roblett, however, denied having abandoned the projects and that it was overpaid by MSU. Roblett also claimed to have finished the construction and the delay was due to the MSU's refusal to release the necessary funds therefor. The trial court dismissed the complaint and found that the delay in the completion of the construction was due to justifiable reasons. It also found no overpayment in the construction contract as the release of the budget thereto was positively identified as properly approved and signed by the authorities. On appeal, the Court of Appeals affirmed the decision of the trial court. The petitioner appealed its case to the Supreme Court.

In denying this petition, the Supreme Court found that the delay in the construction was mainly due to the policy changes of the different Presidents of MSU during the period of construction undertaken by Roblett. The Court also agreed that all requests for payment made by Roblett were supported by progress reports which were subjected to verification and assessment, and the billings and vouchers covering payments were combed through before they were finally approved by the MSU management. The Court ruled that MSU failed to indubitably show that Roblett welched on its obligation under the two contracts subject of the case.

SYLLABUS

REMEDIAL LAW; EVIDENCE; ALLEGATIONS OF FRAUD; MUST BE PROVEN BY CLEAR AND CONVINCING EVIDENCE; ABSENCE THEREOF IN CASE AT BAR.— As for MSU's allegation that ROBLETT was, as of November 15, 1976, able to draw from it, "through fraudulent means, the total of ₱6,638,509.08 on [the Student Center and Cafeteria] contract" although the percentage of accomplishment was only 59%, it bears emphasis that fraud is not presumed and must be proven by clear and convincing evidence. This MSU failed to discharge. In any event, as the trial court observed, the Zozobrado Committee Report reflecting part of the allegation was available to the MSU Board before it when, on March 15, 1977, it passed the Resolution of even date, yet no investigation or order for refund was made, as in fact the price escalations were approved. In fine, MSU failed to indubitably show that ROBLETT welched on its obligations under the two contracts subject of the case. Discussion of the issue of rescission and damages is thus rendered unnecessary. And so is the issue of overpayment, also for failure to prove the same.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Soo Gutierrez Leogardo and Lee for Paramount Insurance Corp.
Arturo S. Dy for Roblett Industrial and Construction Corp.

D E C I S I O N

CARPIO MORALES, *J.*:

From the November 27, 1998 Decision[1] of the Court of Appeals affirming that dated January 23, 1991 of the Regional Trial Court (RTC) of Marawi City (Branch 8)[2] which dismissed the Complaint for sum of money and damages of herein petitioner

[1] CA *Rollo* at 45-59.

[2] RTC Records at 645-675.

Mindanao State University (MSU), the petition for review[3] subject of the present decision was lodged.

On December 17, 1974, MSU, a government educational institution, represented by its then President Mauyag A. Tamano, and Roblett Industrial Construction Corporation (Roblett), represented by its "Manager-Sales and Contractor" Vicente D. Diana, Jr., forged a Construction Contract[4] for the construction of a Student Center and Cafeteria building for a consideration of FIVE MILLION EIGHT HUNDRED THOUSAND (₱5,800,000.00) PESOS. Contract time was fixed at eighteen months, to begin "at the tenth (10th) calendar day following the receipt by [Roblett] of the Notice to Proceed with the work to be issued by the [MSU] after the signing of the [Contract]."

To the Contract was attached an addendum[5] reading:

> Anent to the contract executed by the University and the Roblett Industrial Construction Corporation, a provision has been provided that materials delivered by the contractors to the jobsite must be certified by the ARCHITECT and the PROJECT ENGINEER. Inasmuch as the contractor has already delivered the materials and the Architect's certification will take time to be secured and in order to avail ourselves of the prevailing prices in the market, may we request authority that such procedure be revised. *Upon delivery of materials on the jobsite, they will be inspected by the auditor for quantity and cost consideration per auditing regulations and the University engineer or his representative shall certify whether such materials delivered are within the specifications of that project.* ***Payment could then be released to the contractor on this basis.*** (Emphasis and italics supplied)

The contract price was subsequently twice escalated by a total of ₱2,441,725.00. The price, as escalated, thus amounted to ₱8,241,725.00.

In mid 1975, Tamano was replaced as President by Tukod Macaraya who adopted the policy that all contracts had to be

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[3] *Rollo* at 8-32-a.

[4] Exhibit "A"-"A-7"; Annex "A" to Complaint, RTC Records at 16-22.

[5] Annex "A-7" to Complaint, *id*. at 23.

first approved by the MSU Board of Regents, thus resulting in the suspension of the construction of the Student Center and Cafeteria. The suspension was to last for around seven months.

In November 1975, Tamano reassumed as President of MSU.

On June 22, 1976, MSU, represented by Tamano, and Roblett, represented by its Provincial Manager Cornelio Tan, entered into another Construction Contract for the construction of a Girls Dormitory and Recreation Hall for a consideration of TWO MILLION (₱2,000,000.00) PESOS,[6] within a contract period of six calendar months commencing on the tenth (10th) calendar day following the receipt by ROBLETT of the Notice to proceed with the construction. Shortly after the forging of this second contract, Tamano was again replaced as President, this time by then Provincial Governor Ali Dimaporo who suspended the construction projects.

In the meantime, a committee was formed by the MSU to appraise the construction of the Student Center and Cafeteria so far accomplished by ROBLETT. The committee, referred to as the Zozobrado Committee as it was headed by Public Works District Engineer II Roque Zozobrado, by Report dated November 15, *1976*,[7] concluded that ROBLETT had "subsequently completed 58.747 or *59 percentum* more or less of the total work . . . in the original contract."

The two escalations in the contract price for the construction of the Student Center and Cafeteria were subsequently approved by the MSU Board of Regents in its Resolution of March 21, *1977*,[8] after considering "the phenomenal soaring of prices of labor and construction materials and to allow the contractor, Roblett . . . , to continue and proceed with the project . . . ; Provided further that . . . 3) [Roblett's] Performance Bond shall be renewed or updated and that [Roblett] shall finish the projects within a period of EIGHT (8) months from April 1977." The construction of both projects resumed soon after.

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[6] Exhibit "B"-"B-9"; Annex "B" to Complaint, *Id*. at 24-33.

[7] Exhibit "K".

[8] *Vide* par. 9, Complaint, RTC Records at 9.

On June 8, 1978, QUAZAR INSURANCE AGENCY represented by Douglas Paalam with limited authority, as agent of PARAMOUNT INSURANCE CORPORATION, and ROBLETT executed in favor of MSU Performance Bond No. 0149[9] in the amount of ₱1,606,400.00 "to secure the full and faithful performance" by ROBLETT "its part of [the contracts]" and the "satisfaction of obligations for materials used and labor employed upon the work."

Alleging that in mid 1978, even after Roblett had incurred delay in finishing the projects subject of the two contracts, it unjustifiably stopped construction and abandoned and refused to resume it, MSU filed a June 26, 1980 Complaint[10] before the Regional Trial Court of Marawi City, for sum of money and damages, subject of the case at bar, against ROBLETT, its representatives and PARAMOUNT INSURANCE CORPORATION.

In its Complaint, MSU alleged that *as of November 15, 1976,* before the MSU Board approved on March 21, 1977 the two escalations in the construction cost of the Student Center and Cafeteria, Roblett drew "*through fraudulent means* the total amount of ₱6,638,509.08 . . . although the percentage of accomplishment was only 59%"; that at the time of the filing of the complaint, ROBLETT had *accomplished only **67%** of the Student Center and Cafeteria* but had "withdrawn" the total amount of ₱8,0891,919.45[11] representing 97% of the escalated contract price of ₱8,241,725.00, hence, it was overpaid by ₱2,496,963.75; that with respect to the *Dormitory and Recreation Hall, Roblett had accomplished only **94%*** of the project and had collected ₱1,670,000.00, *and albeit there was no*

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[9] Exhibit "C"; Annex "C" to Complaint, *Id*. at 34-35.

[10] The original records of the case were reconstituted after the building housing the RTC was burned on June 28, 1984. The reconstituted records do not show when the complaint was filed. The reconstituted complaint with Annexes "A" - "E" is on pp. 6-41, RTC Records.

[11] In its petition before this Court, MSU alleges in its Statement of Facts and Matters Involved that the amount already withdrawn by ROBLETT was *₱7,197.689.46,* to thereby result to an overpayment of ₱1,750.150.46 (*vide*: *Rollo* at 14).

overpayment, since it incurred delay in the completion thereof, which would have been on November 30, 1977, the liquidated penalty provision of the contract covering it called for it to pay damages; that in view of ROBLETT's refusal to finish the projects, MSU was constrained to rescind the contracts, by letter of December 15, 1978[12] addressed to ROBLETT officials, and engage the services of another contractor to finish the projects; and that it notified PARAMOUNT INSURANCE CORPORATION, by letter of January 10, 1979,[13] that it was confiscating the Performance Bond but it refused to comply with its obligations thereunder.

Roblett, in its Answer with Counterclaim and Crossclaim,[14] denied abandoning the projects and being overpaid, it claiming that, *inter alia*, with respect to the Student Center and Cafeteria contract, it did not accept the terms and conditions of the MSU Board Resolution of March 21, 1977 and that it received less than ₱8,241,725.00 "in accordance with the percentage of accomplishment duly certified to and approved by [MSU]" and not due to fraud; that stoppage of the construction of the Student Center Cafeteria and the dormitory was "involuntary . . . because no funds were made available and released by [MSU] for the completion of the buildings"; that it finished the construction of the dormitory and "if there was any delay in the accomplishment of the work therein, it was because [MSU] itself delayed and/or refused to release the necessary funds therefor," hence, the provision on liquidated penalty cannot apply; and that the contract paid for the Student Center and Cafeteria "has not expired . . . because [MSU] has not yet made available and released the remaining funds for the completion" thereof.

In its Answer with Counterclaim and Crossclaim[15] too, PARAMOUNT INSURANCE CORPORATION, denying any liability under the Performance Board, alleged that, *inter alia*,

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[12] Exhibit "D" - "D-1"; Annex "D" - "D-1" to Complaint, RTC Records at 38-39.

[13] Exhibit "E" - "E-1"; Annex "E" to Complaint, *Id*. at 40-41.

[14] *Id*. at 42-50.

[15] *Id*. at 64-69.

Douglas Paalam was never empowered to execute the bond and, in any event, he violated its guidelines including failure to remit any premium as allegedly he was not paid therefor by MSU; and that the bond was executed only on June 8, 1978 after expiration, not prior to the execution, of the construction contracts as provided for therein (construction contracts).

In its decision,[16] the trial court, noting the testimony of *MSU witness Atty. Abdul Aguam, MSU Director for Legal Services,* that there were three notices of suspension of work, and that of ROBLETT witness former MSU Assistant University Engineer Abdullah Sarangani that:

> . . . the MSU is located in this area and because *of long rainy season, sometimes it lasts for seven days* and certainly, it has adverse effect on the accomplishment of the project. Secondly, the MSU had undergone changes of leadership and *it would appear that the changes of leadership brought about different policy. In the case of contract, there is usually investigation and this causes* ***stoppage of work and also the weather affected the work;*** the labor force must have been disturbed. (Emphasis and italics supplied),

found that the delay in the completion of the Student Center and Cafeteria was not attributable to Roblett.

With respect to the issue of overpayment regarding the construction of the Student Center and Cafeteria, the trial court held that under the express provisions of the contract (Art. 5 [Exhibit "2"] and Art. 6 [Exh. "1-13"]), "the University Engineer is the one empowered to determine the rate of progress of work and since witness [former MSU Assistant Engineer] Sarangani had positively identified the last Progress billing approved and signed by him, Exhibit '1' showing that *as of period ending June 15, 1976* 75.50% of the project had been completed], then this exhibit should prevail over all other evaluation."

The trial court went on to pass upon the effect of the MSU Board Resolution of March 21, 1977 on a) the November 15, 1976 Report of the Zozobrado Committee *re* the percentage of

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[16] *Vide* note 2.

work (59%) done by Roblett, b) the payments to Roblett in excess of the original contract price, and c) the delay incurred by Roblett, in this wise:

x x x x x x x x x

The findings [in the November 15, 1976 Report] *of the Zozobrado Commi[ttee] was evidently available to the Board before its meeting* [on March 21, 1977]. The Board, however, did not order any investigation of any anomaly or asked (*sic*) Roblett to make a refund. ***Instead*** *the Board approved the two escalations requested which in effect legalized all payments made previous to March 21, 1977 although it may have exceeded the original contract.*

When the [March 21, 1977] *resolution was adopted, the defendant Roblett ha[d] already incurred in delay,* having exceeded the time frame of his original contract. However, *the board adopted a new time frame from April 1 to Nov. 30, 1977.* **However, the Board Resolution was not converted into an addendum to the original contract and neither was it signed by both parties. It can be inferred from this fact that the defendant did not agree to this new time frame.**

4. Can the plaintiff be permitted to deny and disclaim the official acts of its own university officials acting within the limits of their official capacities, in the absence of allegations and proofs of fraud and collusion with the defendant?

The witnesses for the defendant Roblett — Albino Rivera and Abdullah Sarangani — testified in a credible, frank and candid manner that **all requests for payments were supported by Progress Reports** which the staff of the Physical Plant Division had to verify, investigate, and assess first before it could be approved. **And the billings and vouchers underwent further approval by the Administrative Division** including the University President. There was **never any allegation and proof of fraud and collusion** and no university official was indicted for approving the vouchers. **The university must therefore be estopped from denying the official acts of its own officials.** Art. 1431 of the New Civil Code specifically provides thus —

"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." (Emphasis and italics supplied)

As for the claim of MSU for the enforcement of ROBLETT's Performance Bond, the trial court held that the QUAZAR INSURANCE AGENCY represented by Mr. Douglas Paalam failed to comply with the standard operating procedure under the Bonds Underwriting Guidelines of PARAMOUNT INSURANCE CORPORATION. More specifically, the trial court held, *inter alia*, that "[t]his transaction was entered into by Roblett & QUAZAR INSURANCE AGENCY after a breach of the undertaking sought to be secured was already committed" and was "in violation of Article 11 of the contract between MSU and ROBLETT that a Performance Bond be secured upon the inception of the construction"; and that no premium was received by PARAMOUNT INSURANCE CORPORATION for the bond.

The trial court accordingly rendered its decision, the dispositive portion of which reads:

WHEREFORE, Plaintiffs complaint is ordered DISMISSED for its failure to prove the causes of action alleged in the complaint and judgment is rendered against the plaintiff and in favor of defendants Roblett and Paramount ordering plaintiff to pay —

1. To defendant Roblett thirty thousand (₱30,000.00) for attorney's fees and litigation expenses

2. To defendant Paramount Twenty Thousand (₱20,000.00) for attorney's fees and Ten Thousand (₱10,000.00) for litigation expenses.

Costs against plaintiff.

SO ORDERED.[17]

On appeal by the MSU, the Court of Appeals as stated early on, by the challenged decision of November 27, 1998,[18] affirmed the decision of the trial court.

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[17] RTC Records at 675.

[18] *Vide* note 1.

Hence, MSU's present petition [19] which assigns to the appellate court the same errors it assigned to the trial court, to wit:

I

THE LOWER COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT AGAINST APPELLEE ROBLETT INDUSTRIAL AND CONSTRUCTION CORPORATION *DESPITE ROBLETT'S DELAY IN PERFORMING ITS OBLIGATIONS* UNDER THE CONTRACTS FOR THE CONSTRUCTION OF THE STUDENT CENTER AND GIRLS' DORMITORY *THAT WARRANTED PLAINTIFF'S RESCISSION OF SAID CONTRACTS.*

II

THE LOWER COURT ERRED IN DENYING APPELLANT'S CLAIM FOR DAMAGES FOR ALLEGED FAILURE TO APPLY TO THE COURTS FOR A DECREE OF RESCISSION OR RESOLUTION.

III

THE LOWER COURT ERRED IN *DENYING APPELLANT'S CLAIM TO RECOVER THE AMOUNT OF THE PRICE OVERPAID* TO ROBLETT UNDER THE CONTRACTS.

IV

THE LOWER COURT ERRED IN *DISMISSING PLAINTIFF'S CLAIM FOR INDEMNITY UNDER THE BOND* ISSUED BY DEFENDANT PARAMOUNT INSURANCE CORPORATION ON THE GROUND THAT NO VALID CONTRACT EXISTS BECAUSE: 1) THE BOND WAS ISSUED IN EXCESS OF DOUGLAS PAALAM'S AUTHORITY AS AGENT FOR PARAMOUNT; 2) THERE WAS NON-PAYMENT OF PREMIUMS.[20] (Italics supplied)

The jurisprudential doctrine that findings of facts of the Court of Appeals are conclusive on the parties, and carry even more weight when these coincide with the factual findings of the trial court [21] must remain undisturbed, MSU not having

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[19] *Vide* note 3.

[20] *Rollo* at 20-21.

[21] *Alcarez v. Tangga-an*, 401 SCRA 84 (2003); *Union Motor Corporation v. Court of Appeals*, 361 SCRA 509 (2001); *Nazareno v. Court of Appeals*, 343 SCRA 637 (2000).

succeeded in showing why the doctrine does not apply in the case at bar.

Indeed, there is no denying that the staccato delays in the construction of the Student Center and Cafeteria, which delays covered a total period of about 17 months, was in the main due to the policy changes of the different Presidents of MSU during the period of the construction undertaken by ROBLETT.

There is no denying too that, by the account of MSU former Asst. Engr. Sarangani, all requests for payment by ROBLETT were supported by PROGRESS REPORTS which were subjected to verification and assessment, and the billings and vouchers covering payments were combed through before they were finally approved by the MSU management.

It is thus incongruous for MSU to complain about having overpaid ROBLETT with respect to the construction of the Student Center and Cafeteria, especially in light of the provision of the Construction Contract that "application for partial payment may be made by the CONTRACTOR corresponding to work already performed, materials installed, or in accordance with the schedule of values of individual work items approved by the PROJECT ENGINEER," and the March 21, 1977 MSU Board Resolution "sanctioning the two escalations of the contract price previously made by the past administration . . ." which resolution categorically stated that "payment to the contractor shall be **subject to the provisions** *of the National Accounting and Auditing Manual and other pertinent laws, decrees and rules on the matter and shall likewise be* **based on actual percentage** *of work accomplished."* Any payments made to ROBLETT by MSU officials are, therefore, presumed to have been made in the regular performance of official duty.

As for MSU's allegation that ROBLETT was, as of November 15, 1976, able to draw from it, "through fraudulent means, the total of ₱6,638,509.08 on [the Student Center and Cafeteria] contract" although the percentage of accomplishment was only 59%, it bears emphasis that fraud is not presumed and must be proven

by clear and convincing evidence.[22] This MSU failed to discharge. In any event, as the trial court observed, the Zozobrado Committee Report reflecting part of the allegation was available to the MSU Board before it when, on March 15, 1977, it passed the Resolution of even date, yet no investigation or order for refund was made, as in fact the price escalations were approved.

In fine, MSU failed to indubitably show that ROBLETT welched on its obligations under the two contracts subject of the case. Discussion of the issue of rescission and damages is thus rendered unnecessary.[23] And so is the issue of overpayment, also for failure to prove the same.

This renders unnecessary too a discussion of MSU's claim for the enforcement of ROBLETT's Performance Bond arising from the alleged delay in the completion of the construction contracts.

Even assuming *arguendo* that there was delay in the completion of the dormitory which was attributable to ROBLETT, MSU had not refuted with success the trial court's denial of such claim upon its finding that, among other things, the QUAZAR INSURANCE AGENCY exceeded its *limited* authority as agent to issue bonds and failed to comply with the procedure under the Bonds Underwriting Guidelines of PARAMOUNT INSURANCE CORPORATION to thus render the contract which was not ratified by PARAMOUNT INSURANCE CORPORATION unenforceable.

WHEREFORE, the petition is hereby *DENIED*.

SO ORDERED.

Vitug (Chairman), Sandoval-Gutierrez and *Corona, JJ.*, concur.

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[22] *Francisco Alonzo v. Cebu Country Club, Inc.*, G.R. No. 130876, Dec. 5, 2003.

[23] Art. 1191, Civil Code provides:

"The power to rescind obligations is implied in reciprocal ones, *in case one of the obligors should not comply with what is incumbent upon him.*

x x x x x x x x x" (Italics supplied)

SECOND DIVISION

[G.R. No. 141857. June 9, 2004]

RODSON PHILIPPINES, INC., EURASIA HEAVY INDUSTRIES, INC., AUTOGRAPHICS, INC., and PETER Y. RODRIGUEZ, *petitioners, vs.* **COURT OF APPEALS and the EASTAR RESOURCES (ASIA) CORPORATION,** *respondents*.

SYNOPSIS

The petitioners herein filed a motion to defer hearing of their case and prayed that they be given a chance to file their written objection to the formal offer of evidence filed by the respondent. The trial court denied such motion and ruled that the ten-day period given to petitioners had long elapsed. It emphasized that the order holding in abeyance its ruling on the respondent's formal offer of evidence did not toll the ten-day period for the filing of the petitioners' comment thereon. Petitioners then filed a petition for *certiorari* and prohibition with the Court of Appeals. The Court of Appeals issued the assailed decision dismissing the petition.

The Supreme Court dismissed this petition for *certiorari*. According to the Court, the ten-day period within which petitioners were required to file comment on the respondent's formal offer of evidence was not suspended by the filing and the pendency of the petitioners' motion to recall respondent's witness for additional cross-examination. What was merely suspended was the trial court's resolution of such offer of evidence. Petitioners, therefore, failed to file their comment within the allowable period. Even when petitioners assumed in good faith that they could file their comment after resolution of the pending motion, they should have filed the same after the court denied the motion, which they failed to do so.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; COPY OF MOTION FOR RECONSIDERATION

REQUIRED TO BE APPENDED TO PETITION FOR *CERTIORARI*; VIOLATION THEREOF IN CASE AT BAR.— We note that the petitioners failed to append to their petition at bar a copy of their motion for reconsideration of the July 17, 1997 Order of the trial court, admitting the documentary evidence offered by the respondent. The said pleading is very relevant in this case, because we could there discern if the petitioners had prayed for a chance to file their comment on or opposition to the admission of the respondent's documentary evidence, and incorporated therein their objections to the said motion, if any. The petitioners are required, under the second paragraph of Section 1, Rule 65 of the Rules of Court, to append to their petition a copy of the said motion for reconsideration. Under Section 3, Rule 46 of the Rules of Court, the petitioners' failure to comply with the second paragraph of Section 1, Rule 65 shall be sufficient ground for the dismissal of the petition.

2. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION AS A GROUND; CONSTRUED.—** By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.

3. **ID.; EVIDENCE; FORMAL OFFER OF EVIDENCE; PERIOD TO FILE COMMENT THEREON NOT SUSPENDED BY THE FILING AND LATER PENDENCY OF A MOTION TO RECALL WITNESS FOR ADDITIONAL CROSS-EXAMINATION; CASE AT BAR.—** Irrefragably, the petitioners had until June 12, 1994 within which to file their comment on the respondent's formal offer of evidence. The ten-day period within which to file such comment was not suspended by the filing and, thereafter, the pendency of the petitioners' motion to recall Maquilan as a witness for additional cross-examination. What was merely suspended by such motion was the trial court's resolution of the respondent's formal offer of evidence. The petitioners failed to file their comment within the period therefor. Indeed, Judge Martin Ocampo erred in declaring that the respondent's formal offer of evidence was prematurely filed, and that the petitioners

need not yet file their comment thereon because of the petitioners' unresolved motion. The respondent had already presented its lone witness, Maquilan, who already testified on direct and cross-examination. Hence, the respondent was obliged to formally offer its documentary evidence as provided by Section 35, Rule 132 of the Revised Rules on Evidence.

4. ID.; FAILURE TO FILE PLEADING; EFFECT THEREOF.— However, by their own negligence, the petitioners failed to file the said comment. As such, the petitioners are not entitled to a writ of *certiorari* to shield themselves from their own omission and negligence. It must be stressed that he who comes to court for equitable relief must do so with clean hands.

APPEARANCES OF COUNSEL

Purita Hontanosas-Cortes for petitioners.
Richard W. Sison & Associates for private respondent.

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. 46035 dismissing the petition for *certiorari* and prohibition filed by the petitioners, which assailed the July 17, 1997, August 27, 1997 and October 29, 1997 Orders of the Regional Trial Court of Cebu City, Branch 11 in Civil Case No. CEB-9224.

The Antecedents

On July 19, 1990, petitioners Rodson Philippines, Inc., Eurasia Heavy Industries, Inc., Autographics, Inc. and Peter Y. Rodriguez, filed a Complaint[2] for damages against respondent Eastar Resources (Asia) Corporation with the Regional Trial Court of Cebu City, Branch 7, then presided by Judge Generoso A.

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Salvador J. Valdez, Jr. and Mariano M. Umali concurring.

[2] *Rollo*, p. 74.

Juaban. The case was docketed as Civil Case No. CEB-9224.

The respondent, in its Answer,[3] denied all the material averments of the complaint and interposed a compulsory counterclaim amounting to ₱29,000,000.

After the requisite pre-trial and without the parties having settled the case amicably, a full-blown trial on the merits ensued.

After the presentation of Peter Y. Rodriguez and Yolanda Lua as witnesses, the petitioners filed their formal offer of evidence on September 3, 1993. The petitioners rested their case after their documentary evidence was admitted by the court. The respondent then presented one witness, Mary C. Maquilan. On March 29, 1994, the respondent prayed for time to make their formal offer of evidence. The court granted the respondent's motion and gave it a period of fifteen (15) days to do so. The court then granted the petitioners a period of ten (10) days from service of the said formal offer within which to file their comment thereon.

The petitioners declared in open court that they would be presenting rebuttal evidence, and prayed that the hearing for the said purpose be set at 9:00 a.m. of May 4, 1994.[4] The case was reset to June 1, 1994.

The petitioners changed their original counsel and retained a new one, Atty. Purita Hontanosas-Cortes, the sister of their original counsel.[5]

In the meantime, the respondent filed its formal offer of evidence and sent a copy thereof to the petitioners on June 1, 1994. When the case was called for the presentation of the petitioners' rebuttal evidence on the said date, the new counsel for the petitioners manifested her desire to recall the respondent's witness, Mary Maquilan, for further cross-examination. She reasoned that she was not satisfied with the cross-examination

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[3] *Id*. at 80.

[4] *Id*. at 237.

[5] *Id*. at 238; see also *Rollo*, p. 253.

of the previous counsel, and asked for time to file the necessary motion. The court granted the same, and gave her fifteen (15) days to do so. The court also gave the respondent a period of ten (10) days from receipt thereof within which to file its comment or opposition. The court held in abeyance the resolution of the respondent's formal offer of evidence until such time that the petitioners' motion to recall Maquilan for further cross-examination was resolved. On June 24, 1994, the petitioners filed their motion to recall Maquilan as a witness for further cross-examination.[6]

In the meantime, Judge Juaban retired from the government service. Acting Presiding Judge Andres C. Garalza, Jr. issued an order giving the respondent a final period of seven (7) days from notice within which to file its written comment on the petitioners' motion to recall Maquilan.[7]

Thereafter, Judge Martin A. Ocampo was appointed presiding judge of the RTC of Cebu City, Branch 7. The hearing of the petitioners' motion to recall the witness was set for hearing on March 26, 1996. During the hearing, the counsel for the petitioners called the attention of the court to the fact that they had not yet filed their comment on the respondent's formal offer of evidence because of the pending incident. The court, for its part, declared that a formal offer of evidence was premature, precisely because of such pending incident. Thus:

ATTY. CORTEZ:

> Just for a while, Your Honor . . . You see one of the questions which would be propounded to her in the event that the request for cross-examination will be granted to recall the witness is whether before charges were made to the plaintiffs a compliance with Republic Act 376665 (*sic*) made. Under this Act, your Honor . . .

COURT:

> You can cross-examine her on that when you subpoena her.

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[6] *Id*. at 146.

[7] *Id*. at 43.

ATTY. CORTEZ:

Yes, Your Honor. Your Honor please, if she will be summoned back as rebuttal witness I cannot go straight. I still have to —

COURT:

You can cross-examine her because she is a hostile witness.

ATTY. CORTEZ:

Yes, Your Honor. But before we do that since there is a formal offer of evidence submitted by the defendant —

COURT:

The Court has not yet ruled on that.

ATTY. CORTEZ:

We don't have a Comment yet as to their formal —

COURT:

Because the Court has not yet ordered you to comment precisely because of this pending Motion. If there is still presentation of evidence then this will be premature. The offer of evidence is premature. That is why the Court has not yet considered it. On the other hand, if there will be additional evidence, they can amend this. You have to amend this because there is additional evidence.

ATTY. SISON:

So far, Your Honor, as I have said, it is not us who will be offering additional evidence. We will relie (*sic*) on what we have formally offered and we will rise and fall on the basis of our evidence. Now, the point here, Your Honor please, is to show to the Honorable Court that counsel is coming up with an issue which has not been raised in this case is to cross-examine Mary Maquilan on the basis of Republic Act 37665 (*sic*) which is not an issue in this case. The point here is this —

COURT:

Are we not putting the cards here? We are objecting to the proposed testimony of this witness when she has not been in the witness stand. You object when the questions are propounded.

ATTY. SISON:

Your Honor please, the point here is counsel would like to recall my client to the witness stand after the termination.

COURT:

But we cannot tie their hands to what they should ask and what they should not ask.

COURT (continuation)

You may object when time comes.

ATTY. SISON:

With due respect, Your Honor, if my memory is right, it is very clear that the recall of witness is always govern (*sic*) by the Rules of materiality of evidence and competency, Your Honor.

COURT:

That is why the Court is denying the Motion to Recall for cross-examination. But the Court will allow her to subpoena her as their hostile witness, in the course of rebuttal.

ATTY. SISON:

I submit, Your Honor, that's the best remedy.

COURT:

Provided, of course, they will have to pay the expenses.

ATTY. SISON:

Your Honor please, with all candidness I adhere to the ruling of the Court.

ATTY. CORTEZ:

Are you going to bind with the Court the production of the witness? Because you manifested in your latest pleading that you may not know about the whereabouts of your client. You are trying to —

ATTY. SISON:

Madam counsel, I don't have control over Mary Maquilan. That was ten (10) years ago.

COURT:

The Court will issue subpoena.

ATTY. CORTEZ:

> Your Honor please, that my contention while (*sic*) if there will be delay in the submission of its Comment and the former Presiding Judge of this Court would not resolve my pending Motion for Recall. It took him eight (8) months under the original period and then in the second period of forty (40) days all in excess of the periods given by the Court.[8]

After the hearing, the court issued an order denying the petitioners' motion to recall Maquilan as witness for additional cross-examination, without prejudice to the petitioners' recalling the latter as a hostile witness on the presentation of its rebuttal evidence.

In the meantime, the petitioners failed to file their comment on the respondent's formal offer of evidence. The court, likewise, failed to resolve the said incident despite the denial of the petitioners' motion to recall Maquilan for additional cross-examination.

On April 1, 1996, the trial court sent a *subpoena ad testificandum* to Maquilan, requiring her to appear before the court and to testify as a hostile rebuttal witness for the petitioners at 9:00 a.m. on June 17 and 18, 1996. The respondent filed its urgent motion to quash the *subpoena* on the ground that the witness was a resident of Quezon City, which was more than fifty (50) kilometers away and, as such, could not be compelled to testify under Section 9 of Rule 23 of the Revised Rules of Court.[9]

During the hearing on June 17, 1996, the trial court expressed doubts as to whether it could compel Maquilan to appear before the court, considering that she was a resident of Quezon City which is more than fifty (50) kilometers from the venue of trial.[10]

Because of the adverse rulings they had been receiving from the trial court, the petitioners manifested that they would file

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[8] CA *Rollo*, pp. 149-152.

[9] *Rollo*, p. 184.

[10] *Id*. at 188.

a motion to inhibit the judge from further hearing the case, and to have the case re-raffled to another branch. The court welcomed such motion, if only to put the petitioners' mind at rest.[11]

In its Order[12] dated August 19, 1996, Judge Martin A. Ocampo inhibited himself from further hearing the case and ordered the transmittal of the records of the case to the Office of the Executive Judge for re-raffle.

The case was re-raffled to the RTC of Cebu City, Branch 11, presided by Judge Isaias P. Dicdican. After a review of the records, the trial court discovered that the petitioners' motion to recall Mary Maquilan had already been denied; that the petitioners had not yet filed their comment on the respondent's formal offer of documentary evidence; and, that the said formal offer of evidence had not yet been resolved by the court. On July 17, 1997, the trial court issued an Order[13] admitting the respondent's documentary evidence for the purposes they were offered. The court also set the continuation of the trial for the presentation of the petitioners' rebuttal evidence to 8:30 a.m. of August 27, 1997.[14]

On August 25, 1997, the petitioners filed a Motion to Defer the Hearing Set on August 27, 1997,[15] and prayed that they be given a chance to file their written objection to the formal offer of evidence filed by the respondent. The trial court denied the motion, per its Order dated August 27, 1997. The trial court ruled that the ten-day period given to the petitioners per its Order of March 29, 1994 had long since elapsed. It emphasized that the order holding in abeyance its ruling on the respondent's formal offer of evidence did not toll the ten-day period for the filing of the petitioners' comment thereon.

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[11] *Ibid*.

[12] *Id*. at 239-241.

[13] *Id*. at 70-71.

[14] *Id*. at 71.

[15] *Id*. at 190-191.

The petitioners filed a motion for the reconsideration of the order. The trial court denied the said motion in an Order dated October 29, 1997.

The petitioners, thereafter, filed a petition for *certiorari*[16] and prohibition with the Court of Appeals, assailing the orders of the RTC, with a prayer for the issuance of a restraining order directing the public respondent RTC to refrain from proceeding with the scheduled hearing of the case and other subsequent settings thereof. The petitioners defined the issue raised by it in the petition as follows:

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE THREE QUESTIONED ORDERS OF JULY 17, 1997, AUGUST 27, 1997 AND OCTOBER 29, 1997 DENYING PETITIONERS AN OPPORTUNITY TO FILE THEIR OBJECTIONS/COMMENT TO PRIVATE RESPONDENT'S VOLUMINOUS FORMAL OFFER OF EVIDENCE?[17]

The respondent was required to file its Comment on the petition. Such Comment was filed beyond the period provided therefore; however, the CA still admitted the same.

On October 22, 1999, the appellate court rendered its assailed Decision and dismissed the petition for being devoid of merit. The petitioners' motion for reconsideration suffered the same fate and was denied by the appellate court.

The Issues

In the present recourse, the petitioners raise the following issues:

I

WAS THE CONSTITUTIONAL RIGHT OF THE PETITIONERS TO DUE PROCESS OF LAW GROSSLY AND BLATANTLY VIOLATED BY THE QUESTIONED DECISION AND RESOLUTION OF PUBLIC

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

[17] *Id*. at 7.

RESPONDENT COURT OF APPEALS DATED OCTOBER 22, 1999 AND JANUARY 31, 2000, RESULTING TO A SERIOUS MISCARRIAGE OF JUSTICE?

II

DOES PUBLIC RESPONDENT COURT OF APPEALS HAVE THE POWER AND AUTHORITY TO DISREGARD SECTION 6 OF RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE IN ORDER TO FAVOR PRIVATE RESPONDENT?[18]

On the first issue, the petitioners contend that the trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction when it resolved the respondent's formal offer of evidence and admitted such documentary evidence before they could file their comment or opposition thereto. They aver that although they had until June 12, 1996, per the trial court's Order of March 26, 1996, within which to file their comment on such formal offer of evidence, the said period was suspended because of their motion to recall Maquilan as a witness for further cross-examination. They assert that during the hearing of March 26, 1996, the petitioners called the attention of the court to the fact that they had not yet filed their comment on the respondent's formal offer of evidence, and that the court declared that there was no need for them to do so as yet because of the unresolved motion. They emphasized that even after the court denied their motion to recall Maquilan as witness and ordered them to present her as a hostile witness on rebuttal evidence, the court still failed to resolve the respondent's formal offer of evidence.

In overruling the contention of the petitioners, the Court of Appeals ratiocinated, thus:

> . . . Going by the records, however, the petitioners were amply accorded the chance and/or opportunity to register their objections to the private respondent's offer of evidence. For as early as May 27, 1994, the petitioners were already charged with knowledge or notice that they were being required to file their comments and/or objection to the offer of evidence. Nevertheless, it appears that action

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[18] *Rollo*, p. 26.

on the offer was put on hold pending the resolution of the motion to recall a witness. Resultantly, since the disposition of the motion to recall was made the condition *sine qua non* for further action on the private respondent's offer of evidence, the petitioners should have lost no time in submitting their comment to the offer once, or as soon as the court denied on March 29, 1996, their motion to recall Ms. Maquilan for further cross-examination. To be sure, the petitioners should not have experienced any difficulty in complying with this order, given the undisputed fact that, counting from May 27, 1994, they had no less than twenty solid months to do so. As it was, the petitioners complacently took their own sweet time, so to speak, apparently secure on their assumption — which turned out to be a bit erroneous — that there was a standing order from Judge M.A. Ocampo to defer action on the offer of evidence. We have earnestly scoured the records in search of the aforementioned order, however, and have found none at all. Of course, we have also carefully reviewed the stenographic notes of the March 27, 1996 hearing which, in fine, indicated that the petitioners' counsel asked for time to submit their comment/objection to the offer of evidence, and that Judge M.A. Ocampo declined to act on the same. Simply put, the petitioners have made capital of Judge M.A. Ocampo's disinclination, failure, or inability to act on the private respondent's offer of evidence, and invoked this as justification for their non-submission of the comment. The petitioners, however, advertently refused to recognize, or seemed to have minimized the fact that, by asking Judge M.A. Ocampo for another period of time to submit their comment, they had, in effect if not in fact, cleverly prolonged the proceedings in this case, as though to show that the period of twenty months or so, reckoned from May 27, 1994, was not yet sufficient and enough time to enable them to submit the comment/objection to the private respondent's offer of evidence.

At this juncture, We adopt the ratiocination of the private respondent, to wit —

> "The Order of the trial court dated 1 June 1994 (*Annex '2' hereof*) merely stated that 'in the interim,' meaning, from the filing of petitioners' motion to recall witness up to the time the trial court would rule on the same, it would hold action on private respondent's formal offer.
>
> "The petitioners filed their Motion to Recall Witness only on 21 June 1994, which was way beyond the original period given.

> "Therefore, when petitioners filed the said motion to recall, *there was no more period to suspend* as it had long expired on 12 June 1994."

It would, thus, appear that even during the time that the petitioners were supposed to file their motion to recall, they had already played fast and loose with court processes. Even then, as correctly argued by the respondent, there was actually no more time to suspend, as it had long expired on June 12, 1997, for which reason the respondent's formal offer of documentary evidence was truly ripe for resolution. Hence, We hold, that far from gravely abusing his discretion, the respondent judge acted prudently and judiciously when he declared in his second assailed order that —

> "The Court would stand by its order issued on July 17, 1997 that it was perfectly all right for it to proceed to act on the defendant's formal offer of documentary evidence, as there's no more legal obstacle for it to do so."

Indeed, His Honor exhibited a circumspect and attentive awareness of the antecedent and attendant circumstances surrounding the case. In contrast to the posture of petitioners, His Honor displayed the better part of sound legal discretion in issuing the assailed orders, as these effectively put a halt to the pernicious and dilatory tactics and maneuverings, of litigants, — or their counsel — which are anathema in this age of clogged court dockets.[19]

The Ruling of the Court

We agree with the Court of Appeals.

We note that the petitioners failed to append to their petition at bar a copy of their motion for reconsideration of the July 17, 1997 Order of the trial court, admitting the documentary evidence offered by the respondent. The said pleading is very relevant in this case, because we could there discern if the petitioners had prayed for a chance to file their comment on or opposition to the admission of the respondent's documentary evidence, and incorporated therein their objections to the said motion, if any. The petitioners are required, under the second paragraph of

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[19] *Rollo,* pp. 46-48.

Section 1, Rule 65 of the Rules of Court, to append to their petition a copy of the said motion for reconsideration. Under Section 3, Rule 46 of the Rules of Court, the petitioners' failure to comply with the second paragraph of Section 1, Rule 65 shall be sufficient ground for the dismissal of the petition.

Even considering the merits of the case, the petition must still fail.

We join the Court of Appeals in ruling that the trial court did not commit a grave abuse of its discretion amounting to excess of or without jurisdiction in issuing the assailed orders. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[20]

Irrefragably, the petitioners had until June 12, 1994 within which to file their comment on the respondent's formal offer of evidence. The ten-day period within which to file such comment was not suspended by the filing and, thereafter, the pendency of the petitioners' motion to recall Maquilan as a witness for additional cross-examination. What was merely suspended by such motion was the trial court's resolution of the respondent's formal offer of evidence. The petitioners failed to file their comment within the period therefor.

Indeed, Judge Martin Ocampo erred in declaring that the respondent's formal offer of evidence was prematurely filed, and that the petitioners need not yet file their comment thereon because of the petitioners' unresolved motion. The respondent had already presented its lone witness, Maquilan, who already testified on direct and cross-examination. Hence, the respondent was obliged to formally offer its documentary evidence as

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[20] *Purefoods Corporation v. National Labor Relations Commission,* 171 SCRA 415 (1989).

provided by Section 35, Rule 132 of the Revised Rules on Evidence:

> 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.
>
> Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

Assuming for the nonce that the petitioners believed in good faith the declaration of Judge Ocampo that they could file their comment after the trial court had resolved their pending motion to recall Maquilan for further cross-examination, the records show that *the court denied the said motion on March 26, 1996*. It then behooved the petitioners to file their comment on the respondent's formal offer of evidence after receipt of the said order, or soon thereafter. The petitioners failed to do so. It was only, after receiving the trial court's Order dated July 17, 1997, admitting the documentary evidence of the respondent, *after the lapse of more than one year* that the petitioners "awakened" and complained of having been deprived of their right to file their comment on such formal offer of evidence. Even then, the petitioners could have filed a motion for the reconsideration, appending thereto their comment/opposition to the respondent's documentary evidence. The petitioners did not do so. If they had appended such opposition to their motion for reconsideration, the trial court could have reviewed the same, and, thereafter, even reconsider its July 17, 1997 Order. A denial thereon could then have been raised before the Court of Appeals, as the appellate court would be able to determine whether or not the trial court, in denying such motion for reconsideration, committed a grave abuse of its discretion.

The petitioners complain that, with the trial court's admission of the respondent's documentary evidence in the absence of their comment thereon, they are apt to lose ₱29,000,000 on the respondent's counterclaim. They contend that such loss would be a grave injustice to them. Hence, the petitioners argue that the CA should have granted their petition.

We do not agree. *It bears stressing that the petitioners still have the right to adduce rebuttal evidence to controvert or overcome the probative weight of the respondent's documentary evidence*. Moreover, since the petitioners were aware that the respondent had a counterclaim of ₱29,000,000, it behooved them to observe diligence and vigilance in filing their comment without delay. However, by their own negligence, the petitioners failed to file the said comment. As such, the petitioners are not entitled to a writ of *certiorari* to shield themselves from their own omission and negligence. It must be stressed that he who comes to court for equitable relief must do so with clean hands.

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED DUE COURSE* and is hereby *DISMISSED*. Costs against the petitioners.

SO ORDERED.

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

EN BANC

[G.R. No. 144599. June 9, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DOMINADOR WERBA *Y* RICAFORT *alias* DOMING also known as DOMINGO WERBA,** *appellant*.

SYNOPSIS

For automatic review is the decision of the Regional Trial Court of Lucena City finding appellant herein guilty beyond reasonable doubt of the crime of robbery with homicide and imposing upon him the supreme penalty of death.

The Supreme Court found no reason to deviate from the conclusions of the trial court on the identification of appellant as the person who robbed the Bril family and shot Lucia Bril, considering that the prosecution eyewitnesses testified on this fact in a categorical, straightforward and consistent manner. Also, the Court agreed with the trial court that the appellant committed the special complex crime of robbery with homicide. The conviction of robbery with homicide is proper even if the homicide is committed before, during or after the robbery. The homicide may be committed by the malefactor at the spur of the moment or by mere accident. However, the Court disagreed with the trial court that the aggravating circumstances of dwelling, nighttime and treachery attended the commission of the crime. Thus, the penalty imposed was reduced to a lower penalty of *reclusion perpetua.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON IS ENTITLED TO HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION.—** The well-settled rule in this jurisdiction is that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal without any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the result of the case.

2. **ID.; ID.; ID.; NOT AFFECTED BY THE RELATIONSHIP OF THE WITNESS TO THE VICTIM.—** Mere relationship of a witness to the victim does not impair his credibility. On the contrary, a witness' relationship to the victim of a crime makes his testimony even more credible as it would be unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit.

3. **ID.; ID.; ALIBI AS A DEFENSE; THE ACCUSED MUST NOT ONLY PROVE THAT HE WAS AT SOME OTHER PLACE AT THE TIME THE CRIME WAS COMMITTED BUT IT WAS IMPOSSIBLE FOR HIM TO BE AT *LOCUS CRIMINIS* AT THE TIME OF THE ALLEGED CRIME.—** For the defense of alibi to prosper, the accused must prove not only

that he was at some other place at the time the crime was committed but that it was likewise impossible for him to be at the *locus criminis* or its immediate vicinity at the time of the alleged crime. Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water.

4. ID.; ID.; ID.; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF AN ACCUSED BY THE EYEWITNESS.— The positive identification of an accused by eyewitnesses prevails over the defenses of alibi and denial. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. Being evidence that is negative in nature and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.

5. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.— The elements of robbery with homicide are: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi* and (d) on the occasion of the robbery, homicide (used in its generic sense) is committed. Essential in robbery with homicide is that there is a nexus, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.

6. ID.; ID.; CONVICTION THEREOF IS PROPER WHEN THE HOMICIDE WAS COMMITTED BEFORE, DURING OR AFTER THE ROBBERY.— A conviction for robbery with homicide is proper even if the homicide is committed before, during or after the robbery. The homicide may be committed by the malefactor at the spur of the moment or by mere accident. Even if two or more persons are killed or a woman is raped or physical injuries are inflicted on another on the occasion or by reason of the robbery, there is only one special complex crime of robbery with homicide. What is critical is the result obtained without reference or distinction as to circumstances, cause, modes or persons intervening in the commission of the crime.

7. ID.; AGGRAVATING CIRCUMSTANCES; DWELLING; CANNOT BE APPRECIATED WHEN NOT ALLEGED IN THE INFORMATION.— We, however, disagree with the court *a quo* that the aggravating circumstance of dwelling attended the commission of the crime. This circumstance was not specifically alleged in the information. By virtue of its amendment, effective December 1, 2000, Rule 110, Section 8 of the Revised Rules on Criminal Procedure now provides that aggravating circumstances must be alleged in the information, otherwise, they cannot be considered against the accused even if they are proven during the trial. Being favorable to the appellant, the rule, as amended, should be applied retroactively.

8. ID.; ID.; NIGHTTIME; MAY BE APPRECIATED ONLY WHEN IT IS SPECIFICALLY SOUGHT BY THE OFFENDER OR TAKEN ADVANTAGE OF BY HIM TO FACILITATE THE COMMISSION OF THE CRIME OR TO INSURE HIS IMMUNITY FROM CAPTURE; NOT PRESENT IN CASE AT BAR.— It is settled that, by and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is specially sought by the offender, or taken advantage of by him, to facilitate the commission of the crime or to insure his immunity from capture. Here, appellant was known by the Bril family for almost ten years. Thrice, he bought a cow from Alipio Bril. On the night he robbed the Bril family and killed Lucia Bril, appellant did not make any attempt to hide his identity from his victims. He did not wear a hood to cover his face and even ordered the lights to be turned on as he instructed the Bril family to bring out their valuables. It appears that the reason he committed the crime on the eve of April 1, 1996 was because of his ill-founded belief that he could get away with it, since he had witnesses to prove that he was busy harvesting *palay* during the day.

9. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; ABSENCE THEREOF IN CASE AT BAR.— The qualifying circumstance of treachery cannot likewise be logically appreciated because appellant did not prepare to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or difficult for her to defend herself or to retaliate. Clearly, appellant had no plan to kill Lucia Bril. He shot her on the occasion of the robbery only because she tried to wrestle the gun away from him as he tried

to sexually abuse Michelle. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate and (2) the means of execution is deliberately or consciously adopted. Both elements are absent in the case at bar.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Free Legal Assistance Group Anti-Death Penalty Task Force for accused-appellant.

D E C I S I O N

CORONA, *J.*:

For automatic review is the decision[1] dated May 15, 2000 of the Regional Trial Court of Lucena City, Branch 55, finding appellant Dominador Werba guilty beyond reasonable doubt of the crime of robbery with homicide and imposing upon him the supreme penalty of death.

Four years earlier, or on May 15, 1996, an Information was filed against appellant charging him with robbery with homicide allegedly committed as follows:

That on or about the 1st day of April, 1996, at Barangay Arawan, in the Municipality of San Antonio, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with short firearm, with intent to gain and to rob, by means of force, intimidation and physical violence and taking advantage of nighttime to better accomplish his purpose, did then and there, willfully, unlawfully and feloniously enter the house of spouses Alipio Bril and Lucia Bril and once inside, take, steal, and carry away cash money amounting to ₱7,000.00 and assorted jewelries of an undetermined amount, to its damage and prejudice in the aforesaid amount; and on the same occasion and by reason thereof, the above-named accused, with intent to kill

[1] Penned by Judge Eleuterio F. Guerrero.

and by means of treachery and intimidation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearm said Lucia Bril, inflicting gunshot wound on vital parts of her body, which directly caused her death.

Contrary to law.[2]

Upon arraignment, appellant pleaded not guilty to the crime charged. Trial ensued.

The case[3] for the prosecution was succinctly summarized by the Office of the Solicitor General:

On April 1, 1996, between 11:00 and 12:00 in the evening, Gerardo Bril was going out of their house at Barangay Arawan, San Antonio, Quezon Province, to store water in the drum. As he opened the door, appellant Dominador Werba, also known as Doming Werba, simultaneously entered the house and poked a gun at Gerardo Bril. Then, appellant forced him to go to the room of his parents, Alipio Bril and Lucia Bril. Upon entering the room of his parents, Gerardo Bril was ordered to lie down in prostrate position. He was scared and trembling. (p. 2, TSN dated January 7, 1998)

About that time, Alipio Bril was already asleep. He was awakened because a gun was poked at him by Dominador Werba, saying: "*Tatalsik ang bao ng ulo ninyo kapag hindi kayo dadapa!*" Out of fear, he and his son Gerardo Bril lied (*sic*) down in prostrate position. Thereafter, appellant ordered Lucia Bril to bring out the things from the "*aparador*" and the "*baul*," and demanded money and gun from the latter. After searching the "*baul*," Lucia Bril handed to her (*sic*) the amount of ₱7,000.00. Then, appellant proceeded to the room of Gerardo Bril where he took several pieces of jewelry, namely, a bracelet valued at ₱10,000.00; a ring valued at ₱3,500.00; a necklace at ₱1,000.00 and earrings at ₱500.00. (pp. 15, 19-20, TSN dated April 2, 1997)

Unsatisfied, appellant demanded for a gun, and proceeded to the room of Michelle Bril, daughter of Gerardo Bril, which was about one (1) meter and a half across the room of Alipio and Lucia Bril. Appellant

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[2] Record, pp. 2-3.

[3] Based on the testimony of the seven prosecution witnesses: Michelle Bril, Alipio Bril, SPO2 Reynaldo Kasilag, Dr. Pedro Landicho, Gerardo Bril, Eugenio Bril and Jose de Luna.

further searched the room, looking for the gun and the proceeds of the sale of cow (*sic*). Finding nothing, he ordered that the lights in the rooms of Michelle and Gerardo Bril be switched on. Angrily, appellant brought Michelle and Lucia Bril in (*sic*) the latter's room, ordering Lucia Bril to lie down under the bed, kicking her for (*sic*) several times in the process. (pp. 20-22, TSN dated April 2, 1997)

Soon after, appellant dragged Michelle towards the kitchen. While thereat, he forced Michelle to remove her clothes. On the pain of threats, Michelle removed her T-shirt and her bra. At that time, Lucia Bril came and pleaded to appellant not to do any harm to her granddaughter Michelle. Irked by Lucia Bril's pleas, appellant dragged both Michelle and Lucia back to the latter's room. He ordered Lucia Bril to lie down under the bed and kicked her again. Afterwards, appellant dragged Michelle to the door forcing her to remove her jogging pants, thus prompting the latter to cry for help. At that moment, Lucia Bril came in and tried to wrest the gun from appellant. During the struggle, appellant shot Lucia Bril with his black short gun, hitting her in the chest. As Lucia Bril fell down, appellant ran away, bringing with him his gun. The robbery and homicide incident at the Bril's residence lasted for about one (1) and a half hour. (pp. 9-14, TSN dated November 26, 1996)

Dr. Pedro P. Landicho, Municipal Health Officer of San Antonio, Quezon, conducted the post mortem examination of Lucia Bril on April 3, 1996:

FINDINGS:

The body belong (*sic*) to a pale, female, cadaver, brown complexion not in rigor mortis, about 61 inches in length.

1. Gun Shot wound, 1.0 cm in diameter, 5th ICS, Anterior Left Chest (Thorax), 7.0 cm from anterior midline.

CAUSE OF DEATH: Hemmorhagic Shock secondary to Gun Shot Wound, at Left Chest.

(Exh. "A", Post Mortem Findings dated August 26, 1997)[4]

Appellant denied the accusation against him and interposed the defense of alibi. He alleged that on March 30, 1996, he and

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[4] Brief for the Plaintiff-Appellee (With Recommendation for Reduction of Actual Damages, Increase of Civil Indemnity and Award of Temperate Damages), *Rollo*, pp. 80-90.

his wife left for Barangay Masaya, Bai, Laguna to harvest rice. They returned home in the afternoon of April 2, 1996, the day after the crime was committed. He presented three witnesses who testified that they harvested *palay* with appellant until April 2, 1996.

On May 15, 2000, the trial court rendered judgment finding appellant guilty of the special complex crime of robbery with homicide and sentenced him to death. The decretal portion of the decision read:

> WHEREFORE, in light of the foregoing premises and considerations, this Court finds the accused Dominador Werba also known as Doming Werba GUILTY beyond reasonable doubt as principal of the special complex crime of Robbery With Homicide, as the felony is defined and penalized by Article 294, paragraph (1) of the Revised Penal Code and, furthermore, applying the provisions of Republic Act No. 7659 entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes," which took effect on December 31, 1993, hereby sentences the same accused to suffer the maximum penalty of death by lethal injection, to pay the family of the deceased Lucia Bril the sums of ₱21,500.00, as indemnity for the sum and the value of the jewelries taken away by the accused, ₱126,000.00 as actual damages incurred by the family of Lucia Bril on account of her death, ₱50,000.00, as indemnity for the death of Lucia Bril, ₱50,000.00, as moral damages, and ₱50,000.00, as exemplary damages, plus costs.
>
> Let the entire records of this case be transmitted to the Honorable Supreme Court for automatic review in accordance with the provisions of the law and pertinent rules on criminal procedure.
>
> SO ORDERED.[5]

Appellant assigns the following alleged errors of the trial court:

ASSIGNMENT OF ERRORS

I. THE HONORABLE PRESIDING JUDGE DID NOT EVEN SEE THE DEMEANOR OF THE PROSECUTION'S WITNESSES, AND

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[5] Decision, RTC, 4th Judicial Region, Branch 55, Lucena City, *Rollo*, p. 40.

YET GAVE WEIGHT AND CREDENCE TO THEIR DOUBTFUL TESTIMONIES.

II. THE COURT BELOW ERRED IN CONSIDERING THE TESTIMONIES OF THE PROSECUTION WITNESSES, ESPECIALLY THAT OF SPO2 REYNALDO GALA KASILAG.

III. THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.[6]

In the first two errors, appellant raises the issue of credibility. He essentially assails the findings of the trial court on his identification as the perpetrator of the offense charged. He alleges that the findings of the trial court should not be relied upon because the judge who rendered the decision was not the one who tried and heard the testimonies of the witnesses. However, while it is true that Judge Eleuterio Guerrero, who penned the decision, merely took over the case from Judge Jose V. Hernandez, who tried it, it did not necessarily follow that Judge Guerrero could not render a just and valid decision. The complete records of the case, including the transcript of stenographic notes, were with Judge Guerrero and it can be fairly assumed that, in rendering the decision, the records were thoroughly read and evaluated by him. Indeed, the efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial.[7]

The well-settled rule in this jurisdiction is that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal without any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the result of the case.[8] We therefore find no reason to deviate from the conclusions of the trial court on the identification

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[6] Appellant's Brief, *Rollo*, pp. 60-61.

[7] *People vs. Yatco*, 379 SCRA 432 [2002].

[8] *Ibid*.; see also *People vs. Boquirin*, 383 SCRA 164 [2002], *People vs. Taboga*, 376 SCRA 500 [2002].

of appellant as the person who robbed the Bril family and shot Lucia Bril, considering that the prosecution eyewitnesses testified on this fact in a categorical, straightforward and consistent manner.

As Michelle Bril narrated:

Q: On April 1, 1996 at about 11:30 in the evening, do you remember where were you?

A: I was inside our house in Brgy. Arawan, San Antonio, Quezon sir.

Q: Where particularly in your house were you?

A: I was inside my bedroom sir.

Q: While inside your bedroom, did you hear anything unusual?

A: Yes sir.

Q: What was that unusual thing?

A: I heard the voice of Dominador Werba saying "do not shout," in tagalog, "*sasabog ang bao ng ulo ninyo* and everybody will be killed," sir.

Q: After hearing that statement what did you do if any?

A: I was listening (*nakikiramdam*) until Dominador Werba passed by my room sir.

Q: What did you do if any then?

A: I saw Dominador Werba poking his gun at my father Gerardo Bril sir.

Q: That person who poked his gun to your father is he in court now?

A: Yes sir, he is that man wearing stripe T-shirt.

INTERPRETER

The person pointed to by the witness when asked give his name Dominador Werba.

Q: After that what happened if any?

A: Dominador Werba together with my father went to the room of my grandmother and my grandfather sir.

x x x x x x x x x

Q: After that what happened?

A: He poked his gun at my grandmother sir.

Q: Did the accused say anything to your *lola*?

A: I heard Werba told my grandmother to bring out the proceeds from the sale of the cow and the pieces of the jewelries and the gun, sir.

Q: What happened next?

A: The accused told my *lola* to bring out all the things inside the *baul* and he found more than ₱7,000.00 which he got sir.

Q: What happened next?

A: Werba ordered and dragged my grandmother to the room of my parents and he ordered that the lights be put on, sir.

Q: Was the lights actually put on?

A: Yes sir.

Q: What happened next?

A: He told my grandmother to get all the things inside the *aparador* of my parents and he was able to find pieces of jewelries, ring sir, the ring of my father, earrings and bracelet of my mother sir.

x x x x x x x x x

Q: After that what happened?

A: Dominador Werba went to my room together with my grandmother and ordered that the light be put on, sir.

Q: Was the light actually put on?

A: Yes sir.

Q: What happened next?

A: He turned his attention to my younger sister May Bril and he hold my sister on her shoulder he asked about the profit from the sale of the cow and of the jewelries and the gun sir.

Q: What was the reply of your sister May Bril?

A: My sister told him she does not know of any gun and the profit from the sale of the cow is very minimal only and she

also said the jewelries are faked (*sic*) only sir, and then he poked his gun to me sir.

Q: What happened when he poked his gun to you?

A: He asked me about the profit from the sale of the cow and about the gun and the jewelries sir.

Q: What was your answer?

A: I told him we don't have any gun and the money from the sale of the cow have been spent for the construction of the house sir, and that the jewelries are only faked (*sic*).

Q: What happened when you answered that?

A: Dominador Werba got angry and he brought me and my grandmother to the room and he ordered my *lola* to lie flat under the bed and he kicked her sir, for several times.

Q: While he was doing this, did he make any statement?

A: He said nobody should rise because everybody will be killed sir.

Q: What happened next?

A: I was dragged going to the kitchen sir.

Q: While in the kitchen what happened?

A: He was forcing me to remove my clothes sir.

Q: Which particular part of your clothes did you or were you ordered to remove?

A: My T-shirt and my bra sir.

Q: Did you remove them?

A: Yes sir because he told me if I will not remove my T-shirt and my bra, *sasabog ang ulo naming lahat*, sir.

Q: What happened next?

A: On that particular moment my grandmother came sir.

Q: What did your grandmother do or say?

A: She was pleading to Dominador Werba not to do anything bad to me or hurt me sir. Dominador Werba got angry and he dragged me and my grandmother to the room of my grandmother sir.

Q: What happened next?

A: He told my grandmother to lie under the bed and he kicked again my grandmother sir.

Q: And then what happened?
A: He dragged me going to the door of the three rooms and he was forcing me to remove my jogging pants.

Q: What happened next?
A: I cried and asked help from my grandmother sir.

Q: Did your grandmother help you?
A: My grandmother stood up and went to the place where we were and tried to wrest the gun from Dominador Werba sir.

Q: What happened next?
A: Dominador Werba shot my grandmother sir.

Q: Was your grandmother Lucia Bril hit?
A: Yes sir, she was hit on her chest.

Q: What happened to your grandmother after she was shot by the accused?
A: She fell down and Dominador Werba run away sir.[9]

Categorically and positively identifying the appellant, Michelle further testified:

Q: What made you remember Dominador Werba such that you were able to identify him inside the municipal jail?
A: Because our house was lighted, he stayed long in our house when he robbed us and killed my grandmother sir.

Q: What particular appearance of Dominador Werba did you remember that made you identify him when he was inside the jail?
A: His face sir, his gold teeth, his arms and hair and his body sir.

Q: What did you notice with his hair?
A: His hair has natural curl.

Q: What about his eyes?
A: *Maliit na mabagsik sir.*

Q: What about his body?
A: He is short and dark sir.[10]

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[9] TSN dated November 26, 1996, pp. 5-12.
[10] *Ibid*., p. 15.

The foregoing narration of facts and the positive identification of appellant were corroborated by witness Alipio Bril:

Q: Now you said that this person Lucia Bril is your wife, where is she now?
A: She is already dead, sir.

Q: Do you know why she died?
A: Yes, sir.

Q: Why did she die?
A: Because she was shot by Dominador Werba, sir.

Q: This Dominador Werba, is he in court?
A: Yes sir.

Q: Please point to him?
A: That one with handcuffs, sir.

INTERPRETER:

The person pointed to by the witness identified himself as Dominador Werba your Honor.

ATTY. QUITAIN:

Before today how long have you known the accused Dominador Werba whom you have just pointed to this honorable court a moment ago?

A: More or less ten (10) years, sir.

Q: Why do you know the accused Dominador Werba for about ten (10) years?
A: Because I bought from him a cow for three (3) times already, sir.[11]

Likewise, witness Gerardo Bril testified:

Q: Where was your daughter Michelle Bril on April 1, 1996 between 11 and 12 o'clock in the evening?
A: Inside our house, sir.

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[11] TSN dated April 2, 1997, pp. 8-10.

Q: Now, at that time, more or less, what were you doing, if any?
A: I was then going out of the house to store water in the drum and I opened the door and, simultaneously, Doming entered the house and poked a gun at me, sir.

Q: Who is this Doming? If this Doming is inside the courtroom, please point him out?
A: That one at the middle sir. (The person pointed to stood up and when asked of (*sic*) his name, replied that he is Dominador Werba).

Q: In what part of your body did Doming poke a gun at you?
A: Here, sir. (Witness pointing to his forehead).

Q: And then, what happened when he poked his gun at you?
A: I was forced to go to the room of my parents, sir.

Q: And after inside (*sic*) the room of your parents, what happened next?
A: I was told to lie down, face down, sir.

Q: Did you actually lie down face downward?
A: Yes sir.[12]

The prosecution witnesses who identified appellant as the perpetrator of the crime were members of the victim's family — husband Alipio, son Gerardo and granddaughter Michelle. Mere relationship of a witness to the victim does not impair his credibility.[13] On the contrary, a witness' relationship to the victim of a crime makes his testimony even more credible as it would be unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit.[14]

Appellant further avers that the testimonies of the prosecution witnesses were rehearsed as they were allegedly coached by

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[12] TSN dated January 7, 1998, p. 2.

[13] *People vs. Godoy*, 382 SCRA 680 [2002] cited in *People vs. Romero*, G.R. No. 145166, October 8, 2003.

[14] *Ibid*.

SPO2 Reynaldo Kasilag to point at appellant as the malefactor. However, he failed to substantiate his accusation of alleged influence exerted by the police on the prosecution witnesses.

In stark contrast to the overwhelming evidence against him, all appellant could offer were alibi and denial. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise impossible for him to be at the *locus criminis* or its immediate vicinity at the time of the alleged crime.[15] Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water.[16] Appellant himself admitted that Barangay Masaya, Bai, Laguna where he was allegedly harvesting rice was only 45 minutes by jeepney from Barangay Arawan, San Antonio, Quezon where the crime was committed. His witnesses testified that they harvested *palay* with him during the day from March 30 to April 2, 1996. But they could not account for his whereabouts at past 11:00 p.m. on April 1, 1996 when the crime was committed. Appellant failed to prove that it was physically impossible for him to be at the scene of the crime at the approximate time of its commission. His alibi therefore deserves no consideration at all.

Furthermore, appellant's denial fails in the light of the positive identification and declarations of the prosecution witnesses. The positive identification of an accused by eyewitnesses prevails over the defenses of alibi and denial.[17] Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense.[18] Being evidence that is negative in nature and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.[19]

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[15] see *People vs. Pelopero et al.*, G.R. No. 126119, October 15, 2003; *People vs. Taboga*, *supra* at note 8; *People vs. Blanco*, 324 SCRA 280 [2002].

[16] *People vs. Lopez*, G.R. No. 149808, November 27, 2003.

[17] see *People vs. Juan*, 322 SCRA 598 [2000].

[18] *People vs. Alib*, 322 SCRA 93 [2000].

[19] *Ibid*.

We agree with the trial court that appellant committed the special complex crime of robbery with homicide under paragraph 1, Article 294 of the Revised Penal Code:

> Art. 294. *Robbery with violence against or intimidation of persons — Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
>
> x x x x x x x x x

The elements of robbery with homicide are: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi* and (d) on the occasion of the robbery, homicide (used in its generic sense) is committed.[20]

Essential in robbery with homicide is that there is a nexus, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.[21]

In the case at bar, the deceased, Lucia Bril, was killed by appellant on the occasion of the robbery. While appellant was demanding more money and a gun from the Bril family, he was irked by the protestations of Lucia and her granddaughter Michelle who were crying that they had nothing more to give him. He then dragged Michelle to the kitchen and later, to her grandparents' bedroom, and ordered her to undress while threatening to shoot her if she refused. Michelle begged her grandmother to help her and Lucia pleaded with appellant not

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[20] see *People vs. Arondain*, 366 SCRA 325 [2001]; *People vs. Amba*, 365 SCRA 518 [2001]; *People vs. Boagat*, 364 SCRA 425 [2001]; *People vs. Olita*, 362 SCRA 521 [2001]; *People vs. del Rosario*, 359 SCRA 166 [2001].

