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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 5554. June 29, 2004]

LUIS DE GUZMAN, represented by his son Rodrigo C. de Guzman, *complainant, vs.* **ATTY. EMMANUEL M. BASA,** *respondent*.

SYNOPSIS

Luis de Guzman filed with the Integrated Bar of the Philippines a complaint for disbarment against Atty. Emmanuel M. Basa for having committed "misrepresentation and gross negligence in his duties as counsel." He claimed that he lost his case before the Court of Appeals and the Supreme Court, not on the merits, but due to technicality caused by respondents' dereliction of his duty as counsel. In his answer, respondent admitted some material facts, thus, during the hearing of this case, the parties agreed to submit the case for resolution on the basis of the pleadings and other documents filed. Thereafter, Commissioner Tyrone R. Cimafranca submitted his report with the finding that respondent was negligent in the performance of his professional duty to his client and recommended that he be reprimanded. The said report was adopted and approved by the IBP Board of Governor.

The Court ruled that respondent's dereliction of duty amounted to gross misconduct. Certainly, he misused the judicial processes and abused the trust and confidence reposed upon him by complainant. We have consistently held that a lawyer should never neglect a legal matter entrusted to him, otherwise his negligence in fulfilling his duty subjects him to

disciplinary action. Respondent was reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. We have been exacting in our expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public. Accordingly, respondent was suspended from the practice of law for six (6) months.

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYER–CLIENT RELATIONSHIP; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. —** Canon 18 of the Code of Professional Responsibility provides that "A lawyer shall serve his client with competence and diligence." Rule 18.03 of the same Canon mandates that "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." Also, Rule 12.03, Canon 12 of the same Code requires that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so." In his lawyer's sacred oath, respondent imposed upon himself the duty, among others, that he "will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients, x x x ."

2. **ID.; ID.; ID.; ID.; LAWYER'S EXCUSE THAT HIS ILLNESS CAUSED THE DELAY IN FILING THE APPELLANT'S BRIEF IS FLIMSY AND DESERVES NO CONSIDERATION. —** [R]espondent admitted that he did not seasonably file with the Court of Appeals the required appellant's brief in CA-G.R. CV No. 49928 resulting in the dismissal of the complainant's appeal. Despite several extensions to file the appellant's brief, respondent failed to do so. Instead, he filed two more motions for extension. While he eventually filed the appellant's brief, however, it was late, being beyond the last extension granted by the Appellate Court. His excuse that his illness caused such delay is flimsy and deserves no

consideration. A motion for extension of time to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the same within the period granted.

3. **ID.; ID.; ID.; WHERE A CLIENT GIVES MONEY TO HIS LAWYER FOR A SPECIFIC PURPOSE, UPON FAILURE TO TAKE SUCH STEP AND SPEND THE MONEY FOR IT, THE LAWYER SHOULD IMMEDIATELY RETURN THE MONEY TO HIS CLIENT. —** [D]espite receipt from complainant the sum of ₱5,000.00 for the filing of a petition for *certiorari* with the Court of Appeals, respondent did not file the same. Thus, he should have returned the amount to complainant who, incidentally, is now deceased. In *Lothar Schulz vs. Atty. Marcelo G. Flores,* we held that where a client gives money to his lawyer for a specific purpose, such as to file an action or appeal an adverse judgment, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client. Respondent's unjustified withholding of complainant's money is a gross violation of the general morality and professional ethics warranting the imposition of disciplinary action.

4. **ID.; DISBARMENT AND DISCIPLINE OF LAWYERS; GROSS MISCONDUCT; ELUCIDATED. —** In *Spouses Jeneline Donato and Mario Donato vs. Atty. Isaiah B. Asuncion Sr.*, we explained the concept of gross misconduct as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent.

5. **ID.; ID.; ID.; LAWYER'S DERELICTION OF DUTY, A CASE OF. —** Respondent's dereliction of duty amounts to gross misconduct. Certainly, he misused the judicial processes and abused the trust and confidence reposed upon him by complainant. We have consistently held that a lawyer should never neglect a legal matter entrusted to him, otherwise his negligence in fulfilling his duty subjects him to disciplinary action. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. We have been exacting

in our expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.

6. ID.; ID.; ID.; ID.; PENALTY. — For violating Rule 12.03, Canon 12, and Rule 18.03, Canon 18 of the Code of Professional Responsibility, which constitutes gross misconduct, as well as his lawyer's oath, he should be suspended from the practice of law for six (6) months.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

When a lawyer accepts to handle a case, whether for a fee or *gratis et amore*, he undertakes to give his utmost attention, skill and competence to it, regardless of its significance. Thus, his client, whether rich or poor, has the right to expect that he will discharge his duties diligently and exert his best efforts, learning and ability to prosecute or defend his (client's) cause with reasonable dispatch. Failure to fulfill his duties will subject him to grave administrative liability as a member of the Bar. For the overriding need to maintain the faith and confidence of the people in the legal profession demands that an erring lawyer should be sanctioned.

On August 14, 2000, Luis de Guzman, represented by his son Rodrigo C. de Guzman, filed with the Integrated Bar of the Philippines (IBP) a complaint against Atty. Emmanuel M. Basa for disbarment for having committed "misrepresentation and gross negligence in his duties as counsel."

The complaint, docketed as CBD Case No. 00-756, alleges that complainant was the defendant in Civil Case No. 535-M-90 for rescission and recovery of possession of two lots and damages filed by Roxas Realty Corporation with the Regional Trial Court (RTC), Branch XI, Malolos, Bulacan. His counsel was Atty. Emmanuel M. Basa, herein respondent.

On September 2, 1992, the RTC issued an Order adverse to complainant. Desiring to challenge the Order through a petition for *certiorari* before the Court of Appeals, he agreed to pay

respondent ₱15,000.00 for his legal services. Thereupon, respondent collected and received from complainant a down payment of ₱5,000.00.[1] However, no such petition was filed by respondent, in violation of their agreement.

On September 20, 1994, the RTC rendered its Decision in Civil Case No. 535-M-90 against complainant. He filed a motion for reconsideration but was denied in an Order dated December 28, 1994.[2]

Complainant, through respondent, appealed the RTC Decision to the Court of Appeals, docketed as CA-G.R. CV No. 49928. Respondent then filed successively three motions for extension of time to submit the appellant's brief, or a total of 135 days from March 11, 1996 until July 25, 1996. The motions were granted, but with a warning that no further extension would be allowed.[3]

Notwithstanding the Court of Appeals' warning, respondent still failed to file the appellant's brief. Instead, he filed two more motions for extension on July 24, 1996 and August 3, 1996, or a total of 15 days.

Expectedly, the Court of Appeals, in its Resolution dated September 17, 1996, denied respondent's motions and "ordered the appellant's brief filed on August 8, 1996 expunged from the records."[4] Respondent then filed a motion for reconsideration. In a Resolution dated November 29, 1996,[5] the Appellate Court denied his motion and dismissed the appeal.

Consequently, complainant, through respondent, filed with this Court a petition for review on *certiorari* assailing the Court of Appeals' Resolutions of September 17, 1996 and November 29, 1996, docketed as G.R. No. 127190.

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[1] Annex "A" (retainership agreement dated January 10, 1993), *Rollo* at 6.

[2] Annex "D", *Rollo* at 20.

[3] See Annex "E" (Court of Appeals' Resolution dated September 17, 1996), *Rollo* at 23.

[4] *Id*.

[5] Annex "E" (should be Annex "F"), *Rollo* at 21.

However, this Court, in a Resolution dated February 26, 1997, dismissed complainant's petition for his failure to submit a certification of non-forum shopping *duly executed by him*.

Respondent rectified the error by filing with this Court a motion for reconsideration, attaching thereto the required certification signed by the complainant himself. Still, the motion was denied on the ground that the Court of Appeals did not commit any reversible error in dismissing complainant's appeal.[6]

On September 19, 1997, the dismissal of complainant's petition in G.R. No. 127190 became final and executory.[7]

Complainant claims that he "lost his case before the Court of Appeals and this Court, not on the merits, but due to technicality caused by respondent's dereliction of his duty as counsel."[8] "In effect," he adds, "it totally dissipated his quest for justice and thereby deprived him of all the remedies that may be availed of."[9] Complainant thus prayed that respondent be disbarred or suspended from the practice of law.

In his answer to the complaint before the IBP, respondent *admitted* the following material facts: (1) he received from complainant ₱5,000.00 as expenses to be incurred in filing the petition for *certiorari* with the Court of Appeals; (2) he was granted by the Court of Appeals in CA-G.R. CV No. 49928 three extensions of time to file the appellant's brief, but he filed it beyond the extended period due to his illness, resulting in the dismissal of his appeal; and (3) he signed the certification of non-forum shopping attached to the petition for review filed with this Court in G.R. No. 127190 because complainant was ill.[10] Respondent thus prayed that the complaint be dismissed.[11]

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[6] *Rollo* at 3, 88.

[7] Entry of Judgment, *id*.

[8] Complaint, *Rollo* at 4.

[9] *Id*. at 3.

[10] Memorandum, *Rollo* at 86.

[11] Answer, *Rollo* at 28, 30-31.

During the scheduled hearing of the instant case before the IBP, the parties agreed to submit it for resolution on the basis of the pleadings and other documents filed.

In its Report dated March 7, 2001,[12] the IBP Commission on Bar Discipline (CBD), through Commissioner Tyrone R. Cimafranca, found respondent negligent in the performance of his professional duty to his client, herein complainant, and recommended that:

"1. The respondent be *REPRIMANDED* and *warned* that any similar or other complaint in the future for breach of his professional duties will be dealt with more severely; and

2. To *return* to the complainant, within fifteen (15) days from notice of the order, *the collected amount of P5,000.00***."**

Commissioner Cimafranca's Report was adopted and approved by the IBP Board of Governors in its Resolution No. XV-2001-259 dated October 27, 2001.[13]

The IBP then forwarded the records of CBD Case No. 00-756 to this Court.

Canon 18 of the Code of Professional Responsibility provides that "A lawyer shall serve his client with competence and diligence." Rule 18.03 of the same Canon mandates that "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

Also, Rule 12.03, Canon 12 of the same Code requires that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

In his lawyer's sacred oath, respondent imposed upon himself the duty, among others, that he "will delay no man for money or malice, and will conduct myself as a lawyer according to the

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[12] *Rollo* at 121-128.

[13] *Id.* at 120.

best of my knowledge and discretion with all good fidelity as well to the courts as to my clients, xxx"

We sustain the IBP Board of Governor's finding that respondent was negligent in the performance of his professional duty towards complainant. Clearly, he violated the above Canons[14] and his lawyer's oath.

Firstly, respondent admitted that he did not seasonably file with the Court of Appeals the required appellant's brief in CA-G.R. CV No. 49928 resulting in the dismissal of the complainant's appeal. Despite several extensions to file the appellant's brief, respondent failed to do so. Instead, he filed two more motions for extension. While he eventually filed the appellant's brief, however, it was late, being beyond the last extension granted by the Appellate Court. His excuse that his illness caused such delay is flimsy and deserves no consideration. A motion for extension of time to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the same within the period granted. As aptly stated in the IBP-CBD Report:

"Respondent failed to show in his Answer and other pleadings that he exercised that degree of competence and diligence required of him in prosecuting particularly the appeal of his client (now complainant) which resulted in its dismissal. If respondent really believed that his physical condition was the cause why he was not able to submit the requisite appellant's brief seasonably, resulting in its being expunged from the record, he should have excused himself from the case. A lawyer may withdraw his services when his mental or physical condition renders it difficult for him to carry out the employment effectively (see Rule 22.01(d), Canon 22, Code of Professional Responsibility). That could have spared him and complainant from the 'undue strictness' shown by the Honorable Court of Appeals which expunged from the record the belated appellant's brief that he filed in the case."[15]

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[14] *Eduardo T. Abay vs. Atty. Raul T. Montesino*, A.C. No. 5718, December 4, 2003; *Arsenia Begornia vs. Atty. Arsenio Merrera*, A.C. No. 5024, February 20, 2003, 398 SCRA 1.

[15] *Rollo* at 126-127.

Secondly, respondent's contention that he signed the certification of non-forum shopping in the petition for review in G.R. No. 127190 because the complainant was ill lacks merit. We quote with approval the IBP-CBD's finding on this matter, thus:

"Furthermore, respondent failed to show that he exercised that degree of competence and diligence required of him in prosecuting the appeal of complainant when he himself signed (instead of complainant) the certification of non-forum shopping, resulting in the dismissal of the petition for review on *certiorari*. He should know, as all lawyers are presumed to know, that it should be the petitioner (not the counsel) who should sign the certification of non-forum shopping in the petition. The explanation offered to justify such non-compliance — that complainant was too old, weak and ill to sign the said certification — is too flimsy and, therefore, untenable. If in the motion for reconsideration that he (respondent) subsequently filed, he was able to submit a certification duly signed by complainant, there is no reason why it could not be submitted earlier at the time that the petition for review on *certiorari* was filed."[16]

Thirdly, despite receipt from complainant the sum of ₱5,000.00 for the filing of a petition for certiorari with the Court of Appeals, respondent did not file the same. Thus, he should have returned the amount to complainant who, incidentally, is now deceased.[17] In *Lothar Schulz vs. Atty. Marcelo G. Flores*,[18] we held that where a client gives money to his lawyer for a specific purpose, such as to file an action or appeal an adverse judgment, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client. Respondent's unjustified withholding of complainant's money is a gross violation of the general morality and professional ethics warranting the imposition of disciplinary action.[19] Again, as correctly found by the IBP-CBD:

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[16] *Id.* at 127.

[17] See *Rollo* at 131.

[18] A.C. No. 4219, December 8, 2003.

[19] *Lothar Schulz vs. Atty. Marcelo G. Flores, id.,* citing *Sencio vs. Atty. Roberto Calvadores*, A.C. No. 5841, January 20, 2003; *Reyes vs. Maglaya*, 243 SCRA 214, 219 (1995).

"The undersigned likewise finds respondent's failure to file a petition for *certiorari* despite having collected the initial amount of ₱5,000.00 for attorney's fees reprehensible. There is no doubt whatsoever that in the contract dated January 10, 1993 (Annex 'A', complaint) respondent committed to file said petition for complainant. His explanation as to why he failed to do so is gratuitous. It should not even be given any probative value as it would tend to violate the parol evidence rule.

A lawyer may be disciplined for refusing to return to his client what he collected as payment for his professional services which he never rendered (see *Espere vs. Santos*, 96 Phil. 987)."[20]

Under Section 27, Rule 138 of the Revised Rules of Court, this Court may disbar or suspend a lawyer for committing any gross misconduct specified therein, thus:

"SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, *or other gross misconduct in such office*, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, *or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court*, or for corruptly or willfully appearing as an attorney for a party in a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice." (Italics supplied)

In *Spouses Jeneline Donato and Mario Donato vs. Atty. Isaiah B. Asuncion, Sr.*,[21] we explained the concept of gross misconduct as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional purpose.

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[20] *Rollo* at 127-128.

[21] A.C. No. 4914, March 3, 2004, citing *SPO2 Jose B. Yap vs. Judge Aquilino A. Inopiquez, Jr.*, A.M. No. MTJ-02-1431, May 9, 2003.

The term, however, does not necessarily imply corruption or criminal intent.

To our mind, respondent's dereliction of duty amounts to gross misconduct. Certainly, he misused the judicial processes and abused the trust and confidence reposed upon him by complainant. We have consistently held that a lawyer should never neglect a legal matter entrusted to him, otherwise his negligence in fulfilling his duty subjects him to disciplinary action.[22] Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.[23] We have been exacting in our expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.[24]

Hence, we cannot sustain the IBP Board of Governors' recommendation that respondent should only be reprimanded. For violating Rule 12.03, Canon 12, and Rule 18.03, Canon 18 of the Code of Professional Responsibility, which constitutes gross misconduct, as well as his lawyer's oath, he should be suspended from the practice of law for six (6) months.[25]

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[22] *Luthgarda F. Fernandez vs. Atty. Fidel M. Cabrera II*, A.C. No. 5623, December 11, 2003, citing *Perea vs. Atty. Almadro*, A.C. No. 5246, March 20, 2003.

[23] *Re: Administrative Case No. 44 of the Regional Trial Court, Branch IV, Tagbilaran City, against Atty. Samuel C. Occeña*, A.C. No. 2841, July 3, 2002, 383 SCRA 636.

[24] *Milagros N. Aldovino, et al. vs. Atty. Pedro C. Pujalte, Jr.*, A.C. No. 5082, February 9, 2004; *Honorio Manalang, et al. vs. Atty. Francisco F. Angeles*, A.C. No. 1558, March 10, 2003; *Maligsa vs. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408.

[25] Pursuant to our rulings in *Spouses Jeneline Donato and Mario Donato vs. Atty. Isaiah B. Asuncion, Sr.*, A.C. No. 4914, March 3, 2004; *Lothar Schulz vs. Atty. Marcelo G. Flores, supra; Eduardo T. Abay vs. Atty. Raul T. Montesino, supra;* and *Arsenia T. Bergonia vs. Atty. Arsenio A. Merrera, supra.*

WHEREFORE, respondent Atty. Emmanuel M. Basa is hereby found guilty of gross misconduct in violation of Canons 12 and 18 of the Code of Professional Responsibility and his lawyer's oath. He is *SUSPENDED* from the practice of law for **six (6) months** effective from notice and is *WARNED* that any similar infraction in the future will be dealt with more severely. He is further ordered to *RETURN*, within five (5) days, also from notice, the sum of ₱5,000.00 directly to the heirs of complainant and submit to this Court the proof of his compliance within three (3) days therefrom.

A copy of this Decision shall be entered in the record of respondent as a member of the Bar. Further, let copies of this Decision be served on the IBP as well as the Court Administrator, who is directed to circulate these to all the courts in the country for their information and guidance.

SO ORDERED.

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

Vitug, J., on official leave.

EN BANC

[G.R. No. 114231. June 29, 2004]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **NELIA A. BARLIS, in her capacity as Officer-in-Charge/Acting Municipal Treasurer of Muntinlupa, substituting EDUARDO A. ALON, former Municipal Treasurer of Muntinlupa, Metro Manila,** *respondent*.

SYNOPSIS

This is the motion for reconsideration of the February 1, 2002 Resolution of the Court that reversed its findings in its May 18, 2001 Decision as it ruled that the petitioner was not served with any notice of assessment as required by law, and that the respondent's Letters dated September 6, 1985 and October 31, 1983 were collection letters, receipt of which was denied by the petitioner. The Court, thus, held that there was a need to remand the case to the lower court in order to resolve the factual issue of whether or not the respondent, indeed, served a notice of assessment on the petitioner. The Court, however, also ruled that there was no longer a need to remand the case to the trial court.

The Court held that there is a need to remand the case for further proceedings, in order for the trial court to resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on the petitioner, and, if in the affirmative, when the petitioner received the same; and to resolve the other issues raised by the parties in their pleadings. It bears stressing that the Court is not a trier of facts. The Court set aside its decision dated May 18, 2001, gave due course to and granted the petition, and reversed and set aside the assailed decision of the Court of Appeals.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; SECOND MOTION FOR RECONSIDERATION OF A JUDGMENT OR FINAL RESOLUTION IS PROHIBITED. —** Section 1, Rule 52 of the Rules of Court, provides that a motion for reconsideration of a decision may be filed within fifteen days from notice thereof. Under Section 10, Rule 51, if no appeal or motion for new trial or reconsideration is filed within the time provided in the Rules, the judgment shall forthwith be entered by the clerk in the book of entries of judgments. Section 2, Rule 52 further provides that *no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained*.

2. **ID.; ID.; ID.; ID.; EXPLAINED. —** Indeed, in *Ortigas and Company Limited Partnership vs. Velasco*, we held that a

second motion for reconsideration of a decision or a final order is prohibited, except for extraordinarily persuasive reasons and only upon express leave first obtained. We explained, thus: …The propriety or acceptability of such a second motion for reconsideration is not contingent upon the averment of "*new*" *grounds* to assail the judgment, *i.e.*, grounds other than those theretofore presented and rejected. Otherwise, attainment of finality of a judgment might be staved off indefinitely, depending on the party's ingeniousness or cleverness in conceiving and formulating "additional flaws" or "newly discovered errors" therein, or thinking up some injury or prejudice to the rights of the movant for reconsideration. "Piece-meal" impugnation of a judgment by successive motions for reconsideration is anathema, being precluded by the salutary axiom that a party seeking the setting aside of a judgment, act or proceeding must set out in his motion all the grounds therefor, and those not so included are deemed waived and cease to be available for subsequent motions. For all litigation must come to an end at some point, in accordance with established rules of procedure and jurisprudence. As a matter of practice and policy, courts must dispose of every case as promptly as possible; and in fulfillment of their role in the administration of justice, they should brook no delay in the termination of cases by stratagems or maneuverings of parties or their lawyers...

3. ID.; ID.; ID.; SECOND MOTION FOR RECONSIDERATION WAS ALLOWED SINCE THE SUPERVENING FINDINGS OF THE COURT ARE INCONSISTENT WITH ITS RULING. — In light of the supervening findings of this Court in its February 1, 2002 Resolution which are inconsistent with its ruling in its May 18, 2001 Decision, and the disposition of the petition on its merits, the Court now rules that the petitioner had the right to file a motion for reconsideration thereon. Consequently, the entry of judgment made of record on March 6, 2002 was premature and inefficacious, and should be recalled.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MERE ABUSE OF DISCRETION IS NOT ENOUGH. — In *People vs. Court of Appeals, et al.*, this Court ruled that 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.

5. ID.; ID.; ID.; LIMITED TO RESOLVING ERRORS OF JURISDICTION ONLY. — In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by writ 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*. *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*.

6. TAXATION; PRESIDENTIAL DECREE NO. 464 (REAL PROPERTY TAX CODE); PROVINCIAL, CITY OR MUNICIPAL ASSESSOR IS TASKED TO DETERMINE THE ASSESSED VALUE OF THE PROPERTY. — Section 22 of P.D. No. 464 states that, upon discovery of real property, the provincial, city or municipal assessor shall make an appraisal and assessment of such real property in accordance with Section 5 of the law, *irrespective of any previous assessment or taxpayer's valuation thereon.* The provincial, city or municipal assessor is tasked to determine the *assessed value of the property*, meaning the value placed on taxable property for *ad valorem* tax purposes. The assessed value multiplied by the tax rate will produce the amount of tax due. It is synonymous to taxable value.

7. ID.; ID.; AN ASSESSMENT FIXES AND DETERMINES THE TAX LIABILITY OF A TAXPAYER. — An assessment fixes and determines the tax liability of a taxpayer. It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. The assessor is mandated under

Section 27 of the law to give written notice within thirty days of such assessment, to the person in whose name the property is declared. The notice should indicate the kind of property being assessed, its actual use and market value, the assessment level and the assessed value. The notice may be delivered either personally to such person or to the occupant in possession, if any, or by mail, to the last known address of the person to be served, or through the assistance of the barrio captain. The issuance of a notice of assessment by the local assessor shall be his last action on a particular assessment. For purposes of giving effect to such assessment, it is deemed made when the notice is released, mailed or sent to the taxpayer. As soon as the notice is duly served, an obligation arises on the part of the taxpayer to pay the amount assessed and demanded.

8. ID.; ID.; ACTION TO COLLECT THE TAXES DUE IS AKIN TO AN ACTION TO ENFORCE A JUDGMENT. — If the taxpayer is not satisfied with the action of the local assessor in the assessment of his property, he has the right, under Section 30 of P.D. No. 464, to appeal to the Local Board of Assessment Appeals by filing a verified petition within sixty (60) days from service of said notice of assessment. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due becomes absolute upon the expiration of such period, with respect to the taxpayer's property. The action to collect the taxes due is akin to an action to enforce a judgment. It bears stressing, however, that *Section 30 of P.D. No. 464 pertains to the assessment and valuation of the property for purposes of real estate taxation. Such provision does not apply where what is questioned is the imposition of the tax assessed and who should shoulder the burden of the tax*.

9. ID.; ID.; DUTY OF THE LOCAL TREASURER TO COLLECT THE TAXES COMMENCES FROM THE TIME THE TAXPAYER FAILS OR REFUSES TO PAY THE TAXES DUE. — The duty of the local treasurer to collect the taxes commences from the time the taxpayer fails or refuses to pay the taxes due, following the latter's failure to question the assessment in the Local Board of Assessment Appeals and/or to the Central Board of Assessment Appeals. This, in turn, renders the assessment of the local assessor final, executory and demandable, thus, precluding the taxpayer from disputing

the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits.

10. ID.; CIVIL PROCEDURE; APPEAL; SUPREME COURT IS NOT A TRIER OF FACTS. — The Court further rules that there is a need to remand the case for further proceedings, in order for the trial court to resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on the petitioner, and, if in the affirmative, when the petitioner received the same; and to resolve the other issues raised by the parties in their pleadings. It bears stressing that the Court is not a trier of facts.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres & Ibarra for petitioner.
Eliseo B. Alampay for respondents.

R E S O L U T I O N

CALLEJO, SR., *J.*:

For the Court's Resolution is petitioner Manila Electric Company's (MERALCO) "Motion for Leave to File Motion for Reconsideration," filed on June 2, 2002 and the attached Motion for Reconsideration of the Resolution of this Court dated April 15, 2002, denying its second motion for reconsideration and ordering that entry of judgment be made in due course,[1] as well as its motion for reconsideration dated March 19, 2002.

To preface, the above-entitled petition was an off-shoot of the following antecedents:

From 1968 to 1972, petitioner MERALCO, a duly-organized corporation in the Philippines engaged in the distribution of electricity, erected four (4) power generating plants in Sucat, Muntinlupa, namely, the Gardner I, Gardner II, Snyder I and Snyder II stations. To equip the power plants, various machineries and equipment were purchased both locally and abroad. When

[1] *Rollo,* p. 512.

the Real Property Tax Code took effect on June 1, 1974, MERALCO filed its tax declarations covering the Sucat power plants, including the buildings thereon as well as the machineries and equipment.[2] In 1976, the Provincial Assessor found that the market value of the machineries amounted to ₱41,660,220.00, and its assessed value at ₱33,328,380.00. Later, in 1978, the Municipal Assessor assessed the value of the machineries and equipment at ₱36,974,610.00. From 1975 to 1978, MERALCO paid the real property taxes on the said properties on the basis of their assessed value as stated in its tax declarations.

On December 29, 1978, MERALCO sold all the power-generating plants including the landsite to the National Power Corporation (NAPOCOR), a corporation fully owned and controlled by the Philippine government.

In 1985, the Municipal Assessor of Muntinlupa, while reviewing records pertaining to assessment and collection of real property taxes, discovered, among others, that MERALCO, for the period beginning January 1, 1976 to December 29, 1978, *misdeclared and/or failed to declare for taxation purposes a number of real properties* consisting of several equipment and machineries found in the said power plants. A review of the Deed of Sale which MERALCO executed in favor of NAPOCOR when it sold the power plants to the latter convinced the municipal government of Muntinlupa that the true value of the machineries and equipment was misdeclared/undeclared. The Municipal Assessor of Muntinlupa, on his own, then determined and assessed the value[3] of the subject properties for taxation purposes from

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[2] *Id*. at 64-71.

[3] SEC. 22. *Valuation of Real Property*. — Upon the discovery of real property or during the general revision of property assessments as provided in Section twenty-two of this Code or at any time when requested by the person in whose name the property is declared, the provincial or city assessor or his authorized deputy shall make an appraisal and assessment in accordance with Section five hereof of the real property listed and described in the declaration irrespective of any previous assessment or taxpayer's valuation thereon: *Provided, however*, That the assessment of real property shall not be increased oftener than once every five years in the absence of new improvements increasing the value of said property or of any change in its use, except as otherwise provided in this Code.

1977 to 1978 under Tax Declarations Nos. T-009-05486 to T-05506, *viz*:

TAX DECL.	ASSESSED VALUE
B-009-05495	₱ 68,208,610.00 (1977-1978)
B-009-0496	₱ 62,524,550.00 (1978)
B-009-05486	₱ 102,088,300.00 (1978)
B-009-05490	₱ 79,881,420.00 (1977-1978)
B-009-05491	₱ 74,555,990.00 (1978)
B-009-05494	₱ 73,892,660.00 (1976-1978)
B-009-05501	₱ 86,874,490.00 (1976-1978)
B-009-05502	₱ 81,082,860.00 (1977-1978)
B-009-05503	₱ 75,291,220.00 (1978)[4]

The matter of collection of the tax due and the enforcement of the remedies provided for in Presidential Decree No. 464 was then referred to the Municipal Treasurer, conformably to Section 57 thereof.[5]

Thereafter, on September 3, 1986, the Municipal Treasurer of Muntinlupa issued three notices to MERALCO, requesting it to pay the full amount of the claimed deficiency in the real property taxes covering the machinery and equipment found in the said power plants.[6] He warned the taxpayer that its properties

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[4] CA *Rollo*, p. 8.

[5] SEC. 57. *Collection of tax to be the responsibility of treasurers.*— The collection of the real property tax and all penalties accruing thereto, and the enforcement of the remedies provided for in this Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality where the property is situated.

[6] *Rollo*, pp. 267-269.

could be sold at public auction unless the tax due was paid. Still, MERALCO did not pay the assessed tax, nor take steps to question the tax assessed as contained in the said notices. The Municipality of Muntinlupa then sought the assistance of the Bureau of Local Government Finance-Department of Finance (BLGF-DOF) for the collection of the tax due from MERALCO.

On August 14, 1989, the BLGF-DOF issued a Letter-Indorsement[7] declaring that the properties of MERALCO were not used in a new and preferred industry, hence, taxable from 1976 up to but not beyond December 31, 1978, the year the properties were acquired by NAPOCOR. The municipal treasurer was directed, in the same letter, to inform the BLGF-DPF of any recent action taken by MERALCO on the collection letter dated September 3, 1986. On the basis thereof, the Municipal Treasurer of Muntinlupa, in a Letter[8] dated October 31, 1989, reminded MERALCO of its deficiency tax liability, demanded the immediate payment of the amount of ₱36,432,001.97 as unpaid real property taxes inclusive of penalties and accrued interest, and reiterated its warning that its properties may be sold at public auction if it failed to pay the taxes due. Subsequently, the Municipality of Muntinlupa, through its Municipal Treasurer, sent MERALCO another Letter[9] dated November 20, 1989, reiterating its previous demands for tax payment. Attached to the latter was the computation of the taxes due. Still, no payment was made.

Accordingly, after issuing the requisite certification of non-payment of real property taxes and complying with the additional requirement of public posting of the notices of delinquency, the Municipal Treasurer issued, on October 4, 1990, Warrants of Garnishment[10] ordering the attachment of MERALCO's bank deposits with the Philippine Commercial and Industrial Bank

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[7] *Id*. at 270-271.

[8] *Id*. at 272-273.

[9] *Id*. at 274.

[10] *Id*. at 276-278.

(PCIB), Metropolitan Bank and Trust Company (METROBANK) and the Bank of the Philippine Islands (BPI) to the extent of its unpaid real property taxes.

On October 10, 1990, MERALCO filed before the Regional Trial Court (RTC) of Makati a Petition for Prohibition with Prayer for Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order (TRO) praying, among others, that a TRO be issued to enjoin the Municipal Treasurer of Muntinlupa from enforcing the warrants of garnishment. The petitioner therein alleged, *inter alia*, that it had paid the real property taxes on its properties from 1975 to 1978 in full, based on the assessed value thereof, as well as the taxes on the machineries and equipment, based on their appraisal value as determined by the Provincial Assessor. According to the petitioner, the collection letters of the municipal assessor for real property taxes amounting to ₱36,432,001.97 was made arbitrarily and without legal authority, for the following reasons: (a) in times of rising cost, especially of imported machinery and equipment such as those installed at the Sucat Power Plants, the prices of articles several years after their acquisition would be very much higher; (b) the respondent could not levy additional real estate taxes without a prior re-appraisal of the property and an amendment of the tax declaration; and, (c) assuming *arguendo* that there was such a re-appraisal made, and a new tax declaration issued, such re-appraisal should operate prospectively and not retroactively as was done in this case.[11] According to the petitioner, the respondent had no authority to distrain its personal property not found in the real property subject of the delinquent real estate taxes, the authority of respondent being limited to those found in the real property subject of the delinquent real estate taxes.[12] The petitioner further averred that real estate tax is a tax on real property; as such, any tax delinquency on property should follow the present owner, in this case, the National Power Corporation.

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[11] RTC Records, p. 4.

[12] Citing Sec. 68, Real Property Tax Code.

The petitioner further claimed that the alleged delinquent real estate taxes claimed by respondent as shown in the annex to the Notice of Garnishment,[13] were arrived at by taxing the same property twice, and, in one case, even three times; by evaluating the property based on the selling price of the machineries and equipment rather than the actual acquisition cost; by taxing, as undeclared machineries, items that were already declared by the petitioner in 1974; and, by including the value of the land and other tax-exempt property in the computation of the alleged deficiency tax. Even assuming that it was liable for the real property tax delinquency, the petitioner asserted that the collection of the said amount had already prescribed.

The petitioner later filed an Amended Petition alleging as follows:

> 12. To further pursue his unjustified aims, respondent issued *three Warrants of Garnishment a*gainst petitioner's bank deposits with the Philippine Commercial International Bank, *Metropolitan Bank and Trust Company, and Bank of the Philippine Islands* which required the said Banks to turn over to petitioner all the garnished amount, copies of which are attached hereto as Annexes *"E", "F", and "G"*.[14]

The trial court issued a TRO which, after the hearing on the injunctive aspect of the case, was modified to the effect that the warrants of garnishment against the bank accounts would be in full force and effect, provided that the Municipal Treasurer would not, in the meantime, collect, receive or withdraw the frozen bank deposits. MERALCO was also allowed therein to withdraw from the frozen deposits, provided that it would not leave a balance less than the tax claim of the Municipality of Muntinlupa.

For its part, the Municipal Treasurer filed a Motion to Dismiss[15] on the following grounds: (a) lack of jurisdiction, since under

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[13] Annex "E", Records, pp. 217-218.

[14] Records, pp. 54-55.

[15] CA *Rollo*, pp. 73-80.

Sec. 64 of the Real Property Tax Code, courts are prohibited from entertaining any suit assailing the validity of a tax assessed thereunder until the taxpayer shall have paid, under protest, the tax assessed against him; and (b) lack of cause of action, by reason of MERALCO's failure to question the notice of assessment issued to it by the Municipality of Muntinlupa before the Local Board of Assessment Appeals. MERALCO opposed the motion, contending that it was the NAPOCOR that was liable for the taxes being collected by the Municipal Treasurer, and that the right to collect such taxes had already prescribed under Section 25 of P.D. No. 464.

In its June 17, 1991 Order, the trial court denied the said motion, ratiocinating that since MERALCO was not the present owner or possessor of the properties in question, it was not the "taxpayer" contemplated under Section 64 of the Tax Code:

> After careful examination of the grounds and arguments of the motion to dismiss and the opposition thereto, the Court is of the view that the petitioner in this case, the Manila Electric Company, is not the "taxpayer" contemplated under Section 64 of the Tax Code. For as rightly argued by the petitioner, the tax due on the property constitutes a lien thereto which lien shall be enforceable against the property whether in the possession of the delinquent or any subsequent owner or possessor. In the case at bar, it is undisputed that the present owner or the possessor of the property in question is not the petitioner Manila Electric Company but the National Power Corporation.[16]

The trial court no longer delved into and resolved the issue of whether the petitioner's action was premature.

On a Petition for *Certiorari* filed before the Supreme Court, later endorsed to the Court of Appeals,[17] the Municipal Treasurer of Muntinlupa assailed the June 17, 1991 Order of the RTC alleging that MERALCO was the taxpayer liable for the tax due and the penalties thereon; that despite receipt by it of the 1985 notice of assessment from the Municipal Assessor, it failed to

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[16] RTC Records, p. 149.

[17] The petition was docketed as CA-G.R. SP No. 25610.

appeal therefrom and, as such, the assessment had become final and enforceable; and, that MERALCO was proscribed from filing its petition assailing the assessment. In its answer to the petition, MERALCO denied having received a notice of assessment from the Municipal Treasurer, *but admitted to having received collection letters.*

On August 11, 1993, the Court of Appeals, in its Decision, granted the petition and declared the assailed order "void and without life in law, having been issued without jurisdiction, on a petition that further does not state a sufficient cause of action, filed by a party who had not exhausted available administrative remedies."[18] The CA ruled that MERALCO was the taxpayer liable for the taxes due, and that it was barred under Section 64 of P.D. No. 464 from assailing the 1986 assessment of the Municipal Assessor for its failure to appeal therefrom. MERALCO moved for a reconsideration of the Decision, which the CA denied for lack of merit in a Resolution[19] dated February 28, 1994.

On further recourse to this Court *via* a petition for review on *certiorari* under Rule 45, the petitioner alleged, *inter alia*, that the Court of Appeals erred in applying Section 64 of the Real Property Tax Code for the following reasons: (a) the petitioner was not the taxpayer for the purpose of an assessment under the Real Property Tax Code; and, (b) no assessment was made by the respondent, and only collection letters were sent to it; hence, Section 30 of the said Code had no application. The petitioner also alleged that its petition stated a sufficient cause of action for prohibition against the petitioner. Thus:

> . . . Respondent Alon committed a grave mistake in going after MERALCO. He should have first asked the registered owner to explain the difference between the original assessment and the purchase price of the plant. Then he should have asked for a revision of the assessment and thereafter serve the notice of assessment on the new owner.

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[18] *Rollo*, pp. 33-49.

[19] *Id*. at 51-53-A.

Respondent cannot use MERALCO as a scapegoat for his errors.

Moreover, as the PETITION FOR PROHIBITION states, the Municipal Treasurer made an erroneous conclusion as to the application of the valuation of the properties.

The Real Property Tax Code provides that "real property shall be appraised at its current and fair market value." (Sec. 2, Pres. Decree No. 469).

As a rule, the market value is that "highest price estimated in terms of money which the property will buy if exposed for sale in the open market xxx" (Sec. 3 [n], ibid.). But in appraising machineries, the following provision applies:

> The current market value of machinery shall be determined on the basis of the original cost in the case of newly acquired machinery not yet depreciated and is appraised within the year of its purchase. In the case of all others, the current market value shall be determined by dividing the remaining economic life of the machinery by its economic life and multiplied by the replacement or reproduction cost (new) of said machinery.
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> "If the machinery is imported, replacement or reproduction cost shall be the original acquisition cost which would normally include such costs as flight and insurance charges, brokerage, arrastre and handling, customs duties and taxes plus cost of inland transportation and handling, and significant installation charges at the present side." (Sec. 28, *ibid.*).

The land, building and machinery and equipment constituting the three power plants were sold to NAPOCOR in 1979. Instead of confronting to the above formula, respondent Alon merely assumed that the 1979 purchase price of the land and machinery would be the same value for the years 1976 to 1978. On the fact alone, he has erred in the appraisal of the machineries. His action is glaringly iniquitous in the light of the economic reality that immovables constantly appreciate in value. Likewise, he did not take into consideration the fact that the foreign currency exchange rate on the imported equipment at the time of the sale was very much higher than the exchange rate at the time of original purchase. It is of judicial notice that when the peso depreciated in value, the cost of cars rapidly escalated. Thus, a second-hand car fetched a price double that of its original cost. The same is true in the instant case. The replacement

cost of the machineries and equipment herein was more than their original cost, which replacement cost was made the basis of the purchase price between NAPOCOR and MERALCO. The tax declaration, meanwhile, reflected the actual cost and value of the machineries at the time they were originally purchased by MERALCO.

Furthermore, the Real Property Tax Code itself provides for the prospective application of assessment and reassessments, thus —

> "Sec. 24. Date of effectivity of assessment or reassessments. — All assessments or reassessments made after the first day of January or any year shall take effect on the first day of January of the succeeding year xxx"
>
> Taxes, moreover, levied on real estate for general revenue purposes are not enforceable as a personal liability of the owner, but a charge upon the real estate assessed, to be enforced and collected by a sale of property liable for the taxes so levied and assessed (*Philadelphia Mortgage & Trust Co. v. City of Omaha*, 63 Neb. 280, 88 NW 523; *Grant v. Bartholomew*, 57 Neb 673, 78 NW 314; *Carman v. Harris*, 85 NW 848; *State of Montana Ex. Rel. Tillman v. District Court*, 103 ALR 376). This principle is currently embodied in our own Real Property Tax Code, to wit:
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> "The real property tax for any year shall attach and become due and payable on the first day of January and from the same date *said tax and all penalties subsequently accruing thereto shall constitute a lien upon the property subject to such tax. Said lien shall be xxx enforceable against the property whether in the possession of the delinquent or any subsequent owner or possessor*, and shall be removable only by the payment of the delinquent taxes and penalties." (Sec. 56, op. Cit., Italics supplied).

If indeed there is any tax due on the realty involved herein, Respondent Alon should therefore go against the real property involved herein, *i.e.*, the Sucat Power Plant, and the personal property attached thereto, which have become immobilized by attachment. Even assuming *arguendo* that MERALCO is the "taxpayer," Respondent Alon has no right or the authority to attach personal property that is not located in the said realty, most especially the funds of MERALCO presently deposited with local banks.

Regrettably, the respondent Court of Appeals did not even give petitioner MERALCO an opportunity to be heard on the foregoing. Instead, it ordered the dismissal of the PETITION FOR PROHIBITION.[20]

In his Comment on the Petition, the respondent alleged that the petitioner was furnished with a notice of assessment on November 19, 1985, and appended a receipt stressing the signature of one Basilio Afuang.[21]

The Court promulgated its Decision[22] on May 18, 2001, denying due course to the petition and affirming the decision of the appellate court. The dispositive portion of the decision reads:

WHEREFORE, the 11 August 1993 Decision of the Court of Appeals declaring as void the 17 June 1992 Order of the Regional Trial Court is hereby *AFFIRMED*. The appellate court's 28 February 1994 Resolution denying petitioner's motion for reconsideration of its subject Decision is likewise *AFFIRMED*.

SO ORDERED.[23]

The Court held that the appellate court correctly ruled that the Regional Trial Court of Makati, Branch 66, had no jurisdiction to entertain the petition for prohibition filed by the petitioner because the latter failed to first pay under protest the deficiency taxes assessed against it, as required under Section 64[24] of P.D.

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[20] *Id*. at 20-22.

[21] Annex "K", *Rollo*, p. 304.

[22] The case was raffled to the Second Division of the Court.

[23] *Id*. at 448.

[24] Section 64 of the Real Property Tax Code (Presidential Decree No. 464) provides:

Restriction upon power of court to impeach tax. — No court shall entertain any suit assailing the validity of tax assessed under this Code until the taxpayer shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of failure to perform their duties within the time herein specified for their performance unless such irregularities, informalities or failure shall have impaired

No. 464.[25] The Court stated that the Notices sent by the respondent to the petitioner dated September 3, 1986 and October 31, 1989 *were in the nature of tax assessments; hence, the petitioner should have paid under protest the deficiency tax assessed against it.* The Court also ruled that contrary to the petitioner's contention, the RTC could not take cognizance of its petition for prohibition, as it was, in truth, assailing the validity of the tax assessment and collection. The Court ratiocinated that to fully resolve the petition for prohibition, the trial court would not only have to rule on the validity of the warrants of garnishment, but also on the issues relating to the assessment and collection of the deficiency taxes. It further declared that the filing of the petition for prohibition would be for no other reason than to forestall the collection of deficiency taxes on the basis of the tax assessment arguments. It emphasized that the petitioner could not file a petition for *certiorari* and prohibition without first resorting to the proper administrative remedies, and by paying under protest the tax assessed, to allow the court to assume jurisdiction over the petition.[26]

The Court also ruled that the garnishment of the petitioner's bank deposits was proper and regular, since the respondent was not limited to the remedy of selling the delinquent real property. It agreed with the contention of the respondent that it could, likewise, avail of the remedies of distraint and levy of the petitioner's personal property and the collection of the real property tax through ordinary court action. Hence, the respondent's availment of the remedy of distraint and levy on the petitioner's bank deposits was in accord with case law. The Court declared that there was nothing illegal about exercising

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the substantial rights of the taxpayer; nor shall any court declare any portion of the tax assessed under the provisions of this Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the court in the pending proceeding.

[25] The Real Property Tax Code in force at the time of the questioned acts of the petitioner, prior to the enactment of Republic Act No. 7160 (otherwise known as the Local Government Code of 1991) which superseded P.D. No. 464.

[26] *Rollo*, pp. 443-444.

this option, since bank deposits are not among those properties exempt from execution under the Revised Rules of Court or under the Real Property Tax Code.[27]

The petitioner received a copy of this Court's Decision on June 18, 2001 and filed, on July 3, 2001, a motion for reconsideration thereon. The petitioner argued that the notices issued by the Municipal Treasurer of Muntinlupa *were not notices of assessment envisaged in Section 3 of P.D. No. 464*.[28] *The petitioner pointed out that the said notices did not contain the assessor's findings regarding the kind of real estate, area, unit value, market value, actual use and assessment level; and, in the case of the machinery attached to the land, the description of the machinery, date of operation, original cost, depreciation, market value and assessment level*. Hence, the said notices could not be used as bases for filing an appeal to the Local Board of Assessment Appeals under Section 30[29] of the Real Property Tax Code, which clearly adverts to a written notice of assessment. Thus, the petitioner contended, it could not be required to avail of the prescribed administrative remedies in protesting an erroneous tax assessment under the said Code.[30]

On February 1, 2002, the Court issued a Resolution denying with finality the petitioner's motion for reconsideration.[31] *The Court, however, reversed its ruling that the notices sent by the respondent to the petitioner were notices of assessment. It*

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[27] *Id.* at 447.

[28] *Id.* at 456-458.

[29] SEC. 30. *Local Board of Assessment Appeals*. — Any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may, within sixty days from the date of receipt by him of the written notice of assessment as provided in this Code, appeal to the Board of Assessment Appeals of the province or city, by filing with it a petition under oath using the form prescribed for the purpose, together with copies of the tax declarations and such affidavit or documents submitted in support of the appeal.

[30] *Rollo*, pp. 453-459.

[31] *Id.* at 482-492.

categorically stated that the notices were, in fact, notices of collection.

Additionally, the Court declared that a question of fact had been raised before it, since the petitioner denied having received any notice of assessment from the Municipal Assessor and collection letters from the respondent:

> As there has been no apparent admission by petitioner that it had received the 1985 tax assessment notices allegedly sent by respondent Municipal Treasurer, and because we have found that the records are bereft of evidence showing actual receipt by petitioner of the real property tax declaration allegedly sent by the Municipal Assessor, We are thus compelled to declare that a question of fact has been raised before this Court: On the one hand, said respondent claims that, aside from the September 3, 1986 and October 31, 1989 notices, he had transmitted to petitioner tax assessment notices in the form of real property tax declarations in November of 1985. On the other hand, petitioner denies having received any tax assessment notice from said respondent prior to receipt of the notices of collection.
>
> Whether or not a tax assessment had been made and sent to the petitioner prior to the collection of back taxes by respondent Municipal Treasurer is of vital importance in determining the applicability of Section 64 of the Real Property Tax Code inasmuch as payment under protest is required only when there has in fact been a tax assessment, the validity of which is being questioned. Concomitantly, the doctrine of exhaustion of administrative remedies finds no application where no tax assessment has been made.[32]

The foregoing notwithstanding, ***the Court ruled against a remand of the case to the trial court***, ratiocinating as follows:

> The Petition for Review on *Certiorari* of petitioner before us raises the same grounds which petitioner relies upon in its Petition for Prohibition before the trial court that the respondent Municipal Treasurer arbitrarily and despotically issued the writ of garnishment against petitioner's funds, to wit: 1) The petitioner is not the taxpayer contemplated by the Real Property Tax Code for purposes of an assessment; 2) There was no assessment made prior to the collection of back taxes thereby rendering irregular the collection of taxes by

[32] *Id.* at 487-488.

the respondent; and 3) Respondent cannot garnish petitioner's funds for the satisfaction of delinquent taxes. His remedy is merely to levy upon the real property subject of the tax pursuant to the legal principle that unpaid real property taxes constitute a lien upon the real property subject to back taxes.

By the parties' own doing, all the issues that bear upon the propriety of the issuance of the warrants of garnishment against petitioner's bank deposits for the collection of back taxes have been raised before this Court in its Petition for Review on *Certiorari* and properly resolved in favor of respondent Municipal Treasurer. In resolving all those issues presented before us by petitioner, we have, in effect, resolved petitioner's amended petition for prohibition filed before the trial court. In other words, we have already decided that said respondent did not act arbitrarily and despotically in garnishing petitioner's funds.

Hence, should the trial court find that there has indeed been a prior assessment, petitioner's petition for prohibition would be dismissed for failure to pay under protest and to exhaust administrative remedies. However, a finding by the trial court that there was no tax assessment made prior to the collection of taxes would render inapplicable the requirement of paying under protest and exhausting administrative remedies by first appealing to the LBAA before the trial court takes cognizance of petitioner's petition for prohibition. Unfortunately therefore, even if the trial court can assume jurisdiction over the said petition for prohibition, there is nothing substantial left for it to do.[33]

The petitioner received, on March 4, 2002, a copy of this Court's Resolution dated February 1, 2002. Entry of judgment was made of record on March 6, 2002.[34] On March 19, 2002, the petitioner filed a "Motion for Reconsideration of the Resolution Promulgated on February 1, 2002 or Motion to Admit the Second Motion for Reconsideration Herein Incorporated of the Decision," *in view of the Court's pronouncements in its February 1, 2002 Resolution that the petitioner was not furnished with any notice of assessment; that the notices sent by the respondent to the petitioner were merely collection letters and not notices of*

[33] *Id.* at 488-489.

[34] *Id.* at 514-517.

assessment; and, that questions of fact were raised before the Court. The petitioner insisted that conformably with its new findings, the Court should have *reversed the Decision of the Court of Appeals dated August 11, 1993 and its Resolution dated February 28, 1994,* and *remanded the case to the trial court for further proceedings.* The petitioner argued that the Court's new findings were inconsistent with its denial of its motion for reconsideration. The petitioner prayed that:

> WHEREFORE, petitioner respectfully prays that the Decision promulgated on May 18, 2001 and the Resolution promulgated on February 1, 2002 be reconsidered and set aside and a new one issue reversing the Decision of the Honorable Court of Appeals dated August 11, 1993 and its Resolution dated February 28, 1994 and remanding this case to the trial court for further proceedings.[35]

Instead of resolving the petitioner's March 19, 2002 motion for reconsideration on its merits, the Court, in a Resolution[36] dated April 15, 2002, merely noted without action the said motion, directed that Entry of Judgment be made in due course and stated that no further pleadings shall be entertained in relation to the case. The Court treated the March 19, 2002 motion for reconsideration of the petitioner as a prohibited pleading.

Undaunted, the petitioner filed, on June 2, 2002, a motion for leave to file a motion for reconsideration of the April 15, 2002 Resolution, appending thereto its motion for reconsideration. It contended that after the Court held in its February 1, 2002 Resolution that the September 3, 1986 and October 31, 1989 notices sent by the respondent to the petitioner were notices of collection, thus, justifying its conclusion that Section 614 of P.D. No. 464 was not applicable, the Court should have ordered the case remanded to the trial court for further proceedings. The petitioner argued that since the Court made findings in its February 1, 2002 Resolution contrary to those findings in its

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[35] *Id.* at 508-509.

[36] *Id.* at 512.

May 18, 2001 Decision, it should be allowed to seek a reconsideration of the said resolution.[37]

In the meantime, in view of the entry of judgment made in the case, the Equitable PCI Bank, one of the petitioner's depository banks, was requested by the respondent, on June 20, 2002, to release to the latter the garnished funds of the petitioner in the amount of ₱36,432,001.97, pursuant to the October 4, 1990 Warrant of Garnishment served on the bank on October 8, 1990.[38] The petitioner, however, in a Letter dated June 24, 2002,[39] requested the same bank to defer the release of the garnished funds, and forthwith filed before the Court on June 28, 2002 an "Urgent Motion For The Recall Of The Entry Of Judgment,"[40] in view of the pendency of its motion for reconsideration before the Court. Hence, on July 2, 2002, Equitable PCI Bank filed a "Motion For Clarification,"[41] praying that it be given appropriate guidance relative to the respondent's implementation of the warrant of garnishment, *vis-à-vis* the petitioner's motion for reconsideration pending before the Court.

On October 1, 2003, the Court resolved to refer the pending incidents to the Court *En Banc* for resolution.

The Issues

The petitioner presented two issues in its motions dated March 19, 2002 and June 2, 2002, *viz*: (a) whether the entry of judgment made of record by the Clerk of Court of this Court on March 6, 2002 should be recalled and the petitioner granted leave to file its motion for reconsideration; and, (b) whether the Court's May 18, 2001 Decision should be set aside and the case remanded to the trial court for further proceedings, in view of the factual findings contained in the Court's February 1, 2002 Resolution.

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[37] *Id*. at 531-532.

[38] *Id*. at 544.

[39] *Id*. at 545.

[40] *Id*. at 535-537.

[41] *Id*. at 540-543.

On the first issue, the petitioner asserts that the entry of judgment made of record by this Court on March 6, 2002 was premature. It argues that it had the right to file a motion for the reconsideration of the February 1, 2002 Resolution of this Court, considering that while the material findings in the instant case were reversed, the petitioner's motion for reconsideration was altogether denied. The petitioner avers that it should not be prevented from moving for a rectification of this Court's inconsistent stance, and submits that the Court's Resolution of February 1, 2002 denying with finality its July 3, 2001 motion for reconsideration was premature, hence, inefficacious.

The Ruling of the Court

The contention of the petitioner is meritorious.

Section 1, Rule 52 of the Rules of Court, provides that a motion for reconsideration of a decision may be filed within fifteen days from notice thereof. Under Section 10, Rule 51, if no appeal or motion for new trial or reconsideration is filed within the time provided in the Rules, the judgment shall forthwith be entered by the clerk in the book of entries of judgments. Section 2, Rule 52 further provides that *no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.*

Indeed, in *Ortigas and Company Limited Partnership vs. Velasco*,[42] we held that a second motion for reconsideration of a decision or a final order is prohibited, except for extraordinarily persuasive reasons and only upon express leave first obtained. We explained, thus:

> . . . The propriety or acceptability of such a second motion for reconsideration is not contingent upon the averment of "*new*" *grounds* to assail the judgment, *i.e.*, grounds other than those theretofore presented and rejected. Otherwise, attainment of finality of a judgment might be staved off indefinitely, depending on the party's ingeniousness or cleverness in conceiving and formulating "additional flaws" or "newly discovered errors" therein, or thinking up some

[42] 254 SCRA 234 (1996).

injury or prejudice to the rights of the movant for reconsideration. "Piece-meal" impugnation of a judgment by successive motions for reconsideration is anathema, being precluded by the salutary axiom that a party seeking the setting aside of a judgment, act or proceeding must set out in his motion all the grounds therefor, and those not so included are deemed waived and cease to be available for subsequent motions.

For all litigation must come to an end at some point, in accordance with established rules of procedure and jurisprudence. As a matter of practice and policy, courts must dispose of every case as promptly as possible; and in fulfillment of their role in the administration of justice, they should brook no delay in the termination of cases by stratagems or maneuverings of parties or their lawyers . . .[43]

The foregoing rule has no application in this case. It bears stressing that this Court, in its May 18, 2001 Decision, affirmed the ruling of the Court of Appeals that the petitioner had no cause of action against the respondent. Thus, the appellate court's finding, that the petitioner received a notice of assessment from the respondent notwithstanding which it failed to appeal in due course from the same, was upheld; hence, the petitioner was barred from filing a petition for prohibition in the trial court under Section 64 of P.D. No. 464. This Court also ruled that the respondent's Letters dated September 3, 1986 and October 31, 1989 received by the petitioner were notices of assessment and not mere collection letters. The Court concluded that the bank deposits of the petitioner may, thus, be garnished by the respondent under P.D. No. 464.

However, in its February 1, 2002 Resolution, the Court reversed its findings and ruled that the petitioner was not served with any notice of assessment as required by law, and that the respondent's Letters of September 6, 1985 and October 31, 1983 were collection letters, receipt of which was denied by the petitioner. The Court, thus, held that there was a need to remand the case to the lower court in order to resolve the factual issue of whether or not the respondent, indeed, served a notice

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[43] *Id.* at 240-241.

of assessment on the petitioner. The Court, however, also ruled that there was no longer a need to remand the case to the trial court.

In light of the supervening findings of this Court in its February 1, 2002 Resolution which are inconsistent with its ruling in its May 18, 2001 Decision, and the disposition of the petition on its merits, the Court now rules that the petitioner had the right to file a motion for reconsideration thereon. Consequently, the entry of judgment made of record on March 6, 2002 was premature and inefficacious, and should be recalled.

Anent the second issue, this Court, upon a meticulous review of the records of the case, finds that the Court of Appeals erred in granting the respondent's petition for a writ of *certiorari*.

In *People vs. Court of Appeals, et al.*,[44] this Court ruled that 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.[45] Mere abuse of discretion is not enough.

In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by writ 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.[46] 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

[44] G.R. No. 144332, June 10, 2004.

[45] *Condo Suite Club Travel, Inc. vs. NLRC*, 323 SCRA 679 (2000).

[46] *People vs. Court of Appeals*, 308 SCRA 687 (1999).

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*.[47] *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.*[48]

This Court finds and so rules that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction in declaring that the petitioner is not the taxpayer liable for the taxes due claimed by the private respondent. Indeed, in its May 18, 2001 Decision,[49] this Court ruled:

> The fact that NAPOCOR is the present owner of the Sucat power plant machineries and equipment does not constitute a legal barrier to the collection of delinquent taxes from the previous owner, MERALCO, who has defaulted in its payment. In *Testate Estate of Concordia T. Lim vs. City of Manila*, the Court held that the unpaid tax attaches to the property and is chargeable against the person who had actual or beneficial use and possession of it regardless of whether or not he is the owner. In that case, the Court declared that to impose the real property tax on the subsequent owner which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust.[50]

However, the Court holds that the RTC did not commit any grave abuse of discretion when it denied the respondent's motion to dismiss on the claim that for the petitioner's failure to appeal from the 1986 notice of assessment of the Municipal Assessor, the assessment had become final and enforceable under Section 64 of P.D. No. 464.

Section 22 of P.D. No. 464 states that, upon discovery of real property, the provincial, city or municipal assessor shall

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[47] *Toh vs. Court of Appeals*, 344 SCRA 831 (2000).

[48] *People vs. Court of Appeals, supra.*

[49] *Manila Electric Company v. Barlis*, 357 SCRA 832 (2001).

[50] *Id.* at 840.

make an appraisal and assessment of such real property in accordance with Section 5 of the law, *irrespective of any previous assessment or taxpayer's valuation thereon*. The provincial, city or municipal assessor is tasked to determine the *assessed value of the property*, meaning the value placed on taxable property for ad *valorem* tax purposes. The assessed value multiplied by the tax rate will produce the amount of tax due. It is synonymous to taxable value.

An assessment fixes and determines the tax liability of a taxpayer.[51] It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof.[52] The assessor is mandated under Section 27 of the law to give written notice within thirty days of such assessment, to the person in whose name the property is declared.[53] The notice should indicate the kind of property being assessed, its actual use and market value, the assessment level and the assessed value. The notice may be delivered either personally to such person or to the occupant in possession, if any, or by mail, to the last known address of the person to be served, or through the assistance of the barrio captain. The issuance of a notice of assessment by the local assessor shall be his last action on a particular assessment.[54] For purposes of giving effect to such assessment, it is deemed made when the notice is released, mailed or sent to the taxpayer.[55] As soon as the notice is duly served, an obligation

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[51] *Commissioner of Internal Revenue v. Island Government Manufacturing Corporation*, 153 SCRA 665 (1987).

[52] *Tupaz vs. Ulep*, 316 SCRA 118 (1999).

[53] SEC. 27. *Notification of New or Revised Assessments.* — When real property is assessed for the first time or when an existing assessment is increased or decreased, the provincial or city assessor shall within thirty days give written notice of such new or revised assessment to the person in whose name the property is declared. The notice may be delivered personally to such person or to the occupant in possession, if any, of by mail to the last known address of the person to be served, or through the assistance of the barrio captain.