[21] *People vs. Cabillo*, 362 SCRA 521 [2001].

to harm her granddaughter. Lucia then tried to wrestle the gun away from appellant but the latter overpowered her and shot her in the chest. Then he fled.

A conviction for robbery with homicide is proper even if the homicide is committed before, during or after the robbery. The homicide may be committed by the malefactor at the spur of the moment or by mere accident. Even if two or more persons are killed or a woman is raped or physical injuries are inflicted on another on the occasion or by reason of the robbery, there is only one special complex crime of robbery with homicide. What is critical is the result obtained without reference or distinction as to circumstances, cause, modes or persons intervening in the commission of the crime.[22]

We, however, disagree with the court *a quo* that the aggravating circumstance of dwelling attended the commission of the crime. This circumstance was not specifically alleged in the information. By virtue of its amendment, effective December 1, 2000, Rule 110, Section 8 of the Revised Rules on Criminal Procedure now provides that aggravating circumstances must be alleged in the information, otherwise, they cannot be considered against the accused even if they are proven during the trial.[23] Being favorable to the appellant, the rule, as amended, should be applied retroactively.[24]

We cannot likewise appreciate the aggravating circumstance of nighttime because, while the information alleged that the killing was committed at past 11:00 p.m., there was no showing

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[22] *People vs. Daniela et. al*, 401 SCRA 519 [2003].

[23] Revised Rules on Criminal Procedure, Rule 110, Sec. 8, specifically provides:

Sec. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[24] *People vs. Ibanez*, G.R. Nos. 133923-34, July 30, 2003.

that nocturnity was deliberately sought to facilitate the commission of the crime. It is settled that, by and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is specially sought by the offender, or taken advantage of by him, to facilitate the commission of the crime or to insure his immunity from capture.[25] Here, appellant was known by the Bril family for almost ten years. Thrice, he bought a cow from Alipio Bril. On the night he robbed the Bril family and killed Lucia Bril, appellant did not make any attempt to hide his identity from his victims. He did not wear a hood to cover his face and even ordered the lights to be turned on as he instructed the Bril family to bring out their valuables. It appears that the reason he committed the crime on the eve of April 1, 1996 was because of his ill-founded belief that he could get away with it, since he had witnesses to prove that he was busy harvesting *palay* during the day.

The qualifying circumstance of treachery cannot likewise be logically appreciated because appellant did not prepare to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or difficult for her to defend herself or to retaliate.[26] Clearly, appellant had no plan to kill Lucia Bril. He shot her on the occasion of the robbery only because she tried to wrestle the gun away from him as he tried to sexually abuse Michelle. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate and (2) the means of execution is deliberately or consciously adopted.[27] Both elements are absent in the case at bar.

On the issue of damages, the Office of the Solicitor General recommends the reduction of the award of actual damages from ₱126,000 to ₱18,000 because only the expense for the funeral services in the amount of ₱18,000 was duly receipted and no other evidence was presented to support the other alleged expenses.

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[25] *People vs. Silvano*, 350 SCRA 385 [2001].

[26] *People vs. Cabareno*, 349 SCRA 297 [2001].

[27] *People vs. Amazan*, 349 SCRA 218 [2001].

In *People vs. Abrazaldo*,[28] we laid down the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of ₱25,000.[29] This doctrine specifically refers to a situation where no evidence at all of funeral expenses was presented in the trial court. However, in instances where actual expenses amounting to less than ₱25,000 are proved during the trial, as in the case at bar, we apply the ruling in the more recent case of *People vs. Villanueva*[30] which modified the *Abrazaldo* doctrine. In *Villanueva*, we held that "when actual damages proven by receipts during the trial amount to less than ₱25,000, the award of temperate damages for ₱25,000 is justified in lieu of the actual damages of a lesser amount." To rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than ₱25,000 would be in a worse situation than those who might have presented no receipts at all but would now be entitled to ₱25,000 temperate damages.[31]

In the case at bar, private complainants were only able to prove the funeral expense of ₱18,000 as evidenced by the receipt issued by the Amparo-Coloma Funeral Homes although they incurred more expenses for the wake and funeral of Lucia Bril than they were actually able to prove. We therefore apply the *Villanueva* doctrine and award private complainants temperate damages in the amount of ₱25,000, in lieu of the actual damages of ₱126,000 which was erroneously awarded by the trial court.

The trial court likewise erred in awarding exemplary damages to the heirs of Lucia Bril in the amount of ₱50,000. We reduce the same to ₱25,000 in line with existing jurisprudence.[32]

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[28] 397 SCRA 137 [2003].

[29] *Ibid*.

[30] G.R. No. 139177, August 11, 2003.

[31] *Ibid*.

[32] *People vs. Almoguerra, supra* at note 24.

The court *a quo*, however, correctly awarded moral damages in the amount of ₱50,000 on account of the grief and suffering of the victim's heirs.[33] The award of moral damages in the amount of ₱75,000, as prayed for by the Office of the Solicitor General, refers to cases of rape where the victim dies. The rule is not applicable to cases of robbery with homicide.

Under Article 294 of the Revised Penal Code, as amended by Section 9 of RA 7659, the prescribed penalty for robbery with homicide is composed of two indivisible penalties, *reclusion perpetua* to death. Considering that, in the present case, there was no aggravating circumstance that attended the commission of the crime, we impose upon appellant the lower penalty of *reclusion perpetua*.

WHEREFORE, the assailed decision is hereby *AFFIRMED* with the *MODIFICATION* that the penalty is reduced to *reclusion perpetua*. Temperate damages in the amount of ₱25,000 shall be awarded private complainants in lieu of the ₱126,000 awarded by the trial court. In line with existing jurisprudence, appellant is likewise ordered to pay private complainants ₱50,000 civil indemnity, ₱50,000 moral damages, ₱25,000 exemplary damages and ₱21,500 as indemnity for the sum and value of the cash and jewelries stolen.

Costs *de oficio*.

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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[33] *People vs. Otayde*, G.R. No. 140227, November 28, 2003.

SECOND DIVISION

[G.R. No. 147220. June 9, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JESUS AQUINO *y* DIMACALI,** *appellant*.

SYNOPSIS

This is an appeal from the decision of the Regional Trial Court of Caloocan City finding the appellant guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua*. In his appeal, the appellant contended that the trial court erred in convicting him of murder absent proof of treachery attendant to the crime. The appellant averred that the stabbing incident was the offshoot of a quarrel. The appellant and his live-in partner had a heated argument, which led to the stabbing incident that resulted in the death of the latter. He asserted that the prosecution failed to prove that he killed the victim with treachery, and that while the victim sustained stab wounds at the back, the same did not constitute proof of such qualifying circumstance.

The Supreme Court agreed with the appellant that the qualifying circumstance of treachery was not sufficiently established by the prosecution. Absent any particulars as to the manner in which the aggression commenced, treachery cannot be appreciated. In this case, the prosecution witnesses did not see the actual stabbing of the victim. As such, there was no way to determine how the attack was initiated. The Court found the appellant guilty of homicide and reduced the penalty to an indeterminate sentence.

SYLLABUS

1. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; MUST BE PROVEN AS CLEARLY AS COGENTLY AS THE CRIME ITSELF.— The qualifying circumstance of treachery was not sufficiently established by the prosecution. To prove treachery, the evidence must show that the accused made some preparation to kill the victim in

such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation. Treachery must be proven as clearly and as cogently as the crime itself. It is herein noted that the prosecution witnesses did not see the actual stabbing of the victim. As such, there is no way of determining how the attack was initiated, in the same way that no testimony would prove that the appellant contemplated upon the mode to insure the killing. Absent any particulars as to the manner in which the aggression commenced, treachery cannot be appreciated against the appellant. What is clear after our review of the records is that the appellant and the victim were engaged in a quarrel, a heated argument which culminated in the appellant's stabbing the victim in the heat of anger. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim.

2. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; TO BE APPRECIATED IT MUST BE SPONTANEOUS AND MADE IN SUCH A MANNER THAT IT SHOWS THE INTENT OF THE ACCUSED TO SURRENDER UNCONDITIONALLY TO THE AUTHORITIES; EFFECT ON THE PENALTY; CASE AT BAR.— Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. However, as the trial court found, the appellant voluntarily surrendered to Barangay Captain Conrado Cruz the day after the crime was committed. To be entitled to the mitigating circumstance of voluntary surrender, the same must be shown to have been spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense that will be incurred in his search and capture. The surrender of the appellant to Barangay Captain Conrado Cruz was reflective of such intent. Thus, the trial court correctly appreciated the mitigating circumstance in his favor.

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 Caloocan City, Branch 129, finding the appellant Jesus Aquino *y* Dimacali guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

An Information charging Jesus Aquino *y* Dimacali with murder was filed on November 17, 1999.[2] The accusatory portion reads:

> That on or about the 13th day of November, 1999 in Caloocan City and within the jurisdiction of this Honorable Court, the above-named accused without any justifiable cause and with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously stab with a double-bladed dagger one FILIPINA DE LEON *y* VILLA, hitting her on the different parts of the body, thereby inflicting upon the latter serious physical injuries, which injuries caused her instantaneous death.[3]

The appellant was arraigned on December 16, 1999, assisted by counsel, and entered a plea of not guilty.[4]

The Facts

The appellant Jesus Aquino and his live-in partner, Filipina "Sweet" de Leon, lived at No. 115 Libis, Talisay, Dulo, Caloocan City.[5] However, when Sweet got pregnant, her parents, who

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[1] Penned by Judge Bayani S. Rivera.

[2] *Rollo*, p. 4.

[3] *Ibid*.

[4] Records, p. 12.

[5] TSN, 26 October 2000, p. 5.

lived at No. 73 Kapak St., Libis, Dulo, Caloocan City,[6] took her away.[7]

In the afternoon of November 13, 1999, three months after she had given birth, Sweet, with her baby, went to the house of her sister, Helen Grace de Leon-de Ocera.[8] Momentarily, Leslie, the appellant's daughter by another woman, went to Helen's house to fetch Sweet, and told the latter that a male person was in their house waiting for her. Sweet told Leslie that she would just follow later.[9] Thereafter, Sweet, with her three-month-old son, arrived at the appellant's house.[10]

When the appellant saw Sweet, he asked her what she was doing in the house of his friend Jun-Jun. Sweet did not answer. He forced Sweet to admit that she was having an affair with his friend Jun-Jun. Sweet raised her voice, prompting the appellant to slap her.[11] Sweet then saw the knife placed on top of the television and was poised to stab the appellant with it, but the latter grabbed possession of the knife. Sweet slapped the appellant in the process.[12] The appellant then lost control of himself, and stabbed Sweet eleven times. When he regained his senses and saw Sweet sprawled on the floor, bloodied all over, he fled to the cemetery and slept there.[13] At 6:00 a.m., he surrendered to Barangay Captain Conrado "Bebot" Cruz, who brought him to the police station.

A post-mortem examination of the victim's cadaver was conducted by Dr. Ludivino J. Lagat. He found that Sweet died of multiple stab wounds. She sustained a total of eleven stab wounds, nine of which were at the back.[14]

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[6] TSN, 10 March 2000, p. 3.

[7] TSN, 26 October 2000, p. 5.

[8] TSN, 24 January 2000, p. 6.

[9] *Ibid*.

[10] *Id*.

[11] TSN, 26 October 2000, p. 13.

[12] *Id*. at 7-9.

[13] *Id*. at 15.

[14] Exhibit "B", Records, p. 57.

On November 16, 1999, the appellant executed a sworn statement[15] after being apprised of his rights under the Constitution, in which he admitted killing Sweet.

During the trial, the appellant admitted having executed his sworn statement in the police station and the truth of the contents thereof.

On February 19, 2001, the trial court promulgated a decision finding the appellant guilty beyond reasonable doubt of murder qualified by treachery, the dispositive portion of which is herein quoted:

> WHEREFORE, premises considered, this Court finds the accused guilty beyond reasonable doubt as principal of the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659. Accordingly, he shall serve the penalty of *reclusion perpetua* with all the accessory penalties under the law, and shall pay the costs.
>
> The accused shall be credited with the period of his preventive detention.
>
> By way of civil liabilities, the accused shall pay the following amounts to the victim's heirs, without subsidiary imprisonment in case of insolvency:
>
> ₱80,000.00 for funeral services;
>
> ₱59,270.00 for burial expenses;
>
> ₱100,000.00 for the victim's father's travel expenses; and
>
> ₱50,000.00 for attorney's fees to Atty. Arnel Magcalas
>
> The Branch Clerk of this Court shall now issue the corresponding Commitment Order for the accused's confinement at the Bureau of Corrections, Muntinlupa City.[16]

The trial court appreciated in favor of the appellant the mitigating circumstance of voluntary surrender.

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[15] Exhibit "1-B," *Id.* at 2.

[16] Records, pp. 117-118.

The Present Appeal

The appellant now appeals the decision, contending that the trial court erred in convicting him of murder, absent proof of treachery attendant to the crime.

The appellant avers that the stabbing incident was the offshoot of a quarrel. He asserts that the prosecution failed to prove that he killed the victim with treachery, and that while the victim sustained stab wounds at the back, the same does not constitute proof of such qualifying circumstance.

The Ruling of the Court

We agree with the appellant that he is guilty only of homicide. The qualifying circumstance of treachery was not sufficiently established by the prosecution. To prove treachery, the evidence must show that the accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself.[17] The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation.[18]

Treachery must be proven as clearly and as cogently as the crime itself.[19] It is herein noted that the prosecution witnesses did not see the actual stabbing of the victim. As such, there is no way of determining how the attack was initiated, in the same way that no testimony would prove that the appellant contemplated upon the mode to insure the killing.[20] Absent any particulars as to the manner in which the aggression commenced, treachery cannot be appreciated against the appellant.[21]

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[17] *People v. Antonio*, 335 SCRA 646 (2000).

[18] *People v. Dela Cruz*, G.R. No. 152176, October 1, 2003.

[19] *People v. Real*, 308 SCRA 244 (1999).

[20] *People v. Dela Cruz, supra*.

[21] *People v. Flores*, G.R. Nos. 143435-36, November 28, 2003.

What is clear after our review of the records is that the appellant and the victim were engaged in a quarrel, a heated argument which culminated in the appellant's stabbing the victim in the heat of anger. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim.[22]

Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. However, as the trial court found, the appellant voluntarily surrendered to Barangay Captain Conrado Cruz the day after the crime was committed. To be entitled to the mitigating circumstance of voluntary surrender, the same must be shown to have been spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense that will be incurred in his search and capture.[23]

The surrender of the appellant to Barangay Captain Conrado Cruz was reflective of such intent. Thus, the trial court correctly appreciated the mitigating circumstance in his favor. Since the appellant is entitled to such mitigating circumstance of voluntary surrender, and there is no aggravating circumstance to offset it, the maximum of the penalty should be imposed in its minimum period, pursuant to Article 64(1) of the Revised Penal Code. Applying the Indeterminate Sentence Law, the appellant may, thus, be sentenced to an indeterminate penalty, the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, which is *prision mayor*, and the maximum of which should be within the range of *reclusion temporal* in its minimum period. Thus, the appellant may be sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of *prision mayor* in its minimum period, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal* in its minimum period, as maximum.[24]

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[22] *People v. Perez*, G.R. No. 134485, October 23, 2003.

[23] *People v. Flores, supra.*

[24] *People v. Eribal*, 305 SCRA 341 (1999).

Consistent with the prevailing jurisprudence, civil indemnity in the amount of ₱50,000 should be awarded without need of further proof.[25]

WHEREFORE, the decision appealed from finding Jesus Aquino *y* Dimacali guilty beyond reasonable doubt of murder is *MODIFIED*. The Court finds the appellant *GUILTY* beyond reasonable doubt of homicide punishable by *reclusion temporal* under Article 249 of the Revised Penal Code. Appreciating the mitigating circumstance of voluntary surrender in favor of the appellant, he is sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of *prision mayor* in its minimum period, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal* in its minimum period, as maximum.

The appellant is further *ORDERED* to pay the heirs of the victim Filipina Villa de Leon the sum of ₱50,000 as civil indemnity and ₱50,000 as moral damages.

The award of ₱80,000 for funeral services,[26] ₱59,720 for burial expenses,[27] and ₱100,000 for the plane fare of the father of the victim from the United States[28] to the Philippines to attend the wake and funeral services of the victim are *AFFIRMED*. The award of ₱50,000 for attorney's fees is *DELETED*. No costs.

SO ORDERED.

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

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[25] *People v. Delim*, 396 SCRA 386 (2003).

[26] Exhibit "S", Records, p. 74.

[27] Exhibit "S-1", *Id*. at 75.

[28] Exhibit "T", *Id*. at 76.

THIRD DIVISION

[G.R. No. 149859. June 9, 2004]

RADIN C. ALCIRA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, MIDDLEBY PHILIPPINES CORPORATION/FRANK THOMAS, XAVIER G. PEÑA and TRIFONA F. MAMARADLO,** *respondents*.

SYNOPSIS

Middleby Philippines Corporation hired petitioner as engineering support services supervisor on a probationary basis for six months. Apparently unhappy with the petitioner's performance, Middleby terminated petitioner's services. Thus, petitioner filed a complaint for illegal dismissal against Middleby contending that he had already become a regular employee as of the date of his dismissal. The labor arbiter dismissed his complaint on the ground that the respondents were able to prove that the petitioner was apprised of the standards for becoming a regular employee and that his performance and work attitude were below par compared to the company's standard required of him. The labor arbiter also ruled that petitioner was dismissed before he became a regular employee. The NLRC as well as the Court of Appeals affirmed the decision of the labor arbiter. The bone of contention in this appeal centered on whether the termination of petitioner occurred before or after the six-months probationary period of employment.

The Supreme Court reiterated its previous rule that the computation of the 6-month probationary period is reckoned from the date of appointment up to the same calendar date of the 6th month following. Thus, since the number of days in each particular month was irrelevant, petitioner was still a probationary employee when Middleby opted not to make him a regular employee. The Court also ruled that although the petitioner's severance from work could be regarded as dismissal, the same cannot be deemed illegal. As found by the labor arbiter, the NLRC and the Court of Appeals, petitioner failed to refute the allegations of Middleby that he failed to meet the required standard to become a regular

employee. Middleby was clearly justified to end its employment relationship with petitioner.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY EMPLOYMENT; PERIOD THEREOF SHOULD BE RECKONED FROM THE DATE APPOINTED UP TO THE SAME CALENDAR DATE WHEN THE PERIOD OF PROBATION ENDS; APPLICATION IN CASE AT BAR.— In *CALS Poultry Supply Corporation, et. al. vs. Roco, et. al.*, this Court dealt with the same issue of whether an employment contract from May 16, 1995 to November 15, 1995 was within or outside the six-month probationary period. We ruled that November 15, 1995 was still within the six-month probationary period. We reiterate our ruling in *CALS Poultry Supply*: (O)ur computation of the 6-month probationary period is reckoned from the date of appointment *up to the same calendar date of the 6th month following*. In short, since the number of days in each particular month was irrelevant, petitioner was still a probationary employee when respondent Middleby opted not to "regularize" him on November 20, 1996.

2. ID.; ID.; ID.; EMPLOYER IS REQUIRED TO MAKE KNOWN TO THE EMPLOYEE THE STANDARDS UNDER WHICH HE WILL QUALIFY AS REGULAR EMPLOYEE; SUBSTANTIALLY COMPLIED IN CASE AT BAR.— Section 6 (d) of Rule 1 of the Implementing Rules of Book VI of the Labor Code (Department Order No. 10, Series of 1997) provides that: x x x x x x x x x (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee. x x x x x x x x x We hold that respondent Middleby substantially notified petitioner of the standards to qualify as a regular employee when it apprised him, at the start of his employment, that it would evaluate his supervisory skills after five months. In *Orient Express Placement Philippines vs. National Labor Relations Commission*, we ruled that an employer failed to inform an employee of the reasonable standards for becoming a regular employee: Neither private

respondent's Agency-Worker Agreement with ORIENT EXPRESS nor his Employment Contract with NADRICO ever mentioned that he must first take and pass a Crane Operator's License Examination in Saudi Arabia before he would be allowed to even touch a crane. Neither did he know that he would be assigned as floorman pending release of the results of the examination or in the event that he failed; *more importantly, that he would be subjected to a performance evaluation by his superior one (1) month after his hiring to determine whether the company was amenable to continuing with his employment.* Hence, respondent Flores could not be faulted for precisely harboring the impression that he was hired as crane operator for a definite period of one (1) year to commence upon his arrival at the work-site and to terminate at the end of one (1) year. *No other condition was laid out except that he was to be on probation for three (3) months.* Conversely, an employer is deemed to substantially comply with the rule on notification of standards if he apprises the employee that he will be subjected to a performance evaluation on a particular date after his hiring.

3. ID.; ID.; ID.; EMPLOYEES ARE ACCORDED THE CONSTITUTIONAL PROTECTION OF SECURITY OF TENURE DURING THE PROBATIONARY PERIOD.— It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement. But we have also ruled in *Manlimos, et. al. vs. National Labor Relations Commission* that this constitutional protection ends on the expiration of the probationary period. On that date, the parties are free to either renew or terminate their contract of employment. *Manlimos* concluded that "(t)his development has rendered moot the question of whether there was a just cause for the dismissal of the petitioners x x x." In the case at bar, respondent Middleby exercised its option not to renew the contract when it informed petitioner on the last day of his probationary employment that it did not intend to grant him a regular status.

APPEARANCES OF COUNSEL

Samson Alcantara for petitioner.
The Solicitor General for public respondent.
Crisostomo L. Akol for private respondents.

D E C I S I O N

CORONA, *J.*:

Before us on appeal is the decision[1] of the Court of Appeals[2] dated June 22, 2001 affirming the decision[3] of the National Labor Relations Commission[4] dated March 23, 1999 which, in turn, affirmed the decision[5] of labor arbiter Pedro Ramos dated May 19, 1998 dismissing petitioner Radin Alcira's complaint for illegal dismissal with prayer for reinstatement, backwages, moral damages, exemplary damages and attorney's fees.

The facts follow.

Respondent Middleby Philippines Corporation (Middleby) hired petitioner as engineering support services supervisor on a probationary basis for six months. Apparently unhappy with petitioner's performance, respondent Middleby terminated petitioner's services. The bone of contention centered on whether the termination occurred before or after the six-month probationary period of employment.

The parties, presenting their respective copies of Alcira's appointment paper, claimed conflicting starting dates of employment: May 20, 1996 according to petitioner and May 27, 1996 according to respondent. Both documents indicated

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[1] Penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Elvi John Asuncion and Juan Enriquez, Jr.; *Rollo*, pp. 90-95.

[2] Seventeenth Division.

[3] *Rollo*, pp. 70-76.

[4] First Division.

[5] *Rollo*, pp. 57-62.

petitioner's employment status as "probationary (6 mos.)" and a remark that "after five months (petitioner's) performance shall be evaluated and any adjustment in salary shall depend on (his) work performance."[6]

Petitioner asserts that, on November 20, 1996, in the presence of his co-workers and subordinates, a senior officer of respondent Middleby in bad faith withheld his time card and did not allow him to work. Considering this as a dismissal "after the lapse of his probationary employment," petitioner filed on November 21, 1996 a complaint in the National Labor Relations Commission (NLRC) against respondent Middleby contending that he had already become a regular employee as of the date he was illegally dismissed. Included as respondents in the complaint were the following officers of respondent Middleby: Frank Thomas (General Manager), Xavier Peña (Human Resources Manager) and Trifona Mamaradlo (Engineering Manager).

In their defense, respondents claim that, during petitioner's probationary employment, he showed poor performance in his assigned tasks, incurred ten absences, was late several times and violated company rules on the wearing of uniform. Since he failed to meet company standards, petitioner's application to become a regular employee was disapproved and his employment was terminated.

On May 19, 1998, the labor arbiter dismissed the complaint on the ground that: (1) respondents were able to prove that petitioner was apprised of the standards for becoming a regular employee; (2) respondent Mamaradlo's affidavit showed that petitioner "did not perform well in his assigned work and his attitude was below par compared to the company's standard required of him" and (3) petitioner's dismissal on November 20, 1996 was before his "regularization," considering that, counting from May 20, 1996, the six-month probationary period ended on November 20, 1996.[7]

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[6] *Rollo*, p. 71.

[7] *Rollo*, pp. 59-62.

On March 23, 1999, the NLRC affirmed the decision of the labor arbiter.

On June 22, 2001, the Court of Appeals affirmed the judgment of the NLRC. According to the appellate court:

> Even assuming, *arguendo*, that petitioner was not informed of the reasonable standards required of him by Middleby, the same is not crucial because there is no termination to speak of but rather expiration of contract. Petitioner loses sight of the fact that his employment was probationary, contractual in nature, and one with a definite period. At the expiration of the period stipulated in the contract, his appointment was deemed terminated and a notice or termination letter informing him of the non-renewal of his contract was not necessary.
>
> While probationary employees enjoy security of tenure such that they cannot be removed except for just cause as provided by law, such protection extends only during the period of probation. Once that period expired, the constitutional protection could no longer be invoked. Legally speaking, petitioner was not illegally dismissed. His contract merely expired.[8]

Hence, this petition for review based on the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED, BLATANTLY DISREGARDED THE LAW AND ESTABLISHED JURISPRUDENCE, IN UPHOLDING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE COURT OF APPEALS GRAVELY ERRED AND BLATANTLY DISREGARDED THE LAW IN HOLDING THAT PROBATIONARY EMPLOYMENT IS EMPLOYMENT FOR A DEFINITE PERIOD.

III

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT AN EMPLOYER CAN BE PRESUMED TO HAVE COMPLIED

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[8] *Rollo*, pp. 94-95.

WITH ITS DUTY TO INFORM THE PROBATIONARY EMPLOYEE OF THE STANDARDS TO MAKE HIM A REGULAR EMPLOYEE.

IV

THE COURT OF APPEALS GRAVELY ERRED AND FAILED TO AFFORD PROTECTION TO LABOR IN NOT APPLYING TO THE INSTANT CASE THE DOCTRINE LAID DOWN BY THIS HONORABLE COURT IN *SERRANO VS. NLRC, ET AL.*, G.R. NO. 117040, JANUARY 27, 2000.[9]

Central to the matter at hand is Article 281 of the Labor Code which provides that:

ART. 281. *PROBATIONARY EMPLOYMENT*. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

The first issue we must resolve is whether petitioner was allowed to work beyond his probationary period and was therefore already a regular employee at the time of his alleged dismissal. We rule in the negative.

Petitioner claims that under the terms of his contract, his probationary employment was only for five months as indicated by the remark "Please be informed that after five months, your performance shall be evaluated and any adjustment in salary shall depend on your work performance." The argument lacks merit. As correctly held by the labor arbiter, the appointment contract also stated in another part thereof that petitioner's employment status was "probationary (6 mos.)." The five-month period referred to the evaluation of his work.[10]

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[9] *Rollo*, p. 13.

[10] *Rollo*, p. 62.

Petitioner insists that he already attained the status of a regular employee when he was dismissed on November 20, 1996 because, having started work on May 20, 1996, the six-month probationary period ended on November 16, 1996. According to petitioner's computation, since Article 13 of the Civil Code provides that one month is composed of thirty days, six months total one hundred eighty days. As the appointment provided that petitioner's status was "probationary (6 mos.)" without any specific date of termination, the 180th day fell on November 16, 1996. Thus, when he was dismissed on November 20, 1996, he was already a regular employee.

Petitioner's contention is incorrect. In *CALS Poultry Supply Corporation, et al. vs. Roco, et al.*,[11] this Court dealt with the same issue of whether an employment contract from May 16, 1995 to November 15, 1995 was within or outside the six-month probationary period. We ruled that November 15, 1995 was still within the six-month probationary period. We reiterate our ruling in *CALS Poultry Supply*:

> (O)ur computation of the 6-month probationary period is reckoned from the date of appointment *up to the same calendar date of the 6th month following*. (italics supplied)

In short, since the number of days in each particular month was irrelevant, petitioner was still a probationary employee when respondent Middleby opted not to "regularize" him on November 20, 1996.

The second issue is whether respondent Middleby informed petitioner of the standards for "regularization" at the start of his employment.

Section 6(d) of Rule 1 of the Implementing Rules of Book VI of the Labor Code (Department Order No. 10, Series of 1997) provides that:

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> (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify

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[11] 385 SCRA 479, 488 [2002].

as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

x x x x x x x x x

We hold that respondent Middleby substantially notified petitioner of the standards to qualify as a regular employee when it apprised him, at the start of his employment, that it would evaluate his supervisory skills after five months. In *Orient Express Placement Philippines vs. National Labor Relations Commission*,[12] we ruled that an employer failed to inform an employee of the reasonable standards for becoming a regular employee:

Neither private respondent's Agency-Worker Agreement with ORIENT EXPRESS nor his Employment Contract with NADRICO ever mentioned that he must first take and pass a Crane Operator's License Examination in Saudi Arabia before he would be allowed to even touch a crane. Neither did he know that he would be assigned as floorman pending release of the results of the examination or in the event that he failed; *more importantly, that he would be subjected to a performance evaluation by his superior one (1) month after his hiring to determine whether the company was amenable to continuing with his employment.* Hence, respondent Flores could not be faulted for precisely harboring the impression that he was hired as crane operator for a definite period of one (1) year to commence upon his arrival at the work-site and to terminate at the end of one (1) year. *No other condition was laid out except that he was to be on probation for three (3) months.* (italics supplied)

Conversely, an employer is deemed to substantially comply with the rule on notification of standards if he apprises the employee that he will be subjected to a performance evaluation on a particular date after his hiring. We agree with the labor arbiter when he ruled that:

In the instant case, petitioner cannot successfully say that he was never informed by private respondent of the standards that he must satisfy in order to be converted into regular status. This rans (*sic*)

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[12] 273 SCRA 256 [1997].

counter to the agreement between the parties that after five months of service the petitioner's performance would be evaluated. It is only but natural that the evaluation should be made *vis-à-vis* the performance standards for the job. Private respondent Trifona Mamaradlo speaks of such standard in her affidavit referring to the fact that petitioner did not perform well in his assigned work and his attitude was below par compared to the company's standard required of him.[13]

The third issue for resolution is whether petitioner was illegally dismissed when respondent Middleby opted not to renew his contract on the last day of his probationary employment.

It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement.[14]

But we have also ruled in *Manlimos, et al. vs. National Labor Relations Commission*[15] that this constitutional protection ends on the expiration of the probationary period. On that date, the parties are free to either renew or terminate their contract of employment. *Manlimos* concluded that "(t)his development has rendered moot the question of whether there was a just cause for the dismissal of the petitioners. x x x"[16] In the case at bar, respondent Middleby exercised its option not to renew the contract when it informed petitioner on the last day of his probationary employment that it did not intend to grant him a regular status.

Although we can regard petitioner's severance from work as dismissal, the same cannot be deemed illegal. As found by the

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[13] *Ibid*., pp. 259-260.

[14] *Agoy vs. National Labor Relations Commission*, 252 SCRA 588, 595 [1996].

[15] 242 SCRA 145 [1995] citing *Biboso vs. Victorias Milling Co*., 76 SCRA 250 [1977]; *Colegio de San Agustin vs. NLRC*, 201 SCRA 398 [1991].

[16] *Ibid*., p. 156.

labor arbiter, the NLRC and the Court of Appeals, petitioner (1) incurred ten absences (2) was tardy several times (3) failed to wear the proper uniform many times and (4) showed inferior supervisory skills. Petitioner failed to satisfactorily refute these substantiated allegations. Taking all this in its entirety, respondent Middleby was clearly justified to end its employment relationship with petitioner.

WHEREFORE, the petition is hereby *DENIED*.

No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 151205. June 9, 2004]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **MARLOW DE GUZMAN *y* DELA CRUZ and JESUS VILLANUEVA *y* CALMA,** *appellants*.

SYNOPSIS

Appellants herein were charged with the crime of drug pushing after they were apprehended in a buy-bust operation conducted by the agents of the National Bureau of Investigation (NBI). The trial court believed the version of the prosecution and found both accused (now appellants) guilty of the charge. It meted accused Villanueva the penalty of *reclusion perpetua* and accused de Guzman the supreme penalty of death. Accused-appellants now assailed the decision of the trial court.

The Supreme Court affirmed the appealed decision. According to the Court in buy-bust operations, the testimony

of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they performed their duties regularly. The Court agreed with the findings of the trial court that the testimony of the poseur-buyer was clear and credible. The officers also presented before the court the substance confiscated from the appellants and the boodle money used in the operation.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF POLICE OFFICERS IN BUY-BUST OPERATIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; SHOULD NOT PREVAIL OVER THE PRESUMPTION OF INNOCENCE AND THE CONSTITUTIONALLY-PROTECTED RIGHTS OF THE INDIVIDUAL.—** In buy-bust operations, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. The presumption is overturned only if there is clear and convincing evidence that they were not properly performing their duty or that they were inspired by improper motive. The courts, nonetheless, are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual.

2. **CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; SUFFICIENTLY PROVED IN CASE AT BAR.—** The elements that must be established by the prosecution in a case for illegal sale of dangerous drugs are: (1) that the transaction of sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. These were sufficiently proved by the prosecution in the case at bar. The failure of the NBI agents to confiscate and present in evidence the car allegedly used by the appellants is immaterial for it is not an element of the crime and the prosecution has full discretion to determine the pieces of evidence that they will present in court. It is sufficient that they were able to prove the transaction between S/I Veloso and the appellants, and they were able to present in court the substance seized

from the appellants which, after chemical examination, were found to contain methamphetamine hydrochloride or *shabu*.

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*:**

This is an automatic review of the decision of the Regional Trial Court of Malabon Branch 72 in Criminal Case No. 24671-MN finding the two accused, Marlow De Guzman *y* Dela Cruz and Jesus Villanueva *y* Calma, guilty of violation of Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659.

The accused were charged with the crime of drug pushing in an Information that states:

That on or about the 23rd day of March 2001, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, being a police officer and private person respectively and without authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver in consideration of the amount of Two pieces of Five Hundred Peso Bill and mixed with bundles of boodle money to a poseur-buyer white crystalline substance contained in two (2) big resealable plastic bags with markings "RSF-1" and "RSF-2" Net Weight of RSF-1 — 1,049.27 grams and Net Weight of RSF-2 — 1,054.86 grams with a total Net Weight of 2,104.13 grams which substances when subjected to chemistry examination gave positive results for *EPHEDRINE HYDROCHLORIDE and METHAMPHETAMINE HYDROCHLORIDE for the contents of RSF-1 and EPHEDRINE HYDROCHLORIDE for the contents of RSF-2* otherwise known as "*shabu*" which are both regulated drugs.

The prosecution relied on the testimony of NBI Agent Charlemagne Veloso who apprehended the accused in a buy-bust operation conducted on March 23, 2001 in Malabon, Metro Manila. Veloso, a member of the Special Task Force Division, testified that on March 22, 2001, an informant reported that he had set a deal with a certain Mr. Chang for the purchase of two kilos of *shabu* for ₱1,000,000.00. The transaction was set at noontime of March 23, 2001 at Wendy's Restaurant along Edsa, Caloocan City. A team of NBI personnel consisting of Atty. Reynaldo Esmeralda, Dominador Villanueva, Rommel Vallejo, Eric Isidoro, Rolan Fernandez, Job Gayas and Veloso himself, planned a buy-bust operation against Mr. Chang. Veloso was designated as poseur-buyer and the team prepared the marked money mixed with bundles of boodle money to be used in the operation. In the morning of March 23, 2001, the team proceeded to the agreed meeting place, bringing with them the marked money. The members of the team boarded separate vehicles going to Wendy's. Veloso and the informant used a private van while the rest of the team rode in two other vehicles. Upon reaching the area, the team coordinated with the local police of Caloocan City. Veloso and the informant entered the restaurant where they met a man who introduced himself as Walter Sy. He was, however, later identified as Marlow De Guzman, a member of the Philippine National Police (PNP), from his official ID which was seized after his apprehension. After some small talk, De Guzman demanded to see the money. Veloso showed him the ₱500.00 bill mixed with boodle money. De Guzman then instructed them to follow his vehicle, a 1978 Mitsubishi Galant with plate number NEB 391, as somebody was waiting at Tugatog, Malabon. The other members of the team followed them discreetly as they proceeded to Tumariz Street, Tugatog, Malabon. De Guzman was met by Jesus Villanueva who was carrying two plastic bags. De Guzman and Villanueva boarded the van and handed Veloso the two plastic bags. Veloso checked the bags and examined their contents. After confirming that they contained white crystalline substance or *shabu*, he introduced himself as an NBI operative and gave the pre-arranged signal to the other members of the team. Other team members rushed

to their vehicle and helped in apprehending the two suspects. Veloso confiscated the driver's license of Jesus Villanueva. He also kept the marked money inside the vehicle for safety. Upon arrival at the NBI office, team member Rolan Fernandez took custody of the seized substance and delivered them to the Forensic Chemistry Division for laboratory examination. Fernandez marked the plastic bags before turning them over to the Forensic Chemist. After examining the substance, the NBI Chemist issued a certification that the seized items were positive for methamphetamine hydrochloride. After the arrest of the suspects and examination of the contents of the plastic bags, the NBI did the usual booking preparatory to the inquest proceedings. Upon conclusion of the inquest, the prosecution recommended the filing of an information against the two accused.[1]

Rolan Fernandez, Special Investigator at the NBI, stated that he was part of the buy-bust team and he was present during the operation against the accused on March 23, 2001. After S/I Veloso arrested De Guzman and his companion, the team immediately proceeded to their office and S/I Veloso turned over to him two transparent plastic bags containing white crystalline substance which appeared to be methamphetamine hydrochloride. He then turned over the plastic bags to the Forensic Chemist for investigation.[2]

NBI Forensic Chemist Ferdinand I. Cruz confirmed that on March 23, 2001, he received from NBI Agent Rolan Fernandez a request for laboratory examination of two plastic bags with markings "RSF 1" and "RSF 2" containing white crystalline substance. He opened the bags in the presence of Fernandez and weighed the same. He then performed a physical and chemical examination of their contents. The chemical examination revealed that the contents of the plastic bag marked as "RSF 1" are positive for ephedrine hydrochloride and methamphetamine hydrochloride and the contents of the plastic bag marked as

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[1] TSN, June 21, 2001.

[2] TSN, July 26, 2001.

"RSF 2" are positive for methamphetamine hydrochloride. He said that ephedrine hydrochloride is a regulated drug.[3]

The defense presented a different version of the story.

Victor Ermita, a resident of Tugatog, Malabon, Metro Manila, testified that on March 23, 2001, around 12:00 noon, he was buying food at Sabel's *Lugawan* in Tugatog, Malabon when he saw a man running and shouting for help. Another man who heard the plea stood and said, "I am a policeman! What's the problem?" Ermita identified the latter as accused Marlow De Guzman. Some NBI personnel approached De Guzman and held him. De Guzman struggled. The NBI personnel pushed him and handcuffed him after he fell. In the meantime, the man being pursued by the NBI continued to run and evaded his pursuers. The NBI personnel then boarded De Guzman and his companion, Jessie, in a van.[4]

Accused Marlow De Guzman also took the witness stand. He admitted that he was a police officer assigned to the mobile patrol. He stated that on March 23, 2001, around 11:00 in the morning, he and Jesus Villanueva were at the *lugawan* of Aling Sabel in Acaro, Lascano Street when he saw a man, a certain Andoy, screaming, "*Hinahabol ako!"* He stood up and approached the pursuers and introduced himself as police officer. But the latter repelled him. De Guzman pretended to draw a gun from his waist but the pursuers pushed him and identified themselves as NBI agents. De Guzman was arrested, boarded on a van and brought to the NBI office. The NBI personnel kept him in a room and interrogated him. They were insisting that the *shabu* came from him. De Guzman, however, swore that he saw the alleged *shabu* for the first time at the NBI office and there was only one plastic bag at that time. Then he heard Atty. Esmeralda ask why only one bag of *shabu* was taken when there should have been at least three. One of the members replied that he could even produce two to three kilos. When De Guzman went

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[3] TSN, June 28, 2001.

[4] TSN, August 3, 2001.

out of the room, he saw Villanueva come in. De Guzman heard sounds from the room as if someone was being boxed and hit. Villanueva came out of the room after thirty minutes with bruises. Villanueva told him that they hit his arm and fingers with a hammer and he could hardly move. De Guzman also told the court that he saw the NBI personnel dividing money among themselves, saying, "*Eto'ng sa iyo, eto'ng sa iyo*." They pocketed the money which they divided. He was an armslength away from them.[5]

The defense also presented NBI Agent Job Gayas as hostile witness. Agent Gayas, who has been with the NBI for eight years, testified that he was part of the buy-bust operation against the two accused, but he was not with the arresting team. He was riding in his own vehicle together with S/I Fernandez and S/I Villa. They stayed about 100 meters away from the scene of the operation. Hence, he did not actually see the transaction between the suspects and the poseur-buyer. They were only advised over the radio of the on-going operations and its consummation. They moved out of the area as soon as the operation was completed. Agent Gayas also testified on some of the standard operating procedures observed during buy-bust operations. He said that it is a standard operating procedure that the suspects undergo a medical check-up before they are committed to detention. The records of the NBI showed that accused Villanueva did not have a medical certificate. He also said that during buy-bust operations, the NBI normally coordinates with the local police when it conducts an operation. In this case, however, the records do not show that the NBI coordinated with the local police of Malabon, although they did with the local police of Caloocan City.[6]

The trial court believed the version of the prosecution and found both accused guilty of the charge. It meted accused Jesus Villanueva the penalty of *reclusion perpetua*, and accused

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[5] TSN, August 6 & 9, 2001.

[6] TSN, August 13, 2001.

Marlow De Guzman the supreme penalty of death, considering the presence of the aggravating circumstance of his being a police officer. The dispositive portion of the decision states:

> WHEREFORE, premises considered, judgment is hereby rendered, finding the two accused, namely, Marlow de Guzman *y* dela Cruz and Jesus Villanueva *y* Calma guilty beyond reasonable doubt of the crime of drug pushing penalized under Section 15, Art. III, RA 6425, as amended by RA 7659. Considering that accused de Guzman is an admitted policeman or member of the PNP (Exhibit A and Exhibit 2), and considering, further, the fact that the commission by him of the crime of drug pushing was characterized by the use of a motor vehicle, pursuant to Section 24 of the herein mentioned law, accused de Guzman is hereby sentenced to suffer the penalty of DEATH to be executed in the manner provided for by law and applicable regulations. The herein cited circumstances not being applicable to accused Villanueva, the latter is hereby sentenced to suffer imprisonment of *RECLUSION PERPETUA*.
>
> The two accused are also ordered to pay a fine of ₱10,000,000.00 each.
>
> The *shabu*/ephedrine hydrochloride contained in two plastic bags (Exhibit C-5 and C-6) already returned to NBI Forensic Chemist Ferdinand Cruz are hereby forfeited in favor or the government to be disposed under rules governing the same.
>
> Costs against the two accused.
>
> SO ORDERED.

Accused-appellants now assail the decision of the trial court on the following grounds:

1. The trial court gravely erred in convicting the accused-appellants of the crime charged based on the uncorroborated testimony of the poseur-buyer.
2. The trial court gravely erred in convicting the accused-appellants of the crime charged despite the inconsistent, contradictory and impossibility of the testimonies of the witnesses for the prosecution.
3. The trial court gravely erred in convicting the accused-appellants of the crime charged when the prosecution miserably failed to establish their guilt beyond reasonable doubt.[7]

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[7] Appellants' Brief, *Rollo*, pp. 46-47.

We affirm the decision of the trial court.

In buy-bust operations, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. The presumption is overturned only if there is clear and convincing evidence that they were not properly performing their duty or that they were inspired by improper motive.[8] The courts, nonetheless, are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual. Thus, we discussed in *People vs. Doria*[9] the "objective" test in buy-bust operations to determine the credibility of the testimony of the police officers involved in the operation:

> We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.

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[8] *People vs. Padasin*, 397 SCRA 417 (2003); *People vs. Eugenio*, 395 SCRA 317 (2003).

[9] 301 SCRA 668 (1999).

We find the testimony of the poseur-buyer, Charlemagne Veloso, clear and credible. He recounted in full detail how the deal was set by the informant, their initial meeting with De Guzman at Wendy's in Caloocan City, their agreement to purchase two kilos of *shabu* for ₱1,000,000.00, how they met with Villanueva in Tugatog, Malabon, the actual exchange of the plastic bags containing the substance and the boodle money, and the apprehension of the two accused. They also presented before the court the substance confiscated from the appellants[10] and the boodle money used in the operation.[11]

Moreover, the arguments raised by the appellants in their brief deserve scant consideration.

First, the failure of the arresting officers to confiscate and present in evidence the car allegedly used by the appellants during the transaction does not affect the case of the prosecution. The elements that must be established by the prosecution in a case for illegal sale of dangerous drugs are: (1) that the transaction of sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[12] These were sufficiently proved by the prosecution in the case at bar. The failure of the NBI agents to confiscate and present in evidence the car allegedly used by the appellants is immaterial for it is not an element of the crime and the prosecution has full discretion to determine the pieces of evidence that they will present in court. It is sufficient that they were able to prove the transaction between S/I Veloso and the appellants, and they were able to present in court the substance seized from the appellants which, after chemical examination, were found to contain methamphetamine hydrochloride or *shabu*.

Second, appellant's argument that the testimonies of NBI personnel Ferdinand Cruz and Rolan Fernandez do not support

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[10] Exhibits "C-4", "C-5", "C-6".

[11] Exhibits "E", "E-1", "E-2", "E-3", "E-4", "E-5", "E-6", Original Records, pp. 59-61.

[12] *People vs. Hajili*, 399 SCRA 188 (2003).

S/I Veloso's testimony also lacks merit. Ferdinand Cruz was the forensic chemist of NBI. He cannot be expected to testify on the conduct of the buy-bust operation as his only duty was to examine the substance confiscated by the NBI operatives from the suspects to determine its composition and whether it is indeed a prohibited drug. Cruz affirmed that the white crystalline substance contained in the plastic bags taken from the appellants contained methamphetamine hydrochloride and ephedrine hydrochloride. Rolan Fernandez, on the other hand, was a member of the back-up team during the buy-bust operation. He was not with S/I Veloso while the latter was transacting with the suspected drug dealers. He was riding a separate vehicle and stayed 100 meters away from the site of the deal to avoid any suspicion from the drug pushers. Due to the distance and because there was an obstruction in their line of vision, he was not able to see the exchange between S/I Veloso and the appellants. This was also confirmed by S/I Job Gayas who was presented by the defense as hostile witness. Be that as it may, both S/I Fernandez and S/I Gayas testified that the NBI team conducted a buy-bust operation around noontime of March 23, 2001; that they moved from Caloocan City to Tugatog, Malabon where the sale was consummated and where the appellants were apprehended; and that after the operation, S/I Veloso turned over to S/I Fernandez two plastic bags containing white crystalline substance taken from the appellants. Their testimonies do not contradict that of S/I Veloso but in fact complement it.

The other alleged errors imputed by the appellants on the prosecution, such as the failure of S/I Veloso to describe the pre-arranged signal, and the inability of S/I Fernandez to state the number of vehicles used in the operation or to describe the clothing worn by S/I Veloso at the time pertain to minor details which do not significantly affect the guilt of the appellants. Neither does the fact that the plastic bags containing the substance were not sealed when they were turned over to the forensic chemist. Contrary to appellants' submission, such fact does not necessarily imply that the substance was planted. It has been established that the NBI operatives inspected the contents

of the plastic bags before and after the appellants were apprehended. Hence, it is possible that they forgot to seal the plastic bags after checking their contents. Appellants also harp on the fact that De Guzman was carrying his PNP ID at the time of his apprehension. They claim that it is improbable that appellant De Guzman would bring his official ID if it were true that he intended to commit a crime. It suffices to say that such argument is highly speculative.

IN VIEW WHEREOF, the appeal is *DISMISSED*. The decision of the Regional Trial Court of Malabon Branch 72 in Criminal Case No. 24671-MN is *AFFIRMED*.[13]

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 the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

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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[13] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

FIRST DIVISION

[G.R. No. 154177. June 9, 2004]

TF VENTURES, INC., MANUEL L. MORATO, ANTONIO L. TAN, JR., TRUMAN E. BECKER and JOSE THOMAS D. BELDIA, *petitioners, vs.* **YOSHITSUGU MATSUURA, PENTACAPITAL MANAGEMENT CORPORATION and SUNDAY PINEDA,** *respondents*.

SYNOPSIS

Petitioners herein initiated a case with the Securities Investigation and Clearing Department (SICD) of the Securities and Exchange Commission (SEC) praying for the nullification of the acts done by respondent Matsuura and his allies as stockholders and directors of petitioner company. Meanwhile, Matsuura filed a request for investigation by the Prosecution and Enforcement Department (PED) of the SEC to look into the basis of increase in the capital stock of the respondent company. Petitioner sought the consolidation of the two cases mentioned, but the same was denied by the SEC. The issue of consolidation reached the Supreme Court and awaiting resolution. The SICD case was transferred to the RTC of Makati. In the meantime, the SEC resolved the PED case in favor of respondents, thus finding serious misrepresentation in the application for increase in capitalization. After the SEC denied their motion for reconsideration, the petitioners filed a petition for review in the Court of Appeals. The CA dismissed the petition for failure to comply with the rule on forum shopping. In this petition for review before the Supreme Court, petitioners alleged that the rule against forum shopping is not applicable in this case.

The Supreme Court ruled to dismiss this petition. Upon a perusal of the records, the Court found that the petitioners have simultaneously sought positive result in several different fora. The petitioners sought favorable decision in two other proceedings; one with RTC of Makati, while another one was pending before the Supreme Court. In this intra-corporate dispute, notwithstanding the absence of absolute identity of parties,

the contending parties represent the same block of stockholders on opposite sides. The issue of validity of the increase in capitalization would be threshed out in both cases and thus the decision therein would amount to *res judicata* in the other case.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; RULE AGAINST FORUM SHOPPING; PURPOSE.—** The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate, and contradictory decisions. Unscrupulous party-litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. This would make a complete mockery of the judicial system. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.

2. **ID.; ID.; ID.;VIOLATION THEREOF; WHEN PRESENT.—** The test for determining whether there has been a violation of the rule against forum shopping has been laid down in the 1986 case of *Buan v. Lopez*. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.

3. **ID.; ID.; ID.; *LITIS PENDENTIA*; ELEMENTS.—** For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.

4. **ID.; ID.; ID.; ID.; ID.; REQUIRES ONLY SUBSTANTIAL NOT ABSOLUTE IDENTITY OF PARTIES; RATIONALE.—** Well-settled is the rule that *lis pendens* requires only *substantial*,

and not absolute, identity of parties. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. We have also held that the fact that the position of the parties was reversed, the plaintiffs in the first case being the defendants in the second case or vice versa, does not negate the identity of parties for the purpose of *litis pendentia*.

5. ID.; ID.; JUDGMENTS; *RES JUDICATA*; ELEMENTS.— On the other hand, the following are the elements of *res judicata*: (a) The former judgment must be final; (b) The court which rendered judgment must have jurisdiction over the parties and the subject matter; (c) It must be a judgment on the merits; and (d) There must be between the first and second actions identity of parties, subject matter, and cause of action.

APPEARANCES OF COUNSEL

Del Prado Diaz & Associates Law Offices for petitioners.
De Borja Medialdea Bello Guevarra & Gerodias for S. Pineda and Pentacapital Management Corp.
Jonathan M. Polines for Y. Matsuura.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

For review is the decision of the Court of Appeals,[1] dated March 5, 2002[2] in CA-G.R. SP No. 68302, which dismissed the petition for review filed by TF Ventures, Inc., Manuel L. Morato, Antonio L. Tan, Jr., Truman E. Becker and Jose Thomas D. Beldia, as well as the resolution dated July 4, 2002, denying their motion for reconsideration.

Petitioners Morato, Tan, Becker, Beldia and respondent Yoshitsugu Matsuura are stockholders of TF Ventures, Inc., a private domestic

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[1] Per Justice Josefina Guevara-Salonga, with Justices Godardo A. Jacinto and Eloy R. Bello, concurring.

[2] *Rollo*, pp. 59-60.

corporation organized and existing under Philippine law. Pentacapital Management Corporation and Sunday Pineda, alleged successors-in-interest of legitimate stockholders of record, were given leave to intervene in these proceedings.[3]

On November 21, 1997, respondent Matsuura filed a request for investigation by the Prosecution and Enforcement Department (PED) of the SEC, initially docketed as CSI 97-11-31, and eventually docketed as PED Case No. 98-2231, to look into the basis for the increase in capital stock of TF Ventures, Inc. from ₱10 million to P100 million. Respondent Matsuura, in his capacity as stockholder and chairman of the board of TF Ventures, Inc., alleged that the corporation's capital increase was based on anomalous transactions and spurious documents.[4]

Prior to the investigation, on October 1, 1997, petitioners initiated a case with the Securities Investigation and Clearing Department (SICD) of the SEC, for "Declaration of Nullity of Stockholders/ Directors Meeting with Damages". This case was docketed as SICD-SEC Case No. 10-97-5778. Petitioners therein sought, *inter alia*, the nullification of the acts of Matsuura, Alexander Poblador, Romeo F. Gaza, Yuzuke Fukuzumi, Florence R. Valmonte, Virgilio R. Lazaga, Reza M. Arabpour and Ruben P. Jacinto, who misrepresented themselves as shareholders and/or directors of TF Ventures, Inc. Among the acts sought to be annulled were: (1) an annual stockholders' meeting conducted on September 22, 1997; (2) the election of the directors; (3) the organizational meeting of the board of directors; and (4) the election of officers.[5] In their "Answer with Counterclaim", Matsuura and Poblador denied petitioners' allegations, and for their part, sought (1) the declaration of nullity of a stockholders' meeting held on October 20, 1997, allegedly spearheaded by the individual petitioners; (2) the nullification of certain allegedly sham board resolutions; and (3) for failure of consideration, the nullification of the approval of the application

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[3] *Id.*, p. 202.

[4] CA Records, p. 60.

[5] *Rollo*, pp. 77-78.

for the corporation's increased capitalization from ₱10 million to P100 million.[6]

On March 30, 1998, petitioners filed a "Motion to Suspend Proceedings and/or Consolidation of Cases" in PED Case No. 98-2231 (CSI Case No. 97-11-31), alleging that the issue pertaining to the increase of TF Ventures Inc.'s capital stock had already been pleaded and raised in Matsuura's "Answer with Counterclaim" in SEC Case No. 10-97-5778.[7] This motion was denied for lack of merit on April 27, 1998.[8] Petitioners filed a petition for *certiorari* with the SEC *en banc* which, on September 11, 1998, dismissed the same and denied the consolidation of cases.[9] Not content, petitioners sought relief from the Court of Appeals, which denied their petition for review.[10] The matter was elevated to this Court, docketed as G.R. No. 141510 (*TF Ventures, Inc., Manuel L. Morato, Antonio L. Tan, Jr., Truman E. Becker and Jose Thomas D. Beldia versus the Court of Appeals, Hon. Simeon P. Baldillo and Yoshitsugu Matsuura*), and is now awaiting resolution.[11]

SICD-SEC Case No. 10-97-5778 and PED Case No. 98-2231 thus proceeded independently. SICD-SEC Case No. 10-97-5778 was transferred to the Regional Trial Court of Makati, Branch 138, docketed as Civil Case No. 01-207. Meanwhile, the investigation of Matsuura's claim proceeded in PED Case No. 98-2231.

On May 22, 2001, the SEC rendered a resolution in PED Case No. 98-2231, (1) finding that there was serious misrepresentation committed in the application for increase in capitalization of TF Ventures, Inc.; (2) setting aside the increase in authorized capital stock from ₱10,000,000.00 to

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[6] *Id.*, pp. 87-89.

[7] CA Records, p. 141.

[8] *Id.*, p. 149.

[9] *Rollo*, p. 160.

[10] CA Records, p. 210.

[11] *Id.*, pp. 209-233.

₱100,000,000.00; and (3) ordering the immediate revocation and cancellation of the certificate of increase in capitalization.[12] On November 8, 2001, the SEC denied petitioners' motion for reconsideration.[13]

After the two adverse resolutions issued by the SEC in PED Case No. 98-2231, petitioners filed with the Court of Appeals a petition for review, wherein they argued that they were denied due process in the proceedings before the SEC; that they were deprived of their right to participate therein; and that there was undue haste in the promulgation of the resolutions dated May 22 and November 8, 2001. Petitioners thus prayed that the questioned resolutions be nullified or that the case be remanded to the SEC for further proceedings.[14] The Court of Appeals dismissed the petition outright for failure to comply with the rule on forum shopping.

The only issue raised for determination in the instant petition is whether or not the Court of Appeals correctly dismissed the petition for review.

We rule in the affirmative.

Petitioners' main contention is that there was no legal basis for the dismissal of the suit inasmuch as the rule against forum shopping is not applicable to their case.[15] We disagree.

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate, and contradictory decisions. Unscrupulous party-litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. This would make a complete mockery of the judicial system. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.

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[12] *Rollo*, p. 211.

[13] *Id*., p. 215.

[14] CA Records, p. 33.

[15] *Rollo*, p. 18.

Upon a perusal of the records of this case, we find that petitioners have simultaneously sought a positive result in several different fora. There are not merely one, but **two**, other proceedings in which petitioners have sought a favorable decision, namely: Civil Case No. 01-207, pending before the Regional Trial Court of Makati, Branch 138; and G.R. No. 141510, pending before this Court.

In G.R. No. 141510, petitioners have repeatedly accused **respondents** of violating the rule against forum shopping, and have in no uncertain terms proclaimed that the primary issue in PED Case No. 98-2231, *i.e.*, the basis for the increase in the capital stock of TF Ventures, Inc., is more properly litigated in the earlier proceedings which they initiated before the SEC-SICD. Petitioners themselves characterize the related issues to be threshed out as virtually indistinguishable. In their "Motion to Suspend Proceedings and/or Consolidation of Cases" dated March 30, 1998, filed with the Securities and Exchange Commission in PED Case No. 98-2231, the individual petitioners Tan, Morato, Beldia and Becker categorically state:

> [o]n the other hand, the instant case involved the same issues and presentation of evidence, but for reasons only known to Mr. Matsuura and his counsel [who] deliberately suppress[ed] the fact to this Office the pendency of SEC Case No. 10-97-5778, aggravated by the fact that NO FORMAL COMPLAINT AND/OR NOTICE WERE SERVED AT THE INITIAL STAGES of the proceedings to Messrs. Tan, Morato, Beldia and Truman, or even to stockholder Alexander Poblador, who are the stockholders on record that will be adversely affected by the very nature of the case;[16]
>
> [b]esides, the SEC Case No. 10-97-5778 is a PREJUDICIAL QUESTION to the matter now undertaken by this Office (*PED Case No. 98-2231 and CSI Case No. 97-11-31*) [, and] considering that Mr. Matsuura's accusatorial stance carries with it the penal sanction, if warranted, it is now time to observe the proper procedural rules without sacrificing the substantial rights of the parties;[17]

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[16] CA Records, p. 143.

[17] *Id*.

Petitioners are even more assertive in their petition for review on *certiorari* in G.R. No. 141510, in which they repeatedly characterize PED Case No. 98-2231 as being identical with SEC-SICD Case No. 10-97-5778.[18]

The test for determining whether there has been a violation of the rule against forum shopping has been laid down in the 1986 case of *Buan v. Lopez*.[19] Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary:

(a) identity of parties or at least such as represent the same interest in both actions;

(b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and

(c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.

On the other hand, the following are the elements of *res judicata*:

(a) The former judgment must be final;

(b) The court which rendered judgment must have jurisdiction over the parties and the subject matter;

(c) It must be a judgment on the merits; and

(d) There must be between the first and second actions identity of parties, subject matter, and cause of action.[20]

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[18] *Id*., pp. 209-233.

[19] G.R. No. L-75349, 13 October 1986, 145 SCRA 34.

[20] *Saura v. Saura, Jr*., G.R. No. 136159, 1 September 1999, 313 SCRA 465.

Well-settled is the rule that *lis pendens* requires only *substantial,* and not absolute, identity of parties.[21] There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. We have also held that the fact that the position of the parties was reversed, the plaintiffs in the first case being the defendants in the second case or vice versa, does not negate the identity of parties for the purpose of *litis pendentia*. [22]

In this particular intra-corporate dispute, notwithstanding absence of absolute identity of parties, the contending parties represent the interests of the same block of stockholders on opposing sides. Regardless of which party would be ultimately successful in this case or in Civil Case No. 01-207, the issue of the validity of TF Ventures, Inc.'s increase in capital stock would be threshed out in both cases, and the decision therein would amount to *res judicata* in the other case, on that particular issue.

Mindful of this, petitioners have, first, sought the consolidation of this case with what is now Civil Case No. 01-207. Petitioners have also sought relief from the unfavorable resolution of the SEC in PED Case No. 98-2231. Petitioners have twice sought relief from this Court in PED Case No. 98-2231. To be sure, petitioners cannot simultaneously seek relief from this forum, while seeking the consolidation of this case with the proceedings in the court *a quo*. Their act of doing so is a blatant violation of the rules against forum shopping, and cannot be countenanced.

WHEREFORE, premises considered, the instant petition for review on *certiorari* is *DENIED* and the decision of the Court of Appeals dated March 5, 2002 in CA-G.R. SP No. 68302 is *AFFIRMED*.

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[21] *Santos v. Court of Appeals*, G.R. No. 101818, 21 September 1993, 226 SCRA 630.

[22] *Yu v. Court of Appeals*, G.R. No. 106818, 27 May 1994, 232 SCRA 594.

Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Carpio and *Azcuna, JJ.,* concur.

EN BANC

[G.R. No. 157036. June 9, 2004]

FRANCISCO I. CHAVEZ, *petitioner, vs.* **HON. ALBERTO G. ROMULO, IN HIS CAPACITY AS EXECUTIVE SECRETARY; DIRECTOR GENERAL HERMOGENES E. EBDANE, JR., IN HIS CAPACITY AS THE CHIEF OF THE PNP,** ***ET. AL.,*** *respondents*.

SYNOPSIS

Based on a directive by President Gloria Macapagal-Arroyo, the PNP Chief, respondent Hermogenes Ebdane Jr., issued the assailed guidelines implementing the banning of the carrying of firearms outside of the residence. Petitioner, as a licensed gun owner to whom PTCFOR (Permit to Carry Firearms Outside Residence) was issued, requested the Department of Interior and Local Government to reconsider the implementation of the assailed guidelines. His request was, however, denied. Thus, he filed this petition, which may be synthesized into five major issues: 1. whether respondent Ebdane was authorized to issue the assailed guidelines; 2. whether the citizen's right to bear arms is a constitutional right; 3. whether the revocation of petitioner's PTCFOR pursuant to the assailed guidelines was a violation of his right to property; 4. whether the issuance of the assailed guidelines is a valid exercise of police power; and 5. whether the assailed guidelines constituted an *ex post facto* law.

The Supreme Court dismissed the petition. According to the Court, the rule, which forbids the delegation of legislative power, is not absolute and inflexible. It admits of exceptions. An exception sanctioned by immemorial practice permits the legislative body to delegate its licensing power. Such licensing power includes the power to promulgate rules and regulations, which respondent Ebdane did in issuing the assailed guidelines. As to the second issue, the Court ruled that the right to bear arms is merely a statutory privilege, not a constitutional right. It is a mere statutory creation. As to the third issue, the Court reiterated its previous ruling that a license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority granting it and the person to whom it is granted, neither is it a property or a property right, nor does it create a vested right. The Court was also convinced that with the promotion of public peace as its objective and the revocation of all PTCFORs as the means, the issuance of the assailed guidelines constituted a reasonable exercise of police power. Finally, the Court ruled that the assailed guidelines could not be considered as an *ex post facto* law because it is prospective in its application.

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; POWERS OF CONGRESS; POWER TO MAKE LAWS MAY NOT BE DELEGATED AS A RULE; EXCEPTIONS.— Pertinently, the power to make laws – the legislative power – is vested in Congress. Congress may not escape its duties and responsibilities by delegating that power to any other body or authority. Any attempt to abdicate the power is unconstitutional and void, on the principle that "*delegata potestas non potest delegari*" – "delegated power may not be delegated." *The rule which forbids the delegation of legislative power, however, is not absolute and inflexible.* It admits of exceptions. An exception sanctioned by immemorial practice permits the legislative body to delegate its licensing power to certain persons, municipal corporations, towns, boards, councils, commissions, commissioners, auditors, bureaus and directors. Such licensing power includes the power to promulgate necessary rules and regulations.

2. ID.; EXECUTIVE DEPARTMENT; POWERS OF THE PRESIDENT; POWER OF CONTROL; INCLUDED THE POWER TO DIRECT A SUBORDINATE TO PERFORM AN ASSIGNED DUTY; PRESENT IN CASE AT BAR.— Section 17, Article VII of the Constitution specifies his power as Chief Executive, thus: *"The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed."* As Chief Executive, President Arroyo holds the steering wheel that controls the course of her government. She lays down policies in the execution of her plans and programs. Whatever policy she chooses, she has her subordinates to implement them. In short, she has the power of control. *Whenever a specific function is entrusted by law or regulation to her subordinate, she may act directly or merely direct the performance of a duty.* Thus, when President Arroyo directed respondent Ebdane to suspend the issuance of PTCFOR, she was just directing a subordinate to perform an assigned duty. Such act is well within the prerogative of her office.

3. ID.; RIGHT TO BEAR ARMS; A STATUTORY CREATION WHICH CANNOT BE CONSIDERED AN INALIENABLE RIGHT OR ABSOLUTE RIGHT.— *Evidently, possession of firearms by the citizens in the Philippines is the exception, not the rule.* The right to bear arms is a mere statutory privilege, not a constitutional right. It is a mere statutory creation. *What then are the laws that grant such right to the Filipinos?* The first real firearm law is Act No. 1780 enacted by the Philippine Commission on October 12, 1907. It was passed to regulate the importation, acquisition, possession, use and transfer of firearms. x x x It was restated in Section 887 of Act No. 2711 that integrated the firearm laws. Thereafter, President Ferdinand E. Marcos issued P.D. No. 1866. It codified the laws on illegal possession, manufacture, dealing in, acquisition of firearms, ammunitions or explosives and imposed stiffer penalties for their violation. R.A. No. 8294 amended some of the provisions of P.D. No. 1866 by reducing the imposable penalties. Being a mere statutory creation, the right to bear arms cannot be considered an inalienable or absolute right.

4. ID.; ID.; LICENSE; NATURE THEREOF; EXEMPLIFIED IN CASE AT BAR.— The bulk of jurisprudence is that a license authorizing a person to enjoy a certain privilege is neither a property nor property right. In *Tan vs. The Director of Forestry*,

we ruled that "a license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority granting it and the person to whom it is granted; *neither is it property or a property right, nor does it create a vested right.*" In a more emphatic pronouncement, we held in *Oposa vs. Factoran, Jr.* that: "*Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution.*" In our jurisdiction, the PNP Chief is granted broad discretion in the issuance of PTCFOR. This is evident from the tenor of the Implementing Rules and Regulations of P.D. No. 1866 which state that "the Chief of Constabulary may, *in meritorious cases as determined by him and under such conditions as he may impose,* authorize lawful holders of firearms to carry them outside of residence." Following the American doctrine, it is indeed logical to say that a PTCFOR does not constitute a property right protected under our Constitution. Consequently, a PTCFOR, just like ordinary licenses in other regulated fields, may be revoked any time. It does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed. A licensee takes his license subject to such conditions as the Legislature sees fit to impose, and one of the statutory conditions of this license is that *it might be revoked by the selectmen at their pleasure.* Such a license is not a contract, and *a revocation of it does not deprive the defendant of any property, immunity, or privilege within the meaning of these words in the Declaration of Rights.* The US Supreme Court, in *Doyle vs. Continental Ins. Co,* held: *"The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by the State is always revocable."*

5. ID.; POLICE POWER; TEST TO DETERMINE VALIDITY THEREOF.— In a number of cases, we laid down the test to determine the validity of a police measure, thus: *(1)* The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and *(2)* The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. Deeper reflection will reveal that the test

merely reiterates the essence of the constitutional guarantees of substantive due process, equal protection, and non-impairment of property rights. Notably, laws regulating the acquisition or possession of guns have frequently been upheld as reasonable exercise of the police power. In *State vs. Reams*, it was held that the legislature may regulate the right to bear arms in a manner conducive to the public peace. With the promotion of public peace as its objective and the revocation of all PTCFOR as the means, we are convinced that the issuance of the assailed Guidelines constitutes a reasonable exercise of police power. The ruling in *United States vs. Villareal*, is relevant, thus: "We think there can be no question as to the reasonableness of a statutory regulation prohibiting the carrying of concealed weapons as a police measure well calculated to restrict the too frequent resort to such weapons in moments of anger and excitement. We do not doubt that the strict enforcement of such a regulation would tend to increase the security of life and limb, and to suppress crime and lawlessness, in any community wherein the practice of carrying concealed weapons prevails, and this without being unduly oppressive upon the individual owners of these weapons. It follows that its enactment by the legislature is a proper and legitimate exercise of the police power of the state."

6. ID.; STATUTES; *EX POST FACTO* LAW; DEFINED.— In *Mekin vs. Wolfe*, an *ex post facto* law has been defined as one – *(a)* which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or *(b)* which aggravates a crime or makes it greater than it was when committed; or *(c)* which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or *(d)* which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant.

APPEARANCES OF COUNSEL

Francisco I. Chavez for and on his behalf.
The Solicitor General for respondents.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

The right of individuals to bear arms is not absolute, but is subject to regulation. The maintenance of peace and order[1] and the protection of the people against violence are constitutional duties of the State, and the right to bear arms is to be construed in connection and in harmony with these constitutional duties.

Before us is a petition for prohibition and injunction seeking to enjoin the implementation of the "*Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence*"[2] (Guidelines) issued on January 31, 2003, by respondent Hermogenes E. Ebdane, Jr., Chief of the Philippine National Police (PNP).

The facts are undisputed:

In January 2003, President Gloria Macapagal-Arroyo delivered a speech before the members of the PNP stressing the need for a nationwide gun ban in all public places to avert the rising crime incidents. She directed the then PNP Chief, respondent Ebdane, to suspend the issuance of Permits to Carry Firearms Outside of Residence (PTCFOR), thus:

"THERE IS ALSO NEED TO FOCUS ON THE HIGH PROFILE CRIMES THAT TEND TO DISTURB THE PSYCHOLOGICAL PERIMETERS OF THE COMMUNITY — THE LATEST BEING THE KILLING OF FORMER NPA LEADER ROLLY KINTANAR. I UNDERSTAND WE ALREADY HAVE THE IDENTITY OF THE CULPRIT. LET US BRING THEM TO THE BAR OF JUSTICE.

THE NPA WILL FIND IT MORE DIFFICULT TO CARRY OUT THEIR PLOTS IF OUR LAW ENFORCEMENT AGENCIES CAN RID THEMSELVES OF RASCALS IN UNIFORM, AND ALSO IF WE ENFORCE A GUN BAN IN PUBLIC PLACES.

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[1] Section 5, Article II of the 1987 Philippine Constitution.

[2] Annex "A" of the Petition, *Rollo* at 60-62.

THUS, I AM DIRECTING THE PNP CHIEF TO SUSPEND INDEFINITELY THE ISSUANCE OF PERMIT TO CARRY FIREARMS IN PUBLIC PLACES. THE ISSUANCE OF PERMITS WILL NOW BE LIMITED ONLY TO OWNERSHIP AND POSSESSION OF GUNS AND NOT TO CARRYING THEM IN PUBLIC PLACES. FROM NOW ON, ONLY THE UNIFORMED MEN IN THE MILITARY AND AUTHORIZED LAW ENFORCEMENT OFFICERS CAN CARRY FIREARMS IN PUBLIC PLACES, AND ONLY PURSUANT TO EXISTING LAW. CIVILIAN OWNERS MAY NO LONGER BRING THEIR FIREARMS OUTSIDE THEIR RESIDENCES. THOSE WHO WANT TO USE THEIR GUNS FOR TARGET PRACTICE WILL BE GIVEN SPECIAL AND TEMPORARY PERMITS FROM TIME TO TIME ONLY FOR THAT PURPOSE. AND THEY MAY NOT LOAD THEIR GUNS WITH BULLETS UNTIL THEY ARE IN THE PREMISES OF THE FIRING RANGE.

WE CANNOT DISREGARD THE PARAMOUNT NEED FOR LAW AND ORDER. JUST AS WE CANNOT BE HEEDLESS OF OUR PEOPLE'S ASPIRATIONS FOR PEACE."

Acting on President Arroyo's directive, respondent Ebdane issued the assailed Guidelines quoted as follows:

"TO : All Concerned

FROM : Chief, PNP

SUBJECT : *Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence.*

DATE : January 31, 2003

1. *Reference*: PD 1866 dated June 29, 1983 and its Implementing Rules and Regulations.

2. *General*:

The possession and carrying of firearms outside of residence is a privilege granted by the State to its citizens for their individual protection against all threats of lawlessness and security.

As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or MR) are prohibited from carrying their firearms outside of residence.

However, the Chief, Philippine National Police may, in meritorious cases as determined by him and under conditions as he may impose, authorize such person or persons to carry firearms outside of residence.

3. Purposes:

This Memorandum prescribes the guidelines in the implementation of the ban on the carrying of firearms outside of residence *as provided for in the Implementing Rules and Regulations, Presidential Decree No. 1866, dated June 29, 1983 and as directed by PGMA.* It also prescribes the conditions, requirements and procedures under which exemption from the ban may be granted.

4. Specific Instructions on the Ban on the Carrying of Firearms:

a. All PTCFOR are hereby revoked. Authorized holders of licensed firearms covered with valid PTCFOR may re-apply for a new PTCFOR in accordance with the conditions hereinafter prescribed.

b. All holders of licensed or government firearms are hereby prohibited from carrying their firearms outside their residence except those covered with mission/letter orders and duty detail orders issued by competent authority pursuant to Section 5, IRR, PD 1866, provided, that the said exception shall pertain only to organic and regular employees.

5. The following persons may be authorized to carry firearms outside of residence.

a. All persons whose application for a new PTCFOR has been approved, provided, that the persons and security of those so authorized are under actual threat, or by the nature of their position, occupation and profession are under imminent danger.

b. All organic and regular employees with Mission/Letter Orders granted by their respective agencies so authorized pursuant to Section 5, IRR, PD 1866, provided, that such Mission/Letter Orders is valid only for the duration of the official mission which in no case shall be more than ten (10) days.

c. All guards covered with Duty Detail Orders granted by their respective security agencies so authorized pursuant to Section 4, IRR, PD 1866, provided, that such DDO shall in no case exceed 24-hour duration.

d. Members of duly recognized Gun Clubs issued Permit to Transport (PTT) by the PNP for purposes of practice and competition, provided, that such firearms while in transit must not be loaded with ammunition and secured in an appropriate box or case detached from the person.

e. Authorized members of the Diplomatic Corps.

6. *Requirements for issuance of new PTCFOR:*

a. Written request by the applicant addressed to Chief, PNP stating his qualification to possess firearm and the reasons why he needs to carry firearm outside of residence.

b. Xerox copy of current firearm license duly authenticated by Records Branch, FED;

c. Proof of actual threat, the details of which should be issued by the Chief of Police/Provincial or City Directors and duly validated by C, RIID;

d. Copy of Drug Test Clearance, duly authenticated by the Drug Testing Center, if photocopied;

e. Copy of DI/ RIID clearance, duly authenticated by ODI/RIID, if photocopied;

f. Copy of Neuro-Psychiatric Clearance duly authenticated by NP Testing Center, if photocopied;

g. Copy of Certificate of Attendance to a Gun Safety Seminar, duly validated by Chief, Operations Branch, FED;

h. NBI Clearance;

i. Two (2) ID pictures (2" x 2") taken not earlier than one (1) year from date of filing of application; and

j. Proof of Payment

7. *Procedures:*

a. Applications may be filed directly to the Office of the PTCFOR Secretariat in Camp Crame. In the provinces, the applications may also be submitted to the Police Regional Offices (PROs) and Provincial/City Police Offices (P/CPOs) for initial processing before they are forwarded to the office of the PTCFOR Secretariat. The processors, after ascertaining that

the documentary requirements are in order, shall issue the Order of Payment (OP) indicating the amount of fees payable by the applicant, who in turn shall pay the fees to the Land Bank.

b. Applications, which are duly processed and prepared in accordance with existing rules and regulations, shall be forwarded to the OCPNP for approval.

c. Upon approval of the application, OCPNP will issue PTCFOR valid for one (1) year from date of issue.

d. Applications for renewal of PTCFOR shall be processed in accordance with the provisions of par. 6 above.

e. Application for possession and carrying of firearms by diplomats in the Philippines shall be processed in accordance with NHQ PNP Memo dated September 25, 2000, with Subj: Possession and Carrying of Firearms by Diplomats in the Philippines.

8. Restrictions in the Carrying of Firearms:

a. The firearm must not be displayed or exposed to public view, except those authorized in uniform and in the performance of their official duties.

b. The firearm shall not be brought inside public drinking and amusement places, and all other commercial or public establishments."

Petitioner Francisco I. Chavez, a licensed gun owner to whom a PTCFOR has been issued, requested the Department of Interior and Local Government (DILG) to reconsider the implementation of the assailed Guidelines. However, his request was denied. Thus, he filed the present petition impleading public respondents Ebdane, as Chief of PNP; Alberto G. Romulo, as Executive Secretary; and Gerry L. Barias, as Chief of the PNP-Firearms and Explosives Division. He anchored his petition on the following grounds:

"I

THE PRESIDENT HAS NO POWER OR AUTHORITY — MUCH LESS BY A MERE SPEECH — TO ALTER, MODIFY OR AMEND THE LAW ON FIREARMS BY IMPOSING A GUN BAN AND CANCELING

EXISTING PERMITS FOR GUNS TO BE CARRIED OUTSIDE RESIDENCES.

II

OFFICIALLY, THERE IS NO PRESIDENTIAL ISSUANCE ON THE GUN BAN; THE PRESIDENTIAL SPEECH NEVER INVOKED POLICE POWER TO JUSTIFY THE GUN BAN; THE PRESIDENT'S VERBAL DECLARATION ON GUN BAN VIOLATED THE PEOPLE'S RIGHT TO PROTECT LIFE AND THEIR PROPERTY RIGHT TO CARRY FIREARMS.

III

THE *PNP CHIEF HAS NO POWER OR AUTHORITY* TO ISSUE THE QUESTIONED GUIDELINES BECAUSE:

1) THERE IS NO LAW, STATUTE OR EXECUTIVE ORDER WHICH GRANTS THE PNP CHIEF THE AUTHORITY TO PROMULGATE THE PNP GUIDELINES.

2) THE IMPLEMENTING RULES AND REGULATIONS OF PD 1866 CANNOT BE THE SUBJECT OF ANOTHER SET OF IMPLEMENTING GUIDELINES.

3) THE PRESIDENT'S SPEECH CANNOT BE A BASIS FOR THE PROMULGATION OF IMPLEMENTING GUIDELINES ON THE GUN BAN.

IV

ASSUMING *ARGUENDO*, THAT THE PNP GUIDELINES IMPLEMENT PD 1866, AND THE AMENDMENTS THERETO, THE PNP CHIEF STILL HAS NO POWER OR AUTHORITY TO ISSUE THE SAME BECAUSE —

1) PER SEC 6, RA 8294, WHICH AMENDS PD 1866, THE IRR SHALL BE PROMULGATED *JOINTLY* BY THE DOJ AND THE DILG.

2) SEC. 8, PD 1866 STATES THAT THE IRR SHALL BE PROMULGATED BY THE CHIEF OF THE PHILIPPINE CONSTABULARY.

V

THE PNP GUIDELINES *VIOLATE THE DUE PROCESS CLAUSE* OF THE CONSTITUTION BECAUSE:

1) THE RIGHT TO OWN AND CARRY A FIREARM IS NECESSARILY INTERTWINED WITH THE PEOPLE'S INHERENT RIGHT TO LIFE AND TO PROTECT LIFE. THUS, THE PNP GUIDELINES DEPRIVE PETITIONER OF THIS RIGHT WITHOUT DUE PROCESS OF LAW FOR:

A) THE PNP GUIDELINES DEPRIVE PETITIONER OF HIS MOST POTENT, IF NOT HIS ONLY, MEANS TO DEFEND HIMSELF.

B) THE QUESTIONED GUIDELINES STRIPPED PETITIONER OF HIS MEANS OF PROTECTION AGAINST CRIME DESPITE THE FACT THAT THE STATE COULD NOT POSSIBLY PROTECT ITS CITIZENS DUE TO THE INADEQUACY AND INEFFICIENCY OF THE POLICE FORCE.

2) THE OWNERSHIP AND CARRYING OF FIREARMS ARE CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS WHICH CANNOT BE TAKEN AWAY WITHOUT DUE PROCESS OF LAW AND WITHOUT JUST CAUSE.

VI

ASSUMING *ARGUENDO*, THAT THE PNP GUIDELINES WERE ISSUED IN THE EXERCISE OF *POLICE POWER*, THE SAME IS AN *INVALID EXERCISE THEREOF* SINCE THE MEANS USED THEREFOR ARE UNREASONABLE AND UNNECESSARY FOR THE ACCOMPLISHMENT OF ITS PURPOSE — TO DETER AND PREVENT CRIME — THEREBY BECOMING UNDULY OPPRESSIVE TO LAW-ABIDING GUN-OWNERS.

VII

THE PNP GUIDELINES ARE UNJUST, OPPRESSIVE AND *CONFISCATORY* SINCE IT REVOKED ALL EXISTING PERMITS TO CARRY WITHOUT, HOWEVER, REFUNDING THE PAYMENT THE PNP RECEIVED FROM THOSE WHO ALREADY PAID THEREFOR.

VIII

THE PNP GUIDELINES VIOLATE THE *EQUAL PROTECTION CLAUSE* OF THE CONSTITUTION BECAUSE THEY ARE DIRECTED AT AND OPPRESSIVE ONLY TO LAW-ABIDING GUN OWNERS WHILE LEAVING OTHER GUN-OWNERS — THE LAWBREAKERS (KIDNAPPERS, ROBBERS, HOLD-UPPERS, MNLF, MILF, ABU SAYYAF COLLECTIVELY, AND NPA) — UNTOUCHED.

IX

THE PNP GUIDELINES ARE *UNJUST, OPPRESSIVE AND UNFAIR* BECAUSE THEY WERE IMPLEMENTED LONG BEFORE THEY WERE PUBLISHED.

X

THE PNP GUIDELINES ARE EFFECTIVELY AN *EX POST FACTO LAW* SINCE THEY APPLY RETROACTIVELY AND PUNISH ALL THOSE WHO WERE ALREADY GRANTED PERMITS TO CARRY OUTSIDE OF RESIDENCE LONG BEFORE THEIR PROMULGATION."

Petitioner's submissions may be synthesized into five (5) major issues:

First, whether respondent Ebdane is authorized to issue the assailed Guidelines;

Second, whether the citizens' right to bear arms is a constitutional right?;

Third, whether the revocation of petitioner's PTCFOR pursuant to the assailed Guidelines is a violation of his right to property?;

Fourth, whether the issuance of the assailed Guidelines is a valid exercise of police power?; and

Fifth, whether the assailed Guidelines constitute an *ex post facto* law?

The Solicitor General seeks the dismissal of the petition pursuant to the doctrine of hierarchy of courts. Nonetheless, in refutation of petitioner's arguments, he contends that: *(1)* the PNP Chief is authorized to issue the assailed Guidelines; *(2)* petitioner does not have a constitutional right to own and carry firearms; *(3)* the assailed Guidelines do not violate the due process clause of the Constitution; and *(4)* the assailed Guidelines do not constitute an *ex post facto* law.

Initially, we must resolve the procedural barrier.

On the alleged breach of the doctrine of hierarchy of courts, suffice it to say that the doctrine is not an iron-clad dictum. In

several instances where this Court was confronted with cases of national interest and of serious implications, it never hesitated to set aside the rule and proceed with the judicial determination of the cases.[3] The case at bar is of similar import as it involves the citizens' right to bear arms.

I

Authority of the PNP Chief

Relying on the principle of separation of powers, petitioner argues that only Congress can withhold his right to bear arms. In revoking all existing PTCFOR, President Arroyo and respondent Ebdane transgressed the settled principle and arrogated upon themselves a power they do not possess — the legislative power.

We are not persuaded.

It is true that under our constitutional system, the powers of government are distributed among three coordinate and substantially independent departments: the legislative, the executive and the judiciary. Each has exclusive cognizance of the matters within its jurisdiction and is supreme within its own sphere.[4]

Pertinently, the power to make laws — the legislative power — is vested in Congress.[5] Congress may not escape its duties and responsibilities by delegating that power to any other body or authority. Any attempt to abdicate the power is unconstitutional and void, on the principle that "*delegata potestas non potest delegari*" — "delegated power may not be delegated."[6]

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[3] See *Buklod ng Kawaning EIIB vs. Zamora*, G.R. Nos. 142801–802, July 10, 2001, 360 SCRA 718; *Fortich vs. Corona*, G.R. No. 131457, April 24, 1998, 289 SCRA 624; *Dario vs. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84.

[4] *People vs. Vera*, 65 Phil. 56 (1937).

[5] Section 1, Article VI of the 1987 Constitution.

[6] Freund, Sutherland, Howe, Brown, *Constitutional Law Cases and Other Problems*, Fourth Edition, 1977, at 653.

The rule which forbids the delegation of legislative power, however, is not absolute and inflexible. It admits of exceptions. An exception sanctioned by immemorial practice permits the legislative body to delegate its licensing power to certain persons, municipal corporations, towns, boards, councils, commissions, commissioners, auditors, bureaus and directors.[7] Such licensing power includes the power to promulgate necessary rules and regulations.[8]

The evolution of our laws on firearms shows that since the early days of our Republic, the legislature's tendency was always towards the delegation of power. Act No. 1780,[9] delegated upon the Governor-General (now the President) the authority *(1)* to approve or disapprove applications of any person for a license to deal in firearms or to possess the same for personal protection, hunting and other lawful purposes; and *(2)* to revoke such license any time.[10]

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[7] 51 Am. Jur. 2d § 51

[8] 51 Am Jur 2d § 52.

[9] "AN ACT TO REGULATE THE IMPORTATION, ACQUISITION, POSSESSION, USE, AND TRANSFER OF FIREARMS, AND TO PROHIBIT THE POSSESSION OF SAME EXCEPT IN COMPLIANCE WITH THE PROVISIONS OF THIS ACT."

[10] *SECTION 11.* An application for a personal license to possess firearms and ammunition, as herein provided for, made by a resident of the city of Manila, shall be directed to the chief of police of said city, and it shall be the duty of the chief of the police to forward the application to the Governor-General with his recommendations. Any such application made by a resident of a province shall be directed to the governor of the province who shall make his recommendations thereon and forward the application to the senior inspector of the Constabulary of the province, who in turn shall make his recommendations thereon and forward the application, through official channels, to the Governor-General. *The Governor-General may approve or disapprove any such application, and, in the event of the approval, the papers shall be transmitted to the Director of Constabulary with instructions to issue the license as hereinbefore provided.* The Director of Constabulary, upon receiving and approving the bond, or receiving the certificate of deposit duly endorsed to the order of the Insular Treasurer, shall issue the license for the time fixed for such license as hereinafter provided, and the Director of Constabulary shall transmit the license direct to the applicant, and shall notify the chief of police of the city of Manila if the applicant resides in Manila, otherwise the senior inspector of Constabulary of the province in which the applicant resides. The Director of Constabulary shall file the

Further, it authorized him to issue regulations which he may deem necessary for the proper enforcement of the Act.[11] With the enactment of Act No. 2711, the "Revised Administrative Code of 1917," the laws on firearms were integrated.[12] The Act retained the authority of the Governor General provided in Act No. 1780. Subsequently, the growing complexity in the Office of the Governor-General resulted in the delegation of his authority to the Chief of the Constabulary. On January 21, 1919, Acting Governor-General Charles E. Yeater issued

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certificate of deposit in his office. It shall be the duty of all officers through whom applications for licenses to possess firearms are transmitted to expedite the same.

[11] *SECTION 30.* The Governor-General is hereby authorized to issue executive orders prescribing the forms and regulations which he may deem necessary for the proper enforcement of the provisions of this Act.

[12] *SEC. 882. Issuance of special hunting permits.* — The Department Head may authorize the Chief of Constabulary to issue special hunting permits to persons temporarily visiting the Philippine Islands, without requiring a bond or deposit as a guarantee of security for their arms and ammunition. Such special hunting permit shall be valid only during the temporary sojourn of the holder in the Islands, shall be nontransferable, and shall be revocable at the pleasure of the Department Head.

SEC. 887. License required for individual keeping arms for personal use. — Security to be given. — Any person desiring to possess one or more firearms for personal protection or for use in hunting or other lawful purposes only, and ammunition thereof, shall make application for a license to possess such firearm or firearms or ammunition as hereinafter provided. Upon making such application, and before receiving the license, the applicant shall, for the purpose of security, make a cash deposit in the postal savings bank in the sum of one hundred pesos for each firearm for which the license is to be issued, and shall indorse the certificate of deposit therefor to the Insular Treasurer; or in lieu thereof he may give a bond in such form as the Governor-General may prescribe, payable to the Government of the Philippine Islands, in the sum of two hundred pesos for each such firearms.

SEC. 888. Mode of making application and acting upon the same. — An application for a personal license to possess firearms and ammunition, as herein provided, made by a resident of the City of Manila, shall be directed to the Mayor of said city, whose duty it shall be to forward the application to the Governor-General, with his recommendation. Applications made by residents of a province shall be directed to the governor of the same, who shall make his recommendation thereon and forward them to the *Governor-General, who may approve or disapprove any such application.*

Executive Order No. 8[13] authorizing and directing the Chief of Constabulary to act on his behalf *in approving and disapproving applications for personal, special and hunting licenses*. This was followed by Executive Order No. 61[14] designating the Philippine Constabulary (PC) as the government custodian of all firearms, ammunitions and explosives. Executive Order No. 215,[15] issued by President Diosdado Macapagal on

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SEC. 889. *Duration of personal license*. — A personal firearms license shall continue in force until the death or legal disability of the licensee, unless, prior thereto, *the license shall be surrendered by him or revoked by authority of the Governor-General.*

SEC. 899. *Revocation of firearms license by Governor-General. — Any firearms license may be revoked at any time by order of the Governor-General.*

SEC. 905. *Forms and regulations to be prescribed by Governor-General. — The Governor-General shall prescribe such forms and promulgate such regulations as he shall deem necessary for the proper enforcement of this law.*

[13] "(Delegating the CPC to Approve/Disapprove Applications)

15. In carrying out the provisions of Sections eight hundred and eighty-one, eight hundred and eighty-two, eight hundred and eighty-eight, as amended by Section two of Act two thousand seven hundred and seventy-four, eight hundred and ninety-one and eight hundred and ninety-two of the Administrative Code, empowering the Governor-General to approve and disapprove applications for personal, special, and hunting licenses to possess firearms and ammunition, the Chief of Constabulary is authorized and directed to act for the Governor-General."

[14] Issued on December 5, 1924 by Governor-General Leonard Wood.

[15] "Pursuant to the provisions of Section 905, Administrative Code, as amended, empowering the President of the Philippines to prescribe regulations for the enforcement of the provisions of the law relating to the possession, use of firearms, *etc*., the following regulations are hereby promulgated.

SECTION 1. In carrying out the provision of Sections 881, 882 and 888 of the Revised Administrative Code, empowering the President of the Philippines to approve or disapprove applications for personal, special and hunting license to possess firearms and ammunition, *the Chief of Constabulary or his representative is authorized and directed to act for the President.*

SECTION 2. In carrying out the provisions of Section 899 of the Revised Administrative Code, empowering the President of the Philippines to revoke any firearm license anytime, *the Chief of Constabulary is authorized and directed to act for the President."*

December 3, 1965, granted the Chief of the Constabulary, not only the authority to approve or disapprove applications for personal, special and hunting license, but also *the authority to revoke the same.* With the foregoing developments, it is accurate to say that the Chief of the Constabulary had exercised the authority for a long time. In fact, subsequent issuances such as Sections 2 and 3 of the Implementing Rules and Regulations of Presidential Decree No. 1866[16] perpetuate such authority of the Chief of the Constabulary. Section 2 specifically provides that any person or entity desiring to possess any firearm *"shall first secure the necessary permit/license/authority from the Chief of the Constabulary."* With regard to the issuance of PTCFOR, Section 3 imparts: *"The Chief of Constabulary may, in meritorious cases as determined by him and under such conditions as he may impose, authorize lawful holders of firearms to carry them outside of residence."* These provisions are issued pursuant to the general power granted by P.D. No. 1866 *empowering him to promulgate rules and regulations for the effective implementation of the decree.*[17] At this juncture, it bears emphasis that P.D. No. 1866 is the chief law governing possession of firearms in the Philippines and that it was issued by President Ferdinand E. Marcos in the exercise of his legislative power.[18]

In an attempt to evade the application of the above-mentioned laws and regulations, petitioner argues that the "Chief of the PNP" is not the same as the "Chief of the Constabulary," the PC being a mere unit or component of the newly established

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[16] "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES."

[17] Section 8 of P.D. No. 1866.

[18] *Baylosis vs. Chavez, Jr.,* G.R. No. 95136, October 3, 1991, 202 SCRA 405.

PNP. He contends further that Republic Act No. 8294[19] amended P.D. No. 1866 such that the authority to issue rules and regulations regarding firearms is now jointly vested in the Department of Justice and the DILG, not the Chief of the Constabulary.[20]

Petitioner's submission is bereft of merit.

By virtue of Republic Act No. 6975,[21] the Philippine National Police (PNP) absorbed the Philippine Constabulary (PC). Consequently, the PNP Chief succeeded the Chief of the Constabulary and, therefore, assumed the latter's licensing authority. *Section 24 thereof specifies, as one of PNP's powers, the issuance of licenses for the possession of firearms and explosives in accordance with law.*[22] This is in conjunction with the PNP Chief's "power to issue detailed implementing

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[19] "AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES." Issued on June 29, 1983.

[20] Section 6 of R.A. No. 8294 provides:

"*SECTION 6. Rules and Regulations. — The Department of Justice and the Department of the Interior and Local Government shall jointly issue, within ninety (90) days after the approval of this Act, the necessary rules and regulations pertaining to the administrative aspect of the provisions hereof,* furnishing the Committee on Public Order and Security and the Committee on Justice and Human Rights of both Houses of Congress copies of such rules and regulations within thirty (30) days from the promulgation hereof.

[21] "AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES." Approved December 13, 1990.

[22] Under Section 2 (11), Chapter 1, Book 7 of Executive Order No. 292, the "Administrative Code of 1987," the term licensing includes agency process involving the "*grant, renewal,* denial, *revocation, suspension,* annulment, withdrawal, limitation, amendment, modification or conditioning of a license."

policies and instructions" on such "matters as may be necessary to effectively carry out the functions, powers and duties" of the PNP.[23]

Contrary to petitioner's contention, R.A. No. 8294 does not divest the Chief of the Constabulary (now the PNP Chief) of his authority to promulgate rules and regulations for the effective implementation of P.D. No. 1866. For one, R.A. No. 8294 did not repeal entirely P.D. No. 1866. It merely provides for the reduction of penalties for illegal possession of firearms. Thus, the provision of P.D. No. 1866 granting to the Chief of the Constabulary the authority to issue rules and regulations regarding firearms remains effective. Correspondingly, the Implementing Rules and Regulations dated September 15, 1997 jointly issued by the Department of Justice and the DILG pursuant to Section 6 of R.A. No. 8294 deal only with the automatic review, by the Director of the Bureau of Corrections or the Warden of a provincial or city jail, of the records of convicts for violations of P.D. No. 1866. The Rules seek to give effect to the beneficent provisions of R.A. No. 8294, thereby ensuring the early release and reintegration of the convicts into the community.

Clearly, both P.D. No. 1866 and R.A. No. 6975 authorize the PNP Chief to issue the assailed guidelines.

Corollarily, petitioner disputes President Arroyo's declaration of a nationwide gun ban, arguing that "she has no authority to alter, modify, or amend the law on firearms through a mere speech."

First, it must be emphasized that President Arroyo's speech was just an expression of her policy and a directive to her subordinate. It cannot, therefore, be argued that President Arroyo enacted a law through a mere speech.

Second, at the apex of the entire executive officialdom is the President. Section 17, Article VII of the Constitution specifies his power as Chief Executive, thus: "*The President shall have control of all the executive departments, bureaus and offices.*

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[23] Section 26 of R.A. No. 6975.

He shall ensure that the laws be faithfully executed." As Chief Executive, President Arroyo holds the steering wheel that controls the course of her government. She lays down policies in the execution of her plans and programs. Whatever policy she chooses, she has her subordinates to implement them. In short, she has the power of control. *Whenever a specific function is entrusted by law or regulation to her subordinate, she may act directly or merely direct the performance of a duty*.[24] Thus, when President Arroyo directed respondent Ebdane to suspend the issuance of PTCFOR, she was just directing a subordinate to perform an assigned duty. Such act is well within the prerogative of her office.

II

Right to bear arms: Constitutional or Statutory?

Petitioner earnestly contends that his right to bear arms is a constitutionally-protected right. This, he mainly anchors on various American authorities. We therefore find it imperative to determine the nature of the right in light of American jurisprudence.

The bearing of arms is a tradition deeply rooted in the English and American society. It antedates not only the American Constitution but also the discovery of firearms.[25]

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[24] Chapter 7, Book IV of E.O. No. 292.

[25] Under the laws of Alfred the Great, whose reign began in 872 A.D., all English citizens, from the nobility to the peasants, were obliged to privately purchase weapons and be available for military duty. This body of armed citizens was known as the "*fyrd*."

Following the Norman conquest, many of the Saxon rights were abridged, however, the right and duty of arms possession was retained. Under the *Assize of Arms of 1181, "the whole community of freemen"* is required to possess arms and to demonstrate to the Royal officials that each of them is appropriately armed.

The Tudor monarchs continued the system of arm ownership and Queen Elizabeth added to it by creating what came to be known as *"train bands"* that is, the selected portions of the citizenry chosen for special training. These *"trained bands"* were distinguished from the "*militia*" which term was first used during the Spanish Armada crisis to designate the entire of the armed citizenry.

A provision commonly invoked by the American people to justify their possession of firearms is the Second Amendment of the Constitution of the United States of America, which reads:

The militia played a pivotal role in the English political system. When civil war broke out in 1642, the critical issue was whether the King or Parliament had the right to control the militia. After the war, England, which was then under the control of a military government, ordered its officers to "*search for and seize all arms*" owned by Catholics, "*opponents of the government," or "any other person whom the commissioners had judged dangerous to the peace of the Commonwealth."*

The restoration of Charles II ended the military government. Charles II opened his reign with a variety of repressive legislation. In 1662, a Militia Act was enacted empowering officials to "*search and to seize all arms in the custody or possession of any person or persons whom the said lieutenants or any two or more of their deputies shall judge dangerous to the peace of the kingdom*." Such seizures of arms continued under James I, who directed them particularly against the Irish population.

In 1668, the government of James was overturned in a peaceful uprising which came to be known as "*The Glorious Revolution.*" Parliament promulgated a Declaration of Rights, later enacted as the Bill of Rights. Before coronation, James' successor, William of Orange, was required to swear to respect these rights. The Bill of Rights, as drafted in the House of Commons, simply provided that "*the acts concerning the militia are grievous to the subject"* and "*it is necessary for the public safety that the subjects, which are protestants, should provide and keep arms for the common defense; And that the arms which have been seized, and taken from them, be restored."* The House of Lords changed this to a more concise statement: "*That the subjects which are Protestant may have arms for their defense suitable to their conditions and as allowed by law*."

In the colonies, the prevalence of hunting as means of livelihood and the need for defense led to armament statutes comparable to those of the early Saxon times. When the British government began to increase its military presence therein in the mid-eighteenth century, Massachusetts responded by calling upon its citizens to arm themselves in defense. In September 1774, an incorrect rumor that British troops killed colonists prompted 60,000 citizens to take arms. A few months later, when Patrick Henry delivered his famed "*Give me liberty or give me death*" speech, he spoke in support of a proposition "*that a well regulated militia, composed of gentlemen and freemen, is the natural strength and only security of a free government . . .*"

When the first Congress convened for the purpose of drafting a Bill of Rights, it delegated the task to James Madison. Madison did not write upon a blank tablet. Instead, he obtained a pamphlet listing the States' proposals for a Bill of Rights and sought to produce a briefer version incorporating all the vital proposals of such States. Madison proposed among other rights:

"A well regulated militia, being necessary for the security of free state, the right of the people to keep and bear Arms, shall not be infringed."

An examination of the historical background of the foregoing provision shows that it pertains to the citizens' "collective right" to take arms in defense of the State, not to the citizens' "individual right" to own and possess arms. The setting under which the right was contemplated has a profound connection with the keeping and maintenance of a militia or an armed citizenry. That this is how the right was construed is evident in early American cases.

The first case involving the interpretation of the Second Amendment that reached the United States Supreme Court is *United States vs. Miller*.[26] Here, the indictment charged the defendants with transporting an unregistered "Stevens shotgun" without the required stamped written order, contrary to the *National Firearms Act*. The defendants filed a demurrer challenging the facial validity of the indictment on the ground that the *National Firearms Act* offends the inhibition of the Second Amendment. The District Court sustained the demurrer and quashed the indictment. *On appeal, the Supreme Court interpreted the right to bear arms under the Second Amendment as referring to the collective right of those comprising the Militia — a body of citizens enrolled for military discipline. It does not pertain to the individual right of citizen to bear arm. Miller* expresses its holding as follows:

"In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in

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"*The right of the people to keep and bear arms shall not be infringed; a well armed and regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms shall be compelled to render military service.*" In the House, this was initially modified so that the militia clause came before the proposal recognizing the right. The proposal finally passed the House in its present form: "*A well regulated militia, being necessary for the security of free state, the right of the people to keep and bear arms, shall not be infringed*." In this form it was submitted to the Senate, which passed it the following day.

[26] 307 U.S. 174 (1939).

length' at this time *has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.* Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

The same doctrine was re-echoed in *Cases vs. United States.*[27] Here, the Circuit Court of Appeals held that the *Federal Firearms Act,* as applied to appellant, does not conflict with the Second Amendment. It ruled that:

"While [appellant's] weapon may be capable of military use, or while at least familiarity with it might be regarded as of value in training a person to use a comparable weapon of military type and caliber, *still there is no evidence that the appellant was or ever had been a member of any military organization or that his use of the weapon under the circumstances disclosed was in preparation for a military career. In fact, the only inference possible is that the appellant at the time charged in the indictment was in possession of, transporting, and using the firearm and ammunition purely and simply on a frolic of his own and without any thought or intention of contributing to the efficiency of the well regulated militia which the Second amendment was designed to foster as necessary to the security of a free state."*

With the foregoing jurisprudence, it is erroneous to assume that the US Constitution grants upon the American people the right to bear arms. In a more explicit language, the *United States vs. Cruikshank*[28] decreed: *"The right of the people to keep and bear arms is not a right granted by the Constitution. Neither is it in any way dependent upon that instrument."* Likewise, in *People vs. Persce,*[29] the Court of Appeals said: "Neither is there any constitutional provision securing the right to bear arms which prohibits legislation with reference to such weapons as are specifically before us for consideration. *The provision in the Constitution of the United*

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[27] 131 Federal Reporter, 2d Series, 916.

[28] 92 U.S. 542, 23 L. Ed. 588.

[29] 204 N.Y. 397, 97 N.E. 877.

that the right of the people to keep and bear arms shall not be infringed is not designed to control legislation by the state."

With more reason, the right to bear arms cannot be classified as fundamental under the 1987 Philippine Constitution. Our Constitution contains no provision similar to the Second Amendment, as we aptly observed in the early case of *United States vs. Villareal*:[30]

"The only contention of counsel which would appear to necessitate comment is the claim that the statute penalizing the carrying of concealed weapons and prohibiting the keeping and the use of firearms without a license, is in violation of the provisions of Section 5 of the Philippine Bill of Rights.

Counsel does not expressly rely upon the prohibition in the United States Constitution against the infringement of the right of the people of the United States to keep and bear arms (U. S. Constitution, amendment 2), which is not included in the Philippine Bill. But it may be well, in passing, to point out that in no event could this constitutional guaranty have any bearing on the case at bar, not only because it has not been expressly extended to the Philippine Islands, but also because it has been uniformly held that both this and similar provisions in State constitutions apply only to arms used in civilized warfare (see cases cited in 40 Cyc., 853, note 18); x x x"

Evidently, possession of firearms by the citizens in the Philippines is the exception, not the rule. The right to bear arms is a mere statutory privilege, not a constitutional right. It is a mere statutory creation. *What then are the laws that grant such right to the Filipinos?* The first real firearm law is Act No. 1780 enacted by the Philippine Commission on October 12, 1907. It was passed to regulate the importation, acquisition, possession, use and transfer of firearms. Section 9 thereof provides:

"SECTION 9. Any person desiring to possess one or more firearms for personal protection, or for use in hunting or other lawful purposes only, and ammunition therefor, shall make application for a license

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[30] 28 Phil. 390 (1914).

to possess such firearm or firearms or ammunition as hereinafter provided. Upon making such application, and before receiving the license, the applicant shall make a cash deposit in the postal savings bank in the sum of one hundred pesos for each firearm for which the license is to be issued, or in lieu thereof he may give a bond in such form as the Governor-General may prescribe, payable to the Government of the Philippine Islands, in the sum of two hundred pesos for each such firearm: *PROVIDED, HOWEVER,* That persons who are actually members of gun clubs, duly formed and organized at the time of the passage of this Act, who at such time have a license to possess firearms, shall not be required to make the deposit or give the bond prescribed by this section, and the bond duly executed by such person in accordance with existing law shall continue to be security for the safekeeping of such arms."

The foregoing provision was restated in Section 887[31] of Act No. 2711 that integrated the firearm laws. Thereafter, President Ferdinand E. Marcos issued P.D. No. 1866. It codified the laws on illegal possession, manufacture, dealing in, acquisition of firearms, ammunitions or explosives and imposed stiffer penalties for their violation. R.A. No. 8294 amended some of the provisions of P.D. No. 1866 by reducing the imposable penalties. Being a mere statutory creation, the right to bear arms cannot be considered an inalienable or absolute right.

III

Vested Property Right

Section 1, Article III of the Constitution provides that "no person shall be deprived of life, liberty or property without due process of law." Petitioner invokes this provision, asserting that the revocation of his PTCFOR pursuant to the assailed Guidelines deprived him of his "vested property right" without due process of law and in violation of the equal protection of law.

Petitioner cannot find solace to the above-quoted Constitutional provision.

In evaluating a due process claim, the first and foremost consideration must be whether life, liberty or property interest

[31] *Supra.*

exists.[32] The bulk of jurisprudence is that a license authorizing a person to enjoy a certain privilege is neither a property nor property right. In *Tan vs. The Director of Forestry*,[33] we ruled that "a license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority granting it and the person to whom it is granted; *neither is it property or a property right, nor does it create a vested right.*" In a more emphatic pronouncement, we held in *Oposa vs. Factoran, Jr.*[34] that:

> "*Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution.*"

Petitioner, in arguing that his PTCFOR is a constitutionally protected property right, relied heavily on *Bell vs. Burson*[35] wherein the U.S. Supreme Court ruled that "once a license is issued, continued possession may become essential in the pursuit of livelihood. Suspension of issued licenses thus involves state action that adjudicates important interest of the licensees."

Petitioner's reliance on *Bell* is misplaced. This case involves a driver's license, not a license to bear arms. The catena of American jurisprudence involving license to bear arms is perfectly in accord with our ruling that a PTCFOR is neither a property nor a property right. In *Erdelyi vs. O'Brien*,[36] the plaintiff who was denied a license to carry a firearm brought suit against the defendant who was the Chief of Police of the City of Manhattan Beach, on the ground that the denial violated her constitutional rights to due process and equal protection of the

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[32] *Bzdzuich vs. U.S. Drug Enforcement Admin.*, 76 F 3d 738, 1996 FED App. 59P (6th Cir. 1996).

[33] G.R. No. L-24548, October 27, 1983, 125 SCRA 302. See also *Pedro vs. Provincial Board of Rizal*, 56 Phil. 123 (1931).

[34] G.R. No. 101083, July 30, 1993, 224 SCRA 792, penned by Chief Justice Hilario G. Davide, Jr.

[35] 402 U.S. 535 (1971).

[36] 680 F 2d 61 (1982).

laws. The United States Court of Appeals Ninth Circuit ruled that Erdelyi did not have a property interest in obtaining a license to carry a firearm, ratiocinating as follows:

> *"Property interests protected by the Due Process Clause of the Fourteenth Amendment do not arise whenever a person has only 'an abstract need or desire for', or 'unilateral expectation of a benefit. x x x Rather, they arise from 'legitimate claims of entitlement . . . defined by existing rules or understanding that stem from an independent source, such as state law. x x x*
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> Concealed weapons are closely regulated by the State of California. *x x x Whether the statute creates a property interest in concealed weapons licenses depends 'largely upon the extent to which the statute contains mandatory language that restricts the discretion of the [issuing authority] to deny licenses to applicants who claim to meet the minimum eligibility requirements. x x x Where state law gives the issuing authority broad discretion to grant or deny license application in a closely regulated field, initial applicants do not have a property right in such licenses protected by the Fourteenth Amendment.* See *Jacobson, supra,* 627 F.2d at 180 (gaming license under Nevada law);"

Similar doctrine was announced in *Potts vs. City of Philadelphia*,[37] *Conway vs. King*,[38] *Nichols vs. County of Sta. Clara*,[39] and *Gross vs. Norton*.[40] These cases enunciated that the test whether the statute creates a property right or interest depends largely on the extent of discretion granted to the issuing authority.

In our jurisdiction, the PNP Chief is granted broad discretion in the issuance of PTCFOR. This is evident from the tenor of the Implementing Rules and Regulations of P.D. No. 1866 which state that "the Chief of Constabulary may, *in meritorious cases as determined by him and under such conditions as he may impose,* authorize lawful holders of firearms to carry them outside

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[37] 01-CV-3247, August 2002.

[38] 718 F. Supp. 1059 (1989).

[39] 223 Cal. App. 3d 1236, 273 Cal. Rptr. 84 (1990).

[40] 120 F. 3d 877 (1997).

of residence." Following the American doctrine, it is indeed logical to say that a PTCFOR does not constitute a property right protected under our Constitution.

Consequently, a PTCFOR, just like ordinary licenses in other regulated fields, may be revoked any time. It does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed.[41] A licensee takes his license subject to such conditions as the Legislature sees fit to impose, and one of the statutory conditions of this license is that *it might be revoked by the selectmen at their pleasure.* Such a license is not a contract, and *a revocation of it does not deprive the defendant of any property, immunity, or privilege within the meaning of these words in the Declaration of Rights.*[42] The US Supreme Court, in *Doyle vs. Continental Ins. Co*,[43] held: *"The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by the State is always revocable."*

The foregoing jurisprudence has been resonating in the Philippines as early as 1908. Thus, in *The Government of the Philippine Islands vs. Amechazurra* [44] we ruled:

"x x x no private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose, for the right to keep and bear arms is not secured to him by law. The Government can impose upon him such terms as it pleases. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the

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[41] *Stone vs. Fritts*, 82 NE 792 (1907) citing *Calder vs. Kurby*, 5 Gray [Mass.] 597; *Freleigh vs. State*, 8 Mo. 606; *People vs. New York Tax, etc., Com'rs*, 47 N.Y. 501; *State vs. Burgoyne*, 75 Tenn. 173, 40 Am. Rep. 60.

[42] *Commonwealth vs. Kinsley*, 133 Mass. 578.

[43] 94 U.S. 535, 540 24 L.Ed.148.

[44] 10 Phil. 637 (1908).

purpose of securing possession of the arms he does agree to such conditions, he must fulfill them."

IV

Police Power

At any rate, assuming that petitioner's PTCFOR constitutes a property right protected by the Constitution, the same cannot be considered as absolute as to be placed beyond the reach of the State's police power. All property in the state is held subject to its general regulations, necessary to the common good and general welfare.

In a number of cases, we laid down the test to determine the validity of a police measure, thus:

(1) The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and

(2) The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

Deeper reflection will reveal that the test merely reiterates the essence of the constitutional guarantees of substantive due process, equal protection, and non-impairment of property rights.

It is apparent from the assailed Guidelines that the basis for its issuance was the need for peace and order in the society. Owing to the proliferation of crimes, particularly those committed by the New People's Army (NPA), which tends to disturb the peace of the community, President Arroyo deemed it best to impose a nationwide gun ban. Undeniably, the motivating factor in the issuance of the assailed Guidelines is the interest of the public in general.

The only question that can then arise is whether the means employed are appropriate and reasonably necessary for the accomplishment of the purpose and are not unduly oppressive.

In the instant case, the assailed Guidelines do not entirely prohibit possession of firearms. What they proscribe is merely the carrying of firearms outside of residence. However, those who wish to carry their firearms outside of their residences may re-apply for a new PTCFOR. This we believe is a reasonable regulation. If the carrying of firearms is regulated, necessarily, crime incidents will be curtailed. Criminals carry their weapon to hunt for their victims; they do not wait in the comfort of their homes. With the revocation of all PTCFOR, it would be difficult for criminals to roam around with their guns. On the other hand, it would be easier for the PNP to apprehend them.

Notably, laws regulating the acquisition or possession of guns have frequently been upheld as reasonable exercise of the police power.[45] In *State vs. Reams*,[46] it was held that the legislature may regulate the right to bear arms in a manner conducive to the public peace. With the promotion of public peace as its objective and the revocation of all PTCFOR as the means, we are convinced that the issuance of the assailed Guidelines constitutes a reasonable exercise of police power. The ruling in *United States vs. Villareal*,[47] is relevant, thus:

"We think there can be no question as to the reasonableness of a statutory regulation prohibiting the carrying of concealed weapons as a police measure well calculated to restrict the too frequent resort to such weapons in moments of anger and excitement. We do not doubt that the strict enforcement of such a regulation would tend to increase the security of life and limb, and to suppress crime and lawlessness, in any community wherein the practice of carrying concealed weapons prevails, and this without being unduly oppressive upon the individual owners of these weapons. It follows that its enactment by the legislature is a proper and legitimate exercise of the police power of the state."

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[45] *Calvan vs. Superior Court of San Francisco*, 70 Cal 2d 851, 76 Cal Rptr 642, 452 P2d 930; *State vs. Robinson* (Del Sup) 251 A2d 552; *People vs. Brown*, 253 Mich 537, 235 NW 245, 82 ALR 341.

[46] 121 N.C. 556, 557, 27 S.E. 1004, 1005 (1897).

[47] 28 Phil. 390 (1914).

V

Ex post facto law

In *Mekin vs. Wolfe*,[48] an *ex post facto* law has been defined as one — *(a)* which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or *(b)* which aggravates a crime or makes it greater than it was when committed; or *(c)* which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or *(d)* which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant.

We see no reason to devote much discussion on the matter. *Ex post facto* law prohibits retrospectivity of penal laws.[49] The assailed Guidelines cannot be considered as an *ex post facto law* because it is prospective in its application. Contrary to petitioner's argument, it would not result in the punishment of acts previously committed.

WHEREFORE, the petition is hereby *DISMISSED*.

SO ORDERED.

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

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[48] 2 Phil. 74 (1903).

[49] *Lacson vs. The Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298.

SECOND DIVISION

[G.R. No. 128053. June 10, 2004]

SPOUSES PRUDENCIO ROBLES and SUSANA DE ROBLES, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, SECOND LAGUNA DEVELOPMENT BANK and SPOUSES NILO DE ROBLES and ZENAIDA DE ROBLES,** *respondents*.

SYNOPSIS

Petitioners' challenge of the decision of the Court of Appeals rests mainly on their claim that the judicial foreclosure of the mortgage on the subject property is void *ab initio* due to the alleged attendant fraud and lack of the requisite notice and publication. They also beseech the Court to liberally interpret the rules on redemption in their favor and allow them to retake the subject property on equitable considerations.

The Supreme Court denied the petition. According to the Court, it was acknowledged that the redemption period for the property expired on May 31, 1985, exactly one year after the registration of the certificate of sale in favor of the respondent bank, and the same had elapsed without petitioners exercising their right of redemption. As a result, ownership of the title to the property was consolidated in favor of the respondent bank. Petitioners offered to redeem the subject property only in December 1990, more than six years after the foreclosure sale on May 15, 1984. Evidently, that was a belated attempt at exercising a right, which had long expired. To allow redemption at such a late time would simply be unreasonable and would work an injustice on respondent spouses who are now holders of a new title issued in their names.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; PREVAILS UNLESS REBUTTED BY EVIDENCE PROVING OTHERWISE.— The statements of the Sheriff

are entitled to belief unless rebutted by evidence proving otherwise. The presumption of regularity in the performance of duty applies in this case in favor of the Sheriff. Since petitioners have not rebutted such valid presumption, we have no reason to believe that the Sheriff was remiss in his duties.

2. CIVIL LAW; MORTGAGE; FORECLOSURE OF MORTGAGE; RIGHT OF REDEMPTION GRANTED BY LAW MUST BE EXERCISED WITHIN THE PRESCRIBED PERIOD; NOT PRESENT IN CASE AT BAR.— This Court affirmed the findings of the Court of Appeals, rejecting the alleged extension of the redemption period, to wit: The right to redeem becomes *functus officio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase however of foreclosed property, after redemption period, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. And, he is not bound by the bid price; it is entirely within his discretion to set a higher price, for after all, the property already belongs to him as owner. As of May 31, 1984, petitioners were redemptioners. As their mortgage indebtedness was extinguished with the foreclosure and sale of the mortgaged subject property, what they had was the right of redemption granted to them by law. But they lost the right when they failed to exercise it within the prescribed period.

APPEARANCES OF COUNSEL

Juanito L. Garcia for petitioners.
Diomedes Perez for Laguna Dev't. Bank.

D E C I S I O N

TINGA, *J.*:

This case once again puts into focus the distinction between redemption and repurchase of foreclosed property.

Before this Court is a *Petition for Review on Certiorari*, the subject of which is a *Decision*[1] of the Court of Appeals affirming *in toto* the *Decision*[2] of the Regional Trial Court of Laguna in a case for "Annulment of Certificate of Sale, Deed of Absolute Sale, Reconveyance, Damages and Preliminary Injunction" rendered in favor of the herein private respondents.

Prior to this controversy, petitioner spouses Prudencio and Susana de Robles obtained a loan of ₱48,000.00 from respondent Laguna Development Bank on April 29, 1980. As security, petitioners executed a deed of real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-55918 registered in their names.

On account of the petitioners' failure to pay their loan on due date, respondent bank caused the subject land to be sold at public auction by the Office of the Provincial Sheriff of Laguna in Foreclosure Case No. F-2174. Respondents state that the sale occurred on May 15, 1984 while petitioners claim that it happened on May 14, 1984.

Respondent bank was the highest bidder with a bid of ₱90,914.86. On May 31, 1984, the certificate of sale issued in favor of respondent bank was registered with the Registry of Deeds.

The one-year redemption period expired on May 31, 1985, without petitioners exercising their right of redemption. Hence, on June 25, 1985, more than one year after the certificate of sale was registered, TCT No. T-102153 was issued in favor of the respondent bank.

On November 29, 1990, respondent bank sold the subject land to respondent spouses Nilo and Zenaida de Robles and a new title, TCT No. T-123344, was issued in their names.

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[1] Promulgated on January 31, 1997, penned by Justice Conrado M. Vasquez, Jr., and concurred in by Justices Fidel P. Purisima and Angelina Sandoval Gutierrez.

[2] Promulgated on February 12, 1993 and written by Judge Zorayda Jerradura-Salcedo.

Sometime in the first week of December 1990, petitioners went to respondent bank and offered to redeem the subject land. The bank informed them that the property had already been sold to respondent spouses and accordingly rejected petitioners' offer. This prompted petitioners to file the aforesaid case with the trial court on January 24, 1991. Respondent spouses prevailed in the case, with the trial court rendering its decision, declaring the foreclosure sale proper and legal and respondent spouses the lawful owners of the subject property.

Petitioners' challenge of the decision of the Court of Appeals rests mainly on their claim that the judicial foreclosure of the mortgage on the subject property is void *ab initio* due to the alleged attendant fraud and lack of the requisite notice and publication. They also beseech the Court to liberally interpret the rules on redemption in their favor and allow them to retake the subject property on equitable considerations.

The *Petition* is devoid of merit.

We affirm the validity of the foreclosure sale in favor of respondent bank. The Sheriff's Certificate of Sale belies petitioners' claim that the prescribed notice and publication was not complied with. Said Certificate attests to the fact that the required twenty (20)-day written notice of the time, place and purpose of the sale was posted in three (3) conspicuous public places at Lumban, Laguna where the property is situated and in three (3) other public places in Sta. Cruz, Laguna where the auction sale was to be held, as required by law.[3] In the same Certificate, the Sheriff also declared that a copy of the notice was sent to the mortgagors by registered mail. The notice of sale was published once a week within a period of twenty (20) days in a local publication entitled "Bayanihan."[4]

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[3] Sec. 3, Act No. 3135, as amended. "Notice shall be given by posting notices of sale for not less than twenty days in at least three public places of the municipality where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city."

[4] *Ibid*.

The statements of the Sheriff are entitled to belief unless rebutted by evidence proving otherwise. The presumption of regularity in the performance of duty applies in this case in favor of the Sheriff.[5] Since petitioners have not rebutted such valid presumption, we have no reason to believe that the Sheriff was remiss in his duties.

Petitioners now take refuge in cases decided by this Court which stress the liberal construction of redemption laws in favor of the redemptioner. *Doronila v. Vasquez*[6] allowed redemption in certain cases even after the lapse of the one-year period in order to promote justice and avoid injustice. In *Tolentino v. Court of Appeals*,[7] the policy of the law to aid rather than defeat the right of redemption was expressed, stressing that where no injury would ensue, liberal construction of redemption laws is pursued and the exercise of the right to redemption is permitted to better serve the ends of justice. In *De los Reyes v. Intermediate Appellate Court*,[8] the rule was liberally interpreted in favor of the original owner of the property to give him another opportunity, should his fortunes improve, to recover his property.

Confronted with this recital, will it be unjust not to allow the petitioners in this case to redeem the subject property? Given the established facts, we find that it is not so.

The cases cited by petitioners are not applicable to this case. Even in *De los Reyes v. Intermediate Appellate Court*,[9] the redemption was allowed beyond the redemption period only because a valid tender was made by the original owners *within the redemption period*. The same is not true in the case before us.

Instead, we find the case of *Natino v. Intermediate Appellate Court*[10] to be on all fours with the case at hand. That case also

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[5] *Umandap v. Sabio*, G.R. No. 140244, August 29, 2000, 339 SCRA 243, 249; Sec. 3(m), Rule 131, Rules of Court.

[6] 72 Phil. 572 (1941).

[7] G.R. Nos. 50405-06, August 5, 1981, 106 SCRA 513.

[8] G.R. No. 74768, August 11, 1989, 176 SCRA 394.

[9] *Supra*.

[10] G.R. No. 73573, May 23, 1991, 197 SCRA 323.

involved the annulment of the final deed of sale of the mortgaged property executed in favor of respondent bank. There, it was not disputed that no redemption was made by petitioner spouses Natino within the two-year redemption period expressly provided in the certificate of sale, so the sheriff issued the Final Deed of Sale in favor of respondent bank which had earlier purchased the property in the foreclosure sale. The Natino spouses, however, averred that they were granted by respondent bank an extension of the redemption period, which the bank denied. This Court affirmed the findings of the Court of Appeals, rejecting the alleged extension of the redemption period, to wit:

> The right to redeem becomes *functus oficio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase however of foreclosed property, after redemption period, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. And, he is not bound by the bid price; it is entirely within his discretion to set a higher price, for after all, the property already belongs to him as owner.[11]

As of May 31, 1984, petitioners were redemptioners. As their mortgage indebtedness was extinguished with the foreclosure and sale of the mortgaged subject property, what they had was the right of redemption granted to them by law. But they lost the right when they failed to exercise it within the prescribed period.

It is acknowledged that the redemption period expired on May 31, 1985, exactly one year after the registration of the certificate of sale in favor of respondent bank,[12] and the same

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[11] *Ibid.* at 330.

[12] The one-year period begins from the time the certificate of sale is registered with the Register of Deeds. *Agbulos v. Alberto*, No. L-17483, July 31, 1962, 5 SCRA 790; *Reyes v. Noblejas*, No. L-23691, November 25, 1962, 21 SCRA 1027; *Salazar v. Meneses*, No. L-15378, July 31, 1963, 8 SCRA 495 [1963]; *Quimson v. Philippine National Bank*, No. L-24920, November 26, 1970, 36 SCRA 26; *State Investment House, Inc. v. Court of Appeals*, G.R. No. 99308, Nov. 13, 1992, 215 SCRA 734.

had elapsed without petitioners exercising their right of redemption. As a result, ownership of and title to the property was consolidated in favor of respondent bank. Petitioners offered to redeem the subject property only on December 1990, more than six (6) years after the foreclosure sale of May 15, 1984. Evidently, that was a belated attempt at exercising a right which had long expired. To allow redemption at such a late time would simply be unreasonable and would work an injustice on respondent spouses.

However, petitioners claim that they negotiated with respondent bank sometime in 1989 for the extension of the period to redeem and they were allegedly granted a period of one year from January 1990. Respondent bank vehemently denies granting petitioners such an extension. The Court cannot endow credence to petitioners' assertions as they failed to present any documentary evidence to prove the conferment of the extension. Even if we believe the petitioners that they negotiated with the respondent bank sometime in 1989 for the extension of the period to redeem, there was no longer any redemption period to extend as the same had already expired.

Assuming but not admitting that indeed an extension had been granted in petitioners' favor, such an extension would constitute a mere offer on the part of respondent bank to re-sell the subject property to petitioners. Such an offer, however, does not constitute a binding contract.[13]

WHEREFORE, the *Petition for Review on Certiorari* is *DISMISSED* and the judgment appealed from is *AFFIRMED in toto*. Costs against the petitioners.

SO ORDERED.

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

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[13] Second par., Art. 1479, Civil Code; *Natino v. Intermediate Appellate Court, supra* at 332-333.

SECOND DIVISION

[G.R. No. 137364. June 10, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GONZALO MASAGNAY *alias* "JUN MASAGNAY",** *appellant.*

SYNOPSIS

Appellant herein was charged with murder for the death of one Romeo L. Garcia. He was among the four persons who forcibly entered the house of the victim. According to witnesses, the appellant was the one who stabbed Romeo, while another one hit the victim with a lead pipe and still another threw hollowblocks on the victim's head. The trial court rendered a decision finding appellant as co-conspirator and principal by direct participation of the crime of murder and was sentenced to suffer the penalty of *reclusion perpetua*. Hence, appellant filed the present petition for review. The appellant assailed the decision of the trial court only on two grounds: (1) that the appellant did not conspire in the killing of the victim; and (2) that abuse of superior strength did not qualify the killing to murder.

In affirming the decision of the trial court, the Supreme Court ruled that the appellant, with his three companions, in forcibly entering the house of the victim and thereafter inflicted injury upon the victim, one after the other, manifested a common intent or desire to kill Romeo as they acted in concert in the commission of the crime. The Court also ruled that the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. Hence, the prosecution amply established the existence of the qualifying circumstance of abuse of superior strength.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON; ENTITLED TO THE HIGHEST DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL.— It is a well-entrenched doctrine

that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts and circumstances of weight and substance which would have affected the result of the case.

2. ID.; ID.; ID.; NOT AFFECTED BY THE BLOOD RELATIONSHIP BETWEEN THE WITNESS AND THE VICTIM.— The Court had carefully examined the testimonies of both Estrella and Rolando and there is no indication that the trial court's assessment of their credibility is tainted with arbitrariness or oversight of some fact and circumstance of weight and influence. A wife's identification of the accused draws strength from the rule that family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants. As the Court has held in *People vs. Villarama,* blood relationship between a witness and the victim does not, by itself impair the credibility of witnesses – on the contrary, relationship strengthens credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit.

3. ID.; ID.; ID.; WORTHY OF FULL FAITH AND CREDIT IN THE ABSENCE OF IMPROPER MOTIVE TO TESTIFY AGAINST THE ACCUSED.— Neither had the defense presented evidence as to any improper motive that could have moved the principal witnesses of the prosecution to testify against appellant. The absence thereof sustains the conclusion that no improper motive existed and that the testimonies of Estrella and Rolando are worthy of full faith and credence. With the prosecution witnesses' positive identification of appellant as one of the perpetrators in the killing of Romeo Garcia, the trial court did not err in convicting appellant of Murder beyond reasonable doubt.

4. CRIMINAL LAW; CONSPIRACY; PRESENCE THEREOF CAN BE INFERRED FROM THE ACTS OF THE ACCUSED WHICH CLEARLY MANIFEST A CONCURRENCE OF WILL, COMMON INTENT OR DESIGN TO COMMIT A CRIME; CASE AT BAR.— As the Court has held in *People vs. Tuppal,* conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. In conspiracy, it is sufficient that at the time

of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all. The fact that appellant together with Edwin Masagnay, a certain Jun and Pilong whose surnames are not known to the prosecution witnesses, forcibly entered the house of victim Romeo by destroying its door, and then one after another, inflicted injury on the victim with appellant stabbing Romeo with a *gulukan*, followed by Edwin hitting Romeo with a lead pipe, then Jun stabbing Romeo with a knife with a wooden handle and while Romeo laid prostrate, face up, Pilong dropped several hollow blocks on the face and body of Romeo; after which, they ran away, certainly manifest a common intent or desire to kill Romeo. They acted in concert in the commission of the same, manifesting a common purpose or design and unity in its execution. Conspiracy is thus established by the prosecution beyond reasonable doubt.

5. ID.; ID.; EACH CONSPIRATOR IS RESPONSIBLE FOR ALL THE ACTS OF THE OTHERS; PRESENT IN CASE AT BAR.— Conspiracy having been proven, the precise degree of culpability of each of the accused is of no moment. The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy. Thus, the Court finds no merit to appellant's claim that having merely inflicted a superficial wound on the victim, he should not be held liable for Murder. Furthermore, the fact that appellant chased Rolando when the latter ran towards the cornfield before his co-accused Jun dealt the fatal blow on the right side of the chest of Romeo, does not relieve appellant of or reduce his criminal liability as a principal in the commission of the crime. To be a conspirator, one need not participate in every detail of execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy.

6. ID.; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; TO BE APPRECIATED THERE MUST BE A DELIBERATE INTENT TO TAKE ADVANTAGE THEREOF; PRESENT IN CASE AT BAR.— In the *Cañete* case, the Court held: Before abuse of superior strength may be appreciated, it must be clearly shown that there was deliberate intent on the

part of the malefactor to take advantage thereof. To justifiably appreciate said circumstance, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event (*People vs. Escoto*, 244 SCRA 87; 97-98 [1995], citing *People vs. Cabiling*, 72 SCRA 285 [1976]). Tested against those requirements, the prosecution, in the present case, had amply established the existence of the qualifying circumstance of abuse of superior strength. Appellant together with his three co-accused, namely: Edwin Masagnay, a certain Jun and one Pilong whose surnames are not known to the prosecution witnesses, barged into the house of the victim after the latter had taken refuge therein, and notwithstanding the couple's plea that they settle their differences the next day, by forcibly breaking the door and one after the other took their turn in inflicting the injuries sustained by the unarmed victim, resulting to his death. Clearly, without any doubt, each of appellant and his co-accused acted in concert with the evident purpose of killing the victim. The attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

In an Information[1] dated January 15, 1997, filed with the Regional Trial Court, Branch 12, Lipa City (RTC for brevity), appellant Gonzalo Masagnay *alias* "Jun Masagnay" is charged with the crime of Murder, committed as follows:

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[1] Docketed as Crim. Case No. 0026-97.

That on or about the 12th day of January, 1997 at about 10:00 o'clock in the evening at the Railroad site located at Brgy. Balintawak, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with Edwin Masagnay *y* Barera, Jun Icabande, Richard Icabande, Rollie dela Cruz, Mardelissa dela Cruz, Edgar whose family name is unknown and one *alias* "Pilong" whose cases are pending preliminary investigation, while armed with bladed instruments, with intent to kill, with treachery and evident premeditation and taking advantage of their superior strength, conspiring and confederating together, acting in common accord and willfully, unlawfully and feloniously attack, assault and stab with the use of said bladed instruments suddenly and without warning one Romeo L. Garcia thereby inflicting upon the latter multiple stab wounds which directly caused his death.[2]

to which he pleaded not guilty upon his arraignment. Trial on the merits ensued.