[54] *Callanta v. Office of the Ombudsman*, 285 SCRA 648 (1998).

[55] *Republic v. De la Rama*, 18 SCRA 861 (1966) cited in *Callanta v. Office of the Ombudsman, supra*.

arises on the part of the taxpayer to pay the amount assessed and demanded.[56]

If the taxpayer is not satisfied with the action of the local assessor in the assessment of his property, he has the right, under Section 30 of P.D. No. 464, to appeal to the Local Board of Assessment Appeals by filing a verified petition within sixty (60) days from service of said notice of assessment. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due becomes absolute upon the expiration of such period, with respect to the taxpayer's property.[57] The action to collect the taxes due is akin to an action to enforce a judgment.[58] It bears stressing, however, that *Section 30 of P.D. No. 464 pertains to the assessment and valuation of the property for purposes of real estate taxation. Such provision does not apply where what is questioned is the imposition of the tax assessed and who should shoulder the burden of the tax*.[59]

Conformably to Section 57 of P.D. No. 464, it is the local treasurer who is tasked with collecting taxes due from the taxpayer. The said provision reads:

> SEC. 57. Collection of tax to be the responsibility of treasurers. — The collection of the real property tax and all penalties accruing thereto, and the enforcement of the remedies provided for in this Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality where the property is situated.

The duty of the local treasurer to collect the taxes commences from the time the taxpayer fails or refuses to pay the taxes due, following the latter's failure to question the assessment in the Local Board of Assessment Appeals and/or to the Central Board

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[56] *Callanta v. Office of the Ombudsman, supra*.

[57] *Ibid*.

[58] See *Republic vs. Court of Appeals*, 149 SCRA 351 (1987).

[59] *Testate Estate of Concordia T. Lim v. City of Manila*, 182 SCRA 482 (1990).

of Assessment Appeals. This, in turn, renders the assessment of the local assessor final, executory and demandable, thus, precluding the taxpayer from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits.[60]

In this case, the petitioner denied receiving copies of Tax Declarations Nos. B-009-5501 to B-009-5494 prepared by the respondent Municipal Assessor in 1985. In the face of the petitioner's denial, the respondent was burdened to prove the service of the tax declarations on the petitioner.[61] While the respondent alleged in his Comment on the Petition at bar that the Municipal Assessor furnished the petitioner with copies of the said tax declarations on November 29, 1985, the only proof proferred by the respondent to prove such claim was the receipt signed by a certain Basilio Afuang dated November 29, 1985.[62] The records failed to show the connection of Basilio Afuang to the petitioner, or that he was authorized by the petitioner to receive the owner's copy of the said tax declaration from the Office of the Municipal Assessor. We note that the respondent even failed to append a copy of the said receipt in its motion to dismiss in the trial court. Conformably, this Court, in its May 18, 2001 Decision,[63] declared as follows:

> . . . The records, however, are bereft of any evidence showing actual receipt by petitioner of the real property tax declaration sent by the Municipal Assessor. However, the respondent in a Petition for *Certiorari* (G.R. No. 100763) filed with this Court which later referred the same to the Court of Appeals for resolution, narrated that "the municipal assessor assessed and declared the afore-listed properties for taxation purposes as of 28 November 1985." Significantly, in the same petition, respondent referred to former Municipal Treasurer Norberto A. San Mateo's notices to MERALCO, all dated 3 September 1986, as notices of assessment and not notices

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[60] *Republic of the Philippines v. Court of Appeals*, *supra*.

[61] *Ibid*.

[62] *Rollo*, p. 241.

[63] *Supra*.

of collection as it claims in this present petition. Respondent cannot maintain diverse positions.[64]

The question that now comes to fore is, whether the respondent's Letters to the petitioner dated September 3, 1986 and October 31, 1989, respectively, are mere collection letters as contended by the petitioner and as held by this Court in its February 1, 2002 Resolution; or, as claimed by the respondent and as ruled by this Court in its May 18, 2001 Decision, are notices of assessment envisaged in Section 27 of P.D. No. 464.

The September 3, 1986 notice/letter[65] of the respondent to the petitioner reads:

"G/Gng. MANILA ELECTRIC CO.
Ortigas Avenue, Pasig
Metro Manila

Mahal na G./Gng.

Ipinababatid po namin sa inyo na ayon sa talaan ng aming tanggapan, ang buwis sa mga ari-arian na nakatala sa inyong pangalan ay hindi pa nakakabayad tulad ng nasasaad sa ibaba:

Tax. Decl. No	Location	Assessment	Year Due	Tax	Penalty	Total
B-009-05501	Sucat	₱86,874,490	1976	—	—	2,171,862.25
-05502	-do-	81,082,860	1977	—	—	2,027,071.50
-05503	-do-	75,291,220	1978	—	—	1,882,280.50
-05504	-do-	80,978,500	1979	—	—	2,024,462.50
			1980	—	—	2,024,462.50
			1981	—	—	2,024,462.50

TOTAL P _____ CON'T. BELOW _____

Inaasahan po namin na di ninyo ipagwawalang bahala ang patalastas na ito at ang pagbabayad ng nabanggit na buwis sa

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[64] *Id.* at 841-842.

[65] The petitioner received several letters/notices dated September 3, 1986 and October 31, 1989. Except for the figures therein, the letters/notices are similarly worded. Quoted above are only samples thereof.

lalong madaling panahon. Ipinaaala-ala po lamang ang sino mang magpabaya o magkautang ng buwis ng maluwat ay isususbasta (Auction Sale) ng Pamahalaan ang inyong ari-arian ng naaayon sa batas.

Subalit kung kayo po naman ay bayad na, ipakita po lamang ang katibayan sa pagbabayad (Official Receipt) at ipagwalang bahala ang patalastas na ito.

Lubos na gumagalang,
(Sgd.) NORBERTO A. SAN MATEO
Ingat-Yaman Pambayan[66]

The October 31, 1989 notice/letter of the respondent to the petitioner, on the other hand, reads:

Gng. MANILA ELECTRIC COMPANY
Sucat

Mahal na G./Gng.

Ipinababatid po namin sa inyo na ayon sa talaan ng aming tanggapan, ang buwis sa mga ari-arian na nakatala sa inyong pangalan ay hindi nakabayad tulad ng nasasaad sa ibaba:

TAX DECL NO.	LOCA-TION	ASSESSED VALUE	YEAR	TAX DUE	PENALTY	TOTAL
05495-Mach.	Sucat	68,208,610.00	1977-78	3,410,430.50	818,503.32	4,228,933
05496-Mach.	-do-	62,524,550.00	1978	1,563,113.75	375,147.30	1,938,261
05486-Mach.	-do-	102,088,300.00	1978	2,552,200.50	612,529.80	1,164,737
05490-Mach.	-do-	78,881,420.00	1977-78	1,997,035.50	479,288.52	2,476,324
05491-Mach.	-do-	74,555,990.00	1978	1,863,899.75	447,335.94	2,311,235
05494-Mach.	-do-	73,892,660.00	1976-78	5,541,949.50	1,330,067.88	6,872,017
				GRAND TOTAL		20,991.509

[66] CA *Rollo*, p. 51.

Inaasahan po namin na di ninyo ipagwawalang bahala ang patalastas na ito at ang pagbabayad sa buwis ng sa lalong madaling panahon. Ipinaala-ala po lamang na sino ang magpabaya sa buwis ng maluwat ay isususbasta (AUCTION SALE) *ng pamahalaan ang inyong ari-arian ayon sa batas.*

Subalit kung kayo ay bayad na, ipakita po lamang ang katibayan sa pagbabayad (OFFICIAL RECEIPT) *at ipagwalang bahala ang patalastas na ito.*

Lubos na gumagalang,
(Sgd.) EDUARDO A. ALON
Asst. Municipal Treasurer
Officer-in-Charge[67]

The Court, in its February 1, 2002 Resolution,[68] upheld the petitioner's contention and ruled that the aforequoted letters/notices are not the notices of assessment envisaged in Section 27 of P.D. No. 464. Thus:

It is apparent why the foregoing cannot qualify as a notice of tax assessment. A notice of assessment as provided for in the Real Property Tax Code should effectively inform the taxpayer of the value of a specific property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties. The September 3, 1986 and October 31, 1989 notices do not contain the essential information that a notice of assessment must specify, namely, the value of a specific property or proportion thereof which is being taxed, nor does it state the discovery, listing, classification and appraisal of the property subject to taxation. In fact, the tenor of the notices bespeaks an intention to collect unpaid taxes, thus the reminder to the taxpayer that the failure to pay the taxes shall authorize the government to auction off the properties subject to taxes or, in the words of the notice, *"Ipinaala-ala po lamang, ang sino mang magpabaya o magkautang ng buwis ng maluwat ay isususbasta (Auction Sale) ng pamahalaan ang inyong ari-arian ng naaayon sa batas."*

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[67] *Id.* at 55.

[68] *Rollo*, pp. 482-492.

The petitioner is also correct in pointing out that the last paragraph of the said notices that inform the taxpayer that in case payment has already been made, the notices may be disregarded is an indication that it is in fact a notice of collection.

Furthermore, even the Bureau of Local Government Finance (BLGF), upon whose recommendation former Municipal Treasurer Alon relied in the collection of back taxes against petitioner, deemed the September 3, 1986 notice as a "collection letter." Hence;

> "The Bureau should be informed of any recent action taken by MERALCO on the collection letter dated September 3, 1986 of that Office and whether NAPOCOR was also advised thereof and its reaction thereon, if any, for our record and reference.[69]

Such ruling is, in effect, a reversal of the May 18, 2001 Decision of the Court, where it was ruled that the said letters/ notices were, in fact, notices of assessment:

Be that as it may, petitioner was correct when it pointed out that the Municipal Treasurer, contrary to that required by law, issued the notices of assessment. However, the trial court is without authority to address the alleged irregularity in the issuance of the notices of assessment without prior tax payment, under protest, by petitioner. Section 64 of the RPTC, prohibits courts from declaring any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes except upon the condition that the taxpayer pays the just amount of the tax, as determined by the court in the pending proceeding. As petitioner failed to make a protest payment of the tax assessed, any argument regarding the procedure observed in the preparation of the notice of assessment and collection is futile as the trial court in such a scenario cannot assume jurisdiction over the matter.

It cannot be gainsaid that petitioner should have addressed its arguments to respondent at the first opportunity — upon receipt of the 3 September 1986 notices of assessment signed by Municipal Treasurer Norberto A. San Mateo. Thereafter, it should have availed of the proper administrative remedies in protesting an erroneous tax assessment, *i.e.*, to question the correctness of the assessments before the Local Board of Assessment Appeals (LBAA), and later,

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[69] *Id.* at 484-485.

invoke the appellate jurisdiction of the Central Board of Assessment Appeals (CBAA). Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal. The failure to appeal within the statutory period shall render the assessment final and unappealable . . .[70]

We note that *the petitioner*, in its Answer to the Petition of the respondent in the Court of Appeals, *admitted to receiving copies of the said letters/notices.*[71]

Upon a careful review of the records of this case and the applicable jurisprudence, we find that it is the contention of the petitioner and the ruling of this Court in its February 1, 2002 Resolution which is correct. Indeed, even the respondent admitted in his comment on the petition that:

Indeed, respondent did not issue any notice of assessment because statutorily, he is not the proper officer obliged to do so. Under Chapter VIII, Sections 90 and 90-A of the Real Property Tax Code, the functions related to the appraisal and assessment for tax purposes of real properties situated within a municipality pertains to the Municipal Deputy Assessor and for the municipalities within Metropolitan Manila, the same is lodged, pursuant to P.D. No. 921, on the Municipal Assessor.[72]

Consequently then, Sections 30 and 64 of P.D. No. 464 had no application in the case before the trial court. The petitioner's action for prohibition was not premature. Hence, the Court of Appeals erred in rendering judgment granting the petition for *certiorari* of the respondent.

Moreover, the petitioner, in its petition for prohibition before the court *a quo*, denied liability for the taxes claimed by the respondent, asserting that if at all, it is the NAPOCOR, as the

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[70] *Id.* at 842-843.

[71] CA *Rollo*, pp. 96-105.

[72] *Rollo*, pp. 234-235 (Emphasis supplied).

present owner of the machineries/equipment, that should be held liable for such taxes. The petitioner had further alleged that the assessment and collection of the said taxes had already prescribed. Conformably to the ruling of this Court in *Testate Estate of Lim vs. City of Manila*,[73] Section 30 of P.D. No. 464 will not apply.

The Court further rules that there is a need to remand the case for further proceedings, in order for the trial court to resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on the petitioner, and, if in the affirmative, when the petitioner received the same; and to resolve the other issues raised by the parties in their pleadings. It bears stressing that the Court is not a trier of facts.

IN VIEW OF THE FOREGOING, the May 18, 2001 Decision of this Court dismissing the petition is *SET ASIDE*. The petition at bar is *GIVEN DUE COURSE* and *GRANTED*. The assailed decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the trial court for further proceedings. The trial court is *DIRECTED* to terminate the proceedings within six (6) months from notice hereof.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, and *Tinga, JJ.*, concur.

Azcuna, J., took no part, former counsel of Meralco.

Vitug, J., on official leave.

Ynares-Santiago and *Austria-Martinez, JJ.*, on leave.

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[73] *Supra*.

SECOND DIVISION

[G.R. No. 128859. June 29, 2004]

AIDA POBLETE and HON. REUBEN P. DE LA CRUZ, *petitioners, vs.* **COURT OF APPEALS and WILLIAM LU,** *respondents.*

SYNOPSIS

Petitioner Aida Poblete was charged with Estafa under paragraph 2 (d), Article 315 of the Revised Penal Code in relation to Presidential Decree No. 818. The checks involved amounted to Two Million Three Hundred Eighteen Thousand Forty Seven Pesos and Sixty Centavos (₱2,318,047.60), hence, the information did not recommend bail. The trial court, however, issued the questioned Order that stated that the accused is entitled to bail as a matter of right since the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment. When this issue was raised to the Court of Appeals, the latter reversed the questioned Order of the presiding judge and required him to conduct hearing on the bail issue. Hence, this petition.

The Court ruled that the issue in this case was definitively resolved when the Court adopted Department of Justice (DOJ) Circular No. 74 ordaining that bail be allowed for the crime of Estafa under Art. 315, par. 2(d), as amended by P.D. 818, thru an *En Banc* Resolution dated February 26, 2002 in the case of *Jovencio Lim* and *Teresita Lim v. People of the Philippines, et al.*, G.R. No. 149276. The salient portion of the *Resolution* reads: "(3) Where the amount of fraud is ₱32,000.00 or over in which the imposable penalty is *reclusion temporal* to *reclusion perpetua*, bail shall be based on *reclusion temporal* maximum, pursuant to Par. 2 (a) of the 2000 Bail Bond Guide, multiplied by ₱2,000.00 plus an additional of ₱2,000.00 for every ₱10,000.00 in excess of ₱22,000.00; Provided, however, that the total amount of bail shall not exceed ₱60,000.00."

However, upon a review of the complete records elevated to the Court, it learned that the criminal case subject of this

case was dismissed when the lower court, acting upon the accused's Demurrer to Evidence, acquitting the accused. Thus, the Court has no alternative but to dismiss the Petition.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; THE TOTAL AMOUNT OF BAIL FOR ESTAFA SHALL NOT EXCEED ₱60,000.00. — It was definitively resolved when the Court adopted Department of Justice (DOJ) Circular No. 74 ordaining that bail be allowed for the crime of Estafa under Art. 315, par. 2(d), as amended by P.D. 818, thru an En Banc *Resolution* dated February 26, 2002 in the case of *Jovencio Lim* and *Teresita Lim v. People of the Philippines et al.*, G.R. No. 149276. The salient portion of the *Resolution* reads: "(3) Where the amount of fraud is ₱32,000.00 or over in which the imposable penalty is *reclusion temporal* to *reclusion perpetua*, bail shall be based on *reclusion temporal* maximum, pursuant to Par. 2(a) of the 2000 Bail Bond Guide, multiplied by ₱2,000.00 plus an additional of ₱2,000.00 for every ₱10,000.00 in excess of ₱22,000.00; Provided, however, that the total amount of bail shall not exceed ₱60,000.00."

2. ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; COUNSELS OF PARTIES FAILED TO NOTIFY THE SUPREME COURT ABOUT THE DISMISSAL OF A CASE WHICH IS SUBJECT OF A PETITION BEFORE IT. — From the records, it appears that the lawyers of the parties, Atty. Roberto T. Neri for petitioner and Atty. Arturo E. Balbastro for respondent, have both failed to inform this Court of the dismissal of the criminal case and the acquittal of the accused. Obviously, this case could have been dismissed much earlier had both or either counsel bothered to advise the Court about the *Order* dated October 15, 1999 of the lower court. Their failure to notify the Court may constitute indirect contempt of court. Thus, they should be made to explain why they should not be held liable for indirect contempt of court.

APPEARANCES OF COUNSEL

Roberto T. Neri for petitioner.
Arturo E. Balbastro for private respondent.

R E S O L U T I O N

TINGA, *J.*:

Before this Court is a *Petition for Review on Certiorari* under Rule 45, seeking the review of the March 31, 1997 Court of Appeals' *Decision*[1] reversing the *Order* of the trial court granting petitioner bail.

The antecedents follow.

Sometime in 1995, upon complaint of private respondent William Lu, the Provincial Prosecutor of Rizal filed an *Information*[2] against the petitioner Aida Poblete, for Estafa under paragraph 2(d), Article 315 of the Revised Penal Code in relation to Presidential Decree No. 818.[3] The *Information* alleged that the petitioner committed the crime of estafa in relation to P.D. 818 by willfully and unlawfully making, drawing and issuing to William Lu, with deliberate intent to defraud and by means of deceit, false pretenses and fraudulent acts executed prior to or simultaneous with, checks amounting to Two Million Three

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[1] Penned by Justice (now Supreme Court Justice) Conchita Carpio Morales, concurred in by Justices Fermin A. Martin, Jr. and Omar U. Amin.

[2] The case entitled "*People v. Aida Poblete*," was docketed as Criminal Case No. 95-700-MK of RTC Branch 272, Marikina, Metro Manila.

[3] Presidential Decree No. 818, Amending Article 315 of the Revised Penal Code, Sec. 1, par. (1) states that:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1. The penalty of *reclusion temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua* (Italics supplied);

Hundred Eighteen Thousand Forty Seven Pesos and Sixty Centavos (₱2,318,047.60). The *Information* did not recommend bail.

On December 18, 1995, counsel for the petitioner, accused Aida Poblete, filed a *Motion for Reinvestigation*. She prayed therein that execution of the warrant of arrest be held in abeyance pending the reinvestigation of the case.[4]

On January 17, 1996, the lower court issued an *Order* denying accused's *Motion for Reinvestigation* and directing the issuance of a warrant of arrest, with the bail for her provisional liberty fixed at Forty Thousand Pesos (₱40,000.00). The *Order* stated that the accused is entitled to bail as a matter of right since the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment.[5]

In his *Motion for Reconsideration* dated February 9, 1996, private respondent sought the setting aside of the *Order*, stressing that the imposable penalty upon the accused in view of the amount involved would exceed thirty (30) years and that applying Section 1 of P.D. 818[6] in relation to Section 3 of Rule 114 of the Rules of Court,[7] bail would not be a matter of right. That being the case, hearing on any application for bail would be mandatory, he urged.

On May 2, 1996, the lower court issued an *Order* denying private respondent's *Motion for Reconsideration* for lack of merit.[8]

Undeterred, private respondent challenged the *Order* in a *Petition for Certiorari, Prohibition and Mandamus with*

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[4] RTC Records, pp. 40-42.

[5] *Id.* at 49-51.

[6] *Supra* note 1.

[7] 1988 Amendments to the 1985 Rules of Criminal Procedure.

Rule 114 Section 3- bail is not a matter of right when the accused is charged with a capital offense or an offense which, under the law at the time of such commission and at the time of the application for bail is punishable by *reclusion perpetua*, when the evidence of guilt is strong.

[8] RTC Records, p. 76.

Preliminary Injunction with the Court of Appeals, imputing to the presiding judge[9] of the lower court grave abuse of discretion. In the meantime, trial on the merits of the criminal case proceeded.

On March 31, 1997 the Court of Appeals reversed the *Order* of the presiding judge and required him to conduct hearing on the bail issue. The appellate court ruled that P.D. 818 needs no further interpretation or construction, pointing out that the trial judge's pronouncement that the penalty for the crime charged at bar should be termed *reclusion perpetua* only in connection with the accessory penalties imposed under the Revised Penal Code is erroneous. In making the pronouncement and in granting bail *ex parte*, the Court of Appeals stressed, the trial judge committed grave abuse of discretion.

Hence, the petitioner elevated the Court of Appeals' Decision to this Court by a *Petition for Review on Certiorari*.

The issue in the case is simple. It was definitively resolved when the Court adopted Department of Justice (DOJ) Circular No. 74 ordaining that bail be allowed for the crime of Estafa under Art. 315, par. 2(d), as amended by P.D. 818, thru an *En Banc Resolution* dated February 26, 2002 in the case of *Jovencio Lim* and *Teresita Lim v. People of the Philippines, et al.*, G.R. No. 149276. The salient portion of the *Resolution* reads:

"(3) Where the amount of fraud is ₱32,000.00 or over in which the imposable penalty is *reclusion temporal* to *reclusion perpetua*, bail shall be based on *reclusion temporal* maximum, pursuant to Par. 2(a) of the 2000 Bail Bond Guide, multiplied by ₱2,000.00 plus an additional of ₱2,000.00 for every ₱10,000.00 in excess of ₱22,000.00; Provided, however, that the total amount of bail shall not exceed ₱60,000.00."

Before deciding the case, the Court asked for the complete records of the case from the lower court. On May 7, 2004, the Branch Clerk of Court of the RTC, Branch 27 at Marikina complied with the directive.

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[9] Hon. Reuben P. De la Cruz.

The Court for the first time learned that the criminal case subject of this case was dismissed as early as October 15, 1999, when the lower court,[10] acting upon the accused's *Demurrer to Evidence*, issued an *Order*[11] acquitting the accused. With the acquittal of the accused, the instant case which involves the issue of bail for the provisional liberty of the accused has become moot and academic. This Court has no alternative but to dismiss the *Petition*.

A final note. From the records, it appears that the lawyers of the parties, Atty. Roberto T. Neri for petitioner and Atty. Arturo E. Balbastro for respondent, have both failed to inform this Court of the dismissal of the criminal case and the acquittal of the accused. Obviously, this case could have been dismissed much earlier had both or either counsel bothered to advise the Court about the *Order* dated October 15, 1999 of the lower court. Their failure to notify the Court may constitute indirect contempt of court.[12] Thus, they should be made to explain why they should not be held liable for indirect contempt of court.

WHEREFORE, the *Petition* is *DISMISSED* on the ground that it has become moot and academic. Atty. Roberto T. Neri and Atty. Arturo E. Balbastro are *DIRECTED* to explain why they should not be held liable for indirect contempt of court within 10 days from receipt of this *Resolution*.

SO ORDERED.

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

Austria-Martinez, J., on leave.

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[10] This time presided by Judge Olga Palanca-Enriquez.

[11] RTC Records, pp. 499–511.

[12] Rule 71, Sec. 3, par. (d) states that:

Section 3. *Indirect Contempt.* —

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

xxx xxx xxx

THIRD DIVISION

[G.R. No. 133805. June 29, 2004.]

AGUSTINA SENO TAN, *petitioner, vs.* **PACITA GANLAG TAN, assisted by her husband, TERESO TAN,** *respondent*.

SYNOPSIS

A Transfer Certificate of Title (TCT) covering the subject lot was issued in the name of Eustaquio Seno. Miguel Seno filed an adverse claim because of the pendency of his complaint for partition with the trial court against Eriberta Seno and Eustaquio Seno. The trial court subsequently rendered a decision ordering the parties therein as co-owners to partition one lot and the subject lot. Thereafter, Eustaquio sold the lot to Antonio Albano, who in turn sold it to respondent. Consequently, a new TCT was issued in the name of respondent. The heirs of Graciano Seno, including petitioner, filed a petition for cancellation of respondent's TCT. This prompted respondent to file a complaint for quieting of title and damages against the same heirs. The trial court ruled in favor of respondent. On appeal, the Court of Appeals (CA) affirmed the trial court's decision. Petitioner's motion for reconsideration was denied for having been filed beyond the 15-day reglementary period. Hence, this petition for review on *certiorari*.

In denying the petition, the Supreme Court ruled that the CA did not err in denying the motion for reconsideration for having been filed late. Petitioner's counsel received a copy of the assailed decision on December 4, 1997. Thus, he had until December 19, 1997 within which to file the motion, but it was filed only on April 29, 1998, or more than 4 months late.

Even granting that petitioner's motion was seasonably filed, the Court held that the instant petition should still be denied, for the issues raised by petitioner were factual. The jurisdiction of the Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record

or the impugned judgment is based on a misapprehension of facts. These exceptions were not present in the case at bar.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; REGLEMENTARY PERIOD; NOT COMPLIED WITH IN CASE AT BAR.— Records show that her former counsel received a copy of the assailed Decision on December 4, 1997. Thus, he had until December 19, 1997 within which to file the motion for reconsideration. But it was filed only on April 29, 1998, or more than 4 months late. Thus, the Appellate Court did not err in denying the motion for being late. Section 1, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides: "Section 1. *Period for filing. — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice* thereof, with proof of service on the adverse." In *Basco vs. Court of Appeals,* we held: *"Rules of court prescribing the time within which certain acts must be done,* or certain proceedings taken, *are absolutely indispensable* to the prevention of needless delays and the orderly and speedy discharge of judicial business. *Strict compliance with such rules is mandatory and imperative."*

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— [P]etitioner poses the following issues: whether petitioner's motion for reconsideration was seasonably filed with the Court of Appeals; whether or not respondent is a purchaser in good faith; and whether she is entitled to an award of nominal damages and litigation expenses. Evidently, these are factual issues. In *Bolinao Security and Investigation Service, Inc. vs. Toston,* we held that "the jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts." These exceptions are not present here.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS, GENERALLY

BINDING ON THE SUPREME COURT.— We have consistently ruled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Juanita T. Montesclaros for respondent.

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 November 28, 1997 and Resolution[2] dated May 20, 1998 of the Court of Appeals in CA-G.R. CV No. 47308, "*Pacita Ganlag Tan vs. Heirs of Graciano Seno, namely: Virgilio Seno; Heirs of Pablo Seno, namely: Florencio Seno, Norma Basiga, Añana Basiga, Buenaventura Basiga, Constancia Ducao, and Hilario Seno; and Heirs of Roman Seno, namely: Miguel Seno, Eugenia Ramonal Codoy, Rosario L. Benoto, Manuel Lincaro; and Eugenio Codoy.*"

The factual antecedents as borne by the records are:

On December 13, 1971, the Registry of Deeds of Mandaue City issued Transfer Certificate of Title (TCT) No. 673 in the name of Eustaquio Seno. This title covers a 673-square meter parcel of land (Lot 264-G) situated in Barrio Banilad, Mandaue City.

Immediately, Miguel Seno filed with the Mandaue City Registry of Deeds an adverse claim which was annotated by the same Register of Deeds as Entry No. 610-V-1-D.B. This adverse

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[1] Annex "H", Petition for Review, *Rollo* at 125-131.

[2] Annex "I", *id*. at 140-141.

claim stemmed from his complaint for partition[3] filed with the Regional Trial Court (RTC), Branch 5, Cebu City against Eriberta Seno and Eustaquio Seno, docketed as Civil Case No. R-12114. In due course, the RTC rendered a Decision[4] dated January 4, 1972 ordering the parties therein as co-owners to partition Lot 264-F and the subject Lot 264-G.

Subsequently or on October 28, 1980, Eustaquio sold Lot 264-G to Antonio Albano for ₱80,000.00.[5] In turn, on December 15, 1980, Antonio sold the same lot to Pacita Ganlag Tan, *respondent*, for ₱120,000.00 as shown by a deed of sale registered on December 24, 1980. Forthwith, TCT No. 673 was cancelled by the same Register of Deeds and in lieu thereof, TCT No. 15376 was issued in the name of respondent Pacita Ganlag Tan.

On January 2, 1990, the heirs of Graciano Seno, including petitioner Agustina Seno Tan, filed with the RTC, Branch 5, Cebu City a petition for cancellation of respondent's TCT No. 15376. They prayed for the issuance of a new TCT in their names.

This prompted respondent to file with the RTC, Branch 21, Cebu City a complaint for quieting of title and damages against the same heirs, docketed as Civil Case No. CEB-8682.

On April 15, 1994, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds for plaintiff and hereby renders judgment *ordering*:

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[3] The complaint alleges that the parties' predecessors were the registered owners of Lot 264 covered by Original Certificate of Title (OCT) No. RO-9788 consisting of Lots 264-G and 264-F with an aggregate area of 14,043 square meters.

[4] On appeal, the Court of Appeals affirmed *in toto* the RTC Decision and thereafter, issued, on October 18, 1978, its entry of judgment. Eventually, on May 14, 1980, the RTC issued a writ of execution.

[5] The deed of sale was registered on December 24, 1980.

1. Removal of all existing clouds of doubts on the validity of plaintiff's title to Lot No. 264-G as covered by TCT No. 15376 in the name of plaintiff, Pacita Ganlag Tan, who is by this same token hereby also declared the absolute owner and legally rightful possessor of said parcel of land, thus rendering said title rid of all such, similar and future doubts whatsoever that may tend to assail the validity of said title; thus, in short, declaring such title clean and *quieted*;

2. The Register of Deeds of the City of Mandaue to note the foregoing Order of this Court;

3. The defendants to pay plaintiff, jointly and severally, the sums of ₱50,000.00 in concept of nominal damages, ₱20,000.00 for attorney's fees, and ₱10,000.00 for litigation expenses;

4. The dismissal of defendants' counterclaim; and

5. The defendants to pay the costs.

SO ORDERED."

In finding for respondent Pacita Ganlag Tan, the trial court ruled that she is the rightful owner of Lot 264-G, being a buyer in good faith, thus:

"Now the fact is patent: *when plaintiff bought property from Albano, the title to the property bares and bears no adverse claim or any notice of lis pendens or any other annotation that could arouse suspicion on the validity of said title.* That plaintiff should have exercised prudence, and that prudence should have moved her to inquire or investigate to determine flaws in the title, or to especially ask Antonio Albano if, as seller, he had already had the title to the property, is too specious an argument to warrant any prolonged consideration. Crying over these supposed plaintiff's omissions does not prove that she indeed was guilty of imprudence as a buyer, much less evidences her being a buyer in bad faith.

As Annex B shows, plaintiff Pacita Ganlag was issued a Transfer Certificate of Title over Lot 264-G. A last inscription on the title, dated 21 July 1982 (3:00 p.m.), was a court order (CFI, Branch V) 'directing the Register of Deeds of Mandaue to cancel the annotation of adverse claim on this certificate of title . . .' In short, *it was a clean title*. . . . .

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And on this afore-discussed point *the Court may only credit and declare plaintiff Pacita Ganlag Tan as a purchaser in good faith and for value.*

But isn't plaintiff bound by the judgment in Civil Case No. 12114 of the Regional Trial Court of Cebu, Branch 5?

Said judgment, among other things, ordered the defendants therein, Eustaquio Seno and Eriberta Seno, to effect the partition of Lot No. 264, located in Banilad, Mandaue City. (Lot No. 264 covers an area of 14,043 square meters, according to said decision. Lot No. 264-G is a portion of Lot No. 264.)

xxx xxx xxx

And *since plaintiff Pacita Ganlag Tan has not been a party in any way in Civil Case No. R-12114, judgment in said case should not, must not bind her.*

xxx xxx xxx

Hence, plaintiff, who merely converted into an innocent purchaser for value of the land in question, should not be made subsequently liable in any way to defendants."

On appeal, the Court of Appeals rendered the assailed Decision dated November 28, 1997 affirming the RTC Decision with modification in the sense that the award of nominal damages to respondent is reduced to ₱5,000.00 and the attorney's fees is deleted, thus:

"WHEREFORE, in view of the foregoing, the appealed Decision is AFFIRMED but MODIFIED as follows: the award of nominal damages of ₱50,000.00 is reduced to ₱5,000.00 while the attorney's fees is deleted.

SO ORDERED."

Petitioner then filed a motion for reconsideration but was denied by the Appellate Court in its Resolution dated May 20, 1998 on the ground that it was filed beyond the 15 day reglementary period.

Hence, this petition for review on *certiorari* alleging that the Court of Appeals erred (1) in denying her motion for reconsideration for being late; (2) in holding that respondent is

a purchaser in good faith; and (3) in awarding respondent nominal damages and litigation expenses.

As earlier mentioned, petitioner's motion for reconsideration of the assailed Court of Appeals Decision was denied for having been filed beyond the 15 day reglementary period. For her predicament, she blamed her former lawyer, Atty. Eutiquio A. Cajes. Petitioner should have known that "the *client is bound by the acts of his counsel, even his mistakes and negligence.*"[6] We observe though that she is not entirely blameless for the denial of her motion for reconsideration. In *Producers Bank of the Philippines vs. Court of Appeals*,[7] we held that "litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case." Indeed, *it is their duty as litigants to keep in constant touch with their counsel so as to be posted on the status of their case*.[8]

At any rate, *we are not concerned with the lawyer's duty to his client but with the timeliness of the filing of petitioner's motion for reconsideration* with the Court of Appeals.

Records show that her former counsel received a copy of the assailed Decision on December 4, 1997. Thus, he had until December 19, 1997 within which to file the motion for reconsideration. But it was filed only on April 29, 1998, or more than 4 months late. Thus, the Appellate Court did not err in denying the motion for being late.

Section 1, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides:

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[6] *Amatorio vs. People*, G.R. No. 150453, February 14, 2003, 397 SCRA 445, 455.

[7] G.R. No. 126620, April 17, 2002, 381 SCRA 185, 199, citing *Bernardo vs. Court of Appeals*, 275 SCRA 413 (1997); and *Greenhills Airconditioning and Services, Inc. vs. NLRC*, 245 SCRA 384 (1995).

[8] *Pallada vs. Regional Trial Court of Kalibo, Aklan, Br. 1*, G.R. No. 129442, March 10, 1999, 304 SCRA 440, 445, citing *B.R. Sebastian Enterprises, Inc. vs. Court of Appeals*, 206 SCRA 28 (1992); and *Manila Electric Company vs. Court of Appeals*, 187 SCRA 200 (1990).

"Section 1. *Period for filing. — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice* thereof, with proof of service on the adverse."

In *Basco vs. Court of Appeals*,[9] we held:

"*Rules of court prescribing the time within which certain acts must be done*, or certain proceedings taken, *are absolutely indispensable* to the prevention of needless delays and the orderly and speedy discharge of judicial business. *Strict compliance with such rules is mandatory and imperativ*e."

Even granting that petitioner's motion was seasonably filed with the Court of Appeals, still we have to deny the instant petition. It may be recalled that petitioner poses the following issues: whether petitioner's motion for reconsideration was seasonably filed with the Court of Appeals; whether or not respondent is a purchaser in good faith; and whether she is entitled to an award of nominal damages and litigation expenses. Evidently, these are factual issues.

In *Bolinao Security and Investigation Service, Inc. vs. Toston*,[10] we held that "the jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts." These exceptions are not present here.

We have consistently ruled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.[11]

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[9] G.R. No. 125290, August 9, 2000, 337 SCRA 472, 484, citing *FJR Garments Industries vs. CA*, 130 SCRA 216 (1984).

[10] G.R. No. 139135, January 29, 2004 at 9, citing *Cosmos Bottling Corporation vs. NLRC*, G.R. No. 146397, July 1, 2003 at 7; and *De Rama vs. Court of Appeals*, 351 SCRA 94 (2001).

[11] *Rosario Textile Mills vs. Court of Appeals*, G.R. No. 137326, August 25, 2003.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated November 28, 1997 and Resolution dated May 20, 1998 of the Court of Appeals in CA-G.R. CV No. 47308 are hereby *AFFIRMED **IN TOTO***.

Costs against petitioner.

SO ORDERED.

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

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

THIRD DIVISION

[G.R. No. 134773. June 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AVELINO MABONGA *y* BABON,** *appellant*.

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a thirteen-year old epileptic girl. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

In affirming the conviction of appellant, the Supreme Court ruled that despite the victim's mental condition, she was able to testify clearly that appellant had carnal knowledge of her by using force and intimidation. During cross-examination, the victim never wavered in her assertion that appellant ravished her.

While the victim failed to resist appellant's lustful advances, it does not indicate that she consented thereto. Consent is insignificant when rape is committed on a woman suffering from some mental deficiency impairing her reason or free will,

like the victim in the present case. The absence of external signs of physical injuries and even the absence fresh of hymenal lacerations do not preclude the finding of rape.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO WOMAN WOULD BE WILLING TO UNDERGO A PUBLIC TRIAL WERE IT NOT TO CONDEMN AN INJUSTICE AND TO HAVE THE OFFENDER PUNISHED.— It bears stressing that "no young and decent lass will publicly cry rape if such were not the truth." In fact, no woman would be willing to undergo a public trial, along with the shame, humiliation and dishonor of exposing her own degradation, were it not to condemn an injustice and to have the offender apprehended and punished. Also, it is highly unnatural for a mother, virtuous or not, to use her own daughter as "an engine of malice, especially if it will subject her to embarrassment and even stigma."

2. CRIMINAL LAW; RAPE; CONSENT; NOT SIGNIFICANT WHEN RAPE IS COMMITTED ON A WOMAN SUFFERING FROM MENTAL DEFICIENCY IMPAIRING HER REASON OR FREE WILL; RATIONALE.— While Janice failed to resist appellant's lustful advances, it does not indicate that she consented thereto. On this point, the late Chief Justice Ramon C. Aquino explained the *insignificance of consent* when *rape* is committed on a *woman suffering some mental deficiency* impairing her reason or free will (like the victim here), thus: "xxx in the rape of the woman deprived of reason or unconscious, the victim has no will. The absence of will determines the existence of rape. Such *lack of will may exist* not only when the victim is unconscious or totally deprived of reason, but also *when she is suffering some mental deficiency impairing her reason or free will.* In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. *Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape.* Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. *Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent."*

3. REMEDIAL LAW; EVIDENCE; CORROBORATIVE TESTIMONY; NOT ESSENTIAL TO WARRANT A CONVICTION FOR RAPE.— Corroborative testimony frequently unavailable in rape cases, is not essential to warrant a conviction for the crime. An accused may be convicted solely on the basis of the victim's testimony.

4. CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF EXTERNAL SIGNS OF PHYSICAL INJURIES AND HYMENAL LACERATION.— We have repeatedly held that "the *absence of external signs of physical injuries does not cancel out the commission of rape*, since proof of injuries is not an essential element of the crime." In fact, even the *absence of fresh lacerations does not preclude the finding of rape.* Laceration of the hymen is not an element of the crime of rape.

5. ID.; ID.; THE PRESENCE OF PEOPLE NEARBY DOES NOT DETER RAPISTS FROM COMMITTING THE CRIME.— [I]t is a common judicial experience that "the *presence of people nearby does not deter rapists from committing their odious act*. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping."

6. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY AND CATEGORICAL ASSERTION OF THE VICTIM THAT ACCUSED IS THE PERPETRATOR OF THE CRIME; CASE AT BAR.— Appellant's bare denial cannot exculpate him. It cannot prevail over the positive testimony and categorical assertion of Janice that appellant sexually abused her.

7. CIVIL LAW; MORAL DAMAGES AND INDEMNITY *EX DELICTO*; AWARDED IN CASE AT BAR.— With respect to appellant's civil liability, aside from the award of moral damages of ₱50,000.00, the trial court should have awarded the victim ₱50,000.00 as indemnity *ex delicto*. Such award is mandatory upon the finding of the fact of rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Appeal from the Decision[1] dated March 17, 1998 of the Regional Trial Court, Branch 76, San Mateo, Rizal, in Criminal Case No. 3223 convicting Avelino Mabonga, appellant, of rape and sentencing him to *reclusion perpetua*. He was ordered to pay the victim, AAA, ₱50,000.00 as moral damages, and costs.

The Information[2] charges appellant as follows:

"That on or about the 20th day of April, 1997, in the Municipality of xxx, Province of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate or degrade complainant, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, mentally incapacitated, 13 years old, without her consent and against her will.

Contrary to law."

Upon arraignment on June 6, 1997, appellant, assisted by counsel, pleaded not guilty to the crime charged. Trial ensued thereafter.

The evidence for the prosecution, as borne by the records, shows that complainant AAA was born on September 29, 1983 to spouses BBB and CCC.[3] But the couple separated, prompting AAA to live with her mother and stepfather Efren Pascual at xxx Street, Barangay xxx, xxx, xxx. When AAA was 8 years

[1] Penned by Judge Jose C. Reyes, Jr., *Rollo* at 23-33.

[2] *Rollo* at 7.

[3] Exhibit "D" Certificate of Live Birth, RTC Records at 62.

old, she suffered from epilepsy.[4] During the period from 1993 to 1996, she was examined and treated by Dr. Ricardo Atengco at the Amang Rodriguez Medical Center. He diagnosed her illness as a neurological disorder that causes delay in her neuro-developmental status.[5] He explained that although AAA is already 13 years old, however, her mentality is that of a 6 or 7 year old.[6]

On April 20, 1997, CCC, AAA's mother, went to Marikina. Before leaving, she requested her neighbor Jennifer Ayad to watch her daughter AAA.[7] At around 7:00 o'clock in the evening that same day, AAA went home to eat.[8] As she was approaching the house, she saw Rolando Ayad and appellant Avelino Mabonga lying on a bench.[9] She noticed that both men were drunk.[10] Suddenly, appellant dragged her to a toilet situated outside an abandoned house[11] and commanded her to undress and lie down. Then he removed his pants and placed himself on top of her.[12] Against her will and consent, he inserted his penis inside her vagina and sexually ravished her.[13] Soon, appellant's wife Rita and other neighbors arrived.[14] At that instance, AAA heard Rita ordering appellant to stop.[15]

At about the same time, Rolando, who was seated beside appellant, was awakened. Although he was dizzy and suffering

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[4] Transcript of Stenographic Notes (TSN), July 29, 1997 at 13.

[5] TSN, July 10, 1997 at 3-4.

[6] *Id*. at 4.

[7] TSN, July 29, 1997 at 12; and 17.

[8] TSN, July 10, 1997 at 8.

[9] *Id*. at 5-6.

[10] *Id*.

[11] *Id*. at 6.

[12] TSN, July 2, 1997 at 3; and July 10, 1997 at 6-8.

[13] *Id*.

[14] TSN, July 10, 1997 at 6; and July 17, 1997 at 3.

[15] TSN, July 17, 1997 at 3.

from a headache,[16] he saw appellant dragging AAA, while she struggled and resisted.[17] Appellant subdued her as they proceeded to a toilet located outside an abandoned house about 60 feet away.[18] Unknown to them, he trailed behind. He saw appellant naked on top of AAA.[19] Frightened that appellant was armed with a weapon, he immediately left and sought help from his neighbors and appellant's wife Rita.[20]

Rafael Ayad, upon being informed of the incident by his niece Jennifer, ran towards the toilet [21] and saw appellant naked on top of AAA.[22] He then instructed Jennifer to report the incident to the police.[23] Before leaving, he heard appellant's wife shouting, "*anong ginagawa mo diyan*?" (what are you doing there?).[24]

Meanwhile, SPO1 Ronaldo San Diego arrived.[25] He found appellant lying on the street. Rolando, who was beside appellant, informed SPO1 San Diego that appellant sexually molested AAA.[26] Then SPO1 San Diego and Rolando brought appellant to the police station at Rodriguez, Rizal.[27]

At the police station, PO1 Lope Macauba, Jr. conducted an investigation. AAA identified appellant as the one who sexually

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[16] TSN, June 25, 1997 at 12; and 14.

[17] *Id*. at 4 and 10-11.

[18] *Id*. at 4; and 11.

[19] *Id*. at 10.

[20] *Id*. at 10-12.

[21] TSN, September 17, 1997 at 5.

[22] *Id*.

[23] *Id*. at 6.

[24] *Id*.

[25] TSN, August 13, 1997 at 3.

[26] *Id*. at 4.

[27] *Id*.

abused her. This was confirmed by Rolando. Thereupon, both executed their sworn statements.[28]

The next day, AAA and her mother went to the Crime Laboratory of the Philippine National Police (PNP) at Camp Crame, Quezon City.[29] There, AAA was examined by Dr. Tomas D. Suguitan who issued Medico-Legal Report No. M-1454-97[30] with the following findings:

"*GENITAL*:

There is absence of pubic hair. Labia majora are full, convex, coaptated and congested with the congested labia minora presenting in between. On separating the same disclosed an elastic, *fleshy-type hymen with deep healing laceration at 3 o'clock and shallow healing laceration at 6 o'clock position*. External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

*Findings are compatible with recent loss of virginity***.** There are no external signs of application of any form of violence.

xxx xxx xxx"

Dr. Suguitan confirmed on the witness stand that the ruptures or lacerations at AAA's hymen were "recently inflicted"[31] and could have been caused by the insertion of an erected male organ.[32]

Appellant Avelino Mabonga vehemently denied the charge. He testified that at around 1:00 o'clock in the afternoon of

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[28] TSN, August 21, 1997 at 4-7; June 25, 1997 at 6-7; and July 2, 1997 at 3-4.

[29] TSN, July 29, 1997 at 14.

[30] TSN, July 17, 1997 at 8-10; Exhibit "C", Records at 61.

[31] TSN, July 17, 1997 at 9-10.

[32] *Id.* at 10.

April 20, 1997, the day of the incident, he was in Barangay Isidro drinking gin with his friends. After drinking 5 bottles of gin, he decided to go home. On his way, he met Rolando who was seated in front of AAA's house. Rolando invited him to drink, at the same time asking money from him. When he acceded, Rolando instructed his nephew to buy 4 bottles of gin. But before they could consume the 4 bottles, he fell to the pavement and slept. When he woke up, he was surprised to find himself detained at the Rodriguez Police Station. He further claimed that in testifying against him, Rolando and Rafael were motivated by hatred that stemmed from a land dispute. In fact, Rolando even threatened him saying, "*may araw ka rin*."

Rita Mabonga, appellant's wife, corroborated his testimony.

Cresencio Cabiao, a resident of Libis Riverside, same municipality, testified that on April 20, 1997, at around 7:00 o'clock in the evening, while on his way to a store, he saw appellant lying on a concrete pavement. He noticed that appellant was drunk. On his way home after 30 minutes, he saw appellant still lying on the same pavement.

On March 17, 1998, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding herein accused Avelino Mabonga *guilty beyond reasonable doubt* of the crime of Rape as defined and penalized under Art. 335 of the Revised Penal Code, and sentencing him to suffer *reclusion perpetua*, and to indemnify herein private complainant AAA Malacaman in the amount of ₱50,000.00 as moral damages and to pay the costs.

SO ORDERED."

Appellant, in his brief, raised this lone assignment of error:

"THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT."

The basic issue for our resolution is whether the prosecution has established appellant's guilt by evidence beyond reasonable doubt.

The crime, as alleged in the Information, was committed on *April 20, 1997*. Hence, the law applicable to the case at bar is Article 335 of the Revised Penal Code, as amended by R.A. 7659,[33] which provides:

"Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. *By using force or intimidation***;**

2. When the *woman is deprived of reason* or otherwise unconscious; and

3. When the *woman* is under twelve years of age or **is** *demented*.

The *crime of rape shall be punished by reclusion perpetua***.**

xxx xxx xxx."

The above provision refers to the crime of *simple rape* committed 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 12 years of age (statutory rape) or is *demented*.[34]

As shown by the evidence for the prosecution, AAA does not possess the intelligence of a normal girl. At 13, when the crime was committed, she had a mental capacity of a 6 or 7 year old child. Dr. Ricardo Atengco, her physician for three years, testified that her mental faculties are different from those of a fully-functioning 13 year old, thus:

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[33] New provisions on *rape* are found in Articles 266-A to 266-D under Crimes Against Persons. Article 335 has been repealed by R.A. No. 8353 (Anti-Rape Law of 1997) effective *October 22, 1997*.

[34] See *People vs. Jose Santos*, G.R. Nos. 137828-33, March 23, 2004 at 10.

"FISCAL FLORANTE RAMOLETE:

xxx xxx xxx

Q Doctor, do you know a person by the name of AAA?
A Yes, sir.

Q Why do you know her?
A She was my former patient at Amang Rodriguez Medical Center, sir.

Q Since when have you been the doctor of AAA?
A I have seen her first in the year 1993 at the outpatient department, sir.

Q And up to the present she is your patient, doctor?
A Not anymore, sir, because I am already in private practice.

Q Up to what year has she been your patient?
A Up to the year of 1996, sir.

Q And *as your patient from 1993 up to 1996, what is her illness?*
A *She was diagnosed to have epilepsy, sir.*

xxx xxx xxx

Q Kindly enlighten us doctor about this epilepsy. Please give us a short background or description about this disease, epilepsy?
A *Epilepsy is a neurological disorder* wherein there is a sort of a short circuit in the brain. So when the patient goes into attack, the patient goes into convulsion and this seizure is usually precipitated by an illness or stress or anything that could precipitate an attack, sir.

Q *So, it affects the brain?*
A *Yes, sir.*

Q But although it affects the brain, in your opinion doctor, can a victim suffering from epilepsy still understand a little bit of what she is doing?
A When we say epilepsy, *this condition is usually related to a delay in the neuro-developmental status of the patient. Since this patient has epilepsy, her mentality does not*

correlate with her actual age. If this patient is 13 years old, her mental age could be that of a 6 or 7 year old, sir.

xxx xxx xxx."[35]

But despite AAA's mental condition, she was able to testify clearly that appellant had carnal knowledge of her by using force and intimidation. He pulled her and inserted his penis into her vagina, thus:

"FISCAL FLORANTE RAMOLETE:

xxx xxx xxx

Q Miss witness, are you the same AAA, the complainant against Avelino Mabonga?
A Yes, sir.

Q What did Avelino Mabonga do to you?
A He pulled me, sir.

Q What else did Avelino Mabonga do to you aside from pulling you?
A He brought me to a destroyed comfort room (*dinala ako sa sirang kubeta*), sir.

Q What did Avelino Mabonga do to you in that '*sirang kubeta*'?
A He asked me to remove my panty and shorts and also his pants and shorts, sir. Then he asked me to lie down as he laid on top of me.

Q What else did he do to you?
A He inserted his penis into my vagina (*pinasok po niya ang titi niya sa buray ko*) sir.

Q Is accused present here, Miss witness?
A Yes, sir.

xxx xxx xxx

Q Do you know when Avelino Mabonga inserted his penis into your vagina, madam witness?
A Last night, sir.

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[35] TSN, July 10, 1997 at 2-4.

Q Did you give your statement to the police in connection to what Avelino Mabonga did to you?
A Yes, sir.

xxx xxx xxx."[36]

During cross-examination, AAA never wavered in her assertion that appellant ravished her and this incident was even witnessed by appellant's wife, thus:

"xxx xxx xxx

FISCAL FLORANTE RAMOLETE:

Q What did Ave do to you?
A *Hinila ako sa sirang kubeta, sir.*

Q What did he do next after pulling you to a comfort room?
A He asked me to remove my shorts, sir. *Siya naman ay nagbaba ng pantalon at shorts niya, sir.*

Q After that, what happened?
A *Dumapa po naman siya sa akin, sir.*

Q After that, what happened?
A *Ipinasok niya ang titi niya sa buray ko, sir.*

Q After that, what happened?
A *Nakita ng asawa niya, sir.*

Q You testified earlier that his wife saw the incident, was Avelino still on top of you, at that time?
A Yes, sir.

xxx xxx xxx."[37]

In his brief, appellant assails AAA's credibility, stressing that her narration of the sordid details of the incident was not only rehearsed but coached by her mother and witness Rolando Ayad.

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[36] TSN, July 2, 1997 at 3.

[37] TSN, July 10, 1997 at 8-9.

AAA's intelligence is admittedly deficient. Thus, if the crime did not actually happen, she could not have narrated in detail how appellant ravished her. The present case is analogous to *People vs. Goles*,[38] where the victim therein is a mental retardate. There, we ruled:

> "It would be *preposterous to assume that the victim, whose intelligence quotient is admittedly low, could have concocted the grave charge of rape***,** or that she and her mother would go into the trouble of having her medically examined, going to court and advertising to the whole world she had been raped, if the charge was merely invented."

We reject appellant's contention that AAA was coached by her mother and witness Rolando Ayad. It bears stressing that "no young and decent lass will publicly cry rape if such were not the truth."[39] In fact, no woman would be willing to undergo a public trial, along with the shame, humiliation and dishonor of exposing her own degradation, were it not to condemn an injustice and to have the offender apprehended and punished.[40] Also, it is highly unnatural for a mother, virtuous or not, to use her own daughter as "an engine of malice, especially if it will subject her to embarrassment and even stigma."[41]

As found by the trial court, AAA, being only 13 years old and an epileptic, could have been an easy victim of appellant's bestial desire, thus:

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[38] G.R. No. 91513, December 21, 1990, 192 SCRA 663, cited in *People vs. Maceda*, G.R. No. 138805, February 28, 2001, 353 SCRA 228, 242.

[39] See *People vs. Tabanggay*, G.R. No. 130504, June 29, 2000, 334 SCRA 575, 597, citing *People vs. Castromero*, 280 SCRA 421 (1997).

[40] *People vs. Diasanta*, G.R. No. 128108, July 6, 2000, 335 SCRA 218, 226, citing *People vs. Lusa*, 288 SCRA 296 (1998); *People vs. Adora*, 275 SCRA 441 (1997); *People vs. Junio*, 237 SCRA 826 (1994); *People vs. Lagrosa, Jr*., 230 SCRA 298 (1994); and *People vs. Domingo*, 226 SCRA 156 (1993).

[41] *People vs. Galleno*, G.R. No. 123546, July 2, 1998, 291 SCRA 761, 774, citing *People vs. Dones*, 254 SCRA 696 (1996).

"Complainant, under the circumstances, could have been easily cowed into submitting to offender's evil design. She is thirteen (13) years old and an epileptic suffering from a delayed neuro-developmental status that makes her mentality incapable of correlating with her actual age. This was attested by her physician, Dr. Ricardo Atengco of the Amang Rodriguez Medical Center, who treated complainant from 1993 to 1996."[42]

While AAA failed to resist appellant's lustful advances, it does not indicate that she consented thereto. On this point, the late Chief Justice Ramon C. Aquino explained the *insignificance of consent* when rape is committed on a *woman suffering some mental deficiency* impairing her reason or free will (like the victim here), thus:

"xxx in the rape of the woman deprived of reason or unconscious, the victim has no will. The absence of will determines the existence of rape. Such *lack of will may exist* not only when the victim is unconscious or totally deprived of reason, but also *when she is suffering some mental deficiency impairing her reason or free will***.** In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. *Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape*. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. *Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent*."[43]

AAA's testimony is corroborated by her neighbors, Rolando and Rafael. Both categorically testified that they saw appellant having sexual intercourse with her on the day in question, thus:

"FISCAL FLORANTE RAMOLETE:

xxx xxx xxx

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[42] See RTC Decision, *supra,* at 32.

[43] Aquino, Ramon C., *Revised Penal Code*, 1988 Edition, Vol. III at 393-394, cited in *People vs. Namayan*, 246 SCRA 646, 655 (1995); and *People vs. Quiñones*, 222 SCRA 249, 253 (1993).

Q How far is this demolished house from that place where you saw Avelino Mabonga dragging AAA?
A Very near, sir.

Q From where you are seated now, will you kindly show the distance between the demolished house and that place where Avelino Mabonga dragged AAA?
A The distance is about 60 ft., sir.

xxx xxx xxx

Q What else did you do next, Mr. Witness?
A *Meron po akong nasa isip. Na baka ganoon nga ang mangyari dahil naalimpungatan po ako noon,* sir.

Q What did you foresee will happen when you saw Avelino dragging AAA?
A He might do something wrong to her, sir. So I followed them to that place. There, I saw Avelino naked, sir.

Q Do you mean to say that he was completely naked, Mr. witness?
A Yes, sir.

Q What else did you see?
A I saw him on top, sir.

Q On top of whom, Mr. witness?
A On top of the child, sir.

xxx xxx xxx."[44]

"Q Where is this toilet that your niece was referring to when she shouted, *'Avelino Mabonga is pulling or dragging AAA to a toilet'?*
A At the back of our house, sir.

Q And were you able to go to that toilet, Mr. witness?
A Yes, sir.

Q What did you see?
A I saw Avelino Mabonga, sir.

Q Was he alone then, Mr. witness?
A No, sir.

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[44] TSN, June 25, 1997 at 4-5 (direct testimony of Ronaldo Ayad).

Q What was Avelino Mabonga doing there?
A He was on top of the child, sir.

Q You are referring to AAA, Mr. witness?
A Yes, sir.

Q You said that he was on top of AAA, did you notice his body, Mr. witness?
A He was not wearing anything, sir. Not a single clothing.

Q So, do you want to impress upon this Court that he was completely naked, Mr. witness?
A Yes, sir.

xxx xxx xxx

Q Why didn't you stop Avelino Mabonga when you saw him on top of AAA, Mr. witness?
A I was worried that Avelino Mabonga might be carrying something that would cause harm to the girl and myself, sir.

Q After calling your niece, Mr. witness, what else did you do?
A I asked her to call the police, sir.

xxx xxx xxx

Q Mr. witness, what transpired next?
A I saw the wife of Ave proceeding to the place where Ave was. She was shouting, sir.

xxx xxx xxx

Q Mr. witness, you said that she was shouting, what did you hear, if any?
A She was cursing (*minumura*) Ave, sir.

Q What else did you hear when Rita was shouting, Mr. witness?
A She shouted, 'what are you doing there?' (*Anong ginagawa mo diyan?*)

xxx xxx xxx."[45]

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[45] TSN, September 17, 1997 at 5-6 (direct testimony of Rafael Ayad).

But appellant discredits the above testimonies, imputing ulterior motive on their part.

It is immaterial and irrelevant whether AAA's testimony was corroborated or not. Corroborative testimony frequently unavailable in rape cases, is not essential to warrant a conviction for the crime.[46] An accused may be convicted solely on the basis of the victim's testimony.[47]

On this point, the trial court gave full credence and weight to the corroborative testimonies of said witnesses that appellant had carnal knowledge of AAA by means of force and intimidation, thus:

"That carnal knowledge of complainant was accomplished by means of force and intimidation, has likewise been established. Eyewitnesses' account and even the testimony of complainant herself revealed how she was forcibly dragged by the offender to an abandoned structure (toilet). xxx

And the identity of the culprit cannot be questioned. Accused herein was positively identified by complainant. Even the eyewitnesses, whose testimonies have not been impeached, pinpoint the accused as the person who committed the detestable act. Jurisprudence have consistently maintained that positive identification prevails over an accused's bare denial. The defense's attempt to attribute evil motive to the prosecution witnesses to falsely testify against herein accused, miserably failed.

xxx xxx xxx."[48]

Equally unconvincing is appellant's claim that sexual assault is totally negated by the findings of the PNP Crime Laboratory Medico-Legal Officer that there are "no external signs" of force upon the victim and that her hymen has "healing lacerations."

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[46] *People vs. Osing*, G.R. No. 138959, January 16, 2001, 349 SCRA 310, 315.

[47] *People vs. Abon*, G.R. No. 130662, October 15, 2003 at 8, citing *People vs. Dalisay*, G.R. No. 133926, August 6, 2003; and *People vs. Agustin*, 365 SCRA 667 (2001).

[48] See RTC Decision, *supra*.

We have repeatedly held that "the *absence of external signs of physical injuries does not cancel out the commission of rape*, since proof of injuries is not an essential element of the crime."[49] In fact, even the *absence of fresh lacerations does not preclude the finding of rape*. Laceration of the hymen is not an element of the crime of rape.[50] Suffice it to say that Dr. Suguitan in his Medico-Legal Report, emphatically concluded that the above "findings are compatible with *recent loss of virginity*."[51]

Appellant also underscores the impossibility of committing rape in the presence of people, such as his wife and neighbors. But it is a common judicial experience that "*the presence of people nearby does not deter rapists from committing their odious act*. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping."[52]

Appellant's bare denial cannot exculpate him. It cannot prevail over the positive testimony and categorical assertion of Janice that appellant sexually abused her.