Practically adopted by appellant in his Brief is the narration of facts by the RTC in its decision which was principally based on the testimonies of Estrella Garcia (Estrella for brevity) and Rolando Garcia (Rolando), wife and son, respectively, of deceased victim Romeo L. Garcia (Romeo), as follows:

Stripped of non-essentials, the evidence for the prosecution show that on January 12, 1997, at around 10:00 o'clock in the evening, Estrella Garcia (Estrella, for brevity) and her four (4) children were sleeping inside their small one (1) storey house, with two (2) rooms, made of *lawanit* and galvanized iron at Brgy. Balintawak, Lipa City; that suddenly Estrella heard people shouting, whose voices she could recognize, though she does not see them, and they were chasing her husband Romeo L. Garcia (Romeo, for brevity); that Estrella heard the voice of "*Manang*", who is a sister of the accused Gonzalo Magsanay, shouting "*Ka Romy, huwag muna kayong pumasok sa inyong bahay*"; that Estrella immediately stood up and opened their door and her husband entered their house; that after her husband entered their house, they immediately closed the door and heard the people chasing Romeo kicking and forcibly opening the same; that the spouses helped each other in pushing back the door so that it will not open; that, at this juncture, their eldest son, Rolando,

[2] Records, p. 156.

who is 17 years old, was awaken (*sic*) but did nothing; that Estrella told the people outside *"Baka puwedeng ipagbukas na iyan. Bukas na ho natin pag-usapan iyan kung ano man ang problema";* that "Manang" retorted "Hindi puwede, kailangang lutasin na ngayon. Hindi puwedeng abutan ng sikat ng araw"; that the people outside the house succeeded in forcibly opening their door, the galvanized iron they were using to cover their window was detached and fell inside the house, and four (4) persons entered their house, one after another; that the first to enter the house was Gonzalo Masagnay *alias* "Jun Masagnay", who immediately stab (*sic*) the shocked Romeo Garcia with a "*gulukan*" at the right side of his body; that Edwin Masagnay, who is a brother of Gonzalo, followed and immediately hit Romeo Garcia on the head and several times on his body with the lead pipe he was carrying until the latter fell down; that, then Rolando heard his father utter the following: "Rolando *labas na, baka ikaw ay madamay pa*"; that Rolando obeyed his father and went out of their house passing through the kitchen door ran towards the cornfield; that Edwin Masagnay saw and pursued Rolando and when he failed to catch the latter, he stopped; that Rolando hid in the cornfield for a long time; that meanwhile, inside the house, while Romeo was already lying down, a certain Jun, whose surname Estrella does not know, entered the house and stab the former once on the chest with a knife with wooden handle; that the fourth person to enter the house was a certain "Pilong", whose surname Estrella does not know; that "Pilong" dropped several hollow blocks many times on the face and body of Romeo, who was then helplessly lying down and could not do anything; that thereafter, the assailants ran away and Estrella went out of their house to ask for help from their neighbors; that while Estrella was still outside their house, Rolando returned and saw the dead body of his father lying on top of the detached galvanized iron, which they used to cover their window; that when the incident was taking place, Estrella, who was only about five (5) to six (6) meters away, was not able to do anything because she was shocked and could not move; that although the incident happened at 10:00 o'clock in the evening, Estrella and Rolando were able to identify and recognize the assailants of Romeo because their "*gasera*" at the center of their house was lighted; and, that Estrella and Rolando identified Gonzalo Masagnay in open court.[3]

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[3] Penned by Judge Vicente F. Landicho.

On January 15, 1998, the RTC rendered a decision,[4] the dispositive portion of which reads as follows:

WHEREFORE, the Court finds accused, GONZALO MASAGNAY @ "JUN MASAGNAY", guilty beyond reasonable doubt, as co-conspirator and principal by direct participation of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code and sentences him to suffer the penalty of *RECLUSION PERPETUA*, to pay the heirs of Romeo L. Garcia the amount of ₱26,150.00, as actual damages, the amount of ₱50,000.00, as civil indemnity for his death, and to pay the costs of this suit.

Also, pursuant to Supreme Court Circular No. 12-94, the City Jail Warden of Lipa City is directed to immediately transfer the custody and/or detention of the accused to the National Bureau of Prisons, Muntinlupa City, Metro Manila.

IT IS SO ORDERED.[5]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court, raising the following Assignment of Errors:

I

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT A CO-CONSPIRATOR, AND PRINCIPAL BY DIRECT PARTICIPATION IN THE COMMISSION OF THE CRIME.

II

THE LOWER COURT LIKEWISE ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH ATTENDED THE COMMISSION OF THE CRIME.[6]

An appeal from a conviction for a capital offense opens the whole case for review.[7] Before proceeding to resolve the

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[4] *Id*., pp. 157-159.

[5] *Id*., p. 168.

[6] Brief of Accused-Appellants, p. 1.

[7] *People vs. Manalili*, 294 SCRA 220, 256-257 (1998).

assignment of errors raised by petitioner, the Court will ascertain first if the RTC committed a reversible error in giving credence to the testimonies of the prosecution witnesses, on which basis, it convicted appellant of the crime of Murder beyond reasonable doubt.

The trial court found the testimonies of Estrella and Rolando to be candid, positive and steadfast. It is a well-entrenched doctrine that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts and circumstances of weight and substance which would have affected the result of the case.[8]

The Court had carefully examined the testimonies of both Estrella and Rolando and there is no indication that the trial court's assessment of their credibility is tainted with arbitrariness or oversight of some fact and circumstance of weight and influence.[9] A wife's identification of the accused draws strength from the rule that family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants.[10] As the Court has held in *People vs. Villarama*,[11] blood relationship between a witness and the victim does not, by itself impair the credibility of witnesses — on the contrary, relationship strengthens credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit.[12]

The defense evidence consists only of the testimony of appellant. His testimony is likewise aptly narrated by the RTC, as follows:

Briefly, the accused testified that he does not know his co-accused Edwin Masagnay, Jun Icabande, Pilong Dolino, Rollie dela Cruz,

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[8] *People vs. Bon*, 396 SCRA 506, 511 (2003).

[9] *People vs. Toyco, Jr.*, 349 SCRA 385, 397 (2001).

[10] *People vs. Lovedorial*, 349 SCRA 402, 413 (2001).

[11] *People vs. Villarama*, 397 SCRA 306, 319 (2003).

[12] *Id.*, p. 319.

Richard Icabande, Mardelissa dela Cruz and a certain Edgar; that he is not a co-conspirator of his co-accused; that he does not know the complainant Estrella Garcia, Roland Garcia and the other witnesses who testified against him; that on January 12, 1997, he was at his house at Brgy. Sto. Toribio, Lipa City, and at around 9:00 o'clock in the evening, he went to a store at the boundary of Barangay Balintawak and Brgy. Sto. Toribio, both of Lipa City, to buy bread; that from the store and while he was walking towards his house, he heard a commotion at the side of the street; that he does not recognize the persons involved in the commotion; that he does not also know how many persons were involved in the commotion ; that suddenly, he felt that he was stabbed at his right shoulder by someone, whom he did not recognized; that he requested somebody, whom he does not know, to bring him to the hospital and said person obliged by accompanying him in walking towards Lipa Medix; that at Lipa Medix, he was treated by a certain Dr. dela Cruz; that his wound was cleaned and sutured and he stayed at the hospital for two (2) days; that on January 4, 1997, he was fetched from the hospital by the police detachment of Lipa City and brought to the Lipa City Police Headquarters, where he was detained at the City Jail; that he never questioned the police authorities why he was detained nor filed any case against any of them; that his elder brother was the one who shouldered the expenses at Lipa Medix; and, that he did not get any medical certificate.[13]

While records disclose that prosecution witness SPO1 Mario Magnaye indeed saw appellant in the hospital,[14] there is no sufficient evidence to corroborate the testimony of appellant that he was attacked by an unknown assailant on the date and time that Romeo Garcia was killed. The defense failed to establish that he could not have been at the scene of the crime. Appellant failed to produce a medical certificate showing that he was admitted in the hospital before the crime happened at 10:00 in the evening of January 12, 1997. Appellant's bare testimony is self-serving and the trial court did not err in not giving credence

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[13] *Ibid*.; *People vs. De Leon*, 350 SCRA 11, 27 (2001).

[14] TSN, July 7, 1997, pp. 38-39.

to it. Besides, the defense of alibi is worthless in the face of positive identification by the prosecution witnesses.[15]

Neither had the defense presented evidence as to any improper motive that could have moved the principal witnesses of the prosecution to testify against appellant. The absence thereof sustains the conclusion that no improper motive existed and that the testimonies of Estrella and Rolando are worthy of full faith and credence.[16] With the prosecution witnesses' positive identification of appellant as one of the perpetrators in the killing of Romeo Garcia, the trial court did not err in convicting appellant of Murder beyond reasonable doubt.

In his Brief, appellant assails the decision of the RTC only on two grounds: (1) that appellant did not conspire in the killing of Romeo Garcia; and (2) that abuse of superior strength did not qualify the crime committed to Murder.

Appellant argues that he could not have possibly conspired with the accused Jun Icambande in stabbing Romeo to death, or be considered as a principal in the commission of the crime of Murder because he stabbed Romeo only once hitting him at the right side of his body which was found on record to be only superficial. The Court is not convinced with appellant's argument.

As the Court has held in *People vs. Tuppal,*[17] conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime.[18] In conspiracy, it is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all.[19]

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[15] *People vs. Corral*, 398 SCRA 494, 504 (2003); *People vs. Casita, Jr.*, 397 SCRA 382, 397 (2003).

[16] *People vs. Garillo*, 398 SCRA 118, 130 (2003).

[17] 395 SCRA 72 (2003).

[18] *Id*., p. 81.

[19] *People vs. Buayaban*, 400 SCRA 48, 63 (2003).

The fact that appellant together with Edwin Masagnay, a certain Jun and Pilong whose surnames are not known to the prosecution witnesses, forcibly entered the house of victim Romeo by destroying its door, and then one after another, inflicted injury on the victim with appellant stabbing Romeo with a *gulukan*, followed by Edwin hitting Romeo with a lead pipe, then Jun stabbing Romeo with a knife with a wooden handle and while Romeo laid prostrate, face up, Pilong dropped several hollow blocks on the face and body of Romeo; after which, they ran away,[20] certainly manifest a common intent or desire to kill Romeo. They acted in concert in the commission of the same, manifesting a common purpose or design and unity in its execution.[21]

Conspiracy is thus established by the prosecution beyond reasonable doubt. Conspiracy having been proven, the precise degree of culpability of each of the accused is of no moment.[22] The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy.[23] Thus, the Court finds no merit to appellant's claim that having merely inflicted a superficial wound on the victim, he should not be held liable for Murder.

Furthermore, the fact that appellant chased Rolando when the latter ran towards the cornfield before his co-accused Jun dealt the fatal blow on the right side of the chest of Romeo,[24] does not relieve appellant of or reduce his criminal liability as a principal in the commission of the crime. To be a conspirator, one need not participate in every detail of execution; he need not even take part in every act or need not even know the

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[20] TSN, Estrella Garcia, April 1, 1997, pp. 4-22.

[21] *People vs. Caraig*, 400 SCRA 67, 80 (2003).

[22] *People vs. Caballero*, 400 SCRA 424, 437 (2003).

[23] *People vs. Acosta, Jr.*, 396 SCRA 348, 373 (2003).

[24] TSN, Testimony of Dra. Avelyn Garin, July 7, 1997, pp. 22-25; TSN, Testimony of Estrella Garcia, April 1, 1997, pp. 14-17.

exact part to be performed by the others in the execution of the conspiracy.[25]

As to the second assigned error of the RTC, appellant argues that before the qualifying circumstance of abuse of superior strength can be legally appreciated, it must be indubitably shown that there was deliberate intent on the part of the malefactors to take advantage thereof, citing *People vs. Cañete*[26] and the prosecution must duly prove that the assailants purposely used excessive force out of proportion to the means of defense available to the person attacked, citing *People vs. Castillo*.[27]

In the *Cañete* case, the Court held:

> Before abuse of superior strength may be appreciated, it must be clearly shown that there was deliberate intent on the part of the malefactor to take advantage thereof. To justifiably appreciate said circumstance, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event (*People vs. Escoto*, 244 SCRA 87; 97-98 [1995], citing *People vs. Cabiling*, 74 SCRA 285 [1976]).[28]

Tested against those requirements, the prosecution, in the present case, had amply established the existence of the qualifying circumstance of abuse of superior strength. Appellant together with his three co-accused, namely: Edwin Masagnay, a certain Jun and one Pilong whose surnames are not known to the prosecution witnesses, barged into the house of the victim after the latter had taken refuge therein, and notwithstanding the couple's plea that they settle their differences the next day, by forcibly breaking the door and one after the other took their turn in inflicting the injuries sustained by the unarmed victim, resulting to his death. Clearly, without any doubt, each of appellant

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[25] *People vs. Tulin*, 364 SCRA 10, 28 (2001).

[26] 287 SCRA 490 (1998).

[27] 289 SCRA 213, 209 (1998).

[28] Note 25, p. 501.

and his co-accused acted in concert with the evident purpose of killing the victim. The attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity.[29]

Under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder, if committed with the qualifying circumstance of taking advantage of superior strength and shall be punished by *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the lesser penalty shall be applied, pursuant to Article 63(2) of the Revised Penal Code. Thus, the RTC correctly imposed the penalty of *reclusion perpetua*.

We come now to the damages awarded by the RTC to the heirs of deceased victim Romeo. The Court has held that in every case, trial courts must specify the award of each item of damages and make a finding thereon in the body of the decision.[30]

The RTC correctly awarded the amount of ₱50,000.00 as civil indemnity for the death of the victim.[31] However, the RTC erred in awarding the amount of ₱26,150.00 for actual damages. Its only basis for awarding said amount is the testimony of Estrella Garcia, the victim's wife who presented no receipts but only an itemized list prepared by her consisting of expenses for the wake and the burial and other items related thereto.[32] The Court has held that to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof.[33] The list submitted by Estrella is self-serving and therefore not a competent evidence. The Court can only award actual damages if supported by receipts.[34]

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[29] *People vs. Aliben*, 398 SCRA 255, 285 (2003).

[30] *People vs. Galo*, 349 SCRA 161, 178 (2001).

[31] *People vs. Delina*, 396 SCRA 386, 419 (2003).

[32] TSN, April 15, 1997, pp. 3-4.

[33] *People vs. Alfon*, 399 SCRA 64, 74 (2003).

[34] *People vs. Diaz*, 395 SCRA 52, 71 (2003).

However, current jurisprudence grants the award of the amount of ₱25,000.00 as temperate damages when it appears that the heirs of the victims had suffered pecuniary losses but the amount thereof cannot be proved with certainty.[35]

Both Estrella and Rolando witnessed the killing of their husband and father, respectively, which indubitably caused them emotional shock and distress. As such, they are entitled to moral damages in the amount of ₱50,000.00.[36]

Although the circumstance of dwelling was not appreciated by the Court as an aggravating circumstance in the ascertainment of appellant's criminal liability for the reason that the same, while proven by the prosecution, was not alleged in the Information, pursuant to Secs. 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, the heirs of the victim are entitled to exemplary damages in the amount of ₱25,000.00, insofar as the civil aspect of the case is concerned.

WHEREFORE, the Court *AFFIRMS* the decision dated June 15, 1998 of the Regional Trial Court (Branch 12), Lipa City convicting Gonzalo Masagnay *alias* "Jun Masagnay" of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua* with modifications as to damages. He is ordered to pay the Heirs of Romeo L. Garcia, the following amounts: Fifty Thousand Pesos (₱50,000.00) as civil indemnity for the death of the victim; ₱50,000.00 as moral damages; Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages; and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages, or a total of One Hundred Fifty Thousand Pesos (₱150,000.00), and to pay the costs of the suit.

SO ORDERED.

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

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[35] *People vs. De los Santos*, G.R. No. 135919, May 9, 2003.

[36] *People vs. Garcia, Jr.,* 400 SCRA 229, 241-242 (2003).

FIRST DIVISION

[G.R. No. 138051. June 10, 2004]

JOSE Y. SONZA, *petitioner, vs.* **ABS-CBN BROADCASTING CORPORATION,** *respondent.*

SYNOPSIS

Petitioner Sonza entered into a contract whereby he agreed to render his services exclusively to respondent ABS-CBN as talent for radio and television. But due to misunderstanding, petitioner wrote a resignation letter to the management. Later, petitioner filed a complaint before the Department of Labor against ABS-CBN for non-payment of salaries and other benefits. ABS-CBN filed a motion to dismiss on the ground that no employer-employee relationship existed between the parties. The labor arbiter denied the motion to dismiss and directed the parties to file their respective position papers. Thereafter, the labor arbiter rendered its decision dismissing the complaint for lack of jurisdiction. Sonza appealed to the NLRC, but the latter affirmed the labor arbiter's decision. His motion for reconsideration having been denied, Sonza filed a special civil action for *certiorari* before the Court of Appeals. The Court of Appeals dismissed the case; hence, Sonza filed this petition for review assailing the CA decision.

The Supreme Court denied the petition. According to the Court, in applying the control test to this case, the Court found that Sonza was not an employee, but an independent contractor. The control test is the most important test the courts could apply in distinguishing an employee from an independent contractor. The Court also ruled that being an exclusive talent does not by itself mean that Sonza is an employee of ABS-CBN. Even an independent contractor can validly provide his services exclusively to the hiring party. In the broadcast industry, exclusivity is not necessarily the same as control. Not every performance of services for a fee creates an employer-employee relationship. Individuals with special skills, expertise or talent enjoy the freedom to offer their services as independent

contractors. The right to life and livelihood guarantees this freedom to contract as independent contractors. The right of labor to security of tenure cannot operate to deprive an individual, possessed with special skills, expertise and talent, of his right to contract as an independent contractor. According to the Court, Sonza's claims were all based on the agreement he had with ABS-CBN. The present case does not call for an application of the Labor Code provisions but an interpretation and implementation of an agreement, which is intrinsically a civil case cognizable by the regular courts.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LABOR ARBITER; ACCORDED RESPECT AND EVEN FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.—** The existence of an employer-employee relationship is a question of fact. Appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. A party cannot prove the absence of substantial evidence by simply pointing out that there is contrary evidence on record, direct or circumstantial. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.—** Case law has consistently held that the elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called "*control test*", is the most important element.

3. **ID.; ID.; ID.; ID.; CONTROL TEST, CONSTRUED.—** The control test is the *most important* test our courts apply in distinguishing an employee from an independent contractor.

This test is based on the extent of control the hirer exercises over a worker. The greater the supervision and control the hirer exercises, the more likely the worker is deemed an employee. The converse holds true as well – the less control the hirer exercises, the more likely the worker is considered an independent contractor.

4. ID.; ID.; ID.; ID.; NOT PRESENT WHEN INDIVIDUALS WITH SPECIAL SKILLS, EXPERTISE OR TALENT ENJOY THE FREEDOM TO OFFER THEIR SERVICES AS INDEPENDENT CONTRACTOR; RATIONALE.— The right of labor to security of tenure as guaranteed in the Constitution arises only if there is an employer-employee relationship under labor laws. Not every performance of services for a fee creates an employer-employee relationship. To hold that every person who renders services to another for a fee is an employee - to give meaning to the security of tenure clause — will lead to absurd results. Individuals with special skills, expertise or talent enjoy the freedom to offer their services as independent contractors. The right to life and livelihood guarantees this freedom to contract as independent contractors. The right of labor to security of tenure cannot operate to deprive an individual, possessed with special skills, expertise and talent, of his right to contract as an independent contractor. An individual like an artist or talent has a right to render his services without any one controlling the means and methods by which he performs his art or craft. This Court will not interpret the right of labor to security of tenure to compel artists and talents to render their services only as employees. If radio and television program hosts can render their services only as employees, the station owners and managers can dictate to the radio and television hosts what they say in their shows. This is not conducive to freedom of the press.

5. ID.; ID.; LABOR-ONLY CONTRACT; PARTIES THERETO.— In a labor-only contract, there are three parties involved: (1) the "labor-only" contractor; (2) the employee who is ostensibly under the employ of the "labor-only" contractor; and (3) the principal who is deemed the real employer. Under this scheme, *the "labor-only" contractor is the agent of the principal.* The law makes the principal responsible to the employees of

the "labor-only contractor" as if the principal itself directly hired or employed the employees.

6. ID.; ID.; LABOR ARBITER; CAN DECIDE A CASE BASED SOLELY ON POSITION PAPERS AND SUPPORTING DOCUMENTS SUBMITTED; RATIONALE.— The Labor Arbiter can decide a case based solely on the position papers and the supporting documents without a formal trial. The holding of a formal hearing or trial is something that the parties cannot demand as a matter of right. If the Labor Arbiter is confident that he can rely on the documents before him, he cannot be faulted for not conducting a formal trial, unless under the particular circumstances of the case, the documents alone are insufficient. The proceedings before a Labor Arbiter are non-litigious in nature. Subject to the requirements of due process, the technicalities of law and the rules obtaining in the courts of law do not strictly apply in proceedings before a Labor Arbiter.

7. TAXATION; VALUE ADDED TAX (VAT); PAID BY PROFESSIONALS INCLUDING TALENTS, TELEVISION AND RADIO BROADCASTERS ON SERVICES THEY RENDER.— The National Internal Revenue Code ("NIRC") in relation to Republic Act No. 7716, as amended by Republic Act No. 8241, treats talents, television and radio broadcasters differently. Under the NIRC, these professionals are subject to the 10% value-added tax ("VAT") on services they render. Exempted from the VAT are those under an employer-employee relationship. This different tax treatment accorded to talents and broadcasters bolsters our conclusion that they are independent contractors, provided all the basic elements of a contractual relationship are present as in this case.

APPEARANCES OF COUNSEL

Theodore O. Te for petitioner.
Abello Concepcion Regala and Cruz for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review on *certiorari*[1] assailing the 26 March 1999 Decision[2] of the Court of Appeals in CA-G.R. SP No. 49190 dismissing the petition filed by Jose Y. Sonza ("SONZA"). The Court of Appeals affirmed the findings of the National Labor Relations Commission ("NLRC"), which affirmed the Labor Arbiter's dismissal of the case for lack of jurisdiction.

The Facts

In May 1994, respondent ABS-CBN Broadcasting Corporation ("ABS-CBN") signed an Agreement ("Agreement") with the Mel and Jay Management and Development Corporation ("MJMDC"). ABS-CBN was represented by its corporate officers while MJMDC was represented by SONZA, as President and General Manager, and Carmela Tiangco ("TIANGCO"), as EVP and Treasurer. Referred to in the Agreement as "AGENT," MJMDC agreed to provide SONZA's services exclusively to ABS-CBN as talent for radio and television. The Agreement listed the services SONZA would render to ABS-CBN, as follows:

a. Co-host for Mel & Jay radio program, 8:00 to 10:00 a.m., Mondays to Fridays;

b. Co-host for Mel & Jay television program, 5:30 to 7:00 p.m., Sundays.[3]

ABS-CBN agreed to pay for SONZA's services a monthly talent fee of ₱310,000 for the first year and ₱317,000 for the

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Jesus M. Elbinias and Marina L. Buzon concurring.

[3] *Rollo*, p. 150.

second and third year of the Agreement. ABS-CBN would pay the talent fees on the 10th and 25th days of the month.

On 1 April 1996, SONZA wrote a letter to ABS-CBN's President, Eugenio Lopez III, which reads:

> Dear Mr. Lopez,
>
> We would like to call your attention to the Agreement dated May 1994 entered into by your goodself on behalf of ABS-CBN with our company relative to our talent JOSE Y. SONZA.
>
> As you are well aware, Mr. Sonza irrevocably resigned in view of recent events concerning his programs and career. We consider these acts of the station violative of the Agreement and the station as in breach thereof. In this connection, we hereby serve notice of rescission of said Agreement at our instance effective as of date.
>
> Mr. Sonza informed us that he is waiving and renouncing recovery of the remaining amount stipulated in paragraph 7 of the Agreement but reserves the right to seek recovery of the other benefits under said Agreement.
>
> Thank you for your attention.
>
> Very truly yours,
>
> (Sgd.)
> JOSE Y. SONZA
> President and Gen. Manager[4]

On 30 April 1996, SONZA filed a complaint against ABS-CBN before the Department of Labor and Employment, National Capital Region in Quezon City. SONZA complained that ABS-CBN did not pay his salaries, separation pay, service incentive leave pay, 13th month pay, signing bonus, travel allowance and amounts due under the Employees Stock Option Plan ("ESOP").

On 10 July 1996, ABS-CBN filed a Motion to Dismiss on the ground that no employer-employee relationship existed between the parties. SONZA filed an Opposition to the motion on 19 July 1996.

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[4] *Ibid.*, p. 204.

Meanwhile, ABS-CBN continued to remit SONZA's monthly talent fees through his account at PCIBank, Quezon Avenue Branch, Quezon City. In July 1996, ABS-CBN opened a new account with the same bank where ABS-CBN deposited SONZA's talent fees and other payments due him under the Agreement.

In his Order dated 2 December 1996, the Labor Arbiter[5] denied the motion to dismiss and directed the parties to file their respective position papers. The Labor Arbiter ruled:

> In this instant case, complainant for having invoked a claim that he was an employee of respondent company until April 15, 1996 and that he was not paid certain claims, it is sufficient enough as to confer jurisdiction over the instant case in this Office. And as to whether or not such claim would entitle complainant to recover upon the causes of action asserted is a matter to be resolved only after and as a result of a hearing. Thus, the respondent's plea of lack of employer-employee relationship may be pleaded only as a matter of defense. It behooves upon it the duty to prove that there really is no employer-employee relationship between it and the complainant.

The Labor Arbiter then considered the case submitted for resolution. The parties submitted their position papers on 24 February 1997.

On 11 March 1997, SONZA filed a Reply to Respondent's Position Paper with Motion to Expunge Respondent's Annex 4 and Annex 5 from the Records. Annexes 4 and 5 are affidavits of ABS-CBN's witnesses Soccoro Vidanes and Rolando V. Cruz. These witnesses stated in their affidavits that the prevailing practice in the television and broadcast industry is to treat talents like SONZA as independent contractors.

The Labor Arbiter rendered his Decision dated 8 July 1997 dismissing the complaint for lack of jurisdiction.[6] The pertinent parts of the decision read as follows:

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[5] Donato G. Quinto, Jr.

[6] *Rollo*, pp. 114-130.

x x x x x x x x x

While Philippine jurisprudence has not yet, with certainty, touched on the "true nature of the contract of a talent," it stands to reason that a "talent" as above-described cannot be considered as an employee by reason of the peculiar circumstances surrounding the engagement of his services.

It must be noted that *complainant was engaged by respondent by reason of his peculiar skills and talent as a TV host and a radio broadcaster. Unlike an ordinary employee, he was free to perform the services he undertook to render in accordance with his own style.* The benefits conferred to complainant under the May 1994 Agreement are certainly very much higher than those generally given to employees. For one, complainant Sonza's monthly talent fees amount to a staggering ₱317,000. Moreover, his engagement as a talent was covered by a specific contract. Likewise, he was not bound to render eight (8) hours of work per day as he worked only for such number of hours as may be necessary.

The fact that per the May 1994 Agreement complainant was accorded some benefits normally given to an employee is inconsequential. *Whatever benefits complainant enjoyed arose from specific agreement by the parties and not by reason of employer-employee relationship.* As correctly put by the respondent, "All these benefits are merely talent fees and other contractual benefits and should not be deemed as 'salaries, wages and/or other remuneration' accorded to an employee, notwithstanding the nomenclature appended to these benefits. Apropos to this is the rule that the term or nomenclature given to a stipulated benefit is not controlling, but the intent of the parties to the Agreement conferring such benefit."

The fact that complainant was made subject to respondent's Rules and Regulations, likewise, does not detract from the absence of employer-employee relationship. As held by the Supreme Court, "The line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means to achieve

it." (*Insular Life Assurance Co., Ltd. vs. NLRC, et al.,* G.R. No. 84484, November 15, 1989).

x x x x x x x x x (Italics supplied)[7]

SONZA appealed to the NLRC. On 24 February 1998, the NLRC rendered a Decision affirming the Labor Arbiter's decision. SONZA filed a motion for reconsideration, which the NLRC denied in its Resolution dated 3 July 1998.

On 6 October 1998, SONZA filed a special civil action for *certiorari* before the Court of Appeals assailing the decision and resolution of the NLRC. On 26 March 1999, the Court of Appeals rendered a Decision dismissing the case.[8]

Hence, this petition.

The Rulings of the NLRC and Court of Appeals

The Court of Appeals affirmed the NLRC's finding that no employer-employee relationship existed between SONZA and ABS-CBN. Adopting the NLRC's decision, the appellate court quoted the following findings of the NLRC:

> x x x the May 1994 Agreement will readily reveal that MJMDC entered into the contract merely as an agent of complainant Sonza, the principal. By all indication and as the law puts it, the act of the agent is the act of the principal itself. This fact is made particularly true in this case, as admittedly MJMDC 'is a management company devoted exclusively to managing the careers of Mr. Sonza and his broadcast partner, Mrs. Carmela C. Tiangco.' (Opposition to Motion to Dismiss)
>
> Clearly, the relations of principal and agent only accrues between complainant Sonza and MJMDC, and not between ABS-CBN and MJMDC. This is clear from the provisions of the May 1994 Agreement which specifically referred to MJMDC as the 'AGENT'. As a matter of fact, when complainant herein unilaterally rescinded said May 1994 Agreement, it was MJMDC which issued the notice of rescission in behalf of Mr. Sonza, who himself signed the same in his capacity as President.

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[7] *Ibid*., pp. 123-125.

[8] *Ibid*., p. 39.

Moreover, previous contracts between Mr. Sonza and ABS-CBN reveal the fact that historically, the parties to the said agreements are ABS-CBN and Mr. Sonza. And it is only in the May 1994 Agreement, which is the latest Agreement executed between ABS-CBN and Mr. Sonza, that MJMDC figured in the said Agreement as the agent of Mr. Sonza.

We find it erroneous to assert that MJMDC is a mere 'labor-only' contractor of ABS-CBN such that there exist[s] employer-employee relationship between the latter and Mr. Sonza. On the contrary, We find it indubitable, that MJMDC is an agent, not of ABS-CBN, but of the talent/contractor Mr. Sonza, as expressly admitted by the latter and MJMDC in the May 1994 Agreement.

It may not be amiss to state that jurisdiction over the instant controversy indeed belongs to the regular courts, the same being in the nature of an action for alleged breach of contractual obligation on the part of respondent-appellee. As squarely apparent from complainant-appellant's Position Paper, his claims for compensation for services, '13th month pay', signing bonus and travel allowance against respondent-appellee are not based on the Labor Code but rather on the provisions of the May 1994 Agreement, while his claims for proceeds under Stock Purchase Agreement are based on the latter. A portion of the Position Paper of complainant-appellant bears perusal:

> 'Under [the May 1994 Agreement] with respondent ABS-CBN, the latter contractually bound itself to pay complainant a signing bonus consisting of shares of stocks . . . with FIVE HUNDRED THOUSAND PESOS (₱500,000.00).
>
> Similarly, complainant is also entitled to be paid 13th month pay based on an amount not lower than the amount he was receiving prior to effectivity of (the) Agreement'.
>
> Under paragraph 9 of (the May 1994 Agreement), complainant is entitled to a commutable travel benefit amounting to at least One Hundred Fifty Thousand Pesos (₱150,000.00) per year.'

Thus, it is precisely because of complainant-appellant's own recognition of the fact that his contractual relations with ABS-CBN are founded on the New Civil Code, rather than the Labor Code, that instead of merely resigning from ABS-CBN, complainant-appellant served upon the latter a 'notice of rescission' of Agreement with the station, per

his letter dated April 1, 1996, which asserted that instead of referring to unpaid employee benefits, 'he is waiving and renouncing recovery of the remaining amount stipulated in paragraph 7 of the Agreement but reserves the right to such recovery of the other benefits under said Agreement.' (Annex 3 of the respondent ABS-CBN's Motion to Dismiss dated July 10, 1996).

Evidently, it is precisely by reason of the alleged violation of the May 1994 Agreement and/or the Stock Purchase Agreement by respondent-appellee that complainant-appellant filed his complaint. Complainant-appellant's claims being anchored on the alleged breach of contract on the part of respondent-appellee, the same can be resolved by reference to civil law and not to labor law. Consequently, they are within the realm of civil law and, thus, lie with the regular courts. As held in the case of *Dai-Chi Electronics Manufacturing vs. Villarama*, 238 SCRA 267, 21 November 1994, *an action for breach of contractual obligation is intrinsically a civil dispute*.[9] (Italics supplied)

The Court of Appeals ruled that the existence of an employer-employee relationship between SONZA and ABS-CBN is a factual question that is within the jurisdiction of the NLRC to resolve.[10] A special civil action for *certiorari* extends only to issues of want or excess of jurisdiction of the NLRC.[11] Such action cannot cover an inquiry into the correctness of the evaluation of the evidence which served as basis of the NLRC's conclusion.[12] The Court of Appeals added that it could not re-examine the parties' evidence and substitute the factual findings of the NLRC with its own.[13]

The Issue

In assailing the decision of the Court of Appeals, SONZA contends that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE NLRC'S DECISION AND REFUSING TO FIND THAT AN EMPLOYER-

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[9] *Rollo*, pp. 37-39.

[10] *Ibid*., p. 39.

[11] *Ibid*.

[12] *Ibid*.

[13] *Ibid*.

EMPLOYEE RELATIONSHIP EXISTED BETWEEN SONZA AND ABS-CBN, DESPITE THE WEIGHT OF CONTROLLING LAW, JURISPRUDENCE AND EVIDENCE TO SUPPORT SUCH A FINDING.[14]

The Court's Ruling

We affirm the assailed decision.

No convincing reason exists to warrant a reversal of the decision of the Court of Appeals affirming the NLRC ruling which upheld the Labor Arbiter's dismissal of the case for lack of jurisdiction.

The present controversy is one of first impression. Although Philippine labor laws and jurisprudence define clearly the elements of an employer-employee relationship, this is the first time that the Court will resolve the nature of the relationship between a television and radio station and one of its "talents." There is no case law stating that a radio and television program host is an employee of the broadcast station.

The instant case involves big names in the broadcast industry, namely Jose "Jay" Sonza, a known television and radio personality, and ABS-CBN, one of the biggest television and radio networks in the country.

SONZA contends that the Labor Arbiter has jurisdiction over the case because he was an employee of ABS-CBN. On the other hand, ABS-CBN insists that the Labor Arbiter has no jurisdiction because SONZA was an independent contractor.

Employee or Independent Contractor?

The existence of an employer-employee relationship is a question of fact. Appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence.[15] Substantial evidence means

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[14] *Ibid.*, p. 269.

[15] *Fleischer Company, Inc. v. National Labor Relations Commission*, G.R. No. 121608, 26 March 2001, 355 SCRA 105; *AFP Mutual Benefit Association, Inc. v. NLRC*, G.R. No. 102199, 28 January 1997, 267 SCRA 47; *Cathedral School of Technology v. NLRC*, G.R. No. 101438, 13 October

such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[16] A party cannot prove the absence of substantial evidence by simply pointing out that there is contrary evidence on record, direct or circumstantial. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[17]

SONZA maintains that all essential elements of an employer-employee relationship are present in this case. Case law has consistently held that the elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished.[18] The last element, the so-called "*control test,*" is the most important element.[19]

A. Selection and Engagement of Employee

ABS-CBN engaged SONZA's services to co-host its television and radio programs because of SONZA's peculiar skills, talent and celebrity status. SONZA contends that the "discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondent's claim of independent contractorship."

1992, 214 SCRA 551. See also *Ignacio v. Coca-Cola Bottlers Phils., Inc.*, 417 Phil. 747 (2001); *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, 26 March 2001, 355 SCRA 195; *Sandigan Savings and Loan Bank, Inc. v. NLRC*, 324 Phil. 348 (1996); *Magnolia Dairy Products Corporation v. NLRC*, 322 Phil. 508 (1996).

[16] *Madlos v. NLRC*, 324 Phil. 498 (1996).

[17] *Domasig v. National Labor Relations Commission*, G.R. No. 118101, 16 September 1996, 261 SCRA 779.

[18] *De Los Santos v. NLRC*, 423 Phil. 1020 (2001); *Traders Royal Bank v. NLRC*, 378 Phil. 1081 (1999); *Aboitiz Shipping Employees Association v. National Labor Relations Commission*, G.R. No. 78711, 27 June 1990, 186 SCRA 825; *Ruga v. National Labor Relations Commission*, G.R. Nos. 72654-61, 22 January 1990, 181 SCRA 266.

[19] *Ibid*.

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, ***because of his unique skills, talent and celebrity status not possessed by ordinary employees,*** is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.

In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.

B. Payment of Wages

ABS-CBN directly paid SONZA his monthly talent fees with no part of his fees going to MJMDC. SONZA asserts that this mode of fee payment shows that he was an employee of ABS-CBN. SONZA also points out that ABS-CBN granted him benefits and privileges "which he would not have enjoyed if he were truly the subject of a valid job contract."

All the talent fees and benefits paid to SONZA were the result of negotiations that led to the Agreement. If SONZA were ABS-CBN's employee, there would be no need for the parties to stipulate on benefits such as "SSS, Medicare, x x x and 13th month pay"[20] which the law automatically incorporates into every employer-employee contract.[21] Whatever benefits

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[20] Paragraph 10 of the Agreement provides: "The COMPANY shall provide him with the following benefits: SSS, Medicare, Healthcare, executive life and accident insurance, and a 13th-month pay based on an amount not lower than the amount he was receiving prior to the effectivity of this Agreement."

[21] Presidential Decree No. 851 (Requiring All Employers to Pay their Employees a 13th-month Pay) for the 13th month pay; Republic Act No. 1161 (Social Security Law) for the SSS benefits; and Republic Act No. 7875 (National Health Insurance Act of 1995) for the Philhealth insurance.

SONZA enjoyed arose from contract and not because of an employer-employee relationship.[22]

SONZA's talent fees, amounting to ₱317,000 monthly in the second and third year, are so huge and out of the ordinary that they indicate more an independent contractual relationship rather than an employer-employee relationship. ABS-CBN agreed to pay SONZA such huge talent fees precisely because of SONZA's unique skills, talent and celebrity status not possessed by ordinary employees. Obviously, SONZA acting alone possessed enough bargaining power to demand and receive such huge talent fees for his services. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative, but not conclusive, of an independent contractual relationship.

The payment of talent fees directly to SONZA and not to MJMDC does not negate the status of SONZA as an independent contractor. The parties expressly agreed on such mode of payment. Under the Agreement, MJMDC is the AGENT of SONZA, to whom MJMDC would have to turn over any talent fee accruing under the Agreement.

C. Power of Dismissal

For violation of any provision of the Agreement, either party may terminate their relationship. SONZA failed to show that ABS-CBN could terminate his services on grounds other than breach of contract, such as retrenchment to prevent losses as provided under labor laws.[23]

During the life of the Agreement, ABS-CBN agreed to pay SONZA's talent fees as long as "AGENT and Jay Sonza shall

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[22] Article 1157 of the Civil Code explicitly provides:

Obligations arise from:

(1) Law;

(2) Contracts;

(3) Quasi-contracts;

(4) Acts or omissions punished by law; and

(5) Quasi-delicts. (Italics supplied)

[23] See Article 283, Labor Code.

faithfully and completely perform each condition of this Agreement."[24] Even if it suffered severe business losses, ABS-CBN could not retrench SONZA because ABS-CBN remained obligated to pay SONZA's talent fees during the life of the Agreement. This circumstance indicates an independent contractual relationship between SONZA and ABS-CBN.

SONZA admits that even after ABS-CBN ceased broadcasting his programs, ABS-CBN still paid him his talent fees. Plainly, ABS-CBN adhered to its undertaking in the Agreement to continue paying SONZA's talent fees during the remaining life of the Agreement even if ABS-CBN cancelled SONZA's programs through no fault of SONZA.[25]

SONZA assails the Labor Arbiter's interpretation of his rescission of the Agreement as an admission that he is not an employee of ABS-CBN. The Labor Arbiter stated that "if it were true that complainant was really an employee, he would merely resign, instead." SONZA did actually resign from ABS-CBN but he also, as president of MJMDC, rescinded the Agreement. SONZA's letter clearly bears this out.[26] However, the manner by which

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[24] Paragraph 7 of the Agreement states: "Provided that the AGENT and Jay Sonza shall faithfully and completely perform each condition of this Agreement for and in consideration of the aforesaid services by the AGENT and its talent, the COMPANY agrees to pay the AGENT for the first year of this Agreement the amount of THREE HUNDRED TEN THOUSAND PESOS ONLY (₱310,000.00) per month, payable on the 10th and 25th of each month. For the second and third year of this Agreement, the COMPANY shall pay the amount of THREE HUNDRED SEVENTEEN THOUSAND PESOS ONLY (₱317,000.00) per month, payable likewise on the 10th and 25th of each month."

[25] Paragraph 11 of the Agreement states: "In the event of cancellation of this Agreement through no fault of the AGENT and its talent, COMPANY agrees to pay the full amount specified in this Agreement for the remaining period covered by this Agreement, provided that the talent shall not render any service for or in any other radio or television production of any person, firm, corporation or any entity competing with the COMPANY until the expiry hereof."

[26] The opening sentence of the second paragraph of SONZA's letter reads:

"As you are well aware, *Mr. Sonza irrevocably resigned* in view of recent events concerning his programs and career. x x x"

SONZA terminated his relationship with ABS-CBN is immaterial. Whether SONZA rescinded the Agreement or resigned from work does not determine his status as employee or independent contractor.

D. Power of Control

Since there is no local precedent on whether a radio and television program host is an employee or an independent contractor, we refer to foreign case law in analyzing the present case. The United States Court of Appeals, First Circuit, recently held in ***Alberty-Vélez v. Corporación De Puerto Rico Para La Difusión Pública ("WIPR")***[27] that a television program host is an independent contractor. We quote the following findings of the U.S. court:

> Several factors favor classifying Alberty as an independent contractor. *First, a television actress is a skilled position requiring talent and training not available on-the-job. x x x* In this regard, Alberty possesses a master's degree in public communications and journalism; is trained in dance, singing, and modeling; taught with the drama department at the University of Puerto Rico; and acted in several theater and television productions prior to her affiliation with "*Desde Mi Pueblo*." *Second, Alberty provided the "tools and instrumentalities" necessary for her to perform.* Specifically, she provided, or obtained sponsors to provide, the costumes, jewelry, and other image-related supplies and services necessary for her appearance. Alberty disputes that this factor favors independent contractor status because WIPR provided the "equipment necessary to tape the show." Alberty's argument is misplaced. The equipment necessary for Alberty to conduct *her job* as host of "*Desde Mi Pueblo*" related to her appearance on the show. Others provided equipment for filming and producing the show, but these were not the primary tools that Alberty used to perform her particular function. If we accepted this argument, independent contractors could never work on collaborative projects because other individuals often provide the equipment required for different aspects of the collaboration.x x x
>
> *Third, WIPR could not assign Alberty work in addition to filming "Desde Mi Pueblo."* Alberty's contracts with WIPR specifically provided that WIPR hired her "professional services as Hostess for

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[27] 361 F.3d 1, 2 March 2004.

the Program *Desde Mi Pueblo*." There is no evidence that WIPR assigned Alberty tasks in addition to work related to these tapings. x x x[28] (Italics supplied)

Applying the *control test* to the present case, we find that SONZA is not an employee but an independent contractor. The control test is the *most important* test our courts apply in distinguishing an employee from an independent contractor.[29] This test is based on the extent of control the hirer exercises over a worker. The greater the supervision and control the hirer exercises, the more likely the worker is deemed an employee. The converse holds true as well — the less control the hirer exercises, the more likely the worker is considered an independent contractor.[30]

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[28] See also *Spirides v. Reinhardt*, 486 F. Supp. 685 (1980).

[29] In the United States, aside from the right of control test, there are the "economic reality" test and the "multi-factor test." The tests are drawn from statutes, regulations, rules, policies, rulings, case law and the like. The "right of control" test applies under the federal Internal Revenue Code ("IRC"). The "economic reality" test applies to the federal Fair Labor Standards Act ("FLSA"). The California Division of Labor Standards Enforcement ("DLSE") uses a hybrid of these two tests often referred to as the "multi-factor test" in determining who an employee is.

Most courts in the United States have utilized the control test to determine whether one is an employee. Under this test, a court must consider the hiring party's right to control the manner and means by which the product is accomplished. Among other factors relevant to this inquiry are the skills required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. (*www.piercegorman.com*, quoted from the article entitled "Management-side employment law advice for the entertainment industry" with subtitle "*Classification of Workers: Independent Contractors versus Employee*" by David Albert Pierce, Esq.)

[30] *www.piercegorman.com*, quoted from the article entitled "Management-side employment law advice for the entertainment industry" with subtitle *"Classification of Workers: Independent Contractors versus Employee"* by David Albert Pierce, Esq.

First, SONZA contends that ABS-CBN exercised control over the means and methods of his work.

SONZA's argument is misplaced. ABS-CBN engaged SONZA's services specifically to co-host the "Mel & Jay" programs. ABS-CBN did not assign any other work to SONZA. To perform his work, SONZA only needed his skills and talent. How SONZA delivered his lines, appeared on television, and sounded on radio were outside ABS-CBN's control. SONZA did not have to render eight hours of work per day. The Agreement required SONZA to attend only rehearsals and tapings of the shows, as well as pre- and post-production staff meetings.[31] ABS-CBN could not dictate the contents of SONZA's script. However, the Agreement prohibited SONZA from criticizing in his shows ABS-CBN or its interests.[32] The clear implication is that SONZA had a free hand on what to say or discuss in his shows provided he did not attack ABS-CBN or its interests.

We find that ABS-CBN was not involved in the actual performance that produced the finished product of SONZA's work.[33] ABS-CBN did not instruct SONZA how to perform his job. ABS-CBN merely reserved the right to modify the program format and airtime schedule "for more effective

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[31] Paragraph 4 of the Agreement provides: "AGENT will make available Jay Sonza for rehearsals and tapings of the Programs on the day and time set by the producer and director of the Programs and to attend pre and post production staff meetings."

[32] Paragraph 15 of the Agreement provides: "AGENT, talent shall not use the Programs as a venue to broadcast or announce any criticism on any operational, administrative, or legal problems, situations or other matter which may occur, exist or alleged to have occurred or existed within the COMPANY. Likewise, AGENT, talent shall, in accordance with good broadcast management and ethics, take up with the proper officers of the COMPANY suggestions or criticisms on any matter or condition affecting the COMPANY or its relation to the public or third parties."

[33] In *Zhengxing v. Nathanson*, 215 F.Supp.2d 114, citing *Redd v. Summers*, 232 F.3d 933 (D.C. Cir.), plaintiff's superior was not involved in the actual performance that produced the final product.

programming."[34] ABS-CBN's sole concern was the quality of the shows and their standing in the ratings. Clearly, ABS-CBN did not exercise control over the means and methods of performance of SONZA's work.

SONZA claims that ABS-CBN's power not to broadcast his shows proves ABS-CBN's power over the means and methods of the performance of his work. Although ABS-CBN did have the option not to broadcast SONZA's show, ABS-CBN was still obligated to pay SONZA's talent fees. Thus, even if ABS-CBN was completely dissatisfied with the means and methods of SONZA's performance of his work, or even with the quality or product of his work, ABS-CBN could not dismiss or even discipline SONZA. All that ABS-CBN could do is not to broadcast SONZA's show but ABS-CBN must still pay his talent fees in full.[35]

Clearly, ABS-CBN's right not to broadcast SONZA's show, burdened as it was by the obligation to continue paying in full SONZA's talent fees, did not amount to control over the means and methods of the performance of SONZA's work. ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work — how he delivered his lines and appeared on television — did not meet ABS-CBN's approval. This proves that ABS-CBN's control was limited only to the result of SONZA's work, whether to broadcast the final product or not. In either case, ABS-CBN must still pay SONZA's talent fees in full until the expiry of the Agreement.

In ***Vaughan, et al. v. Warner, et al.,***[36] the United States Circuit Court of Appeals ruled that vaudeville performers were independent contractors although the management reserved the

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[34] Paragraph 3 of the Agreement provides: "The COMPANY reserves the right to modify the program format and likewise change airtime schedule for more effective programming."

[35] The right not to broadcast an independent contractor's show also gives the radio and television station protection in case it deems the contents of the show libelous.

[36] 157 F.2d 26, 8 August 1946.

right to delete objectionable features in their shows. Since the management did not have control over the manner of performance of the skills of the artists, it could only control the result of the work by deleting objectionable features.[37]

SONZA further contends that ABS-CBN exercised control over his work by supplying all equipment and crew. No doubt, ABS-CBN supplied the equipment, crew and airtime needed to broadcast the "Mel & Jay" programs. However, the equipment, crew and airtime are not the "tools and instrumentalities" SONZA needed to perform his job. What SONZA principally needed were his talent or skills and the costumes necessary for his appearance.[38] Even though ABS-CBN provided SONZA with the place of work and the necessary equipment, SONZA was still an independent contractor since ABS-CBN did not supervise and control his work. ABS-CBN's sole concern was for SONZA to display his talent during the airing of the programs.[39]

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[37] *Ibid*.

[38] In ***Zhengxing v. Nathanson***, 215 F.Supp.2d 114, 5 August 2002, plaintiff was also provided with the place of work and equipment to be used.

[39] In the Alberty case, the US Court of Appeals rejected Alberty's contention that WIPR provided the "equipment necessary to tape the show." The court held there that "the equipment necessary for Alberty to conduct *her job* as program host related to her appearance on the show. Others provided equipment for filming and producing the show, but these were not the primary tools that Alberty used to perform her particular function." Since Alberty provided, or obtained sponsors to provide, the costumes, jewelry, and other image-related supplies and services necessary for her appearance, she provided the "tools and instrumentalities" necessary for her to perform. The US Court of Appeals added that if it accepted Alberty's argument, independent contractors could never work on collaborative projects because other individuals often provide the equipment required for different aspects of the collaboration.

The Alberty case further ruled that "while 'control' over the manner, location, and hours of work is often critical to the independent contractor/employee analysis, it must be considered in light of the work performed and the industry at issue. Considering the tasks that an actor performs, the court does not believe that the sort of control identified by Alberty necessarily indicates employee status."

A radio broadcast specialist who works under minimal supervision is an independent contractor.[40] SONZA's work as television and radio program host required special skills and talent, which SONZA admittedly possesses. The records do not show that ABS-CBN exercised any supervision and control over how SONZA utilized his skills and talent in his shows.

Second, SONZA urges us to rule that he was ABS-CBN's employee because ABS-CBN subjected him to its rules and standards of performance. SONZA claims that this indicates ABS-CBN's control "not only [over] his manner of work but also the quality of his work."

The Agreement stipulates that SONZA shall abide with the rules and standards of performance "*covering talents*"[41] of ABS-CBN. The Agreement does not require SONZA to comply with the rules and standards of performance prescribed for employees of ABS-CBN. The code of conduct imposed on SONZA under the Agreement refers to the "Television and Radio Code of the *Kapisanan ng mga Broadcaster sa Pilipinas* (KBP), which has been adopted by the COMPANY (ABS-CBN) as its Code of Ethics."[42] The KBP code applies to broadcasters, not to employees of radio and television stations. Broadcasters are

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[40] In ***Zhengxing***, a Chinese language broadcaster and translator was deemed an independent contractor because she worked under minimal supervision. The U.S. court also found that plaintiff was required to possess specialized knowledge before commencing her position as a broadcaster.

[41] Paragraph 13 of the Agreement provides: "AGENT agrees that talent shall abide by the rules, regulations and standards of performance of the COMPANY *covering talents*, and that talent is bound to comply with the Television and Radio Code of the *Kapisanan ng mga Broadcaster sa Pilipinas* (KBP), which has been adopted by the COMPANY as its Code of Ethics. AGENT shall perform and keep all of the duties and obligations assumed or entered by the AGENT hereunder using its best talents and abilities. Any violation of or non-conformity with this provision by talent shall be a valid and sufficient ground for the immediate termination of the Agreement." (Italics supplied)

[42] *Ibid*.

not necessarily employees of radio and television stations. Clearly, the rules and standards of performance referred to in the Agreement are those applicable to talents and not to employees of ABS-CBN.

In any event, not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former.[43] In this case, SONZA failed to show that these rules controlled his performance. We find that these general rules are merely *guidelines* towards the achievement of the mutually desired result, which are top-rating television and radio programs that comply with standards of the industry. We have ruled that:

Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The facts of this case fall squarely with the case of *Insular Life Assurance Co., Ltd. vs. NLRC.* In said case, we held that:

> Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.[44]

The *Vaughan* case also held that one could still be an independent contractor although the hirer reserved certain supervision to insure the attainment of the desired result. The hirer, however, must not deprive the one hired from performing his services according to his own initiative.[45]

Lastly, SONZA insists that the "exclusivity clause" in the Agreement is the most extreme form of control which ABS-CBN exercised over him.

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[43] *AFP Mutual Benefit Association, Inc. v. NLRC*, G.R. No. 102199, 28 January 1997, 267 SCRA 47.

[44] *Ibid*.

[45] *Supra* note 36.

This argument is futile. Being an exclusive talent does not by itself mean that SONZA is an employee of ABS-CBN. Even an independent contractor can validly provide his services exclusively to the hiring party. In the broadcast industry, exclusivity is not necessarily the same as control.

The hiring of exclusive talents is a widespread and accepted practice in the entertainment industry.[46] This practice is not designed to control the means and methods of work of the talent, but simply to protect the investment of the broadcast station. The broadcast station normally spends substantial amounts of money, time and effort "in building up its talents as well as the programs they appear in and thus expects that said talents remain exclusive with the station for a commensurate period of time."[47] Normally, a much higher fee is paid to talents who agree to work exclusively for a particular radio or television station. In short, the huge talent fees partially compensates for exclusivity, as in the present case.

MJMDC as Agent of SONZA

SONZA protests the Labor Arbiter's finding that he is a talent of MJMDC, which contracted out his services to ABS-CBN. The Labor Arbiter ruled that as a talent of MJMDC, SONZA is not an employee of ABS-CBN. SONZA insists that MJMDC is a "labor-only" contractor and ABS-CBN is his employer.

In a labor-only contract, there are three parties involved: (1) the "labor-only" contractor; (2) the employee who is ostensibly under the employ of the "labor-only" contractor; and (3) the principal who is deemed the real employer. Under this scheme, *the "labor-only" contractor is the agent of the principal.* The law makes the principal responsible to the employees of the "labor-only contractor" as if the principal itself directly hired or employed the employees.[48] These circumstances are not present in this case.

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[46] *Rollo,* p. 302.

[47] *Ibid*.

[48] The second paragraph of Article 106 of the Labor Code reads:

There are essentially only two parties involved under the Agreement, namely, SONZA and ABS-CBN. MJMDC merely acted as SONZA's agent. The Agreement expressly states that MJMDC acted as the "AGENT" of SONZA. The records do not show that MJMDC acted as ABS-CBN's agent. MJMDC, which stands for Mel and Jay Management and Development Corporation, is a corporation organized and owned by SONZA and TIANGCO. The President and General Manager of MJMDC is SONZA himself. It is absurd to hold that MJMDC, which is owned, controlled, headed and managed by SONZA, acted as agent of ABS-CBN in entering into the Agreement with SONZA, who himself is represented by MJMDC. That would make MJMDC the agent of both ABS-CBN and SONZA.

As SONZA admits, MJMDC is a management company devoted *exclusively* to managing the careers of SONZA and his broadcast partner, TIANGCO. MJMDC is not engaged in any other business, not even job contracting. MJMDC does not have any other function apart from acting as agent of SONZA or TIANGCO to promote their careers in the broadcast and television industry.[49]

Policy Instruction No. 40

SONZA argues that Policy Instruction No. 40 issued by then Minister of Labor Blas Ople on 8 January 1979 finally settled the status of workers in the broadcast industry. Under this policy, the types of employees in the broadcast industry are the station and program employees.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[49] *Rollo*, p. 90.

Policy Instruction No. 40 is a mere executive issuance which does not have the force and effect of law. There is no legal presumption that Policy Instruction No. 40 determines SONZA's status. A mere executive issuance cannot exclude independent contractors from the class of service providers to the broadcast industry. The classification of workers in the broadcast industry into only two groups under Policy Instruction No. 40 is not binding on this Court, especially when the classification has no basis either in law or in fact.

Affidavits of ABS-CBN's Witnesses

SONZA also faults the Labor Arbiter for admitting the affidavits of Socorro Vidanes and Rolando Cruz without giving his counsel the opportunity to cross-examine these witnesses. SONZA brands these witnesses as incompetent to attest on the prevailing practice in the radio and television industry. SONZA views the affidavits of these witnesses as misleading and irrelevant.

While SONZA failed to cross-examine ABS-CBN's witnesses, he was never prevented from denying or refuting the allegations in the affidavits. The Labor Arbiter has the discretion whether to conduct a formal (trial-type) hearing after the submission of the position papers of the parties, thus:

> Section 3. Submission of Position Papers/Memorandum
>
> x x x x x x x x x
>
> These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. x x x
>
> Section 4. *Determination of Necessity of Hearing*. — Immediately after the submission of the parties of their position papers/ memorandum, the Labor Arbiter shall *motu proprio* determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information,

including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness.[50]

The Labor Arbiter can decide a case based solely on the position papers and the supporting documents without a formal trial.[51] The holding of a formal hearing or trial is something that the parties cannot demand as a matter of right.[52] If the Labor Arbiter is confident that he can rely on the documents before him, he cannot be faulted for not conducting a formal trial, unless under the particular circumstances of the case, the documents alone are insufficient. The proceedings before a Labor Arbiter are non-litigious in nature. Subject to the requirements of due process, the technicalities of law and the rules obtaining in the courts of law do not strictly apply in proceedings before a Labor Arbiter.

Talents as Independent Contractors

ABS-CBN claims that there exists a prevailing practice in the broadcast and entertainment industries to treat talents like SONZA as independent contractors. SONZA argues that if such practice exists, it is void for violating the right of labor to security of tenure.

The right of labor to security of tenure as guaranteed in the Constitution[53] arises only if there is an employer-employee relationship under labor laws. Not every performance of services for a fee creates an employer-employee relationship. To hold that every person who renders services to another for a fee is an employee — to give meaning to the security of tenure clause — will lead to absurd results.

Individuals with special skills, expertise or talent enjoy the freedom to offer their services as independent contractors.

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[50] New Rules of Procedure of the National Labor Relations Commission, as amended by Resolution 3-99, series of 1999.

[51] *University of the Immaculate Concepcion v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union*, 414 Phil. 522 (2001).

[52] *Columbus Philippine Bus Corp. v. NLRC*, 417 Phil. 81 (2001).

[53] Section 3, Article XIII of the Constitution.

The right to life and livelihood guarantees this freedom to contract as independent contractors. The right of labor to security of tenure cannot operate to deprive an individual, possessed with special skills, expertise and talent, of his right to contract as an independent contractor. An individual like an artist or talent has a right to render his services without any one controlling the means and methods by which he performs his art or craft. This Court will not interpret the right of labor to security of tenure to compel artists and talents to render their services only as employees. If radio and television program hosts can render their services only as employees, the station owners and managers can dictate to the radio and television hosts what they say in their shows. This is not conducive to freedom of the press.

Different Tax Treatment of Talents and Broadcasters

The National Internal Revenue Code ("NIRC")[54] in relation to Republic Act No. 7716,[55] as amended by Republic Act No. 8241,[56] treats talents, television and radio broadcasters differently. Under the NIRC, these professionals are subject to the 10%

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[54] Republic Act No. 8424. BIR Revenue Regulations No. 19-99 also provides the following:

SECTION 1. *Scope*. — Pursuant to the provisions of Sections 244 and 108 of the National Internal Revenue Code of 1997, in relation to Section 17 of Republic Act No. 7716, as amended by Section 11 of Republic Act 8241, these Regulations are hereby promulgated to govern the imposition of value-added tax on sale of services by persons engaged in the practice of profession or calling and professional services rendered by general professional partnerships; *services rendered* by actors, actresses, *talents*, singers and emcees, *radio and television broadcasters* and choreographers; musical, radio, movie, television and stage directors; and professional athletes.

SECTION 2. Coverage. — Beginning January 1, 2000, general professional partnerships, professionals and persons described above shall be governed by the provisions of Revenue Regulation No. 7-95, as amended, otherwise known as the "Consolidated Value-Added Tax Regulations".x x x

[55] Otherwise known as the Expanded Value-Added Tax Law.

[56] Act amending Republic Act No. 7716, otherwise known as the Expanded Value-Added Tax Law and other pertinent provisions of the National Internal Revenue Code, as amended (December 20, 1996).

value-added tax ("VAT") on services they render. Exempted from the VAT are those under an employer-employee relationship.[57] This different tax treatment accorded to talents and broadcasters bolsters our conclusion that they are independent contractors, provided all the basic elements of a contractual relationship are present as in this case.

Nature of SONZA's Claims

SONZA seeks the recovery of allegedly unpaid talent fees, 13th month pay, separation pay, service incentive leave, signing bonus, travel allowance, and amounts due under the Employee Stock Option Plan. We agree with the findings of the Labor Arbiter and the Court of Appeals that SONZA's claims are *all based on the May 1994 Agreement and stock option plan, and not on the Labor Code.* Clearly, the present case does not call for an application of the Labor Code provisions but an interpretation and implementation of the May 1994 Agreement. In effect, SONZA's cause of action is for breach of contract which is intrinsically a civil dispute cognizable by the regular courts.[58]

WHEREFORE, we *DENY* the petition. The assailed Decision of the Court of Appeals dated 26 March 1999 in CA-G.R. SP No. 49190 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Ynares-Santiago, and *Azcuna, JJ.,* concur.

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[57] Section 109 of the NIRC provides:

Exempt transactions. — The following shall be exempt from the value-added tax:

x x x x x x x x x

(o) Services rendered by individuals pursuant to an employer-employee relationship; . . .

[58] *Singapore Airlines Ltd. v. Hon. Cruz, etc., et al.*, 207 Phil. 585 (1983).

SECOND DIVISION

[G.R. No. 144332. June 10, 2004]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **COURT OF APPEALS (ELEVENTH DIVISION), EFREN S. ALMUETE, JOHNNY ILA *y* RAMEL and JOEL LLOREN *y* DELA CRUZ,** *respondents*.

SYNOPSIS

After due proceedings, the trial court set the promulgation of its decision against respondents herein. Respondents, however, did not appear in court and their lawyer informed the court that respondents Almuete and Loren were ill, while respondent Ila was not notified of the scheduled promulgation. Their lawyer presented a medical certificate. The trial court found the absence of the respondents unjustified and proceeded with the promulgation of its decision, finding them guilty of the crime charged. The court also cancelled the bail bonds of the respondents. Their motion for reconsideration having been denied, they filed a petition for *certiorari* with the Court of Appeals. The appellate court granted the petition and ordered the re-promulgation of the decision against two of the accused, while acquitting Almuete. Respondents Lloren and Ila filed a motion for reconsideration with the appellate court praying that they should also be acquitted. The appellate court denied the motion. Aggrieved, petitioner herein assailed the decision of the Court of Appeals. In his comment, respondent Almuete asserted that the filing of a petition with the Supreme Court placed him in double jeopardy; hence, the petition should be dismissed.

The Supreme Court reversed the decision of the appellate court and granted this petition. According to the Court, the appellate court acted with grave abuse of discretion when it ventured beyond its sphere of authority and arrogated unto itself in the *certiorari* proceedings, the authority to review perceived errors of the trial court in the exercise of its judgment and discretion, which are correctible only by appeal by writ of error. Consequently, the decision of the CA acquitting Almuete was a nullity. In this case, the CA is authorized only to entertain

and resolve errors of jurisdiction and not errors of judgment. A void judgment has no legal and binding effect; hence, Almuete cannot claim double jeopardy in this case. The Court likewise agreed that the trial court did not abuse its discretion in its promulgation of the decision in the absence of respondents Lloren and Ila, despite the presentation of the medical certificate.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; WHEN AVAILABLE AS A REMEDY; REQUIREMENTS.—** For a petition for *certiorari* or prohibition to be granted, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ. The petitioner must allege in his petition and establish facts to show that any other existing remedy is not speedy or adequate and that (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and, (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

2. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION AS A GROUND; CONSTRUED.—** The public respondent acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the tribunal or inferior court. A petition for *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive.

3. **ID.; ID.; ID.; DISTINGUISHED FROM APPEAL OR PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF**

COURT.— In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or *via* a petition for review on *certiorari* in this Court under Rule 45 of the Rules of Court. *Certiorari* will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari. Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.

4. ID.; ID.; ID.; NOT PROPER REMEDY TO DETERMINE WHETHER OR NOT THE EVIDENCE ADDUCED BY THE PROSECUTION HAS ESTABLISHED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT; VIOLATION IN CASE AT BAR; EFFECT THEROF.— Whether or not the evidence adduced by the prosecution is sufficient to prove the guilt of the accused beyond reasonable doubt rests entirely within the sound discretion and judgment of the lower court. In *Joseph v. Villaluz*, we held that whether or not the evidence adduced by the prosecution has established beyond reasonable doubt, the guilt of the accused cannot be resolved in a special civil action of *certiorari*. The appellate court acted with grave abuse of its discretion when it ventured beyond the sphere of its authority and arrogated unto itself, in the *certiorari* proceedings, the authority to review perceived errors of the trial court in the exercise of its judgment and discretion, which are correctible only by appeal by writ of error. Consequently, the decision of the CA acquitting respondent Almuete of the crime charged is a nullity. If a court is authorized by statute

to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make a particular judgment is akin to lack of subject-matter jurisdiction. In this case, the CA is authorized to entertain and resolve only errors of jurisdiction and not errors of judgment. A void judgment has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. It cannot impair or create rights; nor can any right be based on it.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
The Law Firm of Lapeña & Associates for respondents.
Ernesto S. Salunat for J. Ila & J. Lloren.

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 of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 49953 granting the petition for *certiorari* of the private respondents.

The Antecedents

Respondents Efren S. Almuete, Johnny Ila and Joel Lloren were charged with violating Presidential Decree No. 705, as amended, in the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27, docketed as Criminal Case No. 2672. The accusatory portion reads:

That on or about the early morning of August 15, 1993, at night time purposely sought to better accomplish their end and facilitate the commission of their offense, at Barangay Uddiawan, Municipality of Solano, Province of Nueva Vizcaya, Philippines, and within the

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Godardo A. Jacinto and Remedios Salazar Fernando concurring.

jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, and with the use of motor vehicles, more particularly two six-by-six trucks bearing plate numbers BAW-150 and BBP-606, did then and there wilfully, unlawfully and feloniously, with intent of gain, gather, collect, remove, possess, smuggle and transport three hundred fifty-seven pieces of sawn timber of various sizes of the common hardwood species with a total volume of four thousand seven hundred fifty-one (4,751) board feet valued at fifty-seven thousand and twelve pesos (₱57,012.00), Philippine currency, plus imposable forest charges, surcharges and other penalties, without having first secured and obtained from the proper authorities the necessary permit and/or supporting legal documents as required under existing forestry laws, rules and regulations, to the damage and prejudice of the Republic of the Philippines in the aforesaid amount.

CONTRARY TO LAW.[2]

After due proceedings, the trial court set the promulgation of its decision on September 8, 1998. When the case was called, Atty. Rodolfo Lorenzo, the counsel of the respondents, informed the trial court that Almuete and Lloren were ill, and that Ila was not in court because he was not notified of the scheduled promulgation. The counsel presented to the court a medical certificate attesting to the illness of respondents Lloren and Almuete. The trial court found the absence of the respondents unjustified and proceeded with the promulgation of its decision, finding them guilty of the crime charged. The decretal portion of the decision reads:

WHEREFORE, finding the accused, namely, Efren S. Almuete, Johnny Ila *y* Ramel and Joel Lloren *y* dela Cruz GUILTY beyond reasonable doubt of violation of Section 68, P.D. No. 705, as amended, they are each sentenced to suffer the penalty of 18 years, 2 months and 21 days of *reclusion temporal* as minimum period to 40 years of *reclusion perpetua* as maximum period. Costs against the said accused.