In *People vs. Pancho*,[53] we aptly held:

"Appellant's *denial is an inherently weak defense*. It has always been viewed upon with disfavor by the courts due to the ease with

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[49] *People vs. Osing, supra*, citing *People vs. Casipit*, 232 SCRA 638 (1994).

[50] *People vs. Pancho*, G.R. Nos. 136592-93, November 27, 2003 at 12, citing *People vs. Pruna*, 390 SCRA 577 (2002); *People vs. Geraban*, 358 SCRA 213 (2001); *People vs. Esteves*, 390 SCRA 135 (2002); *People vs. Llamo*, 323 SCRA 791 (2000); and *People vs. Sapinoso*, 328 SCRA 649 (2000).

[51] Exhibit "C", *supra*.

[52] *People vs. Belga*, G.R. No. 129769, January 19, 2001, 349 SCRA 678, citing *People v. Lusa*, 288 SCRA 296 (1998); and *People vs. Antonio*, 333 SCRA 201 (2000).

[53] *Supra* at 13, citing *People vs. Watiwat*, G.R. No. 139400, September 3, 2003; *People vs. Colisao*, 372 SCRA 20 (2001); and *People vs. Musa*, 371 SCRA 234 (2001).

which it can be concocted. Inherently weak, *denial as a defense crumbles in the light of positive identification of the accused*, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters."

And so, the trial court correctly found appellant guilty of the crime of *simple rape* through force and intimidation. There being neither aggravating nor mitigating circumstance that attended the commission of the crime, the trial court, thus, properly imposed upon appellant the penalty of ***reclusion perpetua***, pursuant to Article 335 of the Revised Penal Code, as amended, earlier quoted.

With respect to appellant's civil liability, aside from the award of moral damages of ₱50,000.00, the trial court should have awarded the victim ₱50,000.00 as indemnity *ex delicto*. Such award is mandatory upon the finding of the fact of rape.[54]

WHEREFORE, the appealed Decision dated March 17, 1998 of the Regional Trial Court, Branch 76, San Mateo, Rizal, in Criminal Case No. 3223 is hereby *AFFIRMED with MODIFICATION* in the sense that in addition to the award of ₱50,000.00 as moral damages to herein victim, AAA, appellant **AVELINO MABONGA** is also ordered to pay her ₱50,000.00 as civil indemnity.

With costs *de oficio*.

SO ORDERED.

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

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

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[54] *People vs. Ayuda*, G.R. No. 128882, October 2, 2003 at 14, citing *People vs. Escaño*, 376 SCRA 670 (2002); and *People vs. Arizapa*, 328 SCRA 214 (2000).

SECOND DIVISION

[G.R. No. 140267. June 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BEN AMBROCIO, BENIGNO AMBROCIO, SR., BENIGNO AMBROCIO, JR.* (At Large), JOSEPH ANDRADE, and CARLITO FRANCISCO (At Large),** *accused***. BEN AMBROCIO, BENIGNO AMBROCIO, SR., and JOSEPH ANDRADE,** *appellants*.

SYNOPSIS

Appellants were found guilty by the trial court of the crime of murder qualified by treachery for the killing of Roberto Sanchez. They were sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

In affirming the conviction of appellants, the Supreme Court ruled that the prosecution witnesses have established in detail how each of the appellants participated in the killing. The trial court based its finding that conspiracy existed on the appellants' actions at the time of the commission of the crime which showed a unity of purpose among them. A division of labor among appellants and co-accused occurred. Thus, as co-conspirators, they must all be liable for the death caused even if not all may have dealt a fatal blow on the victim.

The Court likewise held that treachery cannot be appreciated in the case at bar, as the killing was preceded by an argument or quarrel, and thus the victim could be said to have been forewarned and could anticipate aggression from the assailants. But while treachery might not have attended the killing, abuse of superior strength should be appreciated as an aggravating circumstance. It has been shown that the aggressors cooperated in such a way as to secure the advantage of their numerical strength and advantage. Since this aggravating circumstance was alleged in the information and duly proved, it qualified properly the killing to murder.

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* Also referred to as "Benny," in some parts of the records.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY RESPECTED ON APPEAL; CASE AT BAR.— Weighing carefully the contrasting versions of the prosecution and the defense, the trial court found the appellants' submission far from credible. On this score, we are in agreement with the trial court. For it had the opportunity to observe the demeanor of the witnesses, and was in the best position to appreciate the credibility of the witnesses and of their testimonies. Based on the records of the case before us, we see no reason to disturb the trial court's findings and conclusion that appellants hacked and killed the victim, Roberto Sanchez beyond a shadow of doubt.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— For self-defense to prosper, the following elements must be duly proved: (a) unlawful aggression; (b) reasonable means employed to repel the victim's unlawful aggression; and (c) lack of sufficient provocation on the appellants' part.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; LIES ON THE ACCUSED WHO INVOKES SELF-DEFENSE; CASE AT BAR.— When self-defense is invoked, the accused admits the killing of the victim, and the accused has the burden to justify such killing. Here, we find that appellant Ben Ambrocio failed to discharge his burden adequately.

4. ID.; ID.; FLIGHT, WHEN UNEXPLAINED, IS AN INDICATION OF GUILT.— Settled is the rule that flight of an accused, when unexplained, is a circumstance from which an inference of guilt may be drawn.

5. CRIMINAL LAW; CONSPIRACY, HOW ESTABLISHED.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be appreciated even if there is no direct evidence to show an actual agreement to commit the crime, when the acts and attendant circumstances surrounding the commission of the crime reflect a common design, thus making all the accused co-principals in the crime committed. It can be proven by evidence of a chain of circumstances and may be

inferred from the acts of all the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. It is not even necessary to show that all the conspirators actually hit and killed the victim, because once conspiracy is established, an act of one is the act of all.

6. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; CANNOT BE APPRECIATED IF THE KILLING IS PRECEDED BY AN ARGUMENT OR QUARREL.— [W]here a killing is preceded by an argument or quarrel, treachery can no longer be appreciated, as the victim could be said to have been forewarned and could anticipate aggression from the assailants.

7. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; APPRECIATED IN CASE AT BAR.— Abuse of superior strength is present when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked. Superiority in number does not necessarily amount to the aggravating circumstance of taking advantage of superior strength. But in this case, it has been shown that the aggressors cooperated in such a way as to secure the advantage of their numerical strength and advantage. There is proof of the relative numerical strength of the aggressors and the assaulted, a ratio of 5 to 2. There is also proof that the aggressors simultaneously assaulted the deceased. When all five accused, armed with bolos, joined forces to attack and pursue Sanchez and Masangya, in a concerted effort, they definitely abused their superiority in number and in arms. Since this aggravating circumstance was alleged in the information and duly proved, it qualifies properly the killing to murder.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— As to damages, the award by the trial court of ₱50,000 as civil indemnity to the heirs of the victim is correct and should be sustained. In addition, considering the wound inflicted on the victim that caused his death, and the anguish suffered by the victim's heirs, moral damages in the amount of ₱50,000 should also be awarded.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Immanuel L. Sodusta for accused-appellants.

D E C I S I O N

QUISUMBING, *J.*:

In the decision[1] dated April 7, 1999, of the Regional Trial Court of Kalibo, Aklan, Branch 2, in Criminal Case No. 5228, appellants Ben G. Ambrocio, Benigno L. Ambrocio, Sr., and Joseph P. Andrade were found guilty of murder and sentenced to *reclusion perpetua*. The two co-accused, Benigno (Benny) Ambrocio, Jr., and Carlito Francisco, however, are still at large, so their case was ordered archived pending their arrest.

Appellants and their co-accused were charged on September 17, 1998, by the Office of the Provincial Prosecutor of Aklan of murder allegedly committed as follows:

> That on or about the 24th day of February, 1998, in the afternoon, in Barangay Dalipdip, Municipality of Altavas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and abuse of superior strength, being then armed with bolos and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and hack one ROBERTO SANCHEZ thereby inflicting upon the latter physical injuries, to wit:
>
> ... ...
>
> "2. Hack wound, 5 inches long and 1 inch deep, at the middle portion of the right parietal region of the head with complete fracture of the underlying bone and hitting the brain underneath.
>
> 3. Incised wound, 1 ¼ inches long, at the anterior portion of the right parietal region of the head with incomplete fracture of the underlying bone.
>
> 4. Hack wound, 5 ½ inches long, from the left frontal region of the head, above the left eyebrow to the right side of the face, cutting the right eyebrow and hitting the right eyeball,

[1] Records, pp. 115-126.

with complete fracture of the underlying bone and hitting the frontal region of the brain underneath.

5. Hack wound, 5 ½ inches long, from the right frontal region of the head to the left upper jaw, cutting the right eyebrow, the right side of the nose and the left upper lip and with complete fracture of the underlying bones.

6. Hack wound, 2 ½ inches long, at the left occipital region of the head with complete fracture of the underlying bones.

7. Hack wound, 3 inches long and 3 inches deep, at the right side of the back, 8 inches below the right shoulder and with complete fracture of the underlying third rib.

8. Hack wound, 5 inches long, at the right side of the back and 1 inch below finding No. 7, with complete fracture of the underlying 5th rib and hitting the right lung.

9. Hack wound, 5 inches long, at the left side of the back, midclavicular line, 10 inches from the left shoulder and with complete fracture of the underlying 12th rib.

10. Incised wound, 1 ½ inches long, at the base of the back of the neck at the level of the shoulder with incomplete fracture of the underlying vertebra.

11. Incised wound, 2 inches long, at the left side of the back, 2 ½ inches below the left shoulder with incomplete fracture of the underlying bone.

12. Incised wound, 2 inches long at the back of the left shoulder with incomplete fracture of the underlying bone.

13. Hack wound, 3 ½ inches long around the lateral side of the right hand with complete fractures of the underlying bones and cutting all soft tissues underneath the wound at the level of the ringfinger and the littlefinger.

14. Hack wound, 6 inches long and 1 ½ inches deep, at the right side of the neck, from below the right ear to the left submandibular region with complete fracture of the underlying bones and cutting the blood vessels at the right side of the neck.

15. Incised wound, 1 ½ inches long, at the right side of the chest at the level of the midclavicular region with incomplete fracture of the underlying bone which is the clavicle.

16. Incised wound, 1 ½ inches long at the left side of the chest at the parasternal line, 7 inches from the suprasternal notch, ½ inch deep and cutting the muscles underneath.

17. Hack wound, 6 ½ inches long, at the left forearm, 2 inches below the left elbow and extends from the medial to the lateral side of the forearm with complete fracture of the ulna underneath."

as per Post Mortem Examination Report issued by Dr. Gliceria A. Sucgang, M.D., Rural Health Physician of Altavas, Aklan, a copy of which is hereto attached as Annex "A" and made an integral part hereof, and which injuries have caused the death of the victim.

That by reason of the unlawful acts of the accused, the heirs of the victim have suffered actual and compensatory damages in the amount of ₱50,000.00.

CONTRARY TO LAW.[2]

Because their co-accused remained at large, only herein appellants were arraigned. Assisted by counsel *de parte*, appellants Benigno Ambrocio, Sr. and Joseph Andrade denied the charge and pleaded not guilty. Appellant Ben Ambrocio, for his part, pleaded self-defense.[3] Trial on the merits then commenced.

The following is the summary of testimonies by witnesses for the prosecution.

(1) DIEGO MASANGYA testified that at around 1:30 p.m. of February 24, 1998, a certain Roger Domingo reported that he found coconut lumber which could have been felled without permit, in a construction site in Sitio Nasunog, Dalipdip, Altavas, Aklan.[4] As *barangay* captain of Dalipdip, part of Masangya's duties was to issue permits to cut coco lumber. He investigated the report and instructed Elienito[5] Gervacio, a member of the

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[2] *Id*. at 1-3.

[3] *Id*. at 52.

[4] TSN, 19 January 1999, pp. 18-21 (Diego Masangya).

[5] "Elenito" in other parts of the records.

Lupong Tagapamayapa, to verify Domingo's report and to wait for him at Sitio Nasunog.[6]

At around 2:00 p.m., Masangya recalled, he was accompanied by the victim, Roberto Sanchez, to Sitio Nasunog. There they saw the pile of coconut lumber beside the road near the construction site.[7] He noticed that in the house under construction, there was a drinking spree going on amongst the five accused — Carlito Francisco, Joseph Andrade, Benigno Ambrocio, and his sons Ben and Benny.[8] They alighted from the motorcycle. Ben Ambrocio walked towards the two until Ben was six meters away from them with only the construction site's bamboo fence separating them. He heard Ben ask, "What are you doing there, captain?" He noticed that Ben and his companions were already drunk.[9] He replied, "Who are you to question me? I am the *barangay* captain here." Upon hearing this reply, the other four accused came down from the house, and all five jumped over the fence. With their bolos drawn, the five approached them. Sanchez suggested that they talk things over calmly, saying, "We will just talk peacefully." Without warning, Ben suddenly hacked Sanchez at the back.[10]

Masangya testified that at that point, he shouted to the victim, "Berto, you run away." He himself sped off, but Benigno Ambrocio, Francisco and Andrade pursued him. They failed to overtake him.[11] Sanchez, however, was not so lucky. Before he could run away, he suffered another blow. This time Benny Ambrocio struck him at the back with his bolo. The victim fell. All the five accused then gathered around Sanchez and continued hacking him to death. Afterwards, they carried his body to the area where it was later found.[12]

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[6] *Supra*, note 4.

[7] *Id*. at 5.

[8] *Id*. at 11-12, 22.

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

[10] *Id*. at 8, 27-30.

[11] *Id*. at 9-10.

[12] TSN, 20 January 1999, pp. 11-12 (Elienito Gervacio).

Masangya added that he witnessed the entire incident while he hid behind a thicket.[13] Soon thereafter, at around 4:00 p.m., he reported the incident to the Altavas police. There he saw Joseph Andrade who also reported the incident. Initially, Masangya only implicated the Ambrocios.[14] He included Andrade and Francisco in a supplemental report made one day after the killing.[15]

(2) ELIENITO GERVACIO testified that upon instruction from Masangya, he proceeded to the construction site on foot. He arrived there at around 1:15 p.m. and found around twenty pieces of coco lumber. He saw all the five accused in the construction site located ten meters away from the pile of coco lumber, but he did not attempt to approach them because he saw they were drinking. Forty-five minutes later he recalled hearing the sound of a motorcycle, from which he saw Masangya and Sanchez alight. He did not speak to the two because all the accused were approaching the duo, while demanding why Masangya was there. Gervacio said Masangya replied, "Why are you asking me when I am going somewhere else?" He remembered Sanchez say, "We will just talk peacefully." Suddenly, he saw Ben Ambrocio hit Sanchez at the back with his bolo.[16] Gervacio said he heard Masangya shout at Sanchez to run, but Sanchez could not because by then Benny had struck Sanchez at the back. The other three accused chased Masangya but were unable to catch up with him. They returned to Sanchez, who meanwhile had fallen to the ground because of the two blows he received. He saw all five carry Sanchez to the feeder road where his body was later found. Afterwards, he saw all the five return to the construction site.[17]

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[13] TSN, 19 January 1999, p. 11 (Diego Masangya).

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

[15] Exhibit "B", Records, p. 6.

[16] TSN, January 20, 1999, pp. 4-8, 16-18 (Elienito Gervacio).

[17] *Id*. at 8-12.

Gervacio said that the group did not see him, nor did they talk to him.[18] On cross-examination, he stated that after the incident, he accompanied Masangya to the police station where they reported the incident. The police took only Masangya's testimony. He also admitted that Edison Gervacio, who testified for the defense, is his brother.[19]

(3) DR. GLICERIA A. SUCGANG, the physician who conducted the post-mortem examination of the victim, testified that out of the 17 hack and incised wounds suffered by the victim, the most fatal was wound No. 14, the hack wound at the right side of the victim's neck. She affirmed that the wounds could have been caused by five different bolos while the victim was standing.[20] On cross-examination however, she also opined that it was possible only one bolo could have been used in inflicting all the wounds. She also stated that in certain cases, there were some victims who, despite the wounds they suffered, still ran for some distance before they succumbed to the wounds.[21]

In their defense, appellants contended that they merely defended themselves from Masangya and Sanchez's unlawful aggression. According to appellant Ben, he hacked Roberto Sanchez in self-defense. The following is the summary of the testimonies by appellants and witnesses presented by the defense.

(1) Appellant BEN AMBROCIO testified that he and his co-accused (except for Carlito Francisco, a transient visitor) were building the Ambrocio family's house. At 3:00 p.m. on February 24, 1998, Masangya and Sanchez arrived at the construction site and without any provocation from the appellants, the two destroyed the bamboo fence of the construction site. Ben recalled Masangya barged into their house and asked, "Why are you continuing the construction when I had caused this to be burned already?" Ben replied, "Why did you cause to have

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[18] *Id*. at 14, 18.

[19] *Id*. at 23-24.

[20] TSN, 18 January 1999, pp. 6-7 (Gliceria Sucgang).

[21] *Id*. at 10-12.

it burned when it is not yours and this house is ours." Masangya responded by pointing a gun at him and pulled its trigger three times. The gun, however, jammed and did not fire.[22]

Ben remembered Sanchez unsheathed his bolo and tried to hit him but Sanchez missed. He said he defended himself with a bolo, and hit Sanchez's left hand. Sanchez ran downhill and challenged him to fight on. As Masangya fled downhill, Ben said he chased Sanchez and they fought. He insisted he alone hacked Sanchez several times because he was consumed by anger, stemming from the fact that Masangya and Sanchez had burned their house before.

Ben said that after the incident, he went home. The next day, he surrendered to the police station in Barangay Ipil, Batan. He was issued a certification regarding his voluntary surrender.[23]

Ben contends that none of the other accused were involved in the hacking incident. According to him, Francisco was a mere transient who took temporary shelter in the construction site. Andrade stayed on the roof. His brother Benny arrived only after the incident. Ben said that his father Benigno attempted to pacify the quarreling group but failed.

(2) Appellant BENIGNO L. AMBROCIO, SR., testified that Sanchez and Masangya arrived on a motorcycle on the day of the incident. The two challenged Ben, Joseph and he to a fight. Masangya pointed his gun at Ben while Sanchez unsheathed his bolo. Sanchez tried to hack Ben but failed, and Ben retaliated. He said Masangya pointed his gun at Ben and pulled the trigger three times, but it did not fire. Benigno claimed he then parried the gun, and hit the gun's lock that the cylinder was dislodged and three bullets fell. Unarmed, Masangya ran downhill with Sanchez. When Sanchez challenged Ben, Ben hacked Sanchez to death. Benigno said he stayed behind unable to run, because his feet were swelling from arthritis.[24]

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[22] TSN, 1 February 1999, pp. 15-18 (Ben Ambrocio).

[23] *Id*. at 19-22.

[24] TSN, 9 February 1999, pp. 16-21 (Benigno Ambrocio).

(3) Appellant JOSEPH ANDRADE testified that he was on top of the roof when Masangya and Sanchez arrived. Masangya shouted why they were still building when he had the house torched before. At that moment, he saw Masangya point a gun at Ben, while Sanchez attempted to hack Ben. The entire time Joseph claims, he stayed on the rooftop. He only went down after Ben and Sanchez ran downhill. Later, he accompanied Rosita Ambrocio to the police station to report the matter.[25]

(4) Witness ROSITA AMBROCIO, wife of appellant Benigno, testified that on the day of the incident, she was at the family home located 70 meters from the construction site of their new house. She and Benny, her eldest son, were on the way to the construction site when they heard a commotion. Upon reaching the place, she saw Masangya poking a gun at her other son, Ben.[26] Her testimony corroborated appellants' story.

Afterwards, Andrade and she reported the incident to the police.[27] She brought along the three bullets that fell from Masangya's gun and gave them to the police. The police kept the bullets and made an entry about them in the blotter.[28] Around seven policemen accompanied her to the scene of the crime. She said the police officers took pictures of the scene, and checked the body of the deceased.[29]

She added that their house was indeed burned last November 9, 1997. She showed pictures of the burned site,[30] and the certification of the fact in the police blotter.[31]

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[25] *Id*. at 13.

[26] TSN, 27 January 1999, pp. 8-10 (Rosita Gregorio-Ambrocio).

[27] *Id*. at 17-18.

[28] *Id*. at 18-19; Exhibit "6", Records, p. 23.

[29] *Supra*, note 26 at 22; Exhibits "7-7B", Records, pp. 24-26.

[30] Exhibits "7-A" & "7-B", Records, pp. 25-26.

[31] *Supra*, note 26 at 14-16; Exhibit "4", Records, p. 21.

(5) LAURA DOMINGUEZ testified that she has been a resident of Dalipdip for 25 years already. On the day of the incident, at 3:00 p.m., she was on a cart with her daughter on the feeder road en route home. She knew all the accused because they were her barriomates.[32]

While in the cart, she heard shouts coming from the construction site, and she stopped the cart. She saw the *barangay* captain and Ben Ambrocio fighting. The *barangay* captain was holding a gun.[33] She corroborated the story of the other defense witnesses. In addition, she said that she knew Elienito Gervacio, but she did not see him anywhere near the area when the incident happened.[34]

On cross-examination, she said that on her way downhill, she saw Rosita Ambrocio.[35] She also said she did not see Andrade and Francisco nor Benny in the area where she was the entire time.[36]

(6) EDISON GERVACIO testified that Elienito Gervacio and he were brothers. On that day of the incident, February 24, 1998, he was at Elienito's house from 10:00 a.m. to 4:00 p.m. Elienito arrived only at 11:30 a.m. They ate lunch together, and afterwards they talked. He stressed that at no time in the afternoon of February 24, 1998, did Elienito leave the house.[37] When they finished talking at around 4:00 p.m., his brother escorted him to the highway to get a ride home.[38] He said they learned of the incident at around 4:30 p.m.[39] He admitted that

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[32] TSN, 28 January 1999, pp. 20-22 (Laura De Jose Dominguez).

[33] *Id*. at 23-24.

[34] *Id*. at 26-28.

[35] TSN, 1 February 1999, p. 5 (Laura De Jose Dominguez).

[36] *Id*. at 9.

[37] TSN, 1 February 1999, pp. 3-5 (Edison Gervacio).

[38] *Id*. at 6.

[39] *Id*. at 10a.

Consoling Francisco, his sister-in-law who is the wife of the accused Carlito Francisco,[40] asked him to testify.

(7) SPO1 ISAAC CLARITE testified that on February 24, 1998, he was the Desk Officer/Investigator of the Altavas Police Station. That afternoon, he said, Rosita Ambrocio reported a hacking incident that happened in Dalipdip. He recorded the report in the police blotter.[41] He recalled that she also turned over three live ammunition of a .357 caliber magnum revolver.[42] A moment later, Diego Masangya arrived at the police station to report the incident.[43]

On cross-examination, SPO1 Clarite said that he saw traces of blood from the feeder road to where the body was lying, a distance of some seven (7) to eight (8) meters.[44] He was certain that the blood was from the feeder road and not from the construction area. He added that no gun or bolo was recovered from the crime scene.[45]

(8) SPO2 JESUS DURAN DOMINGUEZ testified that on February 25, 1998, Ben Ambrocio voluntarily surrendered to him at the Batan police station. He recorded the surrender in the police blotter. On cross-examination, Dominguez stated that when Ben surrendered, Ben explained he was afraid to surrender to the Altavas Police station that was why he surrendered to the Batan station instead. Dominguez did not detain Ben. Instead he informed the Altavas police station of Ben's surrender. Representatives of the Altavas Station took custody of Ben the following day. In the Batan station, Ben stayed inside the police station but outside the jailhouse.[46]

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[40] *Id*. at 11.

[41] TSN, 9 February 1999, p. 4 (SPO1 Isaac Clarite).

[42] *Id*. at 7-8.

[43] *Id*. at 5-6.

[44] *Id*. at 9-10.

[45] *Id*. at 10.

[46] TSN, 23 February 1999, pp. 3-10 (SPO2 Jesus Duran Dominguez).

On rebuttal, MASANGYA testified that he did not own nor possess a gun. He claimed he did not even know how to handle one. He said the police did not question nor confront him about the bullets which the Ambrocios submitted to the police.[47]

Further, he denied that Sanchez unsheathed his bolo during the incident. Neither did he know what happened to said bolo because when he returned to the scene, only the scabbard was left. The bolo was missing. He also denied castigating the accused regarding their rebuilding of their house. On the contrary, he said, all the accused jumped at him and Sanchez as soon as they arrived and when they were actually still on the road. He said the feet of the accused hit the fence as they rushed over it in a drunken rage, and that is how the fence broke. He added that when this happened, he had not even turned off his motorcycle's engine. Masangya said he was certain that Joseph Andrade participated in the hacking of the victim. He remembered telling Andrade, who was a *tanod* in Dalipdip, but Andrade responded by attempting to hack the victim, instead. He was certain Carlito Francisco also joined in the hacking of the deceased, Sanchez, because when he told Francisco to stop, Francisco instead attempted to hack Masangya.[48]

The trial court disbelieved the defense, and found the prosecution's version credible. It sentenced appellants as follows:

> WHEREFORE, the Court finds the three (3) accused, BEN G. AMBROCIO, BENIGNO L. AMBROCIO [Sr.] and JOSEPH P. ANDRADE, GUILTY beyond reasonable doubt of MURDER and hereby imposes upon each one of them the penalty of *RECLUSION PERPETUA*.
>
> Further, the said three (3) accused are hereby ordered to jointly and severally pay to the heirs of the victim Roberto C. Sanchez the amount of ₱50,000.00 for the latter's death.
>
> Furthermore, the Court orders that the three (3) above-named accused be credited in the service of their sentence with the full time during which they have undergone preventive imprisonment.

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[47] TSN, 9 March 1999, pp. 7-8 (Diego Masangya).

[48] *Id*. at 9-15.

And finally, let the case against the two (2) accused BENNY AMBROCIO and CARLITO FRANCISCO, who are still at large, be ARCHIVED to be revived upon their apprehension.

With COSTS against the accused.

SO ORDERED.[49]

The trial court found the prosecution's evidence clear, convincing, and credible. It cited Masangya's testimony for his candor.[50] The trial court especially found the following pieces of evidence too strong to be ignored:

1) SPO1 Isaac Clarite's testimony that traces of blood were discovered leading from the road to the spot where the cadaver was found. This fact bolsters the prosecution's claim that the hacking took place right at the road from where the five accused transferred the corpse;

2) The number, location and direction of the injuries suffered by the victim, which strongly suggest more than one person took part in inflicting the wounds;

3) The continuing evasion from arrest by co-accused Benny Ambrocio and Carlito Francisco, belying their claims that they are innocent, and that Ben Ambrocio alone was guilty;

4) The demonstration made in court, wherein Benigno Ambrocio, Sr., parried a loaded gun but the bullets did not fall, showing the defense's allegations about the gun allegedly used by the barangay captain Masangya, were highly improbable.[51]

The trial court held that conspiracy attended the killing. The accused acted in concert when they approached Masangya and Sanchez with drawn bolos just before the hacking attack.[52] An

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[49] Records, pp. 125-126.

[50] *Rollo*, pp. 26-27.

[51] *Id*. at 27.

[52] *Id*. at 28.

apparent "division of labor" existed among them as to who would take care of *barangay* captain Masangya while the victim, Sanchez, was being hacked. Their *bayanihan* efforts facilitated the transfer of the victim's corpse from the road to the thicket.[53]

The lower court also found that treachery was present to qualify the killing to murder. The first blow on the victim's back was so sudden that it took the victim by surprise. Even granting the victim was aware of the possible dangers when they accosted appellants, the victim was definitely not expecting a treacherous attack, considering that he was in the middle of pacifying everyone. The trial court said that at the moment of the attack, the victim Sanchez was totally defenseless. The attack was carried out in such a manner that Sanchez was deprived of the opportunity to at least draw his own bolo and defend himself.[54]

In the instant appeal, appellants now assail the lower court's judgment, alleging the following errors:

1. THE LOWER COURT ERRED IN ITS FINDINGS OF FACT AND OF LAW WHEN IT RULED THAT HEREIN ACCUSED-APPELLANTS CONSPIRED IN KILLING THE VICTIM;

2. THE LOWER COURT ERRED IN ITS FINDINGS OF FACT AND OF LAW WHEN IT APPRECIATED THE AGGRAVATING CIRCUMSTANCE OF TREACHERY AGAINST HEREIN ACCUSED-APPELLANTS;

3. CONSEQUENTLY, THE LOWER COURT ERRED IN ITS FINDINGS OF FACT AND OF LAW WHEN IT CONVICTED HEREIN ACCUSED-APPELLANTS OF THE CRIME CHARGED, SPECIFICALLY PARAGRAPH 1, ART. 248, REVISED PENAL CODE.[55]

The main issues for resolution are: whether the appellants' guilt has been proved beyond reasonable doubt; and whether the killing of Roberto Sanchez was attended by conspiracy and treachery.

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[53] *Ibid*.

[54] *Id*. at 29.

[55] *Id*. at 52-53.

Appellants contend that it was only Ben Ambrocio who killed the victim, and that he did it in self-defense, and out of fear for his own safety. They aver that the incident would not have transpired at all if not for the unlawful aggression and provocation on the part of Masangya and Sanchez. They assail the trial court's heavy reliance on Masangya's testimony, which they claim is self-serving. Moreover, they stress that Joseph Andrade and Rosita Ambrocio, who is Benigno's wife, also immediately reported the incident to the police. When the policemen arrived at the scene of the crime, Benigno and Joseph were also there. They claim that these circumstances are contrary to the usual behavior of persons who had just committed a crime, hence, these circumstances negate the accusation that Benigno and Joseph participated in the commission of the crime.[56]

The appellee, through the Office of the Solicitor General (OSG), counters that the evidence presented by the prosecution established all the elements of murder. The prosecution witnesses clearly identified all the accused. This fact belies the claim that it was Ben Ambrocio alone who killed the victim. The OSG invokes the doctrine in *People v. Go-od*[57] that mere averment of non-participation of the other accused does not suffice to overcome the positive identification of the malefactors by prosecution witnesses.[58]

Appellants question the trial court's finding that the prosecution witnesses are credible. After a careful scrutiny of the testimonies of witnesses for the prosecution as well as the defense we find that the prosecution witnesses have established in detail how each of the accused participated in the killing. Their testimonies corroborated each other on material points. These testimonies inculpating the appellants could not have been merely fabricated. Witnesses Masangya and Gervacio were particularly candid,

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

[57] G.R. No. 134505, 9 May 2000, 331 SCRA 612.

[58] *Id.* at 618.

detailed and straightforward as to compel belief in the truth and sincerity of their testimonies for the prosecution.

In contrast, we find that the appellants' version of the incident appears contrived. Their claim that parrying a .357 caliber revolver could cause its chamber to disengage was belied by actual demonstration done in open court, which showed it was highly improbable. Appellants also claim that the victim was hacked by co-appellant Ben Ambrocio in self-defense, and that the initial hacking was done by him alone within the construction site. But this claim is refuted by the testimony of SPO1 Isaac Clarite. He testified under oath that blood was found only on the road up to the thicket. There were no traces of blood in the construction area.[59]

Weighing carefully the contrasting versions of the prosecution and the defense, the trial court found the appellants' submission far from credible. On this score, we are in agreement with the trial court. For it had the opportunity to observe the demeanor of the witnesses, and was in the best position to appreciate the credibility of the witnesses and of their testimonies. Based on the records of the case before us, we see no reason to disturb the trial court's findings and conclusion that appellants hacked and killed the victim, Roberto Sanchez beyond a shadow of doubt.

Moreover, appellant Ben Ambrocio's claim of self-defense is bereft of merit. For self-defense to prosper, the following elements must be duly proved: (a) unlawful aggression; (b) reasonable means employed to repel the victim's unlawful aggression; and (c) lack of sufficient provocation on the appellants' part.[60] When self-defense is invoked, the accused admits the killing of the victim, and the accused has the burden to justify such killing.[61] Here, we find that appellant Ben Ambrocio failed to discharge his burden adequately.

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[59] See TSN, 9 February 1999, pp. 9-10 (SPO1 Isaac Clarite).

[60] Revised Penal Code, Art. 11.

[61] *People v. Cabical*, G.R. No. 148519, 29 May 2003, 403 SCRA 268, 274.

Worth stressing, no unlawful aggression on the part of Sanchez, the victim, or of Masangya, has been sufficiently shown. In any event, the means employed by appellants could not, by any stretch of the imagination, be deemed reasonable and necessary. The means used, which was simultaneous and repeated hacking ensured with certainty the victim's death. Eloquent proof in this regard is the finding that the victim sustained no less than seventeen hack and incised wounds, which proved mercilessly fatal.

Lastly, the flight of co-accused Benigno Ambrocio, Jr., and Carlito Francisco from the moment this case was filed and up to the present is indicative of their guilt. Settled is the rule that flight of an accused, when unexplained, is a circumstance from which an inference of guilt may be drawn.[62]

Now, as to the issue of conspiracy. Appellants' claim the facts of this case belie the presence of conspiracy. Appellants say that they had bolos with them because they were constructing a house. They allege that it was Masangya and Sanchez who started the confrontation by calling out to them in a confrontational way. They add that the two were armed with a gun and a bolo, which were unnecessary, if the duo were merely to inspect the coco lumber. According to appellants, the death of Sanchez was a result of the unwarranted provocation by both Masangya and Sanchez. Additionally, they cite the police blotter report filed by Masangya, which initially made mention only of the Ambrocios.[63]

The OSG counters that the killing was a concerted effort of all the five accused. The OSG points out that as testified to by the prosecution witnesses, all the accused helped to consummate the offense. Co-accused Andrade and Francisco further participated in carrying the hacked body of the victim towards the thicket where the body was eventually found. All these established the participation of appellants and the co-accused. These circumstances

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[62] *People v. Bensig*, G.R. No. 138989, 17 September 2002, 389 SCRA 182, 196.

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

show that they acted in concert, and conspiracy existed among them.[64]

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[65] It may be appreciated even if there is no direct evidence to show an actual agreement to commit the crime, when the acts and attendant circumstances surrounding the commission of the crime reflect a common design, thus making all the accused co-principals in the crime committed. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of all the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[66] It is not even necessary to show that all the conspirators actually hit and killed the victim, because once conspiracy is established, an act of one is the act of all.[67]

The trial court based its finding that conspiracy existed on the appellants' actions at the time of the commission of the crime which showed a unity of purpose amongst them.[68] A division of labor among appellants and co-accused occurred: Ben and Benny took care of Sanchez, while the other three pursued Masangya. When all the accused carried the body of Sanchez from the road to the thicket, it showed their unity of purpose — to end his life and hide his corpse. Thus, as co-conspirators, they must all be liable for the death caused even if not all may have dealt a fatal blow on the victim.

But appellants question the trial court's finding of treachery, saying that they were provoked by Masangya and the victim

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[64] *Id*. at 107, 110.

[65] Revised Penal Code, Art. 8, par. 2.

[66] *People v. Peralta*, G.R. No. 133267, 8 August 2002, 387 SCRA 45, 63.

[67] *People v. Sicad*, G.R. No. 133833, 15 October 2002, 391 SCRA 19, 34.

[68] *People v. San Pascual*, G.R. No. 137746, 15 October 2002, 391 SCRA 49, 64, quoting *Sison v. People*, G.R. Nos. 108280-83 & 114931-33, 16 November 1995, 250 SCRA 58, 80.

Sanchez, and stressing that daytime attack and frontal but impulsive confrontation among adversaries negate treachery.[69]

For appellee, the OSG contends that the trial court did not err when it ruled that treachery was present, but if such cannot be appreciated, then abuse of superior strength should be considered to have attended the killing. The OSG says that the weapons used and the location of the wounds showed intent to kill which made it impossible for the victim to resist or escape.[70] Assuming that treachery was not present, because the victim was aware of the impending peril arising from the exchange of words between the appellants and Masangya, the OSG says that abuse of superior strength must be appreciated to have attended the killing, as the appellants took advantage of their numerical superiority.[71]

On this point, we agree with the OSG. It was established that when Masangya and Sanchez arrived at the scene of the crime, they had a heated argument or exchange of words with appellant Ben Ambrocio, who was holding a bolo. Ben was six meters away from Sanchez, the victim. Said heated exchange prompted the appellants and co-accused to jump over the fence. They promptly surrounded Masangya and Sanchez. Noteworthy, this incident took place in broad daylight. The victim Sanchez could not have missed the import of what was happening: the bolo held by the appellants and co-accused meant danger to his life. Like Masangya, Sanchez had an opportunity to escape from the tension-filled situation. Unfortunately, unlike Masangya, he did not succeed to run away. Nevertheless, where a killing is preceded by an argument or quarrel, treachery can no longer be appreciated, as the victim could be said to have been forewarned and could anticipate aggression from the assailants.[72]

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[69] *Rollo*, pp. 55-57.

[70] *Id.* at 114.

[71] *Id.* at 115.

[72] *People v. Buluran*, G.R. No. 113940, 15 February 2000, 325 SCRA 476, 487. See also *People v. Tadeo*, G.R. Nos. 127660 & 144011-12, 17 September 2002, 389 SCRA 20, 27-28.

But while we agree that treachery might not have attended the killing of Sanchez, we rule that there was abuse of superior strength that should be appreciated as an aggravating circumstance on the part of appellants. Abuse of superior strength is present when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked.[73]

Superiority in number does not necessarily amount to the aggravating circumstance of taking advantage of superior strength. But in this case, it has been shown that the aggressors cooperated in such a way as to secure the advantage of their numerical strength and advantage. There is proof of the relative numerical strength of the aggressors and the assaulted, a ratio of 5 to 2. There is also proof that the aggressors simultaneously assaulted the deceased. When all five accused, armed with bolos, joined forces to attack and pursue Sanchez and Masangya, in a concerted effort, they definitely abused their superiority in number and in arms. Since this aggravating circumstance was alleged in the information and duly proved, it qualifies properly the killing to murder.[74]

The penalty for murder, under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, is "*reclusion perpetua* to death." For appellants Benigno L. Ambrocio, Sr., and Joseph Andrade, since no aggravating and no mitigating circumstances were proved, the applicable provision is Art. 63, par. 2 of the Revised Penal Code.[75] As for appellant Ben

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[73] *People v. Garcia*, G.R. No. 132915, 6 August 2002, 386 SCRA 263, 274.

[74] Revised Penal Code. 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:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

... ...

[75] ART. 63. *Rules for the application of indivisible penalties*. —

Ambrocio, we find in his favor the mitigating circumstance of voluntary surrender,[76] to which Art. 63, par. 3 of the Revised Penal Code[77] applies. On all of them, the imposition of the penalty of *reclusion perpetua* is appropriate under the circumstances.[78]

As to damages, the award by the trial court of ₱50,000 as civil indemnity to the heirs of the victim is correct and should be sustained. In addition, considering the wound inflicted on the victim that caused his death, and the anguish suffered by the victim's heirs, moral damages in the amount of ₱50,000 should also be awarded.[79]

... ...

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:

... ...

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[76] ART. 13. Mitigating circumstances. — The following are mitigating circumstances:

... ...

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

... ...

[77] ART. 63. *Rules for the application of indivisible penalties*. —

... ...

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:

... ...

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.

[78] See *People v. Amazan*, G.R. Nos. 136251, 138606 & 138607, 16 January 2001, 349 SCRA 218, 237.

[79] *People v. Delmo*, G.R. Nos. 130078-82, 4 October 2002, 390 SCRA 395, 437-438.

WHEREFORE, the decision of the Regional Trial Court of Kalibo, Aklan, Branch 2, in Criminal Case No. 5228, finding appellants BEN G. AMBROCIO, BENIGNO L. AMBROCIO, SR., and JOSEPH P. ANDRADE *GUILTY* beyond reasonable doubt of murder, imposing on each the penalty of *reclusion perpetua* with all its accessories is *AFFIRMED with MODIFICATION*. Appellants are *ORDERED* jointly and severally, to pay the heirs of the victim, Roberto Sanchez, ₱50,000.00 as civil indemnity and another ₱50,000 as moral damages.

Let a copy of this Decision be furnished to the Director of the National Bureau of Investigations (NBI) and the Director-General of the Philippine National Police (PNP), for the arrest of accused BENIGNO AMBROCIO, JR., and CARLITO FRANCISCO so that they could be brought before the bar of justice. Costs *de oficio*.

SO ORDERED.

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

Austria-Martinez, J., on leave.

FIRST DIVISION

[G.R. No. 141336. June 29, 2004]

RODOLFO G. VALENCIA, PEDRITO REYES, REMEDIOS MARASIGAN, BAYANI ANASTACIO, RUMULADO BAWASANTA, JOSE ENRIQUEZ, NELSON GABUTERO, JOSE GENILO, JR., JOSE LEYNES and ALFONSO UMALI, JR., *petitioners, vs.* **SANDIGANBAYAN, 4TH DIVISION and OFFICE OF THE OMBUDSMAN/SPECIAL PROSECUTOR,** *respondents.*

SYNOPSIS

An information was filed with the Sandiganbyan charging petitioners with violation of Section 3 (e) in relation to Section 3 (g) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, for entering into a grossly disadvantageous contract of loan with Engr. Alfredo Atienza, whereby the provincial funds of Oriental Mindoro were given to him to finance the cost of repair, operation and maintenance of his vessel. A motion to quash the information was filed, but the same was denied. In the meantime, petitioners learned that in the administrative case against them involving the same subject matter as the criminal case, the Ombudsman dismissed the complaint after finding that the contract of loan was entered into in pursuance of the police power of the local chief executive. In this petition for *certiorari*, petitioners alleged that the Sandiganbayan committed grave abuse of discretion in not dismissing the information or in not granting the motion to quash the information despite the fact that the administrative case against them had already been dismissed.

In dismissing the petition, the Supreme Court ruled that the basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. Moreover, one of the grounds for the dismissal of the administrative case against petitioners is the fact that they were reelected to office. However, the re-election of a public official extinguishes only the administrative, but not the criminal liability incurred by him during his previous term of office. There was, thus, no reason for the Sandiganbayan to quash the information against petitioners on the basis solely of the dismissal of the administrative complaint against them.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; ONLY SUCH FACTS AS ARE ALLEGED IN THE INFORMATION AND THOSE ADMITTED BY THE PROSECUTOR ARE GENERALLY TAKEN INTO ACCOUNT IN THE RESOLUTION OF THE MOTION.—

Save where the Rules expressly permit the investigation of facts alleged in a motion to quash, the general rule is that in the hearing of such motion only such facts as are alleged in the information, and those admitted by the prosecutor, should be taken into account in the resolution thereof. Matters of defense can not be produced during the hearing of such motions, except where the rules expressly permit, such as extinction of criminal liability, prescription and former jeopardy. Otherwise put, facts which constitute the defense of the accused against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.

2. ID.; ID.; MOTION TO QUASH ON THE GROUND THAT THE ALLEGATIONS OF THE INFORMATION DO NOT CONSTITUTE THE OFFENSE CHARGED, HOW RESOLVED; EXCEPTION.— As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. The informations need only state the ultimate facts; the reasons therefor could be proved during the trial. The fundamental test in reflecting on the viability of a motion to quash under this particular ground is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in the law. In this examination, matters *aliunde* are not considered. However, inquiry into facts outside the information may be allowed where the prosecution does not object to the presentation thereof … It should be stressed, however, that for a case to fall under the exception, it is essential that there be no objection from the prosecution. Thus, the above rule does not apply where the prosecution objected to the presentation of extraneous facts and even opposed the motion to quash.

3. ID.; ACTIONS; CRIMINAL PROSECUTION AND ADMINISTRATIVE PROCEEDINGS, DISTINGUISHED.— [T]he basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other

hand, the purpose of the criminal prosecution is the punishment of crime.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; RE-ELECTION OF A PUBLIC OFFICIAL EXTINGUISHES ONLY THE ADMINISTRATIVE, BUT NOT THE CRIMINAL, LIABILITY INCURRED DURING HIS PREVIOUS TERM OF OFFICE.— [O]ne of the grounds for the dismissal of the administrative case against petitioners is the fact that they were re-elected to office. Indeed, a re-elected local official may not be held administratively accountable for misconduct committed during his prior term of office. The rationale for this holding is that when the electorate put him back into office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still re-elects him, then such reelection is considered a condonation of his past misdeeds. However, the re-election of a public official extinguishes only the administrative, but not the criminal, liability incurred by him during his previous term of office, … . There is, thus, no reason for the Sandiganbayan to quash the Information against petitioners on the basis solely of the dismissal of the administrative complaint against them.

APPEARANCES OF COUNSEL

Westwood Law for petitioners.
Sarah Villareal-Fernandez for R. Valencia.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

On April 8, 1997, petitioners Rodolfo G. Valencia, Pedrito Reyes, Remedios Marasigan, Bayani Anastacio, Rumulado Bawasanta, Jose Enriquez, Nelson Gabutero, Jose Genilo, Jr., Jose Leynes and Alfonso Umali were charged with Violation of Section 3(e) in relation to Section 3(g) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, in an Information which reads:

That on or about January 12, 1994 or sometime prior or subsequent thereto, in Calapan, Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, accused Rodolfo G. Valencia, then Provincial Governor of Oriental Mindoro, Pedrito A. Reyes, then Vice-Governor and Presiding officer of the *Sangguniang Panlalawigan* of Oriental Mindoro, Bayani Anastacio, Romualdo J. Bawasanta, Emmanuel B. Buenaventura, Cesareo M. Cueto, Violeta D. Dakis, Jose A. Enriquez, Nelson B. Cabutero, Jose G. Genilo, Jr., Jose C. Leynes, Dante A. Manao, Remedios E. Marasigan, all members of the *Sangguniang Panlalawigan* of Oriental Mindoro, and Alfonso V. Umali, Jr., then Provincial Administrator, all of whom are public officials of the provincial government of Oriental Mindoro, while in the performance of their official and/or administrative functions, and acting in evident bad faith and manifest partiality, conspiring and confederating with private accused Engr. Alfredo M. Atienza, and mutually helping one another, did then and there willfully, unlawfully and criminally give said accused Alfredo M. Atienza unwarranted benefit, privilege and advantage by entering into a grossly disadvantageous contract of loan, whereby the provincial funds of Oriental Mindoro in the sum of ₱2,500,000.00 was given to Alfredo M. Atienza to finance the cost of repair, operation and maintenance of his vessel, thereby causing the provincial government of Oriental Mindoro damage and undue injury.

CONTRARY TO LAW.[1]

The Information was filed with the Sandiganbayan and docketed as Criminal Case No. 23624.

On April 11, 1997, petitioners filed a "Motion Seeking an Order to Allow Accused to File with the Ombudsman Motion for Reconsideration/Reinvestigation and to Defer Issuance of Warrant of Arrest."[2] This was followed by a "Motion to Quash" filed by petitioner Valencia on April 14, 1997.[3]

The prosecution manifested that it had no objection to a reinvestigation of the case. Hence, on October 23, 1997, the Sandiganbayan granted petitioners' motion for reinvestigation

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[1] Record, Vol. I, pp. 2-3.

[2] *Id*., pp. 39-41.

[3] *Id*., pp. 42-52.

and directed the Office of the Special Prosecutor to conduct a reinvestigation.[4]

On March 23, 1998, the Office of the Special Prosecutor/ Ombudsman issued a Joint Resolution wherein Ombudsman Aniano A. Desierto and Prosecution Bureau Director Victorio U. Tabanguil approved the recommendation of Special Prosecution Officer II Manuel A. Corpuz that the motion for reinvestigation be denied but that the complaint as against Emmanuel B. Buenaventura, Violeta A. Daquis and Damte A. Manzo be dismissed for insufficiency of evidence. However, Deputy Special Prosecutor Robert E. Kallos and Special Prosecutor Leonardo P. Tamayo recommended the dismissal of the complaint against all accused on the ground that their liability is civil in nature.[5]

Accordingly, the prosecution filed an Amended Information.[6]

Petitioners filed with the Sandiganbayan a Motion for Leave to File Motion for Reconsideration of the Joint Resolution of the Office of the Special Prosecutor/Ombudsman,[7] which was denied in the first assailed Resolution dated June 23, 1999.[8]

In the meantime, petitioners learned that in the administrative case against them docketed as OMB-ADM-1-96-0316, which involved the same subject matter as the criminal case, the Ombudsman dismissed the complaint against them after finding that the contract of loan was entered into in pursuance of the police power of the local chief executive.[9] Invoking this Resolution, petitioners filed with the Sandiganbayan a Motion for Reconsideration of the Order dated June 23, 1999 and/or Motion to Resolve Motion to Quash Information.[10] In the second assailed

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[4] *Id*., p. 204.

[5] *Id*., pp. 244-247.

[6] *Id*., p. 267-269.

[7] *Id*., pp. 271-279.

[8] Record, Vol. II, pp. 60-64.

[9] *Id*., pp. 79-81.

[10] *Id*., pp. 66-78.

Resolution dated September 27, 1999, the Sandiganbayan denied the Motion.[11]

Hence, this petition for *certiorari* under Rule 65 of the Rules of Court, based on the following grounds:

Respondent Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction in not dismissing the information or in not granting the Motion to Quash information despite the fact that:

a) Respondent ombudsman had already dismissed the administrative case against the petitioners regarding the same subject matter of the criminal case against the petitioners;

b) The facts alleged in the information have already become moot and academic and no longer constitute an offense;

c) No satisfactory reason was given by the respondent Ombudsman in delaying inordinately (close to three [3] years) the filing of the information against the petitioners.

Similarly, respondent Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction in the Resolution dated September 27, 1999 in holding that the dismissal of the administrative case against all the petitioners is not determinative of the outcome of the criminal case despite the facts following:

a) The subject matter in both criminal and administrative cases against the same petitioners are *one and the same*;

b) The degree of proof in criminal case is proof beyond reasonable doubt. Whereas, in administrative case the proof required is only substantial evidence; and

c) Two of the reviewing prosecutors, namely: Deputy Prosecutor Roberto Kallos and Special Prosecutor Leonardo Tamayo held in the Joint Resolution dated March 23, 1999 that the criminal case against the petitioners should be dismissed, and they both concurred with the findings of GIO I Medwin Dizon, Dir. Angel Mayoralgo, Jr., and Hon. Assistant Ombudsman Abelardo Aportadera, Jr., in their Resolution dated October 8, 1996, which recommended

[11] *Id*., pp. 136-141.

the dismissal of the case as they found that the contract of loan entered into by the petitioners with a certain Alfredo Atienza was in pursuance of the General Welfare Clause of Section 16 of the Local Government Code.[12]

In a Minute Resolution dated January 31, 2000, the petition was dismissed for failure to show grave abuse of discretion on the part of the Sandiganbayan.[13]

Petitioners filed a Motion for Reconsideration[14] as well as a Supplemental thereto.[15] The respondents were required to comment on the Motion for Reconsideration and the Supplement.[16] The prosecution filed a Comment on the petition for *certiorari*.[17] Thereafter, petitioners filed their Reply.[18]

In the meantime, on May 29, 2000, a Temporary Restraining Order was issued enjoining respondents "from further proceeding with the pre-trial and trial in Criminal Case No. 23624 entitled *'People of the Philippines vs. Rodolfo G. Valencia, et al.,'* scheduled [on] May 22, 23, 24 and 25, 2000 and from acting on the motion to suspend petitioners *pendente lite*."[19]

On November 27, 2000, petitioners' Motion for Reconsideration was granted and the petition was reinstated.[20]

The petition lacks merit.

The grounds on which a complaint or information may be quashed are:

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[12] *Rollo*, pp. 13-15.

[13] *Id*., pp. 132-133.

[14] *Id*., pp. 134-147.

[15] *Id*., pp. 148-162.

[16] *Id*., p. 163.

[17] *Id*., pp. 191-210.

[18] *Id*., pp. 242-248.

[19] *Id*., pp. 182-183.

[20] *Id*., p. 258.

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.[21]

Save where the Rules expressly permit the investigation of facts alleged in a motion to quash, the general rule is that in the hearing of such motion only such facts as are alleged in the information, and those admitted by the prosecutor, should be taken into account in the resolution thereof. Matters of defense can not be produced during the hearing of such motions, except where the rules expressly permit, such as extinction of criminal liability, prescription and former jeopardy.[22] Otherwise put, facts which constitute the defense of the accused against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.[23]

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[21] Revised Rules of Criminal Procedure, Rule 117, Sec. 3.

[22] *Cruz, Jr. v. Court of Appeals*, G.R. No. 83754, 18 February 1991, 194 SCRA 145, 151-152, citing *People v. Cadabis*, 97 Phil. 829, 832 [1955].

[23] *Torres v. Garchitorena, et al.*, G.R. No. 153666, 27 December 2002, 394 SCRA 494, 503.

As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. The informations need only state the ultimate facts; the reasons therefor could be proved during the trial.[24]

The fundamental test in reflecting on the viability of a motion to quash under this particular ground is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in the law. In this examination, matters *aliunde* are not considered.[25] However, inquiry into facts outside the information may be allowed where the prosecution does not object to the presentation thereof. [26] In the early case of *People v. Navarro*,[27] we held:

> *Prima facie*, the facts charged are those described in the complaint, but they may be amplified or qualified by others appearing to be additional circumstances, upon admissions made by the people's representative, which admissions could anyway be submitted by him as amendments to the same information. It would seem to be pure technicality to hold that in the consideration of the motion the parties and the judge were precluded from considering facts which the fiscal admitted to be true, simply because they were not described in the complaint. Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence. But we see no reason to prohibit the fiscal from making, in all candor, admissions of undeniable facts, because the principle can never be sufficiently reiterated that such official's role is to see that justice is done: not that all accused are

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[24] *Domingo v. Sandiganbayan, et al.*, G.R. No. 109376, 20 January 2000, 322 SCRA 655, 664-665.

[25] *Ingco, et al., v. Sandiganbayan*, G.R. No. 112584, 23 May 1997, 272 SCRA 563, 573.

[26] *Garcia v. Court of Appeals*, G.R. No. 119063, 27 January 1997, 266 SCRA 678, 692.

[27] 75 Phil. 516, 518-519 [1945].

convicted, but that the guilty are justly punished. Less reason can there be to prohibit the court from considering those admissions, and deciding accordingly, in the interest of a speedy administration of justice.

It should be stressed, however, that for a case to fall under the exception, it is essential that there be no objection from the prosecution. Thus, the above rule does not apply where the prosecution objected to the presentation of extraneous facts and even opposed the motion to quash.[28]

In the case at bar, petitioners are charged with violation of Section 3(e), in relation to 3(g), of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. The pertinent provisions read:

Sec. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of officers or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

xxx xxx xxx

The elements of the crime of violation of Section 3 (e) are the following:

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[28] *Torres v. Garchitorena, et al., supra.*

1. The accused is a public officer discharging administrative, judicial or official functions;

2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3. His action has caused undue injury to any party, including the Government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions.[29]

On the other hand, the elements of the crime of violation of Section 3(g) are:

1. The offender is a public officer;

2. He enters into a contract or transaction on behalf of the government; and

3. The contract or transaction is grossly and manifestly disadvantageous to the government.[30]

A careful scrutiny of the Information shows that all the above elements are averred therein. It sufficiently alleges that petitioners are public officials discharging official or administrative functions who, in evident bad faith and with manifest partiality, entered into a grossly disadvantageous contract on behalf of the government with a private person which gives the latter unwarranted benefit and advantage.

Petitioners invoke the earlier Resolution of the Ombudsman which recommended the dismissal of the case against them. There, the Graft Investigation Officer opined that the contract of loan extended by petitioners to Engr. Alfredo M. Atienza for the repair, maintenance and operation of the latter's motor vessel was necessary for the transportation needs of the inhabitants of the Province of Oriental Mindoro, which had just suffered three successive typhoons. The loan of provincial funds was supposedly extended by the Sangguniang Panlalawigan of Oriental

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[29] *Katigbak v. Sandiganbayan*, G.R. No. 140183, 10 July 2003.

[30] *Morales v. People*, G.R. No. 144047, 26 July 2002, 385 SCRA 259, 273.

Mindoro under Section 468[31] of R.A. 7160 (The Local Government Code of 1991), pursuant to the General Welfare provision embodied in Section 16 thereof, which states:

> SEC. 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

As enunciated above, however, the Resolution must be established as their defense during the trial. It was not even offered and admitted as evidence by the Sandiganbayan. It was merely attached to petitioners' "Supplemental Pleading in Support of Motion to Quash Information."[32] Furthermore, the Resolution does not bear the approval of the Ombudsman.[33]

In any event, the Ombudsman subsequently denied petitioners' motion for reinvestigation. The fact that Special Prosecutor Leonardo P. Tamayo and Deputy Special Prosecutor Robert E. Kallos recommended the dismissal of the case against petitioners is of no moment, especially since the same Special Prosecutor and Deputy Special Prosecutor signed the Comment filed before this Court wherein they extensively argued against the instant

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[31] SEC. 468. *Powers, Duties, Functions and Compensation*. — (a) The *sangguniang panlalawigan*, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants pursuant to Section 16 of this Code xxx

[32] *Rollo*, pp. 64-82.

[33] *Id.*, p. 82.

petition. The continuing objection and opposition of the prosecution to petitioners' motion to quash the Information removes this case from the exception to the above-cited rule that in the determination of whether the facts alleged constitute an offense, only the allegations in the Information, whose truth and veracity are hypothetically admitted, should be considered.

Indeed, the findings of the Graft Investigation Officer are contradicted by the following disquisition by the Ombudsman in the Resolution finding probable cause to charge petitioners, to wit:

> The subject loan does not fall within the context of the "general welfare clause" under Section 16 of the Local Government Code. The loan in question was more inclined to promote the personal or business interest of Engr. Atienza rather than to boost the common welfare of the people in Mindoro. In the "credit agreement" itself, while the problem of transport system was addressed in passing under its "whereas clause" (introductory part) of the said contract, however, the same was not mentioned in the body of the said agreement. There is no provision in the contract to obligate Engr. Atienza towards the improvement of transport service for the people of Oriental Mindoro. In short, it is not clear in the said agreement that Engr. Atienza is mandated to render transport service for the general welfare of the people in Mindoro xxx
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> xxx xxx xxx
>
> As embodied in the credit agreement, the purpose of the loan being stated therein was to finance the cost of the repair, operation and maintenance of Atienza's vessel. This in essence is indeed a private affair. It suits Atienza's personal aggrandizement. In synthesis, the subject loan has the attributes of a private interest as opposed to public purpose. Consequently the subject loan does not rhyme with the requirement that "government funds shall be used/spent strictly for public purpose." xxx[34]

In the final analysis, the conflicting findings of the Ombudsman boil down to issues of fact which, however, are not within our

[34] *Rollo*, p. 215.

province to resolve. As has been oft-repeated, this Court is not a trier of facts.[35] This is a matter best left to the Sandiganbayan.

Petitioners argue that the dismissal by the Ombudsman of the administrative case against them based on the same subject matter should operate to dismiss the criminal case because the quantum of proof in criminal cases is proof beyond reasonable doubt, while that in administrative cases is only substantial evidence. While that may be true, it should likewise be stressed that the basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime.[36]

Moreover, one of the grounds for the dismissal of the administrative case against petitioners is the fact that they were reelected to office. Indeed, a reelected local official may not be held administratively accountable for misconduct committed during his prior term of office. The rationale for this holding is that when the electorate put him back into office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still reelects him, then such reelection is considered a condonation of his past misdeeds.[37]

However, the re-election of a public official extinguishes only the administrative, but not the criminal, liability incurred by him during his previous term of office, thus:

> The ruling, therefore, that — "when the people have elected a man to his office it must be assumed that they did this with knowledge of his life and character and that they disregarded or forgave his faults or misconduct if he had been guilty of any" — refers only to

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[35] *Añonuevo v. Court of Appeals*, G.R. No. 152998, 23 September 2003.

[36] *Caña v. Gebusion*, A.M. No. P-98-1284, 30 March 2000, 329 SCRA 132, 145.