SO ORDERED.[3]

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[2] *Rollo*, pp. 40-41.

[3] *Id*. at 53.

The court also cancelled the bail bonds of the respondents. The latter filed a motion for the reconsideration of the decision on the following grounds: (a) they were deprived of their right to be present at the promulgation of the trial court's decision; (b) lack of factual and legal basis for their conviction of the crime charged; and, (c) the penalty imposed by the court was excessive. The respondents prayed, thus:

> WHEREFORE, premises well considered, it is most respectfully prayed that the promulgation be set aside as being null and void and the bail posted by them reinstated. In the event that the Court refuses to set aside the promulgation that the Decision be reconsidered and order the acquittal of the accused; that in the event the Court denies the reconsideration that the accused be allowed to be free under their own bail and/or be required to post additional bail for their provisional liberty during the pendency of this case. Further, accused prays for other reliefs which are just and proper under the circumstances.[4]

On October 12, 1998, the trial court issued an Order denying the motion of the respondents for lack of merit.[5]

The respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals, docketed as CA-G.R. SP No. 49953. They, likewise, prayed for the issuance of a temporary restraining order and for the reversal of the trial court's decision. The respondents claimed that the penalty of eighteen (18) years and two (2) months and twenty-one (21) days of *reclusion temporal* as minimum, to forty (40) years as maximum, was in excess of the maximum imposable penalty for violation of Article 309 of the Revised Penal Code. They claimed that the trial court erroneously applied Article 310 of the Revised Penal Code, and insisted that their absence at the scheduled promulgation of the decision was justified. The petitioners prayed that judgment be rendered in their favor, thus:

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[4] *Id*. at 57.

[5] *Id*. at 62.

WHEREFORE, it is respectfully prayed:

a) That the promulgation of the decision be set aside as having been done with undue haste and, therefore, is void *ab initio*;

b) To declare the decision as null and void as the decision is not based on competent clear and convincing evidence;

c) That in the alternative that the decision be modified and/or amended in accordance with law;

d) That in the meantime, a temporary restraining order is prayed for to prevent further damage and injuries to the accused-petitioners;

e) To issue an injunction against the respondent judge pending the resolution of this case;

f) To restore the bail of the accused which have been ordered cancelled by respondent judge in the meanwhile that the case is pending.

Petitioners pray for other reliefs which are just and proper under the circumstances.[6]

On May 19, 2000, the Court of Appeals (CA) rendered judgment granting the petition. The appellate court ordered a re-promulgation of the decision of the trial court against Ila and Lloren, but acquitted petitioner Almuete, the head (deacon) of the *Iglesia ni Cristo*, on the ground that the prosecution failed to prove his guilt for the crime charged beyond a reasonable doubt. The decretal portion of the decision reads:

WHEREFORE, premises considered, the present petition is hereby GRANTED. On the basis of the evidence on record, accused Efren S. Almuete should be, as he is hereby ACQUITTED of the charge against him.

The court *a quo* is ORDERED to re-promulgate the decision in the presence of the accused Ila and Lloren, duly assisted by counsel of their own choice, after notice and allow them to appeal. Let the complete records of this case be remanded to the court *a quo*.

SO ORDERED.[7]

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[6] *Id*. at 68-69.

[7] *Id*. at 38.

Respondents Lloren and Ila filed a motion for the reconsideration of the decision of the appellate court, praying that they also be acquitted, on the ground that the prosecution failed to prove their guilt for the crime charged. The appellate court denied the said motion.

Aggrieved, the People of the Philippines now assails the decision of the CA. It contends that the appellate court acted beyond its jurisdiction when it acquitted respondent Almuete of the crime charged on a petition for *certiorari* under Rule 65 of the Rules of Court, and that it erred when it ordered a re-promulgation of the trial court's decision.

In his comment on the petition, respondent Almuete asserts that the filing of the petition at bar would place him in double jeopardy; hence, the petition should be dismissed. He cites the ruling of this Court in *Central Bank of the Philippines v. Court of Appeals*[8] to buttress his stance. The respondent also asserts that in acquitting him of the crime charged, the appellate court acted within its jurisdiction because it merely acted on his plea for acquittal. It was, likewise, only proper for the appellate court to look into the merits of the trial court's decision in his petition for *certiorari*, since the settled rule is that on appeal, the entire record of the case is open for review by the appellate court.

Respondents Lloren and Ila, for their part, contend that the appellate court did not err in ordering a re-promulgation of the RTC decision, given the appellate court's findings and ratiocinations in its decision. By way of reply, the petitioner argues that since the CA acted without jurisdiction in acquitting respondent Almuete, its decision is null and void; as such, the respondent was never placed in first jeopardy.

The Issues

The issues for resolution are the following: (a) whether the CA acted in excess of its jurisdiction or without jurisdiction when it acquitted private respondent Almuete in a petition for *certiorari* for the nullification of the trial court's decision; and,

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[8] 171 SCRA 49 (1989).

(b) whether the RTC acted with grave abuse of its jurisdiction amounting to excess or lack of jurisdiction when it promulgated its decision, even in the absence of the private respondents.

The Ruling of the Court

For a petition for *certiorari* or prohibition to be granted, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ.[9] The petitioner must allege in his petition and establish facts to show that any other existing remedy is not speedy or adequate[10] and that (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and, (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[11]

The public respondent acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction.[12] Mere abuse of discretion is not enough. A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the tribunal or inferior court.[13] A petition for *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are

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[9] *Heung v. Frista*, 559 So.2d 434.

[10] *Alabama Power Co. v. City of Fort Wayne*, 187 S.W.2d 632 (1939).

[11] *Sanchez v. Court of Appeals*, 279 SCRA 647 (1997).

[12] *Condo Suite Club Travel, Inc. v. NLRC*, 323 SCRA 679 (2000).

[13] *Pioneer Insurance & Surety Corp. v. Hontanosas*, 78 SCRA 447 (1977).

antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive.[14]

In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or *via* a petition for review on *certiorari* in this Court under Rule 45 of the Rules of Court. *Certiorari* will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment.[15] An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*.[16] *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law.[17] As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.[18]

Whether or not the evidence adduced by the prosecution is sufficient to prove the guilt of the accused beyond reasonable doubt rests entirely within the sound discretion and judgment of the lower court.[19] In *Joseph v. Villaluz*,[20] we held that whether

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[14] *Ley Construction & Development Corporation v. Hyatt Industrial Manufacturing Corporation*, 339 SCRA 223 (2000).

[15] *People v. Court of Appeals*, 308 SCRA 687 (1999).

[16] *Toh v. Court of Appeals*, 344 SCRA 831 (2000).

[17] *Tensorex Industrial Corporation v. Court of Appeals*, 316 SCRA 471 (1999).

[18] *People v. Court of Appeals, supra*.

[19] *People v. Mercado*, 159 SCRA 453 (1988).

[20] 89 SCRA 324 (1979).

or not the evidence adduced by the prosecution has established beyond reasonable doubt, the guilt of the accused cannot be resolved in a special civil action of *certiorari*.

In this case, the RTC rendered judgment finding all the accused, respondents herein, guilty of the crime charged based on the evidence on record and the law involved, and sentenced them to suffer the penalty of imprisonment as provided for in P.D. No. 705, in relation to Articles 304 and 305 of the Revised Penal Code. They had a plain, speedy and adequate remedy at law to overturn the decision as, in fact, they even filed a motion for reconsideration of the decision on its merits, and for the nullification of the promulgation of the said decision. Upon the trial court's denial of their motion for reconsideration, the petitioners had the right to appeal, by writ of error, from the decision on its merits on questions of facts and of law. The appeal of the petitioners in due course was a plain, speedy and adequate remedy. In such appeal, the petitioners could question the findings of facts of the trial court, its conclusions based on the said findings, as well as the penalty imposed by the court. It bears stressing that an appeal in a criminal case throws the whole case open for review and that the appellate court can reverse any errors of the trial court, whether assigned or unassigned, found in its judgment.[21] However, instead of appealing the decision by writ of error, the respondents filed their petition for *certiorari* with the CA assailing the decision of the trial court on its merits. They questioned their conviction and the penalty imposed on them, alleging that the prosecution failed to prove their guilt for the crime charged, the evidence against them being merely hearsay and based on mere inferences. In fine, the respondents alleged mere errors of judgment of the trial court in their petition. It behooved the appellate court to have dismissed the petition, instead of giving it due course and granting it.

The CA reviewed the trial court's assessment of the evidence on record, its findings of facts, and its conclusions based on the said findings. The CA forthwith concluded that the said

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[21] *People v. Court of Appeals, supra.*

evidence was utterly insufficient on which to anchor a judgment of conviction, and acquitted respondent Almuete of the crime charged.

The appellate court acted with grave abuse of its discretion when it ventured beyond the sphere of its authority and arrogated unto itself, in the *certiorari* proceedings, the authority to review perceived errors of the trial court in the exercise of its judgment and discretion, which are correctible only by appeal by writ of error. Consequently, the decision of the CA acquitting respondent Almuete of the crime charged is a nullity. If a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make a particular judgment is akin to lack of subject-matter jurisdiction.[22] In this case, the CA is authorized to entertain and resolve only errors of jurisdiction and not errors of judgment.

A void judgment has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent.[23] It cannot impair or create rights; nor can any right be based on it. Thus, respondent Almuete cannot base his claim of double jeopardy on the appellate court's decision.

On the second issue, the CA nullified the trial court's promulgation of its decision, ratiocinating as follows:

> This Court further finds the promulgation of the decision by the trial court on September 8, 1998 and the denial of the motion for reconsideration thereof on September 22, 1998 as being issued with grave abuse of discretion. The accused Almuete and Ila during the promulgation were not present as they were then sick. A medical certificate was issued to attest to their sickness. In the case of Lloren, he was not duly notified of the date of the promulgation.
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> Under Section 6, Rule 120 of the Rules of Court, the presence in person of the accused at the promulgation of judgment is

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[22] 46 Am. Jur.2d Judgment, p. 389.

[23] *Ramos v. Court of Appeals*, 180 SCRA 635 (1989).

MANDATORY in all cases except where the conviction is for a light offense (*Florendo v. Court of Appeals*, 239 SCRA 325 [1994]).

The accused were, therefore, denied their right to be present during the promulgation of the decision since they have not waived their rights thereto.[24]

In contrast to the court ratiocinations of the CA, the trial court amply explained why it proceeded to promulgate its decision despite the presentation of a medical certificate by Ila and Almuete:

With respect to the first ground, the pertinent rule is Section 6, par. 3, Rule 120 of the Revised Rules of Court, properly quoted in the Opposition to the Motion for Reconsideration filed by Atty. Arthur P. Castillo, Special DENR Prosecutor.

It is clear from the said rule that if the accused failed to appear without justifiable cause, the judgment of conviction may be promulgated. The question, therefore, is, was the non-appearance of the accused during the promulgation of sentence justified or not?

It will be assumed that the accused were duly notified because (1) their counsel, Atty. Rodolfo Cornejo, appeared; and (2) Atty. Cornejo submitted medical certificates for accused Efren Almuete and Joel Lloren. Accused Johnny Ila did not appear anymore after arraignment. He was duly notified through accused Almuete. Atty. Cornejo moved for the cancellation of the promulgation of sentence averring that Almuete and Lloren were sick as evidenced by medical certificates. Atty. Arthur Castillo and Asst. Provincial Prosecutor Albert Castillo opposed the motion on the ground that the medical certificates were not verified.

Upon examining the medical certificates submitted, the Court decided by (*sic*) proceed with the promulgation of the sentence. Atty. Cornejo, defense counsel, moved that only the dispositive portion of the sentence be read; he did not move for the reconsideration of the denial of his motion to cancel promulgation. The Court directed the Court Interpreter to read the decision from that portion explaining the penalty being imposed up to the dispositive portion.

When the court examined the medical certificates of accused Almuete and Lloren before the promulgation of sentence, it noticed

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[24] *Rollo*, p. 38.

and could sense that the same were being used as a play to delay the promulgation.

Firstly, the medical certificates were not verified. Any person can produce such unverified medical certificate from any physician even when he is not sick or may even fake the same. Hence, the need to verify the certificate or place the physician under oath. This step will insure that the patient really appeared before the physician and that he was really sick of the ailment described therein.

Secondly, a reading of the medical certificate of accused Almuete would show that his alleged ailment was one that needed no bed rest and is natural to anyone who was about to be sentenced by court. Nowhere in said certificate is the statement that he should stay in bed. The medical certificate states "To Whom It May Concern: This is to certify that Mr. Efren Almuete consulted the undersigned due to stress, anxiety and some physiological disturbance. He is advised to take some tranquilizers and rest. Issued for general purpose." It was signed by Dr. Ferdinand T. Tolentino. It is dated September 7, 1998, the day before the promulgation. If every accused who suffers the same ailment a day before the promulgation will be allowed to stay away from such promulgation, then no one will be sentenced as such condition is common among those who are about to be sentenced. It must bear emphasis that the medical certificate was dated a day before the actual promulgation. Had Almuete taken the advise of the physician, he would have been fit to appear the following day to hear the sentence. Moreover, the wordings of the certificate were such that one senses the reluctance of the physician to issue the certificate but had to do so out of consideration of friendship or insistence of the "patient." Hence, when accused Almuete failed to appear to hear the promulgation of his sentence, his absence was unjustifiable.

With respect to Lloren, aside from the fact that his medical certificate was unverified, the same was not issued by a Government Physician; hence, unreliable. By actual practice, only government physicians, by virtue of their oath as civil service officials, are competent to examine persons and issue medical certificates which will be used by the government. Since the examination of Lloren was performed in a private medical clinic, it can be assumed that the physician, if the medical certificate is really genuine, is a private practitioner who is not a government physician.

As regards Johnny Ila, he did not justify his absence. Hence, promulgation could be validly made against him.

It is interesting to note that right after the promulgation of sentence to the accused on September 8, 1998, the Court cancelled the bail bonds put up by the accused and issued warrants of arrest against them in accordance with the above-mentioned rule. Almuete who was suffering from "stress, anxiety and some physiological disturbance" and Lloren who was suffering from "influenza" could not be found in their respective residence. From this evasion, it can be deduced that they did not appear because they wanted to know the tenor of the decision so that if it is adverse, they could dig deeper to hide. As a matter of fact, two days before the promulgation, Almuete was asking the tenor of the decision of the court from one of the stenographers who feigned ignorance. Up to the present, Almuete, *et al.*, have not surfaced to surrender despite broadcast and print media announcements that they are wanted. The accused could have shown their respect for the court and its processes by surrendering to authorities. They have not in defiance of this Court.[25]

We agree with the trial court. We do not discern any abuse of discretion in the trial court's promulgation of its decision in the absence of respondents Lloren and Ila, despite the presentation of a medical certificate thereon.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The assailed decision and resolution of the Court of Appeals are *REVERSED AND SET ASIDE*. The Decision of the Regional Trial Court dated September 8, 1998 and its Order dated October 12, 1998 are *REINSTATED*. No costs.

SO ORDERED.

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

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[25] *Id.* at 59-61.

SECOND DIVISION

[G.R. No. 145793. June 10, 2004]

LINA VILLANUEVA, *petitioner, vs.* **GENEROSO YAP and the HONORABLE REGIONAL TRIAL COURT, OF GENERAL SANTOS CITY, BRANCH 37 Presided by HON. MONICO G. CABALES,** *respondents.*

SYNOPSIS

Private respondent filed a complaint against petitioner for recovery of possession of real properties, Lots 614-A and 614-L, docketed as Civil Case No. 3551. For the respondent's failure to appear for trial, his complaint was dismissed and he was ordered to pay damages to petitioner on her counterclaims. Such decision was affirmed by the Court of Appeals and the same became final and executory. On May 22, 1992, the respondent filed another complaint against petitioner for recovery of possession of property, this time it included Lot 614-J. The case was docketed as Civil Case No. 4825. The trial court rendered a decision in favor of respondent, thus ordering the petitioner to vacate the subject land. The Court of Appeals affirmed the decision of the trial court on July 26, 1999 and entry of judgment was made on February 4, 2000. The court granted the writ of execution on July 24, 2000. On November 20, 2000, the petitioner filed before the Supreme Court a petition for *certiorari* for the reversal of the decision in Civil Case No. 4825. The respondent claimed that respondent's action in Civil Case No. 4825 was barred by the decision in Civil Case No. 3551. She also claimed that as held in Civil Case No. 3551, she and private respondent had a tenancy relationship, and such finding could not be reversed by the ruling in Civil Case No. 4825.

The Supreme Court denied the petition. The Court ruled that the decision in Civil Case No. 4825 was affirmed by the Court of Appeals in CA-GR CV No. 48126. The appellate court resolved the issue of whether the actions of respondent was barred by *res judicata* and lack of jurisdiction of the trial court. It agreed with the appellate court that *res judicata* is merely a technical

rule and the dispensation of justice and the vindication of legitimate grievance should not be barred by technicalities, as in this case. The Court also agreed that there was no reason to overturn the trial court's finding that no tenancy relationship existed between the parties herein, petitioner having claimed herself to be an employee of the former owner of the property. Therefore, her only basis for holding the property in question was her alleged illegal dismissal. Finally, the Court ruled that the decision of the Court of Appeals had become final and executory; hence the Supreme Court is bereft of jurisdiction to annul the decision of the Court of Appeals, which has attained finality.

SYLLABUS

1. **REMEDIAL LAW; WRIT OF EXECUTION; ISSUANCE THEREOF IS THE MINISTERIAL DUTY OF THE TRIAL COURT; RATIONALE.—** The writ of execution issued by the trial court is but an enforcement of its decision. The well-entrenched rule is that it is the ministerial duty of the trial court to enforce its final and executory decision.

2. **LABOR AND SOCIAL LEGISLATION; LAND REFORM; TENANCY RELATIONSHIP; REQUIREMENTS.—** In *Prudential Bank v. Gapultos*, (181 SCRA 159 [1990]), the Supreme Court have ruled that for tenancy to exist, the following must concur: [a] the parties are the landowner[s] and the tenant[s]; [b] the subject is agricultural land; [c] there is consent; [d] the purpose is agricultural production; [e] there is personal cultivation; and [f] there is sharing of harvests. The same case held that if a person fails to establish that he has all the said requisites, he is not entitled (*sic*) claim coverage of the agrarian reform laws, to wit: "x x x. All these requisites must concur in order to create a tenancy relationship between the parties. The absence of one does not make an occupant of a parcel of land, or a cultivator thereof, or a planter thereon, a *de jure* tenant. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the government under existing tenancy laws. x x x." (181 SCRA at 169).

APPEARANCES OF COUNSEL

Johnny P. Landero for petitioner.
Llaguno & Ong Law Office for respondent.

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 Regional Trial Court of General Santos City, Branch 37, in Civil Case No. 4825 ordering the petitioner to vacate the subject property.

The Antecedents

On April 30, 1987, respondent Generoso Yap filed a complaint against petitioner Lina Villanueva, docketed as Civil Case No. 3551, for recovery of possession of real properties, with a plea for a writ of preliminary injunction over two parcels of land, Lots 614-A and 614-L, located in General Santos City. Each lot had an area of 122,903 square meters and was covered by Original Certificate of Title (OCT) No. P-3176.

The respondent alleged, *inter alia*, that he purchased the said parcels of land from Concepcion G. Malonjao for ₱100,000.00 on January 23, 1987. He averred that the petitioner had been in possession of one side of the property since 1985, without any color of title or right thereto. The petitioner refused to vacate the property upon demand and, on April 27, 1987, even enlarged the portion of the property she occupied; she harvested the bananas on the adjacent areas, and placed her hogs therein.

The respondent prayed that, after due proceedings, judgment be rendered in his favor, thus:

WHEREFORE, it is most respectfully prayed of the Honorable Court that before the issuance of the writ of preliminary injunction, and (*sic*) injunction be issued, which can only be granted on notice and hearing, that the Honorable Court issues a temporary restraining order, commanding the defendant to desist from further committing acts of dispossession, and that after hearing, that a writ of injunction and writ of preliminary injunction be issued commanding the defendant

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[1] Penned by Judge Teodoro A. Dizon, Jr.

to vacate her unlawful occupancy of the subject hut, and that judgment be rendered making said injunction permanent with costs against the defendant and for her to pay the attorney's fees of ₱10,000.00.

Plaintiff further prays for such other reliefs as are just and equitable under the premises.[2]

The case was docketed as Civil Case No. 3551 and was raffled to Branch 23 of the RTC. In her answer to the complaint, the petitioner alleged that Concepcion Malonjao designated her as caretaker of the property in 1974. She then built a hut on a portion of the property, where she and her family resided and planted a variety of plants. She further alleged that on June 2, 1978, Malonjao appointed her, in writing, as timekeeper and *capataz* in the property. Malonjao mortgaged the property to a certain Mr. Manansala in 1983, and her services as *capataz* were retained. The respondent informed her of his plan to buy the property and to terminate her employment in 1986. Malonjao finally terminated her services in February 1987, but failed to pay her separation pay. This impelled her to file a complaint against her employer in the NLRC, docketed as ROXI Case No. MC-032-65-87, for illegal dismissal and reinstatement with money claims. Thereafter, Malonjao, through her son Rufino Malonjao, offered to settle the case for ₱10,000.00. The petitioner was told that the amount was with the respondent, but before she could receive the same, the respondent's counsel, in the company of armed men, ordered her to remove her hut from the property.

The petitioner interposed counterclaims. For the respondent's failure to appear for trial, his complaint was dismissed and the petitioner was allowed to adduce evidence, *ex parte*, on her counterclaims.

On February 24, 1989, the court rendered judgment dismissing the complaint and ordering the respondent to pay damages to the petitioner on her counterclaims. The decretal portion of the decision reads:

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[2] Records, p. 3 (Civil Case No. 3551).

WHEREFORE, judgment is hereby rendered in favor of the defendant ordering plaintiff to pay defendant as follows:

a) ₱3,000.00 as moral damages;

b) ₱3,000.00 as exemplary damages;

c) ₱1,000.00 as temperate damages; and

d) cost of the suit.

SO ORDERED.[3]

Both parties appealed the decision to the Court of Appeals, and the appeal was docketed as CA-G.R. CV No. 23979. On October 16, 1991, the CA rendered judgment affirming the decision of the trial court. The decision of the Court of Appeals became final and executory after the plaintiff's petition for review on *certiorari*, docketed as G.R. No. 104466, was dismissed by this Court in a Resolution dated January 22, 1992. Entry of judgment of the resolution was made of record on May 6, 1992.

Earlier, on May 22, 1992, the respondent had filed a complaint against the petitioner in the Regional Trial Court of General Santos City for recovery of possession of property with a prayer for a writ of preliminary injunction. The case was docketed as Civil Case No. 4825 and was raffled to the RTC, Branch 37. Except for the allegation in his complaint that Civil Case No. 3551 had been previously dismissed, and the inclusion of Lot 614-J as the subject of his complaint, the material allegations therein were similar to those in Civil Case No. 3551.

The petitioner filed a motion to dismiss the complaint on the ground of *res judicata*, but the court denied the same. The court, likewise, denied the petitioner's motion for reconsideration of the said order.

In her answer to the complaint, the petitioner alleged that the complaint was barred by *res judicata*. She also pointed out that she was a caretaker of the subject property and, as such, it was the DARAB, not the trial court, which had jurisdiction over the action.

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[3] Records, pp. 181-182 (Civil Case No. 3551).

Meanwhile, the writ of execution issued by the trial court for the enforcement of its decision in Civil Case No. 3551 was satisfied by the respondent, per the Sheriff's Return dated November 20, 1992.

On August 24, 1994, the court rendered judgment in Civil Case No. 4825 in favor of the *respondent*, the dispositive portion of which reads:

> WHEREFORE, in view of the fact that the defendant's occupation of the subject land is illegal, the defendant is hereby ordered to vacate the subject land and deliver possession thereof to plaintiff. Defendant is, likewise, ordered to pay plaintiff the sum of ₱30,000.00 as moral damages; ₱20,000.00 as attorney's fees; ₱10,000.00 as exemplary damages.
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> SO ORDERED.[4]

The petitioner appealed the decision to the Court of Appeals, docketed as CA-G.R. CV No. 48126, alleging as follows:

> 1. That the Trial Court below erred in not dismissing the plaintiff-appellee's complaint on the ground of *res judicata*;
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> 2. That the Trial Court below erred in not considering the defendant-appellant as tenant over the land in question;
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> 3. That the Trial Court below erred in assuming jurisdiction over the subject matter of the complaint;
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> 4. That the Trial Court below erred in treating the defendant-appellant as possessor in bad faith of the land in question.[5]

On July 26, 1999, the appellate court rendered judgment[6] affirming the appealed decision. The court also denied the petitioner's motion for the reconsideration of the decision. Entry of judgment was made of record on February 4, 2000. The

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[4] Records, p. 97 (Civil Case No. 4825).

[5] *Rollo*, p. 96.

[6] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Corona Ibay-Somera and Oswaldo D. Agcaoili, concurring.

respondent's motion for a writ of execution was granted by the court on July 24, 2000.

On August 31, 2000, the respondent filed, in Civil Case No. 3551, a verified pleading for revival of judgment and issuance of an alias writ of execution with a prayer for a writ of preliminary injunction to enjoin the enforcement of the decision in Civil Case No. 4825. On September 11, 2000, the RTC, Branch 23 issued an Order in Civil Case No. 3551, refusing to take cognizance of the pleading, holding that the respondent should file a new case and not a mere motion to revive its judgment.

On August 29, 2000, the petitioner filed a petition against the respondent in the Court of Appeals, docketed as CA-G.R. SP No. 60812, to annul the judgment of the RTC, Branch 37 in Civil Case No. 4825. The appellate court issued a Resolution dated September 29, 2002 dismissing the petition. *The resolution of the CA became final and executory.*

Meanwhile, in Civil Case No. 4825, the petitioner filed a motion to stay execution. On September 27, 2000, the court issued an Order directing the petitioner to post a *supersedeas* bond of ₱50,000.00 pending its resolution of her motion to stay execution.[7]

On October 12, 2000, the court issued an order in Civil Case No. 4825 denying the petitioner's motion to stay execution. On November 28, 2000, the Sheriff submitted his report in Civil Case No. 4825 on the enforcement of the decision of the court, stating that it was partially enforced in that the petitioner had been evicted from the property, but that she had not paid the damages due under the decision because she was impoverished.

The Present Petition

In the meantime, on November 20, 2000, the petitioner filed before this Court a petition for *certiorari* under Rule 65 of the Rules of Court, with a motion for a writ of preliminary injunction

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[7] Records, p. 164 (Civil Case No. 4825).

against the respondent, for the reversal of the decision of Branch 37 of the RTC in Civil Case No. 4825, on the ground that the DARAB, not the RTC, had jurisdiction over the complaint of the respondent, as ruled by the RTC, Branch 23 in Civil Case No. 3551.

On November 29, 2000, the Court resolved to issue a writ of temporary restraining order enjoining the respondents from enforcing the RTC Decision, as well as its Orders of August 24, 1994 and July 24, 2000.

The petitioner contends that the action of the respondent in the court *a quo* in Civil Case No. 4825 was barred by the decision in Civil Case No. 3551. The petitioner further asserts that the respondent is guilty of forum shopping in filing his complaint in Civil Case No. 4823. She claims that as held in Civil Case No. 3551, she and the private respondent had a tenancy relationship, and that such finding could not be reversed by the ruling of the RTC, Branch 37 in Civil Case No. 4825. The petitioner posits that the court *a quo* erred in ordering the issuance of a writ of execution for her eviction, as it would disturb the tenancy relationship between her and the respondent.

The Ruling of the Court

The petition is denied for utter lack of merit.

First. The decision of Branch 37 of the RTC in Civil Case No. 4825 was affirmed *in toto* by the Court of Appeals on July 26, 1999 in CA-G.R. CV No. 48126. The appellate court resolved the issue of whether the action of the respondent was barred by *res judicata* and the trial court's lack of jurisdiction over the action, thus:

> While it is indubitable that the first case operates as a bar to the present case, the court is inclined to agree with the trial court that *res judicata* should not be made to operate in the present case. *Res judicata* is merely a technical rule and has been held by no less than the Supreme Court that technical rules should not be rigidly applied if its application would amount to a denial of substantial justice

(*Suarez v. Court of Appeals*, 193 SCRA 183 [1991]). As succinctly put by the Supreme Court in *Santiago v. Ramirez* (8 SCRA 157 [1963]).

> "x x x The dispensation of justice and the vindication of legitimate grievance should not be barred by technicalities. (8 SCRA 162)

In a line of cases, the Supreme Court held that *res judicata*, a mere technical rule, should be disregarded if its application would involve the sacrifice of justice to technicality (*Islamic Directorate of the Philippines v. Court of Appeals*, 272 SCRA 454 [1997]; *Zaldarriaga v. Court of Appeals*, 255 SCRA 254 [1996]; *Republic v. De los Santos*, 159 SCRA 264 [1988]). Thus, in *Ronquillo v. Marasigan* (5 SCRA 304 [1962]), it was held that:

> "x x x To deny this appeal on the principles of *res judicata* and/or estoppel by judgment would be sacrificing justice to technicality. Their application to the case, under the particular facts obtaining, would amount to denial of justice and/or a bar to a vindication of a legitimate grievance. In cases like the one under consideration, a liberal interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the indetermination of a litigation. There is no vested right in technicalities (*Alonzo v. Villamor*, 16 Phil. 315)" (5 SCRA at 312).

As pointed out in the above-quoted Order of the trial court, defendant-appellant's only basis for holding on to the property in question is her alleged illegal dismissal. Although workers have rights which ought to be protected, land owners (*sic*) likewise have rights which should receive the same protection from the law.

As to the defendant-appellant's second assignment of error, we find no reason (*sic*) overturn the trial court's finding that there was no tenancy relationship between the parties.

In the defendant's Answer, dated 16 November 1992, she has expressly admitted the allegations contained in paragraphs 4 to 7 of the complaint. Said paragraphs of the complaint alleged that defendant-appellant admitted in a prior case that she filed a labor case against the former owner, to wit:

"5. That after demands made for defendant to vacate the said land were ignored, plaintiff filed a complaint, Civil Case No. 3551 for Recovery of Possession, Injunction with Writ of Preliminary Injunction;

> "6. That in her answer, defendant claimed that she was employed as timekeeper by Concepcion Malonjao over the latter's workers in the banana plantation and that she was terminated so that she filed a case for illegal dismissal, 13th month pay differential, Unpaid Living Allowance and Reinstatement with the Office of the Ministry of Labor and Employment, General Santos City."

Defendant-appellant herself anchors much of her argument in her present appeal to the (*sic*) Civil Case No. 3551, and the Court notes that in said case, defendant's Answer admitted she is an employee of Concepcion Malonjao and that after her services were terminated, she filed a case with the NLRC, to wit:

> "3.2. In 1974, the defendant was hired by Concepcion Malonjao, owner of Lot No. 614, to serve as caretaker of said lot with full authority to introduce improvements thereon and adopt such measures as would provide protection against would-be intruders and trespassers into the property. In consequence thereof, defendant erected a hut herself and her children on a portion of the said lot and began planting a variety of plants and crops in the premises to augment her meager means in support of her family.
>
> "3.3. Subsequently, Lot 614 was utilized and devoted by Concepcion Malonjao to the planting of banana trees in accordance with a growership agreement entered into by her with STANFILCO; whereupon, defendant, in a Notice of Appointment dated June 2, 1978, was *designated and officially employed by Concepcion Malonjao as timekeeper and "capataz" over her workers in the banana plantation.*
>
> "3.4. In 1983, Lot 614 was mortgaged by Concepcion Malonjao to a certain Mana[n]sala who, while assuming the operation and collection of the proceeds from the banana plantation as consequence of the mortgage, retained the services of the defendant as such "*capataz*" in the plantation. Neither was she disturbed, during all these times, by the original owner, Concepcion Malonjao, the mortgagee, Manansala, nor by the other person, in her occupancy and or possession of the premises used by her and their family for habitation.

"3.5. Sometime in the middle part of 1986, *plaintiff approached the defendant and informed her of an impending plan on his part to purchase Lot No. 614 and his intention to terminate the employment of the defendant in the banana plantation.*

"3.6. Thereafter, or in (*sic*) February 1987, defendant's employment was terminated by Concepcion Malonjao, presumably upon representation made by the plaintiff, Generoso Yap, the proposed vendee of Lot No. 614.

"3.7. In view of the fact that she was not given her separation pay nor any form of financial assistance, defendant filed ROXI Case No. MC-032-65-87 for Illegal Dismissal, 13th month pay differential, Unpaid Living Allowance and Reinstatement with the Office of the Ministry of Labor and Employment, General Santos City, which scheduled the date for hearing on April 21, 1987. However, Concepcion Malonjao or any of her agents or representatives, failed to appear on the date of the scheduled hearing." (Italics supplied)

Having admitted that she herself went to the NLRC claiming to be an employee of the former owner, she should not be allowed to play a mockery of justice by later claiming (after losing her case in the NLRC) to claim that she is a tenant and not an employee.

In *Prudential Bank v. Gapultos*, (181 SCRA 159 [1990]), the Supreme Court have ruled that for tenancy to exists, the following must concur: [a] the parties are the landowner[s] and the tenant[s]; [b] the subject is agricultural land; [c] there is consent; [d] the purpose is agricultural production; [e] there is personal cultivation; and [f] there is sharing of harvests. The same case held that if a person fails to establish that he has all the said requisites, he is not entitled (*sic*) claim coverage of the agrarian reform laws, to wit:

"x x x All these requisites must concur in order to create a tenancy relationship between the parties. The absence of one does not make an occupant of a parcel of land, or a cultivator thereof, or a planter thereon, a *de jure* tenant. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the government under existing tenancy laws x x x" (181 SCRA at 169).

By defendant-appellant's own admission, there was a "growership agreement" between the former owner and STANFILCO (Petition, page 3), thus, negating the possibility of there ever having been crop sharing between the former owner and herein defendant. As pointed out above, the sharing of harvests is one of the requisites for the existence of a tenancy relation.

It is, therefore, clear that the trial court did not err when it ruled that there was no tenancy relations between the parties in this case.

The Court further notes that the land involved in the present case is less than three hectares. This fact is not controverted by defendant-appellant. This being the case, the land in question is not within the purview of the (*sic*) RA 6657. There is no basis for defendant-appellant to claim coverage of the said law.

Considering the Court's ruling regarding the second assignment of error, we further hold that since there was no tenancy relationship between the parties, the DARAB does not have jurisdiction over the present case and, therefore, the trial court did not err in taking cognizance of the present case. The third assignment of error, therefor, has no leg to stand on.

With regards to the fourth assignment of error, defendant-appellant claims that her status as a tenant negates the possibility of her ever acting in bad faith. She anchors her argument on the findings in Civil Case No. 3551 where she claims the trial court found that she was a tenant of Concepcion Malonjao. However, the findings in the said case is not conclusive as to her status as a tenant, because as pointed out above, *res judicata* should not apply in the present case. Moreover, the matter of tenancy, which was merely incidentally touched upon in said decision, was not among issue (*sic*) resolved. In *Esquivias v. Court of Appeals* (272 SCRA 803 [1977]), the Supreme Court held:

> "Consequently, the judgment on the disbarment proceedings, which *incidentally touched on the issue* of the validity of the deed of sale, cannot be considered conclusive in another action where the validity of the same deed of sale is merely one of the main issues. At best, such judgment may only be given weight when introduced as evidence, but in no case does it bind the court in the second action." (272 SCRA at 813) (Italics supplied).

The findings in Civil Case No. 3551 cannot, therefore, be the basis for the defense of good faith. Furthermore, as

> discussed above, defendant-appellant's admissions showed she was aware that she was an employee and not a tenant. She cannot claim good faith in continuing to hold on the subject property because agricultural employees do not enjoy tenurial rights over the land.[8]

The decision of the Court of Appeals has become final and executory. This Court in this case is bereft of jurisdiction to annul a decision of the Court of Appeals affirming *in toto* a decision of the trial court which has attained finality. The assailed decision, whether right or wrong, has become immutable.[9] The writ of execution issued by the trial court is but an enforcement of its decision. The well-entrenched rule is that it is the ministerial duty of the trial court to enforce its final and executory decision.

Second. Under Rule 45 of the Rules of Court, a petition for review on *certiorari* must be filed with this Court within fifteen (15) days from notice of the judgment sought to be reversed. The trial court rendered judgment in Civil Case No. 4825 on August 24, 1994. The petition at bar was filed in this Court on November 20, 2000, long after the lapse of the period under the said rule.

Third. The petitioner filed a petition in the Court of Appeals docketed as CA-G.R. SP No. 60812 to annul the decision of the RTC, Branch 37 in Civil Case No. 4825. However, the Court of Appeals dismissed the petition on September 29, 2000, and such dismissal became final and executory on November 2, 2000. The petition in this case is but another futile attempt to obtain relief in this Court, which the petitioner failed to obtain from the Court of Appeals in CA-G.R. SP No. 60821. As we held in *Toledo-Banaga, et al. vs. Court of Appeals*:[10]

> . . . The decision in that case bars a further repeated consideration of the very same issue that has already been settled with finality. To once again re-open that issue through a different avenue would defeat the existence of our courts as final arbiters of legal controversies.

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[8] Records, pp. 106-112 (Civil Case No. 4825).

[9] *Toledo-Banaga vs. Court of Appeals*, 302 SCRA 331 (1996).

[10] *Ibid*.

Having attained finality, the decision is beyond review or modification even by this Court.[11]

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED DUE COURSE* and is hereby *DISMISSED*. Costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 147420. June 10, 2004]

CEZAR ODANGO in his behalf and in behalf of 32 complainants, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ANTIQUE ELECTRIC COOPERATIVE, INC.,** *respondents*.

SYNOPSIS

Petitioners, monthly paid employees of private respondent, assailed the Resolutions of the Court of Appeals, which upheld the Decision and Resolution of the National Labor Relations Commission in NLRC Case No. V-0048-97. The NLRC reversed the decision of the Labor Arbiter, which found the private respondent liable for petitioners' wage differentials, plus attorney's fees. In its assailed Decision, the Court of Appeals held that the petition was insufficient in form and substance since it "does not allege the essential requirements of the extra-

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[11] *Id*. at 341.

ordinary special action of *certiorari*." The Court of Appeals faulted petitioners for failing to recite "where and in what specific instance public respondent abused its discretion."

Petitioners argued that their petition was clear and specific in its allegation of grave abuse of discretion. Petitioners further claimed that the Court of Appeals gravely erred in denying their claim for wage differentials arguing that under Section 2, Rule IV of Book III of the Omnibus Rules Implementing the Labor Code, monthly-paid employees are considered paid for all days of the month including un-worked days. Petitioners asserted that they should be paid for all the 365 days in a year. They argued that since in the computation of leave credits, private respondent uses a divisor of 304, private respondent is not paying them 61 days every year.

The Supreme Court agreed with the Court of Appeals that nowhere in the petition was there any acceptable demonstration that the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction. Petitioners merely stated generalizations and conclusions of law. Rather than discussing how the NLRC acted capriciously, petitioners resorted to a litany of generalizations. According to the Court, petitions that fail to comply with procedural requisites, or are unintelligible or clearly without legal basis, deserve scant consideration. On the petitioners' right to wage differentials, the Court found petitioners' claim without basis. The Court had long ago declared void Section 2, Rule IV of Book III of the Omnibus Rules Implementing the Labor Code. Thus, Section 2 cannot serve as basis of any right or claim. Absent any other legal basis, petitioners' claim for wage differential must fail. Accordingly, the Court denied the petition.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; CONFINED TO ISSUES OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AND DOES NOT INCLUDE CORRECTION OF THE NLRC'S EVALUATION OF THE EVIDENCE OR OF ITS FACTUAL FINDINGS.— We find that the Court of Appeals did not err in dismissing the petition outright. Section 3, Rule 46 of the Rules of Court requires that a petition for *certiorari* must state the grounds relied on for

the relief sought. A simple perusal of the petition readily shows that petitioners failed to meet this requirement. The appellate court's jurisdiction to review a decision of the NLRC in a petition for *certiorari* is confined to issues of jurisdiction or grave abuse of discretion. An extraordinary remedy, a petition for *certiorari* is available only and restrictively in truly exceptional cases. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. A party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of *certiorari* will lie.

2. ID.; ID.; ID.; PETITION MUST BE SUFFICIENT IN FORM AND SUBSTANCE.— We agree with the Court of Appeals that nowhere in the petition is there any acceptable demonstration that the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction. Petitioners merely stated generalizations and conclusions of law. Rather than discussing how the NLRC acted capriciously, petitioners resorted to a litany of generalizations. Petitions that fail to comply with procedural requisites, or are unintelligible or clearly without legal basis, deserve scant consideration. Section 6, Rule 65 of the Rules of Court requires that every petition be sufficient in form and substance before a court may take further action. Lacking such sufficiency, the court may dismiss the petition outright.

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYMENT; WAGES; MONTHLY PAID EMPLOYEES ARE NOT EXCLUDED FROM THE BENEFITS OF HOLIDAY PAY; SECTION 2, RULE IV OF BOOK III OF THE OMNIBUS RULES IMPLEMENTING THE LABOR CODE DECLARED NULL AND VOID.— We have long ago declared void Section 2, Rule IV of Book III of the Omnibus Rules Implementing the Labor Code. In *Insular Bank of Asia v. Inciong,* we ruled as follows: Section 2, Rule IV, Book III of the Implementing Rules and Policy Instructions No. 9 issued by the Secretary (then Minister) of Labor are null

and void since in the guise of clarifying the Labor Code's provisions on holiday pay, they in effect amended them by enlarging the scope of their exclusion. The Labor Code is clear that monthly-paid employees are not excluded from the benefits of holiday pay. However, the implementing rules on holiday pay promulgated by the then Secretary of Labor excludes monthly-paid employees from the said benefits by inserting, under Rule IV, Book III of the implementing rules, Section 2 which provides that monthly-paid employees are presumed to be paid for all days in the month whether worked or not. Thus, Section 2 cannot serve as basis of any right or claim. Absent any other legal basis, petitioners' claim for wage differentials must fail.

4. ID.; ID.; ID.; ID.; "NO WORK, NO PAY" PRINCIPLE; RIGHT TO BE PAID FOR UN-WORKED DAYS IS GENERALLY LIMITED TO THE TEN LEGAL HOLIDAYS IN A YEAR; CASE AT BAR.— Even assuming that Section 2, Rule IV of Book III is valid, petitioners' claim will still fail. The basic rule in this jurisdiction is "no work, no pay." The right to be paid for un-worked days is generally limited to the ten legal holidays in a year. Petitioners' claim is based on a mistaken notion that Section 2, Rule IV of Book III gave rise to a right to be paid for un-worked days beyond the ten legal holidays. In effect, petitioners demand that ANTECO should pay them on Sundays, the un-worked half of Saturdays and other days that they do not work at all. Petitioners' line of reasoning is not only a violation of the "no work, no pay" principle, it also gives rise to an invidious classification, a violation of the equal protection clause. Sustaining petitioners' argument will make monthly-paid employees a privileged class who are paid even if they do not work. The use of a divisor less than 365 days cannot make ANTECO automatically liable for underpayment. The facts show that petitioners are required to work only from Monday to Friday and half of Saturday. Thus, the minimum allowable divisor is 287, which is the result of 365 days, less 52 Sundays and less 26 Saturdays (or 52 half Saturdays). Any divisor below 287 days means that ANTECO's workers are deprived of their holiday pay for some or all of the ten legal holidays. The 304 days divisor used by ANTECO is clearly above the minimum of 287 days.

5. ID.; ID.; ID.; ID.; RULING IN CHARTERED BANK EMPLOYEES ASSOCIATION CASE (G.R. NO. L-44717, 28 AUGUST 1985) NOT APPLICABLE TO CASE AT BAR.— Finally, petitioners cite *Chartered Bank Employees Association v. Ople* as an analogous situation. Petitioners have misread this case. In *Chartered Bank*, the workers sought payment for un-worked legal holidays as a right guaranteed by a valid law. In this case, petitioners seek payment of wages for un-worked non-legal holidays citing as basis a void implementing rule. The circumstances are also markedly different. In *Chartered Bank*, there was a collective bargaining agreement that prescribed the divisor. No CBA exists in this case. In *Chartered Bank*, the employer was liable for underpayment because the divisor it used was 251 days, a figure that clearly fails to account for the ten legal holidays the law requires to be paid. Here, the divisor ANTECO uses is 304 days. This figure does not deprive petitioners of their right to be paid on legal holidays.

APPEARANCES OF COUNSEL

Mariano R. Pefianco for petitioners.
The Solicitor General for public respondent.
Alex G. Siruelo for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Court of Appeals' Resolutions of 27 September 2000[2] and 7 February 2001 in CA-G.R. SP No. 51519. The Court of Appeals upheld the Decision[3] dated 27 November 1997 and the Resolution dated

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Mariano M. Umali with Associate Justices Ruben T. Reyes and Rebecca De-Guia Salvador, concurring.

[3] Penned by Commissioner Bernabe S. Batuhan with Commissioners Irenea R. Cerniza and Amorito V. Cañete, concurring.

30 April 1998 of the National Labor Relations Commission ("NLRC") in NLRC Case No. V-0048-97. The NLRC reversed the Labor Arbiter's Decision of 29 November 1996, which found respondent Antique Electric Cooperative ("ANTECO") liable for petitioners' wage differentials amounting to ₱1,017,507.73 plus attorney's fees of 10%.

Antecedent Facts

Petitioners are monthly-paid employees of ANTECO whose workdays are from Monday to Friday and half of Saturday. After a routine inspection, the Regional Branch of the Department of Labor and Employment ("DOLE") found ANTECO liable for underpayment of the monthly salaries of its employees. On 10 September 1989, the DOLE directed ANTECO to pay its employees wage differentials amounting to ₱1,427,412.75. ANTECO failed to pay.

Thus, on various dates in 1995, thirty-three (33) monthly-paid employees filed complaints with the NLRC Sub-Regional Branch VI, Iloilo City, praying for payment of wage differentials, damages and attorney's fees. Labor Arbiter Rodolfo G. Lagoc ("Labor Arbiter") heard the consolidated complaints.

On 29 November 1996, the Labor Arbiter rendered a Decision in favor of petitioners granting them wage differentials amounting to ₱1,017,507.73 and attorney's fees of 10%. Florentino Tongson, whose case the Labor Arbiter dismissed, was the sole exception.

ANTECO appealed the Decision to the NLRC on 24 December 1996. On 27 November 1997, the NLRC reversed the Labor Arbiter's Decision. The NLRC denied petitioners' motion for reconsideration in its Resolution dated 30 April 1998. Petitioners then elevated the case to this Court through a petition for *certiorari*, which the Court dismissed for petitioners' failure to comply with Section 11, Rule 13 of the Rules of Court. On petitioners' motion for reconsideration, the Court on 13 January 1999 set aside the dismissal. Following the doctrine in ***St. Martin Funeral Home v. NLRC,***[4] the Court referred the case to the Court of Appeals.

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[4] 356 Phil. 811 (1998).

On 27 September 2000, the Court of Appeals issued a Resolution dismissing the petition for failure to comply with Section 3, Rule 46 of the Rules of Court. The Court of Appeals explained that petitioners failed to allege the specific instances where the NLRC abused its discretion. The appellate court denied petitioners' motion for reconsideration on 7 February 2001.

Hence, this petition.

The Labor Arbiter's Ruling

The Labor Arbiter reasoned that ANTECO failed to refute petitioners' argument that monthly-paid employees are considered paid for all the days in a month under Section 2, Rule IV of Book 3 of the Implementing Rules of the Labor Code ("Section 2").[5] Petitioners claim that this includes not only the 10 legal holidays, but also their un-worked half of Saturdays and all of Sundays.

The Labor Arbiter gave credence to petitioners' arguments on the computation of their wages based on the 304 divisor used by ANTECO in converting the leave credits of its employees. The Labor Arbiter agreed with petitioners that ANTECO's use of 304 as divisor is an admission that it is paying its employees for only 304 days a year instead of the 365 days as specified in Section 2. The Labor Arbiter concluded that ANTECO owed its employees the wages for 61 days, the difference between 365 and 304, for every year.

The NLRC's Ruling

On appeal, the NLRC reversed the Labor Arbiter's ruling that ANTECO underpaid its employees. The NLRC pointed

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[5] SEC. 2. *Status of employees paid by the month.* — Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be presumed to be paid for all days in the month whether worked or not.

For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.

out that the Labor Arbiter's own computation showed that the daily wage rates of ANTECO's employees were above the minimum daily wage of ₱124. The lowest paid employee of ANTECO was then receiving a monthly wage of ₱3,788. The NLRC applied the formula in Section 2 [(Daily Wage Rate = (Wage x 12)/365)] to the monthly wage of ₱3,788 to arrive at a daily wage rate of ₱124.54, an amount clearly above the minimum wage.

The NLRC noted that while the reasoning in the body of the Labor Arbiter's decision supported the view that ANTECO did not underpay, the conclusion arrived at was the opposite. Finally, the NLRC ruled that the use of 304 as a divisor in converting leave credits is more favorable to the employees since a lower divisor yields a higher rate of pay.

The Ruling of the Court of Appeals

The Court of Appeals held that the petition was insufficient in form and substance since it "does not allege the essential requirements of the extra-ordinary special action of *certiorari*." The Court of Appeals faulted petitioners for failing to recite "where and in what specific instance public respondent abused its discretion." The appellate court characterized the allegations in the petition as "sweeping" and clearly falling short of the requirement of Section 3, Rule 46 of the Rules of Court.

The Issues

Petitioners raise the following issues:

I

WHETHER THE COURT OF APPEALS IS CORRECT IN DISMISSING THE CASE.

II

WHETHER PETITIONERS ARE ENTITLED TO THEIR MONEY CLAIM.[6]

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[6] *Rollo,* p. 9.

The Ruling of the Court

The petition has no merit.

On the sufficiency of the petition

Petitioners argue that the Court of Appeals erred in dismissing their petition because this Court had already ruled that their petition is sufficient in form and substance. They argue that this precludes any judgment to the contrary by the Court of Appeals. Petitioners cite this Court's Resolution dated 13 January 1999 as their basis. This Resolution granted petitioners' motion for reconsideration and set aside the dismissal of their petition for review.

Petitioners' reliance on our 16 September 1998 Resolution is misplaced. In our Resolution, we dismissed petitioners' case for failure to comply with Section 11, Rule 13 of the Rules of Court.[7] The petition lacked a written explanation on why service was made through registered mail and not personally.

The error petitioners committed before the Court of Appeals is different. The appellate court dismissed their petition for failure to comply with the first paragraph of Section 3 of Rule 46[8] in relation to Rule 65 of the Rules of Court, outlining the necessary contents of a petition for *certiorari*. This is an entirely different ground. The previous dismissal was due to petitioners' failure to explain why they resorted to service by registered mail. This

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[7] 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.

[8] Sec. 3. *Content and filing of petition; effect of non-compliance with requirements*. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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time the content of the petition itself is deficient. Petitioners failed to allege in their petition the specific instances where the actions of the NLRC amounted to grave abuse of discretion.

There is nothing in this Court's Resolution dated 13 January 1999 that remotely supports petitioners' argument. What we resolved then was to reconsider the dismissal of the petition due to a procedural defect and to refer the case to the Court of Appeals for its proper disposition. We did not in any way rule that the petition is sufficient in form and substance.

Petitioners also argue that their petition is clear and specific in its allegation of grave abuse of discretion. They maintain that they have sufficiently complied with the requirement in Section 3, Rule 46 of the Rules of Court.

Again, petitioners are mistaken.

We quote the relevant part of their petition:

REASONS RELIED UPON FOR ALLOWANCE OF PETITION

12. This Honorable court can readily see from the facts and circumstances of this case, the petitioners were denied of their rights to be paid of 4 hours of each Saturday, 51 rest days and 10 legal holidays of every year since they started working with respondent ANTECO.

13. The respondent NLRC while with open eyes knew that the petitioners are entitled to salary differentials consisting of 4 hours pay on Saturdays, 51 rest days and 10 legal holidays plus 10% attorney's fees as awarded by the Labor Arbiter in the above-mentioned decision, still contrary to law, contrary to existing jurisprudence issued arbitrary, without jurisdiction and in excess of jurisdiction the decision vacating and setting aside the said decision of the Labor Arbiter, to the irreparable damage and prejudice of the petitioners.

14. That the respondent NLRC in grave abuse of discretion in the exercise of its function, by way of evasion of positive duty in accordance with existing labor laws, illegally refused to reconsider its decision dismissing the petitioners' complaints.

15. That there is no appeal, nor plain, speedy and adequate remedy in law from the above-mentioned decision and resolution of respondent NLRC except this petition for *certiorari*.[9]

These four paragraphs comprise the petitioners' entire argument. In these four paragraphs petitioners ask that a writ of *certiorari* be issued in their favor. We find that the Court of Appeals did not err in dismissing the petition outright. Section 3, Rule 46 of the Rules of Court requires that a petition for *certiorari* must state the grounds relied on for the relief sought. A simple perusal of the petition readily shows that petitioners failed to meet this requirement.

The appellate court's jurisdiction to review a decision of the NLRC in a petition for *certiorari* is confined to issues of jurisdiction or grave abuse of discretion.[10] An extraordinary remedy, a petition for *certiorari* is available only and restrictively in truly exceptional cases. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[11] It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality.[12] A party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of *certiorari* will lie.[13]

We agree with the Court of Appeals that nowhere in the petition is there any acceptable demonstration that the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction. Petitioners merely stated generalizations

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

[10] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603 (2001).

[11] *Oro v. Judge Diaz*, 413 Phil. 416 (2001).

[12] *Flores vs. NLRC*, 323 Phil. 589 (1996).

[13] *Sajonas vs. NLRC*, G.R. No. 49286, March 15, 1990, 183 SCRA 182.

and conclusions of law. Rather than discussing how the NLRC acted capriciously, petitioners resorted to a litany of generalizations.

Petitions that fail to comply with procedural requisites, or are unintelligible or clearly without legal basis, deserve scant consideration. Section 6, Rule 65 of the Rules of Court requires that every petition be sufficient in form and substance before a court may take further action. Lacking such sufficiency, the court may dismiss the petition outright.

The insufficiency in substance of this petition provides enough reason to end our discussion here. However, we shall discuss the issues raised not so much to address the merit of the petition, for there is none, but to illustrate the extent by which petitioners have haphazardly pursued their claim.

On the right of the petitioners to wage differentials

Petitioners claim that the Court of Appeals gravely erred in denying their claim for wage differentials. Petitioners base their claim on Section 2, Rule IV of Book III of the Omnibus Rules Implementing the Labor Code. Petitioners argue that under this provision monthly-paid employees are considered paid for all days of the month including un-worked days. Petitioners assert that they should be paid for all the 365 days in a year. They argue that since in the computation of leave credits, ANTECO uses a divisor of 304, ANTECO is not paying them 61 days every year.

Petitioners' claim is without basis

We have long ago declared void Section 2, Rule IV of Book III of the Omnibus Rules Implementing the Labor Code. In *Insular Bank of Asia v. Inciong,*[14] we ruled as follows:

> Section 2, Rule IV, Book III of the Implementing Rules and Policy Instructions No. 9 issued by the Secretary (then Minister) of Labor are null and void since in the guise of clarifying the Labor Code's provisions on holiday pay, they in effect amended them by enlarging the scope of their exclusion.

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[14] *Insular Bank of Asia and America Employees' Union (IBAAEU) v. Inciong,* 217 Phil. 629 (1984).

The Labor Code is clear that monthly-paid employees are not excluded from the benefits of holiday pay. However, the implementing rules on holiday pay promulgated by the then Secretary of Labor excludes monthly-paid employees from the said benefits by inserting, under Rule IV, Book III of the implementing rules, Section 2 which provides that monthly-paid employees are presumed to be paid for all days in the month whether worked or not.

Thus, Section 2 cannot serve as basis of any right or claim. Absent any other legal basis, petitioners' claim for wage differentials must fail.

Even assuming that Section 2, Rule IV of Book III is valid, petitioners' claim will still fail. The basic rule in this jurisdiction is "no work, no pay." The right to be paid for un-worked days is generally limited to the ten legal holidays in a year.[15] Petitioners' claim is based on a mistaken notion that Section 2, Rule IV of Book III gave rise to a right to be paid for un-worked days beyond the ten legal holidays. In effect, petitioners demand that ANTECO should pay them on Sundays, the un-worked half of Saturdays and other days that they do not work at all. Petitioners' line of reasoning is not only a violation of the "no work, no pay" principle, it also gives rise to an invidious classification, a violation of the equal protection clause. Sustaining petitioners' argument will make monthly-paid employees a privileged class who are paid even if they do not work.

The use of a divisor less than 365 days cannot make ANTECO automatically liable for underpayment. The facts show that petitioners are required to work only from Monday to Friday and half of Saturday. Thus, the minimum allowable divisor is 287, which is the result of 365 days, less 52 Sundays and less 26 Saturdays (or 52 half Saturdays). Any divisor below 287 days means that ANTECO's workers are deprived of their holiday pay for some or all of the ten legal holidays. The 304 days divisor used by ANTECO is clearly above the minimum of 287 days.

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[15] See Article 94 of the Labor Code and Executive Order No. 223.

Finally, petitioners cite ***Chartered Bank Employees Association v. Ople***[16] as an analogous situation. Petitioners have misread this case.

In ***Chartered Bank***, the workers sought payment for un-worked *legal* holidays as a right guaranteed by a valid law. In this case, petitioners seek payment of wages for un-worked ***non-legal*** holidays citing as basis a void implementing rule. The circumstances are also markedly different. In ***Chartered Bank***, there was a collective bargaining agreement that prescribed the divisor. No CBA exists in this case. In ***Chartered Bank***, the employer was liable for underpayment because the divisor it used was 251 days, a figure that clearly fails to account for the ten legal holidays the law requires to be paid. Here, the divisor ANTECO uses is 304 days. This figure does not deprive petitioners of their right to be paid on legal holidays.

A final note. ANTECO's defense is likewise based on Section 2, Rule IV of Book III of the Omnibus Rules Implementing the Labor Code although ANTECO's interpretation of this provision is opposite that of petitioners. It is deplorable that both parties premised their arguments on an implementing rule that the Court had declared void twenty years ago in ***Insular Bank***. This case is cited prominently in basic commentaries.[17] And yet, counsel for both parties failed to consider this. This does not speak well of the quality of representation they rendered to their clients. This controversy should have ended long ago had either counsel first checked the validity of the implementing rule on which they based their contentions.

WHEREFORE, the petition is *DENIED*. The Resolution of the Court of Appeals *DISMISSING* CA-G.R. SP No. 51519 is *AFFIRMED*.

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[16] G.R. No. L-44717, 28 August 1985, 138 SCRA 273.

[17] See Azucena, "*The Labor Code with Comments and Cases*," Vol. 1, pp. 174 to 175.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Ynares-Santiago and *Azcuna, JJ.,* concur.

SECOND DIVISION

[G.R. No. 149560. June 10, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **QUIRICO DAGPIN *y* ESMADE,** *appellant.*

SYNOPSIS

Nilo Caermare was unarmed when he was shot to death from behind at close range. Randy, Rona and Rena, all surnamed Labisig, recognized and identified herein appellant as their uncle's assassin. Giving credence and probative weight to the testimonies of the prosecution eyewitnesses, the court, after due trial, convicted the appellant of the crime of murder and sentenced him to *reclusion perpetua*. Hence, this appeal, where appellant contended that the lower court erred in not acquitting him based on reasonable doubt. Appellant contended that the identification by the prosecution witnesses was inadmissible in evidence because he was not assisted by counsel when the three pointed to him as the culprit in the police station.

The well-settled rule is that findings of a trial court on the credibility of witnesses deserve great weight, as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. Where, as in this case, there was no showing that the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case, the findings of the trial court are accorded high respect, if not conclusive effect. Moreover, the appellant's denial of the crime charged cannot prevail over the declarations of prosecution

witnesses. Likewise, the defense of alibi was inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. In addition, the appellant was not deprived of his rights under the Constitution to be assisted by counsel because he was not subjected to a custodial investigation when he was identified by the prosecution's witnesses in a police line-up. Indeed, the appellant even denied that there was no police line-up and that he was merely with the police officers when the prosecution's witnesses arrived in the police station. The Court affirmed the decision of the trial court with modifications as to award of damages.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO ACCORDED HIGH RESPECT.—** The trial court gave credence and probative weight to the testimonies of Randy and Rona. The well-settled rule is that findings of a trial court on the credibility of witnesses deserve great weight, as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Where, as in this case, there is no showing that the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances of substance which, if considered, will alter the outcome of the case. The findings of the trial court are accorded high respect, if not conclusive effect.

2. **ID.; ID.; DEFENSE OF ALIBI; INHERENTLY WEAK AND CRUMBLES IN THE LIGHT OF POSITIVE DECLARATIONS OF TRUTHFUL WITNESSES WHO TESTIFIED ON AFFIRMATIVE MATTERS.—** The appellant's denial of the crime charged cannot prevail over the positive declarations of prosecution witnesses Randy and Rona. The defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. Positive identification where categorical and consistent and without any showing of ill motive

on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.

3. ID.; CRIMINAL PROCEDURE; DESIGNATION OF THE OFFENSE; AGGRAVATING CIRCUMSTANCE MUST BE ALLEGED IN THE INFORMATION; RULE APPLIED RETROACTIVELY.— Although the Information alleges that the appellant used a gun in killing the victim, there is no allegation therein that the appellant had no license to possess the firearm. Neither is there proof that he had no such license. Under Rule 110, Section 8 of the Revised Rules of Criminal Procedure, an aggravating circumstance must be alleged in the Information. While the rule became effective after the crime was committed, the same must be applied retroactively because it is favorable to the appellant.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF ACCUSED; RIGHT TO COUNSEL; ACCUSED NOT DEPRIVED THEREOF WHERE HE WAS NOT SUBJECTED TO A CUSTODIAL INVESTIGATION WHEN HE WAS IDENTIFIED BY WITNESSES IN A POLICE LINE-UP WITHOUT COUNSEL.— The appellant was not deprived of his right under the Constitution to be assisted by counsel because the appellant was not subjected to a custodial investigation where he was identified by the prosecution's witnesses in a police line-up. Indeed, the appellant even denied that there was no police line-up and that he was merely with the police officers when the prosecution's witnesses arrived in the police station.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; CASE AT BAR.— The killing was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means or methods in the execution thereof which tend, directly and specifically, to insure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape. In this case, the victim was shot

from behind, at close range, impervious to the peril to his life. The victim was unarmed and had no chance or means to defend himself or avert the appellant's assault.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Victorio Dante D. Dalman 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 Dipolog City, Branch 8, convicting the appellant Quirico Dagpin *y* Esmade of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

The appellant was charged with murder in an Information, the accusatory portion of which reads:

That on March 20, 1996, at about 1:00 o'clock dawn, in Sitio Bababon, Barangay Diwa-an, City of Dapitan, within the jurisdiction of this Honorable Court, the above-named accused, armed with a home-made shotgun, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot with the use of a home-made shotgun one NILO CAERMARE thereby resulting to his instantaneous death thereafter.

That as a result of the criminal acts of the accused, the heirs of the victim suffered the following damages to wit:

1. Loss of earning capacity ---------- ₱20,000.00
2. Death Indemnity ---------- 50,000.00

Total ..... ₱70,000.00

CONTRARY TO LAW.[2]

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[1] Penned by Judge Pacifico M. Garcia.

[2] Records, p. 1.

The appellant was arraigned, assisted by counsel, and entered a plea of not guilty.

The Case for the Prosecution

On November 10, 1991, Danilo Taruc and his friend, Nilo Caermare, went to Barangay Tamion, Dapitan City, because it was a market day. The appellant was a resident of the place. Late in the afternoon, Nilo and Danilo saw the appellant, who was with his friends. Suddenly, the appellant boxed Nilo. As Nilo and Danilo were outnumbered, they could not retaliate.

At 7:00 p.m. on February 29, 1996, Nilo, along with Jose Bulagao and Reynaldo Bantayana, arrived at the Sulangon National High School to attend a dance party later that evening. To pass the time, they had a drinking spree and consumed six bottles of Tanduay rhum. At 11:00 p.m., while in the premises of the school, the appellant arrived, armed with a shotgun, and punched Nilo on the mouth. Nilo fled. The appellant aimed his gun at the fleeing Nilo and pulled the trigger three times, but the gun did not fire. Nilo returned, while the appellant fled towards the direction of *Sitio* Tamion where he resided. Nilo did not report the incident to the police nor filed charges against the appellant for any crime.

Randy Labisig, one of Nilo's nephews, had seen the appellant during *fiestas* in Barangay Diwa-an, Dapitan City. Randy's sister, Rona Labisig, also used to see the appellant in Sulangon when she was still studying at the Sulangon National High School. The appellant used to ride a bicycle and would pass by the house of her aunt where she stayed.

In the evening of March 19, 1996, Randy attended a dance party at the feeding center in *Sitio* Bababon, Barangay Diwa-an. At about 1:00 a.m., March 20, 1996, Randy, in the company of his Uncle Nilo, his sisters Rena and Rona, and Mario Aliman, were on their way home from the party. They walked along a narrow trail, single file, with Aliman walking first, followed by Rona; the latter was followed by Rena and Nilo who walked side by side, with Randy at the tail end. Momentarily, a man who wore a dark shirt with a baseball cap on his head came from Randy's left side and inserted himself between Nilo and

Randy, in the process pushing the latter to the right side. The man was armed with a long shotgun. Suddenly, the man raised his gun, and, with the muzzle only about a foot away from Nilo's back, pulled the trigger. Nilo fell to the ground.

When they heard the gunfire, Rona and Rena fled, but stopped at a short distance and looked back. In the meantime, Randy was so shocked at the sudden turn of events and attempted to help his uncle. However, the assailant returned, this time, holding an unlighted flashlight and pressed it hard on Randy's chin. Randy then saw the face of the malefactor and recognized him as the appellant, although he did not know the latter's name at the time. The appellant left and returned shortly, this time, armed with the same long shotgun which he used to shoot Nilo. When Randy saw the appellant cock his gun, he fled, fearing that he was about to be shot next. After a short distance, he stopped near where his sisters Rona and Rena were, and looked back. They saw the appellant with three other men, each holding a lighted flashlight which illumined the left side of the appellant's head. Randy, Rona and Rena then fled to the house of Melborga Taruc, about a kilometer away from the place of the shooting, where they spent the rest of the morning.

On March 27, 1996, Randy, Rona and Rena went to the police station and saw the appellant, whom they pointed to the police as the person who shot their uncle. It was only then that they learned the name of their uncle's assassin, Quirico Dagpin. They executed sworn statements of their respective accounts of the killing.

City Health Officer Dr. Bernardino D. Palma performed an autopsy on the cadaver of Nilo and signed a necropsy report containing the following findings:

1. Gunshot wounds with fracture of the left fronto-parietal bones.

2. Gunshot wounds 9 — with powder burns at left infrascapular area directed downward and anteriorly — 2 pilets (*sic*) removed at the right chest, one was lost along transit.[3]

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[3] *Id*. at 79.

The doctor found powder burns on each of the wounds sustained by the victim, signifying that he was shot at close range, at a distance of six inches to two feet.

The Case for the Appellant

The appellant denied killing Nilo. He testified that he was from *Sitio* Tamion which was adjacent to Barangay Sulangon. He knew Nilo because the latter had a girlfriend in Sulangon, whose name was Reina. He saw Nilo whenever the latter was with his girlfriend in Sulangon. He disliked Nilo's actuations because although the latter was not from Sulangon, he acted as if he was "the king of Saudi Arabia" every time he was there.

On March 19, 1996, Pedro Elcamel came by and told the appellant that his daughter was going to graduate the following day, and that he was giving a party for her at his house. Pedro asked him to come along and butcher pigs for the occasion. He agreed, and went with Pedro to Brgy. Burgos near the boundary of Tamion, about two kilometers from his own house. They arrived at Pedro's place at about 7:00 p.m. The appellant, Falconere Elcamel and several others butchered a pig and made preparations for the party. The appellant slept at Pedro's house that evening, and went home only in the morning of the next day. He was already at home by 8:00 a.m.

Pedro Elcamel testified that at 6:00 a.m. on March 19, 1996, the appellant was with him at his house in Barangay Tamion, about two kilometers away from that of the appellant. They were there to butcher a pig for the graduation of his daughter, Maricel, the next day. With the help of Falconere and his son, he and the appellant finished butchering the pig at 10:00 p.m. They cooked the meat at 1:00 a.m. He left his house at 6:00 a.m. for his daughter's graduation at the Rizal Memorial Institute in Dapitan City at 8:00 a.m. He and his daughter arrived back home at 1:00 p.m. and saw the appellant helping in serving food to the guests, including the Barangay Captain of Barangay Oyan, his sister's husband. Neither the appellant nor any of the guests told him that there had been a killing the night before.

Rene Jauculan, the Barangay Captain of Barangay Diwa-an, testified that when he learned of the shooting at *Sitio* Bababon, he was in the company of policemen. Dr. Bernardino Palma arrived at Nilo's house at about 12:00 midnight. The policemen then inquired from the people around who the perpetrators were, but no one knew. He learned from the companions of the victim, Randy and his sisters, Rona and Rena, Reynaldo Bantayana and Danilo Taruc, that they knew the culprits but that they were afraid to divulge the latter's identities as they had not yet been arrested. He then learned that the appellant had been arrested for the crime a month later. He also testified that on February 16, 1996, he received a complaint from the husband of a woman, and a confrontation ensued between Nilo and the complainant. The matter was then settled. The victim was also rumored to be the paramour of his cousin's wife.

SPO2 Ildefonso Jamolod of the Dapitan police station testified that at 9:00 a.m. on March 20, 1996, he and Police Investigator Jonathan Bolado and Dr. Bernardino Palma arrived at the house of Nilo where his cadaver was brought from *Sitio* Bababon. He talked to Nilo's sister, who told him that before his death, Nilo had two or three enemies. He was also told that the suspect was the appellant, and relayed the information to SPO3 Manuel Acabal. He and Acabal left the next day, March 21, 1996, and stopped by a store beyond the hanging bridge. They asked the store owner where the appellant's house was, and they were told that the appellant stayed up all night in a drinking spree in a house about ten meters away from the store. They looked for the appellant but failed to find him. They told the *barangay* captain that they wanted to talk to the appellant and would bring the latter to the police station. The following day, March 22, 1996, the *barangay* captain and the appellant arrived at the police station. SPO2 Jamolod took custody of the appellant and turned him over to SPO3 Acabal. Acabal later told him that there was no sufficient evidence against the appellant.

SPO3 Manuel Acabal testified that he was informed by his subordinates that Nilo and the appellant were known enemies. In the afternoon of March 20, 1996, he and his operatives left the police station, coordinated with the *barangay* captain and

saw the appellant in his house. He was then brought to the police station for identification. The appellant was in the company of police officers when he was identified by the complainant, and was then turned over to Police Investigator SPO3 Julio Galleposo and SPO4 Segundo Balladares.

Gil Dagpin testified that he was a farmer and a carpenter, and the appellant's third cousin. He and Nilo had a disagreement sometime in 1990. During the third week of June 1996, Barangay Captain Tarcisio Bayron told him that there had been a killing, and instructed him to go to the police station. The appellant was also invited for questioning, and the two of them went to the police station in the company of the *barangay* captain. There were persons in the police station who stayed with the appellant. He and the appellant were entrusted to SPO3 Acabal, who brought them to someone who told them that Nilo had been killed. SPO3 Acabal then investigated them for about an hour. They were allowed to go back home afterwards, but the appellant was later arrested for the killing.

Police Inspector Pepe Nortal testified that per the police blotter entry at 1:00 a.m. of March 20, 1996, the victim's assailant was still unidentified. A team of police investigators and the Assistant City Health Officer proceeded to the crime scene to investigate the killing.

After trial, the court rendered judgment finding the appellant guilty beyond reasonable doubt of murder. The decretal portion of the decision reads:

> Wherefore, for all of the foregoing considerations and finding the guilt of the accused established beyond reasonable doubt, herein accused Quirico Dagpin *y* Esmade is convicted of the crime of MURDER charged against him, as principal by direct participation, and in the light of Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act 7659, hereby sentenced to suffer the penalty of *Reclusion Perpetua,* to indemnify the heirs of the deceased victim Nilo Caermare, the sum of ₱50,000.00 by way of civil damages for (*sic*) death of the victim and the added sum of ₱20,000.00 for consequential damages, and to pay the cost.
>
> SO ORDERED.[4]

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[4] *Rollo*, p. 36.

The appellant now assails the decision of the trial court contending that:

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED BASED ON REASONABLE DOUBT.[5]

The appellant avers that the trial court erred in convicting him of the crime charged on the basis mainly of his having been identified by Randy, Rona and Rena at the police station on March 27, 1996. He was not assisted by counsel when the three pointed to him as the culprit in the police station. Hence, according to the appellant, such identification is inadmissible in evidence.

The appellant also contends that the trial court erred in not sentencing him to an indeterminate penalty, since *reclusion perpetua* is now a divisible penalty with a range of from twenty (20) years and one (1) day to forty (40) years.

For its part, the Office of the Solicitor General asserts that Randy, Rona and Rena, saw and recognized the appellant as the person who shot the victim at the *situs criminis*. It also maintains that the appellant was not deprived of his constitutional rights when he was identified by the prosecution witnesses at the police station without counsel, because he was not then under custodial investigation. It avers that the penalty meted by the trial court on the appellant is correct.

The Ruling of the Court

The appeal has no merit.

The evidence on record shows that even before the killing of Nilo on March 26, 1996, Randy and Rona had already seen the appellant, although they did not know his name. This can be gleaned from the testimony of Randy:

Q You said that you have seen the accused prior to the incident at Diwa-an. Can you tell the Honorable Court how many times have you seen him in that place?

A We used to see each other always, Sir.

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[5] *Id*. at 48.

Q In what occasion (*sic*) you used to see him?
A I saw him especially during *fiestas*, Sir.

Q How many *fiestas* have you seen Quirico Dagpin at Diwa-an?
A Everytime there is (*sic*) a *fiesta*, we used to see each other, Sir.

Q In what place (*sic*) you used to see him at Diwa-an during *fiestas*?
A In the "*Tabo*" of that place.

Q But despite that fact that you used to see him at the "*tabo*" at Diwa-an, Dapitan City, you don't know that this guy was actually Quirico Dagpin?
A Yes, Sir.[6]

Rona's testimony on this matter reads:

Q Prior to the incident at dawn of March 20, 1996, have you ever seen the accused Quirico Dagpin?
A Yes, Sir. There were times when I saw him riding on a bicycle.

Q In what particular place have you seen him in the past?
A In Sulangon, Sir.

Q Where else?
A I used to see him in Sulangon because I once studied in Sulangon.

Q In what particular place did you usually see the accused Quirico Dagpin?
A I used to see him passing by the house of my aunt Lingling because at the (*sic*) time, when I was studying in Sulangon, I was staying with my aunt Lingling.

Q Because you usually saw him in the past, that was the reason why you are familiar with his face?

ATTY. PALPAGAN:

I object to the question, Your Honor. That is an opinion.

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[6] TSN, 9 January 1997, pp. 6-7.

COURT:

Sustain, *Compañero*.

Q Can you inform the court how many times, more or less, have you seen the accused prior to the incident on March 20, 1996?

A Maybe four (4) times, Sir.[7]

Randy and Rona recognized their uncle's assassin; they were certain it was the appellant. Randy testified how he recognized the appellant:

Q Okay, let's clarify this. The first time you observed (*sic*) that man, I am referring to the assailant, was when he inserted (*sic*) between you and the victim while holding the rifle and shot the victim at his back. Then he went away and went back to his place. The next time around, he got a flashlight, pressing it at your chin, forcing you to stand, then he went away again. This time you don't know where he placed the flashlight, got the rifle and cocked it and you ran away. Then he went to your uncle again and shot him the second time. Is that your stand?

A Yes, Sir. After that I ran away but when I ran away, I turned my face and I saw him because he was lighted by the light coming from the flashlight. He was bringing (*sic*) with him a rifle and he shot my fallen uncle again.

Q But in the direct examination, when you were confronted several times even by the Honorable Court, you said you were not able to recognize the person who shot first your uncle and the person who shot again your uncle. Do you recall that?

ATTY. BALISADO:

Your Honor, please, that is (*sic*) well explained by the witness already. There is no use propounding the same trend of questioning because that is (*sic*) already explained by the witness.

COURT:

Witness may answer.

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[7] TSN, 10 January 1997, pp. 19-21.

What I mean is that, at (*sic*) the first time he inserted himself between us and Nilo Caermare, I was not able to recognize him very well but the second time when he came back, because he was being lighted by the flashlight, that was the time when I was able to recognize him and also the hat he was wearing.

Q You said in the direct examination that you cannot tell whether that person who shot first your uncle was the same person who pressed the flashlight to your chin, forcing you to stand up?

A The first time he came near us, I was not able to recognize him. But the second time when he came near us when he came back, because of the hat he was wearing, I was able to recognize him as the very person who went first near us and inserted himself between myself and Nilo Caermare.

Q But all you have told to this Honorable Court in my questions a while ago is that part of the body of the assailant, especially the back part of his body was lighted, do you still recall that?

A It is not exactly the center but at the back of his neck that was lighted. Also on the left side of his head.

Q All those times, from the time he inserted (*sic*) between you and the victim to the time you held or he held the flashlight and pressed it to your chin and the next time you observed him shot again your uncle, he was wearing a hat?

A Yes, Sir.

Q That is (*sic*) why you were able to identify him because of the hat that he was wearing?

A That includes also the left side of his face that was being lighted by the flashlight.[8]

x x x x x x x x x

Q Aside from the flashlight, was the man holding a gun?

A No, Sir, he was not bringing (*sic*) a gun but he was bringing (*sic*) a flashlight.

Q You said you recognized the man. Who was that whom you recognized?

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[8] TSN, 9 January 1997, pp. 21-25.

ATTY. PALPAGAN:

I pray, Your Honor, that the question be clarified. It is vague. It was not said that if that person identified by the witness first was the one who shot the victim.

COURT:

Not actually the man who shot but the person who pressed the flashlight to his chin.

A Yes, Sir, I recognize the person.

Q Who was that person whom you recognized who pressed the flashlight to your chin?

A The man who came to me was that man.

COURT INTERPRETER:

Witness pointing to a man whom he recognized just a while ago as Quirico Dagpin, the accused in this case.

Q According to you, when that man whom you pointed to as Quirico Dagpin pressed his flashlight to your chin, you were forced to stand up, is that correct?

A Yes, Sir.

Q What did you do when you were forced to stand up?

A When that man pressed the flashlight to my chin, I was forced to stand up and when I was standing, the man stepped backward and when he returned, he was bringing (*sic*) with him a gun.

Q How did that man hold the gun?

A When he came near me, he was bringing (*sic*) the gun holding it with his two hands but the muzzle was pointed downward.

Q What was your reaction when you saw that he was holding a gun pointed downwards?

A When that man who was bringing (*sic*) that gun with the muzzle pointed downward came near me and because I noticed that there was a sound cocking the gun, I was so afraid that he might fire the gun again. That was the time when I ran away.[9]

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[9] TSN, 8 January 1997, pp. 18-21.

Randy testified that the man who returned with the flashlight and with the gun was the same man who shot his uncle:

Q And that person was not holding an arm or weapon?

A At that time, he was bringing (*sic*) with him a flashlight.

COURT:

You have not noticed him carrying a firearm?

A But after he pressed that flashlight to my chin, Your Honor, he moved away again and when he returned, he was bringing (*sic*) with him a gun.

COURT:

Proceed.

Q Do you mean to say that the person who pressed the flashlight to your chin was the same person who got again with (*sic*) a gun?

A The same person, Sir.

Q So, because of the pressure exerted to your chin by that person holding the flashlight, you stood up and when you heard the cocking of the rifle, you ran away?

A Yes, Sir, I moved forward.

Q Have you actually seen the person cocking his rifle?

A Yes, Sir, because he was very near.[10]

Rona testified that she herself recognized the appellant, thus:

Q You said you heard a gunfire and you turned your back and ran forward and stopped at a little distance?

A Yes, Sir. I ran at a little distance and then I turned my back to the place where the gunburst occurred and then I saw a man wearing [a] black t-shirt and dark pants and a hat at the time.

Q What happen (*sic*) while you were looking back, what did you see?

A When I looked back to the place, I saw that man at the time and he was bringing (*sic*) with him a flashlight and so I just

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[10] TSN, 9 January 1997, pp. 15-16.

kept looking and when he returned back (*sic*), he was bringing (*sic*) with him a gun and there were lights of flashlights coming from his back (*sic*).

Q Towards what direction was the flashlight directed?

A The lights of the flashlights (*sic*) were directed to the place where my Uncle Nilo was but I did not see my uncle and the light lighted the left side of the face of that man wearing a hat.

Q What did that man wearing, a hat, dark t-shirt and pants do?

A I noticed that the man wearing a hat and dark t-shirt and pants was holding a gun and pointed it downward to the place where my Uncle Nilo was and my brother Randy ran away and when that gun burst or fired, I also ran away.

Q Did you recognize that man who fired the gun?

A Yes, Sir.

Q Can you point to that man if he is in court?

A Yes, Sir.

COURT INTERPRETER:

Witness pointing to a man who is sporting a wrist watch with his hands folded in front of him and is known already to the court as (*sic*) accused Quirico Dagpin.

ATTY. BALISADO:

If your Honor, please, may we ask that the accused be made to stand up for identification purposes?

COURT:

He is already known to the court.

ATTY. BALISADO:

How far were you from that man who fired the gun?

A I was only very near because I was situated at the lower portion of the trail which has a distance of about one (1) fathom from the man who fired the gun.

Q You said that the left side of the face of the man was lighted by a flashlight directed towards the ground where your uncle was. How many flashlights did you notice?

A Three, Sir.

Q From what direction did the lights come from in relation to the gunman?

A The two (2) lights coming from the flashlights were situated at an upper portion and the third flashlight was situated on the left side which caused the lighting of the left side of the man who fired the gun.

Q You said after hearing the second gunburst and seeing that person who fired the gun, you ran away. Towards what direction did you run?

A Towards our road because I was left behind in that place because my brother was already ahead of me.

Q All right, you said you heard the gunburst and saw that (*sic*) man who fired the gun. The gun was pointed down. That was the second gunfire. To whom was that gunfire directed?

A As I narrated a while ago, the gun was pointed downward to the ground.[11]

No less than the appellant's witness, Barangay Captain Rene Jauculan, testified that when he talked with Rona and Randy after the shooting, they confirmed to him that they knew the suspects, but were afraid to divulge their identities before they were arrested:

Q Now, you said that the victim in this case had companions in going home, did you try to ask who were his companions at the time of the incident when you were already in (*sic*) the scene of the incident?

A Yes, Sir.

Q Who were they, if you did ask his companions?

A The two Labisigs.

Q Rona Labising (*sic*) and Randy Labisig, right?

A Yes, Sir.

Q Did you ask also Joselito Bantayana?

A I do not know.

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[11] TSN, 10 January 1997, pp. 11-15.

Q How about Danilo Taroc (*sic*)?
A Yes, I think he was with me.

Q How about Reynaldo Matugan?
A I am not very certain, Sir.

Q How about Reina Labisig?
A She was with him.

Q Now, did you ask them, what really happened if they were there at the scene of the incident?
A Yes, Sir, I asked them.

Q Where did you ask them, in the house or at the scene of the incident?
A In the house.

Q You mean, when you went to a certain place, these persons I mentioned or his companions were no longer there?
A They were not there anymore.

Q Now, you had an occasion to ask them in what house?
A In the house of the father of the victim.

Q Did they tell you that they have now the suspects but they were still afraid to arrest them because there were no policemen around?
A Yes, Sir.

Q And that was what they told you, right?
A Yes, Sir.

Q And, of course, they told you that they could not tell you because they were afraid because the suspects were not yet arrested?
A Yes, Sir.

Q And because of that you did not insist in asking them the name of the suspects, right?
A I did not.

Q Because you leave (*sic*) this matter to the police?
A Yes, Sir.[12]

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[12] TSN, 29 March 2000, pp. 26-28.

We have ruled that illumination produced by a kerosene lamp or a flashlight is sufficient to allow identification of persons.[13]

The trial court gave credence and probative weight to the testimonies of Randy and Rona. The well-settled rule is that findings of a trial court on the credibility of witnesses deserve great weight, as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Where, as in this case, there is no showing that the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances of substance which, if considered, will alter the outcome of the case. The findings of the trial court are accorded high respect, if not conclusive effect.[14]

The appellant's denial of the crime charged cannot prevail over the positive declarations of prosecution witnesses Randy and Rona. The defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[15]

The appellant was not deprived of his right under the Constitution to be assisted by counsel because the appellant was not subjected to a custodial investigation where he was identified by the prosecution's witnesses in a police line-up.[16] Indeed, the appellant even denied that there was no police line-up and that he was

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[13] *People vs. Penillos*, 205 SCRA 546 (1992); *People vs. Loste*, 210 SCRA 614 (1992).

[14] *People vs. Caabay*, G.R. Nos. 129961-62, August 25, 2003.

[15] *People vs. Errol Rollon*, G.R. No. 131915, September 3, 2003.

[16] *People vs. Amestuzo*, 361 SCRA 184 (2001).

merely with the police officers when the prosecution's witnesses arrived in the police station.

The killing was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means or methods in the execution thereof which tend, directly and specifically, to insure its execution, without risk to the offender, arising from the defense which the offended party might make.[17] The essence of treachery is that the attack is deliberate and without warning, done in swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[18] In this case, the victim was shot from behind, at close range, impervious to the peril to his life. The victim was unarmed and had no chance or means to defend himself or avert the appellant's assault.

Although the Information alleges that the appellant used a gun in killing the victim, there is no allegation therein that the appellant had no license to possess the firearm. Neither is there proof that he had no such license. Under Rule 110, Section 8 of the Revised Rules of Criminal Procedure, an aggravating circumstance must be alleged in the Information. While the rule became effective after the crime was committed, the same must be applied retroactively because it is favorable to the appellant.[19]

Under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, murder is punishable by *reclusion perpetua* to death. Where no mitigating or aggravating circumstance attended the commission of the crime, the proper penalty is *reclusion perpetua*, conformably to Article 63 of the Revised Penal Code.

We sustain the award of ₱50,000 as civil indemnity to the heirs of the victim without need of any proof.[20] Exemplary

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[17] *People vs. Ruben Cañete, et al.*, G.R. No. 138366, September 11, 2003.

[18] *People vs. Eusebio Duban*, G.R. No. 141217, September 26, 2003.

[19] *People vs. Caabay, supra*.

[20] *People vs. Errol Rollon, supra*.

damages in the amount of ₱25,000[21] must, likewise, be awarded, in accordance with Article 2230 of the Civil Code, the qualifying circumstance of treachery being present. The heirs of the victim are entitled to moral damages of ₱50,000,[22] the prosecution having proved, through the father of the victim, the factual basis therefor. The heirs are not entitled to actual damages in the form of the victim's unearned income because the prosecution failed to present any documentary evidence to prove the victim's employment and the amount of his monthly salary.

IN LIGHT OF ALL THE FOREGOING, the appealed Decision of the Regional Trial Court of Dipolog City, Branch 8, finding the appellant Quirico Dagpin *y* Esmade guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended, is hereby *AFFIRMED with MODIFICATIONS*. The appellant Quirico Dagpin *y* Esmade is *ORDERED* to pay the heirs of the victim, Nilo Caermare, Fifty Thousand Pesos (₱50,000) as civil indemnity; Fifty Thousand Pesos (₱50,000) as moral damages; and Twenty-Five Thousand Pesos (₱25,000) as exemplary damages. The award of actual damages is deleted.

SO ORDERED.

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

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[21] *People vs. Nicolas*, 400 SCRA 217 (2003).

[22] *People vs. Caabay, supra*.

FIRST DIVISION

[G.R. Nos. 150079-80. June 10, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FLORENTINO O. RAMIREZ, JR.,** *appellant.*

SYNOPSIS

For sexually abusing 14 year old AAA through force and intimidation on two separate occasions, the Regional Trial Court of Lingayen, Pangasinan, convicted appellant of two counts of rape and sentenced him to *reclusion perpetua* for each case. In convicting the appellant, the trial court gave more credence and weight to the prosecution's evidence, specifically to the testimony of private complainant, and rejected appellant's defenses of denial and alibi. Hence, this appeal where the appellant questioned the sufficiency of the prosecution's evidence against him.

After a scrutiny of the records and the evidence, the Supreme Court found it unable to affirm the judgment of conviction. The Court had carefully gone over the transcript of stenographic notes and found nothing there describing, no matter how briefly or simply, how the alleged offense had taken place. The testimony of private complainant on the commission of the two counts of rape did not satisfy the standard of proof required to justify the conviction of the appellant. According to the Court, while it is true that the accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, it must, however, be clear, positive, convincing, and consistent with human nature and the normal course of things. The simplistic assertion of private complainant that appellant had sexual intercourse with her on May 7 and May 26, 1999, cannot suffice to establish moral certainty as to his guilt. Equally important, there was absolutely no proof of force and intimidation. True, appellant's defense of denial and alibi is weak and undeserving of serious consideration. But the argument that it is weak is of no moment. Settled is the rule that the evidence for the prosecution must stand or fall on its own merits; it cannot draw strength from the weakness of the evidence for the defense. Accordingly, the Court acquitted the appellant on reasonable doubt.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AFFIDAVIT OF DESISTANCE; REGARDED AS EXCEEDINGLY UNRELIABLE BECAUSE IT CAN EASILY BE SECURED FROM A POOR AND IGNORANT WITNESS, USUALLY THROUGH INTIMIDATION OR FOR MONETARY CONSIDERATION; CASE AT BAR.—** As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable. Indeed, the Affidavit of Desistance of private complainant is highly suspect. Apparently, she executed it on the basis of a consideration of ₱5,000, which was later increased to ₱100,000. After her testimony had been rendered, however, appellant refused to pay the amount agreed upon, thereby prompting her to recant the Affidavit. She had stated therein that "the accused is indeed innocent of the crimes charge[d] since in truth, he never molested me sexually as charged." Such statement was a mere legal conclusion, bereft of any details or other indicia of credibility, much less truth. More likely, it emanated not from this young girl's mouth, but from a trained legal mind. Moreover, while she affirmed her Affidavit on the stand, she also declared, on clarificatory question from the judge, that she was 14 years old when she was molested and raped by appellant. These facts raise doubts as to the reliability of her statements in her Affidavit.

2. **ID.; ID.; ID.; ID.; NOT A GROUND FOR THE DISMISSAL OF AN ACTION ONCE INSTITUTED IN COURT.—** At this point, we reiterate that, by itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court. In the present case, private complainant lost the right or absolute privilege to decide whether the rape charge should proceed, because the case had already reached and must therefore continue to be heard by the court *a quo*.

3. **ID.; ID.; ID.; DOCTRINE THAT NO WOMAN WOULD CLAIM THAT SHE WAS SEXUALLY ABUSED, ALLOW AN**

EXAMINATION OF HER PRIVATE PARTS, AND GO THROUGH THE HUMILIATION OF A TRIAL HAD SHE NOT INDEED BEEN RAPED, DOES NOT BY ITSELF OVERCOME THE RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT UNTIL PROVEN OTHERWISE; CASE AT BAR.— Nonetheless, after a scrutiny of the records and the evidence in this case, we find ourselves unable to affirm the judgment of the trial court. In concluding that appellant had raped private complainant, the RTC was guided by the precept that — had she not indeed been raped — no woman would claim that she was sexually abused, allow an examination of her private parts, and go through the humiliation of a trial. This argument, however, does not by itself overcome the fundamental right of the accused to be presumed innocent until proven otherwise. The testimony of private complainant on the commission of the two counts of rape does not satisfy the standard of proof required to justify the conviction of appellant. Significantly, she failed to narrate just how the alleged rape took place. She said *nothing* at all about how he had supposedly raped her. We have carefully gone over the transcript of stenographic notes and found nothing there describing, no matter how briefly or simply, how the alleged offense had taken place.

4. **ID.; ID.; ID.; EVIDENCE NOT FORMALLY OFFERED CANNOT BE TAKEN INTO CONSIDERATION IN DISPOSING OF THE ISSUES OF THE CASE.—** Private complainant's Sworn Statements, which formed part of the records of the preliminary investigation, cannot be used to convict appellant, because they do not form part of the records of the case in the RTC. They were not marked, much less formally offered before it. Evidence not formally offered cannot be taken into consideration in disposing of the issues of the case.

5. **ID.; ID.; ID.; LONE UNCORROBORATED TESTIMONY OF RAPE VICTIM MAY BE THE BASIS OF CONVICTION PROVIDED IT IS CLEAR, POSITIVE, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.—** The Informations allege that the crimes were committed through force, threats and intimidation as set forth under Article 266-A of the Revised Penal Code (amended by RA 8353). Hence, to convict appellant, the prosecution had the duty of proving not only carnal knowledge of private

complainant, but also his use of force or intimidation to accomplish it. It is the primordial duty of the prosecution to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. While it is true that the accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, it must be clear, positive, convincing, and consistent with human nature and the normal course of things. Mere accusation is not enough. The simplistic assertion of private complainant that appellant had sexual intercourse with her on May 7 and May 26, 1999, cannot suffice to establish moral certainty as to his guilt. Her statements miserably fell short of the requirement of the law on the quantum of evidence required in the prosecution of criminal cases. As appellant correctly argued, her testimony was sorely lacking in details. Equally important, there was absolutely no proof of force or intimidation.

6. ID.; ID.; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; CONVICTION CANNOT BE AFFIRMED ON THE BASIS ALONE OF A MERE POSSIBILITY.— The circumstantial evidence in the present case consists of 1) the results of the medical examination conducted by Dr. Sanchez and 2) AAA's testimony that on the morning of May 26, 1999, she saw appellant on top of the victim and holding her thigh. Indeed, such evidence admits of the *possibility* that he could have had carnal knowledge of private complainant. But we cannot affirm his conviction on the basis alone of a mere possibility. To stress, there was no evidence, either, that the alleged offense had been perpetrated through force or intimidation.

7. ID.; ID.; ID.; CULPABILITY OF THE ACCUSED MUST BE DEMONSTRATED BEYOND REASONABLE DOUBT, FOR AN ACCUSATION IS NOT SYNONYMOUS WITH GUILT.— True, appellant's defense of denial and alibi is weak and undeserving of serious consideration. But the argument that it is weak is of no moment. Settled is the rule that the evidence for the prosecution must stand or fall on its own merits; it cannot draw strength from the weakness of the evidence for the defense. The prosecution must demonstrate the culpability of the accused beyond reasonable doubt, for an accusation is not synonymous with guilt.

8. ID.; ID.; ID.; A STRONG SUSPICION OR POSSIBILITY OF THE EVIDENCE OF GUILT IS NOT SUFFICIENT TO CONVICT.— Our legal culture demands that before any person may be convicted of any crime and deprived of life, liberty or property, the requisite quantum of proof must be presented. A strong suspicion or possibility of guilt is not sufficient. Correlatively, to determine the sufficiency of the evidence for the State, it is important to examine it cautiously. If it falls short of establishing moral certainty of guilt, the verdict must be one of acquittal. "Rape is undoubtedly a vicious crime, and it is rendered more loathsome in this case where the victim is a minor and the accused is a person whom she perceives as a figure of authority. However, our sympathy for the victim and our disgust at the bestial criminal act cannot prevail over our primordial role as interpreters of the law and dispensers of justice." If the prosecution fails to discharge its burden, the court must sustain the presumption of innocence of the accused, whose exoneration must then be granted as a matter of right.

9. LEGAL ETHICS; ATTORNEYS; PROSECUTION ATTORNEYS; ADMONISHED TO LAY OUT PAINSTAKINGLY THE PERTINENT FACTS AT THEIR DISPOSAL, CLARIFY CONTRADICTIONS AND FILL THE GAPS AND LOOPHOLES IN THEIR EVIDENCE.— Finally, we cannot leave unnoticed the lackadaisical, if not inept, manner in which the prosecution presented its case before the trial court. Prosecuting attorneys are admonished to lay out painstakingly the pertinent facts at their disposal, clarify contradictions, and fill the gaps and loopholes in their evidence, in order to avert legal repercussions that may prove prejudicial to the interest of the State and of the private offended parties.

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.*:

The Constitution presumes the accused to be innocent until the contrary is proved. No less than proof beyond reasonable doubt of every fact necessary to constitute the crime charged must be established to overcome such presumption. This duty subsists notwithstanding the weakness of the evidence for the defense. Prosecutors are enjoined to exert their best to lay out the facts faithfully, clarify contradictions and fill up gaps in their evidence.

The Case

Florentino O. Ramirez Jr. appeals the June 29, 2001 Decision[1] of the Regional Trial Court (RTC) of Lingayen, Pangasinan (Branch 68), in Criminal Case Nos. L-6275 & L-6276, finding him guilty of rape on two counts and sentencing him to *reclusion perpetua* for each crime. The dispositive portion of the Decision is worded thus:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered convicting the accused Florentino Ramirez, Jr. beyond reasonable doubt of two (2) counts of rape as narrated in the aforequoted [I]nformations, which are contrary to Article 266-A, Revised Penal Code as amended by R.A. 8353 and hereby sentenc[ing] him to *reclusion perpetua* for each of the instant two (2) cases.

"The accused is likewise ordered to pay the complainant AAA the following: moral damages of ₱100,000.00 and exemplary damages of ₱50,000.00 for each of the two (2) cases."[2]

Two (2) Informations[3] were filed against appellant on May 30, 2000. Except for the dates of the commission of the crimes, the Informations are similarly worded thus:

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[1] *Rollo*, pp. 22-34; records, Vol. I, pp. 102-114. Written by Judge Salvador P. Vedana.

[2] RTC Decision, pp. 12-13; *rollo*, pp. 33-34; records, Vol. I, pp. 113-114.

[3] Both signed by 3rd Assistant City Prosecutor Borromeo R. Bustamante.

Criminal Case No. 6275

"That on or about the 7th day of May, 1999, in the evening, at Sitio x x x, Barangay x x x, Municipality of x x x, x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a minor 14 years old, against her will, to her damage and prejudice."[4]

Criminal Case No. 6276

"That on or about the 26th day of May, 1999 early dawn[,] at Sitio x x , Barangay x x x, Municipality of x x x, x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a minor 14 years old, against her will, to her damage and prejudice."[5]

Upon his arraignment on June 27, 2000,[6] appellant, assisted by his counsel,[7] pleaded not guilty to both charges. The RTC tried the two cases jointly and thereafter rendered the assailed Decision.

The Facts

Version of the Prosecution

At the initial hearing on August 24, 2000, Prosecutor Edmundo M. Manaois informed the trial court of an amicable settlement reached between the parties as shown by an Affidavit of Desistance executed by private complainant, fully quoted herein as follows:

"AFFIDAVIT OF DESISTANCE

"I, AAA, 14 years old and a resident of x x x, x x x, x x x after having duly sworn to on oath in accordance with law, hereby depose and say:

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[4] *Rollo*, p. 10; records, Vol. I, p. 1.

[5] *Rollo*, p. 12; records, Vol. II, p. 1.

[6] Records, Vol. I, p. 43.

[7] Atty. Raul B. Campos.

"1. That I am the complaining witness in Criminal Cases Nos. L-6275 and L-6276, both for Rape against accused Florentino O. Ramirez (detention prisoner) and pending trial in Regional Trial Court-Branch 68, Lingayen, Pangasinan;

"2. That after a heart to heart confrontation with the accused, I realize that the criminal charges against him is a mere product of a trivial misunderstanding between me and the accused;

"3. That I further realize that the accused is indeed innocent of the crimes charge[d] since in truth, he never molested me sexually as charged;

"4. That I and the accused have already patched up x x x our differences;

"5. That in fairness to the accused, I decided to desist from further prosecution of the charges against him not only because we intended to return our cordial relationship with each other but most of all because the accused had done me no wrong;

"6. That I have executed this instrument voluntarily without any force or intimidation imposed by anybody and neither [have I] been paid any consideration;

"7. That I am executing this affidavit in order to affirm the truth of the foregoing statements and in order to seek from the Honorable Court and other government entities for the dismissal of the charges against the accused.

"IN WITNESS WHEREOF, I hereby affixed my signature below this 16th day of August, 2000 at Lingayen, Pangasinan, Philippines.

(Sgd)
A A A
Affiant

"ASSISTED BY:

(Sgd) (Sgd) BBB
ALEJO O. VERZO
Uncle Guardian

"SUBSCRIBED AND SWORN to before me this 16th day of August, 2000 at Lingayen, Pangasinan, Philippines.

(Sgd)
EDMUNDO M. MANAOIS
Asst. Prov'l. Prosecutor
Lingayen, Pangasinan"[8]

During this hearing, private complainant affirmed the veracity and the voluntariness of her Affidavit. She said that the document had been translated to her in Ilocano, and that she fully understood its contents. She confirmed her awareness that by reason of her execution thereof, her case was likely to be dismissed. The mother, BBB, affirmed that the Affidavit had been explained to and signed by her daughter.

Prosecutor Manaois then called the following witnesses to the stand: (1) CCC, private complainant's older sister, and (2) Dr. Maria Teresa G. Sanchez, a medical officer of the Western Pangasinan District Hospital. Their respective testimonies are summarized by the Office of the Solicitor General (OSG) in its Brief as follows:

"CCC, sister of private complainant, confirmed having brought the latter to the Western Pangasinan District Hospital, in Alaminos, Pangasinan for medical examination on June 25, 1999. She also confirmed the fact that during the preliminary investigation of these cases, she made the following statements, to wit: that at early dawn of May 26, 1999, she was inside their house in Sitio x x x, x x x, x x x, x x x, [with] her brother, DDD, her mother, BBB, her sister, herein private complainant AAA; and appellant [Florentino Ramirez] who is her mother's 'live-in partner'; that when she woke up that morning, she went upstairs and saw appellant on top of private complainant and holding her thigh; that when appellant saw her, he immediately picked up his shortpants and fled downstairs; that when she confronted the private complainant about the incident, the latter cried 'I was raped'.

"MARIA TERESA G. SANCHEZ, Medical Officer of the Western Pangasinan District Hospital related to the court that private

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[8] Records, Vol. II, p. 35.

complainant was brought to her for medical examination on June 25, 1999 by her sister, CCC, and uncle, Alejo Verzo; that in the course of her examination, private complainant disclosed that she was raped by appellant; that the rape happened twice, the first time on May 7, 1999 and the second time on May 26, 1999; that the May 7, 1999 incident occurred about 9:00 p.m. when she was left behind in their house at Sitio x x x, Barangay x x x, x x x, x x x, with appellant and her niece; [that] appellant poked a knife and forced her to have sexual intercourse with him; that the May 26, 1999 incident occurred at 4:00 a.m. and her companions at that time were the father and mother of the appellant[; and that] when [she] inquired [about] the whereabouts of the private complainant's father, the latter replied that he 'died sometime on May 1993 or 1994'. The vaginal examination made by the doctor on private complainant disclosed the following findings:

= Nonparous introitus
= Old hymenal laceration at 3 o'clock position
= Vagina admits 2 fingers with ease
= Cervix close
= Uterus small
= No bleeding

x x x x x x x x x

1. non-parous introitus means that the patient [has] not given birth

2. old hymenal laceration 3:00 o'clock position that relates to hymen as compared to the face of a watch[;] the laceration have already healed.

3. vagina admits two fingers with ease, in layman's term, because normally the membrane around and inside the vagina is *"kul[u]bot"*, but after repeated sexual act, the shape of the vagina would be obliterated, so there would be laxity of the vaginal muscle and that during the medical examination, insertion of two (2) fingers will have the slightest resistance.

4. include Cervix close[d].

   Normally the cervix of a woman is close[d].

5. No bleeding — upon examination, the patient is not bleeding (vagina).

= Menstrual History

Menarche means the first menstrual period June 18, 1999.

6. No external physical injuries upon examination

7. Negative of Pregnancy Test

8. Negative for gram stain of vaginal discharge for the presence of spermatozoa."[9]

After formally offering private complainant's Affidavit of Desistance and the Medical Certificate prepared by Dr. Sanchez as documentary evidence, the prosecution rested its case. Notwithstanding the Affidavit submitted by the prosecution, the RTC proceeded to hear the defense.

On October 6, 2000, after the defense had closed its presentation of evidence, Prosecutor Manaois objected to its formal offer of the Affidavit of Desistance of private complainant. He manifested her retraction thereof on the ground that it had been obtained through improper influence and force. Thus, the Affidavit was not admitted by the court *a quo*.

On February 14, 2001, private complainant testified on rebuttal that the allegation by appellant that he was in Baguio City on May 7, 1999, was not true. She declared that in reality, he had been at home in Sitio x x x, Barangay x x x, x x x, x x x, where he had sexual intercourse with her. She affirmed that she really wanted her mother to be separated from him because, as private complainant declared in Tagalog, "*Binaboy niya ako*."

Version of the Defense

The version of the facts offered by the defense is summarized in appellant's Brief as follows:

"Accused *FLORENTINO O. RAMIREZ, JR.*, under oath, testified that he is 29 years old, married, farmer and a resident of Urdaneta, Pangasinan.

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[9] Appellee's Brief, pp. 7-9; *rollo*, pp. 100-102. Signed by Assistant Solicitors General Carlos N. Ortega and Alexander G. Gesmundo and Solicitor John Emmanuel F. Madamba. Citations omitted.

"He is the same Florentino Ramirez, Jr. the accused in Criminal Case Nos. 6275 and 6276 for rape filed against him by AAA, his stepdaughter. It is not true that he sexually abused the latter sometime in the evening of May 7, 1999, because he was then [at] Camp 8, Baguio City working as a laborer for his uncle Piano Ramirez, who was then repairing his three-storey house x x x. On the said date that he was working at his uncle's house, he was with his co-workers, namely: Boy Ramirez, Julie Ramirez, Rudy Ramirez, Joel Pagaduan and one person [whose name he forgot]. He never left his uncle's house on May 7, 1999 particularly in the evening [thereof]. x x x, he slept at his uncle's house together with his fellow workers, leaving only his stepdaughter AAA and his wife BBB in their house at Barangay x x x, x x x, x x x. However, on May 26, 1999, he was in the residence of AAA [at] Sitio x x x, Barangay x x x, x x x, x x x, where he slept in the same house where AAA was staying, together with his father, mother, their siblings and his wife.

"The house where he slept on the said date is made up of two storeys. He slept on the second floor x x x which has no room, together with his wife and AAA. He slept beside his wife BBB, but was only two (2) meters away from AAA, whom he could easily touch by just stretching his hand.

"It is not true, as testified to by his step-daughter CCC, that the latter saw him suspiciously wearing his brief half naked inside the mosquito net where AAA was then sleeping. While he admit that AAA is beautiful, young and was studying in high school, he denied having a secret liking [towards] her. He considered AAA as his own child. AAA filed these instant case[s] against him because his stepchildren wanted him to be separated from their mother BBB. However, he never confronted any of his stepchildren on this matter, neither did he ask his wife BBB, if the latter really wanted to separate from him.

"*BOY RAMIREZ,* 41 years old, laborer, and a resident of Camp 8, Baguio City, testified under oath on the following facts: that he was with his brother Florentino Ramirez, Jr., the accused in these cases, on May 7, 1999, [at] Camp 8, Baguio City particularly [i]n their uncle Cipriano 'Pianong' Ramirez' house[; t]he accused arrived thereat in the morning of May 7, 1999 and stayed at Camp 8, Baguio City for more than a week[; t]he accused worked for their uncle 'Pianong' Ramirez in the construction of a one[-]room extension at the latter's house, and was assigned in digging a hole for the tie [b]eam

foundation; that their working time thereat was from 8:00 o'clock in the morning to 12:00 o'clock noon, and 1:00 o'clock in the afternoon to 5:00 o'clock in the afternoon; that he has never seen the accused leave their uncle 'Pianong' Ramirez' house on May 7, 1999; that after their work on May 7, 1999, he was not with his brother Florentino, instead he attended to his family from 5:00 o'clock p.m. to 9:00 o'clock p.m. when he and his wife went to sleep.

"He does not know if his brother Florentino Ramirez, Jr. was in x x x or lived in x x x from May 16, 1999 up to the end of the month, because as far as he knows, the latter is just residing in Pangasinan.

"*VILLAMOR AYATON* under oath testified that he is 37 years old, married, unemployed and a resident of Barangay Bacquioen, Sual, Pangasinan.

"On the morning of May 26, 1999 he was called by his mother Gloria Orpilla, who was then in the house of AAA purposely to talk about the killing of his brother Virgilio Ayaton. Aside from his mother and stepfather, CCC and the latter's mother were likewise present. When he reached the house of AAA, his half brother Florentino Ramirez, Jr. was outside the said house while AAA was inside the house. His brother Florentino Ramirez, Jr. was then wearing only his brief[,] which prompted his mother Gloria to tell Florentino to get something to wear. The latter then entered the house of CCC and at that juncture, he was surprise[d] to hear the latter confront[ed by] CCC. [He did not] talk to the mother of CCC because he was so ashamed of what his brother Florentino Ramirez, Jr. allegedly did to AAA. He likewise knew at that time that AAA was still inside the house. But despite his knowledge, he neither look[ed] for AAA x x x nor talked to the latter because he left for his work. On the other hand, CCC likewise left and went to the house of one Alejo Ver[j]o. He did not give any statement about what he heard on that month, neither did he report the same to the *barangay* officials."[10]

Ruling of the Trial Court

The RTC gave more credence and weight to the prosecution's evidence, specifically to the testimony of private complainant.

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[10] Appellant's Brief, pp. 6-10; *rollo*, pp. 54-58. Signed by Attys. Amelia C. Garchitorena, Marvin R. Osias and Beatriz Teves-de Guzman of the Public Attorney's Office (PAO). Citations omitted.

It held that she had no ill motive to charge appellant falsely. For lack of proof of the physical impossibility of his being at the *locus criminis* at the time of its commission, scant consideration was given to his defense of alibi. Holding that denial was intrinsically weak and must therefore be supported by strong evidence of non-culpability to merit credence, the trial court likewise debunked his denial of the alleged second rape incident on May 26, 1999.

Hence, this appeal.[11]

Issue

In his Brief, appellant assigns this lone error for our consideration:

"The court *a quo* erred in finding that the guilt of the accused for two (2) counts of rape has been proven beyond reasonable doubt, despite failure of the prosecution to present evidence to prove the crimes charged."[12]

The Court's Ruling

The appeal is meritorious.

Sole Issue:

Sufficiency of the Prosecution Evidence

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. *First*, in her Affidavit of Desistance dated August 16, 2000, private complainant categorically stated that he was innocent of the crime charged. *Second*, she gave no direct testimony describing the circumstances of the alleged rape. Her sweeping statement that he had sexual intercourse with her was clearly inadequate to establish his guilt.

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[11] This case was deemed submitted for decision on May 9, 2003, upon this Court's receipt of appellant's Reply Brief, signed by Attys. Amelia C. Garchitorena and Beatrize Teves-de Guzman of the Public Attorney's Office. Appellant's Brief was received by the Court on September 12, 2002, while appellee's Brief was received on February 4, 2003.

[12] Appellant's Brief, p. 1; *rollo*, p. 49.

Affidavit of Desistance

As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.[13] Moreover, there is always the probability that it would later on be repudiated,[14] and criminal prosecution would thus be interminable.[15]

Indeed, the Affidavit of Desistance of private complainant is highly suspect. Apparently, she executed it on the basis of a consideration of ₱5,000, which was later increased to ₱100,000. After her testimony had been rendered, however, appellant refused to pay the amount agreed upon, thereby prompting her to recant the Affidavit.[16]

She had stated therein that "the accused is indeed innocent of the crimes charge[d] since in truth, he never molested me sexually as charged." Such statement was a mere legal conclusion, bereft of any details or other indicia of credibility, much less truth. More likely, it emanated not from this young girl's mouth, but from a trained legal mind. [17] Moreover, while she affirmed her Affidavit on the stand, she also declared, on clarificatory question from the judge, that she was 14 years old when she

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[13] *People v. Bertulfo*, 381 SCRA 762, May 7, 2002; *People v. Nardo*, 353 SCRA 339, March 1, 2001; *Alonte v. Savellano Jr.*, 350 Phil. 700, March 9, 1998; *Reano v. Court of Appeals*, 165 SCRA 525, September 21, 1988.

[14] *People v. Libo-on*, 358 SCRA 152, May 23, 2001; *People v. Nardo, supra; People v. Dalabajan*, 345 Phil. 944, October 16, 1997; *Lopez v. Court of Appeals*, 239 SCRA 562, December 29, 1994; *Reano v. Court of Appeals, supra*.

[15] *People v. Garcia*, 351 Phil. 624, March 31, 1998; *Gomez v. Intermediate Appellate Court*, 220 Phil. 295, April 9, 1985; *Ibabao v. People*, 217 Phil. 210, September 28, 1984.

[16] Records, Vol. II, pp. 50-51. The Investigation Report dated October 25, 2000, was prepared by Trial Prosecutor Edmundo M. Manaois in compliance with the October 23, 2000 Order of the court.

[17] *People v. Garcia, supra*.

was molested and raped by appellant.[18] These facts raise doubts as to the reliability of her statements in her Affidavit.

At this point, we reiterate that, by itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court.[19] In the present case, private complainant lost the right or absolute privilege to decide whether the rape charge should proceed, because the case had already reached and must therefore continue to be heard by the court *a quo*.

Proof Beyond Reasonable Doubt

Nonetheless, after a scrutiny of the records and the evidence in this case, we find ourselves unable to affirm the judgment of the trial court.

In concluding that appellant had raped private complainant, the RTC was guided by the precept that — had she not indeed been raped — no woman would claim that she was sexually abused, allow an examination of her private parts, and go through the humiliation of a trial. This argument, however, does not by itself overcome the fundamental right of the accused to be presumed innocent until proven otherwise.[20]

The testimony of private complainant on the commission of the two counts of rape does not satisfy the standard of proof required to justify the conviction of appellant. Significantly, she failed to narrate just how the alleged rape took place. She said *nothing* at all about how he had supposedly raped her. We have carefully gone over the transcript of stenographic notes

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[18] TSN, August 24, 2000, p. 7.

[19] *People v. Montes*, GR Nos. 148743-45, November 18, 2003; *Alonte v. Savellano Jr., supra; People v. Igat*, 291 SCRA 100, June 22, 1998.

[20] *People v. De la Cruz*, 353 Phil. 294, April 19, 2001; *People v. Painitan*, 349 SCRA 266, January 16, 2001; *People v. Mariano*, 345 SCRA 1, November 17, 2000; *People v. Cabalida*, 378 Phil. 562, December 15, 1999; *People v. Domogoy*, 364 Phil. 547, March 22, 1999 (citing *People v. Godoy*, 321 Phil. 279, December 6, 1995; and *People v. Sandagon*, 233 SCRA 108, June 13, 1994).

and found nothing there describing, no matter how briefly or simply, how the alleged offense had taken place.

Private complainant's Sworn Statements, which formed part of the records of the preliminary investigation, cannot be used to convict appellant, because they do not form part of the records of the case in the RTC.[21] They were not marked, much less formally offered before it. Evidence not formally offered cannot be taken into consideration in disposing of the issues of the case.[22]

The Informations allege that the crimes were committed through force, threats and intimidation as set forth under Article 266-A[23] of the Revised Penal Code (amended by RA 8353). Hence, to convict appellant, the prosecution had the duty of proving not only carnal knowledge of private complainant, but also his use of force or intimidation to accomplish it.

On direct examination, the testimony of private complainant centered on the veracity of her Affidavit of Desistance, which she later recanted. Her description of how appellant had allegedly

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[21] §8, Rule 112 of the Rules of Court; *Santos v. People*, 395 SCRA 507, January 20, 2003; *People v. Crispin*, 383 Phil. 919, March 2, 2000; *People v. De Guzman*, 351 Phil. 587, March 30, 1998.

[22] §34, Rule 132 of the Revised Rules on Evidence; *People v. Pecardal*, 230 Phil. 51, November 24, 1986; *Soliman v. Sandiganbayan*, 230 Phil. 45, November 24, 1986; *Republic v. Court of Appeals*, 202 Phil. 83, September 11, 1982.

[23] Art. 266-A. *Rape; When and How Committed*. — Rape is committed

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

'a) Through force, threat or intimidation;

'b) When the offended party is deprived of reason or otherwise unconscious;

'c) By means of fraudulent machination or grave abuse of authority; and

'd) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.'"

abused her, scant and peripheral as it was, was made only on rebuttal, as follows:

"Q He further testified that on May 6, 1999, he did not have sexual intercourse with you because of the presence of your mother, what can you say to that?

A No, he 'used' me.

Q What do you mean by 'used'?

A He had sexual intercourse with me.

Q He further claimed that the reason why you filed a case against him was that you want your mother to separate with him?

A Yes sir.

Q Why did you want your mother to be separated with Florentino Ramirez, Jr.?

COURT:

Recess . . . Session resumed. May we ask everybody to please go outside the courtroom including the accused, as well as the mother. Proceed.

PROS. MANAOIS:

I would like to manifest that the witness is crying.

COURT:

Yes noted. Witness answer the question.

A Because I don't like his character, and that was the reason why I would like my mother to be separated with him.

Q What do you mean by that?

A Because '*Binaboy niya ako*'.

Q What do you mean by those words?

A He destroyed my virginity.

Q When you said that, do you mean to say that the accused sexually abused you and that was the reason why you wanted that your mother be separated with the accused?

A Yes sir."[24]

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[24] TSN, February 14, 2001, pp. 3-4.

This was all she testified to.

It is the primordial duty of the prosecution to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion.[25] While it is true that the accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, it must be clear, positive, convincing, and consistent with human nature and the normal course of things.

Mere accusation is not enough.[26] The simplistic assertion of private complainant that appellant had sexual intercourse with her on May 7 and May 26, 1999, cannot suffice to establish moral certainty as to his guilt. Her statements miserably fell short of the requirement of the law on the quantum of evidence required in the prosecution of criminal cases.[27] As appellant correctly argued, her testimony was sorely lacking in details. Equally important, there was absolutely no proof of force or intimidation.

The circumstantial evidence in the present case consists of 1) the results of the medical examination conducted by Dr. Sanchez and 2) CCC's testimony that on the morning of May 26, 1999, she saw appellant on top of the victim and holding her thigh. Indeed, such evidence admits of the *possibility* that he could have had carnal knowledge of private complainant. But we cannot affirm his conviction on the basis alone of a mere possibility. To stress, there was no evidence, either, that the alleged offense had been perpetrated through force or intimidation.

True, appellant's defense of denial and alibi is weak and undeserving of serious consideration. But the argument that it is weak is of no moment. Settled is the rule that the evidence for the prosecution must stand or fall on its own merits; it

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[25] *People v. Painitan, supra*.

[26] *People v. Laguerta*, 344 SCRA 453, October 30, 2000.

[27] *People v. Supnad*, 414 Phil. 637, August 8, 2001; *People v. De Leon*, 377 Phil. 776, December 3, 1999.

cannot draw strength from the weakness of the evidence for the defense.[28] The prosecution must demonstrate the culpability of the accused beyond reasonable doubt, for an accusation is not synonymous with guilt.[29]

Our legal culture demands that before any person may be convicted of any crime and deprived of life, liberty or property, the requisite quantum of proof must be presented. A strong suspicion or possibility of guilt is not sufficient.[30] Correlatively, to determine the sufficiency of the evidence for the State, it is important to examine it cautiously. If it falls short of establishing moral certainty of guilt, the verdict must be one of acquittal.[31]

"Rape is undoubtedly a vicious crime, and it is rendered more loathsome in this case where the victim is a minor and the accused is a person whom she perceives as a figure of authority. However, our sympathy for the victim and our disgust at the bestial criminal act cannot prevail over our primordial role as interpreters of the law and dispensers of justice."[32] If the prosecution fails to discharge its burden, the court must sustain the presumption of innocence of the accused, whose exoneration must then be granted as a matter of right.

Finally, we cannot leave unnoticed the lackadaisical, if not inept, manner in which the prosecution presented its case before the trial court. Prosecuting attorneys are admonished to lay out painstakingly the pertinent facts at their disposal, clarify contradictions, and fill the gaps and loopholes in their evidence,

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[28] *People v. Librado*, GR No. 141074, October 16, 2003; *People v. Sodsod*, 404 SCRA 39, June 16, 2003; *People v. Ortega*, 412 Phil. 588, June 28, 2001; *People v. Melencion*, 355 SCRA 113, March 26, 2001.

[29] *People v. Ortega, supra* (citing *People v. Reyes*, 60 SCRA 126, September 30, 1974; *People v. Melencion, supra*; and *People v. Laguerta, supra*).

[30] *People v. Robles, supra*.

[31] *People v. Abino*, 423 Phil. 263, December 11, 2001; *People v. De la Cruz, supra*; *People v. Laguerta, supra*.

[32] *People v. Laguerta, supra*, p. 462, per Ynares-Santiago, *J*.

in order to avert legal repercussions that may prove prejudicial to the interest of the State and of the private offended parties.

WHEREFORE, the appeal is *GRANTED* and the appealed Decision *REVERSED*. Appellant Florentino O. Ramirez Jr. is *ACQUITTED* on reasonable doubt. His immediate *RELEASE* from confinement is *ORDERED*, unless he is being detained for some other legal cause. The director of prisons is *DIRECTED* to inform this Court, within five days from receipt of this Decision, of the actual date appellant is released. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

SECOND DIVISION

[G.R. No. 151280. June 10, 2004]

THE PRESIDENT OF PHILIPPINE DEPOSIT INSURANCE CORPORATION and PACIFIC BANKING CORP., *petitioners, vs.* **HON. COURT OF APPEALS, REGIONAL TRIAL COURT OF BACOLOD CITY, BRANCH 43, NELLY M. LOVINA REALTY CO., INC., represented by its PRESIDENT, VICENTE M. LOVINA, JIM ROSE, TRADING CORP., INC., FRANCISCO SAJO and THE INTESTATE ESTATE OF ELENITA SAJO,** *respondents*.

SYNOPSIS

Petitioners sought to reverse and set aside the decision of the Court of Appeals which affirmed the order of the Regional Trial Court of Bacolod City directing the reception of private

respondents' evidence *ex parte* in Civil Cases Nos. 8722, 9287, 9315 and 9316, and denying their motion for reconsideration. In the assailed Decision, the appellate court held that the court *a quo* justifiably directed the private respondents to present their evidence *ex parte* for failure of the petitioners or their counsel to attend the pre-trial. According to the appellate court, petitioners' consistent absence at the hearings set for pre-trial was inexcusable.

In their petition, petitioners alleged that the appellate court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the court *a quo's* order, which denied petitioners' motion to set aside the order of default. According to the petitioners, their counsel's absence at the pre-trial on August 19, 1999 was due to conflict of schedule and therefore, excusable and did not constitute obstinate refusal or inordinate neglect to comply with the Rules of Court as to warrant the declaration of default. The petitioners prayed for the lifting of the order of default to enable them to present their evidence in support of their meritorious defense.

The Supreme Court dismissed the petition. According to the Court, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. In this case, the appellate court's decision upholding the court *a quo's* Order directing the presentation of the private respondents evidence *ex parte,* discussed the facts on which it grounded its decision as well as the applicable law on the matter. Its action is neither whimsical nor despotic. Indeed, the consistent failure of the petitioners or their counsel to appear at the pre-trial justify the court *a quo's* order directing the private respondents to present their evidence *ex parte.* Under Section 5, Rule 18 of the Rules of Court, failure on the part of the defendants, the petitioners in this case, and their counsel to appear at the pre-trial, shall be a cause to allow the respondents, as the plaintiffs, to present their evidence *ex parte*, and the Court to render judgment on the basis thereof. Hence, the appellate court cannot be considered to have committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed

the order of the respondent judge directing the respondents to present their evidence *ex parte* conformably with the rules.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; CANNOT BE USED AS A SUBSTITUTE FOR AN APPEAL WHICH THE PARTY ALREADY LOST.—** The special civil action of *certiorari* cannot be used as a substitute for an appeal which the petitioners already lost. *Certiorari* lies only where there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. There is no reason why the question being raised by the petitioners, whether the appellate court committed grave abuse of discretion in dismissing the petition, could not have been raised by them on appeal.

2. **ID.; ID.; ID.; MAY BE TREATED AS HAVING BEEN FILED UNDER RULE 45, IN THE INTEREST OF JUSTICE; LIBERAL APPLICATION OF THE RULES NOT JUSTIFIED WHERE THE PETITION WAS FILED BEYOND THE REGLEMENTARY PERIOD TO FILE A PETITION FOR REVIEW WITHOUT ANY REASON THEREFOR.—** Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review. In this case, however, the Court finds no reason to justify a liberal application of the rules. The petition was filed well beyond the reglementary period to file a petition for review without any reason therefor.

3. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED; ABUSE OF DISCRETION MUST BE SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY OR A VIRTUAL REFUSAL TO PERFORM A DUTY ENJOINED BY LAW; CASE AT BAR.—** By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

APPEARANCES OF COUNSEL

Pablo Y. Romero and Ma. Antonette Brillante-Bolivar for petitioners.

Jose Ma. Valencia for N.M. Lovina Realty.

Leon G. Moya, Jr. and *Mario F. Pao* for private respondents.

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court filed by the Philippine Deposit Insurance Corporation, through its President, and the Pacific Banking Corporation seeking to reverse and set aside the Decision[1] dated September 5, 2001 of the Court of Appeals in CA-G.R. SP No. 56868. In the assailed decision, the appellate court affirmed the Order dated November 18, 1999 of the Regional Trial Court (RTC) of Bacolod City, Branch 43, directing the reception of the respondents' evidence *ex parte* in Civil Cases Nos. 8722, 9287, 9315 and 9316. Likewise, sought to be reversed and set aside is the appellate court's Resolution dated November 28, 2001 denying the petitioners' motion for reconsideration.

The factual antecedents of the case are as follows —

The respondents, Nelly M. Lovina Realty Co., Inc., represented by its President, Vicente M. Lovina, Spouses Antonio and Lourdes Dadivas, Jim Rose Trading Co., Inc., Francisco Sajo and the Intestate Estate of Elenita Sojo, separately obtained loans from the petitioner Pacific Banking Corporation (PaBC). Their respective loans were classified as either Sugar Crop Loans or Agricultural Loans.

On July 5, 1985, the petitioner PaBC was ordered to stop operations and placed under receivership on account of insolvency. Thereafter, it was placed under liquidation and per Resolution No. 537 dated May 17, 1991 of the Monetary Board of the *Bangko*

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[1] Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Cancio C. Garcia and Jose L. Sabio, Jr. concurring.

Sentral ng Pilipinas (BSP), the petitioner, Philippine Deposit Insurance Corporation (PDIC) was designated as liquidator of the petitioner PaBC.

On February 29, 1992, then President Corazon C. Aquino signed into law Republic Act No. 7202, otherwise known as The Sugar Restitution Law. Section 3 thereof provides:

> Sec. 3.
>
> x x x x x x x x x
>
> (a) Condonation of interest charged by the banks in excess of twelve percent (12%) per annum and all penalties and surcharges;
>
> (b) The recomputed loans shall be amortized for a period of thirteen (13) years inclusive of a three-year grace period on principal effective upon the approval of this Act. The principal portion of the loan will carry an interest rate of twelve per cent (12%) per annum and on the outstanding balance effective when the promissory notes were signed and released to producer.

The respondents requested the petitioners that the above provision of Rep. Act. No. 7202 be applied to their loans. The petitioners denied the respondents' requests stating that Rep. Act No. 7202 applies only to sugar loans granted by government financial institutions. The petitioners then demanded payment by the respondents of their respective loans including interests, penalties and other charges.

Thereafter, the respondents, as plaintiffs, filed with the court *a quo* separate complaints against the petitioners. These complaints were consolidated and docketed as follows:

NELLY M. LOVINA REALTY CO., Represented by its President VICENTE M. LOVINA, Plaintiff,	Civil Case No. 8722
SPOUSES ANTONIO & LOURDES DADIVAS, Plaintiffs,	Civil Case No. 9287

JIM ROSE TRADING CO., INC., Civil Case No. 9315
Plaintiff,

FRANCISCO SAJO, ET AL., Civil Case No. 9316
Plaintiffs,

- versus -

PACIFIC BANKING CORP., ET AL,
Defendants.

In their respective complaints, the respondents prayed, among others, that the court *a quo* compel the petitioners PDIC and PaBC to re-compute their (respondents') loans in accordance with Section 3 of Rep. Act No. 7202.

The petitioners seasonably filed their answers to the complaints. However, on account of the repeated failure of the petitioners or their counsel to appear at the pre-trial, on August 19, 1999, the court *a quo* issued an Order directing the respondents to present their evidence *ex parte*. The petitioners filed a motion for reconsideration thereof but the court *a quo* denied the same in its Order dated November 18, 1999. In denying the petitioners' motion for reconsideration, the court *a quo* stated, thus:

> The records disclose that after Civil Cases Nos. 8722 and 9274 were ordered consolidated, the pre-trial conference for the same was originally set on June 14, 1996. In view, however, of the Motion for Consolidation of Civil Cases Nos. 8722 and 9274 with Civil Cases Nos. 9263, 9287, 9315 and 9316 still pending resolution for which latter cases the defendant was not yet served with any summons, pre-trial was reset on June 20, 1996. Then again it was reset on September 27, 1996, April 25, 1997 and August 1, 1997. For failure of either the defendant or its counsel to appear, defendant was declared in default and reception of evidence for plaintiff Lovina Realty was set on September 5, 1993, while reception of evidence for plaintiffs Jim Rose Trading, Spouses Antonio Dadivas and Sajo was set on September 12, 1997.
>
> The Court, however, lifted the Order of Default of its Order dated September 5, 1997 on the basis of a Motion for Reconsideration filed by the defendant. Thereafter, plaintiff Lovina moved to set the pre-

trial again on June 25, 1998 which pre-trial was moved/cancelled again by the defendant. The Court in the interest of justice again granted the motion and set the pre-trial on June 30, 1998 and again on September 17, 1998. Thereafter, the case was set on June 10, 1999 and August 17, 1999. For failure again of defendant to appear, Atty. Jose Ma. Ciocon, counsel for plaintiff Lovina, moved to declare it in default. Hence, this present motion.

It becomes a matter of concern to this Court that while the initial pre-trial was set on June 14, 1996, the same has been continuously postponed at the instance of the defendant causing the case to drag for over three (3) years without having moved from the pre-trial stage.

WHEREFORE, the Motion for Reconsideration is hereby DENIED and the reception of *ex parte* evidence for the plaintiffs is set on December 6, 1999 at 8:30 in the morning.

SO ORDERED.[2]

After their second motion for reconsideration was denied, the petitioners filed with the Court of Appeals (CA) a petition for *certiorari* alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Florentino P. Pedronio in denying their motion to set aside order of default. The petitioners assert that (a) their counsel's failure to attend the August 19, 1999 pre-trial was due to conflict of schedule and therefore, excusable; (b) they have strong and meritorious defenses; and (c) respondents have admitted the existence and validity of their respective loans and their failure to pay the same.

In the assailed Decision of September 5, 2001, the appellate court dismissed the petition. It held that the court *a quo* justifiably directed the respondents to present their evidence *ex parte* for failure of the petitioners or their counsel to attend the pre-trial. According to the CA, their consistent absence at the hearings set for pre-trial was inexcusable. Further, the issue in the consolidated cases involves a pure question of law; hence, the court *a quo* can resolve it without a full-blown trial. In any case, the petitioners are not deprived of their remedies against

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[2] *Rollo*, pp. 106-107.

any adverse decision that may be rendered by the court *a quo* as they can still challenge the correctness of such decision even up to the Supreme Court.

The petitioners sought reconsideration of the above decision. However, in the assailed Resolution of November 28, 2001, the same was denied by the appellate court.

Aggrieved, the petitioners now come to this Court alleging that —

THE RESPONDENT APPELLATE COURT COMMITTED GRAVE AND FUNDAMENTAL ERRORS OF FACT AND LAW TANTAMOUNT TO AN EXERCISE OF GRAVE ABUSE OF DISCRETION AND/OR LACK OF JURISDICTION WHEN IT DISMISSED THE PETITION AND UPHELD THE RESPONDENT JUDGE'S ORDER DENYING PETITIONER'S MOTION TO SET ASIDE ORDER OF DEFAULT.[3]

The respondents filed their respective Comments on the petition. In the meantime, respondent Francisco Sajo passed away. In compliance with the Resolution dated July 1, 2002, the counsel of the deceased informed the Court that Celestino M. Sajo had been designated as the legal representative of the estate of respondent Sajo. On March 5, 2003, the Court gave due course to the petition and required the parties to file their respective memoranda.

It is the petitioners' contention that their counsel's absence at the pre-trial on August 19, 1999 was excusable and did not constitute obstinate refusal or inordinate neglect to comply with the Rules of Court as to warrant the declaration of default. Of the ten settings for pre-trial, only three had allegedly been cancelled at the petitioners' instance. Further, the delay in the proceedings in the court *a quo* was due primarily to the efforts of the parties to amicably settle the case. In fact, the other similar cases, *Leon G. Moya, Jr. v. Pacific Banking Corp., et al.*,[4] *Spouses Fabian Ong v. Pacific Banking Corp., et al.*,[5] and *Spouses*

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[3] *Id.* at 15-16.

[4] Civil Case No. 9263.

[5] Civil Case No. 9274.