[37] *Garcia v. Mojica*, G.R. No. 139043, 10 September 1999, 314 SCRA 207, 227.

an action for removal from office and does not apply to a criminal case, because a crime is a public wrong more atrocious in character than mere misfeasance or malfeasance committed by a public officer in the discharge of his duties, and is injurious not only to a person or group of persons but to the State as a whole. This must be the reason why Article 89 of the Revised Penal Code, which enumerates the grounds for extinction of criminal liability, does not include reelection to office as one of them, at least insofar as a public officer is concerned. Also, under the Constitution, it is only the President who may grant the pardon of a criminal offense.[38]

There is, thus, no reason for the Sandiganbayan to quash the Information against petitioners on the basis solely of the dismissal of the administrative complaint against them.

Finally, petitioners invoke the ruling in *Tatad v. Sandiganbayan*,[39] where this Court dismissed the criminal cases against petitioner for the inordinate delay of three years in the conduct of preliminary investigations which violated his right to due process and the constitutional guarantee of speedy disposition of cases. In the case at bar, petitioners allege that while the letter-complaint against them was dated March 10, 1994, the Ombudsman resolved to file the Information against them three years later, on February 14, 1997, and in fact the Information was filed with the Sandiganbayan on April 8, 1997.

By way of explanation for the perceived delay, the Special Prosecutor, in his Comment to the petition, enumerated the chronology of events beginning from the receipt of the letter-complaint to the filing of the Information. It appears therefrom that in most cases the extended periods of time were devoted to verifications and investigations, first by the National Bureau of Investigation and then by the Ombudsman. Within the Office of the Ombudsman, the complaint had to undergo separate investigations by the Fact-Finding Investigation Bureau and the Evaluation and Preliminary Investigation Bureau. During the

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[38] *Conducto v. Monzon*, A.M. No. MTJ-98-1147, 2 July 1998, 291 SCRA 619, 630; citing *Ingco v. Sanchez*, 21 SCRA 1292, 1295 [1967].

[39] G.R. No. L-72335-39, 21 March 1988, 159 SCRA 70.

preliminary investigation itself, petitioners sought extensions of time before they filed their counter-affidavits.

Thus, the ruling in *Tatad* does not apply here. In that case, the delay was exacerbated by the fact that the charges against petitioner were found to be politically motivated. In the case at bar, there is no indication that the complaint against petitioners was filed to serve political ends. Neither is the delay vexatious, capricious or oppressive. On the contrary, what appears is that the prosecutors exercised extreme care in verifying, evaluating and assessing the charges against petitioners before making a finding of probable cause.

For *certiorari* to lie, it must be shown that the Sandiganbayan acted with grave abuse of discretion,[40] or more specifically, that it exercised its power arbitrarily or despotically by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law.[41] Petitioners failed in this respect.

WHEREFORE, in view of the foregoing, the petition for certiorari is *DISMISSED*. The Temporary Restraining Order issued by this Court on May 16, 2000 is *LIFTED*. The Sandiganbayan is *DIRECTED* to conduct proceedings in Criminal Case No. 23624 with deliberate dispatch.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Carpio, and *Azcuna, JJ.,* concur.

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[40] *Microsoft Corporation v. Best Deal Computer Center Corporation*, G.R. No. 148029, 24 September 2002.

[41] *Go v. Tong*, G.R. No. 151942, 27 November 2003.

EN BANC

[G.R. No. 141599. June 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHRISTIAN GONZALES *y* CAYUBIT,** *appellant*.

SYNOPSIS

Appellant was found guilty by the trial court of the crime of qualified rape for sexually abusing his fifteen-year old daughter, AAA. Considering the qualifying circumstance of father-daughter relationship as alleged in the Information and established in the course of the proceedings, the trial court sentenced appellant to suffer the supreme penalty of death. Hence, this automatic review of the case.

In affirming the conviction of appellant, the Supreme Court gave full faith and credit in the testimony of the victim, there being no earmarks of a contrived story. The victim's testimony cannot be discredited for being uncorroborated. There is no rule requiring that a rape victim's testimony, to be believed, must be corroborated. The established rule is that where, as here, the testimony of a rape victim is convincingly credible and untainted with any serious inconsistency, such testimony alone may be relied upon to convict the accused of such crime. Moreover, the Court was constrained to sustain the observations of the trial court for it has the advantage of determining the victim's credibility, having actually heard and observed her demeanor during the trial.

The Court also ruled that the trial court correctly imposed the death penalty upon appellant. In the imposition of the death penalty, the qualifying circumstances of minority and relationship must be present. It is likewise required that both must be alleged in the Information and proven during the trial. These essential requirements have been satisfied in the case at bar.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In the review of rape cases, we are guided by certain precepts: (a) an accusation of rape can be made with facility, but more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two (2) persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; VICTIM'S SPONTANEOUS EMOTIONAL OUTBURST STRENGTHENS HER CREDIBILITY; CASE AT BAR.— [R]ecords show that AAA cried during her direct examination. Such spontaneous emotional outburst strengthens her credibility. We held that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.

3. ID.; ID.; ID.; FINDINGS THEREON BY TRIAL COURT, NOT DISTURBED ON APPEAL.— [T]he trial court, in its appealed Decision, stated that it has "painstakingly observed the demeanor" of AAA and found her "to be truthful and straightforward in narrating her harrowing experience in the hands of her supposed protector." We are constrained to sustain the observations of the trial court for it has the advantage of determining her credibility, having actually heard and observed her demeanor during the trial.

4. ID.; ID.; ID.; WHERE THE TESTIMONY OF RAPE VICTIM IS CONVINCINGLY CREDIBLE AND UNTAINTED WITH ANY SERIOUS INCONSISTENCY, SUCH TESTIMONY ALONE MAY BE RELIED UPON TO CONVICT ACCUSED.— There is no rule requiring that a rape victim's testimony, to be believed, must be corroborated. As stated earlier, the established rule is that where, as here, the testimony of a rape victim is convincingly credible and untainted with any serious inconsistency, such testimony *alone* may be relied upon to convict the accused of such crime.

5. ID.; ID.; ID.; NOT IMPAIRED BY LAPSES IN THE RAPE VICTIM'S TESTIMONY CONCERNING MINOR DETAILS

OF THE CRIME; CASE AT BAR.— Neither is AAA's credibility affected by her failure to recall the exact date of the commission of the offense. She could only remember "August 1997" as the last time he ravished her. Her inability to remember the complete date does not render her testimony incredible. We have consistently held that such lapse is a minor matter and can be expected when a witness is recounting the details of a painful, humiliating and horrifying experience. What is important is the fact of the commission of the crime which, in this case, she was able to recount in a credible and convincing manner. In any event, date is not an essential element of the crime of rape, for the gravamen of the offense is the carnal knowledge of a woman. Thus, the precise date of the commission of the crime need not be alleged in the Information.

6. CRIMINAL LAW; RAPE; MAY BE COMMITTED IN THE VERY SAME ROOM WHERE MEMBERS OF THE FAMILY LIVE; CASE AT BAR.— Our jurisprudence is replete with cases of incestuous rapes committed in the very same room where the members of the family live. Thus, the oft-quoted statement that "lust is no respecter of time and place." Here, records show that appellant committed the crime at the time when Mary Grace was alone at home doing her homework.

7. REMEDIAL LAW; EVIDENCE; ALIBI CANNOT PREVAIL OVER RAPE VICTIM'S POSITIVE IDENTIFICATION OF HER RAVISHER; MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.— Appellant's defense of alibi is inherently weak and cannot prevail over the rape victim's positive identification of her ravisher. For alibi to prosper, he must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the *physical impossibility of his presence* at the scene of the crime. Appellant's claim that he was in his place of work in *Pasig City* at the time the crime was committed does not convince us. It was *not* physically impossible for him to return to his residence in Parañaque City and perpetrate the crime for his place of work is only a short distance away, as shown by the records.

8. ID.; ID.; CREDIBILITY OF WITNESSES; NO YOUNG GIRL WOULD CONCOCT A STORY OF RAPE, UNDERGO MEDICAL EXAMINATION AND SUBJECT HERSELF TO THE EMBARRASSMENT OF PUBLIC TRIAL, IF HER

MOTIVE WERE OTHER THAN A DESIRE TO SEEK JUSTICE.— [N]o young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.

9. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE ALLEGED IN THE INFORMATION AND PROVEN DURING TRIAL TO WARRANT THE IMPOSITION OF DEATH PENALTY; CASE AT BAR.— In the imposition of the death penalty as mandated by the amendatory provisions R.A. No. 7659, quoted earlier, the qualifying circumstances of minority and relationship must be present. It is likewise required that both must be alleged in the Information and proven during the trial. These essential requirements have been satisfied in the case at bar. The Information alleges that AAA was *fifteen (15) years old* at the time she was raped by appellant, *her own father*. The prosecution presented, as proof of her age, a certified true copy of her Certificate of Live Birth stating that she was born on January 26, 1983. That she is the daughter of appellant has been established by the Certificate of Marriage showing that he and BBB, AAA's parents, were married on June 21, 1981. Hence, the trial court correctly imposed the death penalty upon appellant.

10. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; AN AWARD OF ₱75,000.00 AS CIVIL INDEMNITY IS MANDATORY UPON A FINDING OF QUALIFIED RAPE.— In line with recent jurisprudence, an award of ₱75,000.00 as civil indemnity is mandatory upon a finding of qualified rape.

11. ID.; ID.; MORAL DAMAGES; AWARDED IN CASE AT BAR WITHOUT NEED OF PROOF.— [T]he victim is entitled to an award of ₱75,000.00 as moral damages without need of proof because it is assumed that the victim has suffered moral injuries by reason of such crime.

12. ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN AN AGGRAVATING CIRCUMSTANCE ATTENDED THE COMMISSION OF THE CRIME; CASE AT BAR.— Considering the presence of the qualifying circumstances of

minority and relationship, she is also entitled to exemplary damages in the amount of ₱25,000.00. As we held in *People vs. Catubig*, "an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code."

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

Before us for automatic review is the Decision[1] dated December 27, 1999 of the Regional Trial Court, Branch 259, Parañaque City, in Criminal Case No. 98-371, convicting Christian Gonzales *y* Cayubit, herein appellant, of rape perpetrated against his own teenage daughter, AAA, and imposing upon him the supreme penalty of death. The trial court also ordered him to pay her ₱50,000.00 as civil indemnity and ₱50,000.00 as exemplary damages.

The Information filed against appellant charges him as follows:

"That on or about and sometime in August 1997, in the Municipality of xxx, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his 15-year old daughter AAA against her will and consent.

CONTRARY TO LAW."

Upon arraignment, appellant, assisted by his counsel *de oficio*, entered a plea of not guilty to the crime charged. Pre-trial proceedings having been terminated, trial on the merits ensued.

[1] Penned by Judge Zosimo V. Escano.

During the pre-trial, the parties stipulated that appellant and BBB were married on June 21, 1981 as shown by their Marriage Certificate.[2] They have four (4) children, including AAA, who was born on January 26, 1983.[3] They all reside in the two-storey house of BBB' mother located at No. xxx xxx St., xxx, xxx City.[4]

AAA testified that in 1992, when she was nine (9) years old and a Grade III pupil, appellant abused her for the first time inside their room at home. At that time, she asked appellant to help her with her school assignments as her mother and some neighbors were holding a prayer session (*padasal*) downstairs. While appellant was teaching her, he suddenly placed his hands around her shoulders, held her hand tightly and commanded her to remove her clothes. He ordered her not to resist. Terrified and hurt by his fingernails pressed deep into her skin, she unwillingly took off her clothes. (At this juncture, she was crying while narrating). He then touched her private parts but stopped when he noticed that the prayer session was about to end.[5]

In 1994, when AAA was in Grade V, appellant had sexual intercourse with her by force.[6] It happened in the same room where she was doing her school assignment. This time, she did not ask him anymore to help her in her assignment due to her previous terrifying experience. Suddenly, he entered and locked the door. He approached her and showed her a fan knife, telling her to keep quiet. He then held her tightly, ordered her to undress, and laid her on bed. Thereupon, he forcibly inserted his penis into her vagina. She felt pain but he ordered her not to shout.[7]

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[2] Exhibit "C", RTC Records at 152.

[3] Exhibit "D" (Certificate of Live Birth), RTC Records at 153.

[4] Transcript of Stenographic Notes (TSN), February 1, 1999 at 72-77.

[5] *Id.* at 4, 6-8, 10-13.

[6] *Id.* at 84.

[7] *Id.* at 15-19.

Thereafter, appellant sexually assaulted AAA several times. The last time was in *August 1997* when she was a high school sophomore,[8] now the subject of the instant case. After doing her school assignment that afternoon, she laid on her bed to rest. Suddenly, she sensed someone closed the door quietly. It was appellant. He approached her, laid beside her, and ordered her to be quiet. He held her legs tightly and removed her shorts and underwear. After that, he removed his pants, kissed her, touched her private parts, and forcibly inserted his penis into her vagina. She was hurt as he was making a push-and-pull movement. After satisfying his lust, he left the room. She was crying in fear and kept mum about the incident.[9]

On March 24, 1998, AAA finally confided to Bryan Esteban, her best friend and suitor, the sexual abuses she suffered in the hands of appellant. Immediately, Bryan reported the incident to his uncle, a police officer. With his assistance, a complaint for rape was filed against appellant, resulting in his arrest. It was only then that her mother learned of the rape incidents.

Subsequently, Dr. Valentin Bernales, Medico-Legal Officer of the National Bureau of Investigation (NBI) examined her. The Medico-Legal Certificate[10] he issued and confirmed before the trial court shows the following findings:

"*GENITAL EXAMINATION*:

> Pubic hair, fully grown, abundant. Labia majora, gaping and minora, coaptated, hypertrophied. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick with an old-healed complete laceration at 6:00 o'clock position, corresponding to a face of a watch; edges rounded and non-coaptable. Hymenal orifice admits a tube of 2.5 cms. in diameter with marked resistance. Vaginal walls, tight and rugosities, prominent.

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[8] *Id*. at 90.

[9] *Id*. at 34, 98-102.

[10] RTC Records at 2.

CONCLUSIONS:

1. No evident signs of extragenital physical injuries noted on the body of the subject at the time of examination.

2. Old-healed complete laceration, present."

Dr. Bernales testified that complainant was no longer a virgin when she examined her; and that the "old-healed complete laceration at 6:00 o'clock position" was caused by sexual intercourse.[11]

Appellant denied the charge and raised the defense of alibi. He claimed that his work at the Towing and Impounding Division of the Metropolitan Manila Development Authority (MMDA) requires him to stay at their office in Pasig City during weekdays. He only goes home every Saturday evening then leaves Monday morning. Thus, it was impossible for him to have sexually abused his daughter at home after her classes. Sometime in March 27, 1998, he scolded her for coming home late from an excursion and for entertaining her suitors. These are the reasons why she charged him.[12]

On December 27, 1999, the trial court rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, finding accused Christian Gonzales GUILTY beyond reasonable doubt for the crime of Rape as defined and penalized under Art. 335 of RPC, as amended by RA 7659, and considering the qualifying circumstance of father-daughter relationship as alleged in the information and duly established in the course of the proceedings, this Court sentences accused Gonzales to the supreme penalty of DEATH by lethal injection and to suffer the accessory penalties provided by law, specifically Art. 40 of the RPC, and to indemnify private complainant AAA ₱50,000.00 in line with existing jurisprudence, and ₱50,000.00 as exemplary damages.

The Clerk of Court is also directed to prepare the Mittimus for the immediate transfer of the accused from Parañaque City Jail to

[11] TSN, June 24, 1999 at 142.

[12] TSN, September 14, 1999 at 168-169, 175-176.

the Bureau of Correction in Muntinlupa City and finally to forward all the records of the case to the Supreme Court for automatic review in accordance with Sec. 9, Rule 122 of the Rules of Court and Art.47 of the Revised Penal Code, as amended by RA 7659.

SO ORDERED."[13]

Appellant now seeks the reversal of the above Decision, ascribing to the trial court the following errors:

"I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE ON THE BASIS OF THE *UNCORROBORATED* TESTIMONY OF THE ALLEGED VICTIM.

"II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIAL EVIDENCE FOR THE DEFENSE."[14]

The Solicitor General, in his appellee's brief,[15] asserts that the evidence for the prosecution has adequately proved appellant's guilt for qualified rape. He thus prayed that the appealed Decision be affirmed.

The law governing the instant case is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[16] which provides:

"ART. 335. *When and how rape is committed*. — Rape is committed *by having carnal knowledge of a woman* under any of the following circumstances.

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[13] *Rollo* at 18.

[14] Appellant's Brief, *id.* at 31.

[15] *Rollo* at 56-76.

[16] "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."

1. *By using force or intimidation*;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

xxx xxx xxx

The *death penalty* shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under *eighteen (18) years of age* and *the offender* is a *parent*, ascendant, step parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

xxx xxx xxx." (Italics ours)

In the review of rape cases, we are guided by certain precepts: (a) an accusation of rape can be made with facility, but more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two (2) persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.[17]

Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[18]

Here, AAA's testimony clearly shows that appellant, her very own father, had carnal knowledge of her by force and intimidation, thus:

"Q: You claimed madam witness that you were sexually ravished by your father. When did this start?
A: *Noong Grade III po ako*.

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[17] *People vs. Aaron*, G.R. Nos. 136300-02, September 24, 2002, 389 SCRA 526; *People vs. Carlito Marahay*, G.R. Nos. 120625-29, January 28, 2003.

[18] *People vs. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29.

Q: How old were you then?
A: Nine (9) years old sir.

Q: Where did this happen, madam witness?
A: Inside our house, sir.

xxx xxx xxx

Q: *Sabihin mo nga sa Hukumang ito kung paano nangyari iyong unang pang-aabuso sa iyo ng iyong ama?*
A: *Bandang hapon po iyon, nagpapaturo po kasi ako sa tatay ko sa paggawa ng assignment sa Math at saka sa English kasi po iyong mama ko po noon ay nasa baba dahil may padasal po kasi noon.*

xxx xxx xxx

Q: *Sinabi mo sa daddy mo na magpapaturo ka ng assignment?*
A: *Opo.*

Q: *Pagkatapos nun', anong sumunod na nangyari?*
A: *Noong tinuturuan na po niya ako, bigla po niya ako'ng inakbayan, tapos sabi niya huwag daw po akong kakalag. At iyon, doon na po nagsimula iyong ano, bale pinatanggal niya po sa akin iyong suot-suot ko.* (Witness is crying).

Q: *Sabi mo pinatanggal niya sa iyo iyong damit mo o siya mismo ang nagtanggal sa damit mo?*
A: *Siya po ang nagpatanggal.*

Q: *At tinanggal mo naman, ganun' ba?*
A: *Opo kasi po, natatakot po ako sa kanya.*

Q: *Bakit ka natatakot?*
A: *Kasi po hinahawakan niya po ako ng mahigpit na may kasamang mga kuko, paganun' po.*

Q: *So bumabaon ang mga kuko niya sa kamay mo, ganun' ba?*
A: *Opo.*

Q: *At nasasaktan ka?*
A: *Opo.*

Q: *Pagkatapos nun', ano na ang sumunod na nangyari?*
A: *Tinanggal ko na po iyong suot kong damit.*

Q: *At ano ang ginawa niya pagkatapos mong tanggalin iyong damit mo?*
A: *Hinawakan niya po ang maselang bahagi ng katawan ko.*

Q: *At pagkatapos, ano pa ang pinagagawa niya sa iyo?*
A: *Sinimulan niya na po akong halayin.*

Q: *Iyong unang pagkakataon na iyon, nagtagumpay ba siya na kunin ang iyong pagkababae o hindi?*
A: *Hindi po.*

Q: *Bakit hindi siya nagtagumpay sa gusto niyang mangyari?*
A: *Kasi po parang naaaninagan niya po na matatapos na iyong padasal, siguro kinabahan na po siya kaya inisip niya na ihinto na lang.*

Q: *So hindi niya nakuha ang iyong pagkababae sa attempt na iyon?*
A: *Opo.*

Q: *Marami bang beses na naulit iyon noong ikaw ay Grade III?*
A: *Opo sir.*

Q: *Mga ilan sa tingin mo?*
A: *Hindi ko na po matandaan, pero sumunod po iyon mga Grade IV po, tapos Grade V, Grade VI.*

Q: *Kailan niya nagawa iyong gusto niyang mangyari sa iyo, ibig sabihin iyong nakuha niya ang iyong pagkababae?*
A: *Noong Grade V po ako.*

Q: So that was already in 1994?
A: *Siguro po.*

Q: *So paano nangyari iyon, noong una niyang makuha ang iyong pagkababae?*
A: *Sa kuwarto din po namin, ganun' din po, halos magkapareho din po. Bale gumagawa na naman po ulit ako ng assignment ko pero hindi na po ako nagpaturo sa kanya. Tapos isinara niya po iyong kuwarto na hindi ko po namalayan. At doon po nagsimula.*

Q: *Siya ba'y may gamit na panaksak nang makuha niya sa unang pagkakataon ang iyong pagkababae?*
A: *May napansin po akong balisong.*

Q: *Ito ba'y binuksan niya o hindi?*
A: *Ipinakita lang po niya sa akin.*

xxx *xxx* *xxx*

Q: *Hinubaran ka o inutusan ka niyang maghubad?*
A: *Inutusan niya po akong maghubad.*

Q: *At paano'ng ginawa niya para makuha niya ang iyong pagkababae?*
A: *Inihiga po niya ako sa kama.*

Q: *At pagkatapos?*
A: *Habang hawak-hawak niya po ako ng masakit, sinimulan niya na po.*

Q: *Ano'ng ginawa niya, paano niya nagawa iyong gusto niya?*
A: *Pilit niya pong ipinasok ang sex organ niya, kaya lang nasaktan po ako.*

Q: *Sumigaw ka ba habang ginagawa niya iyon?*
A: *Sabi po niya huwag daw akong sisigaw.*

Q: *Nang sabihin niya sa iyo iyon, meron ba siyang hawak na sandata, may kutsilyo ba siya?*
A: *Binitawan niya po iyong balisong niya. Bale ang panakot niya na lang po sa akin ay iyong mga salita niya at saka iyong paghawak niya po sa akin ng masakit.*

xxx xxx xxx

Q: *So, sa madaling sabi, naipasok niya iyong ari niya sa iyong ari, ganun' ba?*
A: *Opo.*

xxx xxx xxx

Q: *Ilang beses naulit iyon na siya'y nagtagumpay na ipasok ang kanyang ari sa iyong ari ng sapilitan?*
A: *Hindi ko na po matandaan.*

Q: *Maraming beses ba iyon?*
A: *Opo.*

xxx xxx xxx

Q: *Kailan iyong huli na panggagahasa niya sa iyo?*
A: *Noong August 1997 po.*

Q: *Paano nangyari ito, saan nangyari na naman ito?*
A: *High school na po ako noon. Palagi niya pong tinatantiya na gumagawa ako ng assignment. At naglalaro siya noon ng dart.*

Q: *Saan siya naglalaro ng dart noon?*
A: *Sa kapitbahay po namin.*

xxx xxx xxx

Q: *Hindi mo ba matandaan kung unang linggo, pangalawang linggo, o pangatlong linggo?*
A: *Hindi ko po matantiya kung anong linggo iyon. Basta weekdays po siya kasi po may pasok po kasi ako noon. Pagkagaling ko po sa school, gumawa na po ako ng assignment. At pagkatapos ko pong gumawa ng assignment, naisipan ko pong matulog kasi inaantok po ako noon. At nang nakahiga na po ako sa kama, hindi ko po namalayan na pumapanhik na pala iyong papa ko.*

xxx xxx xxx

Q: *At paano mo nalaman or namalayan na may nangyayari na sa loob?*
A: *Kasi napansin ko po iyong pagkasara ng pinto ng marahan at pagkatapos nun' ay tumabi na po siya sa akin at ayun na po.*

Q: *Ano'ng ayun na, sabihin mo nga sa Hukumang ito kung ano'ng ginawa niya sa iyo noong August 1997? Pagkatabi niya sa iyo at ikaw ay nakahiga dun' sa kama, ano ang sumunod na ginawa niya sa iyo?*
A: *Hinawakan po ako ng mahigpit sa binti ko tapos siya na po ang naghubad sa akin.*

Q: *Lahat ba ng damit mo, pang-itaas at pang-ibaba, tinanggal niya?*
A: *Pang-ibaba lang po.*

Q: *At ano'ng suot mo nang tinanggal niya ang pang-ibaba mo?*
A: *Naka-short lang po.*

Q: *So ibig sabihin, pati iyong panty ay tinanggal niya?*
A: *Opo.*

Q: *At pagkatapos niyang tanggalin iyong suot mong pang-ibaba, ano'ng sumunod na ginawa ng tatay mo?*
A: *Sinimulan na naman po niya akong halayin.*

Q: *Ibig sabihin, naghubad din siya?*
A: *Opo.*

xxx xxx xxx

Q: *Anong ibig mong sabihing 'sinimulan ka na niyang halayin'? xxx"*
A: *Una po iyong halik, pangalawa po iyong paghahawak niya sa maselang bahagi ng katawan ko.*

Q: *At habang hinahalikan ka at hinahawakan sa maseselang bahagi, ikaw ba ay kinakausap ng tatay mo o hindi, habang ginagawa niya iyon?*
A: *Sabi po niya huwag daw po akong maingay at saka huwag daw papalag sa kanya.*

xxx xxx xxx

Q: *So hinalikan ka at hinawakan ka sa maseselang bahagi at pinagsabihan ka o tinatakot ka na huwag kang maingay at huwag ka raw papalag, pagkatapos nun', ano na ang ginawa niya sa iyo?*
A: *Tinangka na po niyang ipasok ang sex organ niya sa akin.*

Q: *At naipasok niya ba?*
A: *Hindi po gaano.*

Q: *Ano'ng ibig mong sabihing hindi gaano?*
A: *Kasi parang nakikilatis ko po sa kanya na medyo natakot po siya kasi po umiiyak po ako, kaya bigla niya pong itinigil.*

Q: *Pero naibaon niya nang konti iyong ari niya sa iyo? Naipasok niya ng konti, ganun' ba?*
A: *Opo.*

xxx xxx xxx

Q: *Pero sa tingin mo or sa tantiya mo, gaano ang naipasok sa kanyang organ, kalahati o ano?*
A: *Hindi ko po matantiya.*

Q: *So basta naramdaman mong may pumasok sa ari mo ganun' ba?*
A: *Opo.*

Q: *Pumatong ba siya sa iyo?*
A: *Opo.*

Q: *Gaano katagal siyang pumatong sa iyo noon?*
A: *Hindi ko po matantiya kung gaano siya katagal na pumatong sa akin.*

Q: *Basta naramdaman mo na naipasok niya iyong kanya sa iyo pero hindi buong-buong naipasok, ganun' ba?*
A: *Opo.*

Q: *Napansin mo ba kung siya ay nagkaroon ng galaw, kung gumagalaw-galaw iyong kanyang puwit. Parang nagpa-pumping?*
A: *Opo.*

Q: *So gaano katagal iyong pagpa-pumping niya sa iyo. Ilang minuto or ilang segundo?*
A: *Sa tantiya ko po mga tatlo hanggang apat na beses.*

COURT:

Q: *At noong nagpa-pumping siya, nararamdaman mo ba kung nasa loob ng pag-aari mo iyong kanyang pag-aari, noong sinasabi mong mga tatlo o apat na beses siyang nagpa-pumping?*
A: *Opo.*

Q: *Sigurado ka na naramdaman mo iyon?*
A: *Opo."*[19]

The cautious questioning by the prosecutor and the trial Judge elicited from AAA significant details only a real victim could recall and declare. She described in a positive, natural, sincere and spontaneous manner how she was forcibly ravished by appellant sometime in August 1997. She could not have narrated her ordeal in the hands of appellant convincingly if it were not true. There being no earmarks of a contrived story in her testimony, we accord it full faith and credence.

[19] TSN, February 1, 1999 at 74-102.

Moreover, records show that AAA cried during her direct examination. Such spontaneous emotional outburst strengthens her credibility. We held that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[20]

Significantly, the trial court, in its appealed Decision, stated that it has "painstakingly observed the demeanor" of AAA and found her "to be truthful and straightforward in narrating her harrowing experience in the hands of her supposed protector."[21] We are constrained to sustain the observations of the trial court for it has the advantage of determining her credibility, having actually heard and observed her demeanor during the trial.

The appellant, however, urges us to discredit AAA's testimony because it is "uncorroborated." Such argument is absolutely bereft of merit. There is no rule requiring that a rape victim's testimony, to be believed, must be corroborated. As stated earlier, the established rule is that where, as here, the testimony of a rape victim is convincingly credible and untainted with any serious inconsistency, such testimony *alone* may be relied upon to convict the accused of such crime.

Also, appellant casts doubt on AAA's credibility because she first disclosed the rape incident to Bryan Esteban, not to her mother. That is unnatural, he contends.

We disagree. As we stated in *People vs. Madia*,[22] not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses is expected in the proximity of, or in confronting, an aberrant episode. It is well-settled that "different people react differently to a given situation or type of situation and there is no standard form of human behavioral response

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[20] *People vs. Agustin*, G.R. Nos. 135524-25, September 24, 2001, 365 SCRA 667.

[21] RTC Decision, *Rollo* at 17.

[22] G.R. No. 130524, June 20, 2001, 359 SCRA 157, citing *People vs. Silvano*, 309 SCRA 362, 392 (1999).

when one is confronted with a strange, startling or frightful experience."[23] Here, it is not really unnatural for AAA to first reveal her ordeal to Bryan Esteban. He is her *best friend*. What she did was even a very *normal* behavior — confiding a very private matter to a best friend.

Neither is AAA's credibility affected by her failure to recall the exact date of the commission of the offense. She could only remember "August 1997" as the last time he ravished her. Her inability to remember the complete date does not render her testimony incredible. We have consistently held that such lapse is a minor matter and can be expected when a witness is recounting the details of a painful, humiliating and horrifying experience. What is important is the fact of the commission of the crime[24] which, in this case, she was able to recount in a credible and convincing manner. In any event, date is not an essential element of the crime of rape, for the gravamen of the offense is the carnal knowledge of a woman.[25] Thus, the precise date of the commission of the crime need not be alleged in the Information.[26]

Appellant further asserts that it is highly improbable for him to have sexually abused his own daughter for his family members only live in one room. Our jurisprudence is replete with cases of incestuous rapes committed in the very same room where the members of the family live.[27] Thus, the oft-quoted statement

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[23] *Id.*, citing *People vs. Yabut*, 311 SCRA 590, 598 (1999).

[24] *People vs. Mauricio*, G.R. No. 133695, February 28, 2001, 353 SCRA 114.

[25] *Id.*, citing *People vs. Bugayong*, 299 SCRA 528 (1998); *People vs. Narido*, 316 SCRA 131 (1999).

[26] Section 11, Rule 110, of the Revised Rules on Criminal Procedure states:

"SEC. 11. *Date of Commission of the Offense.* — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (11a)"

[27] *People vs. Delos Reyes*, G.R. No. 133385, December 7, 2001, 371 SCRA 595.

that "lust is no respecter of time and place."[28] Here, records show that appellant committed the crime at the time when Mary Grace was *alone* at home doing her homework.

Appellant's defense of alibi is inherently weak and cannot prevail over the rape victim's positive identification of her ravisher.[29] For alibi to prosper, he must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the *physical impossibility of his presence* at the scene of the crime.[30] Appellant's claim that he was in his place of work in *Pasig City* at the time the crime was committed does not convince us. It was *not* physically impossible for him to return to his residence in xxx City and perpetrate the crime for his place of work is only a short distance away, as shown by the records.

Likewise, appellant's imputation of ill-motive to AAA is puerile. It is highly unlikely for her to initiate the charge and expose herself in public that she was sexually molested by her own father unless she was telling the truth. For as we have repeatedly ruled, no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[31]

All told, we sustain the trial court's finding that the prosecution has proved by evidence beyond reasonable doubt that appellant is guilty of qualified rape.

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[28] *People vs. Paraiso*, G.R. No. 131823, January 17, 2001, 349 SCRA 335.

[29] *People vs. Dacara*, G.R. No. 135822, October 25, 2001, 368 SCRA 278.

[30] *People vs. Del Ayre*, G.R. Nos. 139788 & 139827, October 3, 2002, 390 SCRA 281.

[31] *People vs. Metin*, G.R. No. 140781, May 8, 2003; *People vs. Bernabe*, G.R. No. 141881, November 21, 2001, 370 SCRA 142.

In the imposition of the death penalty as mandated by the amendatory provisions R.A. No. 7659, quoted earlier, the qualifying circumstances of minority and relationship must be present. It is likewise required that both must be alleged in the Information and proven during the trial.[32]

These essential requirements have been satisfied in the case at bar. The Information alleges that AAA was *fifteen (15) years old* at the time she was raped by appellant, *her own father*. The prosecution presented, as proof of her age, a certified true copy of her Certificate of Live Birth stating that she was born on January 26, 1983. That she is the daughter of appellant has been established by the Certificate of Marriage showing that he and BBB, AAA's parents, were married on June 21, 1981. Hence, the trial court correctly imposed the death penalty upon appellant.

However, we note that the trial court awarded complainant ₱50,000.00 as civil indemnity and another ₱50,000.00 as exemplary damages.

We modify such awards. In line with recent jurisprudence, an award of ₱75,000.00 as civil indemnity is mandatory upon a finding of qualified rape.[33] In addition, the victim is entitled to an award of ₱75,000.00 as moral damages without need of proof because it is assumed that the victim has suffered moral injuries by reason of such crime.[34] Considering the presence of the qualifying circumstances of minority and relationship, she is also entitled to exemplary damages in the amount of ₱25,000.00. As we held in *People vs. Catubig*,[35] "an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party

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[32] *People vs. Padilla*, G.R. No. 137648, March 30, 2001, 355 SCRA 741, 755; *People vs. Bataller*, G.R. Nos. 134540-41, July 18, 2001, 361 SCRA 302, 323; *People vs. Lomibao*, G.R. No. 135855, August 3, 2000, 337 SCRA 211, 225.

[33] *People vs. Escano*, G.R. Nos. 140218-23, February 13, 2002, 376 SCRA 670.

[34] *People vs. Soriano*, G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140.

[35] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code."

Three members of this Court maintain that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can be lawfully imposed herein.

WHEREFORE, the Decision dated December 27, 1999 of the Regional Trial Court, Branch 259, Parañaque City in Criminal Case No. 98-371, finding appellant Christian Gonzales guilty beyond reasonable doubt of *qualified rape* and sentencing him to suffer the *DEATH* penalty is hereby *AFFIRMED* with *MODIFICATION* in the sense that he is ordered to pay the victim, AAA, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. No. 7659, upon finality of this Decision, let the records of this case be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

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

Vitug, J., on official leave.

Austria-Martinez, J., on leave.

EN BANC

[G.R. No. 144104. June 29, 2004]

LUNG CENTER OF THE PHILIPPINES, *petitioner, vs.* **QUEZON CITY and CONSTANTINO P. ROSAS, in his capacity as City Assessor of Quezon City,** *respondents.*

SYNOPSIS

Petitioner is a non-stock and non-profit entity established by P.D. No. 1823, which owned a parcel of land where the hospital known as the Lung Center of the Philippines is erected. The petitioner accepts paying and non-paying patients. A part of the petitioner's lot was leased to private parties for commercial purposes and portions of the hospital were rented out to private medical practitioners for their private clinics. Both the land and the hospital building of the petitioner were assessed for real property taxes. Petitioner filed a claim for exemption from real property taxes with the City Assessor of Quezon City, predicated on its claim that it is a charitable institution, but the same was denied. The Local Board of Assessment Appeals of Quezon City denied petitioner's petition, holding it liable for real property taxes. This decision was affirmed on appeal by the Central Board of Assessment Appeals and subsequently by the Court of Appeals. Hence, this petition.

The Supreme Court ruled that petitioner is a charitable institution within the context of the 1973 and 1987 Constitutions. The test whether an enterprise is charitable or not is whether it exists to carry out a purpose reorganized in law as charitable or whether it is maintained for gain, profit, or private advantage. Under P.D. No. 1823, petitioner was organized for the welfare and benefit of the Filipino people principally to help combat the high incidence of lung and pulmonary diseases in the Philippines. Petitioner does not lose its character as a charitable institution by the fact that it derived income from paying patients because it was able to prove that it spent its income for its patients and for the operation of the hospital.

However, the Court held that those portions of petitioner's real property that are leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from real property taxes as these are not actually, directly and exclusively used for charitable purposes. On the other hand, the portions of the land occupied by the hospital, and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.

SYLLABUS

1. CONSTITUTIONAL LAW; TAXATION; CHARITABLE INSTITUTIONS; TEST OF WHETHER AN ENTERPRISE IS CHARITABLE OR NOT.— To determine whether an enterprise is a charitable institution/entity or not, the elements which should be considered include the statute creating the enterprise, its corporate purposes, its constitution and by-laws, the methods of administration, the nature of the actual work performed, the character of the services rendered, the indefiniteness of the beneficiaries, and the use and occupation of the properties. In the legal sense, a charity may be fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or otherwise lessening the burden of government. It may be applied to almost anything that tend to promote the well-doing and well-being of social man. It embraces the improvement and promotion of the happiness of man. The word "charitable" is not restricted to relief of the poor or sick. The test of a charity and a charitable organization are in law the same. The test whether an enterprise is charitable or not is whether it exists to carry out a purpose reorganized in law as charitable or whether it is maintained for gain, profit, or private advantage.

2. ID.; ID.; ID.; A CHARITABLE INSTITUTION DOES NOT LOSE ITS CHARACTER AS SUCH AND ITS EXEMPTION FROM TAXES SIMPLY BECAUSE IT DERIVES INCOME FROM PAYING PATIENTS; CONDITION; CASE AT BAR.— As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the

government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.

3. ID.; ID.; ID.; A CHARITABLE INSTITUTION DOES NOT LOSE ITS CHARACTER AS SUCH SIMPLY BECAUSE IT RECEIVES DONATIONS IN THE FORM OF SUBSIDIES GRANTED BY THE GOVERNMENT; CASE AT BAR.— Under P.D. No. 1823, the petitioner is entitled to receive donations. The petitioner does not lose its character as a charitable institution simply because the gift or donation is in the form of subsidies granted by the government.

4. TAXATION LAW; LAWS GRANTING TAX EXEMPTION ARE STRICTLY CONSTRUED AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING POWER.— The settled rule in this jurisdiction is that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The effect of an exemption is equivalent to an appropriation. Hence, a claim for exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.

5. POLITICAL LAW; CONSTITUTIONAL LAW; CHARITABLE INSTITUTIONS; WHEN ENTITLED TO TAX EXEMPTION.— Under the 1973 and 1987 Constitutions and Rep. Act No. 7160 in order to be entitled to the exemption, the petitioner is burdened to prove, by clear and unequivocal proof, that (a) it is a charitable institution; and (b) its real properties are **ACTUALLY, DIRECTLY and EXCLUSIVELY** used for charitable purposes. "Exclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively." If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation. The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitutions and the law. Solely is synonymous with exclusively. What is meant by actual, direct and exclusive use of the property for charitable purposes is the direct and immediate and actual application of the property

itself to the purposes for which the charitable institution is organized. It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, of the Decision[1] dated July 17, 2000 of the Court of Appeals in CA-G.R. SP No. 57014 which affirmed the decision of the Central Board of Assessment Appeals holding that the lot owned by the petitioner and its hospital building constructed thereon are subject to assessment for purposes of real property tax.

The Antecedents

The petitioner Lung Center of the Philippines is a non-stock and non-profit entity established on January 16, 1981 by virtue of Presidential Decree No. 1823.[2] It is the registered owner of a parcel of land, particularly described as Lot No. RP-3-B-3A-1-B-1, SWO-04-000495, located at Quezon Avenue corner Elliptical Road, Central District, Quezon City. The lot has an area of 121,463 square meters and is covered by Transfer

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Fermin A. Martin, Jr. and Salvador J. Valdez, Jr. concurring.

[2] SECTION 1. — CREATION OF THE LUNG CENTER OF THE PHILIPPINES. There is hereby created a trust, under the name and style of Lung Center of the Philippines, which, subject to the provisions of this Decree, shall be administered, according to the Articles of Incorporation, By-Laws and Objectives of the Lung Center of the Philippines, Inc., duly registered (reg. No. 85886) with the Securities and Exchange Commission of the Republic of the Philippines, by the Office of the President, in coordination with the Ministry of Human Settlements and the Ministry of Health.

Certificate of Title (TCT) No. 261320 of the Registry of Deeds of Quezon City. Erected in the middle of the aforesaid lot is a hospital known as the Lung Center of the Philippines. A big space at the ground floor is being leased to private parties, for canteen and small store spaces, and to medical or professional practitioners who use the same as their private clinics for their patients whom they charge for their professional services. Almost one-half of the entire area on the left side of the building along Quezon Avenue is vacant and idle, while a big portion on the right side, at the corner of Quezon Avenue and Elliptical Road, is being leased for commercial purposes to a private enterprise known as the Elliptical Orchids and Garden Center.

The petitioner accepts paying and non-paying patients. It also renders medical services to out-patients, both paying and non-paying. Aside from its income from paying patients, the petitioner receives annual subsidies from the government.

On June 7, 1993, both the land and the hospital building of the petitioner were assessed for real property taxes in the amount of ₱4,554,860 by the City Assessor of Quezon City.[3] Accordingly, Tax Declaration Nos. C-021-01226 (16-2518) and C-021-01231 (15-2518-A) were issued for the land and the hospital building, respectively.[4] On August 25, 1993, the petitioner filed a Claim for Exemption[5] from real property taxes with the City Assessor, predicated on its claim that it is a charitable institution. The petitioner's request was denied, and a petition was, thereafter, filed before the Local Board of Assessment Appeals of Quezon City (QC-LBAA, for brevity) for the reversal of the resolution of the City Assessor. The petitioner alleged that under Section 28, paragraph 3 of the 1987 Constitution, the property is exempt from real property taxes. It averred that a minimum of 60% of its hospital beds are exclusively used for charity patients and that the major thrust of its hospital operation is to serve charity patients. The petitioner contends that it is a charitable institution

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[3] Annex "C", *Rollo*, p. 49.

[4] Annexes "2" & "2-A", *id*. at 93-94.

[5] Annex "D", *id*. at 50-52.

and, as such, is exempt from real property taxes. The QC-LBAA rendered judgment dismissing the petition and holding the petitioner liable for real property taxes.[6]

The QC-LBAA's decision was, likewise, affirmed on appeal by the Central Board of Assessment Appeals of Quezon City (CBAA, for brevity)[7] which ruled that the petitioner was not a charitable institution and that its real properties were not actually, directly and exclusively used for charitable purposes; hence, it was not entitled to real property tax exemption under the constitution and the law. The petitioner sought relief from the Court of Appeals, which rendered judgment affirming the decision of the CBAA.[8]

Undaunted, the petitioner filed its petition in this Court contending that:

A. THE COURT *A QUO* ERRED IN DECLARING PETITIONER AS NOT ENTITLED TO REALTY TAX EXEMPTIONS ON THE GROUND THAT ITS LAND, BUILDING AND IMPROVEMENTS, SUBJECT OF ASSESSMENT, ARE NOT ACTUALLY, DIRECTLY AND EXCLUSIVELY DEVOTED FOR CHARITABLE PURPOSES.

B. WHILE PETITIONER IS NOT DECLARED AS REAL PROPERTY TAX EXEMPT UNDER ITS CHARTER, PD 1823, SAID EXEMPTION MAY NEVERTHELESS BE EXTENDED UPON PROPER APPLICATION.

The petitioner avers that it is a charitable institution within the context of Section 28(3), Article VI of the 1987 Constitution. It asserts that its character as a charitable institution is not altered by the fact that it admits paying patients and renders medical services to them, leases portions of the land to private parties, and rents out portions of the hospital to private medical practitioners from which it derives income to be used for operational expenses. The petitioner points out that for the years 1995 to 1999, 100%

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[6] Annex "E", *id*. at 53-55.

[7] Annexes "4" & "5", *id*. at 100-109.

[8] Annex "A", *id*. at 33-41.

of its out-patients were charity patients and of the hospital's 282-bed capacity, 60% thereof, or 170 beds, is allotted to charity patients. It asserts that the fact that it receives subsidies from the government attests to its character as a charitable institution. It contends that the "exclusivity" required in the Constitution does not necessarily mean "solely." Hence, even if a portion of its real estate is leased out to private individuals from whom it derives income, it does not lose its character as a charitable institution, and its exemption from the payment of real estate taxes on its real property. The petitioner cited our ruling in *Herrera v. QC-BAA*[9] to bolster its pose. The petitioner further contends that even if P.D. No. 1823 does not exempt it from the payment of real estate taxes, it is not precluded from seeking tax exemption under the 1987 Constitution.

In their comment on the petition, the respondents aver that the petitioner is not a charitable entity. The petitioner's real property is not exempt from the payment of real estate taxes under P.D. No. 1823 and even under the 1987 Constitution because it failed to prove that it is a charitable institution and that the said property is actually, directly and exclusively used for charitable purposes. The respondents noted that in a newspaper report, it appears that graft charges were filed with the Sandiganbayan against the director of the petitioner, its administrative officer, and Zenaida Rivera, the proprietress of the Elliptical Orchids and Garden Center, for entering into a lease contract over 7,663.13 square meters of the property in 1990 for only ₱20,000 a month, when the monthly rental should be ₱357,000 a month as determined by the Commission on Audit; and that instead of complying with the directive of the COA for the cancellation of the contract for being grossly prejudicial to the government, the petitioner renewed the same on March 13, 1995 for a monthly rental of only ₱24,000. They assert that the petitioner uses the subsidies granted by the government for charity patients and uses the rest of its income from the property for the benefit of paying patients, among other purposes. They aver that the petitioner failed to adduce

[9] 3 SCRA 187 (1961).

substantial evidence that 100% of its out-patients and 170 beds in the hospital are reserved for indigent patients. The respondents further assert, thus:

> 13. That the claims/allegations of the Petitioner LCP do not speak well of its record of service. That before a patient is admitted for treatment in the Center, first impression is that it is pay-patient and required to pay a certain amount as deposit. That even if a patient is living below the poverty line, he is charged with high hospital bills. And, without these bills being first settled, the poor patient cannot be allowed to leave the hospital or be discharged without first paying the hospital bills or issue a promissory note guaranteed and indorsed by an influential agency or person known only to the Center; that even the remains of deceased poor patients suffered the same fate. Moreover, before a patient is admitted for treatment as free or charity patient, one must undergo a series of interviews and must submit all the requirements needed by the Center, usually accompanied by endorsement by an influential agency or person known only to the Center. These facts were heard and admitted by the Petitioner LCP during the hearings before the Honorable QC-BAA and Honorable CBAA. These are the reasons of indigent patients, instead of seeking treatment with the Center, they prefer to be treated at the Quezon Institute. Can such practice by the Center be called charitable?[10]

The Issues

The issues for resolution are the following: (a) whether the petitioner is a charitable institution within the context of Presidential Decree No. 1823 and the 1973 and 1987 Constitutions and Section 234(b) of Republic Act No. 7160; and (b) whether the real properties of the petitioner are exempt from real property taxes.

The Court's Ruling

The petition is partially granted.

On the first issue, we hold that the petitioner is a charitable institution within the context of the 1973 and 1987 Constitutions. To determine whether an enterprise is a charitable institution/

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[10] *Rollo*, pp. 83-84.

entity or not, the elements which should be considered include the statute creating the enterprise, its corporate purposes, its constitution and by-laws, the methods of administration, the nature of the actual work performed, the character of the services rendered, the indefiniteness of the beneficiaries, and the use and occupation of the properties.[11]

In the legal sense, a charity may be fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or otherwise lessening the burden of government.[12] It may be applied to almost anything that tend to promote the well-doing and well-being of social man. It embraces the improvement and promotion of the happiness of man.[13] The word "charitable" is not restricted to relief of the poor or sick.[14] The test of a charity and a charitable organization are in law the same. The test whether an enterprise is charitable or not is whether it exists to carry out a purpose reorganized in law as charitable or whether it is maintained for gain, profit, or private advantage.

Under P.D. No. 1823, the petitioner is a non-profit and non-stock corporation which, subject to the provisions of the decree, is to be administered by the Office of the President of the Philippines with the Ministry of Health and the Ministry of Human Settlements. It was organized for the welfare and benefit of the Filipino people principally to help combat the high incidence of lung and pulmonary diseases in the Philippines. The *raison*

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[11] See *Workmen's Circle Educational Center of Springfield v. Board of Assessors of City of Springfield*, 51 N.E.2d 313 (1943).

[12] *Congregational Sunday School & Publishing Society v. Board of Review*, 125 N.E. 7 (1919), citing *Jackson v. Philipps*, 14 Allen (Mass.) 539.

[13] *Bader Realty & Investment Co. v. St. Louis Housing Authority*, 217 S.W.2d 489 (1949).

[14] *Board of Assessors of Boston v. Garland School of Homemaking*, 6 N.E.2d 379.

d'etre for the creation of the petitioner is stated in the decree, *viz*:

Whereas, for decades, respiratory diseases have been a priority concern, having been the leading cause of illness and death in the Philippines, comprising more than 45% of the total annual deaths from all causes, thus, exacting a tremendous toll on human resources, which ailments are likely to increase and degenerate into serious lung diseases on account of unabated pollution, industrialization and unchecked cigarette smoking in the country;

Whereas, the more common lung diseases are, to a great extent, preventable, and curable with early and adequate medical care, immunization and through prompt and intensive prevention and health education programs;

Whereas, there is an urgent need to consolidate and reinforce existing programs, strategies and efforts at preventing, treating and rehabilitating people affected by lung diseases, and to undertake research and training on the cure and prevention of lung diseases, through a Lung Center which will house and nurture the above and related activities and provide tertiary-level care for more difficult and problematical cases;

Whereas, to achieve this purpose, the Government intends to provide material and financial support towards the establishment and maintenance of a Lung Center for the welfare and benefit of the Filipino people.[15]

The purposes for which the petitioner was created are spelled out in its Articles of Incorporation, thus:

SECOND: That the purposes for which such corporation is formed are as follows:

1. To construct, establish, equip, maintain, administer and conduct an integrated medical institution which shall specialize in the treatment, care, rehabilitation and/or relief of lung and allied diseases in line with the concern of the government to assist and provide material and financial support in the establishment and maintenance of a lung center primarily to benefit the people of the Philippines and in pursuance of the policy of the State to secure the

[15] *Rollo*, pp. 119-120.

well-being of the people by providing them specialized health and medical services and by minimizing the incidence of lung diseases in the country and elsewhere.

2. To promote the noble undertaking of scientific research related to the prevention of lung or pulmonary ailments and the care of lung patients, including the holding of a series of relevant congresses, conventions, seminars and conferences;

3. To stimulate and, whenever possible, underwrite scientific researches on the biological, demographic, social, economic, eugenic and physiological aspects of lung or pulmonary diseases and their control; and to collect and publish the findings of such research for public consumption;

4. To facilitate the dissemination of ideas and public acceptance of information on lung consciousness or awareness, and the development of fact-finding, information and reporting facilities for and in aid of the general purposes or objects aforesaid, especially in human lung requirements, general health and physical fitness, and other relevant or related fields;

5. To encourage the training of physicians, nurses, health officers, social workers and medical and technical personnel in the practical and scientific implementation of services to lung patients;

6. To assist universities and research institutions in their studies about lung diseases, to encourage advanced training in matters of the lung and related fields and to support educational programs of value to general health;

7. To encourage the formation of other organizations on the national, provincial and/or city and local levels; and to coordinate their various efforts and activities for the purpose of achieving a more effective programmatic approach on the common problems relative to the objectives enumerated herein;

8. To seek and obtain assistance in any form from both international and local foundations and organizations; and to administer grants and funds that may be given to the organization;

9. To extend, whenever possible and expedient, medical services to the public and, in general, to promote and protect the health of the masses of our people, which has long been recognized as an economic asset and a social blessing;

10. To help prevent, relieve and alleviate the lung or pulmonary afflictions and maladies of the people in any and all walks of life, including those who are poor and needy, all without regard to or discrimination, because of race, creed, color or political belief of the persons helped; and to enable them to obtain treatment when such disorders occur;

11. To participate, as circumstances may warrant, in any activity designed and carried on to promote the general health of the community;

12. To acquire and/or borrow funds and to own all funds or equipment, educational materials and supplies by purchase, donation, or otherwise and to dispose of and distribute the same in such manner, and, on such basis as the Center shall, from time to time, deem proper and best, under the particular circumstances, to serve its general and non-profit purposes and objectives;

13. To buy, purchase, acquire, own, lease, hold, sell, exchange, transfer and dispose of properties, whether real or personal, for purposes herein mentioned; and

14. To do everything necessary, proper, advisable or convenient for the accomplishment of any of the powers herein set forth and to do every other act and thing incidental thereto or connected therewith.[16]

Hence, the medical services of the petitioner are to be rendered to the public in general in any and all walks of life including those who are poor and the needy without discrimination. After all, any person, the rich as well as the poor, may fall sick or be injured or wounded and become a subject of charity.[17]

As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no

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[16] *Id.* at 123-125.

[17] *Scripps Memorial Hospital v. California Employment Commission*, 24 Cal.2d 669, 151 P.2d 109 (1944).

money inures to the private benefit of the persons managing or operating the institution.[18] In *Congregational Sunday School, etc. v. Board of Review*,[19] the State Supreme Court of Illinois held, thus:

> . . . [A]n institution does not lose its charitable character, and consequent exemption from taxation, by reason of the fact that those recipients of its benefits who are able to pay are required to do so, where no profit is made by the institution and the amounts so received are applied in furthering its charitable purposes, and those benefits are refused to none on account of inability to pay therefor. The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.[20]

As aptly stated by the State Supreme Court of South Dakota in *Lutheran Hospital Association of South Dakota v. Baker*: [21]

> . . . [T]he fact that paying patients are taken, the profits derived from attendance upon these patients being exclusively devoted to the maintenance of the charity, seems rather to enhance the usefulness of the institution to the poor; for it is a matter of common observation amongst those who have gone about at all amongst the suffering classes, that the deserving poor can with difficulty be persuaded to enter an asylum of any kind confined to the reception of objects of charity; and that their honest pride is much less wounded by being placed in an institution in which paying patients are also received. The fact of receiving money from some of the patients does not, we think, at all impair the character of the charity, so long as the money thus received is devoted altogether to the charitable object which the institution is intended to further.[22]

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[18] *Sisters of Third Order of St. Frances v. Board of Review of Peoria County*, 83 N.E. 272.

[19] See note 12.

[20] *Id*. at 10.

[21] 167 N.W. 148 (1918), citing *State v. Powers*, 10 Mo. App. 263, 74 Mo. 476.

[22] *Id*. at 149.

The money received by the petitioner becomes a part of the trust fund and must be devoted to public trust purposes and cannot be diverted to private profit or benefit.[23]

Under P.D. No. 1823, the petitioner is entitled to receive donations. The petitioner does not lose its character as a charitable institution simply because the gift or donation is in the form of subsidies granted by the government. As held by the State Supreme Court of Utah in *Yorgason v. County Board of Equalization of Salt Lake County*:[24]

> Second, the . . . government subsidy payments are provided to the project. Thus, those payments are like a gift or donation of any other kind except they come from the government. In both *Intermountain Health Care* and the present case, the crux is the presence or absence of material reciprocity. It is entirely irrelevant to this analysis that the government, rather than a private benefactor, chose to make up the deficit resulting from the exchange between St. Mark's Tower and the tenants by making a contribution to the landlord, just as it would have been irrelevant in *Intermountain Health Care* if the patients' income supplements had come from private individuals rather than the government.
>
> Therefore, the fact that subsidization of part of the cost of furnishing such housing is by the government rather than private charitable contributions does not dictate the denial of a charitable exemption if the facts otherwise support such an exemption, as they do here.[25]

In this case, the petitioner adduced substantial evidence that it spent its income, including the subsidies from the government for 1991 and 1992 for its patients and for the operation of the hospital. It even incurred a net loss in 1991 and 1992 from its operations.

Even as we find that the petitioner is a charitable institution, we hold, anent the second issue, that those portions of its real

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[23] See *O'brien v. Physicians' Hospital Association*, 116 N.E. 975 (1917).

[24] 714 P.2d 653 (1986).

[25] *Id.* at 660-661.

property that are leased to private entities are not exempt from real property taxes as these are not actually, directly and exclusively used for charitable purposes.

The settled rule in this jurisdiction is that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The effect of an exemption is equivalent to an appropriation. Hence, a claim for exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.[26] As held in *Salvation Army v. Hoehn*:[27]

> An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. . . .[28]

Section 2 of Presidential Decree No. 1823, relied upon by the petitioner, specifically provides that the petitioner shall enjoy the tax exemptions and privileges:

> SEC. 2. TAX EXEMPTIONS AND PRIVILEGES. — Being a non-profit, non-stock corporation organized primarily to help combat the high incidence of lung and pulmonary diseases in the Philippines, all donations, contributions, endowments and equipment and supplies to be imported by authorized entities or persons and by the Board of Trustees of the Lung Center of the Philippines, Inc., for the actual use and benefit of the Lung Center, *shall be exempt from income and gift taxes, the same further deductible*

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[26] *Commissioner of Internal Revenue v. Court of Appeals*, 298 SCRA 83 (1998).

[27] 188 S.W.2d. 826 (1945).

[28] *Id.* at 829.

in full for the purpose of determining the maximum deductible amount under Section 30, paragraph (h), of the National Internal Revenue Code, as amended.

The Lung Center of the Philippines *shall be exempt from the payment of taxes, charges and fees imposed by the Government or any political subdivision or instrumentality thereof with respect to equipment purchases made by, or for the Lung Center*.[29]

It is plain as day that under the decree, *the petitioner does not enjoy any property tax exemption privileges for its real properties as well as the building constructed thereon*. If the intentions were otherwise, the same should have been among the enumeration of tax exempt privileges under Section 2:

It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*.

The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressium facit cessare tacitum*. Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.

xxx xxx xxx

The rule of *expressio unius est exclusio alterius* and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. They proceed from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[30]

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[29] *Rollo*, p. 120. (Italics supplied.)

[30] *Malinias v. COMELEC*, 390 SCRA 480 (2002).

The exemption must not be so enlarged by construction since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be intended beyond what was meant.[31]

Section 28(3), Article VI of the 1987 Philippine Constitution provides, thus:

(3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, *actually*, *directly* and *exclusively* used for religious, charitable or educational purposes shall be exempt from taxation.[32]

The tax exemption under this constitutional provision covers *property* taxes only.[33] As Chief Justice Hilario G. Davide, Jr., then a member of the 1986 Constitutional Commission, explained: ". . . what is exempted is not the institution itself . . .; those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes."[34]

Consequently, the constitutional provision is implemented by Section 234(b) of Republic Act No. 7160 (otherwise known as the Local Government Code of 1991) as follows:

SECTION 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

... ...

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries

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[31] *St. Louis Young Men's Christian Association v. Gehner*, 47 S.W.2d 776 (1932).

[32] Italics supplied.

[33] *Commissioner of Internal Revenue v. Court of Appeals, supra*.

[34] *Ibid.* Citing II RECORDS OF THE CONSTITUTIONAL COMMISSION 90.

and all lands, buildings, and improvements *actually*, *directly*, and *exclusively* used for religious, charitable or educational purposes.[35]

We note that under the 1935 Constitution, ". . . all lands, buildings, and improvements used 'exclusively' for … charitable . . . purposes shall be exempt from taxation."[36] However, under the 1973 and the present Constitutions, for "lands, buildings, and improvements" of the charitable institution to be considered exempt, the same should not only be "exclusively" used for charitable purposes; it is required that such property be used "actually" and "directly" for such purposes.[37]

In light of the foregoing substantial changes in the Constitution, the petitioner cannot rely on our ruling in *Herrera v. Quezon City Board of Assessment Appeals* which was promulgated on September 30, 1961 before the 1973 and 1987 Constitutions took effect.[38] As this Court held in *Province of Abra v. Hernando*:[39]

> . . . Under the 1935 Constitution: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." The present Constitution added "charitable institutions, mosques, and non-profit cemeteries" and required that for the exemption of "lands, buildings, and improvements," they should not only be "exclusively" but also "actually" and "directly" used for religious or charitable purposes.

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[35] Italics supplied.

[36] Article VI, Section 22, par. (3) of the 1935 Constitution provides that, "Cemeteries, churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation."