Antonio and Lourdes Dadivas v. Pacific Banking Corp., et al.[6] had already been dismissed on account of the parties' amicable settlement. The petitioners pray for the lifting of the order of default to enable them to present their evidence in support of their meritorious defense.

The petition is bereft of merit.

At the outset, it must be stated that the filing of the instant petition for *certiorari* under Rule 65 of the Rules of Court is inappropriate. It is evident from the averments of material dates that the remedy of *certiorari* under Rule 65 was resorted to by the petitioners as a substitute for a lost appeal. The CA promulgated the assailed Decision on September 5, 2001, a copy of which was received by the petitioners on September 12, 2001.[7] The petitioners filed a motion for reconsideration thereof on September 29, 2001 but the CA denied the same in the assailed Resolution of November 29, 2001, a copy of which was received by the petitioners on December 6, 2001.[8] The petitioners' remedy would have been to file a petition for review on *certiorari* under Rule 45 before this Court, and, reckoning the fifteen-day period to file the same from receipt of the resolution denying their motion for reconsideration, the petitioners had until December 21, 2001 to file a petition for review on *certiorari* before this Court. Instead, the petitioners filed the instant petition for *certiorari* on January 21, 2002, a month after the lapse of the reglementary period within which to file a petition for review on *certiorari*.

Apparently, the petitioners resorted to this special civil action of *certiorari* after failing to appeal within the fifteen-day reglementary period. This cannot be countenanced. The special civil action of *certiorari* cannot be used as a substitute for an appeal which the petitioners already lost.[9] *Certiorari* lies only where there is no appeal nor any plain, speedy, and adequate

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[6] Civil Case No. 9287.

[7] *Rollo*, p. 4.

[8] *Ibid*.

[9] *Conejos v. Court of Appeals*, 387 SCRA 142 (2002).

remedy in the ordinary course of law.[10] There is no reason why the question being raised by the petitioners, whether the appellate court committed grave abuse of discretion in dismissing the petition, could not have been raised by them on appeal.[11]

Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review.[12] In this case, however, the Court finds no reason to justify a liberal application of the rules. The petition was filed well beyond the reglementary period to file a petition for review without any reason therefor.[13]

Even on the ground invoked by the petitioners, *i.e.*, the appellate court committed grave abuse of discretion in dismissing their petition and upholding the respondent judge's order of default, the present petition must be dismissed. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction.[14] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[15]

In this case, in its decision upholding the Order dated November 18, 1999, directing the presentation of the respondents' evidence *ex parte*, the appellate court discussed the facts on which it grounded its decision as well as the applicable law on the matter. Its action is neither whimsical nor despotic.

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[10] *Ibid*.

[11] *Id*.

[12] *Republic v. Court of Appeals*, 322 SCRA 81 (2000).

[13] *Ibid*.

[14] *Duero v. Court of Appeals*, 373 SCRA 11 (2002).

[15] *Ibid*.

Indeed, the consistent failure of the petitioners or their counsel to appear at the pre-trial justify the court *a quo's* order directing the respondents to present their evidence *ex parte*. Under Section 5,[16] Rule 18 of the Rules of Court, failure on the part of the defendants, the petitioners in this case, and their counsel to appear at the pre-trial, shall be a cause to allow the respondents, as the plaintiffs, to present their evidence *ex parte*, and the Court to render judgment on the basis thereof.[17] As correctly put by the CA, "assuming that the respondent judge was strict in the enforcement of the rules, that is an ocean away from being gravely abusive of his discretion."[18]

In the same light, the CA cannot be considered to have committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the order of the respondent judge directing the respondents to present their evidence *ex parte* conformably with the rules.

WHEREFORE, the instant petition for *certiorari* is *DISMISSED* for lack of merit.

SO ORDERED.

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

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[16] The provision reads:

Sec. 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless, otherwise, ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

[17] *Leonardo v. S.T. Best, Inc.*, G.R. No. 142066, February 6, 2004.

[18] *Rollo*, p. 35.

SECOND DIVISION

[G.R. No. 159390. June 10, 2004]

GALLERA DE GUISON HERMANOS, INC., CARLO REYES and PACITA REYES, *petitioners, vs.* **MA. ASUNCION C. CRUZ,** *respondent.*

SYNOPSIS

Petitioners assailed the decision and resolution of the Court of Appeals which dismissed the petitioners' petition for *certiorari* assailing the NLRC's dismissal of their appeal for having been filed beyond the reglementary period, and upholding the decision of the Labor Arbiter which ruled that the respondent was illegally dismissed and the dismissal was attended by bad faith on the part of the petitioners, and that the petitioners are solidarily liable for the respondent's monetary claims consisting of separation pay, backwages and attorney's fees. In its decision, the appellate court ruled that contrary to the petitioners' contention that the respondent resigned from her position as cashier, the latter was actually removed from her position. Subsequently, petitioners appointed the respondent as liaison officer, a move that entailed a demotion in her position and diminution of salaries, privileges and other benefits. Hence, it concluded that respondent was constructively dismissed.

In their petition, the petitioners tenaciously asserted that the respondent resigned from her position as cashier and insisted that she be designated as liaison officer. Assuming that she was forcibly transferred to the latter position, petitioners theorized that the respondent was estopped from questioning said transfer because she voluntarily assumed the position and received the appurtenant salary. Petitioners also disputed the appellate court's decision holding the individual petitioners solidarily liable with the company for the respondent's monetary claims.

The Supreme Court, in a Resolution dismissed the petition. The Court found no reason to disturb the unanimous findings and conclusions of the Court of Appeals, the NLRC, and the Labor Arbiter. According to the Court, the findings of fact of

the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, are accorded not only respect but even finality and are deemed binding upon the Court so long as they are supported by substantial evidence. Thus, the Court denied the petition and affirmed the decision of the Court of Appeals.

SYLLABUS

REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS, PARTICULARLY WHERE IT IS IN ABSOLUTE AGREEMENT WITH THAT OF THE NLRC AND THE LABOR ARBITER, ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; CASE AT BAR.— Indeed, the instant petition raises a fundamental factual issue which has already been exhaustively discussed and passed upon by the Labor Arbiter and the Court of Appeals, *i.e*, whether Cruz was dismissed for cause. The appellate court, dismissing the petitioners' petition for *certiorari* assailing the NLRC's dismissal of their appeal and upholding the decision of the Labor Arbiter, ruled that Cruz was illegally dismissed and the dismissal was attended by bad faith on the part of the petitioners; hence, the petitioners are solidarily liable for Cruz' monetary claims consisting of separation pay, backwages and attorney's fees. We stated then, "time and again the much-repeated but not so well-heeded rule that findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, as in this case, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence." We reiterate the statement in this case. After a careful consideration of the records of this case, we find no reason to disturb the unanimous findings and conclusions of the Court of Appeals, NLRC and the Labor Arbiter.

APPEARANCES OF COUNSEL

Sison & Associates for petitioners.
Saulog & De Leon Law Offices for respondent.

R E S O L U T I O N

TINGA, *J.*:

This *Petition*[1] seeks a review of the decision[2] and resolution[3] of the Court of Appeals dismissing the petitioners' petition for *certiorari*[4] and affirming the decision[5] of the Labor Arbiter which found that the respondent was illegally dismissed and therefore entitled to separation pay, backwages and attorney's fees.

The appellate court's findings of fact, undisputed by the petitioners, are as follows:

"Private respondent Ma. Asuncion G. Cruz was a cashier and stockholder of Petitioner Gallera de Guison Hermanos, Inc. ('Gallera' for brevity) since 1976. Gallera is engaged in the operation and maintenance of a cockpit arena in Quezon City and petitioners Carlos H. Reyes, Sr. and Pacita G. Reyes are the chairman of the Board of Directors and President, respectively thereof.

On February 15, 1998, private respondent wrote Gallera requesting that she be assigned as Liaison Officer, which is a more challenging job than as a cashier.

Subsequently, Atty. Sumawang, Gallera's counsel, wrote a letter dated February 16, 1998 addressed to the private respondent informing her that the Board is not in a legal position to consider the request because an employee cannot be appointed to another position which would result in the reduction of his existing salary and that the duties and responsibilities of a Liaison Officer are already being performed by some of the management staff.

On February 24, 1998, due to the alleged ill treatment and harassment perpetrated by Galera's (*sic*) management against the

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[1] Dated October 24, 2003, *Rollo*, pp. 8-166, with Annexes.

[2] Dated July 31, 2002, *Rollo*, pp. 29-40.

[3] Dated August 7, 2003, *Rollo*, pp. 42-43.

[4] Assailing the decision and resolution of the National Labor Relations Commission (NLRC) which dismissed the petitioners' appeal for having been filed beyond the reglementary period.

[5] Dated October 15, 2000, *Rollo*, pp. 128-147.

private respondent, the latter procured a medical certificate and went on sick leave until March 5, 1998.

While on leave, petitioners appointed one Antonio G. Reyes, a relative of the former, as cashier.

On February 26, 1998, private respondent wrote Atty. Sumawang that her request for transfer has no legal implication and stated that the real reason for the request for transfer is the ill treatment and harassment perpetuated by the management of Gallera's management *(sic)* on her person.

The following day, Gallera, thru Atty. Sumawang; wrote private respondent advising her that upon her return to work on March 6, 1998, she shall cease and desist from occupying and performing the duties of cashier and instead she shall report for work on a no work no pay basis in the meantime that the management is studying to which position private respondent will be transferred.

Meanwhile, private respondent was designated as liaison officer as shown in 22 payrolls dating from October 1, 1999 up to November 13, 1999.

On November 13, 1999, the salary of private respondent was withheld allegedly due to her absence on the said date. Private respondent's designation as liaison officer in the payroll on even date was likewise removed. Thereafter, the private respondent did not report for work.

On December 2, 1999, Gallera, thru its board chairman Carlos Reyes wrote private respondent informing the latter that the position of liaison officer still holds and that private respondent is still welcome to work with Galera (*sic*) on a "no work, no pay basis," except the allowances and other cash entitlements to the position.

On March 8, 2000, private respondent filed with the Department of Labor, NCR, a complaint for illegal dismissal, docketed as NLRC NCR Case No. 00-03-01416-2000.

Meanwhile, Galera (*sic*) notified private respondent thru a letter dated April 16, 2000, that the latter should report for work on April 23, 2000 and explain why private respondent has not been reporting for work since November 18, 1999.

On October 15, 2000, labor arbiter issued a decision declaring private respondent to have been illegally dismissed by petitioners, the dispositive portion of which, reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed by respondent corporation.

Respondents are ordered to pay complainant the following:

(1) Separation pay in lieu of reinstatement for twenty four (24) years in the amount of ₱460,800.00;

(2) Backwages from November 13, 1999 up to the date of this decision in the amount of ₱211,200.00; and

(3) Attorneys fees in the amount of ten (10%) percent of the total amount awarded.

All other claims are dismissed . . .

Copy of said decision was received by petitioners on December 8, 2000. Petitioners, however, filed their Notice of Appeal and Memorandum on Appeal only on December 26, 2000 or 8 days beyond the 10-day reglementary period for filing an appeal. Consequently, NLRC Second Division dismissed the appeal on May 30, 2001 for being filed out of time . . .

Expectedly, petitioners filed a Motion for Reconsideration on June 15, 2001. But NLRC Second Division resolved to deny the same on August 9, 2001."[6]

The petitioners then filed a petition for *certiorari* with the Court of Appeals assailing the NLRC's dismissal of its appeal. Setting aside technicalities, the appellate court dealt with the substantive issues in the petition. The Court of Appeals nonetheless dismissed the petition ruling that contrary to the petitioners' contention that respondent Ma. Asuncion C. Cruz ("Cruz") resigned from her position as cashier, the latter was actually removed from her position by the petitioners. Subsequently, the petitioners appointed Cruz as liaison officer, a move which entailed a demotion in her position and diminution of salaries, privileges and other benefits. Hence, the Court of Appeals concluded that Cruz was constructively dismissed and declared her entitled to backwages, separation pay and attorney's fees. Finding that the individual petitioners-officers of Gallera, Carlos

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[6] *Supra*, note 2.

and Pacita Reyes, assented to and sustained Cruz' illegal transfer from cashier to liaison officer, the appellate court declared the former solidarily liable with Gallera for Cruz' monetary claims.

In their petition, the petitioners tenaciously assert that Cruz resigned from her position as cashier and insisted that she be designated as liaison officer. Assuming that she was forcibly transferred to the latter position, petitioners theorize that Cruz is estopped from questioning said transfer because she voluntarily assumed the position and received the appurtenant salary for one (1) year and eight (8) months. The petitioners also dispute the appellate court's decision holding the individual petitioners solidarily liable with Gallera for Cruz' monetary claims.

We denied the *Petition* in our *Resolution*[7] dated October 15, 2003 for failure of the petitioners to take the appeal within the reglementary period in view of the earlier denial of their *Motion for Extension*. However, acting on the petitioners' *Motion for Reconsideration*[8] dated October 3, 2003, we issued a *Resolution*[9] dated January 12, 2004 granting the motion, reinstating the petition and requiring the respondent to file a comment on the petition.

Cruz maintains in her *Comment*[10] dated March 19, 2004 that the issues raised in the instant petition have been addressed and resolved in her favor by the Labor Arbiter, the NLRC and the Court of Appeals.

Indeed, the instant petition raises a fundamental factual issue which has already been exhaustively discussed and passed upon by the Labor Arbiter and the Court of Appeals, *i.e*, whether Cruz was dismissed for cause. The appellate court, dismissing the petitioners' petition for *certiorari* assailing the NLRC's dismissal of their appeal and upholding the decision of the Labor

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[7] *Supra*, note 1 at 176.

[8] *Id*. at 178-179.

[9] *Id*. at 186.

[10] *Id*. at 197-209.

Arbiter, ruled that Cruz was illegally dismissed and the dismissal was attended by bad faith on the part of the petitioners; hence, the petitioners are solidarily liable for Cruz' monetary claims consisting of separation pay, backwages and attorney's fees.

We stated then, "time and again the much-repeated but not so well-heeded rule that findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, as in this case, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence."[11] We reiterate the statement in this case.

After a careful consideration of the records of this case, we find no reason to disturb the unanimous findings and conclusions of the Court of Appeals, NLRC and the Labor Arbiter.

WHEREFORE, the instant petition is *DENIED* and the assailed decision dated July 31, 2002 of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

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

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[11] *Hantex Trading Co., Inc. v. Court of Appeals*, G.R. No. 148241, September 27, 2002, 390 SCRA 181, 189, citing *Permex, Inc. v. NLRC*, G.R. No. 125031, January 24, 2000, 323 SCRA 121.

SECOND DIVISION

[G.R. Nos. 140538-39. June 14, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GODOFREDO B. ADOR and DIOSDADO B. ADOR III,** *appellants*.

SYNOPSIS

For shooting to death Absalon S. Cuya II and Rodolfo S. Chavez, herein appellants were charged, tried and found guilty of the crime of murder and were sentenced to *reclusion perpetua*. In convicting the appellants, the trial court declared that, " a chain of circumstances x x x lead to a sound and logical conclusion that indeed the appellants committed the offense charged." Hence, this joint appeal where the appellants maintained that the trial court gravely erred in convicting them of murder based on circumstantial evidence.

Contrary to the pronouncements of the trial court, the Supreme Court cannot rest easy in convicting the appellants based on circumstantial evidence. For, the pieces of the said circumstantial evidence presented did not inexorably lead to the conclusion that they are guilty. Firstly, the prosecution witnesses failed to identify the accused in court. Secondly, a cloud of doubt continued to hover over the gun used and the slug recovered. Thirdly, the dying declaration and paraffin examination remained unreliable. Fourthly, appellant Godofredo's uncounseled admissions including the gun he turned in were barred as evidence. Fifthly, the supposed motive of the accused was simply insufficient. Thus, the facts from which the inference that the accused committed the crime were not proven. Accordingly, the guilt of the accused cannot be established, more so to a moral certainty. It is when evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength of its own case and not on the weakness of the defense, and that conviction must rest on nothing less than moral certainty. Consequently, the case of the prosecution has been reduced to nothing but mere suspicions and speculations. It is hornbook doctrine that suspicions and

speculations can never be the basis of conviction in a criminal case. Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice. In view of the foregoing, the Court acquitted the appellants on reasonable doubt.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT.—** The rules of evidence allow the courts to rely on circumstantial evidence to support its conclusion of guilt. It may be the basis of a conviction so long as the combination of all the circumstances proven produces a logical conclusion which suffices to establish the guilt of the accused beyond reasonable doubt. All the circumstances must be consistent with each other, consistent with the theory that all the accused are guilty of the offense charged, and at the same time inconsistent with the hypothesis that they are innocent and with every other possible, rational hypothesis except that of guilt. The evidence must exclude each and every hypothesis which may be consistent with their innocence. Also, it should be acted on and weighed with great caution. Circumstantial evidence which has not been adequately established, much less corroborated, cannot by itself be the basis of conviction. Thus, for circumstantial evidence to suffice, (1) there should be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Like an ornate tapestry created out of interwoven fibers which cannot be plucked out and assayed a strand at a time apart from the others, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion that the accused, to the exclusion of all others, is guilty beyond reasonable doubt.

2. **ID.; ID.; ID.; ID.; GUIDELINES IN APPRECIATION THEREOF.—** The test to determine whether or not the circumstantial evidence on record are sufficient to convict the accused is that the series of the circumstances proved must be consistent with the guilt of the accused and inconsistent with his innocence. Accordingly, we have set guidelines in

appreciating circumstantial evidence: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense. Measured against the guidelines set, we cannot uphold the conviction of the accused based on the circumstantial evidence presented.

3. ID.; ID.; ID.; ID.; IT IS WHEN EVIDENCE IS PURELY CIRCUMSTANTIAL THAT THE PROSECUTION IS MUCH MORE OBLIGATED TO RELY ON THE STRENGTH OF ITS OWN CASE AND NOT ON THE WEAKNESS OF THE DEFENSE.— All told, contrary to the pronouncements of the trial court, we cannot rest easy in convicting the two (2) accused based on circumstantial evidence. For, the pieces of the said circumstantial evidence presented do not inexorably lead to the conclusion that they are guilty. The prosecution witness failed to identify the accused in court. A cloud of doubt continues to hover over the gun used and the slug recovered. The dying declaration and paraffin examination remain unreliable. Godofredo's uncounseled admissions including the gun he turned in are barred as evidence. And, the supposed motive of the accused is simply insufficient. Plainly, the facts from which the inference that the accused committed the crime were not proven. Accordingly, the guilt of the accused cannot be established, more so to a moral certainty. It is when evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength of its own case and not on the weakness of the defense, and that conviction must rest on nothing less than moral certainty.

4. ID.; ID.; ID.; ID.; IF THE ALLEGED INCULPATORY FACTS AND CIRCUMSTANCES ARE CAPABLE OF TWO OR MORE EXPLANATIONS, ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE ACCUSED, AND THE OTHER CONSISTENT WITH HIS GUILT, THEN THE EVIDENCE IS NOT ADEQUATE TO SUPPORT CONVICTION.— Consequently, the case of the prosecution has been reduced to nothing but mere suspicions and speculations. It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal

case. Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice. If the alleged inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused, and the other consistent with his guilt, then the evidence is not adequate to support conviction. The court must acquit the accused because the evidence does not fulfill the test of moral certainty and is therefore insufficient to support a judgment of conviction. Conviction must rest on nothing less than a moral certainty of the guilt of the accused. The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. It is thus apropos to repeat the doctrine that an accusation is not, according to the fundamental law, synonymous with guilt – the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. The prosecution has failed to discharge its burden. Accordingly, we have to acquit.

5. ID.; ID.; FACTUAL FINDINGS OF THE LOWER COURT RESPECTED ABSENT ANY INDICATION THAT IT OVERLOOKED SOME FACTS OR CIRCUMSTANCES WHICH IF CONSIDERED WOULD ALTER THE OUTCOME OF THE CASE.— The testimony of Calsis, if at all, could hardly be used against Diosdado III whom he miserably failed to positively identify during trial. In fact, the acquittal of Diosdado Jr. by the trial court renders the entire testimony of Calsis in serious doubt. Calsis was presented to positively identify the assailants who were supposedly personally known to him and were just ten (10) meters away from him. It puzzles us no end why he cannot even identify the Adors in open court. Thus, despite Calsis' assertion that Diosdado Jr. was one of the assailants, the trial court doubted him and gave credence to the alibi of Diosdado Jr. that the latter was in Nangka, Marikina, when the killings took place. The trial court favored the unbiased testimony of Aspe who said that Diosdado Jr. worked as a timekeeper and warehouseman with him at the Consuelo Construction at Nangka, Marikina, from February 15, 1997, until March 22, 1997, and went home to Pacol only on May 27, 1997. This ruling is strengthened by the fact that on the morning following the killings, all the male members of the Ador family were brought to the police headquarters

for paraffin examination and Diosdado Jr. was not among them. We thus respect the finding of the trial court that indeed Diosdado Jr. was not at the scene of the crime absent any indication that the lower court overlooked some facts or circumstances which if considered would alter the outcome of the case.

6. ID.; ID.; WHILE THE COURTS ARE NOT BOUND TO ACCEPT OR REJECT AN ENTIRE TESTIMONY, AND MAY BELIEVE ONE PART AND DISBELIEVE ANOTHER, THE CONSTITUTION AND THE LAW MANDATE THAT ALL DOUBTS MUST BE RESOLVED IN FAVOR OF THE ACCUSED.— While it is true that the courts are not bound to accept or reject an entire testimony, and may believe one part and disbelieve another, our Constitution and the law mandate that all doubts must be resolved in favor of the accused. Calsis committed an obvious blunder in identifying the supposed assailants which this Court cannot simply let go. On the contrary, it creates reasonable doubt in our minds if Calcis really saw the persons he allegedly saw or if he was even where he said he was that evening. For, it is elementary that the positive identification of the accused is crucial in establishing his guilt beyond reasonable doubt. That is wanting in the instant case.

7. ID.; ID.; DEFENSE OF DENIAL; DOCTRINE THAT THE DEFENSE OF DENIAL CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED MUST YIELD TO THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.— Both Diosdado III and Godofredo denied the charges hurled against them. But, while it is true that alibi and denial are the weakest of the defenses as they can easily be fabricated, absent such clear and positive identification, the doctrine that the defense of denial cannot prevail over positive identification of the accused must yield to the constitutional presumption of innocence. Hence, while denial is concededly fragile and unstable, the conviction of the accused cannot be based thereon. The rule in criminal law is firmly entrenched that verdicts of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.

8. ID.; ID.; ADMISSIBILITY; EXCEPTION TO THE HEARSAY RULE; DYING DECLARATION; LOSES ITS SIGNIFICANCE WHERE ASSAILANT WAS NOT IDENTIFIED WITH CERTAINTY.— Neither can this Court rely on the dying

declaration of the dying Chavez nor on the results of the paraffin tests to convict either Diosdado III or Godofredo or both. To refute these, we need not go far and beyond the 13 May 1998 Order of the trial court partially granting the demurrer to evidence filed by the accused – x x x. Thus, while a dying declaration may be admissible in evidence, it must identify with certainty the assailant. Otherwise, it loses its significance.

9. ID.; ID.; ID.; PARAFFIN TEST; WHILE IT CAN ESTABLISH THE PRESENCE OR ABSENCE OF NITRATES ON THE HAND, IT CANNOT SHOW THAT THE SOURCE OF THE NITRATES WAS THE DISCHARGE OF FIREARMS.— Also, while a paraffin test could establish the presence or absence of nitrates on the hand, it cannot establish that the source of the nitrates was the discharge of firearms – 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. In *People v. Melchor*, this Court acquitted the accused despite the presence of gunpowder nitrates on his hands – [S]cientific experts concur in the view that the result of a paraffin test is not conclusive. While it can establish the presence of nitrates or nitrites on the hand, it does not always indubitably show that said nitrates or nitrites were caused by the discharge of firearm. The person tested may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, pharmaceuticals and leguminous plants such as peas, beans and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco. The presence of nitrates or nitrites, therefore, should be taken only as an indication of a possibility but not of infallibility that the person tested has fired a gun.

10. ID.; ID.; ID.; MOTIVE; NOT SUFFICIENT TO SUPPORT CONVICTION IF THERE IS NO OTHER RELIABLE EVIDENCE FROM WHICH IT MAY BE REASONABLY ADDUCED THAT THE ACCUSED WAS THE MALEFACTOR.— With hardly any substantial evidence left, the prosecution likewise played up the feud between the Adors on one hand and the Chavezes and the Cuyas on the other hand, and suggested that the Adors had an axe to grind against

the Chavezes and the Cuyas. For sure, motive is not sufficient to support a conviction if there is no other reliable evidence from which it may reasonably be adduced that the accused was the malefactor. Motive alone cannot take the place of proof beyond reasonable doubt sufficient to overthrow the presumption of innocence.

11. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF ACCUSED; CUSTODIAL RIGHTS; A SUSPECT'S CONFESSION WHEN TAKEN WITHOUT THE ASSISTANCE OF COUNSEL WITHOUT A VALID WAIVER OF SUCH ASSISTANCE REGARDLESS OF THE ABSENCE OF COERCION, OR THE FACT THAT IT HAD BEEN VOLUNTARILY GIVEN, IS INADMISSIBLE IN EVIDENCE, EVEN IF SUCH CONFESSION WERE THE GOSPEL TRUTH; CASE AT BAR.— In fine, the admissions made by Godofredo to Major Idian and PO3 Nepomuceno including the gun in question cannot be considered in evidence against him without violating his constitutional right to counsel. Godofredo was already under custodial investigation when he made his admissions and surrendered the gun to the police authorities. The police had already begun to focus on the Adors and were carrying out a process of interrogations that was lending itself to eliciting incriminating statements and evidence: the police went to the Ador residence that same evening upon being informed that the Adors had a long-standing grudge against the Cuyas; the following day, all the male members of the Ador family were told to go to the police station; the police was also informed of the dying declaration of deceased Chavez pointing to the Adors as the assailants; the Adors were all subjected to paraffin examination; and, there were no other suspects as the police was not considering any other person or group of persons. The investigation thus was no longer a general inquiry into an unsolved crime as the Adors were already being held as suspects for the killings of Cuya and Chavez. Consequently, the rights of a person under custodial investigation, including the right to counsel, have already attached to the Adors, and pursuant to Art. III, Sec. 12(1) and (3), 1987 Constitution, any waiver of these rights should be in writing and undertaken with the assistance of counsel. Admissions under custodial investigation made without the assistance of counsel are barred as evidence. The records are bare of any

indication that the accused have waived their right to counsel, hence, any of their admissions are inadmissible in evidence against them. As we have held, a suspect's confession, whether verbal or non-verbal, when taken without the assistance of counsel without a valid waiver of such assistance regardless of the absence of such coercion, or the fact that it had been voluntarily given, is inadmissible in evidence, even if such confession were gospel truth. Thus, in *Aballe v. People*, the death weapon, a four-inch kitchen knife, which was found after the accused brought the police to his house and pointed to them the pot where he had concealed it, was barred from admission as it was discovered as a consequence of an uncounseled extrajudicial confession.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Nicolas D. Villanueva III for accused-appellant.

D E C I S I O N

PUNO, *J.*:

The quiescence of the fading day was shattered by bursts of gunfire, startling the otherwise tranquil but sanguine folks of Pacol, Naga City. As the fusillade of shots ceased and the wisp of smoke cleared, frolicking promenaders stumbled upon Ompong Chavez who was gasping his last, clutching his intestines which had spewed out from his bloodied stomach. He did not in fact reach the hospital alive. A breath away, Abe Cuya lay lifeless on the pavement. He died on the spot. For the twinned deaths, the Adors, six (6) of them, were haled to court.

In two (2) separate informations,[1] Diosdado Sr.,[2] Diosdado Jr., Diosdado III, Godofredo, Rosalino and Allan, all surnamed Ador, were charged with the murder of Absalon "Abe" S. Cuya

[1] Both dated 12 November 1997; *Rollo*, pp. 17-18.

[2] Diosdado A. Ador Sr. is interchangeably referred to in the different parts of the records as simply, Diosdado A. Ador, without the suffix "Sr."

III and Rodolfo "Ompong" S. Chavez. The Informations in Crim. Cases Nos. 97-6815 and 97-6816 identically read:

> That on or about March 10, 1997, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, with treachery and the aid of armed men, did then and there willfully, unlawfully and feloniously shoot ABSALON "ABE" CUYA III (RODOLFO "OMPO" CHAVEZ *y* SAN ANDRES[3] for Crim. Case No. 97-6816) with firearms, inflicting upon him multiple and mortal gunshot wounds which caused his death, to the damage and prejudice of his heirs.
>
> With the aggravating circumstance of evident premeditation and nighttime.
>
> CONTRARY TO LAW.

However, only four (4) of the six (6) Adors, namely, Diosdado Sr., Godofredo, Rosalino and Allan, were taken into custody. The two (2), Diosdado Jr. and Diosdado III, remained at large. Trial thus proceeded only against Diosdado Sr., Godofredo, Rosalino and Allan who all pleaded not guilty. Diosdado Sr. is the father of Diosdado Jr., Diosdado III and Godofredo, while Rosalino is the father of Allan. Diosdado Sr. and Rosalino are brothers.[4]

In its effort to secure the conviction of the accused, the prosecution presented a total of sixteen (16) witnesses: Mercy Beriña, Larry Cado, Medico-Legal Officer of Naga City Dr. Joel S. Jurado, Police Inspector Ma. Julieta Razonable, SPO1 Benjamin Barbosa, SPO3 Augusto Basagre, Major Ernesto Idian, Inspector Reynaldo F. Fulgar, SPO1 Noli Reyes Sol, SPO3 Eduardo C. Bathan, Inspector Vicente C. Lauta, Ernani Castillo, PO3 Augusto I. Nepomuceno, Absalon Cuya Sr., Efren Chavez and Pablo Calsis.

From the evidence of the prosecution, it appears that on March 10, 1997, at around seven-thirty in the evening, while

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[3] Prosecution witnesses referred to Chavez as "Ompong".

[4] TSN, 27 May 1999, pp. 2-3; 14-15.

Mercy Beriña, Larry Cado and some eleven (11) others were leisurely walking along Kilometer 11 on their way to Zone 1, Kilometer 10, Pacol, Naga City, to attend a wedding anniversary, they heard several gunshots. Shortly after, they met a certain Pablito Umali who told them that "Ompong" Chavez had been shot. They ran to Chavez straight off and saw him already lying on the ground, about 1½ meters away from a lighted electric post, holding on to his intestines which were starting to come out. Beriña shook Chavez and asked him what had happened. Chavez replied "*tinambangan kami na Ador*" ("We were ambushed by the Adors") and requested that he be brought to the hospital as he was dying. About eight (8) meters from where Chavez was, in a dark spot, lay "Abe" Cuya, dead.[5]

Upon learning of the shooting incident through their radio communication, SPO1 Benjamin Barbosa, together with PO2 Alexander Diaz, immediately proceeded to the crime scene to conduct an investigation. SPO3 Eduardo Bathan and SPO1 Wilfredo Fernandez, among others, were already there.[6] SPO1 Barbosa collected some pieces of evidence, took some pictures and made some sketches.[7] SPO1 Fernandez on the other hand interviewed one Cresenciana Mendoza in her house which was nearby, and when he heard people shout that Chavez was still alive, he brought Chavez to the hospital but the latter expired on the way.[8]

That same evening, upon being informed that the Adors had a long-standing grudge against the Cuyas, SPO1 Barbosa sought the help of then Barangay Captain Josue Perez to accompany him to the residence of the Adors. They arrived at the Adors at around ten o'clock that evening and spoke with their patriarch, Diosdado Ador Sr. SPO1 Barbosa looked for the other male members of the Ador family but was told by Diosdado Sr. that they were already asleep. Diosdado Sr. nevertheless promised to present them the following day.[9]

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[5] *Id.*, 18 February 1998, pp. 8-12, 26.

[6] *Id.*, 4 February 1998, pp. 5-6.

[7] *Id.*, pp. 7-9.

[8] *Id.*, 30 June 1999, pp. 4-5.

[9] *Id.*, 4 February 1998, pp. 11-14.

The following morning, March 11, 1997, Barangay Captain Perez accompanied the Adors, namely, Diosdado Sr., Diosdado III, Godofredo, Rosalino, Allan and Reynaldo, to SPO1 Barbosa at the PNP Central Police Headquarters. The Adors were informed of their constitutional rights to remain silent and to choose their own counsel. They were then brought to the PNP Crime Laboratory at the Provincial Headquarters and subjected to paraffin tests.[10] On the way to the crime laboratory, Godofredo told his police escort that he had been entrusted with a handgun which he kept in his residence.[11] The information was relayed to Major Ernesto Idian, then Deputy Chief of Police of Naga City, who ordered PO3 Augusto I. Nepomuceno to accompany him in recovering the gun because Godofredo said that he would turn in the gun only to PO3 Nepomuceno. Thus, Major Idian, PO3 Nepomuceno and some others accompanied Godofredo to the latter's residence.

Upon reaching the Ador residence, Godofredo, together with PO3 Nepomuceno, went to their backyard, retrieved the gun from under a fallen coconut trunk and turned it in to the latter. Godofredo allegedly told the police that he fired the said gun outside their house on the night of March 10 after he heard several gunshots.[12] PO3 Nepomuceno identified the gun as a caliber .38 "*paltik*" handgun which had no serial number.[13] PO3 Nepomuceno then turned over the handgun to Major Idian[14] who likewise identified it as a .38 caliber revolver. Major Idian returned the handgun to PO3 Nepomuceno for ballistic and paraffin examination.[15] Thereafter, PO3 Nepomuceno placed his initials on the gun

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[10] *Id.*, pp. 15, 26, 33; Exhibit "F" (Investigation Report), Folder of Exhibits, pp. 21-26.

[11] *Id.*, 7 December 1998, p. 6.

[12] *Id.*, 16 March 1998, pp. 30-31.

[13] *Id.*, p. 31. The investigation report of SPO1 Barbosa (Exhibit "F-4") states that the gun recovered was "an unlicensed revolver, caliber .38, TM-Smith and Wesson, (*Paltik*) without serial number."

[14] *Id.*, 26 February 1998, pp. 13-14.

[15] *Id.*, pp. 8-9.

and put it in his private locker while preparing the documents for the examinations and the possible filing of a case for Illegal Possession of Firearm.[16]

Also, on the same day, March 11, 1997, Dr. Joel S. Jurado, Medico-Legal Officer of Naga City, conducted an autopsy on the bodies of Chavez and Cuya. Based on the autopsy reports, Dr. Jurado testified that Cuya sustained five (5) gunshot wounds and died from "cardio-pulmonary arrest, massive intra-thoracic, intra-abdominal, intra-cranial hemorrhage secondary to multiple gunshot wounds penetrating the heart, brain, lungs and digestive tract."[17] Chavez on the other hand had three (3) gunshot wounds and died from "traumatic shock and massive intra-abdominal hemorrhage secondary to multiple gunshot wounds penetrating the right kidney and the internal abdominal organs."[18] Dr. Jurado further testified that that he recovered a slug from Cuya's head three (3) days after he conducted the autopsy — after Cuya's relatives called his attention to a protruding mass in Cuya's head. Thus, he had Cuya's cadaver sent back to the funeral parlor, opened it and was able to extract a deformed .38 caliber slug which he thereafter submitted to the City Prosecutor's Office.[19]

Police Inspector Reynaldo Fulgar, Chief of the Firearm Identification Section of the PNP Crime Laboratory, Camp Ola, Legaspi City, testified that based on the ballistic examination he conducted on the bullets submitted to his office, the .38 caliber slug recovered from Cuya's head matched the three (3) .38 caliber test bullets which were test-fired from the suspected firearm surrendered by Godofredo. He however averred that the .38 caliber bullets were actually fired from a .357 Smith

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[16] *Id*., 16 March 1998, pp. 18-34.

[17] *Id*., 17 December 1998, pp. 11-15; Autopsy Report dated 11 March 1997, Original Records of Crim. Case No. 97-6815, p. 8.

[18] *Id*., 17 December 1998, pp. 16-17; Autopsy Report dated 12 March 1997, Original Records, Crim. Case No. 97-6816, p. 8.

[19] *Id*., 16 March 1998, pp. 10-12; Exhibit "N", Folder of Exhibits, p. 47.

and Wesson Magnum homemade revolver without serial number, and not from a .38 caliber revolver.[20]

The paraffin casts taken from the Adors were also transmitted to the PNP Crime Laboratory Services for examination and yielded the presence of gunpowder nitrates, thus —

(1) Diosdado A. Ador — both hands, positive;

(2) Diosdado B. Ador III — right hand, positive; left hand, negative;

(3) Godofredo B. Ador — right hand, positive; left hand, negative;

(4) Rosalino A. Ador — both hands, positive;

(5) Reynaldo T. Ador — both hands, negative;[21]

(6) Allan T. Ador — both hands, positive.[22]

Absalon Cuya Sr., father of deceased Cuya III, said that the killing of his son was driven by the long-standing feud between the Adors and his family. He said that Diosdado Jr. had earlier accused his other son Liberato of frustrated homicide for allegedly stabbing him (Diosdado Jr.).[23] Then, Adelina, a daughter of Diosdado Sr., filed a case for abduction with multiple rape against him, Absalon III, Rayne and Josephine, all surnamed Cuya, after the romantic relationship between Adelina and his deceased son Absalon III turned sour.[24] He also presented official receipts of the funeral and burial expenses which amounted to ₱10,230.00.[25]

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[20] *Id.*, 9 February 1999, pp. 6-7; Exhibit "Q," Folder of Exhibits, p. 49.

[21] While Reynaldo Ador was subjected to paraffin testing, he was not among those eventually charged. On the other hand, Diosdado Ador Jr. who was charged was not subjected to paraffin testing.

[22] Judgment of the trial court, pp. 16-17; *Rollo*, pp. 60-61; Exhibits "B," "C," "D," and "E," Folder of Exhibits, pp. 1-20.

[23] TSN, 16 March 1998, pp. 42-44.

[24] Exhibit "X", Folder of Exhibits, pp. 70-80; The trial court's finding that it was the brother of victim Cuya, Absalon Cuya II, who was charged by Adelina Ador of multiple rape is not consistent with the Resolution of the Office City Prosecutor dated June 13, 1996 in I.S. No. 96-0380.

[25] Exhibits "V-2" to "V-8", Folder of Exhibits, pp. 57-63.

Efren Chavez, brother of deceased Chavez, likewise spoke of the animosity between the Chavez and the Ador families. He produced a certification from the PNP Naga City Police Station that on February 17, 1997, a blotter was entered in the Daily Record of Events showing that deceased Chavez reported a certain Ricardo Ador who while under the influence of liquor caused him physical injury.[26] The witness likewise presented an official receipt showing that the family spent ₱3,500.00 for the funeral of the deceased Chavez.[27] After presenting Chavez, the prosecution rested its case.

On April 7, 1998, the four (4) accused filed a demurrer to evidence "for utter lack of evidence."[28] On May 13, 1998, the trial court dismissed the cases against Diosdado Sr., Rosalino and Allan but denied the demurrer to evidence against Godofredo —

> WHEREFORE, this Court finds the demurrer to evidence to be justified for the accused Diosdado A. Ador, Allan T. Ador and Rosalino Ador, hence, the same is hereby granted insofar as these accused are concerned. Said accused therefore, namely: Diosdado A. Ador, Allan T. Ador and Rosalino Ador are ACQUITTED in Crim. Cases Nos. 97-6815 and 97-6816. The bailbonds posted for their provisional liberty are hereby cancelled.
>
> Trial of the case insofar as Godofredo B. Ador is concerned shall proceed.
>
> SO ORDERED.[29]

Thus, trial proceeded against Godofredo.

For his defense, Godofredo denied any participation in the killings of Cuya and Chavez. He said that on March 10, 1997, at around seven o'clock in the evening, he heard several gunshots

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[26] Exhibit "V" for Crim. Case No. 97-6816, *Id.*, p. 54.

[27] Exhibits "W" and "W-1" for Crim. Case No. 97-6816, *Id*., pp. 67-68.

[28] Demurrer to Evidence, p. 4; Original Records, Crim Case No. 97-6815, p. 163.

[29] 13 May 1998 Order of the Trial Court, Original Records, Crim. Case No. 97-6815, p. 194.

while he was having dinner with his wife and four (4) children in their house in Pacol, Naga City. Since his wife advised him not to go out anymore, he slept after dinner. The following day, while he was gathering pili nuts, his long-time friend Dominador Bautista arrived and asked him to go down from the tree. Bautista wanted to borrow money and on his way to see him, found a gun by the footpath. Bautista gave the gun to him. It was his first time to hold a gun. He tried it out and fired three (3) times. After firing the gun, he removed the empty shells from its chambers and threw them away. He then wrapped the gun with plastic and hid it under a coconut trunk. Bautista left when he told him that he had no money. He then continued to gather pili nuts until Major Idian and three (3) other policemen came.

Godofredo's father told him that they were being suspected of killing Chavez and Cuya the night before. Thus, they went to the provincial headquarters, were subjected to paraffin testing and made to sign a blank bond paper. After that, they went back to the central police station. At the central police station, Godofredo narrated to a certain Calabia that that morning, his friend Bautista found a gun along the road and gave it to him. He hid the gun under a coconut trunk. Calabia relayed the information to Major Idian who directed PO3 Nepomuceno to go with Godofredo to get the gun. Godofredo led PO3 Nepomuceno to where he hid the gun, retrieved it and handed it to the latter. They then returned to the police headquarters where he was jailed. He asserted that the gun presented in court is different from the gun he surrendered to the police.[30]

Bautista corroborated Godofredo's story. He testified that he found the gun which Godofredo yielded to PO3 Nepomuceno. He said that he was on his way to see Godofredo to borrow money when he chanced upon the handgun on the pathway. He gave the gun to Godofredo and the latter tested it by pulling its trigger. After firing the gun, Godofredo removed the empty shells and threw them. Godofredo then wrapped the gun with plastic and hid it under a fallen coconut trunk.[31]

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[30] TSN, 1 September 1998, pp. 3-42.

[31] *Id.*, 27 August 27, 1998, pp. 3-8.

Meanwhile, Diosdado Jr. was arrested on October 9, 1998, at Barangay Doña, Orani, Bataan, and committed to the Naga City Jail on November 17, 1998, while Diosdado III surrendered to the court and was committed to the same city jail on November 22, 1998. On November 23, 1998, both Diosdado Jr. and Diosdado III were arraigned and entered a plea of not guilty. Hence, trial against them commenced and proceeded jointly with the case of the remaining accused, Godofredo.

The prosecution presented Pablo Calsis[32] as a witness against Diosdado Jr. and Diosdado III. Calsis testified that on March 10, 1997, at around 7:30 in the evening, he dropped by the house of Cresenciana Mendoza whom he fondly called Lola Kising at Kilometer 10, Pacol, Naga City, before going home from work. After asking permission from her to go home and while about to urinate outside her house, he heard several gunshots. He ducked by a *sineguelas* tree at a nearby flower plantation. As he was about to stand up, he saw Diosdado Jr., Diosdado III, Godofredo and another unidentified man run away. Godofredo was carrying a short firearm while Diosdado Jr. had a long firearm.[33] He saw Chavez and Cuya lying on the road. Chavez was about five (5) meters away from where he stood while Cuya was ten (10) meters away. The place was illuminated by a bright light from an electric post. There were no other people around. Calsis ran away for fear that he might be identified by the assailants. He heard Chavez mumbling but shirked nevertheless.[34]

Calsis narrated to Absalon Cuya Sr. what he saw only after about one (1) year and nine (9) months. Fear struck him.[35] He maintained that he knew the assailants because he and his wife

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[32] "*Calsis*" is interchangeably referred to as "*Calcis*" in the different parts of the records.

[33] TSN, 26 January 1999, pp. 10-11; The trial court appears to have misquoted the testimony of Calcis when in its 2 August 1999 Judgment, p. 19, it stated that Diosdado Ador III was the one carrying a long firearm.

[34] *Id*., pp. 2-13; 8 February 1999, p. 16.

[35] *Ibid*.

lived in the house of Lola Kising after they got married.[36] Immense fear prevented him from attending to Chavez, even while he heard him murmuring, and from informing the families of the victims of the incident that very same night. He was about to tell the Chavez family the following morning but was counseled by his Lola Bading, the sister of his Lola Kising, against getting involved in the case.[37] Calsis and his family left their residence in Pacol one (1) month after the incident because he was afraid the assailants might have identified him.[38] Even Lola Kising left her residence two (2) months after the incident.[39] It was only after he learned from Absalon Cuya Sr. that the trial court dismissed the cases for lack of evidence insofar as some of the original accused were concerned that he took pity on the respective families of the victims who have failed to get justice for the death of their loved ones.[40]

In defense, Diosdado Jr. testified that on March 10, 1997, he was in Marikina City working as a warehouseman and timekeeper of the Consuelo Builders Corporation. He was there the whole time from February 15, 1997, until March 24, 1997.[41] Pablo Aspe, a co-worker of Diosdado Jr., corroborated the latter's testimony. He said that on February 15, 1997, he and Diosdado Jr. left Pacol, Naga City, together to work in Consuelo Construction in Marikina City. They were with each other in Marikina City the whole time from February 15, 1997, until he (Aspe) went home to Naga City on March 22, 1997. While in Marikina City, they resided and slept together in their barracks at the construction site.[42]

Diosdado III also took the witness stand. On March 10, 1997, at around seven o'clock in the evening, he was at their house at Zone 1, Pacol, Naga City, watching television with his parents

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[36] *Id*., pp. 5-6.

[37] *Id*., pp. 17-18.

[38] *Id*., p. 7.

[39] *Id*., pp. 10-11.

[40] *Id*., pp. 20-21.

[41] *Id*., 25 May 1999, pp. 7-8.

[42] *Id*., 19, May 1999, pp. 6-8.

and cousins Reynaldo and Allan when they heard gunshots. They ignored the gunshots, continued watching television and slept at eight o'clock. The following day, at around six o'clock in the morning, while he was fetching water, four (4) policemen arrived at their house and talked to his father. Thereafter, his father called him, his brother Godofredo, uncle Rosalino and cousins Allan and Reynaldo. The policemen then requested all of them to go to the PNP Central Police Headquarters for investigation regarding the killings of Chavez and Cuya. Upon reaching the police headquarters, they were interviewed by the media and afterwards brought to the provincial headquarters where they were subjected to paraffin tests. They were then brought back to the Central Police Headquarters and later allowed to go back home to Pacol.

Then, sometime in October, 1997, his father was arrested by the police. Diosdado III was at their residence when his father was picked up. Only his father was taken by the police. He continued to reside in their house until April, 1998, when he transferred to Sagurong, San Miguel, Tabaco, Albay, to work as a fisherman. On November 21, 1998, he received a letter from his father telling him to come home. Thus, he went home the following day. On November 23, 1998, he surrendered to the court.[43]

The defense also presented Barangay Captain Josue Perez and an uncle of Diosdado Jr. and Diosdado III, Jaime Bobiles. Perez testified that he was the *barangay* captain of Pacol from 1982 until May, 1997. In 1996, Cresenciana Mendoza left their *barangay* permanently to live with her children in Manila because she was sickly and alone in her house. He said that Mendoza never came back. He does not know any Pablo Calsis and the latter could not have talked to Mendoza on March 10, 1997, because at that time, Mendoza was not there and her house was already abandoned.[44] Similarly, Bobiles confirmed the testimony that Diosdado III worked as a fisherman in Tabaco and stayed in his residence from May 1, 1998, until November

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[43] *Id*., 27 May 1999, pp. 2-10.

[44] *Id*., 14 June 1999, pp. 3-7.

1998 when Diosdado III received a letter from his father and had to go home.[45]

In rebuttal however, prosecution witness SPO1 Fernandez asserted that he interviewed Cresenciana Mendoza that fateful night of March 10, 1997.[46] After the rebuttal witness was presented, the cases were finally submitted for decision.[47]

On August 2, 1999, the trial court held that "a chain of circumstances x x x lead to a sound and logical conclusion that indeed the accused (Diosdado III and Godofredo) committed the offense charged"[48] and as such rendered judgment —

WHEREFORE, premises considered, this court finds the accused Godofredo B. Ador and Diosdado B. Ador III GUILTY beyond reasonable doubt of the crime of MURDER, defined and penalized under the provisions of Article 248 of the Revised Penal Code, as amended by Republic Act 7659 in Criminal Cases Nos. 97-6815 and 97-6816, hereby sentences the said accused Godofredo B. Ador and Diosdado B. Ador III to suffer the penalty of *RECLUSION PERPETUA* in Criminal Case No. 97-6815; *RECLUSION PERPETUA* in Criminal Case No. 97-6816, to pay the heirs of Absalon "Abe" Cuya III ₱25,000 each by way of actual damages and ₱50,000 in each criminal case by way of indemnity. To pay the heirs of Rodolfo "Ompong" Chavez the sum of ₱50,000 in each criminal case by way of indemnity, such accessory penalties as provided for by law and to pay the cost. For insufficiency of the prosecution to prove the guilt of the accused Diosdado B. Ador, Jr. beyond reasonable doubt, he is hereby ACQUITTED in Crim. Cases Nos. 97-6815 and 97-6816.

The Jail Warden of the Naga City District Jail is hereby ordered to forthwith release from its custody the accused Diosdado B. Ador, Jr., unless his further detention is warranted by any other legal cause or causes.

SO ORDERED.[49]

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[45] *Id*., pp. 14-16.

[46] *Id*., 30 June 1999, pp. 3-5.

[47] *Id*., p. 16.

[48] Judgment of the trial court, p. 24; *Rollo*, p. 68.

[49] *Id*., p. 25; *Id*., p. 69.

Hence, this joint appeal interposed by Diosdado III and Godofredo. They maintain that the trial court gravely erred in convicting them of murder based on circumstantial evidence. The testimony of prosecution witness Pablo Calsis that he saw them running away from the scene of the crime was concocted. The handgun turned in by Godofredo was not the same gun presented by the prosecution during the trial. The unusual discovery of a slug from the head of the deceased — three (3) days after the autopsy was conducted and after the cadaver was turned over to the family of the victim — was quite doubtful. Even the supposed dying declaration of the victim specifically pointed to neither Diosdado III nor Godofredo. And, the trial court erred in admitting in evidence those taken against them in violation of their constitutional rights to counsel during custodial investigation.[50]

The rules of evidence allow the courts to rely on circumstantial evidence to support its conclusion of guilt.[51] It may be the basis of a conviction so long as the combination of all the circumstances proven produces a logical conclusion which suffices to establish the guilt of the accused beyond reasonable doubt.[52] All the circumstances must be consistent with each other, consistent with the theory that all the accused are guilty of the offense charged, and at the same time inconsistent with the hypothesis that they are innocent and with every other possible, rational hypothesis except that of guilt.[53] The evidence must exclude each and every hypothesis which may be consistent with their innocence.[54] Also, it should be acted on and weighed with great caution.[55] Circumstantial evidence which has not been adequately

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[50] *Rollo*, pp. 103-104.

[51] *People v. Ayola*, G.R. No. 138923, 4 September 2001, 364 SCRA 451.

[52] *People v. Concepcion*, G.R. No. 131477, 20 April 2001, 357 SCRA 168.

[53] *People v. Flores*, G.R. No. 116488, 31 May 2001, 358 SCRA 319; *People v. Abriol*, G.R. No. 123137, 17 October 2001, 367 SCRA 327.

[54] *People v. Bato*, G.R. No. 113804, 16 January 2001, 284 SCRA 223.

[55] *People v. Solis*, G.R. No. 138936, 30 January 2001, 350 SCRA 608.

established, much less corroborated, cannot by itself be the basis of conviction.[56]

Thus, for circumstantial evidence to suffice, (1) there should be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[57] Like an ornate tapestry created out of interwoven fibers which cannot be plucked out and assayed a strand at a time apart from the others, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion that the accused, to the exclusion of all others, is guilty beyond reasonable doubt.[58] The test to determine whether or not the circumstantial evidence on record are sufficient to convict the accused is that the series of the circumstances proved must be consistent with the guilt of the accused and inconsistent with his innocence.[59] Accordingly, we have set guidelines in appreciating circumstantial evidence: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense.[60]

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[56] *People v. Bato*, G.R. No. 113804, 16 January 2001, 284 SCRA 223; *People v. Maluenda*, G.R. No. 115351, 27 March 1998, 288 SCRA 225.

[57] *People v. Olivio, Jr.*, G.R. No. 130335, 18 January 2001, 349 SCRA 499; *People v. Lugod*, G.R. No. 136253, 21 February 2001, 352 SCRA 498; *People v. Lavapie*, G.R. No. 130209, 14 March 2001, 354 SCRA 351; *People v. Ellasos*, G.R. No. 139323, 6 June 2001, 358 SCRA 516; *People v. Corre, Jr.*, G.R. No. 137271, 15 August 2001, 363 SCRA 165; *People v. De Las Eras*, G.R. No. 134128, 28 September 2001, 366 SCRA 231; *People v. Canlas*, G.R. No. 141633, 14 December 2001, 372 SCRA 401; *People v. Baconguis*, G.R. No. 149889, 2 December 2003.

[58] *People v. Consejero*, G.R. No. 118334, 20 February 2001, 352 SCRA 276; *People v. Leano*, G.R. No. 138886, 9 October 2001, 366 SCRA 774; *People v. Patriarca*, G.R. No. 137891, 11 July 2001, 361 SCRA 88; *People v. Nanas*, G.R. No. 137299, 21 August 2001, 363 SCRA 452.

[59] *People v. Ayola*, G.R. No. 138923, 4 September 2001, 364 SCRA 451.

[60] *People v. Cabaya*, G.R. No. 127129, 20 June 2001, 359 SCRA 111.

Measured against the guidelines set, we cannot uphold the conviction of the accused based on the circumstantial evidence presented.

The first circumstance which the prosecution sought to prove is that the accused were supposedly seen fleeing from the *locus criminis*, armed with their respective weapons. Thus, the trial court, gleaning from the evidence presented, found that "[w]hen about to stand, Calsis saw Godofredo B. Ador, Diosdado B. Ador, Jr. and Diosdado B. Ador III, and a person going to the direction of the house of the Adors which is about 500 meters away."[61] In fact, prosecution witness Calsis allegedly even saw Diosdado Jr. carrying "a long firearm but x x x could not determine what kind of gun it was."[62] However, the trial court acquitted Diosdado Jr. But only rightly so. For, Calsis had difficulty in identifying the Adors notwithstanding his assertion that he knew and saw them personally. We defer to his direct examination —

ATTY. TERBIO (Private Prosecutor):

Q. You said you recognized the persons running, could you tell us their names?

PABLO CALSIS:

A. Yes sir.

Q. Name them?

A. Godofredo Ador, Jr., Sadang III.

Q. How about the others?

A. I could not tell his name but if I see him I could identify him.

Q. The 4 persons whom you saw that night, if they are present in court, please point them out?

A. Yes sir.

Q. Point particularly *Godofredo* Ador, Jr.?

A. (Witness pointed or tapped the shoulder of a person inside the courtroom who answered by the name *Diosdado Ador, Jr.*)

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[61] Judgment of the trial court, p. 19; *Rollo*, p. 63.

[62] TSN, 26 January 1999, p. 11.

Q. How about this *Sadang III*?
A. (Witness tapped the shoulder of a man who answered by the name of *Diosdado Ador III*.)

Q. Likewise, point to the *third person*?
A. (Witness pointed to *a man*. . .)

COURT:

Delete that portion from the record, he is not on trial.

ATTY TERBIO:

Q. You said you saw 4 persons, is the fourth one inside the courtroom?
A. None sir.

Q. But if you saw that person, will you be able to recognize him?
A. Yes sir.

Q. Why do you know these persons whom you just tapped the shoulder?

x x x x x x x x x

A. I know these persons having lived in the house of Lola Kising.

Q. How far?
A. Around 100 meters.

Q. On the said date and time and place, you said you saw them running, how far were you from them?
A. Around 10 meters. (*Emphases supplied*)[63]

The testimony of Calsis, if at all, could hardly be used against Diosdado III whom he miserably failed to positively identify during trial. In fact, the acquittal of Diosdado Jr. by the trial court renders the entire testimony of Calsis in serious doubt. Calsis was presented to positively identify the assailants who were supposedly personally known to him and were just ten (10) meters away from him. It puzzles us no end why he cannot even identify the Adors in open court.

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[63] *Id*., pp. 6-8.

Thus, despite Calsis' assertion that Diosdado Jr. was one of the assailants, the trial court doubted him and gave credence to the alibi of Diosdado Jr. that the latter was in Nangka, Marikina, when the killings took place. The trial court favored the unbiased testimony of Aspe who said that Diosdado Jr. worked as a timekeeper and warehouseman with him at the Consuelo Construction at Nangka, Marikina, from February 15, 1997, until March 22, 1997, and went home to Pacol only on May 27, 1997. This ruling is strengthened by the fact that on the morning following the killings, all the male members of the Ador family were brought to the police headquarters for paraffin examination and Diosdado Jr. was not among them.[64] We thus respect the finding of the trial court that indeed Diosdado Jr. was not at the scene of the crime absent any indication that the lower court overlooked some facts or circumstances which if considered would alter the outcome of the case.[65]

While it is true that the courts are not bound to accept or reject an entire testimony, and may believe one part and disbelieve another,[66] our Constitution and the law mandate that all doubts must be resolved in favor of the accused. Calsis committed an obvious blunder in identifying the supposed assailants which this Court cannot simply let go. On the contrary, it creates reasonable doubt in our minds if Calcis really saw the persons he allegedly saw or if he was even where he said he was that evening. For, it is elementary that the positive identification of the accused is crucial in establishing his guilt beyond reasonable doubt. That is wanting in the instant case.

What is more, Calsis' asseverations, at the outset, could no longer be used against Godofredo since both the prosecution and the defense have already rested and the case against Godofredo was already submitted for decision when Calsis

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[64] Judgment of the trial court, p. 22; *Rollo*, p. 66.

[65] *People vs. Pacuancua*, G.R. No. 144589, 16 June 2003; *People vs. Sibonga*, G.R. No. 95901, 16 June 2003.

[66] *People v. Concorcio*, G.R. Nos. 121201-02, 19 October, 2001, 367 SCRA 586; *People vs. Masapol*, G.R. No. 121997, 10 December 2003.

was presented.[67] Neither can they still be used against Diosdado Jr. who was already acquitted by the trial court.

Both Diosdado III and Godofredo denied the charges hurled against them. But, while it is true that alibi and denial are the weakest of the defenses as they can easily be fabricated,[68] absent such clear and positive identification, the doctrine that the defense of denial cannot prevail over positive identification of the accused must yield to the constitutional presumption of innocence.[69] Hence, while denial is concededly fragile and unstable, the conviction of the accused cannot be based thereon.[70] The rule in criminal law is firmly entrenched that verdicts of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.[71]

The second circumstance is the handgun turned in by Godofredo. But this was bungled by the prosecution. Major Idian, Deputy Chief of Police of the Naga City Police Station,

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[67] The proceedings before the trial court when Pablo Calsis was presented by the prosecution were as follows:

COURT:

Place it on record that this witness is being presented insofar as the accused Diosdado Ador Jr. and Diosdado Ador III who have recently been brought to the jurisdiction of this court (are concerned).

ATTY. TERBIO (Private Prosecutor):

We intend to present this witness as an additional witness to the one being tried, Godofredo Ador, because insofar as his case is concerned, it is not yet terminated.

COURT:

You cannot do that because you have already rested your cases and the defense as well has presented its evidence (TSN, 26 January 1999, p. 2).

[68] *People v. Cantonjos*, G.R. No. 136748, 21 November 2001, 370 SCRA 105.

[69] *People v. Cabaya*, G.R. No. 127129, 20 June 2001, 359 SCRA 111.

[70] *People v. Sinco*, G.R. No. 131836, 30 March 2001, 355 SCRA 713.

[71] *People v. Melencion*, G.R. No. 121902, 26 March 2001, 355 SCRA 113; *People v. Teves*, G.R. No. 141767, 2 April 2001, 356 SCRA 14.

to whom the handgun was turned over after Godofredo surrendered it, identified it as a caliber .38 revolver, thus —

ATTY TERBIO (Private Prosecutor):
Q. What kind of firearm was it?
MAJOR IDIAN:
A. Revolver handgun, caliber .38 with 6 rounds ammunition.
Q. What is the caliber?
A. .38 caliber.[72]

Similarly, PO3 Nepomuceno who then had been with the PNP for eight (8) years already and to whom Godofredo turned in the handgun, likewise identified it as a caliber .38, thus —

ATTY TERBIO (Private Prosecutor):
Q. What is the caliber of that gun?
PO3 NEPOMUCENO:
A. .38 caliber.[73]

However, Insp. Fulgar, Chief of the Firearm Identification Section of the PNP Crime Laboratory, testified that "[t]he indorsement coming from the City Prosecutors Office x x x alleged that the .38 caliber live bullet was fired from a .38 caliber revolver. But our office found out that the firearm was not a .38 caliber revolver but a .357 caliber revolver."[74]

Could it be that the handgun was replaced before it was turned over to the PNP Crime Laboratory? While the prosecution traced the trail of police officers who at every stage held the gun supposedly recovered from Godofredo, it never clarified this discrepancy which is quite glaring to ignore. It is difficult to believe that a Deputy Chief of Police and a police officer of eight (8) years will both mistake a .357 caliber for a .38 caliber handgun. Likewise, a Chief of the Firearm Identification Section of the PNP Crime Laboratory cannot be presumed not to know

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[72] TSN, 26 February 1998, p. 8.

[73] *Id*., 16 March 1998, p. 20.

[74] *Id*., 9 February 1999, p. 7.

the difference between the two (2) handguns. Suffice it to say that the prosecution failed to clear up the variance and for this Court to suggest an explanation would be to venture into the realm of pure speculation, conjecture and guesswork. Thus, faced with the obvious disparity in the suspected firearm used in the crime and that which was turned over by Godofredo, his declaration that the handgun presented in court was different from the gun he gave to the police deserves serious, if not sole consideration.

Consequently, even the third circumstance, the .38 caliber slug supposedly recovered from the head of the victim three (3) days after the autopsy was conducted loses evidentiary value as its source is now highly questionable. It has become uncertain whether the deformed slug was fired from the .38 caliber revolver turned in by Godofredo or from a .357 caliber handgun as attested to by the Chief of the Firearm Identification Section of the PNP Crime Laboratory.

Neither can this Court rely on the dying declaration of the dying Chavez nor on the results of the paraffin tests to convict either Diosdado III or Godofredo or both. To refute these, we need not go far and beyond the 13 May 1998 Order of the trial court partially granting the demurrer to evidence filed by the accused —

The only direct evidence introduced by the prosecution is the testimony of Mercy Beriña, that she heard Rodolfo "Ompong" Chavez say "*tinambangan kami na Ador*" (We were ambushed by the Adors). Sad to say, no specific name was ever mentioned by the witness. Neither was she able to tell how many (persons) "Adors" were involved. This testimony if it will be given credence may inculpate any person with the family name Ador as assailant. The prosecution therefore was not able to establish with moral certainty as to who of the Adors were perpetrators of the offense x x x Paraffin tests are not conclusive evidence that indeed a person has fired a gun.

> The fact that the accused-appellants tested positive of gunpowder nitrates does not conclusively show that they fired the murder weapon, or a gun for that matter, for such forensic evidence should be taken only as an indication of possibility or even of probability, but not of infallibility, since nitrates are also admittedly found in substances other than gunpowder.

(*People v. Abellarosa*, G.R. No. 121195, 27 November 1996; *People v. de Guzman*, 250 SCRA 118; *People v. Nitcha*, 240 SCRA 283)[75]

Thus, while a dying declaration may be admissible in evidence, it must identify with certainty the assailant. Otherwise, it loses its significance. Also, while a paraffin test could establish the presence or absence of nitrates on the hand, it cannot establish that the source of the nitrates was the discharge of firearms — 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.[76] In *People v. Melchor* [77] this Court acquitted the accused despite the presence of gunpowder nitrates on his hands —

> [S]cientific experts concur in the view that the result of a paraffin test is not conclusive. While it can establish the presence of nitrates or nitrites on the hand, it does not always indubitably show that said nitrates or nitrites were caused by the discharge of firearm. The person tested may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, pharmaceuticals and leguminous plants such as peas, beans and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco. The presence of nitrates or nitrites, therefore, should be taken only as an indication of a possibility but not of infallibility that the person tested has fired a gun.

In fine, the admissions made by Godofredo to Major Idian and PO3 Nepomuceno including the gun in question cannot be considered in evidence against him without violating his constitutional right to counsel. Godofredo was already under custodial investigation when he made his admissions and surrendered the gun to the police authorities. The police had

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[75] Order of the Trial Court, pp. 5-6; Original Records, Crim. Case No. 97-6815, pp. 192-193.

[76] *People v. Abriol*, G.R. No. 123137, 17 October 2001, 367 SCRA 327.

[77] G.R. No. 124301, 18 May 1999, 307 SCRA 177, 187-188.

already begun to focus on the Adors and were carrying out a process of interrogations that was lending itself to eliciting incriminating statements and evidence: the police went to the Ador residence that same evening upon being informed that the Adors had a long-standing grudge against the Cuyas; the following day, all the male members of the Ador family were told to go to the police station; the police was also informed of the dying declaration of deceased Chavez pointing to the Adors as the assailants; the Adors were all subjected to paraffin examination; and, there were no other suspects as the police was not considering any other person or group of persons. The investigation thus was no longer a general inquiry into an unsolved crime as the Adors were already being held as suspects for the killings of Cuya and Chavez.

Consequently, the rights of a person under custodial investigation, including the right to counsel, have already attached to the Adors, and pursuant to Art. III, Sec. 12(1) and (3), 1987 Constitution, any waiver of these rights should be in writing and undertaken with the assistance of counsel. Admissions under custodial investigation made without the assistance of counsel are barred as evidence.[78] The records are bare of any indication that the accused have waived their right to counsel, hence, any of their admissions are inadmissible in evidence against them. As we have held, a suspect's confession, whether verbal or non-verbal, when taken without the assistance of counsel without a valid waiver of such assistance regardless of the absence of such coercion, or the fact that it had been voluntarily given, is inadmissible in evidence, even if such confession were gospel truth.[79] Thus,

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[78] Sec. 12, Art. III, 1987 Constitution provides: "(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel x x x (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."

[79] *People v. Sia,* G.R. No. 137457, 21 November 2001, 370 SCRA 123.

in *Aballe v. People*,[80] the death weapon, a four-inch kitchen knife, which was found after the accused brought the police to his house and pointed to them the pot where he had concealed it, was barred from admission as it was discovered as a consequence of an uncounseled extrajudicial confession.

With hardly any substantial evidence left, the prosecution likewise played up the feud between the Adors on one hand and the Chavezes and the Cuyas on the other hand, and suggested that the Adors had an axe to grind against the Chavezes and the Cuyas. For sure, motive is not sufficient to support a conviction if there is no other reliable evidence from which it may reasonably be adduced that the accused was the malefactor.[81] Motive alone cannot take the place of proof beyond reasonable doubt sufficient to overthrow the presumption of innocence.[82]

All told, contrary to the pronouncements of the trial court, we cannot rest easy in convicting the two (2) accused based on circumstantial evidence. For, the pieces of the said circumstantial evidence presented do not inexorably lead to the conclusion that they are guilty.[83] The prosecution witness failed to identify the accused in court. A cloud of doubt continues to hover over the gun used and the slug recovered. The dying declaration and paraffin examination remain unreliable. Godofredo's uncounseled admissions including the gun he turned in are barred as evidence. And, the supposed motive of the accused is simply insufficient. Plainly, the facts from which the inference that the accused committed the crime were not proven. Accordingly, the guilt of the accused cannot be established, more so to a moral certainty. It is when evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength

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[80] G.R. No. 64086, 15 March 1990, 183 SCRA 196.

[81] *People v. Teves*, G.R. No. 141676, 2 April 2001, 356 SCRA 14; *People v. Samson*, G.R. No. 133437, 16 November 2001, 369 SCRA 229.

[82] *People v. Mantes*, G.R. No. 117166, 3 December 1998, 299 SCRA 562.

[83] *People v. Mijares*, G.R. No. 126042, 8 October 1998, 297 SCRA 520.

of its own case and not on the weakness of the defense, and that conviction must rest on nothing less than moral certainty.[84]

Consequently, the case of the prosecution has been reduced to nothing but mere suspicions and speculations. It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal case.[85] Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice.[86] If the alleged inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused, and the other consistent with his guilt, then the evidence is not adequate to support conviction.[87] The court must acquit the accused because the evidence does not fulfill the test of moral certainty and is therefore insufficient to support a judgment of conviction.[88] Conviction must rest on nothing less than a moral certainty of the guilt of the accused.[89] The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[90] It is thus apropos to repeat the doctrine that an accusation is not, according to the fundamental law, synonymous with guilt — the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable

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[84] *People v. Caparas, Jr.*, G.R. Nos. 121811-12, 14 May 1998, 290 SCRA 78.

[85] *People v. Cuadro*, G.R. No. 124704, 22 February 2001, 352 SCRA 537.

[86] *People v. Francisco*, G.R. Nos. 135201-02, 15 March 2001, 354 SCRA 475.

[87] *People v. Williams*, G.R. No. 125985, 20 April 2001, 357 SCRA 124; *People v. Mariano*, G.R. No. 133990, 26 June 2001, 359 SCRA 648.

[88] *People v. Leano*, G.R. No. 138886, 9 October 2001, 366 SCRA 774.

[89] *People v. Baulite*, G.R. No. 137599, 8 October 2001, 366 SCRA 732.

[90] *People v. Cabaya*, G.R. No. 127129, 20 June 2001, 359 SCRA 111; *People v. Villaflores*, G.R. Nos. 135063-64, 5 December 2001, 371 SCRA 429.

doubt. The prosecution has failed to discharge its burden. Accordingly, we have to acquit.

IN VIEW WHEREOF, the Decision of the Regional Trial Court of Naga City, Br. 25, in Crim. Cases Nos. 97-6815 and 97-6816 dated August 2, 1999, finding accused-appellants Godofredo B. Ador and Diosdado B. Ador III guilty beyond reasonable doubt of two (2) counts of murder and imposing on them the penalty of *reclusion perpetua*, is hereby *REVERSED* and *SET ASIDE*. Accused-appellants Godofredo B. Ador and Diosdado B. Ador III are *ACQUITTED* on reasonable doubt and their *IMMEDIATE RELEASE* is hereby *ORDERED* unless they are being held for some other legal cause.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 145348. June 14, 2004]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZENG HUA DIAN *alias* "Chan Chang Hua Tian" *a.k.a.* "Bobong Chua" and YANG YAN GIOU *alias* "Jackson Yu and Jackson Yang",** *defendants-appellants.*

SYNOPSIS

Appellants were charged, tried and convicted for violation of Section 15, Article III of the Dangerous Drugs Act, as amended by Republic Act 7659, and were sentenced to *reclusion perpetua* and to pay a fine.

Hence, this appeal.

Appellants questioned the identification by the prosecution of the '*shabu*' allegedly seized during the buy-bust operation. Appellants claimed that the chain of custody of the seized '*shabu*' was broken and was detrimental to the prosecution's case. Appellants questioned the non-presentation of other witnesses to prove that the chain of custody of the evidence was not broken and that the '*shabu*' presented before the court was the same substance seized during the buy-bust operation. Appellants further alleged that they were victims of '*hulidap*.'

The Supreme Court found that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as the evidence custodian and the officer on duty, was not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Furthermore, the prosecution had other witnesses who were able to prove sufficiently that the chain of custody of the '*shabu*' was never broken from the time the police officers took the '*shabu*' from the possession of appellants up to the moment it was offered in evidence. Moreover, it was proven that the plastic packs of '*shabu*' presented before the court were the very same packs seized from appellants during the buy-bust operation. Anent appellants' defense that they were victims of '*hulidap*' or a frame-up, the Court held that clear and convincing evidence of '*hulidap*' must be shown for such a defense to be given merit. Considering that the sale of the illegal substance was adequately established and the prosecution witnesses clearly identified both appellants as the offenders; and that the substance itself was properly identified and presented before the court, the Court thus affirmed the appealed decision.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; PROSECUTION HAS DISCRETION AS TO HOW TO PRESENT ITS CASE AND IT HAS THE RIGHT TO CHOOSE WHOM IT WISHES TO PRESENT AS WITNESSES.— After a thorough review of the records of this case, we find that the

chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Furthermore, the prosecution had other witnesses who were able to prove sufficiently that the chain of custody of the *shabu* was never broken from the time the police officers took the *shabu* from the possession of appellants up to the moment it was offered in evidence.

2. ID.; ID.; DEFENSE OF FRAME-UP; VIEWED WITH DISFAVOR, FOR IT CAN EASILY BE CONCOCTED AND IS A COMMON PLOY BY ACCUSED IN CASES FOR VIOLATIONS OF THE DANGEROUS DRUGS ACT.— Appellants' defense that they were victims of '*hulidap*' or a frame-up cannot be given any merit. It must once more be emphasized that such a defense is viewed with disfavor, for it can easily be concocted and is a common ploy by the accused in cases for violations of the Dangerous Drugs Act. Therefore, clear and convincing evidence of *'hulidap'* must be shown for such a defense to be given merit.

3. ID.; ID.; CREDIBILITY OF WITNESSES; COURT DEFERRED TO THE FACTUAL FINDINGS OF THE TRIAL COURT.— Finally, appellants impugn the credibility of the prosecution witnesses and claim that these witnesses' testimonies did not prove beyond reasonable doubt that appellants had indeed committed the crime. Time and again, this Court has deferred to the factual findings of the trial court, considering that it has the unique position of having observed the witnesses' deportment or demeanor on the stand, an opportunity denied to appellate courts.

4. CRIMINAL LAW; ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; ELEMENTS.— In a prosecution for illegal sale of regulated or prohibited drugs, conviction is proper if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the

prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In this case, the sale of the illegal substance was adequately established and the prosecution witnesses clearly identified both appellants as the offenders. Furthermore, the substance itself, was properly identified and presented before the court.

5. ID.; ID.; IMPOSABLE PENALTY.— Under Section 15 of Article III of Republic Act No. 6425, as amended by RA 7659, the sale of regulated drugs without proper authority is penalized with *reclusion perpetua* to death and a fine ranging from ₱500,000 to ₱10,000,000. Under Section 20 thereof, the penalty in Section 15, Article III shall be applied if the dangerous drug involved in the case is Methamphetamine Hydrochloride or *shabu* and the quantity of said substance is 200 grams or more. The rules on penalties in the Revised Penal Code have suppletory application to the Dangerous Drugs Act after the amendment of the latter by Republic Act No. 7659 on December 31, 1993. Since no mitigating nor aggravating circumstance attended appellants' violation of the law, and since the aggregate quantity of *shabu* seized from appellants was 389.2963 grams, we find that pursuant to Article 63 of the Revised Penal Code the trial court correctly imposed the penalty of *reclusion perpetua* and the fine of Eight Hundred Thousand Pesos (₱800,000).

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ledesma & Pajarito Law Offices for accused-appellants.

D E C I S I O N

AZCUNA, *J.*:

For review before this Court is the July 21, 2000 Decision[1] of the Regional Trial Court, Branch 16, Zamboanga City convicting herein appellants Zeng Hua Dian *a.k.a.* Chan Chang Hua Tian

[1] *Rollo*, pp. 27-84; Penned by Judge Jesus Carbon, Jr.

a.k.a. Bobong Chua and Yang Yan Giou *alias* Jackson Yu *a.k.a.* Jackson Yang for violation of Section 15, Article III of Republic Act 6425, otherwise known as the Dangerous Drugs Act, as amended by Republic Act 7659.

The Information, dated April 17, 1999, charged appellants as follows:

> That on or about the 16th day of April 1999, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named, both Chinese [n]ationals, not being authorized by law to sell, deliver, distribute, transport or give away to another any regulated drug, conspiring and confederating together, mutually aiding and assisting with one another, did then and there wil[l]fully, unlawfully, and feloniously, SELL and DELIVER to SPO2 SALIM SAHAJI *y* SAHIOL, a member of the PNP designated as Chief Clerk/ Operative of the Special Operation Group of the Presidential Anti-Organized Crime Task Force, who acted as buyer, eight (8) heat-sealed white plastic packs each containing white crystalline substance having a total weight of 389.2963 grams which when subjected to qualitative examination gave positive result to the tests for METHAMPHETAMINE HYDROCHLORIDE (*shabu*), both accused knowing the same to be a regulated drug.
>
> CONTRARY TO LAW.[2]

Appellants were arraigned on May 24, 1999.[3] They pleaded not guilty to the offense charged. After trial in due course, the lower court rendered its assailed Decision, the dispositive portion of which states:

> WHEREFORE, the Court finds accused ZENG HUA DIAN *alias* "*Chan Chang Hua Tian*" *a.k.a.* Bobong Chua and Joseph Chan and accused YANG YAN GIOU *alias* Jackson Yu, Jackson Yang, Yu Yang Giou, and Yang Yan Piao GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 15, Article III in relation to Section 20, Article IV of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and SENTENCES each of said accused to suffer the penalty of *RECLUSION PERPETUA*

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[2] *Rollo*, p. 9.

[3] Records, p. 26; assisted by counsel, Atty. Eduardo Ledesma.

and its accessory penalties, to pay a fine of EIGHT HUNDRED THOUSAND (₱800,000.00) PESOS each, and to pay the costs.

The 389.2963 grams of methamphetamine hydrochloride or *shabu* (Exhs. "E"; "E-1" to "E-7") confiscated from both accused are ordered to be turned over to the Dangerous Drugs Board thru the National Bureau of Investigation (NBI) in Zamboanga City, upon finality of this decision, for disposition in accordance with law.

The buy-bust money in the total amount of ₱2,000.00 ("G"; "G-1") shall be returned to the Presidential Anti-Organized Crime Task Force (*PAOCTF*), Mindanao II Area, Zamboanga City, after the finality of the decision.

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts, as follows:

On April 15, 1999, at around 11:15 a.m., P/Sr. Supt. Jihani Valdez Nani, Chief of the Presidential Anti-Organized Crime Task Force (PAOCTF), Mindanao II Area, summoned P/Supt. Ahmadul Tindin Pangambayan to his office. There, the latter was introduced to a civilian informant and briefed that two Chinese nationals were involved in the business of selling illegal drugs or *shabu* in Zamboanga City. A few minutes thereafter, P/Sr. Supt. Nani summoned another police officer, SPO2 Salim Sahiol Sahaji and also introduced him to the civilian informant. SPO2 Sahaji was then instructed to go to Platinum Pension House at Barcelona St., Zamboanga City, where the alleged drug dealers were reportedly based, and conduct a test-buy of initially ₱100 worth of *shabu*. If given the genuine substance, they would then make a deal to make a further purchase of ₱200,000 worth of *shabu*.

The next day, April 16, 1999, at around 9:55 a.m., SPO2 Sahaji and the civilian informant arrived at the aforesaid pension house. They proceeded to Room 304 and once there, the civilian informant introduced SPO2 Sahaji to the person who opened the door, a man named Bobong. He was later identified in open court as appellant Zeng Hua Dian. Another person was also in the room and he was introduced to SPO2 Sahaji as Jackson. This man was also later identified as appellant Yang Yan Giou.

SPO2 Sahaji made an initial purchase of ₱100 worth of shabu during that meeting. He handed the money to appellant Zeng and the latter took out five (5) decks of shabu from his pocket, gave one (1) deck to SPO2 Sahaji and returned the remaining four (4) inside his pocket. SPO2 Sahaji then told appellant Zeng that if the *shabu* was of good quality, he would buy up to ₱200,000 worth of the merchandise. Appellant Zeng replied that they may return by 5:30 p.m. that day and even showed to SPO2 Sahaji a key to a bodega where the *shabu* was purportedly kept. Thereafter, SPO2 Sahaji and the civilian informant left the pension house and returned to the police headquarters.

Upon their arrival at the police headquarters, SPO2 Sahaji and the civilian informant reported to P/Supt. Pangambayan and gave him the *shabu* worth ₱100 which they had bought earlier. P/Supt. Pangambayan inspected the *shabu* and handed it to another police officer, PO2 Arthur Valdez, for the requisite laboratory examination at the PNP Crime Laboratory. PO2 Valdez was the one who prepared the request for laboratory examination, which was signed by P/Sr. Supt. Nani.[4] The PNP Crime Laboratory Service Unit 9, Zamboanga City received the said request together with the specimen at around 11:20 a.m. that very same day. By 1:00 p.m., the laboratory submitted a report which revealed that the said specimen tested positive for Methamphetamine Hydrochloride or *shabu*.[5]

The buy-bust operation was immediately planned thereafter at around 4:30 p.m. with P/Supt. Pangambayan assigned as the over-all supervisor of the team. SPO2 Sahaji was designated to act again as the poseur-buyer. The other members of the team were SPO3 Warid Argueli, SPO2 Menting Arab, PO2 Jul-Anni Karimuddin, PO2 Jauhal Usman, and the civilian informant. They agreed that the civilian informant would step out of the room to signal that the sale of *shabu* had already been consummated. They also prepared the boodle money to be used for the buy-bust operation. Two bundles of bond paper

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[4] Request for Laboratory Examination dated April 16, 1999; Exhibit "A".

[5] Laboratory Report No. D-117-99; Exhibit "C".

cut into the size of money bills were placed inside a white envelope. On top of each bundle was a genuine ₱1,000 bill to be used as the marked buy-bust money. The two police officers, P/Supt. Pangambayan and SPO2 Sahaji, placed their initials and markings on the bills. After everybody had been briefed about the plan, they all proceeded to the Platinum Pension House to commence the operation.

Upon their arrival at the pension house, SPO2 Sahaji and the civilian informant proceeded directly to the room at the third floor where they planned to meet the drug dealers. P/Supt. Pangambayan positioned himself around five meters from the door of the room, near the stairs. The other members of the team took their positions in other areas of the pension house. The civilian informant then knocked on the door and it was opened by appellant Zeng who ushered them inside. Appellant Zeng was alone inside the room. SPO2 Sahaji asked about the *shabu*, but appellant Zeng asked that he be shown the money first. SPO2 Sahaji opened his leather bag and showed appellant Zeng the buy-bust money. The latter then used his cellular phone and spoke to somebody in Chinese. Afterwards, he then informed the two poseur-buyers that somebody will soon arrive with the merchandise. A few minutes later, there was a knock on the door and when appellant Zeng opened it, appellant Yang entered the room. SPO2 Sahaji saw that appellant Yang had a cellular phone in his hand. Then, appellant Yang took out four (4) plastic heat-sealed packs of transparent cellophane from the pockets of his pants and gave these packs to SPO2 Sahaji, who in turn inspected them. After the latter was satisfied that the packs indeed contained the illegal substance, *shabu*, he placed these packs in his bag. Appellant Yang again took out another four (4) plastic heat-sealed packs from his pockets and handed these packs to SPO2 Sahaji. Again, these packs were inspected by SPO2 Sahaji and placed inside his bag after he was satisfied that these packs contained *shabu*. SPO2 Sahaji then took out the marked money and immediately, the civilian informant left the room.

Right away, P/Supt. Pangambayan rushed into the room just when appellant Zeng had the buy-bust money in his hand. P/Supt. Pangambayan and SPO2 Sahaji identified themselves to the two appellants as police officers and ordered them to place all their belongings on the bed. SPO2 Sahaji confiscated all the items belonging to appellants. He also took the buy-bust money from appellants and the eight (8) packs of the merchandise alleged to be *shabu*. SPO2 Sahaji also searched the room, but did not find any bag or clothing belonging to appellants, who, meanwhile, were being informed by P/Supt. Pangambayan of their constitutional rights.

Appellants were brought to the PAOCTF office at around 6:20 p.m. and presented to P/Sr. Supt. Nani. All the confiscated items were inventoried by PO2 Valdez. He also prepared the complaint sheet against appellants that evening. SPO2 Sahaji and P/Supt. Pangambayan wrote some markings on the eight (8) packs of *shabu*. PO2 Valdez likewise wrote some markings on the said packs.

The next morning, PO2 Valdez prepared a request for laboratory examination of the contents of the eight (8) plastic heat-sealed packs. The PNP Crime Laboratory received the said request at 10:15 a.m. that day.[6] Later, at around 12:10 p.m., the laboratory submitted a report which revealed that the eight (8) heat-sealed packs containing some white crystalline substance tested positive for Methamphetamine Hydrochloride or *shabu*.[7] The laboratory report was made by P/Sr. Inspector and Forensic Chemist Mercedes Delfin Diestro.

Appellants, on the other hand, question the identification by the prosecution of the *shabu* allegedly seized during the buy-bust operation. In their Brief, appellants claim that the chain of custody of the seized *shabu* was broken and this, therefore, is detrimental to the prosecution's case. Appellants assert that other witnesses should have been presented by the prosecution

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[6] Request for Laboratory Examination dated April 17, 1999; Exhibit "D."

[7] Laboratory Report No. D-118-99; Exhibit "F."

to prove that the chain of custody of the evidence was not broken and that the *shabu* presented before the court was the same substance seized during the buy-bust operation. They question the non-presentation as witness of PO3 Alamia, the police officer on duty who received the specimen together with the request for laboratory examination from PO2 Valdez. They maintain that the specimen which PO3 Alamia turned over to P/Sr. Insp. Diestro, the forensic chemist, may no longer be the same specimen given to him by PO2 Valdez. They also question the non-presentation as witness of SPO1 Grafia, the evidence custodian. According to appellants, SPO1 Grafia should have been presented as witness since P/Sr. Insp. Diestro turned over the *shabu* to his custody after examining the same.

Appellants further claim that when the packs of *shabu* were already presented before the court, the prosecution witnesses failed to identify properly these packs as the very same ones seized during the buy-bust operation. They argue that SPO2 Sahaji's testimony identifying the *shabu* should not be given much credence. Allegedly, SPO2 Sahaji was not able to identify the marks he himself placed on the plastic packs. During his testimony, SPO2 Sahaji stated that he placed a mark using a pentel pen on the plastic packs which resembled the letter "W." However, when he was asked to point out these marks before the court, he had some difficulty finding the said marks since only blots of ink were found on the said packs.

After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

Furthermore, the prosecution had other witnesses who were able to prove sufficiently that the chain of custody of the *shabu*

was never broken from the time the police officers took the *shabu* from the possession of appellants up to the moment it was offered in evidence.

It was clearly proven that when SPO2 Sahaji and P/Supt. Pangambayan arrested appellants, they confiscated the *shabu*. SPO2 Sahaji placed the said *shabu* inside his brown leather bag. When they boarded the vehicle going to the PAOCTF office, SPO2 Sahaji was still in possession of the said bag. Upon their arrival at the PAOCTF office, the group immediately proceeded to the office of P/Sr. Supt. Nani. SPO2 Sahaji then placed all the confiscated articles on top of the table of P/Sr. Supt. Nani, who meanwhile had PO2 Valdez summoned. When PO2 Valdez entered the office, he was ordered by P/Sr. Supt. Nani to prepare a complaint sheet. Following the orders, PO2 Valdez made the complaint sheet and recorded therein not only the arrest of appellants but also the confiscated articles. While PO2 Valdez was writing down the articles, P/Supt. Pangambayan started placing his markings on the said articles, using as his mark the name he usually uses when he transmits messages over the radio. SPO2 Sahaji likewise placed his own mark on the confiscated items, using "S" which with his handwriting, looked like the letter "W." PO2 Valdez himself also marked the eight (8) plastic packs containing shabu with his initials "AV." After marking all the articles, PO2 Valdez then placed everything inside a bag and put the same inside his drawer. Before leaving the office, he locked the said drawer. The next day, April 17, 1999, PO2 Valdez arrived at around 8:00 a.m. and started preparing the request for laboratory examination. He himself submitted the said request for laboratory examination at 10:15 a.m. together with the eight (8) plastic packs of *shabu* to the PNP Crime Laboratory. These items were received by PO3 Alamia, the duty officer at that time, who immediately transmitted the items to the forensic chemist, P/Sr. Insp. Diestro. In her testimony, the latter stated that it is standard operating procedure for them to conduct an examination of the substance submitted to them the moment they receive the request. P/Sr. Insp. Diestro, therefore, lost no time in examining the substance and making

her report. She also wrote on the plastic packs her signature and the marks "*D-118-99*" and "*10:15 HRS, 17 April 1999*," the time and date when she examined the same. Thereafter, she turned these over to SPO1 Grafia, the evidence custodian of the PNP Crime Laboratory Regional Office 9. SPO1 Grafia placed the packs inside the evidence room, particularly in a box marked "*Dangerous Drugs Cases for the Year 1999*." Before P/Sr. Insp. Diestro went to the court to testify on this case, she requested for the substance from SPO1 Grafia from the evidence room.

As to appellants' allegation of the prosecution's failure to identify properly the substance in court as the same one seized from appellants, the trial court noted that SPO2 Sahaji was still able to identify his markings on the plastic packs, albeit with a little difficulty since the markings were almost no longer apparent. Moreover, the other persons who placed their own markings on the plastic packs, namely P/Supt. Pangambayan and PO3 Arthur Valdez, were still able to identify their own marks on the said plastic packs. It was proven, therefore, that the plastic packs of *shabu* presented before the court were the very same packs seized from appellants during the buy-bust operation.

Appellants' defense that they were victims of '*hulidap*' or a frame-up cannot be given any merit. It must once more be emphasized that such a defense is viewed with disfavor, for it can easily be concocted and is a common ploy by the accused in cases for violations of the Dangerous Drugs Act.[8] Therefore, clear and convincing evidence of '*hulidap*' must be shown for such a defense to be given merit.[9]

Finally, appellants impugn the credibility of the prosecution witnesses and claim that these witnesses' testimonies did not prove beyond reasonable doubt that appellants had indeed committed the crime. Time and again, this Court has deferred

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[8] *People v. Barita*, 325 SCRA 22 (2000) cited in *People v. Patayek*, G.R. No. 123076, March 26, 2003.

[9] *People v. Lacbanes*, 270 SCRA 193 (1997).

to the factual findings of the trial court, considering that it has the unique position of having observed the witnesses' deportment or demeanor on the stand, an opportunity denied to appellate courts.[10]

In a prosecution for illegal sale of regulated or prohibited drugs, conviction is proper if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[11] In this case, the sale of the illegal substance was adequately established and the prosecution witnesses clearly identified both appellants as the offenders. Furthermore, the substance itself, was properly identified and presented before the court.

Under Section 15 of Article III of Republic Act No. 6425, as amended by RA 7659, the sale of regulated drugs without proper authority is penalized with *reclusion perpetua* to death and a fine ranging from ₱500,000 to ₱10,000,000. Under Section 20 thereof, the penalty in Section 15, Article III shall be applied if the dangerous drug involved in the case is Methamphetamine Hydrochloride or *shabu* and the quantity of said substance is 200 grams or more.

The rules on penalties in the Revised Penal Code have suppletory application to the Dangerous Drugs Act after the amendment of the latter by Republic Act No. 7659 on December 31, 1993.[12] Since no mitigating nor aggravating circumstance

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[10] *People v. Guambos*, G.R. No. 152183, January 22, 2004 citing *People v. Sorongon*, G.R. No. 142416, February 11, 2003.

[11] *People v. Mala*, G.R. No. 152351, September 18, 2003.

[12] *People v. Corpuz*, G.R. No. 148919, December 17, 2002 citing *People v. Simon*, 234 SCRA 555 (1994) and *People v. Medina*, 292 SCRA 439 (1998).

attended appellants' violation of the law, and since the aggregate quantity of *shabu* seized from appellants was 389.2963 grams, we find that pursuant to Article 63 of the Revised Penal Code the trial court correctly imposed the penalty of *reclusion perpetua* and the fine of Eight Hundred Thousand Pesos (₱800,000).

WHEREFORE, the appealed Decision is hereby *AFFIRMED*. Costs against appellants.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban and *Carpio, JJ.,* concur.

Ynares-Santiago, J., is on leave.

SECOND DIVISION

[G.R. No. 156558. June 14, 2004]

GEORGE VINCOY,[1] *petitioner, vs.* **HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents*.

SYNOPSIS

For deceiving private complainants Rolando Flores and Lizah Cimafranca into parting with their ₱600,000.00 on the promise that he would provide them thirty (30) dumptrucks and two (2) payloaders, petitioner was charged, tried and convicted by the Regional Trial Court of Pasig City of the crime of estafa under Art. 315, par. 2(a) of the Revised Penal Code. On appeal, the Court of Appeals affirmed the decision of the trial court. Petitioner elevated the case before the Supreme Court *via* petition for review alleging that his guilt had not been proven

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[1] Petitioner's surname was mispelled "Vingcoy" by both the trial court and the Court of Appeals.

beyond reasonable doubt. He contended that his identity was not established since his pictures although presented and marked as exhibits were not included in the prosecution's formal offer of evidence; that the dismissal of the previous complaint filed against him before the City Prosecutor's Office of Pasay City supported his acquittal; that the trial court and the appellate court erred in concluding that he received payment from the private complainants.

Petitioner's contentions are not well taken. The fact that his pictures were not formally offered as evidence although they were presented and marked as exhibits, is not fatal to the prosecution's cause. There was no question as to petitioner's identity as the accused, as he himself admitted that he transacted with the private complainants although the transaction was cancelled for failure of the latter to pay the mobilization fund. This admission that he personally dealt with the private complainants in regard to the transaction in question rendered his identification a non-issue. Anent the second issue raised by the petitioner, the Court held that the dismissal of a similar complaint filed before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The dismissal of a case during its preliminary investigation does not constitute double jeopardy since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof. For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal. Hence, petitioner was properly charged before the Office of the City Prosecutor of Pasig City which is not bound by the determination made by the Pasay City Prosecutor who may have had before him a different or incomplete set of evidence than that subsequently presented before the Pasig City Prosecutor. Lastly, whether or not petitioner indeed received payment from private complainants is a question of fact best left to the determination of the trial court. The factual finding of the trial court, affirmed by the Court of Appeals, that petitioner indeed received payment from the private complainants in the form of the mobilization fund, deserves great weight and respect. In view of the foregoing, the Court denied the petition and affirmed the decision of the Court of Appeals.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF ACCUSED; FAILURE TO FORMALLY OFFER AS EVIDENCE THE PICTURES OF ACCUSED ALTHOUGH THEY WERE PRESENTED AND MARKED AS EXHIBITS IS NOT FATAL TO THE PROSECUTION'S CAUSE IN CASE AT BAR.—** The fact that petitioner's pictures were not formally offered as evidence although they were presented and marked as exhibits, is not fatal to the prosecution's cause. There is no question as to petitioner's identity as the accused. He himself admitted that he transacted with the private complainants although the transaction was cancelled for failure of complainants to pay the mobilization fund. This admission that he personally dealt with the complainants in regard to the transaction in question renders his identification a non-issue.

2. **ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, AFFIRMED BY THE COURT OF APPEALS, DESERVES GREAT WEIGHT AND RESPECT.—** Lastly, whether or not petitioner indeed received payment from private complainants is a question of fact best left to the determination of the trial court. The factual finding of the trial court, affirmed by the Court of Appeals, that petitioner indeed received payment from the private complainants in the form of the mobilization fund, deserves great weight and respect.

3. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DISMISSAL OF A CASE DURING ITS PRELIMINARY INVESTIGATION DOES NOT CONSTITUTE DOUBLE JEOPARDY; REASON.—** The dismissal of a similar complaint for *estafa* filed by Lizah Cimafranca before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The case cannot bar petitioner's prosecution. It is settled that the dismissal of a case during its preliminary investigation does not constitute double jeopardy since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof. For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal. Hence, petitioner

was properly charged before the Office of the City Prosecutor of Pasig City which is not bound by the determination made by the Pasay City Prosecutor who may have had before him a different or incomplete set of evidence than that subsequently presented before the Pasig City Prosecutor.

4. CRIMINAL LAW; ESTAFA; THE FACT THAT THE CHECK WAS NOT FORMALLY OFFERED AS EVIDENCE IS NOT FATAL TO THE PROSECUTION'S CAUSE IN CASE AT BAR.— Moreover, the fact that PCIBank Check No. 022170A for ₱715,000.00 was not presented and marked as an exhibit during the trial, hence, could not have been formally offered as evidence, is not fatal to the prosecution's cause. As well pointed out by the Office of the Solicitor General (OSG), petitioner was prosecuted not for issuing a worthless check, but for deceiving complainants into parting with their ₱600,000.00 on the promise that he would provide them dump trucks and payloaders.

APPEARANCES OF COUNSEL

Emilio G. Abrogena for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PUNO, *J.*:

This is a petition for review of the Decision dated December 20, 2002 of the Court of Appeals in CA-G.R. CR No. 24316[2] affirming that of the Regional Trial Court of Pasig, Branch 268, in Criminal Case No. 112432 finding petitioner George Vincoy guilty beyond reasonable doubt of *estafa* under Art. 315, par. 2(a) of the Revised Penal Code.

The Information reads:

On or about March 14, 1996, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, by means of deceit and false pretenses executed to or simultaneously with the commission

[2] Entitled "*People of the Philippines v. George Vingcoy*."

of the fraud, did, then and there willfully, unlawfully and feloniously defraud Lizah C. Cimafranca and Rolando Flores, in the following manner, to wit: the said accused represented that he could mobilize thirty (30) dump trucks and two (2) payloaders for use of the complainant[s] subject to the payment of ₱600,000.00 mobilization fund and, believing this representation to be true, the said complainants paid and delivered the said amount to the accused at Banco de Oro Bank, Pasig City Branch, which representation accused knew well to be false and fraudulent and were (*sic*) only made to induce the complainants to give and deliver as in fact they gave and delivered the said amount of ₱600,000.00 to the respondent (*sic*), and accused once in possession of said amount, misappropriated, misapplied and converted the same to his own personal use and benefit, to the damage and prejudice of the complainants, Lizah C. Cimafranca and Rolando Flores, in the amount of ₱600,000.00.

Pasig City, May 28, 1997.[3]

Petitioner pleaded not guilty to the charge. Hence, trial ensued.

The prosecution evidence established that private complainants Rolando Flores and Lizah Cimafranca are business partners and contractors. They approached petitioner George Vincoy, proprietor of Delco Industries Phils., Inc., in March 1996 for dump trucks and payloaders which they needed to haul silica in Bulacan. Petitioner represented that he could mobilize thirty (30) dump trucks and two (2) payloaders upon payment of a ₱600,000.00 mobilization fund by complainants at ₱20,000.00 per dump truck. Pursuant to their verbal agreement, private complainants paid an initial ₱200,000.00 cash to the petitioner on March 9 or 10, 1996 for which they were issued a receipt by the petitioner. To pay the balance of ₱400,000.00, complainant Rolando Flores, with the help of his wife Carolina, borrowed from a client of Banco de Oro, Pasig City Branch, of which his wife was the Manager. Carolina personally guaranteed the loan. For the purpose, Rolando bought a manager's check from Banco de Oro which issued to him Manager's Check No. 011543 for ₱400,000.00. On March 14, 1996, Rolando, Lizah, and petitioner went to the bank to encash the check. After Rolando encashed the check, Carolina Flores

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[3] Original Record, p. 1.

personally handed over the proceeds to petitioner. Petitioner issued Official Receipt No. 085 but wrote therein the amount of ₱600,000.00, not ₱400,000.00, to include the ₱200,000.00 which he previously received from the complainants. The previous receipt for the ₱200,000.00 was thus cancelled. Despite the payment, only one (1) dump truck was delivered in the evening of March 14, 1996. Private complainants demanded the return of their money but they were either ignored or refused entry at petitioner's office premises. After some time, petitioner offered to complainants PCIBank Check No. 022170A as reimbursement. The check was for ₱715,000.00 issued by one Luzviminda Hernandez payable to cash and/or to Delco Industries. It was understood that the difference would be turned over to petitioner. Eager to have their money back and pay their obligation to their creditor, private complainants accepted the check and returned Official Receipt No. 085 which petitioner requested. The check, however, was dishonored upon presentment for payment. Private complainants again demanded the return of their money but petitioner could no longer be contacted. As a result, Carolina Flores was terminated from her job as Manager of Banco de Oro, Pasig City Branch, for guaranteeing her husband's loan.

In May 1996, Lizah Cimafranca filed a complaint for *estafa* against petitioner with the Office of the City Prosecutor of Pasay City docketed as I.S. No. 96-1946. It was, however, dismissed in a Resolution dated August 21, 1996 on the ground that petitioner's obligation was purely civil in nature and for complainant's failure to attend the hearings.[4] On October 8, 1996, Lizah Cimafranca, joined by Rolando Flores, re-filed the complaint charging the same offense against petitioner with the Office of the City Prosecutor of Pasig City which filed the corresponding information in court, root of the present petition.

Petitioner denied that he received ₱600,000.00 from the private complainants. He alleged that he was only given a Banco de Oro Manager's Check for ₱400,000.00 which was not even

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[4] Exh. "8," Exhibit Folder for the Defense, p. 12.

issued in his name. Failing to notice that the check was not in his name, he issued Official Receipt No. 085[5] for ₱600,000.00, not ₱400,000.00, to include the overprice for complainants' commission in the amount of ₱200,000.00. When he noticed that the check was issued in the name of complainant Rolando Flores, he arranged for his driver to return the check to complainants for encashment and to take back O.R. No. 085. As a result, his transaction with the private complainants was cancelled because they did not turn over the proceeds of the check to him.

The trial court sustained the version of the prosecution. The trial judge found incredible petitioner's averment that he failed to notice that the check in question was not issued in his name. Petitioner was a seasoned businessman. A judgment of conviction was rendered on February 23, 2000, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court finds the accused GEORGE VINGCOY guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Art. 315 of the Revised Penal Code and hereby sentences him to suffer the penalty of imprisonment from fourteen (14) years, eight (8) months and one (1) day to twenty (20) years of *Reclusion Temporal* in its medium and maximum period (*sic*) and to indemnify the offended party in the amount of ₱600,000.00. With costs.
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> SO ORDERED.[6]

Accused appealed to the Court of Appeals to no avail.[7] Hence, this petition for review.

Petitioner insists that his guilt has not been proven beyond reasonable doubt. He contends that the trial court and the Court of Appeals erred in concluding that he received payment from the private complainants considering that Official Receipt No. 085 was admittedly returned to him and marked "cancelled"

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[5] Exh. "4" for the defense.

[6] Decision dated February 13, 2000; Original Record, pp. 118-124.

[7] Decision dated December 20, 2002 in CA-G.R. CR No. 24316.

while PCIBank Check No. 022170A for ₱715,000.00 was not presented and marked as an exhibit and was only surreptitiously included as Exh. "B" during the prosecution's formal offer of evidence. He also argues that his identity was not even established since his pictures,[8] although presented and marked as Exhs. "B," "B-1" and "B-2," were not included in the prosecution's formal offer of evidence. Further, he points out that the dismissal of the previous complaint for *estafa* filed by Lizah Cimafranca by the City Prosecutor's Office of Pasay City supports his acquittal.

Petitioner's contentions are not well-taken. The fact that his pictures were not formally offered as evidence although they were presented and marked as exhibits, is not fatal to the prosecution's cause. There is no question as to petitioner's identity as the accused. He himself admitted that he transacted with the private complainants although the transaction was cancelled for failure of complainants to pay the mobilization fund. This admission that he personally dealt with the complainants in regard to the transaction in question renders his identification a non-issue.

The dismissal of a similar complaint for *estafa* filed by Lizah Cimafranca before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The case cannot bar petitioner's prosecution. It is settled that the dismissal of a case during its preliminary investigation does not constitute double jeopardy[9] since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof.[10] For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal. Hence, petitioner was properly charged before the Office of the City Prosecutor of

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[8] Petitioner waived his right to be present during the prosecution's presentation of evidence and appeared only when it was his turn to testify.

[9] *Chua v. Court of Appeals*, 222 SCRA 85, 89 (1993) citing *People v. Medted*, 68 Phil 485 (1939).

[10] *Baytan v. Commission on Elections*, 396 SCRA 703, 710-711 (2003).

Pasig City which is not bound by the determination made by the Pasay City Prosecutor who may have had before him a different or incomplete set of evidence than that subsequently presented before the Pasig City Prosecutor.

Lastly, whether or not petitioner indeed received payment from private complainants is a question of fact best left to the determination of the trial court. We quote with approval the following observations of the trial court, *viz*:

x x x x x x x x x

That payment was indeed received by accused can not (*sic*) be denied as he himself issued a receipt to evidence such receipt of payment. The receipt, a xerox copy of which, was marked as evidence by accused (Exhibit "4") indicated that the payment, as explained by the witness Ms. Carolina Flores (TSN, May 7, 1998, pp. 18-20) was actually received in cash as the amount written in the receipt is ₱600,000.00 and not ₱400,000.00. That the number of the Managers (*sic*) check which was for ₱400,000.00 was written on the receipt by way of reference only. This Court gives full credence to the testimony of Ms. Flores who was eventually terminated from the bank where she worked by reason of her guaranteeing Mr. Flores' loan from a customer of the bank. It is clear that cash was actually paid out and the contention of the accused that he was only given a managers (*sic*) check which, according to him, he eventually returned can not (*sic*) be sustained. For why would he issue a receipt in his own handwriting if he did not receive the cash. The receipt is a unilateral admission of a party that he got paid. The receipt, as admitted by accused Mr. Vincoy was issued by him (TSN, May 7, 1999, pp. 7-8) when he received the cashiers (*sic*) check. That he had the cashiers (*sic*) check returned for encashment as it was not made payable to his company. Being a businessman, he would have immediately noticed the fact that the managers (*sic*) check was made out in the name of Rolando Flores and immediately returned the check without issuing a receipt or he could have issued a provisional receipt if indeed what was used as payment was a check. It is highly inconceivable that he would receive the check, issue a receipt then realize that the check is not made payable to his company. Furthermore, two different copies of the same receipts were presented. Prosecution presented a copy of Official Receipt 085 without the marking "cancelled" while accused presented a copy of the same Official Receipt with "cancelled" written on its face.

As testified to by complainant, he returned the original of the Official Receipt upon receipt of a check endorsed by accused. Thus it is not improbable that the word cancelled was written on said official receipt by the accused only upon its return to him. The testimonies of prosecution witnesses as to the cronology (*sic*) of events are more credible and is thus given more weight by this Court because mere denial of the accused can not prevail over the positive testimonies of the prosecution's witnesses. Moreover, private complainant clearly explained that accused came into possession of the original official receipt when accused Vingcoy endorsed and turned over to him a check made payable to cash and or Delco Industries by one Luzviminda Hernandez for ₱715,000.00. However, when said check was presented for payment it was dishonored for the reason "ACCOUNT CLOSED."

x x x x x x x x x

This factual finding of the trial court, affirmed by the Court of Appeals, that petitioner indeed received payment from the private complainants in the form of the mobilization fund, deserves great weight and respect.

Moreover, the fact that PCIBank Check No. 022170A for ₱715,000.00 was not presented and marked as an exhibit during the trial, hence, could not have been formally offered as evidence,[11] is not fatal to the prosecution's cause. As well pointed out by the Office of the Solicitor General (OSG), petitioner was prosecuted not for issuing a worthless check, but for deceiving complainants into parting with their ₱600,000.00 on the promise that he would provide them dump trucks and payloaders.

IN VIEW WHEREOF, the petition is *DENIED*. The questioned Decision dated December 20, 2002 of the Court of Appeals in CA-G.R. CR No. 24316 affirming that of the Regional Trial Court of Pasig, Branch 268, in Criminal Case No. 112432, is *AFFIRMED*.

SO ORDERED.

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

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[11] *People v. Santito, Jr.*, 201 SCRA 87, 95-96 (1991).

FIRST DIVISION

[G.R. No. 156580. June 14, 2004]

LUZ DU, *petitioner, vs.* **STRONGHOLD INSURANCE CO., INC.,** *respondent*.

SYNOPSIS

Petitioner assailed before the Court of Appeals the decision of the Regional Trial Court denying her prayer for the cancellation of Transfer Certificate of Title No. 6444 in the name of respondent with damages. In the assailed decision, the trial court ruled that the respondent had superior rights over the property because of the prior registration of the latter's notice of levy on attachment on Transfer Certificate of Title (TCT) No. 2200. For this reason, it found no basis to nullify TCT No. 6444, which was issued in the name of respondent after the latter had purchased the property in a public auction. Petitioner claimed priority rights over the property by virtue of her Notice of *Lis Pendens* under Entry No. 13305 and inscribed on January 3, 1991, and the final and executory decision in Civil Case No. 60319. According to petitioner, despite the annotation of her said notice of *lis pendens*, respondent still proceeded with the execution of the decision in Civil Case No. 90-1848 against the subject lot and ultimately the issuance of Transfer Certificate of Title No. 6444 in the name of the respondent. The Court of Appeals, however, sustained the trial court *in toto*. Hence, this Petition.

In denying the petition, the Supreme Court held that preference is given to a duly registered attachment over a subsequent notice of *lis pendens*, even if the beneficiary of the notice acquired the subject property before the registration of the attachment. Under the Torrens system, the auction sale of an attached realty retroacts to the date the levy was registered. As the property in this case was covered by the Torrens system, the registration of respondent's attachment was the operative act that give validity to the transfer and created a lien upon the land in favor of the respondent. The preference given to a duly registered levy on attachment is not diminished even by the subsequent registration of the prior sale. Moreover, a notice of *lis pendens*

with respect to a disputed property is intended merely to inform third persons that any of their transactions in connection therewith – if entered into subsequent to the notation – would be subject to the result of the suit.

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; WHEN DULY ANNOTATED ON A CERTIFICATE OF TITLE IS SUPERIOR TO THE RIGHT OF A PRIOR BUT UNREGISTERED BUYER.—** The preference given to a duly registered levy on attachment or execution over a prior unregistered sale is well-settled in our jurisdiction. As early as *Gomez v. Levy Hermanos*, this Court has held that an attachment that is duly annotated on a certificate of title is superior to the right of a prior but unregistered buyer. In that case, the Court explained as follows: "x x x. It is true that she bought the lots with *pacto de retro* but the fact of her purchase was not noted on the certificates of title until long after the attachment and its inscription on the certificates. In the registry, therefore, the attachment appeared in the nature of a real lien when Apolonia Gomez had her purchase recorded. The legal effect of the notation of said lien was to subject and subordinate the right of Apolonia Gomez, as purchaser, to the lien. She acquired the ownership of the said parcels only from the date of the recording of her title in the register, which took place on November 21, 1932 (Sec. 51 of Act No. 496; *Liong-Wong-Shih vs. Sunico and Peterson*, 8 Phil. 91; *Tabigue vs. Green*, 11 Phil. 102; *Buzon vs. Lucauco*, 13 Phil. 354; and *Worcester vs. Ocampo and Ocampo*, 34 Phil. 646), and the right of ownership which she inscribed was not an absolute but a limited right, subject to a prior registered lien, by virtue of which Levy Hermanos, Inc. was entitled to the execution of the judgment credit over the lands in question, a right which is preferred and superior to that of the plaintiff (Sec. 51, Act No. 496 and decisions cited above). x x x"

2. **ID.; ID.; ID.; ID.; SUBSEQUENT SALE OF THE PROPERTY TO THE ATTACHING CREDITOR RETROACTS TO THE DATE OF THE LEVY.—** Indeed, the subsequent sale of the property to the attaching creditor must, of necessity, retroact to the date of the levy. Otherwise, the preference created by the levy would

be meaningless and illusory, as reiterated in *Defensor v. Brillo*: "x x x. The doctrine is well-settled that a levy on execution duly registered takes preference over a prior unregistered sale; and that even if the prior sale is subsequently registered before the sale in execution but after the levy was duly made, the validity of the execution sale should be maintained, because it retroacts to the date of the levy; otherwise, the preference created by the levy would be meaningless and illusory. "Even assuming, therefore, that the entry of appellants' sales in the books of the Register of Deeds on November 5, 1949 operated to convey the lands to them even without the corresponding entry in the owner's duplicate titles, *the levy on execution on the same lots in Civil Case No. 1182 on August 3, 1949, and their subsequent sale to appellee Brillo (which retroacts to the date of the levy) still takes precedence over and must be preferred to appellants' deeds of sale which were registered only on November 5, 1949*. "This result is a necessary consequence of the fact that the properties herein involved were duly registered under Act No. 496, and of the fundamental principle that registration is the operative act that conveys and binds lands covered by Torrens titles (Sections 50, 51, Act 496). Hence, if appellants became owners of the properties in question by virtue of the recording of the conveyances in their favor, their title arose already subject to the levy in favor of the appellee, which had been noted ahead in the records of the Register of Deeds."

3. ID.; ID.; ID.; ID.; ID.; REGISTRATION OF ATTACHMENT IS THE OPERATIVE ACT THAT GIVES VALIDITY TO THE TRANSFER AND CREATES A LIEN UPON THE LAND.— The Court has steadfastly adhered to the governing principle set forth in Sections 51 and 52 of Presidential Decree No. 1529: x x x. As the property in this case was covered by the torrens system, the registration of Stronghold's attachment was the operative act that gave validity to the transfer and created a lien upon the land in favor of respondent.

4. ID.; ID.; ID.; ID.; ID.; PREFERENCE CREATED BY THE LEVY ON ATTACHMENT IS NOT DIMINISHED BY THE SUBSEQUENT REGISTRATION OF THE PRIOR SALE; RULING IN *CAPISTRANO* CASE (101 PHIL. 1117, 1120) APPLICABLE TO CASE AT BAR.— The preference created by the levy on attachment is not diminished even by the

subsequent registration of the prior sale. That was the import of *Capistrano v. PNB,* which held that precedence should be given to a levy on attachment or execution, whose registration was *before* that of the prior sale. In *Capistrano,* the sale of the land in question — though made as far back as 1946 — was registered only in 1953, after the property had already been subjected to a levy on execution by the Philippine National Bank. The present case is not much different. The stipulation of facts shows that Stronghold had already registered its levy on attachment before petitioner annotated her notice of *lis pendens*. As in *Capistrano*, she invokes the alleged superior right of a prior unregistered buyer to overcome respondent's lien. If either the third-party claim or the subsequent registration of the prior sale was insufficient to defeat the previously registered attachment lien, as ruled by the Court in *Capistrano,* it follows that a notice of *lis pendens* is likewise insufficient for the same purpose. Such notice does not establish a lien or an encumbrance on the property affected. As the name suggests, a notice of *lis pendens* with respect to a disputed property is intended merely to inform third persons that any of their transactions in connection therewith — if entered into subsequent to the notation — would be subject to the result of the suit.

5. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; A PERSON DEALING WITH REGISTERED PROPERTY MAY RELY ON THE TITLE AND BE CHARGED WITH NOTICE OF ONLY SUCH BURDENS AND CLAIMS AS ARE ANNOTATED THEREON; IT IS ONLY AFTER THE NOTICE OF *LIS PENDENS* IS INSCRIBED IN THE OFFICE OF THE REGISTER OF DEEDS THAT PURCHASERS OF THE PROPERTY BECOME BOUND BY THE JUDGMENT IN THE CASE.— We now tackle the next question of petitioner: whether Stronghold was a purchaser in good faith. Suffice it to say that when Stronghold registered its notice of attachment, it did not know that the land being attached had been sold to petitioner. It had no such knowledge precisely because the sale, unlike the attachment, had not been registered. It is settled that a person dealing with registered property may rely on the title and be charged with notice of only such burdens and claims as are annotated thereon. This principle applies with more force

to this case, absent any allegation or proof that Stronghold had actual knowledge of the sale to petitioner before the registration of its attachment. Thus, the annotation of respondent's notice of attachment was a registration in good faith, the kind that made its prior right enforceable. Moreover, it is only after the notice of *lis pendens* is inscribed in the Office of the Register of Deeds that purchasers of the property become bound by the judgment in the case. As Stronghold is deemed to have acquired the property — not at the time of actual purchase but at the time of the attachment — it was an innocent purchaser for value and in good faith.

APPEARANCES OF COUNSEL

Benjamin A. Moraleda, Jr. for petitioner.
Ricardo L. Saclayan for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

Preference is given to a duly registered attachment over a subsequent notice of *lis pendens*, even if the beneficiary of the notice acquired the subject property before the registration of the attachment. Under the torrens system, the auction sale of an attached realty retroacts to the date the levy was registered.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the March 19, 2002 Decision[2] and the December 5, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 50884. The CA disposed as follows:

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[1] *Rollo*, pp. 8-21.

[2] *Id.*, pp. 22-28. Penned by Justice Conrado M. Vasquez Jr. (Tenth Division chair) and concurred in by Justices Andres B. Reyes Jr. and Amelita G. Tolentino (members).

[3] *Id.*, p. 30.

"Parenthetically, when the decision in Civil Case No. 90-1848 became final and executory, levy on execution issued and the attached property sold at public auction, the latter retroacts to the date of the levy. Said the High Court:

> 'In line with the same principle, it was held that where a preliminary attachment in favor of 'A' was recorded on November 11, 1932, and the private sale of the attached property in favor of 'B' was executed on May 29, 1933, the attachment lien has priority over the private sale, which means that the purchaser took the property subject to such attachment lien and to all of its consequences, one of which is the subsequent sale on execution (*Tambao v. Suy*, 52 Phil. 237). *The auction sale being a necessary sequel to the levy, it enjoys the same preference as the attachment lien enjoys over the private sale. In other words, the auction sale retroacts to the date of the levy. [Were] the rule be otherwise, the preference enjoyed by the levy of execution would be meaningless and illusory* (*Capistrano v. Phil. Nat. Bank*, 101 Phil. 1117).' (Italics supplied)

"By and large, We find no reversible error in the appealed decision.

"IN VIEW OF ALL THE FOREGOING, the instant appeal is ordered *DISMISSED*. No pronouncement as to cost."[4]

The questioned Resolution, on the other hand, denied petitioner's Motion for Reconsideration.

The Facts

The CA narrated the facts as follows:

"x x x Aurora Olarte de Leon was the registered owner of Lot No. 10-A (LRC Psd 336366) per Transfer Certificate of Title No. 582/T-3. Sometime in January 1989, De Leon sold the property to Luz Du under a 'Conditional Deed of Sale' wherein said vendee paid a down payment of ₱75,000.00 leaving a balance of ₱95,000.00.

"Then again, on April 28, 1989, Aurora de Leon sold [the] same property to spouses Enrique and Rosita Caliwag without prior notice

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[4] CA Decision, pp. 6-7; *rollo*, pp. 27-28.

to Luz Du. As a result, Transfer Certificate of Title No. 582/T-3 was cancelled and Transfer Certificate of Title No. 2200 was issued in favor of the Caliwag spouses.

"Meanwhile, Stronghold Insurance Corp., Inc. x x x commenced Civil Case No. 90-1848 against spouses Rosita and Enrique Caliwag *et al.*, for allegedly defrauding *Stronghold* and misappropriating the company's fund by falsifying and simulating purchases of documentary stamps. The action was accompanied by a prayer for a writ of preliminary attachment duly annotated at the back of Transfer Certificate of Title No. 2200 on August 7, 1990.

"On her part, on December 21, 1990, Luz Du initiated Civil Case No. 60319 against Aurora de Leon and the spouses Caliwag for the annulment of the sale by De Leon in favor of the Caliwags, anchored on the earlier mentioned Deed of Conditional Sale.

"On January 3, 1991, Luz Du caused the annotation of a Notice Of *Lis Pendens* at the back of Transfer Certificate of Title No. 2200.

"On February 11, 1991, the decision was handed down in Civil Case No. 90-1848 in favor of *Stronghold*, ordering the spouses Caliwag jointly and severally to pay the plaintiff ₱8,691,681.60, among others. When the decision became final and executory, on March 12, 1991, a notice of levy on execution was annotated on Transfer Certificate of Title No. 2200 and the attached property was sold in a public auction. On [August] 5, 1991,[5] the certificate of sale and the final Deed of Sale in favor of *Stronghold* were inscribed and annotated leading to the cancellation of Transfer Certificate of Title No. 2200 and in lieu thereof, Transfer Certificate of Title No. 6444 was issued in the name of *Stronghold*.

"It came to pass that on August 5, 1992, Luz Du too was able to secure a favorable judgment in Civil Case No. 60319 and which became final and executory sometime in 1993, as well.

"Under the above historical backdrop, Luz Du commenced the present case (docketed as Civil Case No. 64645) to cancel Transfer Certificate of Title No. 6444 in the name of *Stronghold* with damages claiming priority rights over the property by virtue of her Notice Of *Lis Pendens* under Entry No. 13305 and inscribed on January 3, 1991, and the final and executory decision in Civil Case No. 60319

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[5] TCT No. 2200, records, p. 8.

she filed against spouses Enrique and Rosita Caliwag. According to Luz Du, despite her said notice of *lis pendens* annotated, *Stronghold* still proceeded with the execution of the decision in Civil Case No. 90-1848 against the subject lot and ultimately the issuance of Transfer Certificate of Title No. 6444 in its (*Stronghold's*) name."[6]

The trial court ruled that Stronghold had superior rights over the property because of the prior registration of the latter's notice of levy on attachment on Transfer Certificate of Title (TCT) No. 2200. For this reason, it found no basis to nullify TCT No. 6444, which was issued in the name of respondent after the latter had purchased the property in a public auction.

Ruling of the Court of Appeals

Sustaining the trial court *in toto*, the CA held that Stronghold's notice of levy on attachment had been registered almost five (5) months *before* petitioner's notice of *lis pendens*. Hence, respondent enjoyed priority in time. Such registration, the appellate court added, constituted constructive notice to petitioner and all third persons from the time of Stronghold's entry, as provided under the Land Registration Act — now the Property Registration Decree.

The CA also held that respondent was a purchaser in good faith. The necessary sequels of execution and sale retroacted to the time when Stronghold registered its notice of levy on attachment, at a time when there was nothing on TCT No. 2200 that would show any defect in the title or any adverse claim over the property.

Hence, this Petition.[7]

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[6] CA Decision, pp. 1-3; *rollo*, pp. 22-24. Boldface in the original.

[7] The case was deemed submitted for decision on October 3, 2003, upon the Court's receipt of respondent's Memorandum, signed by Atty. Ricardo L. Saclayan of Gascon, Rellora & Associates. Petitioner's Memorandum, signed by Atty. Benjamin A. Moraleda Jr., was received on September 4, 2003.

Issues

Petitioner submits the following issues for our consideration:

"I.

Whether a Notice of Levy on Attachment on the property is a superior lien over that of the unregistered right of a buyer of a property in possession pursuant to a Deed of Conditional Sale.

"II.

"Whether the acquisition of the subject property by Respondent Stronghold was tainted with bad faith."[8]

The Court's Ruling

The Petition has no merit.

Main Issue:

Superiority of Rights

Petitioner submits that her unregistered right over the property by way of a *prior* conditional sale in 1989 enjoys preference over the lien of Stronghold — a lien that was created by the registration of respondent's levy on attachment in 1990. Maintaining that the ruling in *Capistrano v. PNB* was improperly applied by the Court of Appeals, petitioner avers that unlike the circumstances in that case, the property herein had been sold to her *before* the levy. We do not agree.

The preference given to a duly registered levy on attachment or execution over a prior unregistered sale is well-settled in our jurisdiction. As early as *Gomez v. Levy Hermanos*,[9] this Court has held that an attachment that is duly annotated on a certificate of title is superior to the right of a prior but unregistered buyer. In that case, the Court explained as follows:

"x x x It is true that she bought the lots with *pacto de retro* but the fact of her purchase was not noted on the certificates of title

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[8] Petitioner's Memorandum, p. 6; *rollo*, p. 55.

[9] 67 Phil. 134, April 3, 1939.

until long after the attachment and its inscription on the certificates. In the registry, therefore, the attachment appeared in the nature of a real lien when Apolonia Gomez had her purchase recorded. The legal effect of the notation of said lien was to subject and subordinate the right of Apolonia Gomez, as purchaser, to the lien. She acquired the ownership of the said parcels only from the date of the recording of her title in the register, which took place on November 21, 1932 (Sec. 51 of Act No. 496; *Liong-Wong-Shih vs. Sunico and Peterson*, 8 Phil. 91; *Tabigue vs. Green*, 11 Phil. 102; *Buzon vs. Lucauco*, 13 Phil. 354; and *Worcester vs. Ocampo and Ocampo*, 34 Phil. 646), and the right of ownership which she inscribed was not an absolute but a limited right, subject to a prior registered lien, by virtue of which Levy Hermanos, Inc. was entitled to the execution of the judgment credit over the lands in question, a right which is preferred and superior to that of the plaintiff (Sec. 51, Act No. 496 and decisions cited above) x x x"[10]

Indeed, the subsequent sale of the property to the attaching creditor must, of necessity, retroact to the date of the levy. Otherwise, the preference created by the levy would be meaningless and illusory, as reiterated in *Defensor v. Brillo*:[11]

"x x x The doctrine is well-settled that a levy on execution duly registered takes preference over a prior unregistered sale; and that even if the prior sale is subsequently registered before the sale in execution but after the levy was duly made, the validity of the execution sale should be maintained, because it retroacts to the date of the levy; otherwise, the preference created by the levy would be meaningless and illusory.

"Even assuming, therefore, that the entry of appellants' sales in the books of the Register of Deeds on November 5, 1949 operated to convey the lands to them even without the corresponding entry in the owner's duplicate titles, *the levy on execution on the same lots in Civil Case No. 1182 on August 3, 1949, and their subsequent sale to appellee Brillo (which retroacts to the date of the levy) still takes precedence over and must be preferred to appellants' deeds of sale which were registered only on November 5, 1949.*

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[10] *Id.*, p. 137, per Concepcion, *J.*

[11] 98 Phil. 427, February 21, 1956.

"This result is a necessary consequence of the fact that the properties herein involved were duly registered under Act No. 496, and of the fundamental principle that registration is the operative act that conveys and binds lands covered by Torrens titles (Sections 50, 51, Act 496). Hence, if appellants became owners of the properties in question by virtue of the recording of the conveyances in their favor, their title arose already subject to the levy in favor of the appellee, which had been noted ahead in the records of the Register of Deeds."[12] (Citations omitted, italics supplied)

The Court has steadfastly adhered to the governing principle set forth in Sections 51 and 52 of Presidential Decree No. 1529:[13]

"SEC. 51. *Conveyance and other dealings by registered owner*. — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration.

"The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or the city where the land lies.

"SEC. 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province

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[12] *Defensor v. Brillo, supra*, pp. 429-430, per Reyes, *J*.

[13] Otherwise known as the Property Registration Decree. The above-quoted Sections were §§50 and 51 of Act No. 496 or the Land Registration Act. See *Lavides v. Pre*, 419 Phil. 665, 671-672, October 17, 2001; *Sajonas v. CA*, 258 SCRA 79, 91, July 5, 1996; *Calalang v. Register of Deeds of Quezon City*, 231 SCRA 88, 103, March 11, 1994; *Landig v. US Commercial Co*., 89 Phil. 638, 642, July 31, 1951.

or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering."(Italics supplied)

As the property in this case was covered by the torrens system, the registration of Stronghold's attachment[14] was the operative act that gave validity to the transfer and created a lien upon the land in favor of respondent.[15]

***Capistrano* Ruling Correctly Applied**

The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale.[16] That was the import of *Capistrano v. PNB*,[17] which held that precedence should be given to a levy on attachment or execution, whose registration was *before* that of the prior sale.

In *Capistrano*, the sale of the land in question — though made as far back as 1946 — was registered only in 1953, after the property had already been subjected to a levy on execution by the Philippine National Bank. The present case is not much different. The stipulation of facts shows that Stronghold had already registered its levy on attachment before petitioner annotated her notice of *lis pendens*. As in *Capistrano*, she

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[14] The lien or security obtained by attachment — even before judgment — is a fixed and positive security, the existence of which is no way contingent, conditional, or inchoate. (*BF Homes, Inc. v. CA*, 190 SCRA 262, 272, October 3, 1990; citing *Ching Liu & Co. v. Mercado*, 67 Phil. 409, 413, April 13, 1939). It ripens into a judgment against the *res* when the order of sale is made. (*Republic v. Saludares*, 384 Phil. 192, 204, March 9, 2000).

[15] See also *Vargas v. Tancioco*, 67 Phil. 308, 311, April 12, 1939; *Landig v. US Commercial Co., supra*.

[16] *Lavides v. Pre, supra*, p. 672 (citing *Defensor v. Brillo, supra*; and *Gomez v. Levy Hermanos, Inc., supra*).

[17] 101 Phil. 1117, 1120, August 30, 1957. The same ruling — over competing claims of a third-party claimant and the attaching creditor/purchaser — was made earlier in *Vargas v. Tancioco, supra*.

invokes the alleged superior right of a prior unregistered buyer to overcome respondent's lien.

If either the third-party claim or the subsequent registration of the prior sale was insufficient to defeat the previously registered attachment lien, as ruled by the Court in *Capistrano*, it follows that a notice of *lis pendens* is likewise insufficient for the same purpose. Such notice does not establish a lien or an encumbrance on the property affected.[18] As the name suggests, a notice of *lis pendens* with respect to a disputed property is intended merely to inform third persons that any of their transactions in connection therewith — if entered into subsequent to the notation — would be subject to the result of the suit.

In view of the foregoing, the CA correctly applied *Capistrano*, as follows:

"x x x the rule now followed is that if the attachment or levy of execution, though posterior to the sale, is registered before the sale is registered, it takes precedence over the latter.

"The rule is not altered by the fact that at the time of the execution sale the Philippine National Bank had information that the land levied upon had already been deeded by the judgment debtor and his wife to Capistrano. The auction sale being a necessary sequel to the levy, for this was effected precisely to carry out the sale, the purchase made by the bank at said auction should enjoy the same legal priority that the levy had over the sale in favor of plaintiff. In other words, the auction sale retroacts to the date of the levy. Were the rule otherwise, the preference enjoyed by the levy of execution in a case like the present would be meaningless and illusory."[19] (Citations omitted, italics supplied)

Second Issue:

Taking in Bad Faith

We now tackle the next question of petitioner: whether Stronghold was a purchaser in good faith. Suffice it to say that

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[18] *Legarda v. CA*, 345 Phil. 890, 903, October 16, 1997.

[19] *Capistrano v. PNB, supra*, p. 1120, per Reyes, *J.*

when Stronghold registered its notice of attachment, it did not know that the land being attached had been sold to petitioner. It had no such knowledge precisely because the sale, unlike the attachment, had not been registered. It is settled that a person dealing with registered property may rely on the title and be charged with notice of only such burdens and claims as are annotated thereon.[20] This principle applies with more force to this case, absent any allegation or proof that Stronghold had actual knowledge of the sale to petitioner before the registration of its attachment.

Thus, the annotation of respondent's notice of attachment was a registration in good faith, the kind that made its prior right enforceable.[21]

Moreover, it is only after the notice of *lis pendens* is inscribed in the Office of the Register of Deeds that purchasers of the property become bound by the judgment in the case. As Stronghold is deemed to have acquired the property — not at the time of actual purchase but at the time of the attachment — it was an innocent purchaser for value and in good faith.

WHEREFORE, the Petition is *DENIED*, and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[20] *Legarda v. CA, supra,* p. 903; *Sandoval v. CA*, 260 SCRA 283, 295, August 1, 1996; *Sajonas v. CA, supra*.

[21] *Cheng v. Genato,* 360 Phil. 891, 911, December 29, 1998.

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Custodial rights — A suspect's confession when taken without the assistance of counsel without a valid waiver of such assistance regardless of the absence of coercion, or the fact that it had been voluntarily given is inadmissible in evidence, even if such confession were the gospel truth; case at bar. (People *vs*. Ador, G.R. Nos. 140538-39, June 14, 2004) p. 669

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Right to be presumed innocent — Doctrine that no woman would claim that she was sexually abused, allow an examination of her private parts, and go through the humiliation of a trial had she not indeed been raped, does not itself overcome the right of the accused to be presumed innocent until proven otherwise; case at bar. (People *vs*. Ramirez, Jr., G.R. Nos. 150079-80, June 10, 2004) p. 631

Right to counsel — Accused not deprived thereof where he was not subjected to a custodial investigation when he was identified by witnesses in a police line-up without counsel. (People *vs*. Dagpin, G.R. No. 149560, June 10, 2004) p. 610

Right to counsel and duty of a lawyer for an accused — Construed. (People *vs*. Beriber, G.R. No. 151198, June 8, 2004) p. 251

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Credibility — Assessment thereof by the trial court will not be disturbed by the appellate court; exception; not present in case at bar. (People *vs*. Escote, G.R. No. 151834, June 8, 2004) p. 268

— Bare testimony without sufficient physical evidence, the latter must be upheld. (People *vs*. Reforma, G.R. No. 133440, June 7, 2004) p. 7

— Court deferred to the factual findings of the trial court. (People *vs*. Zeng Hua Dian, G.R. No. 145348, June 14, 2004) p. 700

— Entitled to full faith and credit when not actuated by improper motive; case at bar. (People *vs*. Escote, G.R. No. 151834, June 8, 2004) p. 268

— Findings of the trial court thereon entitled to the highest degree of respect and will not be disturbed on appeal. (People *vs*. Dagpin, G.R. No. 149560, June 10, 2004) p. 610

(People *vs*. Masagnay, G.R. No. 137364, June 10, 2004) p. 525

(People *vs*. Werba, G.R. No. 144599, June 9, 2004) p. 426

(People *vs*. Oga, G.R. No. 152302, June 8, 2004) p. 278

(People *vs*. Reforma, G.R. No. 133440, June 7, 2004) p. 7

— Not affected by discrepancies between the affidavit of the witness and his testimony in court. (Teodosio *vs*. CA, G.R. No. 124346, June 8, 2004) p. 80

— Not affect by inconsistencies and discrepancies on minor and trivial matters. (People *vs*. SPO1 Yamuta, G.R. No. 133006, June 9, 2004) p. 376

(People *vs*. Comadre, G.R. No. 153559, June 8, 2004) p. 293

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