[37] Article VIII, Section 17, par. (3) of the 1973 Constitution provides that, "Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, and non-profit cemeteries, and all lands, buildings, and improvements actually, directly, and exclusively used for religious or charitable purposes shall be exempt from taxation."

[38] 3 SCRA 186 (1961).

[39] 107 SCRA 105 (1981).

The Constitution is worded differently. The change should not be ignored. It must be duly taken into consideration. Reliance on past decisions would have sufficed were the words "actually" as well as "directly" not added. There must be proof therefore of the *actual* and *direct* use of the lands, buildings, and improvements for religious or charitable purposes to be exempt from taxation . . .

Under the 1973 and 1987 Constitutions and Rep. Act No. 7160 in order to be entitled to the exemption, the petitioner is burdened to prove, by clear and unequivocal proof, that (a) it is a charitable institution; and (b) its real properties are **ACTUALLY**, **DIRECTLY** and **EXCLUSIVELY** used for charitable purposes. "Exclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively."[40] If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation.[41] The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitutions and the law.[42] Solely is synonymous with exclusively.[43]

What is meant by actual, direct and exclusive use of the property for charitable purposes is the direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized. It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.[44]

The petitioner failed to discharge its burden to prove that the entirety of its real property is actually, directly and exclusively

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[40] *Young Men's Christian Association of Omaha v. Douglas County*, 83 N.W. 924 (1900).

[41] *St. Louis Young Men's Christian Association v. Gehner, supra*.

[42] See *State ex rel Koeln v. St. Louis Y.M.C.A.*, 168 S.W. 589 (1914).

[43] *Lodge v. Nashville*, 154 S.W. 141.

[44] *Christian Business College v. Kalamanzoo*, 131 N.W. 553.

used for charitable purposes. While portions of the hospital are used for the treatment of patients and the dispensation of medical services to them, whether paying or non-paying, other portions thereof are being leased to private individuals for their clinics and a canteen. Further, a portion of the land is being leased to a private individual for her business enterprise under the business name "Elliptical Orchids and Garden Center." Indeed, the petitioner's evidence shows that it collected ₱1,136,483.45 as rentals in 1991 and ₱1,679,999.28 for 1992 from the said lessees.

Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes.[45] On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.

IN LIGHT OF ALL THE FOREGOING, *the petition is PARTIALLY GRANTED*. The respondent Quezon City Assessor is hereby *DIRECTED* to determine, after due hearing, the precise portions of the land and the area thereof which are leased to private persons, and to compute the real property taxes due thereon as provided for by law.

SO ORDERED.

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

Vitug, J., on official leave.

Ynares-Santiago and *Austria-Martinez, JJ.,* on leave.

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[45] See *Young Men's Christian Association of Omaha v. Douglas County, supra; Martin v. City of New Orleans,* 58 Am. 194 (1886).

SECOND DIVISION

[G.R. No. 144497. June 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **IGNACIO TONOG, JR., also known as ABDUL TONOG, JR., ALVIN ROLANDO SOLAMILLO, also known as ALLAN SOLAMILLO, "JOHN DOE," and "PETER DOE,"** *accused***. ALVIN ROLANDO SOLAMILLO also known as ALLAN SOLAMILLO,** *appellant*.

SYNOPSIS

On the basis of circumstantial evidence, appellant was found guilty by the trial court of the crime of murder for the killing of one Efren Flores. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal where appellant questioned the veracity of the testimonies of the witnesses for the prosecution.

In affirming the decision of the trial court, the Supreme Court ruled that the trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify. Upon a careful review of the records of the instant case, the Court found no cogent reason to overrule the trial court's finding that the appellant stabbed the victim in cold blood. Moreover, the circumstantial evidence presented by the prosecution is sufficient to sustain a conviction: the victim was last seen in the company of the appellant; not long thereafter, the victim was found dead; and the appellant was nowhere to be found within the vicinity of the killing.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS AND ASSESSMENT THEREOF BY THE TRIAL COURT, GENERALLY ACCORDED GREAT WEIGHT ON APPEAL; EXCEPTION; NOT PRESENT IN CASE AT BAR.— [T]he trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify. Upon a careful review of the records of the instant case, the Court finds no cogent reason to overrule the trial court's finding that the appellant stabbed the victim in cold blood.

2. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT ACCUSED.— [F]or the accused to be convicted based on circumstantial evidence, the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.

3. ID.; ID.; ACCUSED'S FLIGHT AND HIS REFUSAL TO TESTIFY IN HIS DEFENSE, IN THE ABSENCE OF CREDIBLE EXPLANATION, ARE INDICATIONS OF GUILT; CASE AT BAR.— [F]light *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. However, the flight of an accused, *in the absence of a credible explanation*, would be a circumstance from which an inference of guilt may be established, for a truly innocent person would normally grasp the first available

opportunity to defend himself and assert his innocence. Although the appellant's silence and refusal to testify, let alone refusal to present evidence, cannot be construed as evidence of guilt, this Court has consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time." In this case, the appellant has not even attempted to explain his absence, nor presented evidence to corroborate his claim that he went with his father to help in the latter's tricycle business in Zamboanga. His bare claim, as against the evidence supporting his conviction, cannot be given credence by this Court.

4. CRIMINAL LAW; CONSPIRACY; MAY BE ESTABLISHED BY DIRECT OR CIRCUMSTANTIAL EVIDENCE AS CONVINCINGLY AS THE COMMISSION OF THE CRIME ITSELF.— Conspiracy must be shown to exist by direct or circumstantial evidence, as clearly and convincingly as the commission of the offense itself.

5. ID.; AGGRAVATING CIRCUMSTANCES; CRUELTY; WHEN APPRECIATED.— The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanely caused the victim's suffering or outraged or scoffed at the victim's corpse.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Asbi N. Edding 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 Negros Oriental, Branch 34, Dumaguete City, finding

[1] Penned by Judge Rosendo B. Bandal, Jr.

the appellant, Alvin Rolando Solamillo *alias* Allan Solamillo, guilty of murder in Criminal Case No. 8123.

The appellant, along with accused Ignacio Tonog, Jr. and two others, was charged in an Amended Information[2] which reads, thus:

> The undersigned Fiscals accuses [*sic*] *IGNACIO TONOG, JR.* alias ABDUL TONOG, ALVIN ROLANDO SALAMILLO *alyas* [sic] ALLAN SALAMILLO, "JOHN DOE" and "PETER DOE" of the crime of MURDER, committed as follows:
>
> That on or about the 24th day of April, 1988, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and mutually aiding one another, with the use of a motorvehicle [*sic*] in which they brought said EFREN FLORES to an uninhabited place, and taking advantage of their superior strength and with intent to kill said EFREN FLORES, and armed with a deadly weapon, to wit: a Batangas knife, did then and there willfully, unlawfully and feloniously stab and wound therewith said EFREN FLORES during nighttime, inflicting upon said EFREN FLORES the following injuries to wit:
>
> ... ...
>
> . . . which injuries directly caused the death of said EFREN FLORES.
>
> That the crime was committed with the qualifying circumstances of use of a motorvehicle [*sic*], taking advantage of superior strength, nighttime, uninhabited place and cruelty.
>
> Contrary to Article 248 of the Revised Penal Code.[3]

The accused Ignacio Tonog, Jr. moved for a separate trial, because his co-accused were still at large.[4] The court granted

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[2] In the hearing of February 23, 1999, the appellant disclosed that his real name was not Allan Solamillo, but ALVIN ROLANDO SOLAMILLO. Hence, upon motion of the prosecuting fiscal, the prosecution was allowed to amend the Information by inserting "Alvin Rolando Solamillo, *alias* Allan Solamillo" in the amended Information dated October 27, 1988.

[3] Records, pp. 65-67.

[4] *Id*. at 76.

the motion. The case as against the appellant was archived. After trial, the court rendered judgment convicting Tonog, Jr. of murder and sentenced him to *reclusion perpetua*. The dispositive portion of the said decision reads:

> WHEREFORE, the accused Ignacio Tonog, Jr. *alias* "Abdul Tonog" is hereby found guilty beyond reasonable doubt of the crime of Murder and the Court hereby imposes on him the penalty of *Reclusion Perpetua*.
>
> Accused is likewise ordered to indemnify the heirs of the deceased victim the sum of THIRTY THOUSAND PESOS (₱30,000.00) and to pay the costs.
>
> The case filed against his co-accused Allan Solamillo and two other unidentified individuals are hereby ordered archived, without prejudice to their further prosecution, considering that until this time they have not yet been apprehended and still remain at large.[5]

The ruling of the trial court was affirmed by this Court in G.R. No. 94533[6] on February 4, 1992, the dispositive portion of which reads:

> WHEREFORE, the judgment appealed from is hereby AFFIRMED, except with respect to the indemnity, which is hereby increased to ₱50,000.00. Costs against accused-appellant, Ignacio Tonog, Jr.[7]

More than six years later, or on April 8, 1998, the appellant was arrested in Cabato Road, Tetuan, Zamboanga City.[8] Upon motion[9] of the Assistant City Prosecutor, Criminal Case No. 8123 was revived. The appellant, with the assistance of counsel, pleaded not guilty to the charge against him.[10] Trial commenced as to the appellant.

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[5] *Id*. at 180-181.

[6] Entitled *People v. Tonog, Jr.,* 205 SCRA 772 (1992).

[7] Records, p. 200.

[8] *Id*. at 206.

[9] *Id*. at 210.

[10] *Id*. at 214.

The Case for the Prosecution[11]

Thirty-eight-year-old Liberato Solamillo, Jr., the appellant's first cousin, was a fish vendor in Tinago, Dumaguete City. In the year 1988, he worked as a driver of his father's "motorcab." He was also a part-time driver of Jun Salabante, and drove the "motorcab" owned by the latter, bearing sidecar number 0164. The appellant was its regular driver.

On April 24, 1988, Liberato started plying his route at around 6:00 a.m. and was still driving until about 5:30 p.m. Liberato's uncle and the appellant's father, Teodoro Solamillo, arrived from Zamboanga and asked to be accompanied to look for his son. Liberato and Teodoro searched for the appellant using the "motorcab" with sidecar no. 0164, and found the appellant sleeping at the house of his grandmother, Felisa Solamillo. Teodoro awakened his son and the two of them conversed. Liberato was told to wait, so he stood by the "motorcab" and did as he was told. Thereafter, the appellant, Teodoro and Liberato boarded the "motorcab" and left. Teodoro alighted at the house of his father, Paulo Solamillo, in Lawisid, *Sitio* Bacong. The appellant was then wearing a plain white shirt and maong pants. [12]

At around 7:00 p.m., Liberato and the appellant then went to Nora's Store located at *Sitio* Bacong. Ignacio Tonog, Jr. was also at the store. Liberato drank soft drinks, while the appellant and Tonog, Jr. drank beer. At around 7:30 p.m., the appellant requested Liberato to bring a certain Emil to the cockpit in Dumaguete City. Liberato did as he was told, and no longer collected the fare because the passenger was a friend of the appellant's. The trip from Bacong to Dumaguete and back took about forty-five minutes.[13]

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[11] The following persons who testified during the separate trial of Ignacio Tonog, Jr. were already deceased at the time of the appellant's trial, and thus were no longer able to testify: Ramon Dicen Flores who died on August 7, 1995; Godofredo Diaz Flores, who died on August 7, 1995; and Elvis Solamillo Bueno who died on April 30, 1996 (TSN, 25 February 1999, p. 18).

[12] TSN, 21 June 1999, p. 30.

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

At around this time, Patrolman Remigio Biyok was watching a movie at the house of Charlie Yee with many others. The place was about one hundred fifty meters from Nora's Store.[14] At 8:00 p.m., Julian Valencia approached Pat. Biyok and informed the latter that the appellant had fired a gun somewhere within the vicinity of the store. Pat. Biyok went to the police station which was about a hundred meters away from Nora's Store, before proceeding to the place.[15] His companions, Patrolman Mendoza, Patrolman Taño and Patrolman Tuballa had already gone ahead to investigate the matter. Pat. Biyok saw the appellant within the vicinity of the Nora's Store. He also saw Tonog, Jr., who asked to be conveyed to Tinago, Dumaguete City, to the house his brother was renting. Pat. Biyok obliged, since Tonog, Jr. also happened to be the brother of then Chief of Police Lt. Isaias Tonog.[16] Tonog, Jr. then left with Pat. Biyok on board the latter's Yamaha 80 motorcycle. It was about 9:30 p.m. [17]

When Liberato went back to *Sitio* Bacong, Dumaguete City, he saw the appellant and Tonog, Jr. standing outside Nora's Store. Divina, the store owner's daughter, was also there. Three policemen were within the vicinity. Liberator heard that one of them, either Tonog, Jr. or the appellant, had caused a commotion by firing a gun.[18] He also saw Tonog, Jr. leave with Pat. Biyok.

At about 9:30 p.m., Liberato and the appellant went looking for Tonog, Jr. using the "motorcab" bearing sidecar no. 0164. They passed by Pat. Biyok's house in Banilad, Dumaguete City, which was about five kilometers from *Sitio* Bacong. Efren Flores, the son of former Philippine National Police Chief Nick Flores, was then at Pat. Biyok's house, drinking beer with friends.[19] Pat. Biyok arrived from the trip to Tinago, Dumaguete City,

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[14] TSN, 23 February 1999, p. 18.

[15] *Id*. at 19.

[16] *Id*. at 6-7.

[17] *Id*. at 8.

[18] Exhibit "A", Records, p. 10.

[19] TSN, 23 February 1999, p. 9-10.

which was about five to six kilometers away[20] and saw Efren at his house. Liberato and the appellant arrived and inquired on the whereabouts of Tonog, Jr. The appellant asked Pat. Biyok where Tonog, Jr. had gone, and Pat. Biyok replied that he had already brought the latter to *Sitio* Tinago.[21]

In the meantime, Efren Flores came near Liberato and the appellant, and said, "I would like to ride with you to Dumaguete." The appellant told Liberato to stay at Pat. Biyok's residence as he (the appellant) would be the one to take Efren Flores to Dumaguete City. "Stay here," the appellant told Liberato.[22] The appellant promised that he would be back within five minutes.[23] Pat. Biyok saw Efren Flores on board the "motorcab" driven by the appellant.[24] The motorcab was about ten to fifteen meters away, and Pat. Biyok saw them as he was sitting on the porch of his house. The place was lit by a Meralco lamp post, about twenty to twenty-five meters away.[25]

Liberato waited in vain for the appellant to return. He watched an on-going amateur contest and decided to leave the place about thirty minutes later.[26]

Liberato then waited for a ride and saw his friend, Gorio, pass by in a "motorcab." He requested Gorio to accompany him to look for the appellant in *Sitio* Tinago. They went around Dumaguete City, but did not find the appellant. They then decided to go home. Along the way, they passed by the store owned by Liberato's aunt, Francisca Bueno, which was located along the national highway at *Sitio* Bacong, Banilad, Dumaguete City.

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[20] *Id.* at 21.

[21] *Id.* at 15.

[22] TSN, 21 June 1999, p. 60.

[23] Exhibit "A", Records p. 10.

[24] TSN, 23 February 1999, p. 15.

[25] *Id.* at 24.

[26] *Id.* at 26.

They saw the "motorcab" bearing sidecar no. 0164 and approached the vehicle. Liberato saw Tonog, Jr. inside.

Liberato then went into his aunt's house. He saw the appellant buying sardines and one family-sized soft drink. He asked the appellant why he showed up only now, and the latter told him to keep quiet and to let Gorio go ahead.[27] Thereafter, he saw the appellant and his other cousin, Elvis Bueno, conversing. They were about one meter away from each other.[28] Liberato then overheard the appellant say "*Nakuha na gyod, Bes*" (Already taken Bes).[29] As the appellant uttered those words, Liberato noticed that the latter's fatigue shirt had plenty of red stains. He then remembered that the appellant was wearing a white shirt while they were still at the store. He did not ask the appellant about the red stains, because the latter seemed fearful at the time. Nothing was said of the incident. It was by then past 11:00 p.m.[30]

Later, the group went back to the house of Liberato's grandfather, Paulo Solamillo. Paulo was angry at Liberato for going home so late. Tonog, Jr. and the appellant ate and conversed, while Liberato slept. Liberato woke up at 6:00 a.m. and started plying his usual route, using the "motorcab" owned by Jun Salabante.

At about 6:00 a.m. on April 25, 1988, the Dumaguete Police Station received reports that a lifeless body had been found at the crossing of Cantil-e, Dumaguete City.[31] Upon receiving the report, SPO1 Walter R. Leguarda immediately went to the place where the body was reported found and conducted an investigation. He learned that the Flores family, who lived near the place

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[27] Exhibit "A", Records, p. 10.

[28] TSN, 21 June 1999, p. 45.

[29] *Id*. at 18, 46; Annex "A".

[30] *Id*. at 19-20.

[31] TSN, 24 February 1999, p. 5.

where the body of the victim was found, spotted the "motorcab" bearing sidecar number 0164 within the vicinity. After learning that the vehicle belonged to Jun Salabante, SPO1 Leguarda proceeded to the latter's house where he was informed that the drivers of the vehicle were Liberato Solamillo and the appellant. SPO1 Leguarda then went to Liberato's place to investigate the matter further. Liberato told him that the appellant borrowed the "motorcab" that day. Thus, the police operatives went to *Sitio* Bacong to arrest Tonog, Jr., but did not find the suspect there.

Afterwards, however, Tonog, Jr. voluntarily went with the police authorities to the police station for questioning. After the investigation, SPO1 Leguarda saw Tonog, Jr. seated on a bench, and appeared to be crying. SPO1 Leguarda approached him and asked why his pants had so many blood stains. Tonog, Jr. looked surprised and asked where the station commander was. He then politely confessed to Police Captain Pedro Centeno that he was one of the killers of Efren Flores and that he used a *Batangas* knife, which, however, he gave to the appellant.[32]

SPO1 Leguarda also testified that he saw the appellant talking with Captain Nick Flores, the father of the victim, near the *kampanaryo* at the Quezon Park, Dumaguete City, at the corner of Perdices and Colon Streets. According to Leguarda, he saw the two of them talking early in the morning, after their "formation" before reporting to their respective duties, on three or four occasions. He did not think much about it at the time.[33]

SPO1 Leguarda also recounted that he was able to talk to the late Captain Flores before the latter died. It was the first week of January, 1995. Captain Flores requested him to appear in court if ever the appellant would be arrested. He was told that the appellant was an informer or "asset," and that in connection with a tire he helped to recover, the appellant was promised reward money in the amount of ₱5,000.00. However,

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[32] *Id*. at 6-13.

[33] *Id*. at 14-15.

Captain Flores was unable to give the money to the appellant. Captain Flores narrated that the appellant threatened to kill him because of the incident.[34]

SPO1 Leguarda also recounted that Tonog, Jr. had a grudge on the victim, and learned of the motive behind the killing from Tonog, Jr.'s girlfriend. Efren Flores and Tonog apparently had an argument while both were drunk, which led the victim to strangle the latter with his hands.

Liberato found out about the killing from some of his passengers, as he was plying his usual route. He was then invited for questioning by the police in the afternoon of April 25, 1988. When the police asked him were he was the night before, he replied that he and the appellant were together.

SPO3 Vilma Beltran testified she was on duty at the Police Station of Dumaguete City. At around 11:00 a.m. of April 25, 1988, Sgt. Patricio brought Tonog, Jr. to the station. The suspect was made to remove his pants, which Sgt. Patricio handed to her. Tonog, Jr. also turned over a stainless knife. Both items were placed in a transparent plastic pack and labeled. The bag containing the items was then forwarded to Forensic Chemist Myrna Areola.[35]

City Health Officer Urbano E. Diga examined the cadaver of the victim and documented the following findings in his medico-legal report:

1. Wound at the pre-auricular area 2 cm. from the right ear measuring 0.2 cm. x 1.5 cm. non-penetrating;
2. Wound 3 cm. above wound no. 1 measuring 0.2 cm. x 1 cm. non-penetrating;
3. Wound at the angle of the right mandible measuring 1 cm. x 2.8 cm. x 9 cm.;
4. Wound above wound no. 3 measuring 0.3 cm. x 1 cm. non-penetrating;

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[34] *Id*. at 16.

[35] TSN, 25 February 1999, pp. 1-9.

5. Wound at the right lateral neck measuring 0.3 cm. x 1 cm. x 6.5 cm.;
6. Wound below wound no. 5 (4 cm. distance) measuring 0.5 cm. x 1 cm. x 6 cm.;
7. Wound 6 cm. below right middle portion of the clavicle measuring 1 cm. x 2 cm. x 13.5 cm.;
8. Wound 4 cm. below medial 3rd of the right clavicle measuring 1 cm. x 2 cm. x 13.6 cm.;
9. Wound 4 cm. above the right nipple measuring 0.5 cm. x 1.4 cm. non-penetrating;
10. Wound 2 cm. from the level of the right nipple measuring 1 cm. x 1.5 cm. The direction of the wound is upward measuring 14 cm. deep.
11. Wound at the third medial portion of the left clavicle measuring 1 cm. x 3 cm. x 13.7 cm.
12. Wound 1 cm. below wound no. 11 measuring 0.3 cm. x 1 cm.
13. Wound 2 cm. below wound no. 12 measuring 0.3 cm. x 1.5 cm. non-penetrating;
14. Wound 1 cm. below wound no. 13 measuring 0.3 cm. x 7.5 cm.;
15. Wound 7 cm. above the left nipple measuring 1 cm. x 1.5 cm. x 14.5 cm.;
16. Wound 1 cm. below wound no. 15 measuring 1 cm. x 1.5 cm. x 14.5 cm.;
17. Wound 1.8 cm. above and to the right of the left nipple measuring 0.5 cm. x 0.2 cm. x 2 cm. x 13.5 cm.;
18. Wound just below the left nipple horizontally directed measuring 0.2 cm. x 2 cm. x 13.5 cm.;
19. Wound 2 cm. to the right of wound no. 18 measuring 0.6 cm. x 1.5 cm. x 15 cm.;
20. Wound just above the right subcostal region measuring 1.3 cm. x 4 cm. The wound is directed upward measuring 15 cm. deep;

21. Wound 3 cm. below the right subcostal region among (*sic*) nipple line measuring 1 cm. x 2 cm. The wound is directed upward measuring 10.5 cm. deep;

22. Wound along right midaxillary line (lumbar region) measuring 1 cm. x 2 cm. x 2 cm.;

23. Wound at the right 11th posterior rib measuring 0.8 cm. x 7.9 cm. non[-]penetrating directed horizontally;

24. Wound 1.5 cm. above wound no. 23 directed obliquely 0.8 cm. x 1.5 cm.;

25. Wound right posterior lumbar measuring 0.5 cm. x 2 cm. directed horizontally. The wound is 15 cm. deep;

26. Wound 7 cm. above wound no. 25 measuring 0.5 cm. x 1.5 cm. x 4.5 cm.;

27. Hematoma and swelling of both lips.[36]

The doctor also testified that of the twenty-six (26) wounds inflicted on the victim, fourteen (14) were fatal,[37] and that the weapon used by the assailant could have been a long, sharp, bladed instrument.[38] The doctor also executed the victim's certificate of death.[39] He testified that the victim was his nephew by affinity, as his wife was the cousin of the victim's father. The victim also happened to be their neighbor in Banilad.[40]

Wilna Portugaleza, the custodian of the medical records at the Holy Child Hospital, testified that the records of the victim Efren Flores were no longer available as of 1996. The blood type of the victim as indicated in the certified true copy of the records of the hospital was Type "O."[41]

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[36] Exhibit "B", Records, pp. 16-17.

[37] TSN, 22 February 1999, pp. 26-30.

[38] *Id.* at 31.

[39] Exhibit "C". Records, p. 18.

[40] TSN, 22 February 1999, p. 34.

[41] Exhibit "A".

The Case for the Appellant

The appellant, for his part, filed a Manifestation[42] submitting the attached Demurrer to Evidence,[43] with a reservation that in the event an adverse decision would be rendered, such decision would be appealed to this Court. The appellant, through counsel, prayed that judgment be rendered acquitting him for insufficiency of the evidence for the prosecution.

The Trial Court's Ruling

The court thereafter rendered judgment convicting the appellant of murder in its decision dated May 17, 2000, thus:

> WHEREFORE, accused ALVIN ROLANDO SOLAMILLO, *alias* "ALLAN SOLAMILLO," is hereby found guilty beyond reasonable doubt of the crime of Murder and the court hereby imposes upon him the penalty of *RECLUSION PERPETUA*.
>
> Accused is likewise ordered to indemnify the heirs of the deceased victim the sum of FIFTY THOUSAND PESOS (₱50,000.00), and to pay the costs.
>
> There is no more need to pronounce judgment against co-accused Ignacio Tonog, Jr. *alias* "Abdul," considering the fact that in this case, he was earlier convicted by this Court of the crime of Murder and meted the penalty of *Reclusion Perpetua*, which conviction was affirmed by the Supreme Court.
>
> In line with Section 5, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, the City Warden of the Bureau of Jail Management and Penology, Dumaguete City, is hereby directed to immediately transmit the living body of accused Alvin Rolando Solamillo, *alias* "Allan Solamillo," to the New Bilibid Prison at Muntinlupa City, Metro Manila, where he may remain to be detained.
>
> SO ORDERED.[44]

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[42] Records, pp. 303-305.

[43] *Id.* at 306-370.

[44] *Id.* at 430.

The Present Appeal

The appellant now appeals the decision of the trial court, contending as follows:

> A) THAT THE HONORABLE TRIAL COURT HAS ERRED IN ITS APPRECIATION OF THE EVIDENCE OF THE PROSECUTION CONVICTING THE ACCUSED/APPELLANT OF THE CRIME CHARGED BEYOND REASONABLE DOUBT;
>
> B) THAT THE HONORABLE TRIAL COURT WAS MANIFESTLY BIASED AGAINST AND/OR HAS PREJUDGED THE GUILT OF THE ACCUSED EVEN BEFORE [THE] PROSECUTION PRESENTED ITS EVIDENCE WHICH IS VIOLATIVE OF DUE PROCESS;
>
> C) THAT THE CONDUCT OF THE HONORABLE PRESIDING JUDGE DURING THE HEARING APPEARS TO BE UNETHICAL, UNPLEASANT AND UNCALLED FOR.[45]

According to the appellant, the prosecution miserably failed to prove the existence of circumstantial evidence to establish his participation in the crime. He avers that no bloodstain was found in the "motorcab" bearing sidecar no. 0164, precisely because it was never inspected, verified, nor examined by the police authorities. Furthermore, prosecution witness SPO1 Walter Leguarda testified that a certain Flores, the owner of the house near the place where the victim was found, told him that the said "motorcab" was seen that evening within the vicinity of the crime scene. However, the said Flores was not presented as a witness.

The appellant also points out that that there are inconsistencies in the testimony of prosecution witness Police Inspector Orlando Patricio, who testified that he found the knife in the morning of April 25, 1988, but admitted that the knife presented in open court was not the *Batangas* knife recovered at the crime scene. He also testified that he merely placed the said knife inside the tools compartment of the jeep, and never confronted the appellant with such knife.

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[45] *Rollo*, p. 60.

The appellant also questions the trial court's reliance on the testimony of Medical Record Custodian Wilna Portugaleza, as she candidly admitted in open court that she could not remember the blood type of the victim as his medical records in the Holy Child Hospital in Dumaguete City were already destroyed as of 1996. The appellant also points out that there is serious doubt as to whether the witness Liberato Solamillo, Jr. actually heard the appellant utter the words "*Nakuha na gyod bes*" to Elvis Bueno, considering that his testimony remained uncorroborated.

According to the appellant, the fact that he left Dumaguete City for Zamboanga City after the commission of the crime is not evidence of his flight. He was never in hiding in Zamboanga City. As a matter of fact, the appellant's father, Teodoro Solamillo, arrived in Dumaguete City in the afternoon of April 24, 1988 for the purpose of fetching his son (the appellant) to help in the management and operation of their motorized tricycle transportation business in Zamboanga City. Liberato further testified that he even accompanied his uncle, Teodoro Solamillo, to look for the appellant that afternoon of April 24, 1988, and found the latter sleeping in their grandmother's house.

The appellant also posits that he had no motive to kill Efren Flores, which, in this case, is relevant, considering that the identity of the assailant is in serious doubt. The motive presented by the prosecution, that the appellant killed the victim because he was not given his share of the reward money of ₱5,000, is incredible and farfetched. The prosecution witnesses' failure to testify that the appellant was in fact an "asset" of the late Capt. Nick Flores (the victim's father) when they testified in 1989 raises doubts as to their veracity. Thus, such testimony was a mere afterthought on the part of the prosecution witnesses.

In fine, the appellant questions the veracity of the testimonies of the witnesses for the prosecution. As such, the appellant asserts that the prosecution failed to prove conspiracy and the guilt of the appellant beyond reasonable doubt.

The Office of the Solicitor General (OSG), for its part, contends that the appellant's guilt was proven beyond reasonable doubt by interlocking circumstantial evidence. Furthermore, the flight

of the appellant from Negros Oriental immediately after the incident, until he was finally arrested ten years later in Mindanao, is an indication of his guilt. The OSG concludes that the obtaining circumstantial evidence against the appellant serves as sufficient basis to convict the appellant of the crime charged, as his participation in the crime charged had already been established in Ignacio Tonog, Jr.'s conviction.

The Ruling of the Court

The appellant's contentions are without merit.

It is a well-entrenched rule that the trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify.[46] Upon a careful review of the records of the instant case, the Court finds no cogent reason to overrule the trial court's finding that the appellant stabbed the victim in cold blood.

The Circumstantial Evidence Against the Appellant is Sufficient to Sustain a Conviction

The counsel for the appellant filed a demurrer to evidence *without leave of court*, which, under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, constitutes a waiver of the right to present evidence. The case is then considered submitted for judgment on the basis of the evidence for the prosecution. In fact, in his demurrer before the trial court, the appellant specifically prayed that judgment be rendered in the case, and manifested that he was no longer presenting evidence

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[46] *People v. Sibonga*, 404 SCRA 10, (2003).

on his behalf, on the ground that the evidence for the prosecution was insufficient to convict him.

Contrary to the appellant's contention, the prosecution was able to prove his motive to commit the crime, albeit belatedly. SPO1 Leguarda testified as follows:

Q Will you please tell this Honorable Court, when did you learn from the late Captain Flores that accused Allan Solamillo was his informer or asset?
A Before [the] first week of January sir. Before he died, January 1995.

Q Now, Captain Nick Flores is the father of Efren Flores, isn't it?
A Yes, Sir.

Q And, Efren Flores was murdered sometime in the evening of April 24, 1998, is it not?
A Yes, Sir.

Q And per your investigation, Allan Solamillo has something to do in (*sic*) the killing of Efren Flores, isn't it?
A Yes, Sir.

COURT:
Let's clarify this.

Q In your investigation, was Allan Solamillo involved in the killing of the victim Efren Flores?
A Yes, Sir.

Q Are you sure of that?
A Yes sir, because that was [what] Liberato Solamillo told me that he saw Allan Solamillo bought some sardines and pepsi cola at the store of Francisca Buena with some blood stains on his T-shirt Sir.

ATTY. EDDING:

Q But did you not reduce in writing about (*sic*) this important informations (*sic*) that you learned from Liberato Solamillo?
A I did not.

Q So, to your best knowledge, the late Captain Flores also knew that Allan Solamillo has involvement (*sic*) in the killing of his son Efren Flores as early as April 25, 1988?
A After his son was murdered Sir.

Q So he has knowledge already?
A After his son was murdered Sir, he has knowledge already Sir.

Q About the alleged involvement of Allan Solamillo?
A Yes, Sir.

Q And of course, even if you were not so closed (*sic*) with the late Captain Flores, you were always seeing each other because you were at the same station?
A Yes, Sir.

Q So, you would like to tell us that from 1988, 89, 90, 91, 92, 93, 94 up to sometime January 1995 or for the period of eight (8) years, only [a] few days before Captain Flores died, that they revealed to you that Allan Solamillo was his former asset or informer?
A Because I was relieved in the Dumaguete Police Station Sir and was assigned in Canlaon Sir.

Q The late Captain Flores told you that Allan Solamillo was his asset or informer, isn't it?
A Yes, Sir.

Q And that, he also told you at one time [that] the police was able to recover lost article[s] like [a] tire, and it was recovered because of the assistance provided by Allan Solamillo?
A Yes, Sir.

Q And, he also told you that Allan Solamillo was supposed to be entitled to Five Thousand Pesos (₱5,000.00), a (*sic*) reward money, isn't it?
A Yes, Sir.

Q And also Captain Flores told you that he failed to give the Five Thousand Pesos (₱5,000.00) to Allan Solamillo?
A Yes, Sir.

Q And he also told you that he was able to make use of the Five Thousand Pesos (₱5,000.00)?
A Yes, Sir.[47]

SPO1 Leguarda could not be faulted for not having disclosed the matter earlier. The victim's father, Captain Nick Flores,

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47 TSN, 24 February 1999, pp. 33-35.

revealed that the appellant was an "asset," and threatened to kill him upon his failure to pay the reward money of five thousand pesos (₱5,000) only after eight years. Captain Flores was probably unsure whether he would reveal such information, as it would incriminate him, having himself used the reward money intended for the appellant.

Furthermore, SPO1 Leguarda's account of the investigation corroborates that of Liberato Solamillo's version of the incident. Even during the trial of the case for Tonog, Jr., SPO1 Leguarda testified, thus:

Q And where did you gather information that Abdul Tonog was one of the suspected killers? From whom?
A When I asked Jun Salabante who the driver of the pedicab was, he told me that the driver of that motorcab on that day, April 24, was Liberato Solamillo but the regular driver was Allan Solamillo. So I went to the house of Liberato Solamillo and asked him if he was the driver of that motorcab that day; and this Liberato Solamillo told me that in the early day of April 24, 1988, this Allan Solamillo borrowed his motorcab. On the same date, April 24, about twelve o'clock in the evening, Liberato Solamillo told me that he saw his motorcab parked in front of the store of Francisca Bueno and he saw this Abdul Tonog sitting inside his motorcab while Allan Solamillo bought some sardines and Pepsi-cola at the store of Francisca Bueno, with some blood stains in (*sic*) his t-shirt.

Q So it was Liberato Solamillo that you questioned[,] and [you] identified one suspect as one Mr. Ignacio Tonog, is that correct?
A Yes.

Q And by information you identified Allan Solamillo as one of the suspects?
A Yes.

Q Inasmuch as Allan Solamillo was supposed to be identified as one of the suspects, did you effect an arrest against Allan Solamillo?
A We were not able to locate Allan Solamillo.

Q How about Liberato Solamillo, did you not effect an arrest against him?
A We invited him for investigation.

Q You invited him?
A Yes.[48]

A comparison of the testimonies of SPO1 Leguarda taken during the trial for Tonog, Jr., and for the appellant, reveals that there was no substantial variance between both accounts. Such consistency lends veracity to the testimony of SPO1 Leguarda, considering the ten-year interval of time between the testimonies.

Liberato's account of the events on that fateful night seemed, likewise, to have been etched in his mind. His unwavering testimony, in both trials, was that the appellant took "motorcab" bearing sidecar no. 0164, and volunteered to convey the victim to Dumaguete City. The appellant told Liberato that he would be back shortly, and instructed the latter to stay put and wait for him at the house of Pat. Biyok. His testimony during the trial of Tonog, Jr. was almost identical to his account during the trial for the appellant.

ESCOREAL:

Q Upon arrival at the house of Patrolman Remegio Biyok at Banilad, Dumaguete City, Allan Solamillo asked Patrolman Biyok where Abdul was; can you remember what was your answer?
A Patrolman Biyok answered that he conveyed Abdul Tonog to Tinago.

Q Then after that, what transpired next?
A Efren Flores went near Allan, and Efren Flores requested that he be conveyed here in Dumaguete City.

Q Did Allan heed the request of Efren Flores?
A Allan said "You stay behind Jun because I will first convey Efren Flores.["]

[48] Exhibit "S".

Q Who is this June (*sic*) whom Allan is referring to?
A Myself.

... ...

Q Where was this Patrolman Biyok when Allan told you to stay behind?
A He was at the gate of their (Biyok's) fence.

Q How far was this fence of Patrolman Biyok from where you were situated?
A Less than one meter.

Q And after the request made by Efren Flores that he be conveyed to Dumaguete City proper, what transpired next?
A When Allan conveyed Efren Flores here in Dumaguete City, Efren remained in conversation with Patrolman Biyok at their place. It was already about 11:45 in the evening, Allan Solamillo had not returned yet. And so, Patrolman Biyok told me to go home.

Q Did you heed the advice of Patrolman Remegio Biyok?
A Yes, Sir.

Q And what did you do next upon hearing the advice of Patrolman Biyok?
A We waited for a pedicab and fortunately Gorio happened to pass by, and so, I road (*sic*) on his pedicab and made a search for Allan Solamillo.

Q And where did you search for Allan Solamillo?
A Here in Tinago and at the pier.

Q And were you able to locate Allan?
A No, Sir.

... ...

Q Then after you went inside the house of your aunt Francisca Bueno, what did you observe inside?
A I heard Allan said (*sic*): "*Kuha na gyod 'Vis*." (He is already taken, '*vis*.)

Q To whom was he addressing that statement?
A Elvis Bueno.

Q And who is this Elvis Bueno?
A My cousin, the son of Francisca Bueno.

Q Was Elvis Bueno around when Allan Solamillo uttered that statement addressed to Elvis Bueno?
A Yes, Sir.

Q What about this Francisca Bueno, was she also around?
A She was upstairs.

Q When Allan Solamillo uttered these words, did you see Allan Solamillo?
A Yes.

Q Who were around when Allan Solamillo uttered these words "*Kuha na gyod 'vis*"?
A The three of us, Elvis, Allan and myself.

Q What did you notice in Allan Solamillo?
A I noticed or observed that the t-shirt he was wearing before was no longer the same.

Q Why, what was the t-shirt that was worn by Allan Solamillo on that early evening?
A It was a white t-shirt.

Q Was it a printed t-shirt?
A Plain white.

Q And on that particular place and time, what did you observe? What was the t-shirt or what was Allan wearing during that time?

SEDILLO:

Which particular time and place?

ESCOREAL:

At the time when Allan was already, when Allan and you were inside the house of Francisca Bueno?
A It was a fatigue t-shirt.

Q What did you observe on the fatigue t-shirt of Allan Solamillo?
A I noticed that there were many blood stains.

... ...

ESCOREAL:

Q Why did you notice that the fatigue t-shirt that was used by Allan Solamillo has plenty of blood stains?

SEDILLO:

We will object to that, there was still no basis of (sic) the word plenty. The witness did not testify yet that there was plenty of blood stains.

ESCOREAL:

I will omit that word plenty, your Honor, and let the witness answer.

WITNESS:

A Because it seemed that there were many red spots.

Q And after that, what happened next?
A Allan bought a family size coke and sardines and then we went home to Banilad, Bacong.

Q And what happened to Abdul Tonog?
A The three of us including Abdul went home together.

Q And did it not occur to your mind the whereabouts of your motorcab?
A No, Sir.

Q Did you not inquire from Allan or Abdul?
A I asked Allan but he got angry with me.

Q Why did you say that Allan got angry with you?
A Because I asked him why there seemed to be red spots on his t-shirt.

Q How are you related to Francisca Bueno when you said she is your aunt?
A My father and Francisca Bueno are brothers (*sic*) and sisters (*sic*).[49]

Thus, the appellant failed to discredit the testimony of prosecution witness Liberato Solamillo who saw him wearing

[49] Exhibits "T", "U", "V", "W", TSN, March 3, 1989; Folder of Exhibits, pp. 29-32.

blood-stained clothes. Neither did he succeed in discrediting the testimony of SPO1 Leguarda, who saw him drive off with the victim in the "motorcab" bearing sidecar number 0164 owned by Jun Salabante. In fact, even the late Elvis Bueno testified, during the hearing of the case for Tonog, Jr., that the appellant told him thus:

Q Aside from that, were there other statements uttered by Allan Solamillo when you were conversing with each other?
A Only that he said, "*KUHA NA VIS*," meaning "it was already taken, *VIS*."

Q Do you know what he mean[t] by those words. "*Kuha na Vis*"?
A I do not know.[50]

Doubtless, it is not only by direct evidence that an accused may be convicted of the crime for which he is charged. There is, in fact, consensus that resort to the circumstantial evidence is essential since to insist on direct evidence would, in many cases, result in setting felons free and deny proper protection to the community.[51] However, for the accused to be convicted based on circumstantial evidence, the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[52]

In the case at bar, the circumstantial evidence presented by the prosecution is sufficient to sustain a conviction: the victim was last seen in the company of the appellant; not long thereafter,

[50] Exhibit "Z", *Id.* at 59.

[51] *People v. Dela Cruz*, 343 SCRA 374 (2000).

[52] *People v. Esponilla*, 404 SCRA 421 (2003).

the victim was found dead; and, the appellant was nowhere to be found within the vicinity of the killing.[53]

The Appellant's Flight From Dumaguete To Zamboanga, Where He Was Arrested Ten (10) Years Later, Is Evidence Of His Guilt For The Crime Charged

Indeed, flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt.[54] However, the flight of an accused, *in the absence of a credible explanation*, would be a circumstance from which an inference of guilt may be established, for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.[55] Although the appellant's silence and refusal to testify, let alone refusal to present evidence, cannot be construed as evidence of guilt, this Court has consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time."[56] In this case, the appellant has not even attempted to explain his absence, nor presented evidence to corroborate his claim that he went with his father to help in the latter's tricycle business in Zamboanga. His bare claim, as against the evidence supporting his conviction, cannot be given credence by this Court.

The Appellant was Correctly Convicted Of Murder, Qualified By Abuse Of Superior Strength

We agree with the trial court that the appellant is guilty of murder under Article 248 of the Revised Penal Code, qualified by abuse of superior strength.[57] In this case, the appellant and

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[53] See *People v. Salvame*, 270 SCRA 766 (1997).

[54] *People v. Lopez*, 313 SCRA 114 (1999).

[55] *People v. Diaz*, 395 SCRA 52 (2003).

[56] *People v. Castillo*, 333 SCRA 506 (2000).

Tonog, Jr., armed with a knife, attacked the victim, and took advantage of their combined strength in order to consummate the offense, considering that the victim sustained no less than twenty-seven (27) stab wounds, fourteen (14) of which were fatal.

Conspiracy must be shown to exist by direct or circumstantial evidence, as clearly and convincingly as the commission of the offense itself.[58] The prosecution in this case, was able to show that the appellant conspired with Ignacio Tonog, Jr. to kill the victim.

Although alleged in the Information, the aggravating circumstance of nighttime cannot be considered against the appellant, since there is no proof that the appellant purposely sought the period to facilitate the commission of the crime, or to prevent its discovery, or to evade capture.[59] Neither can the aggravating circumstance of use of a motor vehicle be appreciated, as there is, likewise, no evidence that it facilitated the killing of the victim, whether directly or indirectly.[60] Furthermore, the fact that the victim sustained numerous stab wounds does not necessarily mean that cruelty attended the killing. The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanely caused the victim's suffering or outraged or scoffed at the victim's corpse.[61]

The crime was committed in 1988, when murder under Article 248 of the Revised Penal Code was punishable by *reclusion temporal* in its maximum period to death. There being no mitigating

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[57] *People v. Tonog, Jr., supra.*

[58] *People v. Corbes*, 270 SCRA 465 (1997).

[59] *People v. Garcia*, 258 SCRA 411 (1996).

[60] See *People v. Amion*, 353 SCRA 410 (2001).

[61] *People of the Philippines v. Juanito Ibañez*, G.R. No. 133923-24, July 30, 2003.

nor aggravating circumstances attendant to the crime, the appellant was correctly sentenced to *reclusion perpetua*, conformably to paragraph 1, Article 64 of the Revised Penal Code.

WHEREFORE, the judgment appealed from is hereby *AFFIRMED*. The appellant Alvin Rolando Solamillo *alias* Allan Solamillo is found *GUILTY* of murder under Article 248 of the Revised Penal Code, as amended. There being no modifying circumstances attendant to the crime, the appellant is sentenced to suffer the penalty of *reclusion perpetua*. In line with current jurisprudence,[62] the appellant is *ORDERED* to pay to the heirs of the victim, Efren Flores, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity.

SO ORDERED.

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

Austria-Martinez, J., on leave.

EN BANC

[G.R. Nos. 144551-55. June 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **HECTOR ALVIZ,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of three counts of violation of Section 5(b), Article III of R.A. No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act) and two counts of rape, perpetrated against his own minor daughter, Hazel Alviz. In one of the rapes

[62] *People v. Biong*, 402 SCRA 366 (2003).

committed by appellant, on August 6, 1994, the trial court sentenced him to suffer the penalty of death in view of the minority of the victim. Hence, this automatic review of the case.

The Supreme Court gave credence to the testimony of the victim. It ruled that the trial court's evaluation of the credibility of witnesses should be viewed as correct and entitled to the highest respect because it has the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they give their testimony. Unless the trial judge plainly overlooks certain facts of substance and value which, if considered might affect the result of the case, his assessment of the credibility of witnesses must be respected.

Anent the rapes committed by appellant against the victim, the Court held that indeed the penis of appellant slightly entered the victim's vagina. Because of the victim's resistance, the penetration was slight. Nevertheless, this already constituted rape considering that appellant's penis did not just touch the victim's organ but actually entered it. The mere entry of the penis into the labia majora of the vagina suffices to convict for rape. Hence, the imposition of the penalty for such rape was affirmed. However, as to the rape committed by the appellant where the penalty of death was imposed by the trial court, the Supreme Court reduced the penalty to *reclusion perpetua* on account of the insufficiency of proof of the qualifying circumstance of minority of the victim.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— The Court has been consistent in applying the following guiding principles in rape cases: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (b) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution, and (c) the evidence of the prosecution must stand or fall on its own merit and cannot be allowed to capitalize on the weakness of the evidence of the defense.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION THEREOF BY THE TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT ON APPEAL; EXCEPTION.— It has long been held that the trial court's evaluation of the credibility of witnesses should be viewed as correct and entitled to the highest respect because it has the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they give their testimony. The trial judge therefore is in a better position to determine if witnesses are telling the truth and to weigh conflicting testimonies. Thus, unless the trial judge plainly overlooks certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of witnesses must be respected.

3. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF AN ACCUSED BY THE PROSECUTION WITNESSES.— A denial unsubstantiated by clear and convincing evidence is negative, self-serving and merits no weight in law, and cannot therefore be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters. A denial cannot prevail over the positive identification of an accused by the prosecution witnesses.

4. CRIMINAL LAW; RAPE; NOT NECESSARILY COMMITTED IN SECLUSION.— [R]ape is not necessarily committed only in seclusion. Rape has in fact been committed in a room adjacent to where the victim's family was sleeping or even in a room the victim shared with other women. In this light, rape in the case at bar was not an impossibility. Evil knows no bounds and the beast in man respects neither time nor place, driving him to commit rape anywhere, even in places where people congregate such as parks, along the roadside, within school premises or in a house where there are other occupants. Lust is no respecter of time and place.

5. ID.; ID.; CONSUMMATED EVEN BY MERE ENTRY OF THE MALE ORGAN INTO THE *LABIA MAJORA* OF THE FEMALE ORGAN.— The mere entry of the penis into the of the vagina suffices to convict for rape.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— It follows that the award of ₱75,000 as civil indemnity should be reduced to ₱50,000 since the

commission of rape by appellant was not effectively qualified by any of the circumstances justifying the death penalty under the present amended law. The award of ₱50,000 as moral damages for each rape committed by appellant is likewise in order according to the ruling in *People vs. Prades* without the necessity for pleading or proof. Lastly, considering the depravity of the acts of appellant, the award of exemplary damages in the amount of ₱25,000 for each rape committed is proper to deter similar perversities, particularly the sexual abuse of one's daughter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

Before us on automatic review is the decision[1] of Branch 74 of the Regional Trial Court of Olongapo City, convicting appellant of the crimes of rape and acts of lasciviousness.

Appellant Hector Alviz was charged with two counts of rape and three counts of violation of Section 5(b), Article III of RA 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act) committed against his daughter, AAA, in five separate informations:

Criminal Case No. 211–95

That on or about the month of July, 1994 at around 8:00 o'clock in the evening, at No. xxx Brgy. xxx, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of minor AAA, with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness on the person of AAA, who was only then fifteen

[1] Penned by Judge Fatima Gonzales-Asdala.

(15) years old, by then and there kissed her on the mouth and put his tongue inside her mouth, against the will and consent of said AAA, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 212–95

That on or about the 9*th* day of June, 1993 at around 2:00 o'clock in the morning, at xxx Brgy. xxx, in the City of xxx, Philippines and within the jurisdiction of this Honorable Court, the said accused, being the father of minor AAA, with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously, commit acts of lasciviousness on the person of AAA, who was only then 13 years old, by then and there touched her breast and genital of said minor AAA, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 213-95

That on or about the month of February, 1993, at No. xxx Brgy. xxx, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of minor AAA, with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously, commit acts of lasciviousness on the person of AAA, there touched her breast, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 214-95

That on or about the 6*th* day of August, 1994, at around 4:30 o'clock in the morning, at No. xxx Brgy. xxx, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of AAA, a minor of 15 years old, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, against her will, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 215–95

That on or about the 2nd day of November, 1993 at No. xxx Brgy. xxx, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of AAA, who was then 14 years old, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, against her will, to the damage and prejudice of the latter.

CONTRARY TO LAW.[2]

When arraigned on September 20, 1995, appellant pleaded not guilty to all the crimes charged. Thereafter, trial ensued.

The inculpatory facts, based on the testimony of victim AAA and social worker Rubilyn Domingo, follow.

Sometime in February 1993 at about 8:00 p.m., then thirteen-year-old AAA was in their living room watching television while lying down on their couch. Her three brothers, BBB, CCC and DDD, who were about an arm's length away from her, were also watching TV. Their mother was in the kitchen.

Appellant arrived and lay down beside AAA. Suddenly, appellant touched her breasts and genitalia. She tried to stop her father but appellant persisted and kept on touching her private parts for about 10 to 15 minutes. She testified that she was so afraid that her father would hit her and her mother and brothers, as he usually did, so she did not report the incident to her mother.

On June 9, 1993, appellant repeated what he did to her. At about 2:00 a.m., she was sleeping in their living room together with her brothers when appellant arrived home drunk. She was awakened by the noise he created. Again, he lay down beside her and started to touch her private parts. She attempted to move away from appellant but her father pulled her back and continued to fondle her until he fell asleep. Again, she did not

[2] *Rollo*, pp. 128-130.

report this incident to her mother because of fear that her father might hurt her and the rest of her family.

Appellant molested his daughter again on the night of November 2, 1993. While she was sleeping in their living room with her brothers, she woke up when she felt that someone was sucking her breasts. True enough, her father was on top of her doing so. He then went down to lick her genitalia. Thereafter, appellant inserted two fingers inside her vagina and repeatedly rubbed his penis against it. She could only cry that night.

In July 1994, at about 8:00 p.m., she went to her bedroom.[3] Appellant followed her. He kissed her and when he attempted to insert his tongue inside her mouth, she shouted "*ang bastos*." Appellant reasoned that he was inserting his tongue in her mouth to ease her toothache. He continued to insert his tongue into her mouth. AAA this time shouted "*Ma, tingnan mo ang ginagawa sa akin ni papa!*" However, her mother said nothing. Appellant then went out of her room and proceeded to his own room where her mother was. She later overheard her mother asking her father "*Ano na naman ang ginagawa mo sa anak mo?*" He replied "*Naglalambing lang naman ako sa anak mo. . . madumi ang utak mo.*"[4]

August 6, 1994 was AAA's birthday. At about 4:30 a.m. while she was sleeping, appellant fondled her breasts and inserted his finger inside her vagina. He then forced his penis inside her organ. When he failed to penetrate it completely, he again inserted his finger. Alternately, he inserted his finger and penis until he ejaculated. Then he left her crying.

She did not disclose to her mother the ordeal she had been undergoing in the hands of her father because of fear. Instead, she intimated it to her friend, Aurora Turibio, who offered her house for AAA to temporarily stay in. Later, she divulged it to another friend, Edilberto de Leon, and her teacher, Lilia Tudla,

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[3] Hazel had no bedroom of her own prior to July 1994. The said room was a former store later converted into a bedroom.

[4] TSN, February 7, 1995, pp. 15-18.

who referred the matter to the guidance counselor. Her mother was summoned but she showed her no sympathy or support. She even scolded her. So AAA ran away from home.

In Burnham Park, Baguio City, AAA found shelter. She became a street child wandering about in the park. There she met some students to whom she related her bitter experience. Through their kindness, she was referred to PROLIFE (a non-governmental organization focused on teenage pregnancy) which in turn directed her to the Child and Family Service (CFS). She was admitted to the CFS for temporary care and underwent counseling under social worker Rubilyn Domingo.

During one of the sessions, AAA admitted to Rubilyn that she was first molested by her paternal grandfather who used to live with them in xxx. After her grandfather left their house, her own father started to do to her what seemed to be a common sexual perversity of her father's clan. After her disclosure, she was brought to the Philippine National Police (PNP) crime laboratory for medico-legal examination which revealed that there were shallow, healed hymenal lacerations in the 6 and 9 o'clock positions and that she was in a "non-virgin" state.[5]

In his defense, appellant denied the charges against him. He alleged that it was impossible for him to commit such acts against AAA without being noticed because his wife slept in the bedroom with him while their children slept together in the sala. He added that he was strict with her but he never abused much less raped his daughter. He suspected that the cases were filed against him either because AAA was scared for running away from home or because he threatened not to send her to school anymore or because somebody else forced her to file the complaints. Appellant concluded that, in any event, his daughter had already forgiven him.

On July 12, 1999, the defense called AAA to the witness stand to confirm that she had already forgiven her father. Despite

[5] TSN, February 5, 1997, pp. 10-11.

her deep emotional and psychological trauma, AAA showed nothing but deference and respect for her parents. She stated in open court that, after she gave birth on February 8, 1999, she realized how much she owed her father (and mother) for having been born in this world and that there was nothing she could do to repay them for that. After her testimony, no other witnesses were called to testify for the defense.

On March 30, 2000, the trial court[6] convicted appellant of all the charges:

> WHEREFORE, this Court finds accused HECTOR ALVIZ —
>
> GUILTY of Violation of Section 5(b), Article III, R.A. No. 7610 in Criminal Case No. 211-95 and hereby sentences said Hector Alviz to suffer the penalty of six (6) years of *prision correccional*;
>
> GUILTY of Violation of Section 5(b), Article III, R.A. No. 7610 in Criminal Case No. 212-95 and hereby sentences said Hector Alviz to suffer the penalty of six (6) years of *prision correccional*;
>
> GUILTY of Violation of Section 5(b), Article III of R.A. No. 7610 in Criminal Case No. 213-95 and hereby sentences said Hector Alviz to suffer the penalty of six (6) years of *prision correccional.*
>
> GUILTY of Rape under Article 335 of the Revised Penal Code in Criminal Case No. 214-95 committed on August 6, 1994 and hereby sentences said Hector Alviz to suffer the penalty of DEATH and to pay his victim the sum of Seventy Five (₱75,000.00) Pesos for damages;
>
> GUILTY of Rape under Article 335 of the Revised Penal Code in Criminal Case No. 215-95 committed on November 2, 1993 (before the restoration of death penalty as a capital punishment) and hereby sentences said Hector Alviz to suffer the penalty of *RECLUSION PERPETUA* and to pay his victim the sum of Seventy Five (₱75,000.00) Pesos for damages.
>
> SO ORDERED.[7]

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[6] Branch 74, RTC, Judge Fatima Gonzales-Asdala presiding.

[7] RTC Decision dated March 20, 2000, *Rollo*, pp. 40-41.

In his brief, appellant argues that the trial court erred in (1) finding him guilty beyond reasonable doubt of the charges imputed against him on the basis of the incredible story of the complaining witness; (2) finding him guilty of rape in criminal case nos. 214-95 and 215-95 when the evidence adduced tended to prove otherwise; (3) imposing the penalty of death on him in criminal case no. 214-95 despite the failure of the prosecution to prove the real age of the victim and its failure to allege and prove that the rape was committed in full view of relatives within the third degree of consanguinity.

In support of these arguments, appellant posits that it taxed human credulity that appellant could be so brazen as to sexually molest his daughter openly within the full view and hearing of his wife and other children. The uncorroborated testimony of the complaining witness, being incredible, could not justify a conviction. What baffles appellant is why the prosecution failed to present as witnesses the complainant's mother and siblings who could have been good eye-witnesses had the imputations been true.

Appellant further asserts that the physical evidence belied the truthfulness of complainant's story. He claims that the accusations against him were made to conceal Hazel's real predicament. The medical report showing that complainant's hymen had shallow healed lacerations at the 6 and 9 o'clock positions and that she was in a "non-virgin" state only proved that complainant had a previous sexual encounter but not necessarily with the appellant. Furthermore, the finding was contrary to the victim's admission that appellant never fully and successfully penetrated her organ.

Appellant also maintains that, although the minority of the victim was alleged in the informations, it was not proven during the trial.

In his brief, appellant underscores the doubtful and incredible testimony of AAA that sexual intercourse took place. He quotes that portion of her testimony when she said appellant was not able to insert his organ into hers, thus creating a doubt as to

whether or not the penis of appellant did in fact enter the vagina or pudendum of AAA.

The Court has been consistent in applying the following guiding principles in rape cases: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (b) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution, and (c) the evidence of the prosecution must stand or fall on its own merit and cannot be allowed to capitalize on the weakness of the evidence of the defense.[8]

The focal point of the prosecution's evidence is, in the final analysis, AAA's testimony. After carefully observing her demeanor, with emphasis on gestures and tenor of voice, the trial court found AAA's testimony clear, honest, spontaneous and straightforward, as opposed to appellant's evasive attitude.

It has long been held that the trial court's evaluation of the credibility of witnesses should be viewed as correct and entitled to the highest respect because it has the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they give their testimony. The trial judge therefore is in a better position to determine if witnesses are telling the truth and to weigh conflicting testimonies. Thus, unless the trial judge plainly overlooks certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of witnesses must be respected.[9]

Appellant's defense is primarily denial which is essentially a weak defense. A denial unsubstantiated by clear and convincing evidence is negative, self-serving and merits no weight in law, and cannot therefore be given greater evidentiary value than

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[8] *People vs. Gallo*, 284 SCRA 590 [1998]; *People vs. Barrientos*, 285 SCRA 221 [1998]; *People vs. Balmoria*, 287 SCRA 687 [1998]; *People vs. Sta. Ana*, 291 SCRA 188 [1998]; *People vs. Perez*, 270 SCRA 526 [1997].

[9] *People vs. Ramirez*, 266 SCRA 336 [1997]; *People vs. Gabris*, 258 SCRA 663 [1996]; *People vs. Vallena*, 244 SCRA 685 [1995].

the testimony of credible witnesses who testify on affirmative matters.[10] A denial cannot prevail over the positive identification of an accused by the prosecution witnesses.[11]

As already stated, appellant argues that the commission of the crimes charged was improbable due to the attendant circumstances. In the first place, rape is not necessarily committed only in seclusion. Rape has in fact been committed in a room adjacent to where the victim's family was sleeping or even in a room the victim shared with other women.[12] In this light, rape in the case at bar was not an impossibility.

Evil knows no bounds and the beast in man respects neither time nor place, driving him to commit rape anywhere, even in places where people congregate such as parks, along the roadside, within school premises or in a house where there are other occupants.[13] Lust is no respecter of time and place.[14]

AAA's testimony painted a graphic picture of a cruel and shameless father who always got what he wanted. He was quick to maul his wife and children and we can safely presume that the cries and moans of his family during such incidents were easily heard by their neighbors. If that did not stop appellant from hurting them, what would have deterred him from satisfying his bestial instincts within the confines of a house in the presence of a wife and young children who were all cowering in fear of him?

At the center of appellant's defense is the theory that AAA was induced by other people to file the cases against him. Thus, the accusations against him were allegedly mere concoctions.

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[10] *People vs. Tumaob, Jr.*, 291 SCRA 133 [1998].

[11] *People vs. Villamor*, 297 SCRA 262 [1998].

[12] *People vs. Talaboc*, 256 SCRA 441 [1996]; *People vs. Burce*, 269 SCRA 293 [1997].

[13] *People vs. Agbayani*, 284 SCRA 315 [1998].

[14] *People vs. Gementiza*, 285 SCRA 478 [1998]; *People vs. Lusa*, 288 SCRA 296 [1998].

The Court is inclined to believe, however, that it was appellant who concocted his defense. AAA, a young and innocent adolescent, would not have fabricated a tale of defloration, allowed an examination of her private parts and thereafter subjected herself to a public trial had she not been motivated solely by the desire to have her tormentor apprehended and punished.[15]

Appellant argues that AAA herself testified that he merely attempted to insert his penis into her vagina. We are not persuaded and in fact have no doubt that rape was consummated.

According to the recent case of *People vs. Campuhan*,[16] we must first ascertain whether the penis of the accused succeeded in entering the labial threshold of the vagina before we can safely conclude that rape was consummated:

> The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, *e.g*. mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, *etc*. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e*. touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.

The trial court, after carefully analyzing AAA's categorical and spontaneous answers, concluded that the penis of appellant

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[15] *People vs. Taneo*, 284 SCRA 251 [1998].

[16] 329 SCRA 270 [2000].

slightly entered the victim's vagina or pudendum. We agree. Then fourteen-year-old AAA was not expected to be knowledgeable about sexual intercourse and every stage thereof. The fact that she answered "he was not able to penetrate all of his organ, only the end portion (*dulo*)" — when asked whether or not appellant succeeded in inserting his penis into her vagina — did not mean that there was no penetration.

The findings of the medico-legal officer revealed that AAA's vagina bore lacerations at the 6 and 9 o'clock positions and that she was in a non-virgin state physically.

Perforce, we conclude that both the victim's positive testimony and the findings of the medico-legal officer complemented each other in the conclusion that there was penetration, however slight. Appellant attempted to insert his penis several times. Because of AAA's resistance, the penetration was slight. Nevertheless, this already constituted rape considering that appellant's penis did not just touch AAA's organ but actually *entered* it. The mere entry of the penis into the *labia majora* of the vagina suffices to convict for rape.[17]

We are thus convinced that, when AAA testified that she had been raped, she said, in effect, all that was necessary to constitute the commission of the crime. And this should be applied with more vigor in the case at bar where the culprit was the victim's father. An incestuous sexual assault is a psycho-social deviance that inflicts a stigma not only on the victim but on her entire family as well.[18] In these cases, the sole testimony of a credible victim may seal the fate of the rapist. AAA, although she has forgiven her father for the sexual assaults against her, must finally obtain justice.

In imposing the death penalty in criminal case no. 214-95, the trial court applied Article 335 of the Revised Penal Code,

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[17] *People vs. Cabiles*, 284 SCRA 199 [1998]; *People vs. Sanchez*, 250 SCRA 14 [1995].

[18] *People vs. Burce, supra*.

as amended by Section 11 of RA 7659 (the Death Penalty Law) which reads:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.
>
> xxx xxx xxx

The trial court took into consideration the testimonial and documentary evidence adduced. Although the minority of the complainant was alleged in the informations, it was not proven during the trial. Significant is the case of *People vs. Javier*[19] where the Court ruled that the minority of the victim must be proved with equal certainty and clearness as the crime itself:

> In a criminal prosecution especially cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld.
>
> We have meticulously examined the records of the case and we are convinced that the evidence for the prosecution falls short of the required quantum of proof for the proper imposition and carrying out of the death penalty. Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently established the victim's age is fatal and consequently bars conviction for rape in its qualified form.

Likewise, in *People vs. Liban*,[20] we ruled:

> Relative particularly to the qualifying circumstance of minority of the victim in incestuous rape cases, the Court has consistently adhered to the idea that the victim's minority must not only be specifically alleged in the information but must likewise be established

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[19] 311 SCRA 122 [1999].

[20] 345 SCRA 453 [2000].

beyond reasonable doubt during trial. Neither the obvious minority of the victim, nor the absence of any contrary assertion form the defense, can exonerate the prosecution from these twin requirements. Judicial notice of the issue of age, without the requisite hearing conducted under Section 3, Rule 129, of the Rules of Court, would not be considered enough compliance with the law. The birth certificate of the victim or in lieu thereof, any other documentary evidence, like a baptismal certificate, school records and documents of similar nature, or credible testimonial evidence, that can help establish the age of the victim should be presented. While the declaration of a victim as to her age, being an exception to the hearsay proscription, would be admissible under the rule on pedigree, the question on the relative weight that may be accorded to it is another matter. Corroborative evidence would be most desirable or even essential when circumstances warrant.

In the instant case, nothing could be obtained from the records of the case to ascertain the correct age of AAA except her bare testimony that she was 14 years old at the time she was raped.

We therefore reduce the death penalty imposed by the trial court to *reclusion perpetua* in criminal case no. 214-95[21] on account of the insufficiency of proof of the qualifying circumstance of minority of the victim.

It follows that the award of ₱75,000 as civil indemnity should be reduced to ₱50,000 since the commission of rape by appellant was not effectively qualified by any of the circumstances justifying the death penalty under the present amended law. The award of ₱50,000 as moral damages for each rape committed by appellant is likewise in order according to the ruling in *People vs. Prades*[22] without the necessity for pleading or proof.

Lastly, considering the depravity of the acts of appellant, the award of exemplary damages in the amount of ₱25,000 for

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[21] In criminal case no. 214-95, the trial court imposed the death penalty on appellant. In criminal case no. 215-95, the trial court imposed *reclusion perpetua* as his penalty.

[22] 293 SCRA 411 [1998].

each rape committed is proper to deter similar perversities, particularly the sexual abuse of one's daughter.[23]

WHEREFORE, the decision under review is hereby *AFFIRMED* with the following *MODIFICATIONS*:

(a) In Criminal Case No. 214-95 for the rape committed on August 6, 1994, appellant Hector Alviz is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay victim AAA the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as exemplary damages.

(b) In Criminal Case no. 215-95 for the rape committed on November 2, 1993, appellant Hector Alviz is hereby sentenced to suffer the penalty of *reclusion perpetua* and is ordered to indemnify the victim the reduced amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as exemplary damages.

SO ORDERED.

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

Vitug, J., on official leave.

Austria-Martinez, J., on leave.

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[23] *People vs. Sangil, Sr.* 276 SCRA 532 [1997].

THIRD DIVISION

[G.R. No. 145405. June 29, 2004]

CHARLES JOSEPH U. RAMOS, *petitioner, vs.* **HONORABLE COURT OF APPEALS and UNION BANK OF THE PHILIPPINES,** *respondents*.

SYNOPSIS

Petitioner was allegedly the OIC branch manager of respondent Union Bank's J.P. Rizal Branch, when Mr. Rudy Paras, the branch cashier, was found to be accountable for the loss of ₱10.1 million due to certain unreconciled statements of cash deliveries from the Central Cash Unit to the J.P. Rizal Branch. However, by the time the act was discovered, Paras had long resigned from the bank. The investigation committee directed the staff of the J.P. Rizal Branch to explain what happened. Consequently, petitioner was dismissed due to gross negligence/serious dereliction of duty resulting in loss of trust and confidence by management. Ruling on the complaint for illegal dismissal filed by petitioner, the Labor Arbiter held that petitioner was illegally dismissed since he was not the branch manager at the time the scam was perpetrated, and was thus not responsible for overseeing the work of Paras. On appeal, the National Labor Relations Commission (NLRC) reversed the finding of the Labor Arbiter. The Court of Appeals (CA) upheld the decision of the NLRC. Hence, this petition revolving on the issue of whether or not petitioner was functioning as the branch manager of the J.P. Rizal Branch during the time Paras perpetrated the scam.

In dismissing the petition, the Supreme Court ruled that the primary issue raised by petitioner referred to the factual findings of the court *a quo* which are beyond the Court's jurisdiction in a petition for review. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the CA, are conclusive upon the parties and binding on this Court.

In the case at bar, petitioner held a position of trust and confidence as the regular branch cashier and acting branch manager of respondent's J.P. Rizal branch. Petitioner was utterly

negligent in performing his duties as acting branch manager. The scam perpetrated by Paras could have been easily detected had petitioner conscientiously done his job in carefully overseeing the branch's operations. Respondent bank therefore had reason to lose its trust and confidence and to impose the penalty of dismissal on him.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF ERRORS OF LAW; EXCEPTIONS.— Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record or the assailed judgment is based on a gross misapprehension of facts.

2. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES WHEN AFFIRMED BY THE COURT OF APPEALS, GENERALLY CONCLUSIVE UPON THE PARTIES AND BINDING ON THE SUPREME COURT.— [F]actual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court. In the case at bar, there is no need to review the factual findings of the court *a quo* since these are amply supported by the evidence. We find no reason to disturb the findings of the Court of Appeals that the NLRC did not commit grave abuse of discretion in ruling that petitioner was lawfully dismissed by respondent.

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; DISMISSAL ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE; GUIDELINES.— To validly dismiss an employee on the ground of loss of trust and confidence, the following guidelines must be followed: 1. the loss of confidence must not be simulated; 2. it should not be used as a subterfuge for causes which are illegal, improper or unjustified; 3. it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; 4. it must be genuine, not a mere afterthought, to justify earlier

action taken in bad faith; and 5. the employee involved holds a position of trust and confidence.

APPEARANCES OF COUNSEL

Raul E. Espinosa for petitioner.
Sycip Salazar Hernandez & Gatmaitan for private respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition to review the decision[1] of the Court of Appeals[2] in CA-G.R. SP No. 55056 which held that the NLRC did not commit grave abuse of discretion in finding that petitioner Charles Ramos (Ramos) was lawfully dismissed by respondent Union Bank of the Philippines (Bank). The dispositive portion read:

WHEREFORE, considering the foregoing premises, the petition is hereby DISMISSED.[3]

The facts of the case, as culled from the records, follow.

Petitioner Ramos was an employee of respondent Bank from 1987 to 1996. He started out as a post audit clerk and eventually became branch manager of respondent's J.P. Rizal Branch, Makati City.

Sometime in 1993, respondent Bank was in the thick of preparations for its approved merger with Interbank. Mr. Jose Morales, then branch manager of the J.P. Rizal branch, was detailed to the head office to help out with the merger. Petitioner,

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[1] Penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Quirino Abad Santos and Andres B. Reyes, Jr.; *Rollo*, pp. 152-157.

[2] Third Division.

[3] *Rollo*, p. 156.

being then the branch cashier, automatically assumed the functions of branch manager, since the branch cashier was next in rank.

In October 1993, Mr. Ricardo Gonda, Area Head, verbally designated petitioner as the OIC branch manager of the J.P. Rizal Branch and assigned Mr. Rudy Paras from the reserve pool as branch cashier.

On March 15, 1994, petitioner was formally appointed as branch manager of the J.P. Rizal Branch through a notice of personnel movement dated March 9, 1994.

On August 21, 1995, the Central Accounting Division of the Bank reported certain unreconciled statements of cash deliveries from the Central Cash Unit to the J.P. Rizal Branch. Based on the bank's investigation, branch cashier Paras was found accountable for the alleged loss of ₱10.1 million. Paras did not record certain cash deliveries which enabled him to sponge a total of ₱10.1 million from October 1, 1993 to February 15, 1994. However, by the time the act was discovered, Paras had long resigned from respondent Bank and could no longer be found by the National Bureau of Investigation (NBI). A case for qualified theft was filed against him by the respondent Bank.

On August 29, 1995, petitioner was appointed as Area Operations Officer of Legaspi Village, Makati and Quezon City while the investigation was going on.

Sometime in September 1995, the investigation committee issued a memorandum to the staff of the J.P. Rizal branch to explain what happened. On April 12, 1996, petitioner was dismissed due to gross negligence/serious dereliction of duty resulting in loss of trust and confidence by management.

Petitioner wrote several letters to respondent Bank's officers denying liability but these were not answered. So on January 8, 1997, petitioner filed with the NLRC-NCR Arbitration Branch, Quezon City a complaint for illegal dismissal, payment of 13th month pay, damages and attorney's fees.

The labor arbiter, NLRC and later the Court of Appeals all agreed that the main issue was whether petitioner was functioning

as the branch manager of the J.P. Rizal branch during the time Paras perpetrated his scam.

The labor arbiter ruled that petitioner was illegally dismissed since he was not the branch manager from October 1993 to February 1994. The arbiter gave credence to petitioner's claim that he was assigned as the branch's marketing officer and was thus not responsible for overseeing the work of Paras. The arbiter found it hard to believe that a big bank like respondent would allow the mere verbal appointment of a branch manager, a position carrying much responsibility. Also, the documents submitted by respondent did not show that petitioner assumed the responsibilities of branch manager during the period in question. Thus, the labor arbiter awarded backwages, 13th month pay and attorney's fees to petitioner. The dispositive portion of his ruling read:

> WHEREFORE, judgment is hereby rendered declaring the dismissal of CHARLES JOSEPH M. RAMOS as illegal and ordering the UNION BANK OF THE PHILIPPINES, through its President, ARMAND F. BRAUN to reinstate him to his previous position without loss of seniority rights and other privileges and pay him the following amounts:
>
> | | |
> |---|---|
> | Backwages from his dismissal on April 12, 1996 up to the date of his reinstatement which computed as of today amounts to (₱19,600 x 30 months) = ---------- | ₱588,000.00 |
> | 13th Month Pay for this period (₱588,400 over 12) = ---------- | 49,000.00 |
> | 13th Month Pay from January to April 12, 1996 = ---------- | ₱ 5,716.60 |
> | TOTAL AWARD---------- | ₱ 642,716.60 |
>
> plus 10% of the total award by way of attorney's fees.
>
> SO ORDERED.[4]

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[4] LA's Decision, *Rollo*, pp. 84-85.

On appeal, however, the NLRC reversed the finding of the labor arbiter and ruled that petitioner did in fact assume the responsibilities of branch manager and was thus responsible for overseeing the work of the branch cashier Paras. Even if petitioner was not formally appointed as branch manager, this did not negate the fact that he acted as branch manager during the period in question. He performed the duties of a branch manager such as marketing to increase the Current Account and Savings Account Deposit (CASA) of the branch. He also signed numerous documents as branch manager. Thus, his failure to discover the scam of Paras constituted gross negligence and his dismissal was justified. The NLRC thus dismissed his complaint for lack of merit. The dispositive portion read:

> WHEREFORE, premises considered, judgment is hereby rendered reversing and setting aside the October 12, 1998 Decision of the Labor Arbiter and a new one is issued dismissing the complaint for lack of merit.
>
> SO ORDERED.[5]

The Court of Appeals upheld the decision of the NLRC, hence this petition raising the following issues:

> I
>
> Whether or not the Honorable Court of Appeals gravely erred in dismissing the petition for *certiorari* filed by petitioner assailing the decision of the NLRC when the latter reversed the decision of the Labor Arbiter declaring the termination of petitioner as illegal, or without just or lawful cause, and ordering his reinstatement to his former position without loss of seniority rights and privileges and the payment of his full backwages;
>
> II
>
> Whether or not the Honorable Court of Appeals gravely erred in denying petitioner's motion for reconsideration which clearly discussed and argued that loss of trust and confidence cannot be used to justify improper causes for terminating an employee, like

[5] NLRC Decision, *Rollo*, p. 129.

herein petitioner, in line with established rulings enunciated by the Honorable Supreme Court.[6]

The petition has no merit. The issues raised by petitioner go into the factual findings of the court *a quo* and are thus beyond this Court's jurisdiction in a petition for review.

Petitioner essentially raises questions of fact regarding the Court of Appeals' finding that petitioner Ramos assumed the duties and responsibilities of branch manager. This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record or the assailed judgment is based on a gross misapprehension of facts.[7] Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[8]

In the case at bar, there is no need to review the factual findings of the court *a quo* since these are amply supported by the evidence. We find no reason to disturb the findings of the Court of Appeals that the NLRC did not commit grave abuse of discretion in ruling that petitioner was lawfully dismissed by respondent. We quote with approval the findings of the Court of Appeals:

xxx The absence of a formal memorandum designating him as officer-in-charge of the Branch does not alter the fact that he was still designated verbally by Bank Officer Ricardo Gonda as OIC/ Branch Manager in the absence of Jose Morales III who was pulled out of the J.P. Rizal Branch. Undeniably, by virtue of such verbal designation, petitioner performed the functions and duties of a Branch Manager including that of marketing which he stresses to be his

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[6] Petitioner's Memorandum, *Rollo*, p. 438.

[7] *Magellan Capital Management Corporation vs. Zosa*, 355 SCRA 157 [2001]; *Sarmiento vs. Court of Appeals*, 291 SCRA 656 [1997].

[8] *Miralles vs. Go*, 349 SCRA 596 [2001].

sole function at the J.P. Rizal Branch. Likewise, the pieces of evidence presented by the respondent Bank clearly indicate that petitioner (sic) indeed, signed in several document as officer-in-charge of the Bank.

Petitioner cannot rightfully argue that he was not the officer-in-charge of the branch and that he only functions as marketing officer at the time when Rudy Paras was committing the fraud. The records of the case show the absence of such position in the organization chart of the Bank. Categorically speaking, only three senior positions exist in the Bank, namely: Branch Manager, Branch Cashier and Branch Accountant. Indubitably, the petitioner's marketing function is just a part of the numerous functions of a Branch Manager. His function as the marketing officer was performed in his capacity as Branch Manager and no other.

Moreover, the petitioners' argument that Jose Morales III should also be held liable for the scam because he was the regular Branch Manager and he goes to the J.P. Rizal Branch to check documents and organize matters cannot hold water. Assuming that it was Morales who was the *de facto* Branch Manager at the time, the fact still remains that it was the petitioner who had direct supervision over the transactions and activities of the Bank. With his failure to supervise Rudy Paras by not looking into and checking his activities, it is undeniable that the petitioner was negligent in the performance of his functions which was enough reason for the Bank to lose the trust and confidence reposed on him. Had he been diligent in the performance of his job, the loss of ₱10.1 Million cash abstraction could not have occurred to the prejudge (sic) of the Bank's interest.

The Supreme Court, on several occasions, upheld the dismissal of bank employees for loss of trust and confidence and gross neglect of responsibilities. In view of the nature of its business, banks have every reason to demand that the conduct of their employees holding sensitive positions be fully deserving of their trust. If bank employees will be allowed to do their work without the exercise of due diligence, no bank will survive.[9]

To validly dismiss an employee on the ground of loss of trust and confidence, the following guidelines must be followed:

[9] CA Decision, *Rollo*, pp. 154-155.

1. the loss of confidence must not be simulated;
2. it should not be used as a subterfuge for causes which are illegal, improper or unjustified;
3. it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary;
4. it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith; and
5. the employee involved holds a position of trust and confidence.[10]

In the case at bar, petitioner held a position of trust and confidence as the regular branch cashier and acting branch manager of respondent's J.P. Rizal branch. Petitioner was utterly negligent in performing his duties as acting branch manager. The scam perpetrated by Paras could have been easily detected had petitioner conscientiously done his job in carefully overseeing the branch's operations. Respondent bank therefore had reason to lose its trust and confidence and to impose the penalty of dismissal on him.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Sandoval-Gutierrez and *Carpio Morales, JJ.*, concur.

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

[10] *Midas Touch Food Corp. vs. NLRC*, 259 SCRA 652, 659-660 [1996].

THIRD DIVISION

[G.R. No. 146825. June 29, 2004]

REYNOSA VALTE, *petitioner, vs.* **THE COURT OF APPEALS, PEDRO MENDOZA and JOSE GONZALES,** *respondents.*

SYNOPSIS

Petitioner's application for free patent covering the subject lot was approved, causing the issuance of an Original Certificate of Title in her name. Respondents filed a protest to the grant of the free patent to petitioner on the ground of fraud. After the holding of a pre-trial conference, the Department of Environment and Natural Resources (DENR) dismissed the protest of respondents. On appeal, the Office of the President reversed the decision of the DENR. Petitioner's motion for reconsideration having been denied, she filed a petition for review with the Court of Appeals (CA). The CA dismissed the petition citing, among others, the defect in the certification of non-forum shopping. Petitioner's motion for reconsideration was denied. Hence, this petition.

The Supreme Court ruled that special circumstances or compelling reasons have been held to justify the rule requiring certification on forum shopping. Considering that the resolution of the controversy between the parties revolves on factual issues and these issues involve the regularity and legality of the disposition under the Public Land Law of the subject public land to petitioner, the Court relaxed the rule on certification on forum shopping and directed the remand of the case to the CA for decision on the merits.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; RULE THEREON MAY BE RELAXED UNDER SPECIAL CIRCUMSTANCES; CASE AT BAR.— Special circumstances or compelling reasons have been held to justify relaxing the rule requiring certification on forum-shopping. For "Technical rules of procedure should be used to promote, not frustrate

justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal. The certificate of non-forum shopping is a mandatory requirement. Nonetheless, this requirement must not be interpreted too literally to defeat the ends of justice." Considering that the resolution of the controversy between the parties revolves admittedly on factual issues and that these issues involve the regularity and legality of the disposition under the Public Land Law of 7.2293 hectares of public land to petitioner, this Court relaxes the rule on certification on forum shopping and directs the remand of the case to the Court of Appeals for decision on the merits.

APPEARANCES OF COUNSEL

Edwin D.S. Limos for petitioner.
Jose C. Felimon for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner filed an Application for Free Patent[1] dated July 6, 1978 before the Bureau of Lands District Office, Region III-2 at Cabanatuan City which was docketed as Application No. 12409. The application covered a parcel of land in Lupao, Nueva Ecija "[i]dentical to Lot No. *1035-B* of Plan Csd-03-000514-D" alleged to contain an area of 7 hectares, 22 ares and 55 centares.

In the application, petitioner stated that, *inter alia*, the land was first occupied and cultivated in May 1941 by her father Policarpio Valte who died on February 10, 1963.

To the application was attached a July 6, 1978 Joint Affidavit[2] executed by Procopio Vallega and herein respondent Pedro Mendoza declaring:

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[1] *Rollo* at 60.

[2] *Rollo* at 61.

1. That we personally know [herein petitioner] Reynosa Valte who has filed Free Patent Application No. 2409 for a tract of land located in the Municipality of Lupao, Province of N. Ecija;

2. That we are actual residents of the said municipality of Lupao, Nueva Ecija and we know the land applied for very well;

3. That the said applicant has continuously occupied and cultivated the land himself and/or thru his predecessor's-in-interest since July 4, 1945, or prior thereto and it is free from claims and conflicts;

4. That we are not related to the applicant either by consanguinity or by affinity and we are not personally interested in the land applied for;

5. That to the best of our knowledge, belief and information, the applicant is a natural born citizen of the Philippines and is not the owner of more than twenty four (24) hectares of land in the Philippines.

It appears that a *Sinumpaang Salaysay*[3] of petitioner's mother, Miguela dela Fuente, was subsequently submitted in support of the application. The *Sinumpaang Salaysay* which was executed on September 12, 1978 reads:

SINUMPAANG SALAYSAY

AKO si MIGUELA DELA FUENTE, 86 na taong gulang, Pilipino, biyuda ni Policarpio Valte, at kasalukuyang nakatira sa 1826 Kalimbas, Sta. Cruz, Manila, matapos na ako ay sumumpa nang ayon sa umiiral na batas, ay malaya at kusang loob akong nagsaysay ng gaya ng mga sumusunod;

Na, nang taong 1941, buwan ng Mayo, ako at ang namatay kong asawa na si Policarpio Valte, ay nakabili ng 3 lagay na bahagi ng palayang lupa na kung pagsama-samahin ay may parisukat na mahigit na 7 hectaryas at nasa baryo ng San Isidro, Lupao, Nueba Esiha;

Na, ang isang lagay na may parisukat na 2 hectaryas humigit-kumulang ay nabili namin sa mag-asawang Francisco Maglaya at Maxima Benitez, ang ikalawang lagay na may parisukat na

[3] *Id.* at 59.

kulang na 2 hectarya ay nabili namin sa mag-asawang Nemesio Jacalan at Trinidad, Marta at ang ikatlong lagay ay parisukat na mahigit na 3 at kalahating hectaryas at ito ay nabili naman namin kay Laureano Pariñas Lote bilang 1035 ng sukat-cadastro bilang 144 ng Lupao, Nueba Esiha;

Na, ang mga kasulatan ng bilihan namin nina Francisco Maglaya at Maxima Benitez at Laureano Pariñas ay kapua nawala nuong panahon ng digmaan maliban sa kasulatan ng bilihan namin sa mag-asawang Nemesio Jacalan at Mata Trinidad na hindi nawala;

Na, matapos naming nabili ang nabang[g]it na 3 lagay na lupa nang taong 1941, ay inakupahan na naming at nagsimula na kaming gumawa sa lupa at pagkatapos ng digmaan ay ipinagpatuloy naming muli ang paggawa tuloy binayaran namin ang kaukulang bayad sa buis patuloy hanggang sa kasalukuyan sa ilalim ng Tax Declaration bilang 645, 646 at 647 sa pangalan ng aking asawa na si Policarpio Valte na namatay sa Manila nong ika 10 ng Febrero, 1963;

Na, bagaman at nuon pang taong 1964 ko ipinaubaya sa aking anak na si Reynosa Valte ang pangangasiwa sa pagpapagawa sa nasabing lupa ay ginawa ko ngayon ang salaysay na ito upang sa pamamagitan ng kasulatang ito ay siyang magsilbing kasulatan ng paglilipat at pagsasalin ko ng buo kong karapatan sa lupa sa nasabi kong anak na si Reynosa Valte, may sapat na gulang, dalaga at naninirahan din sa 1826 Kalimbas, Sta. Cruz, Manila;

Ang nasabing lupa na isinasalin at inililipat ko kay Reynosa ay walang gusot, walang pananagutang utang kangino man at ang salinan at lipatan ng karapatang ito ay walang kuartang kabayaran sa akin kundi ito ay dahil at alang-alang lamang sa pagmamahal at mabuting paglilingkod sa akin ng aking anak na si Reynosa;

Sa katunayan ng lahat gaya ng matutunghayan sa gawing itaas nito ako ay lumagda ng aking pangalan ngayong ika 12 ng Septeyembre, 1978, dito sa Lunsod ng Cabanatuan. (Emphasis and italics supplied)

By Order of December 28, 1978, the then Director of Lands Ramon M. Casanova noting, *inter alia*, the report of Land Investigator Celedonio P. Bacena that petitioner herself and/or through her predecessor-in-interest occupied and cultivated the

lot applied for since 1945, approved petitioner's application covering *Lot No. 1035-B* alleged to contain an area of 7.2293 hectares. A free patent was subsequently issued by the Register of Deeds for Nueva Ecija on January 16, 1979 in the name of petitioner. The Technical Descriptions of Lot No. 1035-B, Csd-03-000514-D is reflected in the title which therein notes that the lot is *identical to Lot 2391, portion of Lot 1035-B, Csd 144* and is covered by I.P.A. No. (III-2) 12409.

Original Certificate of Title (OCT) No. P-10119 covering Free Patent No. 586435 was thereupon issued to petitioner.

It appears that on November 29, 1982, herein respondents Jose Gonzales and Pedro Mendoza (who jointly executed the above-quoted Joint Affidavit along with Procopio Vallega in support of petitioner's application for free patent) filed a "Protest"[4] to the grant of the free patent to petitioner on the ground of fraud. The protest was amended on March 30, 1983 alleging:

> that the actual area of the lot which is the subject of the protest is seven and 2255/10,000 (7.2255) hectares, and
>
> claimant claimant-protestant Mendoza is in actual possession and cultivation of an area of four (4) hectares, more or less,
>
> claimant protestant Gonzales two (2) hectares, more or less, and
>
> one PROCOPIO VALLEGA [the co-affiant of Mendoza in the Joint Affidavit] the rest of the area.

The Department of Environment and Natural Resources (DENR), by then Secretary Angel C. Alcala, by Decision of January 20, 1994,[5] gave due course to and approved the protest of respondents and disposed as follows:

> WHEREFORE, foregoing premises duly considered, the Regional Executive Director (RED) of DENR Region III is hereby directed to cause the REVERSION of the area covered by Original Certificate of Title (OCT) No. P-10119 of Reynosa Valte, through the Office of the Solicitor General in accordance with the pertinent provisions

[4] *Id*. at 95-96.

[5] *Id*. at 73.

of Commonwealth Act (CA) No. 141, as amended. Claimants-Protestants Pedro Mendoza and Jose Gonzales and Procopio Vallega are hereby *ADJUDGED* to have the preferential right over the land in question pro rata to their area of actual occupation. Hence *they are GIVEN SIXTY (60) DAYS from the termination of the reversion proceedings to FILE their respective appropriate public land applications.* (Emphasis and italics supplied)

SO ORDERED.

Petitioner seasonably filed an appeal to the Office of the President which, by Decision of February 10, 1997,[6] set aside the DENR January 20, 1994 decision and declared that there was patent failure of due process, the investigation conducted by the DENR investigator having been done *ex parte* without petitioner having been given an opportunity to be heard.

The Office of the President thus ordered the conduct of "another formal hearing and thorough investigation of the case."[7]

Acting on the directive of the Office of the President, a pre-trial conference was held by the DENR at the Community Environment Regional Office in Muñoz, Nueva Ecija.

By Decision of March 11, 1999,[8] the DENR, this time by then Secretary Antonio H. Cerillas, dismissed the protest of respondents in this wise:

After a careful review of the pertinent documents of this case, these Office rules in favor of Reynosa Valte. The evidence on record preponderates to the fact that Reynosa Valte has preferential rights over the controverted lot. In fact, *as early as 1978, in the report of Land Investigator Celedonio P. Bacena, it was found that the controverted land has been occupied and cultivated by Reynosa Valte, and previously by her predecessors-in-interest since 1945. Herein protestants, Pedro Mendoza and Procopio Vallega, thru an affidavit dated July 6, 1978 supported Reynosa Valte's application for free patent* over the controverted land and, under

[6] *Id*. at 108-113.

[7] *Id*. at 112.

[8] *Id*. at 115-118.

oath, confirmed that the latter has continuously occupied and cultivate the land since 1945 by herself and by her predecessors-in-interest. *The aforestated joint-affidavit is a very convincing document to strengthen Reynosa Valte's assertions that, indeed, the protestants are tenants* and that their rights on the controverted lot cannot rise higher that its source, that of Reynosa Valte.

In view of the foregoing, the Protest of Jose Gonzales and Pedro Mendoza against Free Patent Application No. (III-2) 120461 and Original Certificate of Title No. P-10119 in the name of Reynosa Valte is hereby dismissed for lack of merit. (Italics supplied)

Respondents appealed to the Office of the President which by Decision of April 26, 2000[9] reversed that of the DENR.

In deciding the case, upon the issue of "who among [respondents] Mendoza and Gonzales and [petitioner] had actually cultivated and had prior possession of the land," the Office of the President held:

After going through the evidence presented by the parties, we find the protest of appellants to be credible. *The positive testimony of their witnesses*, namely the *Barangay* captain, the *Barangay* officials as well as neighbors, *to the effect that appellee was hardly or never seen cultivating nor possessing the subject premises, cannot simply be disregarded*. Rather, these testimonies should be accorded great weight and respect, as they come from individuals who could very well attest to the truth or falsity of appellee's claim that she was in "open, continuous, exclusive and peaceful" possession of the property in dispute.

The declaration of appellee[-herein petitioner] that she actually possessed the subject property and had cultivated the same, despite her full knowledge that Mendoza and Gonzales were the actual possessors and occupants, simply constitutes fraud as she failed to state this material fact in her application for free patent. Hence, the cancellation of OCT No. P-10119 issued in her favor is in order, pursuant to the doctrine laid down in *Republic vs. Mina* (114 SCRA 945) which was aptly quoted by then DENR Secretary Angel C. Alcala in his decision dated January 20, 1994, namely:

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[9] *Id*. at 119-123.

> A certificate of title that is void may be ordered cancelled. And, a title will be considered void if it is procured through fraud, as when a person applies for registration of the land on the claim that he has been occupying and cultivating it. In the case of disposable public lands, failure on the part of the grantee to comply with the condition imposed by law is a ground for holding such title void (*Director of Lands v. CA*, 17 SCRA 71). The lapse of the one (1) year period within which a decree of title may be reopened for fraud would not prevent the cancellation thereof for to hold that a title may become indefeasible by registration, even if such title had been secured through fraud or in violation of the law, would be the height of absurdity. Registration should not be a shield of fraud in securing title (Republic vs. Animas, 56 SCRA 499).

Our conclusion is essentially an affirmation of the DENR findings as embodied in its decision dated January 20, 1994 that appellee Valte committed fraud and misrepresentation in procuring Free Patent No. 586435, which became the basis for issuing OCT No. P-10119, consisting of her **omission to state in her application that appellants Mendoza and Gonzales were in actual possession and occupation of the subject lot.** Such findings were supported by substantial evidence, hence, must perforce be reinstated.[10] (Emphasis and italics supplied)

The Office of the President accordingly disposed as follows:

WHEREFORE, premises considered, the questioned decision dated March 11, 1999 is hereby *REVERSED* and *SET ASIDE*. The decision dated January 20, 1994 is hereby *REINSTATED* directing the Department of Environment and Natural Resources, through the Solicitor General, to cause the reversion of the area covered by Original Certificate of Title No. P-10119 of Reynosa Valte. Appellants Mendoza and Gonzales are hereby adjudged to have the preferential right over the subject land, *pro rata* to their area of actual occupation, *entitling them to file their respective public land applications within sixty (60) days after the termination of the reversion proceeding*.[11] (Italics supplied, emphasis in the original).

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[10] *Id.* at 122-123.

[11] *Id.* at 123.

Petitioner's motion for reconsideration of the Office of the President's decision having been denied, she lodged a petition for review before the Court of Appeals.

By Resolution of September 8, 2000,[12] the Court of Appeals, finding that the petition suffered from the following defects:

1) *The certification of non-forum shopping is incomplete* in violation of Rule 7, Sec. 5 of the 1997 Rules of Civil Procedure;

2) *Failure to attach registry receipts in the affidavit of service* as proof of service in violation of Rule 13, Sec. 13, of the 1997 Rules of Civil Procedure;

3) *No certified true copies of such material portions of the record* referred to in the petition, *viz*:

   a) *Decision/resolution of the Bureau of Lands*, dated December 28, 1978, approving petitioner's application for patent;

   b) *Decision of the Secretary of the Department of Environment and Natural Resources*, dated January 20, 1994, ordering the Regional Executive Director of DENR Region III to cause the reversion of OCT No. P-10119 of petitioner in favor of respondents;

   c) *Complete copy of the Resolution of July 14, 2000* denying petitioner's motion for reconsideration.

Contrary to the provisions of Rule 43, Sec. 6 of the 1997 Rules of Civil Procedure. (Italics supplied),

dismissed the same.

Petitioner's motion for reconsideration of the resolution of dismissal of the Court of Appeals having been denied by Resolution of January 12, 2001,[13] she comes to this Court on what she style as a petition for *certiorari*.

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[12] *Id*. at 8-9.

[13] *Id*. at 57.

By Resolution of April 4, 2001,[14] this Court denied the present petition due to late filing, lack of certification against forum shopping and failure to sufficiently show that the appellate court committed any reversible error. On motion for reconsideration[15] of petitioner, however, the petition was, by Resolution of June 25, 2001,[16] reinstated.

Upon this Court's directive in the same Resolution of June 25, 2001, respondents filed their comment. Also upon this Court's directive,[17] the parties filed their respective memoranda. Petitioner subsequently filed her reply memorandum dated April 22, 2003.

Petitioner submits as "the only issues to be resolved" the following:

I. WHETHER OR NOT THERE IS SUBSTANTIAL COMPLIANCE BY THE PETITIONER IN HER INCOMPLETE CERTIFICATION OF NON-FORUM SHOPPING [AND]

II. WHETHER OR NOT THE OFFICE OF THE PRESIDENT IS CORRECT IN ITS DECISION IN FAVOR OF PEDRO MENDOZA AND JOSE GONZALES

On the first issue, petitioner admits having failed to undertake to report to the appellate court within 5 days from knowledge of any case involving the same issues filed in other courts or tribunals. She argues, however, that such failure maybe overlooked provided there is actually no forum shopping, she citing[18] this Court's ruling in, *inter alia, Cabardo v. Court of Appeals*[19] as follows:

Lastly, petitioner's failure to state in the certificate of non-forum shopping that he undertakes to inform the Court of any petition which

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[14] *Id.* at 167-168.

[15] *Id.* at 169-176.

[16] *Id.* at 177.

[17] Resolution of December 2, 2002, *Id.* at 241.

[18] *Rollo* at 37.

[19] 290 SCRA 131 (1998).

might be filed, as required under Revised Circular No. 28-91, may be overlooked since it does not appear that any petition related to this case has ever been filed in any other court. On the other hand, to dismiss the petition on this ground would be to uphold technicality over substantial justice.

She hastens to add that she had not filed in any court, tribunal or agency any action or petition involving the same issues as those presented in the case at bar, hence, she asserts that she had not committed any act of forum shopping.

With respect to the other grounds-bases of the appellate court's dismissal of her petition as specified in its above-quoted Resolution of September 8, 2000, petitioner submits as follows:

> [A]s to the other grounds why the petition for review was dismissed . . ., they must have been cured by the motion for reconsideration in which the required true copies were submitted. That must have been the reason why the Honorable Court of Appeals merely cited the non-compliance with certification on non-forum shopping as ground for the dismissal of the petition for review in its Resolution of the motion for reconsideration.
>
> . . . [A]s regards the registry receipts proving notice to the other parties, said receipts were indeed attached to the petition for review, but not on the proper page where they would be attached. They were wrongly attached to page 4 of the Decision of the DENR dated March 11, 1999 . . .[20]

On the merits, petitioner argues that while only questions of law may be raised in a "petition for *certiorari*," there are instances when questions of fact may be considered therein. And she draws attention to what she alleges to be erroneous factual findings of the Office of the President.

In their Comment[21] to the petition, respondents, who are silent on the procedural aspect of the case, quote the entire decision of the Office of the President and contend that the

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[20] *Rollo* at 38-39.

[21] *Id*., at pp.209-218.

decision was "based [o]n evidence that supports the factual circumstances."

Special circumstances or compelling reasons have been held to justify relaxing the rule requiring certification on forum-shopping. For

> Technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal. The certificate of non-forum shopping is a mandatory requirement. Nonetheless, this requirement must not be interpreted too literally to defeat the ends of justice.[22]

Considering that the resolution of the controversy between the parties revolves admittedly on factual issues and that these issues involve the regularity and legality of the disposition under the Public Land Law of 7.2293 hectares of public land to petitioner, this Court relaxes the rule on certification on forum shopping and directs the remand of the case to the Court of Appeals for decision on the merits.

WHEREFORE, the assailed Court of Appeals Resolutions of September 8, 2000 and January 12, 2001 are hereby *SET ASIDE*.

Let the case be *REMANDED* to the Court of Appeals for decision on the merits.

SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.*, concur.

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

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[22] *Twin Towers Condominium Corporation v. Court of Appeals*, 398 SCRA 203, 212 (2003).

FIRST DIVISION

[G.R. No. 148277. June 29, 2004]

NICANOR MARTILLANO, *petitioner*, *vs.* **THE HONORABLE COURT OF APPEALS and WILSON PO CHAM,** *respondents*.

SYNOPSIS

Abelardo Valenzuela, claiming to be the owner of the land in dispute, filed a complaint before the Regional Adjudication Board of the Department of Agrarian Reform for the cancellation of the Certificate of Land Transfer (CLT) and/or Emancipation Patents issued in favor of petitioner, alleging that the issuance thereof was improper because he has never instituted the petitioner as tenant-farmer. Finding that petitioner was not a bona fide tenant, the said CLT and Emancipation Patents were declared null and void. On appeal, the Department of Agrarian Reform Adjudication Board (DARAB) reversed the decision and declared petitioner as a bona fide tenant for the disputed land. From this decision, no appeal was interposed by Valenzuela. Respondent Po Cham filed a motion for intervention, claiming that he was the successor-in-interest of Valenzuela over the disputed land, as it was the subject of a Deed of Absolute Sale between them. The DARAB Regional Office rendered a decision declaring Po Cham to have the right to retain the disputed land, but the same was reversed by the DARAB. Po Cham filed a petition for review before the Court of Appeals which granted the same. Hence, this petition.

In granting the petition, the Supreme Court ruled that the decision of the DARAB declaring petitioner to be a bona fide tenant of the land in dispute became final and executory for failure of Valenzuela to file an appeal within the period prescribed by law. Accordingly, the matter regarding the status of petitioner as a tenant-farmer and the validity of the CLT and Emancipation Patents issued in his favor are settled and no longer open to doubt and controversy. An administrative adjudication partakes of the nature of judicial proceedings. The Department of Agrarian Reform, through its adjudication boards, exercises quasi-judicial functions and jurisdiction on all matters pertaining

to agrarian dispute or controversy and the implementation of agrarian reform laws. Its judicial determinations have the same binding effect as judgments and orders of a regular judicial body.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI;* UNAVAILING WHERE THE APPEAL PERIOD HAS LAPSED; EXCEPTIONS; CASE AT BAR.— While ordinarily, *certiorari* is unavailing where the appeal period has lapsed, there are exceptions. Among them are (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority. Hence, in the interest of substantial justice, we deem it wise to overlook the procedural technicalities if only to demonstrate that despite the procedural infirmity, the instant petition is impressed with merit.

2.POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ADJUDICATION PARTAKES OF THE NATURE OF JUDICIAL PROCEEDINGS.— It bears noting that an administrative adjudication partakes of the nature of judicial proceedings. The Department of Agrarian Reform, through its adjudication boards, exercises quasi-judicial functions and jurisdiction on all matters pertaining to agrarian dispute or controversy and the implementation of agrarian reform laws. Its judicial determinations have the same binding effect as judgments and orders of a regular judicial body.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); DECISIONS OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD ATTAIN FINALITY AFTER THE LAPSE OF FIFTEEN DAYS AND NO APPEAL IS INTERPOSED THEREFROM BY ANY PARTIES; CASE AT BAR.— [T]he Department of Agrarian Reform is empowered, through its adjudicating arm the regional and provincial adjudication boards, to resolve agrarian disputes and controversies on all matters pertaining to the implementation

of the agrarian law. Section 51 thereof provides that the decision of the DARAB attains finality after the lapse of fifteen (15) days and no appeal was interposed therefrom by any of the parties. In the instant case, the determination of the DARAB in DARAB Case No. 062-Bul '89, there being no appeal interposed therefrom, attained finality. Accordingly, the matter regarding the status of Martillano as a tenant farmer and the validity of the CLT and Emancipation Patents issued in his favor are settled and no longer open to doubt and controversy.

4. ID.; ID.; CERTIFICATE OF LAND TRANSFER AND EMANCIPATION PATENT, DISTINGUISHED.— A certificate of land transfer merely evinces that the grantee thereof is qualified to, in the words of *Pagtalunan,* "avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under Pres. Decree No. 27." It is not a muniment of title that vests upon the farmer/grantee absolute ownership of his tillage. On the other hand, an emancipation patent, while it presupposes that the grantee thereof shall have already complied with all the requirements prescribed under Presidential Decree No. 27, serves as a basis for the issuance of a transfer certificate of title. It is the issuance of this emancipation patent that conclusively entitles the farmer/grantee of the rights of absolute ownership.

5. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DOCTRINE OF BAR BY PRIOR JUDGMENT; APPLICABILITY THEREOF IS NOT AFFECTED BY BELATED INCLUSION OF A PARTY IN THE ACTION; CASE AT BAR.— The belated inclusion of Martillano as respondent in the petition will not affect the applicability of the doctrine of bar by prior judgment. What is decisive is that the issues which have already been litigated in a final and executory judgment precludes, by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata,* and even under the doctrine of "law of the case," the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision, continues to be binding

between the same parties as long as the facts on which the decision was predicated, continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since said issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment.

APPEARANCES OF COUNSEL

Anselmo M. Carlos for petitioner.
Rodrigo E. Mallari for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision of the Court of Appeals in CA-G.R. SP No. 49929[1] dated September 19, 2000, and its Resolution dated March 9, 2001, which reversed and set aside the decision of the Department of Agrarian Reform Adjudication Board (DARAB)[2] dated July 31, 1998; in effect, reinstating the Decision[3] dated July 10, 1996 of the Provincial Adjudicator of Malolos, Bulacan, which declared private respondent Wilson Po Cham to have the right to retain the 1.3785 hectare property pursuant to Section 6 of Republic Act No. 6657.

The antecedent facts are as follows:

On April 24, 1989, Abelardo Valenzuela, Jr. instituted a complaint, docketed as DARAB Case 062-Bul '89, before the DAR Adjudication Board for the cancellation of the Certificate

[1] Decision penned by Justice Delilah Vidallon-Magtolis, concurred in by Associate Justices Teodoro P. Regino and Perlita J. Tria Tirona, Thirteenth Division Court of Appeals.

[2] DARAB Case No. 5548.

[3] DARAB Case No. 512-Bul. '94.

of Land Transfer (CLT) No. 0-042751 and/or Emancipation Patent Nos. A-308399 issued in favor of Nicanor Martillano. In his complaint, Valenzuela alleged that he is the absolute owner in fee simple of two parcels of land with an aggregate area of more or less 14,135 square meters located at Pandayan (formerly Ibayo), Meycauyan, Bulacan. He averred that he has never instituted Martillano as tenant-farmer and that the issuance of the said CLT and/or Emancipation Patents in his favor was erroneous and improper.

In answer to the complaint, Martillano claimed that he is a tenant of the Roman Catholic Church since 1972. He does not recognize the complainant as the true and lawful landowner of the land he was tilling. He further claimed that he acquired his tenurial status from his mother, Maria Martillano, and submitted in evidence a leasehold contract executed by and between the Roman Catholic Church of Meycauyan, Bulacan and Maria Martillano.

On April 4, 1990, Valenzuela sold 19 parcels of land with an aggregate land area of more or less 1.3785 hectares to private respondent Po Cham.[4]

On April 19, 1990, the Regional Adjudication Board of the Department of Agrarian Reform, Region III, rendered a decision in DARAB Case No. 062-Bul '89 finding that Martillano was not a bona fide tenant and declaring that CLT No. 0-042751 and Emancipation Patent No. A-308399 are null and void. The dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring respondent Nicanor Martillano as not a bona fide tenant of the land in dispute, consisting of two (2) parcels known as Lot No. 18-C-1 with an area of 7,301 square meters and Lot No. 18-C-2 with an area of 6,834 square meters, situated at Pandayan (formerly Ibayo), Meycauyan, Bulacan, owned by complainant Abelardo Valenzuela, Jr.;

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[4] CA Records, Annexes "J"-"J-2".

2. Declaring null and void CLT No. 0-042751 and Emancipation Patent No. A-308399 generated in favor of respondent Nicanor F. Martillano for having been erroneously and improperly issued, and ordering their immediate recall and/or cancellation;

3. Ordering respondent Nicanor F. Martillano and all other persons claiming authority under him to immediately vacate subject landholding and surrender possession thereof to complainant Abelardo D. Valenzuela.

On appeal, the DARAB reversed the decision of the Regional Adjudication Board and declared Martillano as a bona fide tenant for the disputed land, and Certificate of Land Transfer No. 0-042751 and Emancipation Patent Nos. 308399 and 308400-(H) as valid. The decretal portion of the DARAB decision reads:

WHEREFORE, the Decision of the DAR Regional Adjudication Board dated April 19, 1990 is hereby REVERSED, and a new one entered:

1. Declaring the Appellant a bona fide tenant-tiller of the land in dispute;

2. Declaring and maintaining as valid the Certificate of Land Transfer numbered No. 0-042751 and the Emancipation patent Nos. 308399 and 308400-(H) issued to appellant;

3. Directing the DAR Provincial Agrarian Reform Officer (PARO) of Baliuag, Bulacan to register the said Emancipation Patents with the Register of Deed; for the Province of Bulacan and for the latter to enter the same in the Book of Registry; and

4. Denying the Motion for Reconsideration dated February 26, 1991 filed by Appellee for being moot and academic.

From this decision, no appeal was interposed by Valenzuela.

Meanwhile, as early as May 13, 1994, Valenzuela filed an application with the DAR, Region III for the retention of a portion of his landholdings with a total land area of 10.12625 hectares pursuant to Section 6 of RA 6657.[5]

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[5] Comprehensive Agrarian Reform Law of 1988.

In an Order dated December 20, 1996, the DAR, Region III, thru then Regional Director Eugenio B. Bernardo, granted to Valenzuela 4.4597 hectares under TCT Nos. T-12773 (M) and T-12.774 (M) (formerly OCT No. 0-6061) as his retention area. Thus:

> WHEREFORE, premises considered, an ORDER is hereby issued, as follows:
>
> 1. GRANTING Valenzuela an area of 4.4597 hectares under TCT Nos. T-12773 (M) and T-12.774 (M) (formerly OCT No. 0-6061) situated in Meycauyan, Bulacan, as his retention area;
>
> 2. DIRECTING Abelardo Valenzuela, Jr., to cause the segregation of his retained area at his own expense and to submit a copy of the segregation plan to this Office within thirty (30) days from the approval thereof; and,
>
> 3. MAINTAINING the legality and validity of the Emancipation patents of Apolinario Antonio, Severo San Felipe, Guillermo Pangilinan and Nicanor Martillano covering their respective tillages.

On March 11, 1997, William Po Cham filed a motion for intervention, claiming that he was the successor-in-interest of Abelardo Valenzuela, Jr. over a portion of 1.3785 hectares which is the subject of a Deed of Sale dated April 4, 1990.

Valenzuela's motion for reconsideration from the Order of DAR, Region III was treated as an appeal by the Department of Agrarian Reform, which declared the retained area of Valenzuela to be five hectares including the portion subject of the Deed of Absolute Sale to private respondent Po Cham consisting of 1.3785 hectares.

Earlier, on June 4, 1993, Po Cham filed a petition[6] entitled "*Wilson Po Cham v. the MARO and Register of Deeds of Meycauyan, and PARO, all of the Province of Bulacan*" before the DARAB, Region III, docketed as DARAB Case No. 512-Bul '94, for the cancellation of Emancipation Patents Nos. 308399

[6] Docketed as Case No. 512-B-93.

and 308400 in the name of Martillano. Significantly, Po Cham did not implead Nelson Martillano as one of the party-defendants in the case.[7]

On July 10, 1996, DARAB, Region III rendered its decision, the dispositive portion of which reads:[8]

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring Petitioner (Wilson Po Cham) has the right to retain the 1.3785 hectare of property covered by the above-mentioned titles pursuant to Section 6, R.A. No. 6657;

2. Directing respondents PARO of Bulacan and Register of Deeds of Meycauyan, both of Bulacan to recall and cancel EP No. 308399/TCT No. EP-062 (M) and EP No. 308400 (H)/TCT No. EP-061 (M) and;

3. Directing tenant Nicanor F. Martillano be maintained in peaceful possession of the subject landholding that he is actually cultivating.

Dissatisfied, Po Cham filed an appeal before the DARAB which rendered a decision on July 31, 1998, the decretal portion of which reads:[9]

WHEREFORE, finding reversible errors committed by the Honorable Adjudicator *a quo* the decision appealed from is hereby REVERSED and a new decision entered.

1. Declaring Nicanor Martillano as the lawful farmer-beneficiary and maintaining the Emancipation Patents numbered 30399 and 308400 issued in his name as valid; and

2. Maintaining Nicanor F. Martillano in peaceful possession and cultivation of the subject landholding; and

3. Declaring the conveyance of the landholding between Abelardo Valenzuela, Jr. and Plaintiff-Appellee Wilson Po Cham as null and void for being contrary to law and public policy.

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[7] *Rollo*, p. 93.

[8] *Id*., p. 105.

[9] *Id*., p. 86.

Unfazed by the adverse ruling, private respondent Po Cham filed a petition for review before the Court of Appeals assailing the decision of DARAB. On September 19, 2000, the Court of Appeals rendered the challenged decision, which granted the petition and reversed and set aside the July 31, 1998 decision of the DARAB.[10]

On March 9, 2001, the appellate court denied for lack of merit the motion for reconsideration filed by petitioner Martillano.

Hence the instant petition based on the following grounds:

I

THE RESPONDENT COURT ACTED WITHOUT JURISDICTION OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RENDERING THE QUESTIONED DECISION OF SEPTEMBER 19, 2000 REVERSING AND SETTING ASIDE THE DARAB DECISION OF JULY 31, 1998 AND REINSTATING THE PROVINCIAL ADJUDICATOR'S DECISION OF JULY 10, 1996.

II

THE RESPONDENT COURT ACTED WITHOUT JURISDICTION OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION OF MARCH 9, 2001 DENYING MARTILLANO'S MOTION FOR RECONSIDERATION OF THE AFORESAID QUESTIONED DECISION.[11]

In the instant case, petitioner is appealing a final decision of the Court of Appeals by resorting to Rule 65, when his remedy should be based on Rule 45. This case should have been dismissed outright for failure by the petitioner to adopt the proper remedy. While ordinarily, *certiorari* is unavailing where the appeal period has lapsed, there are exceptions. Among them are (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when

[10] *Id*., p. 243.

[11] *Id*., p. 36.

the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority. Hence, in the interest of substantial justice, we deem it wise to overlook the procedural technicalities if only to demonstrate that despite the procedural infirmity, the instant petition is impressed with merit.[12]

Petitioner contends that the failure of private respondent Po Cham to implead him as party defendant in DARAB Case No. 512-Bul '94 divested the Provincial Adjudicator of jurisdiction in rendering its decision of July 10, 1996 which cancelled the Certificate of Land Transfer and the Emancipation Patents issued in his favor. For this procedural defect, he argues that DARAB Case No. 512-Bul '94 should have been dismissed outright inasmuch as under the Rules of Civil Procedure, the Provincial Adjudicator could not proceed thereon without him being impleaded because he is an indispensable party. He reasons that in the said case, Po Cham sought the cancellation of his CLT and Emancipation Patents which directly affects his rights and interests over his landholdings. The Provincial Adjudicator should have dismissed DARAB Case No. 512-Bul '94 instead of erroneously and irregularly proceeding thereon and rendering a decision adverse to him, specifically, the cancellation of his CLT and Emancipation Patents.

Petitioner further argues that although the decision in DARAB Case No. 062-Bul '89 of the Regional Adjudication Board of the Department of Agrarian Reform, Region III on April 19, 1990 was adverse to him, the DARAB on September 18, 1992 reversed the decision of the lower body and ruled that he is a bona fide tenant in the disputed land. It further affirmed the validity of his CLT and the Emancipation Patents. He points out that since Valenzuela did not appeal from the September 18, 1992 decision, the same became final and incontestable, thus finally rendering unassailable his ownership of the subject

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[12] *Spouses Go v. Court of Appeals*, G.R. No. 151942, 27 November 2003; *Chua, et al. v. Court of Appeals*, G.R. No. 121438, 23 October 2000, 344 SCRA 136.

landholdings. Since DARAB Case No. 062-Bul '89 had long become final and executory before the filing of DARAB Case No. 512-Bul '94, and considering further that both cases involve the same subject matter, *i.e.*, his 1.3785 hectare landholding, the former case constitutes *res adjudicata* as to the latter.

Petitioner further asserts that the finality of DARAB Case No. 062-Bul '89 operates as a bar to the application by Valenzuela for retention, considering that both cases had a common objective, that is, the cancellation of his CLT and the Emancipation Patents.

The petition is meritorious. It is at once apparent from the records, as shown above, that as early as April 24, 1989, Valenzuela filed a complaint for cancellation of Certificate of Land Transfer and Emancipation Patents issued in the name of Martillano. At the first instance, the adjudication board declared Martillano to be not a bona fide tenant of the land in dispute. On appeal, however, the DARAB reversed the ruling of the adjudication board. Valenzuela did not appeal this adverse decision which, for all intents and purposes, became final and executory after the lapse of the period within which to file an appeal.

It bears noting that an administrative adjudication partakes of the nature of judicial proceedings. The Department of Agrarian Reform, through its adjudication boards, exercises quasi-judicial functions and jurisdiction on all matters pertaining to agrarian dispute or controversy and the implementation of agrarian reform laws. Its judicial determinations have the same binding effect as judgments and orders of a regular judicial body. At this juncture, reference is made to pertinent sections of RA 6657 or the Comprehensive Agrarian Reform Law of 1988, namely:

> Section 50. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources xxx

> Section 51. *Finality of determination*. — Any case or controversy before it shall be decided within thirty (30) days after it is submitted for resolution. Only one (1) motion for reconsideration shall be allowed. Any order, ruling or decision shall be final after the lapse of fifteen (15) days from receipt of a copy thereof.

Under the afore-cited sections of RA 6657, the Department of Agrarian Reform is empowered, through its adjudicating arm the regional and provincial adjudication boards, to resolve agrarian disputes and controversies on all matters pertaining to the implementation of the agrarian law. Section 51 thereof provides that the decision of the DARAB attains finality after the lapse of fifteen (15) days and no appeal was interposed therefrom by any of the parties.

In the instant case, the determination of the DARAB in DARAB Case No. 062-Bul '89, there being no appeal interposed therefrom, attained finality. Accordingly, the matter regarding the status of Martillano as a tenant farmer and the validity of the CLT and Emancipation Patents issued in his favor are settled and no longer open to doubt and controversy.

In disputing petitioner's arguments, private respondent Po Cham heavily relies on this Court's pronouncements in *Pagtalunan v. Tamayo*[13] where it was categorically stated that "the mere issuance of the certificate of land transfer does not vest in the farmer/grantee ownership of the land described therein." Compliance with certain pre-conditions, such as payment of his lease rentals or amortization payments when they fall due for a period of two (2) years to the landowner, is necessary in order that the grantee can claim the right of absolute ownership over them. Prescinding therefrom, private respondent contends that the ownership of the disputed landholdings by petitioner is still contestable and subject to revocation where there is no showing that he has complied with the prescribed pre-conditions for the grant of absolute ownership.

We do not agree. Private respondent conveniently overlooks the fact that petitioner was issued both the CLT and Emancipation

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[13] G.R. No. 54281, 19 March 1990, 183 SCRA 252.

Patents. Both instruments have varying legal effects and implications insofar as the grantee's entitlements to his landholdings. A certificate of land transfer merely evinces that the grantee thereof is qualified to, in the words of *Pagtalunan*, "avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under Pres. Decree No. 27." It is not a muniment of title that vests upon the farmer/grantee absolute ownership of his tillage. On the other hand, an emancipation patent, while it presupposes that the grantee thereof shall have already complied with all the requirements prescribed under Presidential Decree No. 27, serves as a basis for the issuance of a transfer certificate of title. It is the issuance of this emancipation patent that conclusively entitles the farmer/grantee of the rights of absolute ownership. *Pagtalunan* distinctly recognizes this point when it said that:

> It is the emancipation patent which constitutes conclusive authority for the issuance of an Original Certificate of Transfer, or a Transfer Certificate of Title, in the name of the grantee xxx
>
> Clearly, it is only after compliance with the above conditions which entitle a farmer/grantee to an emancipation patent that he acquires the vested right of absolute ownership in the landholding — a right which has become fixed and established, and is no longer open to doubt or controversy [See definition of "vested right" or "vested interest" in *Balbao v. Farrales*, 51 Phil. 498 (1928); Republic of the *Philippines v. de Porkan*, G.R. No. 66866, June 18, 1987, 151 SCRA 88]. At best, the farmer/grantee, prior to compliance with these conditions, merely possesses a contingent or expectant right of ownership over the landholding.

We recall that DARAB Case 062-Bul '89 was for the cancellation of petitioner's CLT and Emancipation patents. The same effect is sought with the institution of DARAB Case No. 512-Bul '94, which is an action to withdraw and/or cancel administratively the CLT and Emancipation Patents issued to petitioner. Considering that DARAB Case 062-Bul '89 has attained finality prior to the filing of DARAB Case No. 512-Bul '94, no strenuous legal interpretation is necessary to understand that the issues raised in the prior case, i.e., DARAB Case No. 062-

Bul '89, which have been resolved with finality, may not be litigated anew.

The instant case is complicated by the failure of the complainant to include Martillano as party-defendant in the case before the adjudication board and the DARAB, although he was finally impleaded on appeal before the Court of Appeals.

The belated inclusion of Martillano as respondent in the petition will not affect the applicability of the doctrine of bar by prior judgment. What is decisive is that the issues which have already been litigated in a final and executory judgment precludes, by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision, continues to be binding between the same parties as long as the facts on which the decision was predicated, continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since said issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment.[14]

In *Mallari v. Court of Appeals*, we clarified that the principle of *res judicata* may not be evaded by the mere expedient of including an additional party to the first and second action, thus:[15]

But even if the cause of action in the Second *Certiorari* Petition were different, the issue determined in the First *Certiorari* Petition,

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[14] *De Villa v. Jacob*, G.R. No. L-29420, 14 November 1988, 167 SCRA 303.

[15] G.R. No. L-26467, 15 July 1981, 105 SCRA 430.

to reiterate, the validity of the Receivership Order, must, as between the same parties, be taken as conclusively established so long as the judgment in the First *Certiorari* Petition remains unmodified. This is the rule on conclusiveness of judgment, another aspect of *res judicata* doctrine, as enunciated in Section 49 of the Rules of Court.

In the same case, we elucidated further on the doctrine of "the law of the case" in this wise:

> And even under the "law of the case" doctrine, as aptly held in the original Decision in the Second *Certiorari* Petition (CA-G.R. No. 36093-R), the Receivership Order is no longer open to further re-litigation. It constitutes the controlling legal rule between the parties and cannot be modified or amended. By "law of the case" is meant that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case so long as the facts on which the decision was predicated continue to be the facts of the case before the court.

As fully as public policy demands that finality be accorded to judicial controversies, public interest requires that proceedings already terminated should not be altered at every step, for the rule *non quieta movere* dictates that what has been terminated should not be disturbed. Sound public policy dictates that, at the risk of occasional errors, we must write *finis*, at one time or another, to judicial disputes.

WHEREFORE, in view of the foregoing, the Petition is *GRANTED*. The assailed Decision of September 19, 2000 and the Resolution of March 9, 2001 are *SET ASIDE*. The Certificate of Land Transfer (CLT) No. 0-042751 and/or Emancipation Patents Nos. A-308399 and A-308400 issued in favor of petitioner are maintained.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Carpio, and *Azcuna, JJ.,* concur.

SECOND DIVISION

[G.R. No. 148738. June 29, 2004]

MITSUBISHI MOTORS PHILIPPINES CORPORATION, *petitioner, vs.* **CHRYSLER PHILIPPINES LABOR UNION and NELSON PARAS,** *respondents*.

SYNOPSIS

Nelson Paras, a member of Chrysler Philippines Labor Union, was re-hired on a probationary basis by petitioner and started reporting for work on May 27, 1996. However, his services were terminated on November 26, 1996 allegedly for failure to meet the required company standards for regularization. The settlement of the dispute which arose from Paras' termination was filed by the union with the Voluntary Arbitrator, which found the dismissal of Paras valid for his failure to pass the probationary standards of petitioner. On appeal, the CA reversed the ruling of the Voluntary Arbitrator and denied the petitioner's subsequent motion for reconsideration. Hence, this petition.

The Supreme Court ruled that the probationary period of six months consists of one hundred eighty days, which in this case, commenced on May 27, 1996, and ended on November 23, 1996. Thus, Paras was already a regular employee of the petitioner at the time of his termination on November 25, 1996. An unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. The records of this case did not show that Paras was grossly negligent in the performance of his duties. Thus, the Court ruled that his dismissal from employment was illegal.

Anent the issue on reinstatement, the Court held that the unfavorable financial conditions of the petitioner may not justify reinstatement, however, it is not a sufficient ground to deny backwages to Paras who was illegally dismissed. Consequently, the Court ordered petitioner to pay Paras separation pay and backwages from the date of his illegal dismissal up to March 25, 1998.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF ERRORS OF LAW.— [W]e must stress that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions. Questions of fact are not entertained. This Court is not a trier of facts and, in labor cases, this doctrine applies with greater force. Factual questions are for labor tribunals to resolve.

2. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, ACCORDED RESPECT ON APPEAL; EXCEPTION; PRESENT IN CASE AT BAR.— The findings of fact of quasi-judicial bodies like the National Labor Relations Commission (NLRC), are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the Court of Appeals, such findings are binding and conclusive upon the Supreme Court and will not normally be disturbed. However, when the findings of the NLRC and the Court of Appeals are inconsistent with each other, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts. Considering that the CA's findings of fact clash with those of the Voluntary Arbitrator, this Court is compelled to go over the records of the case, as well as the submissions of the parties.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; SERVICES OF AN EMPLOYEE ENGAGED ON A PROBATIONARY BASIS, WHEN TERMINATED.— [A]n employer, in the exercise of its management prerogative, may hire an employee on a probationary basis in order to determine his fitness to perform work. Under Article 281 of the Labor Code, the employer must inform the employee of the standards for which his employment may be considered for regularization. Such probationary period, unless covered by an apprenticeship agreement, shall not exceed six (6) months from the date the employee started working. The employee's services may be terminated for just cause or for his failure to qualify as a regular employee based on reasonable standards made known to him.

4. ID.; ID.; ID.; ID.; PROBATIONARY PERIOD, HOW COMPUTED; CASE AT BAR.— Applying Article 13 of the Civil Code, the probationary period of six (6) months consists of one hundred eighty (180) days. This is in conformity with paragraph one, Article 13 of the Civil Code, which provides that the months which are not designated by their names shall be understood as consisting of thirty (30) days each. The number of months in the probationary period, six (6), should then be multiplied by the number of days within a month, thirty (30); hence, the period of one hundred eighty (180) days. As clearly provided for in the last paragraph of Article 13, *in computing a period, the first day shall be excluded and the last day included.* Thus, the one hundred eighty (180) days commenced on May 27, 1996, and ended on November 23, 1996.

5. ID.; ID.; ID.; REGULAR EMPLOYMENT; AN UNSATISFACTORY RATING CAN BE A JUST CAUSE FOR DISMISSAL ONLY IF IT AMOUNTS TO GROSS AND HABITUAL NEGLECT OF DUTIES; GROSS NEGLIGENCE, DEFINED.— An employee cannot be dismissed except for just or authorized cause as found in the Labor Code and after due process. … Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Gross negligence has been defined to be the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

6. ID.; ID.; ID.; THE NORMAL CONSEQUENCES OF ILLEGAL DISMISSAL ARE REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND PAYMENT OF BACKWAGES.— The normal consequences of illegal dismissal are reinstatement without loss of seniority rights and the payment of backwages computed from the time the employee's compensation was withheld from him. Since respondent Paras' dismissal from employment is illegal, he is entitled to reinstatement and to be paid backwages from the time of his dismissal up to the time of his actual reinstatement. … The unfavorable financial conditions of the petitioner may not justify reinstatement. However, it is not a sufficient ground to deny backwages to respondent Paras who was illegally dismissed.

7. ID.; ID.; ID.; BUSINESS REVERSES AND RETRENCHMENT; RECOGNIZED BY LAW AS AUTHORIZED CAUSES FOR TERMINATION OF EMPLOYMENT.— Business reverses or losses are recognized by law as an authorized cause for termination of employment. Still, it is an essential requirement that alleged losses in business operations must be proven convincingly. Otherwise, such ground for termination would be susceptible to abuse by scheming employers, who might be merely feigning business losses or reverses in their business ventures to ease out employees. Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing.

APPEARANCES OF COUNSEL

Imelda M. Abadilla for petitioner.
Flores Saladero & Bunao Law Office for respondents.

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. 46030 and the Resolution denying the motion for reconsideration filed by petitioner Mitsubishi Motors Philippines Corporation.

The Antecedents

Mitsubishi Motors Philippines Corporation (MMPC) is a domestic corporation engaged in the assembly and distribution of Mitsubishi motor vehicles. Chrysler Philippines Labor Union (CPLU) is a legitimate labor organization and the duly certified

[1] Penned by Associate Justice Eriberto U. Rosario, Jr. and concurred in by Associate Justices Eubolo G. Verzola and Roberto A. Barrios; promulgated on September 13, 2000; *Rollo*, pp. 35-44.

bargaining agent of the hourly-paid regular rank and file employees of MMPC. Nelson Paras was a member of CPLU. His wife, Cecille Paras, was the President of the Chrysler Philippines Salaried Employees Union (CPSU).

Nelson Paras was first employed by MMPC as a shuttle bus driver on March 19, 1976. He resigned on June 16, 1982. He applied for and was hired as a diesel mechanic and heavy equipment operator in Saudi Arabia from 1982 to 1993. When he returned to the Philippines, he was re-hired as a welder-fabricator at the MMPC tooling shop from October 3, 1994 to October 31, 1994.[2] On October 29, 1994, his contract was renewed from November 1, 1994 up to March 3, 1995.[3]

Sometime in May of 1996, Paras was re-hired on a probationary basis as a manufacturing trainee at the Plant Engineering Maintenance Department. He and the new and re-hired employees were given an orientation on May 15, 1996[4] by Emma P. Aninipot, respecting the company's history, corporate philosophy, organizational structure, and company rules and regulations, including the company standards for regularization, code of conduct and company-provided benefits.[5]

Paras started reporting for work on May 27, 1996. He was assigned at the paint ovens, air make-up and conveyors. As part of the MMPC's policy, Paras was evaluated by his immediate supervisors Lito R. Lacambacal [6] and Wilfredo J. Lopez[7] after six (6) months, and received an average rating. Later, Lacambacal informed Paras that based on his performance rating, he would be regularized.[8]

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[2] CA *Rollo*, p. 191.

[3] *Id*. at 192.

[4] Orientation for New Employees (ONE).

[5] CA *Rollo*, p. 192-A.

[6] Foreman at Section 3410 of MMPC.

[7] Foreman at Section 3400 of MMPC.

[8] *Rollo*, p. 126.

However, the Department and Division Managers, A.C. Velando and H.T. Victoria,[9] including Mr. Dante Ong,[10] reviewed the performance evaluation made on Paras. They unanimously agreed, along with Paras' immediate supervisors, that the performance of Paras was unsatisfactory.[11] As a consequence, Paras was not considered for regularization. On November 26, 1996, he received a Notice of Termination dated November 25, 1996, informing him that his services were terminated effective the said date since he failed to meet the required company standards for regularization.[12]

Utilizing the grievance machinery in the collective bargaining agreement, the CPLU demanded the settlement of the dispute which arose from Paras' termination.[13] The dispute was thereafter submitted for voluntary arbitration, as the parties were unable to agree on a mutually acceptable solution. CPLU posited that Paras was dismissed on his one hundred eighty third (183rd) day of employment, or three (3) days after the expiration of the probationary period of six (6) months. It was contended that Paras was already a regular employee on the date of the termination of his "probationary employment."

According to CPLU and Paras, the latter's dismissal was an offshoot of the heated argument during the CBA negotiations between MMPC Labor Relations Manager, Atty. Carlos S. Cao, on the one hand, and Cecille Paras, the President of the Chrysler Philippines Salaried Employees Union (CPSU) and Paras' wife, on the other.

On November 3, 1997, the Voluntary Arbitrator (VA) rendered a decision finding the dismissal of Paras valid for his failure to pass the probationary standards of MMPC. The dispositive portion of the decision reads:

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[9] Department Managers.

[10] First Vice-President for Manufacturing.

[11] *Rollo*, p. 51.

[12] *Id*. at 52.

[13] CA *Rollo*, p. 131.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding the termination of Mr. Paras was valid for cause — his failure to pass the probationary period.[14]

The VA declared that hiring an employee on a probationary basis to determine his or her fitness for regular employment was in accord with the MMPC's exercise of its management prerogative. The VA pointed out that MMPC had complied with the requirement of apprising Paras of the standards of performance evaluation and regularization at the inception of his probationary employment. The VA agreed with the MMPC that the termination of Paras' employment was effected prior to the expiration of the six-month probationary period. As to Paras' contention that he was already a regular employee before he was dismissed in 1994 considering that he had an accumulated service of eleven (11) months, the VA ruled that Paras' delay in filing a complaint for regularization only in 1996, for services rendered in October 1994 to March 1995, militated against him. The VA stated that Paras' dismissal was based on the unsatisfactory performance rating given to him by his direct supervisors Lito Lacambacal and Wilfredo Lopez. The VA also found that the alleged heated argument between Atty. Carlos S. Cao, the Labor Relations Manager of MMPC, and Cecille Paras, the President of CPSU, was irrelevant in the termination of Paras' services.[15]

The Case Before the Court of Appeals

Aggrieved, Paras and CPLU filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals, docketed as C.A.-G.R. SP No. 46030. They assigned the following errors:

I

THE VOLUNTARY ARBITRATOR COMMITTED A SERIOUS ERROR OF LAW IN FAILING TO HOLD THAT THE NOTICE OF TERMINATION WAS SERVED UPON PETITIONER NELSON

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[14] *Id.* at 7.

[15] *Rollo*, p. 134.

PARAS AFTER HE HAS ALREADY BECOME A REGULAR EMPLOYEE, HIS PERIOD FOR PROBATION HAVING EXPIRED.

II

THE VOLUNTARY ARBITRATOR SERIOUSLY ERRED AND GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT PETITIONER NELSON PARAS' SUPPOSED DELAY IN FILING THE ILLEGAL DISMISSAL CASE WORKED AGAINST HIM.

III

THE VOLUNTARY ARBITRATOR ACTED WITH GRAVE ABUSE OF DISCRETION AND COMMITTED SERIOUS ERRORS OF FACT AND LAW IN NOT HOLDING THAT THE PERFORMANCE OF NELSON PARAS WAS SATISFACTORY AND THAT HIS DISMISSAL WAS POLITICALLY MOTIVATED.[16]

Therein, Paras and CPLU asserted that pursuant to Article 13 of the New Civil Code, the period of May 27, 1996 to November 26, 1996 consisted of one hundred eighty-three (183) days. They asserted that the maximum of the probationary period is six (6) months, which is equivalent to 180 days; as such, Paras, who continued to be employed even after the 180th day, had become a regular employee as provided for in Article 282 of the Labor Code. They averred that as a regular employee, Paras' employment could be terminated only for just or authorized causes as provided for under the Labor Code, and after due notice. They posited that in the Letter of Termination dated November 25, 1996, the ground for Paras' termination was not among those sanctioned by the Labor Code; hence, his dismissal was illegal.

Paras and CPLU also stressed that he had already been in the employ of MMPC from October 3, 1994 to March 3, 1995 as a welder-fabricator in the production of jigs and fixtures, a function necessary and desirable to the usual business of MMPC. Such period, in addition to the six-month probationary period, amounted to eleven (11) months of service, which is sufficient for him to be considered as a regular employee.

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[16] CA *Rollo*, pp. 14-15.

Paras and CPLU averred that the filing of an illegal dismissal complaint only after his termination in 1996 did not make Paras' claim for regularization specious, since an illegally dismissed employee, like him, has four (4) years within which to file a complaint.[17]

They emphasized that Paras' performance evaluation was changed to unsatisfactory as an off-shoot of the arguments between the latter's wife, the President of the CPSU, and Atty. Carlos S. Cao, one of MMPC's negotiators, over the provisions in the CBA.[18]

The MMPC, for its part, averred that under Article 13 of the New Civil Code, Paras' probationary employment which commenced on May 27, 1996 would expire on November 27, 1996. Since he received the notice of termination of his employment on November 25, 1996, the same should be considered to have been served within the six-month probationary period.

The MMPC asserted that the VA acted correctly in not considering the five-month period of Paras' contractual employment as a welder-fabricator to qualify him for regularization. It argued that his rating showed that his immediate supervisors, in tandem with his department head, found his performance unsatisfactory. Thus, his failure to meet a satisfactory performance rating justified the termination of his probationary employment.

For its part, the Office of the Solicitor General (OSG), in representation of Voluntary Arbitrator Danilo Lorredo, agreed that Paras and CPLU's allegation, that the notice of termination was served on Paras' 183rd day, was erroneous. The OSG opined that the six-month probationary period was to expire on November 27, 1996 and since Paras was served such notice on November 25, 1996, his employment was deemed terminated within the six-month probationary period. It posited that the failure of

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[17] *Id*. at 19.

[18] *Id*. at 24.

Paras to get a satisfactory performance rating justified the termination of his probationary employment, and that the inclusion of his five-month contractual employment as welder-fabricator did not qualify him for regular employment.

Finally, the OSG contended that the appointment of a probationary employee to a regular status is voluntary and discretionary on the part of the employer.

In a Decision promulgated on September 13, 2000, the CA reversed the ruling of the Voluntary Arbitrator, the dispositive portion of which is herein quoted:

> WHEREFORE, the petition is GRANTED. The Decision of public respondent, dated November 3, 1997, is REVERSED and SET ASIDE. In lieu thereof, judgment is hereby entered declaring Mitsubishi Motors Phils. Corporation's dismissal of Nelson Paras as ILLEGAL and ORDERING the former to reinstate Paras to his former position without loss of seniority rights and other privileges. Conformably with the latest pronouncement of the Supreme Court on backwages, *supra*, Mitsubishi Motors Phils. Corporation is further ORDERED to pay Paras full backwages (without qualifications or deductions), inclusive of allowances, and his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Petitioners' claims for attorney's fees, moral and exemplary damages are, nevertheless, DENIED for lack of sufficient basis. No costs.[19]

The CA agreed with Paras and CPLU's interpretation that six (6) months is equivalent to one hundred eighty (180 days) and that computed from May 27, 1996, such period expired on November 23, 1996. Thus, when Paras received the letter of termination on November 26, 1996, the same was served on the 183rd day or after the expiration of the six-month probationary period. The CA stated that since he was allowed to work beyond the probationary period, Paras became a regular employee. Hence, his dismissal must be based on the just and authorized causes under the Labor Code, and in accordance with the two-notice requirement provided for in the implementing rules. The appellate

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[19] *Rollo*, pp. 40-41.

court concluded that for MMPC's failure to show that Paras was duly notified of the cause of his dismissal, the latter was illegally dismissed; hence, his actual reinstatement without loss of seniority rights and the payment of backwages up to the time of his reinstatement were in order.

Dissatisfied, the MMPC filed a motion for reconsideration of the decision, alleging that the CA erred in holding that the six-month probationary period which commenced on May 27, 1996, expired on November 23, 1996.

The MMPC contended that the reinstatement of Paras to his former position had become moot and academic because it had retrenched approximately seven hundred (700) employees as a result of its financial losses in 1997. It posited that the payment of full backwages should only be computed up to February 1998, the date when MMPC effected the first phase of its retrenchment program.

The CA denied the motion in a Resolution dated June 18, 2001.[20]

The Present Petition

Undaunted, the MMPC filed this instant petition, alleging as follows:

A.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE 3 NOVEMBER 1997 DECISION OF THE HONORABLE VA DANILO LORREDO, AND IN FINDING THAT RESPONDENT PARAS (WAS) ILLEGALLY DISMISSED AND ORDERING HIS REINSTATEMENT.

B.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING THE REINSTATEMENT OF PARAS WITH FULL

[20] CA *Rollo*, p. 385.

BACKWAGES DESPITE THE CHANGE IN THE FINANCIAL CIRCUMSTANCES OF THE COMPANY.

C.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE SIX-MONTH PROBATIONARY PERIOD OF PARAS WHICH STARTED ON 27 MAY 1996 HAD EXPIRED 23 NOVEMBER 1996.[21]

The petitioner asserts that the CA erred in ruling that respondent Paras was already a regular employee when he was served the notice of termination. Citing Article 13 of the New Civil Code, the petitioner argued that the six-month probationary period should be computed as follows:

May 27-31	=	4 days
Jun(e) 1-30	=	1 month (30 days)
July 1-31	=	1 month (30 days)
Aug(.) 1-31	=	1 month (30 days)
Sept(.) 1-30	=	1 month (30 days)
Oct(.) 1-31	=	1 month (30 days)
Nov(.) 1-26	=	26 days[22]

Hence, according to the petitioner, when the termination letter was served on November 26, 1996, Paras was still a probationary employee. Considering that he did not qualify for regularization, his services were legally terminated. As such, the CA erred in ordering his reinstatement and the payment of his backwages.

According to the petitioner, even assuming that respondent Paras was a regular employee when he was dismissed, his reinstatement had already become moot and academic because of the retrenchment program effected as a result of the business losses it had suffered in the year 1997. Respondent Paras, who was employed only in May 27, 1996, would have been included in the first batch of employees retrenched in February of 1998, in accordance with the "last in first out policy" embedded in

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[21] *Rollo*, pp. 13-14.

[22] *Id*. at 27.

the CBA. The petitioner further contends that Paras' backwages should be computed only up to February of 1998.

In their comment on the petition, the respondents argue that the CA was correct in concluding that the termination letter was served on respondent Paras' one hundred eighty third (183rd) day of employment with the petitioner, asserting that six (6) months is equivalent to one hundred eighty (180) days. Since respondent Paras was employed on May 27, 1996, the 180th day fell on November 23, 1996. Thus, respondent Paras was already a regular employee when the termination letter was served on him. Consequently, his dismissal should be based on the just or authorized causes provided for by the Labor Code, and after proper notice.

The respondents, likewise, contend that the petitioner cannot raise new and unsubstantiated allegations in its petition at bar.

The Issues

The issues for resolution are the following: (a) whether or not respondent Paras was already a regular employee on November 26, 1996; (b) whether or not he was legally dismissed; (c) if so, whether or not his reinstatement had been rendered moot and academic; and, (d) whether or not his backwages should be computed only up to February of 1998.

The Court's Ruling

The petition is partially granted.

At the outset, we must stress that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions.[23] Questions of fact are not entertained.[24] This Court is not a trier of facts and, in labor cases, this doctrine applies with greater force. Factual questions are for labor tribunals to resolve.[25] The findings of fact of *quasi*-judicial bodies like the National Labor Relations Commission

[23] *Producers Bank v. Court of Appeals*, 397 SCRA 651 (2003).

[24] *Alfaro v. Court of Appeals*, 363 SCRA 799 (2001).

[25] *Hacienda Fatima v. NLRC*, 396 SCRA 518 (2003).

(NLRC), are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the Court of Appeals, such findings are binding and conclusive upon the Supreme Court and will not normally be disturbed.[26]

However, when the findings of the NLRC and the Court of Appeals are inconsistent with each other, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts.[27] Considering that the CA's findings of fact clash with those of the Voluntary Arbitrator, this Court is compelled to go over the records of the case, as well as the submissions of the parties.[28]

Regularization of Employment

Indeed, an employer, in the exercise of its management prerogative, may hire an employee on a probationary basis in order to determine his fitness to perform work.[29] Under Article 281 of the Labor Code, the employer must inform the employee of the standards for which his employment may be considered for regularization. Such probationary period, unless covered by an apprenticeship agreement, shall not exceed six (6) months from the date the employee started working. The employee's services may be terminated for just cause or for his failure to qualify as a regular employee based on reasonable standards made known to him.[30]

Respondent Paras was employed as a management trainee on a probationary basis. During the orientation conducted on

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[26] *Shoppes Manila, Inc. v. The Honorable National Labor Relations Commission, Labor Arbiter Ermita Abrasaldo-Cuyuca and Lorie Torno*, G.R. No. 147125, January 14, 2004.

[27] *Cosep v. NLRC*, 290 SCRA 704, 713 (1998).

[28] *Zafra v. Court of Appeals*, 389 SCRA 200 (2002).

[29] *Manlimos v. National Labor Relations Commission*, 242 SCRA 145 (1995).

[30] Article 281 of the Labor Code.

May 15, 1996, he was apprised of the standards upon which his regularization would be based. He reported for work on May 27, 1996. As per the company's policy, the probationary period was from three (3) months to a maximum of six (6) months.

Applying Article 13 of the Civil Code,[31] the probationary period of six (6) months consists of one hundred eighty (180) days.[32] This is in conformity with paragraph one, Article 13 of the Civil Code, which provides that the months which are not designated by their names shall be understood as consisting of thirty (30) days each. The number of months in the probationary period, six (6), should then be multiplied by the number of days within a month, thirty (30); hence, the period of one hundred eighty (180) days.

As clearly provided for in the last paragraph of Article 13, *in computing a period, the first day shall be excluded and the last day included.* Thus, the one hundred eighty (180) days commenced on May 27, 1996, and ended on November 23, 1996. The termination letter dated November 25, 1996 was served on respondent Paras only at 3:00 a.m. of November 26, 1996. He was, by then, already a regular employee of the petitioner under Article 281 of the Labor Code.

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[31] Article 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

[32] *Republic v. National Labor Relations Commission*, 318 SCRA 459 (1999).

The Legality of The Dismissal

An employee cannot be dismissed except for just or authorized cause as found in the Labor Code and after due process.[33] The following grounds would justify the dismissal of an employee:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of the employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or of any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.[34]

The basis for which respondent Paras' services were terminated was his alleged unsatisfactory rating arising from poor performance. It is a settled doctrine that the employer has the burden of proving the lawfulness of his employee's dismissal. The validity of the charge must be clearly established in a manner consistent with due process.[35]

Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Gross negligence has been defined to be the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[36] A careful perusal of the

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[33] *Bolinao Security and Investigation Service, Inc. v. Arsenio M. Toston*, G.R. No. 139135, January 29, 2004.

[34] Article 282 of the Labor Code.

[35] *Bolinao Security and Investigation Service, Inc. v. Arsenio M. Toston, supra*.

[36] *Metro Transit Organization, Inc. v. NLRC*, 263 SCRA 313 (1996).

records of this case does not show that respondent Paras was grossly negligent in the performance of his duties.

The company policy provides the following rule in performance evaluation:

> The performance rating sheet must be accomplished by the immediate supervisor, then reviewed by the Department Head, and concurred by the Division Head. The Personnel Manager likewise must note all submitted performance sheets.
>
> Once the rating sheet has gone through this standard procedure, the immediate supervisor shall discuss the results of the performance rating with the employee. The discussion/conference may be done in the presence of the Department Head. This is to emphasize the point that the employee is given due importance especially in matters pertaining to his development as a person and employee.[37]

In the present case, the immediate supervisor of respondent Paras gave him an average performance rating and found him fit for regularization.[38] Thereafter, his immediate supervisor and the department head reviewed the said rating, which was duly noted by the personnel manager. However, in a complete turn around, the petitioner made it appear that after the performance evaluation of respondent Paras was reviewed by the department and division heads, it was unanimously agreed that the respondent's performance rating was unsatisfactory, making him unfit for regularization.

There is no showing that respondent Paras was informed of the basis for the *volte face* of the management group tasked to review his performance rating. His immediate supervisor even told him that he had garnered a satisfactory rating and was qualified for regularization, only to later receive a letter notifying him that his employment was being terminated.

Considering that respondent Paras was not dismissed for a just or authorized cause, his dismissal from employment was

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

[38] *Id*. at 24.

illegal. Furthermore, the petitioner's failure to inform him of any charges against him deprived him of due process. Clearly, the termination of his employment based on his alleged unsatisfactory performance rating was effected merely to cover up and "deodorize" the illegality of his dismissal.

Reinstatement and Backwages

The normal consequences of illegal dismissal are reinstatement without loss of seniority rights and the payment of backwages computed from the time the employee's compensation was withheld from him.[39] Since respondent Paras' dismissal from employment is illegal, he is entitled to reinstatement and to be paid backwages from the time of his dismissal up to the time of his actual reinstatement.

The petitioner asserts that assuming respondent Paras was illegally dismissed, his reinstatement had become moot and academic because of its retrenchment program which was effected beginning February 1998. The petitioner posits that even if respondent Paras had become a regular employee by November 26, 1996, he would have been included in the first phase of its retrenchment program, pursuant to the "last in first out policy" embedded in the CBA. Hence, the petitioner concludes, the payment of backwages should be computed up to February of 1998.

The respondents, for their part, aver that the petitioner is proscribed from alleging new circumstances and allegations of fact, particularly on financial reverses, before the Court of Appeals and the Voluntary Arbitrator.

We do not agree with the respondents.

A cursory examination of the records shows that the petitioner could not raise its retrenchment program as an issue before the VA, because it was implemented only in February 1998, when

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[39] *Tomas Claudio Memorial College, Inc. v. Court of Appeals and Pedro Natividad*, G.R. No. 152568, February 16, 2004; *Procter and Gamble Philippines v. Edgardo Bondesto*, G.R. No. 139847, March 5, 2004.

the case was already in the CA. However, we note that the petitioner did not raise the same in its comment to the petition. The petitioner asserted the matter only in its October 20, 2000 motion for reconsideration of the decision of the CA, where it alleged that the retrenchment program was effected to arrest the continuing business losses resulting from the financial reverses it experienced in 1997.

Nevertheless, it is not denied that because of the petitioner's losses, it retrenched seven hundred (700) employees. Business reverses or losses are recognized by law as an authorized cause for termination of employment. Still, it is an essential requirement that alleged losses in business operations must be proven convincingly. Otherwise, such ground for termination would be susceptible to abuse by scheming employers, who might be merely feigning business losses or reverses in their business ventures to ease out employees.[40] Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing.[41]

In this case, the petitioner submitted in the CA its financial statements for 1996, 1997 and 1998[42] as well as its application for retrenchment. In its Statements of Income and Unappropriated Retained Earning, it was shown that in 1996, the parent company of the petitioner had a net income of ₱467,744,285. In 1997, it had a net loss of ₱29,253,511.[43] In 1998, its net loss, after effecting retrenchment and closing several plants, was arrested

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[40] *J.A.T. General Services and Jesusa Torubu v. National Labor Relations Commission and Jose F. Mascarinas*, G.R. No. 148340, January 26, 2004.

[41] *Ibid*.

[42] Financial Statements were prepared by SyCip Gorres & Velayo Co.

[43] *Rollo*, p. 56.

and dropped to ₱8,156,585.[44] This shows that even after the retrenchment, the petitioner MMPC still suffered net losses.

In 1996, the petitioner's current assets amounted to ₱5,381,743,576; it increased to ₱8,033,932,745[45] in 1997, while in 1998, it was reduced to ₱5,053,874,359.[46] This shows that the petitioner's assets acquired in 1997 diminished in 1998. The figures for Current Liabilities are consistent with the movement of current assets for 1997 and 1998.

In 1996, the petitioner incurred current liabilities of ₱1,966,445,401 which increased to ₱5,088,990,117[47] in 1997 and decreased to ₱2,880,259,811[48] in 1998. To reduce its losses, the petitioner had to dispose of some of its current assets to cover the increased liability incurred in 1997, and had to resort to borrowings in 1998. The continuity of losses which started in 1997 is further illustrated in the figures on retained earnings for 1996, 1997 and 1998. In 1996, retained earnings stood at ₱1,838,098,175,[49] which decreased to ₱994,942,628[50] in 1997 and further decreased to ₱592,614,548[51] in 1998.

The petitioner's losses in 1997 and 1998 are not insignificant. It is beyond cavil then, that the serious and actual business reverses suffered by the petitioner justified its resort to retrenchment of seven hundred (700) of its employees.

The records show that the petitioner informed the Department of Labor and Employment of its plight and intention to retrench employees as a result of the shutdown of its plants.[52] The

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[44] *Id.* at 83.

[45] *Id.* at 55.

[46] *Id.* at 82.

[47] *Id.* at 55.

[48] *Id.* at 82.

[49] *Id.* at 55.

[50] *Supra*.

[51] *Id.* at 82.

[52] *Id.* at 68-69.

termination of the five hundred thirty-one (531) affected employees were made effective a month from receipt of the termination letter mailed on February 25, 1998.[53]

In accordance with the CBA between MMPC and CPLU, employees who were recently hired were the ones retrenched. Considering that respondent Paras had just been regularized on November 24, 1996, he would have been included among those who had been retrenched had he not been dismissed.

The unfavorable financial conditions of the petitioner may not justify reinstatement. However, it is not a sufficient ground to deny backwages to respondent Paras who was illegally dismissed.[54] Considering that notices of retrenchment were mailed on February 25, 1998 and made effective one month therefrom, respondent Paras should be paid full backwages from the date of his illegal dismissal up to March 25, 1998. Pursuant to Article 283 of the Labor Code, he should be paid separation pay equivalent to one (1) month salary, or to at least one-half month pay for every year of service, whichever is higher, a fraction of at least six months to be considered as one (1) year.[55]

IN LIGHT OF ALL THE FOREGOING, the petition is *PARTIALLY GRANTED*. The September 13, 2000 Decision of the Court of Appeals in CA-G.R. SP No. 46030 is hereby *AFFIRMED WITH MODIFICATIONS*. The petitioner is *ORDERED* to pay respondent Nelson Paras separation pay equivalent to one (1) month, or to at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six (6) months to be considered as one year; and to pay full backwages, computed from the time of his dismissal up to March 25, 1998. That portion of the decision of the Court of Appeals directing the reinstatement of the respondent Paras is *DELETED*.

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[53] *Id*. at 70.

[54] *Columbian Rope Co. of the Philippines v. Tacloban Association of Laborers and Employees*, 6 SCRA 424 (1962).

[55] Article 283 of the Labor Code.

No costs.

SO ORDERED.

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

Austria-Martinez, J., on leave.

FIRST DIVISION

[G.R. No. 149833. June 29, 2004]

NOTRE DAME OF GREATER MANILA, *petitioner, vs.* **Hon. BIENVENIDO E. LAGUESMA, (Undersecretary of the Department of Labor and Employment); Med-Arbiter TOMAS FALCONITIN; and NOTRE DAME OF GREATER MANILA TEACHERS AND EMPLOYEES UNION,** *respondents*.

SYNOPSIS

At the instance of private respondent Notre Dame of Greater Manila Teachers & Employees Union (NDGMTEU), respondent Med-Arbiter issued an order granting the petition for certification election and directing the holding of a pre-election conference. Thereafter, petitioner registered a motion to include probationary and substitute employees in the list of qualified voters in the certification election, but the motion was denied by respondent Med-Arbiter by handwritten notation. Petitioner appealed from the said order. The certification election was conducted to which petitioner filed a written notice of protest. Thereafter, private respondent NDGMTEU was certified as the sole and exclusive bargaining agent of all the rank-and-file employees of petitioner. Petitioner's protest was dismissed. Hence this petition.

In denying the petition, the Supreme Court ruled that Article 259 of the labor Code clearly speaks of the order or results of the certification election. Hence, the Article pertains, not just to any of the Med-Arbiter's orders like the subject notation, but, to the order granting the petition for certification election. Not all the orders issued by a Med-Arbiter are appealable. The intention of the law is to limit the grounds for appeal that may stay the holding of a certification election. Thus, the appeal of the Med-Arbiter's handwritten notation pertaining to the incidental matter of the list of voters should not stay the holding of the certification election. Moreover, unless it filed a petition for a certification election pursuant to Article 258 of the Labor Code, the employer has no standing to question the election, which is the sole concern of the workers. The Labor Code states that any party to an election may appeal the decision of the Med-Arbiter. Petitioner was not such a party to the proceedings, but a stranger which had no right to interfere therein.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CERTIFICATION ELECTION; APPEAL FROM CERTIFICATION ELECTION ORDERS, LIMITED TO THE ORDER OR RESULTS OF THE PETITION FOR CERTIFICATION ELECTION.— "Art 259. Appeal from certification election orders. — Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the grounds that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days." xxx Article 259 clearly speaks of the "order xxx of the election." Hence, the Article pertains, not just to any of the med-arbiter's orders like the subject notation, but to the order granting the petition for certification election — in the present case, that which was issued on November 18, 1991.

2. ID.; ID.; ID.; ID.; AN APPEAL OF A MED-ARBITER'S ORDER TO HOLD A CERTIFICATION ELECTION DOES NOT STAY THE HOLDING THEREOF WHERE THE EMPLOYER COMPANY IS AN UNORGANIZED

ESTABLISHMENT AND NO UNION HAS YET BEEN DULY CERTIFIED AS A BARGAINING REPRESENTATIVE; PURPOSE.— Not all the orders issued by a med-arbiter are appealable. In fact, "[i]nterlocutory orders issued by the med-arbiter prior to the grant or denial of the petition, including orders granting motions for intervention issued after an order calling for a certification election, shall not be appealable. However, any issue arising therefrom may be raised in the appeal on the decision granting or denying the petition." The intention of the law is to limit the grounds for appeal that may stay the holding of a certification election. This intent is manifested by the issuance of Department Order No. 40. Under the new rules, an appeal of a med-arbiter's order to hold a certification election will not stay the holding thereof where the employer company is an unorganized establishment, and where no union has yet been duly recognized or certified as a bargaining representative. This new rule, therefore, decreases or limits the appeals that may impede the selection by employees of their bargaining representative. Expediting such selection process advances the primacy of free collective bargaining, in accordance with the State's policy to "promote and emphasize the primacy of free collective bargaining xxx"; and "to ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare."

3. ID.; ID.; ID.; THE EMPLOYER HAS NO STANDING TO QUESTION THE ELECTION WHICH IS THE SOLE CONCERN OF THE WORKERS; EXCEPTION.— [U]nless it filed a petition for a certification election pursuant to Article 258 of the Labor Code, the employer has no standing to question the election, which is the sole concern of the workers. The Labor Code states that *any party to an election* may appeal the decision of the med-arbiter. Petitioner was not such a party to the proceedings, but a stranger which had no right to interfere therein.

APPEARANCES OF COUNSEL

Gaviola Law Offices for petitioner.
The Solicitor General for public respondents.
Estrada & Associates Law Office for private respondents.

D E C I S I O N

PANGANIBAN, *J.*:

Unless it has filed a petition for a certification election pursuant to Article 258 of the Labor Code, an employer has no standing to question such election or to interfere therein. Being the sole concern of the workers, the election must be free from the influence or reach of the company.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the March 31, 2000 Decision[2] and the August 28, 2001 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 51287. The assailed Decision disposed as follows:

"In sum, the Court finds that public respondents did not commit any abuse of discretion in issuing the assailed decision and order. There is no capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction and hence there is no room for the issuance of the equitable writ of *certiorari.*

"*WHEREFORE*, the instant petition is *dismissed*."[4]

The challenged Resolution denied petitioner's Motion for Reconsideration.

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[1] *Rollo,* pp. 3-26.

[2] *Id.*, pp. 27-40. First Division. Penned by Justice Presbitero J. Velasco, Jr., with the concurrence of Justices Salome A. Montoya (presiding justice and Division chair) and Bernardo Ll. Salas (member).

[3] *Id.*, pp. 41-42. Special Former First Division. Penned by Justice Presbitero J. Velasco, Jr., with the concurrence of Justices Buenaventura J. Guerrero (Division chair) and Conrado M. Vasquez, Jr.

[4] Assailed CA Decision, p. 13; *rollo* p. 39.

The Facts

The factual antecedents of the case are summarized by the CA as follows:

"On October 14, 1991, private respondent Notre Dame of Greater Manila Teachers & Employees Union (NDGMTEU for brevity) a legitimate labor organization duly accredited and registered with the Department of Labor & Employment (DOLE) under Registration Certificate No. 9989 filed with the Med-Arbitration Branch, National Capital Region, (DOLE) a petition for direct certification as the sole and exclusive bargaining agent or certification election among the rank and file employees of petitioner NDGM.

> "On November 18, 1991, Med-Arbiter Tomas F. Falconitin issued an order [granting the petition for certification election and] directing Adelayda C. Francisco, Representation Officer, to undertake a pre-election conference. The order reads:
>
> 'Considering the manifestation of petitioner its legal counsel praying that this case be submitted for resolution; and considering further that the respondent failed to appear on November 13, 1991 scheduled hearing despite knowledge of said hearing; and considering furthermore [that] respondent is [an] unorganized establishment within the purview of Art. 257 of the Labor Code, as amended, we rule to grant certification election instead of direct certification as prayed for by petitioner, in order to give each employee a fair chance to choose their bargaining agent.
>
> 'Accordingly, the Representation Officer is hereby directed to conduct the usual pre-election conference in connection thereof, taking into account the following choices:
>
> 1. Notre Dame of Greater Manila Teachers and Employees Union (NDGMTEU); and
>
> 2. No Union.
>
> 'SO ORDERED.'

"On January 8, 1992, a pre-election conference was conducted wherein the parties agreed, among others, that the certification election shall be conducted on January 18, 1992 from 10:00 o'clock in the morning to 2:00 o'clock in the afternoon and that the eligible

voters shall be 'those employees appearing in the list submitted by management as agreed upon by the parties by affixing their signatures on said list.'

"On January 13, 1992, petitioner NDGM registered a motion to include probationary and substitute employees in the list of qualified voters. On the same day, respondent Med-Arbiter Falconitin denied said motion by handwritten notation on the motion itself — '1/13/92 — The Rep. officer allow[s] only regular employees to vote.'

"On January 17, 1992, petitioner NDGM filed an appeal from the said handwritten 'order' dated January 13, 1992 of Med. Arbiter Falconitin in the form of a notation, in effect excluding probationary and substitute employees from the list of voters.

"On January 18, 1992, public respondent conducted a certification election with the following results:

'YES	56
NO	23
Number of segregated Ballots	4
Number of spoiled Ballots	1
Total.....	84'

"On January 18, 1992, petitioner filed a written notice of protest against the conduct and results of the certification of election, which was opposed by private respondent NDGMTEU.

"On January 27, 1992, a motion to certify private respondent NDGMTEU as the exclusive bargaining agent of petitioner was filed.

"On March 16, 1992[,] Med-Arbiter Tomas Falconitin issued an order which certified private respondent NDGMTEU as the sole and exclusive bargaining agent of all the rank-and-file employees of petitioner and accordingly dismissed petitioner's protest.

"On March 30, 1992, petitioner lodged an appeal from the aforementioned March 16, 1992 Order of Med-Arbiter Falconitin.

"On July 23, 1992, respondent then Undersecretary Laguesma rendered the questioned decision dismissing the appeal for lack of merit.

"Petitioner filed a motion for reconsideration of the Decision which was rejected by public respondent in his order dated October 12, 1992.

"Dissatisfied, petitioner NDGM filed the instant petition asseverating on the following issues, viz:

> 'The issuance of the orders dated July 23, 1992 and October 12, 1992 is flagrantly contrary to and violative of the provisions of the Labor Code of the Philippines.
>
> '1.On [o]rdering the [h]olding of the [c]ertification [e]lection on January 18, 1992 despite [p]etitioner's [p]erfected [a]ppeal on January 17, 1992 with the Office of the Secretary of the Department.
>
> '2.On the [a]rbitrary, whimsical and capricious exclusion from the Qualified Voters List [p]robationary and [s]ubstitute [e]mployees, contrary to law and established jurisprudence.'"[5]

Ruling of the Court of Appeals

Ruling in favor of respondents, the appellate court held that Med-Arbiter Falconitin's notation on petitioner's "Motion to Include Probationary and Substitute Employees in the List of Qualified Voters" was not an order that could be the subject of an appeal to the Secretary of the Department of Labor and Employment. Also, petitioner was deemed to have abandoned its appeal of the notation when it filed another one on March 30, 1992, also with the labor secretary. Thus, the CA held that staying the holding of the certification election was unnecessary.

The appellate court added that complaints regarding the conduct of the certification election should have been raised with the registration officer before the close of the proceedings. Moreover, it held that only complaints relevant to the election could be filed. Be that as it may, the pre-election conference was deemed to have already dispensed with the issue regarding the qualification of the voters.

Lastly, the CA ruled that petitioner had no standing to question the qualification of the workers who should be included in the

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[5] *Id*., pp. 2-6 & 28-32.

list of voters because, in the process of choosing their collective bargaining representative, the employer was definitely an intruder.

Hence, this Petition.[6]

The Issues

In its Memorandum, petitioner raises these issues for our consideration:

> "A. Whether or not Hon. Court of Appeals committed grave error in dismissing the petition which petition alleged that Public Respondent Laguesma flagrantly violated the provisions of the Labor Code of the Philippines in the issuance of Orders, dated July 23, 1992 and October 12, 1992[.]
>
> "B. Whether or not the Hon. Court of Appeals committed errors in fact and law[.]"[7]

Simply put, the main issue is whether the holding of the certification election was stayed by petitioner's appeal of the med-arbiter's notation on the Motion to Include the Probationary and Substitute Employees in the List of Qualified Voters.

This Court's Ruling

The Petition has no merit.

Main Issue:
Appeal of Med-Arbiter's Handwritten Denial of the Motion

The solution to the controversy hinges on the correct interpretation of Article 259 of the Labor Code, which provides:

> "Art 259. Appeal from certification election orders. — Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor

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[6] The case was deemed submitted for decision on December 20, 2002, upon this Court's receipt of the Office of the Solicitor General's Memorandum, signed by Assistant Solicitor General Nestor J. Ballacillo and Associate Solicitor Raymond Joseph G. Javier. Petitioner's Memorandum, signed by Attys. A. B. F. Gaviola, Jr. and Marie Josephine C. Suarez, was also received by the Court on December 20, 2002. Private respondent's Memorandum, signed by Atty. Marcos L. Estrada, Jr., was received by the Court on the same date.

[7] Petitioner's Memorandum, p. 8; *rollo*, p. 211. Original in upper case.

and Employment on the grounds that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days."

This provision is supplemented by Section 10 of Rule V of Book Five of the 1992 Omnibus Rules Implementing the Labor Code. Stating that such appeal stays the holding of a certification election, the later provision reads:

"Sec. 10. *Decision of the Secretary final and inappealable.* — The Secretary shall have fifteen (15) calendar days within which to decide the appeal from receipt of the records of the case. The filing of the appeal from the decision of the Med-Arbiter stays the holding of any certification election. The decision of the Secretary shall be final and inappealable."

Petitioner argues that the med-arbiter's January 13, 1992 handwritten notation denying its Motion was the order referred to by Article 259. Hence, petitioner insists that its appeal of the denial should have stayed the holding of the certification election.

Petitioner is mistaken. Article 259 clearly speaks of the "order xxx of the election." Hence, the Article pertains, not just to any of the med-arbiter's orders like the subject notation, but to the order granting the petition for certification election — in the present case, that which was issued on November 18, 1991.[8] This is an unmistakable inference from a reading of Sections 6 and 7 of the implementing rules:

"SEC. 6. *Procedure*. — Upon receipt of a petition, the Regional Director shall assign the case to a Med-Arbiter for appropriate action. The Med-Arbiter, upon receipt of the assigned petition, shall have twenty (20) working days from submission of the case for resolution within which to dismiss or grant the petition. In a petition filed by a legitimate organization involving an unorganized establishment, the *Med-Arbiter shall immediately order the conduct of a certification election.*

"In a petition involving an organized establishment or enterprise where the majority status of the incumbent collective bargaining

[8] *Rollo*, p. 65.

union is questioned through a verified petition by a legitimate labor organization, the *Med-Arbiter shall immediately order the certification election* by secret ballot if the petition is filed . xxx

"xxx xxx xxx." (italics supplied)

"SEC. 7. *Appeal*. — Any aggrieved party may *appeal the order of the Med-Arbiter to the Secretary* on the ground that the rules and regulations or parts thereof established by the Secretary for the conduct of election have been violated.

"xxx xxx xxx." (Italics supplied)

Not all the orders issued by a med-arbiter are appealable. In fact, "[i]nterlocutory orders issued by the med-arbiter prior to the grant or denial of the petition, including orders granting motions for intervention issued after an order calling for a certification election, shall not be appealable. However, any issue arising therefrom may be raised in the appeal on the decision granting or denying the petition."[9]

The intention of the law is to limit the grounds for appeal that may stay the holding of a certification election. This intent is manifested by the issuance of Department Order No. 40.[10] Under the new rules, an appeal of a med-arbiter's order to hold a certification election will not stay the holding thereof where the employer company is an unorganized establishment, and where no union has yet been duly recognized or certified as a bargaining representative.

This new rule, therefore, decreases or limits the appeals that may impede the selection by employees of their bargaining representative. Expediting such selection process advances the primacy of free collective bargaining, in accordance with the State's policy to "promote and emphasize the primacy of free collective bargaining xxx"; and "to ensure the participation of

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[9] Section 12, Rule XI, Book Five of the Omnibus Rules Implementing the Labor Code.

[10] The amendatory rules pertaining to Book Five of the Labor Code. Issued on February 17, 2003.

workers in decision and policy-making processes affecting their rights, duties and welfare."[11]

Consequently, the appeal of the med-arbiter's January 13, 1992 handwritten notation — pertaining to the incidental matter of the list of voters — should not stay the holding of the certification election.

More important, unless it filed a petition for a certification election pursuant to Article 258 of the Labor Code,[12] the employer has no standing to question the election, which is the sole concern of the workers. The Labor Code states that *any party to an election* may appeal the decision of the med-arbiter.[13] Petitioner was not such a party to the proceedings, but a stranger which had no right to interfere therein.

In *Joya v. PCGG*,[14] this Court explained that "'[l]egal standing' means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the xxx act that is being challenged. The term 'interest' is material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Moreover, the interest of the party plaintiff must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party."[15]

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[11] Article 211 A (a) and (g) of the Labor Code.

[12] *Philippine Telegraph & Telephone Corp. v. Laguesma*, 223 SCRA 452, June 17, 1993; *Philippine Scout Veterans Security and Investigation Agency v. Torres*, 224 SCRA 682, July 21, 1993; *R. Transport Corporation v. Laguesma*, 227 SCRA 826, November 16, 1993.

[13] Article 259 of the Labor Code.

[14] 225 SCRA 568, August 24, 1993.

[15] *Id*., p. 576, per Bellosillo, *J*. See also *Hechanova v. Hon. Adil*, 228 Phil. 425, September 25, 1986; *Calderon v. Solicitor General*, 215 SCRA 876, November 25, 1992; *St. Luke's Medical Center, Inc. v. Torres*, 223 SCRA 779, June 29, 1993; *Ortigas & Company Limited Partnership v. Velasco*, 234 SCRA 455, July 25, 1994 and *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

Clearly, petitioner did not and will not sustain direct injury as a result of the non-inclusion of some of its employees in the certification election. Hence, it does not have any material interest in this case. Only the employees themselves, being the real parties-in-interest,[16] may question their removal from the voters' list.

To buttress its *locus standi* to question the certification election, petitioner argues that it has the support of all the excluded employees. This support was made known to the representation officer in a letter stating the employees' desire to participate in the certification election.[17] To lend plausibility to its argument, petitioner cites *Monark International v. Noriel*,[18] *Eastland Manufacturing Company v. Noriel*[19] and *Confederation of Citizens Labor Union v. Noriel*.[20] It argues that in the instances therein, management was allowed to interfere in certification elections.

All these cases, though, state precisely the opposite. True, as unequivocally stated in the law,[21] all employees should be given an opportunity to make known their choice of who shall be their bargaining representative. Such provision, however, does not clothe the employer with the personality to question the certification election. In *Monark International*,[22] in which it was also the employer who questioned some incidents of one such election, the Court held:

"There is another infirmity from which the petition suffers. It was filed by the employer, the adversary in the collective bargaining process. Precisely, the institution of collective bargaining is designed to assure that the other party, labor, is free to choose its representative. To resolve any doubt on the matter, certification election, to repeat, is the most appropriate means of ascertaining its will. It is true that

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[16] Section 2, Rule 3 of the Rules of Court.

[17] Petitioner's Memorandum, p. 21; *rollo*, p. 224.

[18] 83 SCRA 114, May 11, 1978.

[19] 197 Phil. 624, February 10, 1982.

[20] 202 Phil. 249, September 21, 1982.

[21] Article 243 of Title V of Book Five of the Labor Code.

[22] *Supra*.

there may be circumstances where the interest of the employer calls for its being heard on the matter. An obvious instance is where it invokes the obstacle interposed by the contract-bar rule. This case certainly does not fall within the exception. Sound policy dictates that as much as possible, management is to maintain a strictly hands-off policy. For [if] it does not, it may lend itself to the legitimate suspicion that it is partial to one of the contending [choices in the election]."[23]

This Court would be the last agency to support an attempt to interfere with a purely internal affair of labor.[24] The provisions of the Labor Code relating to the conduct of certification elections were enacted precisely for the protection of the right of the employees to determine their own bargaining representative. Employers are strangers to these proceedings. They are forbidden from influencing or hampering the employees' rights under the law. They should not in any way affect, much less stay, the holding of a certification election by the mere convenience of filing an appeal with the labor secretary. To allow them to do so would do violence to the letter and spirit of welfare legislations intended to protect labor and to promote social justice.

WHEREFORE, the Petition is *DENIED*, and the assailed Resolution *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[23] *Id*., p. 118-119, per Fernando, *J.*

[24] *Eastland Manufacturing Company, Inc. v. Noriel, supra.*

EN BANC

[G.R. Nos. 150613-14. June 29, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MANUEL MANTIS,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of two counts of rape for sexually abusing the minor daughter of his common-law spouse. He was sentenced to suffer the penalty of death for each count. Hence, this automatic review of the case.

The Supreme Court sustained the trial court's ruling that appellant's guilt has been established in each case by the prosecution beyond reasonable doubt. The victim has proved that she resisted appellant's advances, but was unsuccessful because the appellant was holding her tightly. The amount of force required in rape cases is relative. It need not be overpowering or irresistible. All that is necessary is that the force employed as an element of the offense be sufficient to consummate the purpose which the accused had in mind.

The intimidation employed by the malefactor in rape must be viewed in the light of the victim's perception and judgment at the time of the offense and not by any hard-and-fast rule or standard. All that is required is that the intimidation be sufficient to produce fear in the victim, a fear that if she does not yield to the brute demands of the appellant, something injurious would happen to her. In this case, appellant exercised moral ascendancy and influence over the victim. In instances of rape committed by a father, or a father's surrogate, his moral ascendancy and influence over the victim sufficiently substitutes for the elements of violence and intimidation.

The Court however held that the death sentence imposed upon appellant by the trial court in each case was erroneous for failure of the prosecution to present in evidence the original copy of the victim's birth certificate to prove her age. Thus, the Court found appellant guilty only of two counts of simple rape and sentenced him to suffer the penalty of *reclusion perpetua* for each count.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AFFIRMATIVE DEFENSES; CONSENSUAL SEXUAL CONGRESS NEEDS CONVINCING PROOF ATTESTING TO THE CONSENSUAL ROMANTIC RELATIONSHIP BETWEEN THE ACCUSED AND THE VICTIM; CASE AT BAR.— Consensual sexual congress as an affirmative defense needs convincing proof such as love notes, mementos, and credible witnesses attesting to the consensual romantic relationship between the offender and his supposed victim. Having admitted to carnal knowledge of the complainant, the burden shifts to the appellant to prove his defense by substantial evidence. In the instant cases, however, we find that other than appellant's preposterous tale, there is no scintilla of evidence whatsoever to support his changed theory based on the victim's alleged consent. Furthermore, even assuming *arguendo*, that there was some form of amorous relationship, such averment will not necessarily rule out the use of force or intimidation by appellant to have sex against her will.

2. CRIMINAL LAW; RAPE; FORCE; NEED NOT BE OVERPOWERING OR IRRESISTIBLE.— The amount of force required in rape cases is relative. It need not be overpowering or irresistible. All that is necessary is that the force employed as an element of the offense be sufficient to consummate the purpose which the accused had in mind.

3. ID.; ID.; INTIMIDATION; WHAT IS REQUIRED IS THAT THE INTIMIDATION BE SUFFICIENT TO PRODUCE FEAR IN THE VICTIM THAT SOMETHING INJURIOUS WOULD HAPPEN TO HER IF SHE DOES NOT YIELD TO THE DEMANDS OF ACCUSED; CASE AT BAR.— The intimidation employed by the malefactor in rape must be viewed in the light of the victim's perception and judgment at the time of the offense and not by any hard-and-fast rule or standard. All that is required is that the intimidation be sufficient to produce fear in the victim, a fear that if she does not yield to the brute demands of the appellant, something injurious would happen to her. This Court has previously observed that victims of tender age are easily intimidated and cowed into silence even by the mildest threat against their lives.

4. ID.; ID.; VIOLENCE AND INTIMIDATION; SUBSTITUTED BY THE MORAL ASCENDANCY AND INFLUENCE OF THE ACCUSED OVER THE VICTIM, IN CASES OF RAPE COMMITTED BY A FATHER OR A FATHER'S SURROGATE; CASE AT BAR.— Appellant himself admits that he had played a father role to Mary Jane since her childhood. Appellant exercised moral ascendancy and influence over her. Well established is the rule, that in instances of rape committed by a father, or a father's surrogate, his moral ascendancy and influence over the victim sufficiently substitutes for the elements of violence and intimidation.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY THE RAPE VICTIM'S DELAY IN REPORTING THE CRIME TO THE AUTHORITIES; CASE AT BAR.— It is not uncommon for a young girl to be intimidated and cowed into silence and conceal for some time the violation of her honor, even by the mildest threat against her life. AAA's testimony is not discredited simply because she failed to immediately report to her mother or the authorities the abuses she suffered in the hands of the appellant. A rape victim cannot, after all, be expected to summon the courage to report a sexual assault committed against her person, where the act was accompanied by a death threat.

6. CRIMINAL LAW; PENALTIES; DEATH PENALTY; IMPOSED IN RAPE OF MINORS WHEN THE AGE OF THE VICTIM IS PROVED BY INDEPENDENT EVIDENCE OTHER THAN THE TESTIMONIES OF PROSECUTION WITNESSES AND THE ABSENCE OF DENIAL BY ACCUSED.— Decisions of this Court relating to the rape of minors invariably state that in order to justify the imposition of the death penalty, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A certified true copy of the certificate of live birth showing the complainant's age or some other authentic document such as a baptismal certificate or a school record has been recognized as competent evidence. A mere photocopy of said certificate, however, does not prove the victim's minority, for said photocopy does not qualify as competent evidence for that purpose.

7. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— [P]ursuant to current jurisprudence, the award of civil indemnity ought to be reduced, in each count, from ₱75,000 to ₱50,000 only. Similarly, the award of moral damages in each count should also be reduced from ₱75,000 to ₱50,000 only. But, in each count, by way of public example in order to protect young children from molestation and abuse by perverse elders, the award to the victim of ₱25,000 as exemplary damages is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

In its judgment[1] dated October 24, 2001, the Regional Trial Court of Guagua, Pampanga, Branch 52, found appellant, Manuel Mantis, guilty beyond reasonable doubt of two counts of rape and sentenced him for each count to suffer the penalty of death and to indemnify the victim, AAA, the sum of ₱75,000 as civil indemnity and ₱75,000 as moral damages.

He was charged in two separate informations, both dated August 25, 1999, by the Office of the Provincial Prosecutor of Pampanga as follows:

(1) *Criminal Case No. G-4788*

That on or about the 3rd day of April, 1999 in the municipality of Floridablanca, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MANUEL MANTIS, did then and there wilfully, unlawfully and feloniously entered (sic) the room of AAA, 12 years old, the daughter of his common-law spouse, and by means of force, threat and

[1] Records, Crim. Case No. G-4788, pp. 99-130.

intimidation, accused succeeded in having carnal knowledge with Mary Jane L. Balbin, against the latter's will.

Contrary to law.[2]

(2) *Criminal Case No. G-4797*

That on or about the 16th day of July 1998 in the municipality of Floridablanca, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MANUEL MANTIS, did then and there wilfully, unlawfully and feloniously entered (sic) the room of AAA, 11 years old, the daughter of his common-law spouse, and by means of force, threat, and intimidation, accused succeeded in having carnal knowledge with AAA, against the latter's will.

Contrary to law.[3]

With the assistance of counsel, he pleaded not guilty to the foregoing charges. The cases were then jointly heard since they involved the same parties and the same evidence.

The evidence for the prosecution established that:

Private complainant AAA was born on September 28, 1986, as shown by her testimony and a photocopy of her birth certificate.[4] She had known the appellant since she was six (6) years of age since he was the common-law husband ("live-in" partner) of her mother, BBB. She had come to consider him as her own father, calling him "Papa."[5] AAA lived with her mother, her siblings, and appellant in a three-bedroom house at xxx, xxx, xxx. At the time of the incident in Criminal Case No. G-4788, she was a first year high school student at xxx High School in xxx, xxx.[6]

AAA testified that in the afternoon of July 16, 1998, she and her godfather, one Antonio Bartolo, brought her mother to the

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[2] *Id.* at 3.

[3] Records, Crim. Case No. G-4797, p. 3.

[4] TSN, 15 December 1999, p. 3; Exh. "C", Folder of Exhibits, p. 3.

[5] *Id.* at 12.

[6] TSN, 19 January 2000, p. 2.

hospital because she was sick.[7] That evening, appellant fetched AAA from the hospital and took her home to xxx, xxx.[8] A certain George Nanquil remained at the hospital to watch over AAA's mother.

Once home, AAA entered her room and was preparing for bed, when suddenly the appellant entered her room. To her surprise, appellant was wearing nothing but a t-shirt.[9] Without further ado, appellant grabbed her and removed her shirt, shorts, and panty. She tried to free herself from his tight embrace, but to no avail. Appellant then inserted his phallus inside her private part, causing her much pain.[10] When she continued to struggle, appellant threatened to kill her and her mother should she report what he was doing to her.[11] Appellant's threat cowed her into submission. Fearful of what she or her mother might suffer in the hands of appellant, AAA endured her ordeal in silence.

In the months that followed, AAA did not breathe a single word to anyone about the harrowing experience she suffered. Not to the authorities or her mother, not to her friends, not to her classmates or teachers.[12] Her fearful silence, however, merely emboldened the appellant into repeating his dastardly act.

During the wee hours of April 3, 1999, while AAA was asleep in her room with her two (2) sisters, appellant again entered her room.[13] AAA was awakened when she felt him lie beside her. She saw that he was wearing nothing but a shirt.[14] Appellant swiftly stripped her of her clothes and proceeded to forcibly

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[7] TSN, 12 January 2000, p. 9.

[8] *Id*. at 10.

[9] *Supra*, note 4, at 6.

[10] *Ibid*.

[11] *Ibid*.

[12] TSN, 19 January 2000, pp. 2-3.

[13] TSN, 15 December 1999, p. 7.

[14] *Id*. at 8.

insert his organ into her vagina.[15] She struggled against the unwanted penile invasion, but her resistance was fruitless as appellant held her very tightly. She did not shout, despite the fact that her mother was in the garage,[16] because she was scared of his threat to kill her and her mother.

Living in fear and shame, AAA would have kept her silence had she not become pregnant. She then divulged to appellant's employer, one Ruben Cabrera, what appellant had done to her.

On July 26, 1999, the victim was examined by Dr. Grace Salinas, medical officer of the Romana Pangan District Hospital in San Jose, Floridablanca, Pampanga. AAA disclosed to Dr. Salinas that appellant had been sexually abusing her since she was seven (7) years old. Dr. Salinas confirmed that she was indeed *enceinte*. Dr. Salinas' findings, as reduced to writing, are as follows:

... ...

3. Last menstrual period = February 3rd week 1999
4. Breast = conical
5. Internal examination = vagina admits one finger with ease, healed hymenal laceration 12, 3, 6, 9 o'clock
6. Obstetric ultrasound (7-22-99)
   Result — a single live fetus in breech presentation at about 20 weeks and 1 day AOG[17]

... ...

Dr. Salinas testified that she could not make a determination as to how many times the victim had been forced to engage in unwanted sexual intercourse, but AAA most likely had a

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[15] *Ibid*.

[16] *Id*. at 7-9.

[17] Exh. "A" and sub-markings, Folder of Exhibits, p. 1.

sexual encounter in February 1999, which resulted in her pregnancy.[18]

After her medical examination, AAA filed a sworn complaint with the police authorities alleging that appellant raped her on July 16, 1998 and on April 3, 1999 as well.[19] She likewise attested that prior to April 3, 1999, the appellant had engaged in forcible sex with her several times, but she could no longer recall the dates of these incidents.

On November 29, 1999, AAA gave birth to a baby girl, whom she named CCC. She identified appellant as the father.[20]

Appellant raised the defenses of denial and alibi to both charges. He testified that he was separated from his legal spouse, a certain Purisima Gamboa, and started living in with the victim's mother, BBB in September 27, 1992.[21] AAA came to live with him and BBB sometime in August 1995.

Appellant contended that he could not have raped the victim on the night of July 16, 1998 because he was at the hospital looking after BBB who was then confined. He claimed that he stayed in the hospital from 8:30 p.m. of July 16, 1998 to 3:00 p.m. of the following day.[22] Hence, he could not have raped AAA in their house at xxx, xxx, xxx, as claimed by her.

As to the second rape charge, appellant insisted that it could not have happened, since on April 3, 1999, he was at Maligaya Subdivision, Pulungmasle, Guagua, Pampanga up to 5:00 p.m.[23] He stayed the night at his employer's office as was his wont and only went home at 6:30 a.m. the following day to have

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[18] TSN, 9 February 2000, pp. 5-6.

[19] Exh. "B", Folder of Exhibits, p. 2.

[20] See Exh. "D", Folder of Exhibits, p. 4.

[21] TSN, 21 June 2000, pp. 2-4; TSN, 19 July 2000, p. 2.

[22] TSN, 21 June 2000, p. 3.

[23] *Id*. at 9.

breakfast.[24] The appellant explained that he and BBB did not spend their nights at the house where AAA was staying, since they regularly slept at the office of his employer, Ruben Cabrera, located some 600 meters away from said house.[25] He insisted that he never slept one single night in the same house where AAA was staying.[26] Instead he allowed Jorge Mercado, Joel Casupanan, and Roderick Manalansan to sleep in the house where AAA stayed, as she and her siblings had no adult companion at nights.[27] He claimed that Casupanan was AAA's boyfriend.[28] He also made much of the fact that their neighbor, one Rico Pinili, was a frequent visitor of AAA's at night. Appellant tried to portray the victim as a loose and unchaste female who could have been made pregnant by any of the men previously mentioned, as any or all of them could have enjoyed her favors.

In open court, he claimed that he had an ax to grind against Casupanan, whom he suspected of having an affair with BBB He testified that a few days after he was incarcerated, BBB started living with Casupanan and that he had previously caught them kissing and embracing in the kitchen of his house.[29]

Further, appellant testified that the rape charges against him were concocted by AAA at her mother's behest following a violent scolding he gave them, which prompted them to leave the house. He insisted that the fact that AAA only complained of the alleged rapes after she became pregnant casts doubt upon the veracity of her testimony.

The trial court found the prosecution's evidence weighty and convincing. It declared appellant guilty as charged. Accordingly, it decreed as follows:

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[24] *Id*. at 11.

[25] *Id*. at 5.

[26] TSN, 19 July 2000, pp. 8-9.

[27] TSN, 21 June 2000, pp. 7-8.

[28] *Id*. at 12-14.

[29] TSN, 19 July 2000, pp. 6-7.

WHEREFORE, this court hereby (a) finds accused Manuel Mantis GUILTY beyond reasonable doubt of the crime of rape as charged in Criminal Case No. 4797 and Criminal Case No. 4788; and (b) sentences the accused as follows:

1. In Criminal Case No. 4797, to suffer the penalty of death and to indemnify AAA the amount of ₱75,000.00 and to pay her the additional sum of ₱75,000.00 for moral damages; and

2. In Criminal Case No. 4788, to suffer the penalty of death and to indemnify AAA the amount of ₱75,000.00 and to pay her the additional sum of ₱75,000.00 for moral damages.

The records of these cases, including the transcript of stenographic notes, are hereby ordered forwarded to the Honorable Supreme Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Republic Act No. 7659.

With costs against the accused.

SO ORDERED.[30]

Hence, this automatic review pursuant to Art. VIII, Sec. 5(2d)[31] of the Constitution and Rule 122, Sec. 3(c) and Sec. 10 of the Rules of Court.[32] Before us, appellant assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

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[30] Records, Crim. Case No. G-4788, pp. 129-130.

[31] *Section 5*. The Supreme Court shall have the following powers:

... ...

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

... ...

(d) All criminal cases in which the penalty impose d is *reclusion perpetua* or higher.

[32] SEC. 3. *How appeal taken —*

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WHEN THE INFORMATION DID NOT STATE WITH SPECIFICITY THE QUALIFYING CIRCUMSTANCES OF AGE AND RELATIONSHIP.[33]

Simply stated, the issues for our resolution concern: (1) the sufficiency of the prosecution's evidence to establish the appellant's guilt beyond reasonable doubt; and (2) assuming that appellant is guilty as charged, the propriety of the penalties imposed upon him.

On the *first issue*, appellant contends that it was error for the trial court to find him guilty of rape committed "by means of force, threat, or intimidation" in Criminal Case No. G-4788 since a perusal of the prosecution's evidence, including the victim's own testimony, would clearly show that there was no use of force on his part, and that the victim did not offer the good faith resistance required by law and jurisprudence against sexual assault. He avers that a closer examination of the private complainant's statements in open court as to what transpired

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(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua* or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

SEC. 10. *Transmission of records in case of death penalty*. — In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment within five (5) days after the fifteenth (15) day following the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic report.

[33] *Rollo*, p. 67.

that evening of April 3, 1999, would clearly show that she never shouted for help when she noticed appellant's presence beside her, notwithstanding that her two sisters were sleeping beside her and her mother was in the garage. Nor did she create any commotion of any sort which could have at least caused her sleeping sisters who were in the same room to wake up or cause her mother to rush to her room and find out what was wrong. Appellant insists that this was unusual, considering that he was unarmed at the time and there is no showing that he covered the victim's mouth to prevent her from shouting. Appellant submits that the foregoing circumstances taken together, far from showing that the sexual act was committed by means of force, instead show that the complaining witness had voluntarily consented to the sexual act.

For the appellee, the Office of the Solicitor General (OSG) counters that the appellant's theory of consensual sex is so preposterous as to strain credulity. The OSG points out that in Criminal Case No. G-4797, the Information charged appellant with ravishing AAA on July 16, 1998, when she was but eleven (11) years old. In other words, appellant was indicted for statutory rape. The Solicitor General stresses that under prevailing law, sexual intercourse with a woman below the age of twelve (12) years is statutory rape and her consent to the intercourse, is conclusively presumed by law to be involuntary, as she is considered to have no will of her own.

Anent Criminal Case No. G-4788, the OSG points out that the evidence on record shows that the victim tried to free herself from the appellant's unwanted clutches, but was unsuccessful as he held her tightly. Nor should she be faulted for her failure to shout, says the OSG. The reason she did not shout is that appellant threatened to kill her and her mother if she shouted.

The Solicitor General submits that in this case, the jurisprudential rule — that the degree of force required in rape cases is relative and need not be overpowering or irresistible — should be applied. All that is necessary to show is that the

force employed was sufficient to consummate the purpose which the accused had in mind. Furthermore, the law does not impose upon the victim the burden of proving resistance.

We find that the appellant's last-ditch arguments to persuade us of his innocence are far from convincing. His defense is without merit.

Appellant's change of theory on appeal cannot exculpate him. In the proceedings below, appellant raised the defense of alibi and denied having any sexual relations with the private complainant. Before us, appellant now admits having carnal knowledge of her but maintains that it was consensual all along. His shift of theory does not, however, aid his cause.

Consensual sexual congress as an affirmative defense needs convincing proof such as love notes, mementos, and credible witnesses attesting to the consensual romantic relationship between the offender and his supposed victim.[34] Having admitted to carnal knowledge of the complainant, the burden shifts to the appellant to prove his defense by substantial evidence.[35] In the instant cases, however, we find that other than appellant's preposterous tale, there is no scintilla of evidence whatsoever to support his changed theory based on the victim's alleged consent. Furthermore, even assuming *arguendo*, that there was some form of amorous relationship, such averment will not necessarily rule out the use of force or intimidation by appellant to have sex against her will.[36]

Appellant's claim that AAA consented to the sex act, without his use of force or intimidation, is not supported by the evidence on record. AAA categorically and forthrightly testified that she

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[34] *People v. Bayron*, G.R. No. 122732, 7 September 1999, 313 SCRA 727, 734.

[35] *People v. Cepeda*, G.R. No. 124832, 1 February 2000, 324 SCRA 290, 297.

[36] *People v. De Lara*, G.R. No. 124703, 27 June 2000, 334 SCRA 414, 424.

resisted appellant's advances, but was unsuccessful because the appellant was holding her tightly. The amount of force required in rape cases is relative. It need not be overpowering or irresistible. All that is necessary is that the force employed as an element of the offense be sufficient to consummate the purpose which the accused had in mind.[37]

The intimidation employed by the malefactor in rape must be viewed in the light of the victim's perception and judgment at the time of the offense and not by any hard-and-fast rule or standard. All that is required is that the intimidation be sufficient to produce fear in the victim, a fear that if she does not yield to the brute demands of the appellant, something injurious would happen to her. This Court has previously observed that victims of tender age are easily intimidated and cowed into silence even by the mildest threat against their lives.[38] Appellant himself admits that he had played a father role to AAA since her childhood. Appellant exercised moral ascendancy and influence over her. Well established is the rule, that in instances of rape committed by a father, or a father's surrogate, his moral ascendancy and influence over the victim sufficiently substitutes for the elements of violence and intimidation.[39]

Appellant casts doubt on AAA's credibility as a witness when she testified that she was raped on July 16, 1998 and on April 3, 1999, basing on the expert opinion of Dr. Salinas that the sexual intercourse which caused AAA's pregnancy must have occurred in February 1999. But for the appellee, the OSG counters that the medical examination of the rape victim, as well as the medical certificate which ensues, is merely corroborative in character and is not an indispensable element for conviction

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[37] *People v. Lo-ar*, G.R. No. 118935, 6 October 1997, 280 SCRA 207, 219-220.

[38] *People v. Clado*, G.R. Nos. 135699-700 & 139103, 19 October 2000, 343 SCRA 729, 740.

[39] *People v. Dulay*, G.R. Nos. 144082-83, 18 April 2002, 381 SCRA 346, 352.

of the rapist. The resulting pregnancy is not an element of rape. In this case, appellant's contention is debunked by AAA's testimony in open court. She testified that appellant raped her not only on the dates stated in the charge sheets, but also on several other occasions. She could not be faulted if she could not recall the precise dates of these incidents, considering her age and the trauma she suffered. Victims certainly do not cherish keeping in their memory an accurate account of the dates, number of times, and the manner in which they were sexually violated.[40]

Appellant contends that the private complainant's delay in reporting the rape in Criminal Case No. G-4797 for a period of one (1) year and six (6) days, and her admission that she only divulged the rapes because she discovered she was pregnant and was ashamed to be pregnant at such a young age, destroyed her credibility. However, the OSG stresses that delay in reporting rape does not undermine the charge if such delay is satisfactorily explained. Here, the delay is explained by the death threats made by the appellant against the victim and her mother. It is not uncommon for a young girl to be intimidated and cowed into silence and conceal for some time the violation of her honor, even by the mildest threat against her life.[41] AAA's testimony is not discredited simply because she failed to immediately report to her mother or the authorities the abuses she suffered in the hands of the appellant. A rape victim cannot, after all, be expected to summon the courage to report a sexual assault committed against her person, where the act was accompanied by a death threat.[42]

It bears stressing that the trial court gave full credence and probative value to the private complainant's testimony, finding that she testified in a straightforward and positive manner when

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[40] *People v. Historillo*, G.R. No. 130408, 16 June 2000, 333 SCRA 615, 623.

[41] *People v. Bea, Jr.*, G.R. No. 109618, 5 May 1999, 306 SCRA 653, 659.

[42] *People v. Satioquia*, G.R. No. 125689, 23 October 2003, p. 7.

she disclosed the details of her ravishment. Appellant has not come up with any justifiable reason for us to overturn the trial court's findings. Thus, we sustain the trial court ruling that appellant's guilt has been proved in each case by the prosecution beyond reasonable doubt.

We agree, however, that the death sentence imposed upon him by the trial court in each case is erroneous and ought to be reduced to *reclusion perpetua*.

In these cases, private complainant testified that she was born on September 28, 1986. Her testimony was supported by a photocopy of her "Certificate of Live Birth" showing that she was born in September 1986. But an examination of the prosecution's exhibits shows that the prosecution has failed to present in evidence the original copy of AAA's birth certificate. Further, there is no showing that the original certificate of birth was lost or destroyed, or was unavailable, without the fault of the prosecution. Decisions of this Court relating to the rape of minors invariably state that in order to justify the imposition of the death penalty, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A certified true copy of the certificate of live birth showing the complainant's age or some other authentic document such as a baptismal certificate or a school record has been recognized as competent evidence.[43] A mere photocopy of said certificate, however, does not prove the victim's minority, for said photocopy does not qualify as competent evidence for that purpose. As repeatedly held by this Court, in a capital case, we are bound by the standards of strict scrutiny, given the gravity of the death sentence and the irreversibility of its execution. Hence, appellant herein could be held liable only for two counts of simple rape and the sentence of death imposed upon him for each count of rape must be reduced to *reclusion perpetua*.

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[43] *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003, p. 19.

Further, pursuant to current jurisprudence, the award of civil indemnity ought to be reduced, in each count, from ₱75,000 to ₱50,000 only. Similarly, the award of moral damages in each count should also be reduced from ₱75,000 to ₱50,000 only. But, in each count, by way of public example in order to protect young children from molestation and abuse by perverse elders, the award to the victim of ₱25,000 as exemplary damages is in order.

WHEREFORE, the decision dated October 24, 2001, of the Regional Trial Court of Guagua, Pampanga, Branch 52, in Criminal Cases Nos. G-4788 and G-4797, finding appellant MANUEL MANTIS *GUILTY* of two counts of rape is hereby *AFFIRMED with MODIFICATION*. The death sentence imposed upon the appellant for each count of rape is hereby reduced to *reclusion perpetua*. Appellant is *DIRECTED* to pay the private complainant, AAA, the amount of ₱50,000.00 as civil indemnity, another ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages for each count of rape. Costs *de oficio*.

SO ORDERED.

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

Vitug, J., on official leave.

Ynares-Santiago and *Austria-Martinez, JJ.,* on leave.

SECOND DIVISION

[G.R. No. 154106. June 29, 2004]

D.M. WENCESLAO and ASSOCIATES, INC., and/or DOMINADOR S. DAYRIT, *petitioners, vs.* **READYCON TRADING AND CONSTRUCTION CORP.,** *respondent.*

SYNOPSIS

Respondent filed a complaint for collection of sum of money against petitioners for the latter's failure to pay within the period agreed upon the balance of the purchase price of the asphalt materials delivered by the former. After posting the required bond, respondent's application for the writ of preliminary attachment was granted. Certain assets of petitioner WENCESLAO were attached, however, the same were released after it posted a counter-bond. Subsequently, the trial court ruled in favor of respondent, which decision was affirmed by the Court of Appeals (CA). Hence, this petition.

In denying the petition, the Supreme Court held that WENCESLAO is liable to pay the unpaid account. Under Article 1582 of the Civil Code, the buyer is obliged to pay the price of the thing sold at the time stipulated in the contract. Both the trial court and the (CA) found that the parties' contract stated that the buyer shall pay the purchase price with twenty percent downpayment and the balance shall be payable within fifteen days. Following the rule on interpretation of contracts, no other evidence shall be admissible other than the original document itself, except when a party puts in issue in his pleadings the failure of the written agreement to express the true intent of the parties. However, to rule on whether the written agreement failed to express the true intent of the parties would entail having the Court to reexamine the facts which cannot be done in a petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.

The Court likewise ruled that respondent was entitled to the issuance of the writ of preliminary attachment. WENCESLAO has to bear its own loss, if any, for its failure to heed the demand of respondent to pay its unpaid account.

However, petitioner Dayrit could not be made personally liable for WENCESLAO's failure to comply with its obligation because he merely acted as representative of the corporation.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; POSTING OF A COUNTER-BOND, NOT TANTAMOUNT TO WAIVER OF RIGHT TO DAMAGES ARISING FROM WRONGFUL ATTACHMENT.— It is to be stressed that the posting of a counter-bond is not tantamount to a waiver of the right to damages arising from a wrongful attachment.

2. CIVIL LAW; DAMAGES; WHEN AWARDED IN CASE OF WRONGFUL ISSUANCE OF WRIT OF PRELIMINARY ATTACHMENT.— [W]e laid no hard and fast rule that bad faith or malice must be proved to recover any form of damages. In *Philippine Commercial & Industrial Bank*, we found bad faith and malice to be present, thereby warranting the award of moral and exemplary damages. But we denied the award of actual damages for want of evidence to show said damages. For the mere existence of malice and bad faith would not *per se* warrant the award of actual or compensatory damages. To grant such damages, sufficient proof thereon is required.

3. ID.; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; NO OTHER EVIDENCE SHALL BE ADMISSIBLE OTHER THAN THE ORIGINAL DOCUMENT ITSELF; EXCEPTION; CASE AT BAR.— Under Article 1582 of the Civil Code, the buyer is obliged to pay the price of the thing sold at the time stipulated in the contract. Both the RTC and the appellate court found that the parties' contract stated that the buyer shall pay the manufacturer the amount of ₱1,178,308.75 in the following manner: 20% downpayment — ₱235,661.75 Balance — payable within fifteen (15) days — ₱942,647.00 Following the rule on interpretation of contracts, no other evidence shall be admissible other than the original document itself, except when a party puts in issue in his pleading the failure of the written agreement to express the true intent of the parties.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR *CERTIORARI* UNDER RULE 45; DOES NOT INCLUDE A REVIEW OF FACTUAL FINDINGS.— [T]o rule on whether the written agreement failed to express the true intent of the parties would entail having this Court reexamine the facts. The findings of the trial court as affirmed by the appellate court on this issue, however, bind us now. For in a petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, this Court may not review the findings of fact all over again.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco Law Offices for petitioners.

Arnold V. Guerrerro for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the decision[1] of the Court of Appeals, dated January 30, 2002, as well as its resolution[2] dated June 20, 2002 in CA-G.R. CV No. 49101, denying petitioners' motion for reconsideration. The appellate court affirmed the decision[3] of the Regional Trial Court of Pasig City, Branch 165, in Civil Case No. 61159, ordering petitioners to pay the sum of ₱1,014,110.45 with interest rate of 12% per annum (compounded annually) from August 9, 1991, the date of filing of the complaint, until fully paid to Readycon Trading and Construction Corp., plus damages.

Petitioner D.M. Wenceslao and Associates, Inc. (WENCESLAO, for brevity) is a domestic corporation, organized

[1] *Rollo*, pp. 25-31. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Romeo A. Brawner, and Rebecca De Guia-Salvador concurring.

[2] *Id*. at 33.

[3] *Id*. at 128-137.

under and existing pursuant to Philippine laws, engaged in the construction business, primarily infrastructure, foundation works, and subdivision development. Its co-petitioner, Dominador Dayrit, is the vice-president of said company.[4] Respondent Readycon Trading and Construction Corporation (READYCON, for brevity) is likewise a corporate entity organized in accordance with Philippine laws. Its primary business is the manufacture and sale of asphalt materials.[5]

The facts of this case are not in dispute.

WENCESLAO had a contract with the Public Estates Authority (PEA) for the improvement of the main expressway in the R-1 Toll Project along the Coastal Road in Parañaque City. To fulfill its obligations to the PEA, WENCESLAO entered into a contract with READYCON on April 16, 1991. READYCON agreed to sell to WENCESLAO asphalt materials valued at ₱1,178,308.75. The contract bore the signature of co-petitioner Dominador Dayrit, as signatory officer for WENCESLAO in this agreement. Under the contract, WENCESLAO was bound to pay respondent a twenty percent (20%) downpayment, or ₱235,661.75, upon delivery of the materials contracted for. The balance of the contract price, amounting to ₱942,647, was to be paid within fifteen (15) days thereof. It was further stipulated by the parties that respondent was to furnish, deliver, lay, roll the asphalt, and if necessary, make the needed corrections on a prepared base at the jobsite.[6]

On April 22, 1991, READYCON delivered the assorted asphalt materials worth ₱1,150,531.75. Accordingly, WENCESLAO paid the downpayment of ₱235,661.75 to READYCON. Thereafter, READYCON performed its obligation to lay and roll the asphalt materials on the jobsite.[7]

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[4] *Id*. at 84.

[5] *Id*. at 25.

[6] *Id*. at 26, 129.

[7] *Id*. at 26, 130. The amount stated is ₱235,661.*00*.

Fifteen (15) days after performance of said work, READYCON demanded that WENCESLAO pay the balance of the contract price. WENCESLAO, however, ignored said demand.

On May 30, 1991, the counsel for READYCON wrote a demand letter to WENCESLAO asking that it make good on the balance it owed. Again, WENCESLAO failed to heed the demand. It did not even bother to reply to the demand letter.[8]

In view of this development, on July 19, 1991, READYCON filed a complaint with the Regional Trial Court of Pasig City for collection of a sum of money and damages, with prayer for writ of preliminary attachment against D.M. Wenceslao and/or Dominador Dayrit, docketed as Civil Case No. 61159. READYCON demanded payment of ₱1,014,110.45 from petitioners herein with ₱914,870.75 as the balance of contract price, as well as payment of ₱99,239.70, representing another unpaid account.[9]

As READYCON timely posted the required bond of ₱1,150,000, its application for the writ of preliminary attachment was granted.

On September 5, 1991, the RTC Sheriff attached certain assets of WENCESLAO, particularly, the following heavy equipments: One (1) asphalt paver, one (1) bulldozer, one (1) dozer and one (1) grader.[10]

On September 16, 1991, WENCESLAO moved for the release of the attached equipments and posted its counter-bond. The trial court granted the motion and directed the RTC Sheriff to return the attached equipments.

On September 25, 1991, the Sheriff released the attached heavy machineries to WENCESLAO.[11]

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[8] *Ibid*.

[9] *Rollo*, pp. 27, 129-130.

[10] *Id.* at 86.

[11] *Id.* at 133.

In the proceedings below, WENCESLAO admitted that it owed READYCON ₱1,014,110.45 indeed. However, it alleged that their contract was not merely one of sale but also of service, namely, that respondent shall lay the asphalt in accordance with the specifications and standards imposed by and acceptable to the government. WENCESLAO also alleged that since the contract did not indicate this condition with respect to the period within which the balance must be paid, the contract failed to reflect the true intention of the parties. [12] It alleged READYCON agreed that the balance in the payments would be settled only after the government had accepted READYCON's work as to its quality in laying the asphalt. By way of counterclaim, WENCESLAO prayed for the payment of damages caused by the filing of READYCON's complaint and the issuance of the writ of attachment despite lack of cause.[13]

On December 26, 1994, the RTC rendered judgment in this wise:

> WHEREFORE, judgment is hereby rendered ordering the defendant D.M. Wenceslao & Associates, Inc. to pay plaintiff as follows:
>
> 1. The amount of ₱1,014,110.45 with interest at the rate of 12% per annum (compounded annually) from August 9, 1991, date of filing of the complaint, until fully paid.
> 2. The amount of ₱35,000.00 as and for attorney's fees and expenses of litigation.
> 3. Costs of suit.
>
> The counterclaim of the defendants is dismissed for lack of merit.[14]

Dissatisfied with the decision, the petitioners appealed to the Court of Appeals. The appellate court, however, affirmed *in toto* the decision of the lower court.[15]

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[12] *Ibid*.

[13] *Ibid*.

[14] *Id.* at 137.

[15] *Id.* at 31.

In denying the appeal, the appellate court found that contrary to WENCESLAO's assertion, malice and bad faith in obtaining a writ of attachment must be proved before a claim for damages on account of wrongful attachment will prosper, citing *Philippine Commercial International Bank v. Intermediate Appellate Court*, 196 SCRA 29 (1991). The CA stressed that the trial court found neither malice nor bad faith relative to the filing of the complaint and the obtaining of the writ of attachment. Also, according to the CA, petitioners did not adduce evidence to show that the attachment caused damage to the cited pieces of heavy equipment.[16]

The appellate court also found that the trial court correctly interpreted the period for payment of the balance. It held that the text of the stipulation that the balance shall be paid within fifteen days is clear and unmistakable. Granting that the sales contract was not merely for supply and delivery but also for service, the balance was already due and demandable when demand was made on May 30, 1991, which was a month after READYCON performed its obligation.[17]

Hence, the instant petition, wherein petitioners raise the following issues:

1. WHETHER OR NOT QUESTIONS OF FACTS ARE RAISED IN THE APPEAL BY *CERTIORARI*;
2. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING RESPONDENT LIABLE FOR COMPENSATORY DAMAGES FOR THE WRONGFUL ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT;
3. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THE OBLIGATION [AS] NOT YET DUE AND DEMANDABLE.[18]

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[16] *Id*. at 29.

[17] *Id*. at 30.

[18] *Id*. at 91.

We find proper for resolution two issues: (1) Is respondent READYCON liable to petitioner WENCESLAO for damages caused by the issuance and enforcement of the writ of preliminary attachment? (2) Was the obligation of WENCESLAO to pay READYCON already due and demandable as of May 30, 1991?

On the first issue, petitioners rely mainly on *Lazatin v. Twano and Castro*, 112 Phil. 733 (1961), reiterated in *MC Engineering v. Court of Appeals*, 380 SCRA 116 (2002). In *Lazatin*, we held that actual or compensatory damages may be recovered for wrongful, though not malicious, attachment. *Lazatin* also held that attorney's fees may be recovered under Article 2208 of the Civil Code.[19] Petitioners contend that *Lazatin* applies in the instant case because the wrongful attachment of WENCESLAO's equipment resulted in a paralysis of its operations, causing it to sustain a loss of ₱100,000 per day in terms of accomplishment of work. Since the attachment lasted 19 days it suffered a total loss of ₱1.9 million. Aside from that, it had to spend ₱50,000 on the pullout of the equipment and another ₱100,000 to repair and restore them to their former working condition.[20]

Respondent counters that inasmuch as a preliminary attachment is an available ancillary remedy under the rules, a penalty cannot be meted out for the enforcement of a right, such as in this case when it sought such relief. It stresses that the writ was legally issued by the RTC, upon a finding that READYCON sought the relief without malice or bad faith. Furthermore, WENCESLAO failed to show concrete and credible proof of the damages it suffered. The issuance of a writ and its enforcement entail a rigorous process where the court found that it was not

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[19] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

... ...

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

... ...

[20] *Rollo*, p. 93.

attended by malice or bad faith. It cites *Mindanao Savings and Loan Association v. Court of Appeals*, 172 SCRA 480 (1989), to the effect where a counter-bond is filed, the right to question the irregularity and propriety of the writ of attachment must be deemed waived since the ground for the issuance of the writ forms the core of the complaint.[21]

We find for the respondent on this issue. However, its reliance upon *Mindanao Savings and Loan Association* is misplaced.

It is to be stressed that the posting of a counter-bond is not tantamount to a waiver of the right to damages arising from a wrongful attachment. This we have made clear in previous cases, *e.g.*, *Calderon v. Intermediate Appellate Court*,[22] where we ruled that:

> Whether the attachment was discharged by either of the two (2) ways indicated in the law, *i.e.*, by filing a counterbond or by showing that the order of attachment was improperly or irregularly issued, the liability of the surety on the attachment bond subsists because the final reckoning is when "the Court shall finally adjudge that the attaching creditor was not entitled" to the issuance of the attachment writ in the first place. The attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment writ, instead of the other. Moreover, the filing of a counterbond is a speedier way of discharging the attachment writ maliciously sought out by the attaching party creditor instead of the other way, which in most instances like in the present case, would require presentation of evidence in a fullblown trial on the merits and cannot easily be settled in a pending incident of the case.[23]

The point in *Mindanao Savings*, alluded to by respondent, pertained to the propriety of questioning the writ of attachment by filing a motion to quash said writ, after a counter-bond had been posted by the movant. But nowhere in *Mindanao Savings* did we rule that filing a counter-bond is tantamount to a waiver

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[21] *Id.* at 119-125.

[22] Nos. L-74696 & L-73916, 11 November 1987, 155 SCRA 531.

[23] *Id.* at 540-541.

of the right to seek damages on account of the impropriety or illegality of the writ.

We note that the appellate court, citing *Philippine Commercial & Industrial Bank,* 196 SCRA 29 (1991), stressed that bad faith or malice must first be proven as a condition *sine qua non* to the award of damages. The appellate court appears to have misread our ruling, for pertinently what this Court stated was as follows:

> The silence of the decision in G.R. No. 55381 on whether there was bad faith or malice on the part of the petitioner in securing the writ of attachment does not mean the absence thereof. Only the legality of the issuance of the writ of attachment was brought in issue in that case. Hence, this Court ruled on that issue without a pronouncement that procurement of the writ was attended by bad faith. Proof of bad faith or malice in obtaining a writ of attachment need be proved only in the claim for damages on account of the issuance of the writ. We affirm the finding of the respondent appellate court that malice and bad faith attended the application by PCIB of a writ of attachment.[24]

Plainly, we laid no hard and fast rule that bad faith or malice must be proved to recover any form of damages. In *Philippine Commercial & Industrial Bank,* we found bad faith and malice to be present, thereby warranting the award of moral and exemplary damages. But we denied the award of actual damages for want of evidence to show said damages. For the mere existence of malice and bad faith would not *per se* warrant the award of actual or compensatory damages. To grant such damages, sufficient proof thereon is required.

Petitioners cite *Lazatin* and *MC Engineering* insofar as proof of bad faith and malice as prerequisite to the claim of actual damages is dispensed with. Otherwise stated, in the present case, proof of malice and bad faith are unnecessary because, just like in *Lazatin* and *MC Engineering*, what is involved here is the issue of actual and compensatory damages. Nonetheless,

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[24] *Philippine Commercial International Bank v. IAC,* G.R. No. 73610, 19 April 1991, 196 SCRA 29, 36.

we find that petitioner is not entitled to an award of actual or compensatory damages. Unlike *Lazatin* and *MC Engineering*, wherein the respective complaints were dismissed for being unmeritorious, the writs of attachment were found to be wrongfully issued, in the present case, both the trial and the appellate courts held that the complaint had merit. Stated differently, the two courts found READYCON entitled to a writ of preliminary attachment as a provisional remedy by which the property of the defendant is taken into custody of the law as a security for the satisfaction of any judgment which the plaintiff may recover.[25]

Rule 57, Section 4 of the 1997 Rules of Civil Procedure states that:

> SEC. 4. *Condition of applicant's bond.* — The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, *if the court shall finally adjudge that the applicant was not entitled thereto* (italics for emphasis).

In this case, both the RTC and the Court of Appeals found no reason to rule that READYCON was not entitled to issuance of the writ. Neither do we find now that the writ is improper or illegal. If WENCESLAO suffered damages as a result, it is merely because it did not heed the demand letter of the respondent in the first place. WENCESLAO could have averted such damage if it immediately filed a counter-bond or a deposit in order to lift the writ at once. It did not, and must bear its own loss, if any, on that account.

On the *second issue*, WENCESLAO admits that it indeed owed READYCON the amount being claimed by the latter. However, it contends that while the contract provided that the balance was payable within fifteen (15) days, said agreement did not specify when the period begins to run. Therefore, according to petitioner, the appellate court erred when it held the contract

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[25] SEC. 1, Rule 57, 1997 Revised Rules of Civil Procedure.

clear enough to be understood on its face. WENCESLAO insists that the balance of the purchase price was payable only "upon acceptance of the work by the government." In other words, the real intent of the parties was that it shall be due and demandable only fifteen days after acceptance by the government of the work. This is common practice, according to petitioner.

Respondent argues that the stipulation in the sales contract is very clear that it should be paid within fifteen (15) days without any qualifications and conditions. When the terms of a contract are clear and readily understandable, there is no room for construction. Even so, the contention was mooted and rendered academic when, a few days after institution of the complaint, the government accepted the work but WENCESLAO still failed to pay respondent.

Under Article 1582 of the Civil Code, the buyer is obliged to pay the price of the thing sold at the time stipulated in the contract. Both the RTC and the appellate court found that the parties' contract stated that the buyer shall pay the manufacturer the amount of ₱1,178,308.75 in the following manner:

20% downpayment — ₱235,661.75

Balance — payable within fifteen (15) days — ₱942,647.00

Following the rule on interpretation of contracts, no other evidence shall be admissible other than the original document itself,[26] except when a party puts in issue in his pleading the

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[26] Rule 130, SEC. 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact

failure of the written agreement to express the true intent of the parties.[27] This was what the petitioners wanted done.

However, to rule on whether the written agreement failed to express the true intent of the parties would entail having this Court reexamine the facts. The findings of the trial court as affirmed by the appellate court on this issue, however, bind us now. For in a petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, this Court may not review the findings of fact all over again. Suffice it to say, however, that the findings by the RTC, then affirmed by the CA, that the extra condition being insisted upon by the petitioners is not found in the sales contract between the parties. Hence it cannot be used to qualify the reckoning of the period for payment. Besides, telling against petitioner WENCESLAO is its failure still to pay the unpaid account, despite the fact of the work's acceptance by the government already.

With submissions of the parties carefully considered, we find no reason to warrant a reversal of the decisions of the lower courts. But since Dominador Dayrit merely acted as representative of D.M. Wenceslao and Associates, Inc., in signing the contract,

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sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[27] Rule 130, SEC. 9. *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

he could not be made personally liable for the corporation's failure to comply with its obligation thereunder. Petitioner WENCESLAO is properly held liable to pay respondent the sum of ₱1,014,110.45 with interest rate of 12% per annum (compounded annually) from August 9, 1991, the date of filing of the complaint, until fully paid, plus damages.

WHEREFORE, the petition is *DENIED*. The assailed decision and resolution of the Court of Appeals in CA-G.R. CV No. 49101, affirming the judgment of the Regional Trial Court of Pasig City, Branch 165, in Civil Case No. 61159, are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

Austria-Martinez, J., on leave.

SECOND DIVISION

[G.R. No. 156104. June 29, 2004]

R.P. DINGLASAN CONSTRUCTION, INC., *petitioner, vs.* **MARIANO ATIENZA and SANTIAGO ASI,** *respondents.*

SYNOPSIS

Private respondents served as petitioner's janitors assigned with Pilipinas Refinery Shell Corporation. Subsequently, petitioner offered to reassign private respondents to another company but with no guaranteed working hours and payment of only the minimum wage. Private respondents refused as the offer would be a form of demotion. Petitioner dismissed private respondents on the ground of abandonment of work. Consequently, private respondents charged petitioner with

illegal dismissal. The labor arbiter rendered a decision finding that private respondents were illegally dismissed from the service, which decision was affirmed by the National Labor Relations Commission (NLRC). Petitioner filed a petition for *certiorari* before the Court of Appeals (CA) which dismissed the same. Petitioner's motion for reconsideration was denied. Hence, this petition.

In dismissing the petition, the Supreme Court ruled that private respondents did not abandon their work. Petitioner failed to establish the requisites for abandonment of work, to wit: (1) the employee must have failed to report for work or must have been absent without justifiable reason; and 2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by overt acts.

Private respondents were constructively dismissed by petitioner. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank and diminution of pay. In the case at bar, petitioner committed constructive dismissal when it offered to reassign private respondents to another company but with no guaranteed working hours and payment of only the minimum wage. The terms of the redeployment thus became unacceptable for private respondents and foreclosed any choice but to reject petitioner's offer, involving as it does a demotion in status and diminution in pay.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MOTION FOR RECONSIDERATION OF THE DECISION OF THE NLRC, NECESSARY BEFORE AN APPEAL MAY BE ALLOWED; RIGID APPLICATION OF TECHNICAL RULES OF PROCEDURE, NOT ENCOURAGED; CASE AT BAR.— [T]he well-established rule is that a motion for reconsideration of the decision of the NLRC is necessary before an appeal may be allowed. The rule on exhaustion of administrative remedies intends to afford the tribunal or agency the first opportunity to rectify the errors it may have committed before resort to courts of justice can be had. Nonetheless,

strict and rigid application of technical rules of procedure, *without regard to the merits of the case*, is not encouraged as it will only frustrate rather than promote substantial justice. Rules of procedure should be viewed as tools designed to facilitate the dispensation of justice. In the case at bar, however, we note that *the Decision of the Court of Appeals dismissing petitioner's appeal was not grounded solely on a procedural lapse, i.e.,* failure of the petitioner to move for a reconsideration of the NLRC Decision. The records clearly show that after ruling against petitioner on this procedural issue, the Court of Appeals proceeded to discuss the substantive aspect of the case, *i.e.*, whether petitioner validly dismissed private respondents due to abandonment of work. Hence, it is not accurate to state that the Court of Appeals dismissed the petition *solely* on the basis of a strict application of technical rules.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; IN AN ILLEGAL DISMISSAL CASE, THE *ONUS PROBANDI* RESTS ON THE EMPLOYER TO PROVE THAT ITS DISMISSAL OF AN EMPLOYEE IS FOR A VALID CAUSE.— In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee is for a valid cause. In the case at bar, petitioner failed to discharge its burden. It failed to establish that private respondents deliberately and unjustifiably refused to resume their employment without any intention of returning to work.

3. ID.; ID.; ABANDONMENT OF WORK; REQUISITES.— To constitute abandonment of work, two (2) requisites must concur: first, the employee must have failed to report for work or must have been absent without justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by overt acts. Abandonment as a just ground for dismissal requires deliberate, unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, after notice to return, is not enough to amount to abandonment.

4. ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, DEFINED; CASE AT BAR.— Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable

or unlikely as the offer of employment involves a demotion in rank and diminution of pay. In the case at bar, petitioner committed constructive dismissal when it offered to reassign private respondents to another company but with no guaranteed working hours and payment of only the minimum wage. The terms of the redeployment thus became unacceptable for private respondents and foreclosed any choice but to reject petitioner's offer, involving as it does a demotion in status and diminution in pay. Thereafter, for six (6) months, private respondents were in a floating status. Interestingly, it was only after private respondents filed a complaint with the DOLE that petitioner backtracked in its position and offered to reinstate private respondents to their former job in Shell Corporation with no diminution in salary. Eventually, however, petitioner unilaterally withdrew its offer of reinstatement, refused to meet with the private respondents and instead decided to dismiss them from service.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED IN THE COURT *A QUO* CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— *The settled rule is that issues not raised or ventilated in the court* ***a quo*** *cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play and justice. The computation of monetary award granted to private respondents is a factual issue that should have been posed at the arbitration level when the award was first granted by the labor arbiter who received and evaluated the evidence of both parties, or, at the latest, raised by petitioner in its appeal with the NLRC.*

APPEARANCES OF COUNSEL

Amorado Moraleja and Arcinas for petitioner.
Castor Cepillo-Gonzales & Associates for respondents.

D E C I S I O N

PUNO, *J.*:

This is an appeal from the decision[1] and resolution[2] of the Court of Appeals, dated January 17, 2001 and October 30, 2002, respectively, upholding the finding of constructive dismissal against petitioner.

Petitioner R.P. Dinglasan Construction, Inc. provided janitorial services to Pilipinas Shell Refinery Corporation (Shell Corporation) in Batangas City. Private respondents Mariano Atienza and Santiago Asi served as petitioner's janitors assigned with Shell Corporation since 1962 and 1973, respectively.

Private respondents claim that on July 7, 1994, petitioner called for a meeting and informed private respondents and three (3) other employees that their employment with Shell Corporation would be terminated effective July 15, 1994. They were told that petitioner lost the bidding for janitorial services with Shell. Petitioner notified respondents that they may reapply as helpers and redeployed in other companies where petitioner had subsisting contracts but they would receive only a minimum wage. Private respondents refused as the offer would be a form of demotion — they would lose their seniority status and would not be guaranteed to work at regular hours.

In December 1994, private respondents filed a complaint against petitioner for non-payment of salary with the district office of the Department of Labor and Employment (DOLE) in Batangas City. In February 1995, during the conciliation proceedings with the DOLE, petitioner sent notices to respondents informing them that they would be reinstated with Shell Corporation as soon as they submit their *barangay* clearance, medical certificate, picture and information sheet as per the

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[1] Penned by then Associate Justice Presbitero J. Velasco, Jr., and concurred in by Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr.; *Rollo* at 28-36.

[2] *Id*. at 37.

new identification badge requirements of Shell Corporation. Thereafter, petitioner again met with private respondents, who were then accompanied by the *barangay* captain and a councilor, and the latter confirmed to the former their willingness to be reinstated. Private respondents duly submitted the documents required for their reinstatement.

In May 1995, respondents demanded the payment of their backwages starting from July 15, 1994. On June 1, 1995, petitioner notified private respondents that they have been declared absent without leave (AWOL) as they allegedly failed to signify their intention to return to work and submit the badge requirements for their reinstatement. On June 13, 1995, private respondents wrote petitioner and insisted that they had complied with the badge requirements. Accompanied by the *barangay* officials, private respondents attempted to meet with the officers of petitioner but the latter refused to dialogue with them. As proof of their compliance with the Shell requirements, private respondents submitted to the DOLE their x-ray results, dated May 17 and 19, 1995 and their *barangay* certification, dated May 13, 1995.

The case was eventually referred to the National Labor Relations Commission (NLRC) for compulsory arbitration. Private respondents amended their complaint charging petitioner with illegal dismissal and non-payment of 13th month pay, with a claim for payment of attorney's fees and litigation expenses, and a prayer for reinstatement with payment of full backwages from July 15, 1994.

Petitioner gave a different version of the incident. It allegedly informed respondents and the other affected employees that they would be deployed to petitioner's other principal companies but that their work would be different. Except for private respondents, all the affected employees accepted its offer of redeployment and reported back to work. Respondents failed to submit a resignation letter to signify their intention not to return to work.

Thereafter, during the pendency of the labor case, petitioner in two (2) separate notices,[3] informed private respondents that they could be reinstated at Shell Corporation with no diminution in their salary provided that they submit the documents for the new identification badge requirement of Shell Corporation. Private respondents, however, refused to return to work until they were paid their backwages. Consequently, petitioner was constrained to consider them as having abandoned their work and to terminate their employment on September 19, 1995. Petitioner, thus, justified the dismissal of private respondents on the grounds of gross and habitual neglect of duties and abandonment of work.

On September 3, 1998, labor arbiter Andres Zavalla rendered a decision[4] finding that private respondents were illegally dismissed from service and ordering their reinstatement. The dispositive portion reads:

WHEREFORE, premises considered, the following orders are hereby entered:

1. declaring that the complainants were illegally dismissed from their employment;

2. ordering the respondent to pay complainants the aggregate amount of ₱755,942.15 representing their full backwages and benefits from July 15, 1994 up to the promulgation of this decision; separation pay in lieu of reinstatement; 13th month pay for 1994 and attorney's fees equivalent to 10% of the total monetary award due complainants, broken down as follows:

Mariano Atienza	—	₱366,594.67
Santiago Asi	—	₱320,625.50
Attorney's fees	—	₱ 68,722.02

3. dismissing the claims for litigation expenses for lack of basis.

SO ORDERED.

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[3] Dated February 18 and April 17, 1995; Annexes "G" and "H" of Petition; *Rollo* at 50-51.

[4] *Id*. at 54-68.

On appeal, the decision of the labor arbiter was affirmed by the NLRC.[5] Without moving for reconsideration, petitioner immediately filed a petition for certiorari before the Court of Appeals but petitioner suffered the same fate. On the procedural aspect, the Court of Appeals ruled that the petition could not prosper as petitioner failed to move for a reconsideration of the NLRC decision. On the substantive issues, the appellate court upheld the findings of the labor arbiter and the NLRC that: (1) private respondents were constructively dismissed as petitioner's offer of reassignment involved a diminution in pay and demotion in rank that made their continued employment unacceptable; and, (2) private respondents could not be considered to have abandoned their work.[6]

As petitioner's motion for reconsideration was denied,[7] petitioner filed this appeal and assigned the following errors:

I

THE COURT OF APPEALS, CONTRARY TO APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT, ERRED IN RULING THAT A MOTION FOR RECONSIDERATION OF THE DECISION OF THE NLRC IS A CONDITION *SINE QUA NON* TO THE INSTITUTION OF A SPECIAL CIVIL ACTION OF (sic) *CERTIORARI*, AS THE INSTANT CASE FALLS UNDER THE EXCEPTIONS.

II

THE COURT OF APPEALS, CONTRARY TO EXISTING LAW, ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* AND AFFIRMING THE DECISION OF THE NLRC INSOFAR AS THE MONETARY AWARD IS CONCERNED.

We find no merit in the petition.

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[5] Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes Javier and Commissioner Tito F. Genilo; *Id*. at 70-78.

[6] Promulgated on March 9, 2001, penned by then Associate Justice Presbitero J. Velasco, Jr. and concurred in by Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr.; *Id*. at 28-36.

[7] Resolution, dated October 30, 2002; *Id*. at 37.

On the first issue, petitioner faults the Court of Appeals for dismissing its appeal for its failure to move for a reconsideration of the NLRC Decision. Petitioner contends that its filing would have been purely *pro forma* and a clear exercise in futility as the issues of illegal dismissal and abandonment heard and passed upon by the NLRC were the same issues it brought on appeal to the Court of Appeals.

Indeed, the well-established rule is that a motion for reconsideration of the decision of the NLRC is necessary before an appeal may be allowed.[8] The rule on exhaustion of administrative remedies intends to afford the tribunal or agency the first opportunity to rectify the errors it may have committed before resort to courts of justice can be had.[9] Nonetheless, strict and rigid application of technical rules of procedure, *without regard to the merits of the case*, is not encouraged as it will only frustrate rather than promote substantial justice. Rules of procedure should be viewed as tools designed to facilitate the dispensation of justice.[10]

In the case at bar, however, we note that *the Decision of the Court of Appeals dismissing petitioner's appeal was not grounded solely on a procedural lapse, i.e.,* failure of the petitioner to move for a reconsideration of the NLRC Decision. The records clearly show that after ruling against petitioner on this procedural issue, the Court of Appeals proceeded to discuss the substantive aspect of the case, *i.e.,* whether petitioner validly dismissed private respondents due to abandonment of work. Hence, it is not accurate to state that the Court of Appeals dismissed the petition *solely* on the basis of a strict application of technical rules.

We now resolve the substantive issue.

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[8] *Seagull Shipmanagement & Transport, Inc. vs. NLRC,* 333 SCRA 236 (2000).

[9] *Biogenerics Marketing vs. NLRC,* 313 SCRA 748 (1999).

[10] *Silverio vs. Court of Appeals*, G.R. No. 143395, July 24, 2003.

Petitioner justifies its dismissal of private respondents on the ground that they failed to report back to the office and thus abandoned their work. This allegation, however, is not supported by the evidence.

In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee is for a valid cause.[11] In the case at bar, petitioner failed to discharge its burden. It failed to establish that private respondents deliberately and unjustifiably refused to resume their employment without any intention of returning to work.

To constitute abandonment of work, two (2) requisites must concur: first, the employee must have failed to report for work or must have been absent without justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by overt acts.[12] Abandonment as a just ground for dismissal requires deliberate, unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, after notice to return, is not enough to amount to abandonment.[13]

In the case at bar, the *evidence of private respondents negates petitioner's theory that they abandoned their work*. Firstly, private respondents reported back to petitioner's office a number of times expressing their desire to continue working for petitioner without demotion in rank or diminution of salary. This fact was established by the corroborating testimony of *barangay councilman Valentin Clerigo who, together with the barangay captain, accompanied private respondents to petitioner's office at least ten (10) times to negotiate their redeployment on more acceptable terms*. Secondly, in seeking reinstatement, private respondents also sought the intervention of the DOLE to arbitrate the labor issue between the parties. Thirdly, private respondents

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[11] *Columbus Phils. Bus Corporation vs. National Labor Relations Commission*, 364 SCRA 606 (2001).

[12] *Security and Credit Investigation, Inc. vs. National Labor Relations Commission*, 350 SCRA 357 (2001).

[13] *Columbus Phils. Bus Corporation vs. NLRC*, 364 SCRA 606 (2001).

submitted the *barangay* clearances and x-ray results required from them by petitioner for their reinstatement as witnessed by the *barangay* officials. Lastly, the records would bear that private respondents lost no time and sought their reinstatement by filing an illegal dismissal case against petitioner, which act is clearly inconsistent with a desire to sever employer-employee relations and abandon their work. All these overt acts on the part of private respondents negate petitioner's claim of abandonment of work and prove beyond doubt their steadfast desire to continue their employment with petitioner and be reinstated to their former position. Moreover, petitioner failed to explain why it waited for 14 months from the time private respondents allegedly did not return to work before it dismissed them for being AWOL.

We hold that private respondents were constructively dismissed by petitioner. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank and diminution of pay.[14] In the case at bar, petitioner committed constructive dismissal when it offered to reassign private respondents to another company but with no guaranteed working hours and payment of only the minimum wage. The terms of the redeployment thus became unacceptable for private respondents and foreclosed any choice but to reject petitioner's offer, involving as it does a demotion in status and diminution in pay. Thereafter, for six (6) months, private respondents were in a floating status. Interestingly, it was only after private respondents filed a complaint with the DOLE that petitioner backtracked in its position and offered to reinstate private respondents to their former job in Shell Corporation with no diminution in salary. Eventually, however, petitioner unilaterally withdrew its offer of reinstatement, refused to meet with the private respondents and instead decided to dismiss them from service.

On the second issue, petitioner cannot impugn *for the first time* the computation of the monetary award granted by the

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[14] *Jo Cinema Corporation vs. Abellana*, 360 SCRA 142 (2001).

labor arbiter to private respondents. *The settled rule is that issues not raised or ventilated in the court* ***a quo*** *cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play and justice.*[15] *The computation of monetary award granted to private respondents is a factual issue that should have been posed at the arbitration level when the award was first granted by the labor arbiter who received and evaluated the evidence of both parties, or, at the latest, raised by petitioner in its appeal with the NLRC.* Petitioner omitted to do any of these. All throughout the proceedings below, from the labor arbiter to the NLRC, and even in its petition before the Court of Appeals, petitioner repeatedly pounded only on the sole issue of the validity of its dismissal of private respondents. Thus, at this late stage of the proceedings, it cannot ask the Court to review the bases and verify the correctness of the labor arbiter's computation of the monetary award which it never assailed below. A first-hand evaluation of the evidence of the parties upon which the monetary award is based belongs to the labor arbiter. This Court is not a trier of facts and factual issues are improper in a petition for review on certiorari.[16] Likewise, the Court notes that *in seeking reinstatement and payment of their monetary claims, private respondents have traversed a long and difficult path*. This case has passed the DOLE, the labor arbiter, the NLRC, the Court of Appeals and now this Court, with the finding of illegal dismissal having been consistently affirmed in each stage. Private respondents had been rendering janitorial services as early as 1962 and, at the time of their dismissal, were receiving a measly ₱4,000.00 monthly salary. It is time to put a period to private respondents' travail. If there is anything that frustrates the search for justice by the poor, it is the endless search for it.

IN VIEW WHEREOF, the petition is *DISMISSED* and the impugned decision and resolution of the Court of Appeals, dated

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[15] *Tinio vs. Manzano*, 307 SCRA 460 (1999); *Manalili vs. Court of Appeals*, 280 SCRA 372 (1989); *Ruby International Corporation vs. Court of Appeals*, 284 SCRA 445 (1998).

[16] Section 1, Rule 45, Revised Rules of Court.

January 17, 2001 and October 30, 2002, respectively, are *AFFIRMED in toto*. No pronouncement as to costs.

SO ORDERED.

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

Austria-Martinez, J., on leave.

FIRST DIVISION

[G.R. No. 160039. June 29, 2004]

RAYMUNDO ODANI SECOSA, EL BUENASENSO SY and DASSAD WAREHOUSING and PORT SERVICES, INCORPORATED, *petitioners, vs.* **HEIRS OF ERWIN SUAREZ FRANCISCO,** *respondents*.

SYNOPSIS

Respondents filed an action for damages against petitioners for the death of Erwin Suarez Francisco, after petitioner Secosa, while driving a cargo track owned by petitioner Dassad Warehousing and Port Services, Inc., bumped the motorcycle driven by Francisco. The trial court rendered a decision in favor of respondents. On appeal, the Court of Appeals affirmed the assailed decision. Hence, this petition.

When an injury is caused by the negligence of an employee, there instantly arises a presumption that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to evade solidary liability for quasi-delict committed by an employee, the employer must

adduce sufficient proof that it exercised such degree of care. In the case at bar, petitioner Dassad Warehousing and Port Services, Inc. failed to conclusively prove that it had exercised the requisite diligence of a good father of a family in the selection and supervision of its employees. However, petitioner Sy cannot be held solidarily liable with his co-petitioners because while he is the president of the corporation, such fact is not by itself sufficient to hold him solidarily liable for the liabilities adjudged against his co-petitioners. There was no evidence tending to show the presence of any of the grounds that will justify the piercing of the veil of corporate fiction such as to hold the president of the corporation solidarily liable with it. The Court affirmed the damages awarded by the court *a quo* to the respondents.

SYLLABUS

1. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; *QUASI-DELICT;* EXERCISE OF CARE AND DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF EMPLOYEES; MUST BE SUFFICIENTLY PROVED BY EMPLOYER TO EVADE SOLIDARY LIABILITY FOR *QUASI-DELICT* COMMITTED BY HIS EMPLOYEE.— [W]hen an injury is caused by the negligence of an employee, there instantly arises a presumption that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to evade solidary liability for quasi-delict committed by an employee, the employer must adduce sufficient proof that it exercised such degree of care.

2. ID.; ID.; ID.; ID.; MUST BE PROVED BY TESTIMONIAL EVIDENCE SUPPORTED BY DOCUMENTARY EVIDENCE.— [T]he employer must not merely present testimonial evidence to prove that he observed the diligence of a good father of a family in the selection and supervision of his employee, but he must also support such testimonial evidence with concrete or documentary evidence. The reason for this is to obviate the biased nature of the employer's testimony or that of his witnesses.

3. COMMERCIAL LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATION; HAS A PERSONALITY SEPARATE FROM THAT OF ITS STOCKHOLDERS OR MEMBERS.— It is a settled precept in this jurisdiction that a corporation is invested by law with a personality separate from that of its stockholders or members. It has a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not in itself sufficient ground for disregarding the separate corporate personality. A corporation's authority to act and its liability for its actions are separate and apart from the individuals who own it.

4. ID.; ID.; ID.; ID.; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; WHEN APPLIED.— The so-called veil of corporation fiction treats as separate and distinct the affairs of a corporation and its officers and stockholders. As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights of the public or third persons. In both instances, there must have been fraud and proof of it. For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES; MAY BE DEMANDED BY THE SPOUSE, LEGITIMATE AND ILLEGITIMATE DESCENDANTS AND ASCENDANTS OF THE DECEASED FOR DEATH CAUSED BY *QUASI-DELICT*.— Under Article 2206, the "spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish for the death of the deceased." The reason for the grant of moral damages has been explained in this wise: ". . . the award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status *quo ante*; and therefore, it must be proportionate

to the suffering inflicted. The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity of affection for him and bears no relation whatsoever with the wealth or means of the offender."

6. ID.; ID.; ID.; AWARDED IN CASE AT BAR.— Moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. They are awarded to allow the former to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted. We have previously held as proper an award of ₱500,000.00 as moral damages to the heirs of a deceased family member who died in a vehicular accident. In our 2002 decision in *Metro Manila Transit Corporation v. Court of Appeals, et al*., we affirmed the award of moral damages of ₱500,000.00 to the heirs of the victim, a mother, who died from injuries she sustained when a bus driven by an employee of the petitioner hit her. In the case at bar, we likewise affirm the portion of the assailed decision awarding the moral damages.

APPEARANCES OF COUNSEL

Jimeno Jalandoni & Cope Law Offices for petitioners.
Joseph Y. Balanag for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J*.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision[1] of the Court of Appeals dated February 27, 2003 in CA-G.R. CV No. 61868, which affirmed *in toto* the June 19, 1998 decision[2] of Branch 20 of the Regional Trial Court of Manila in Civil Case No. 96-79554.

The facts are as follows:

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[1] Penned by Justice Danilo B. Pine and concurred in by Justices Eugenio S. Labitoria and Renato C. Dacudao. *Rollo*, pp. 25-31.

[2] Penned by Judge Virgilio D. Quijano, Presiding Judge.

On June 27, 1996, at around 4:00 p.m., Erwin Suarez Francisco, an eighteen year old third year physical therapy student of the Manila Central University, was riding a motorcycle along Radial 10 Avenue, near the Veteran Shipyard Gate in the City of Manila. At the same time, petitioner, Raymundo Odani Secosa, was driving an Isuzu cargo truck with plate number PCU-253 on the same road. The truck was owned by petitioner, Dassad Warehousing and Port Services, Inc.

Traveling behind the motorcycle driven by Francisco was a sand and gravel truck, which in turn was being tailed by the Isuzu truck driven by Secosa. The three vehicles were traversing the southbound lane at a fairly high speed. When Secosa overtook the sand and gravel truck, he bumped the motorcycle causing Francisco to fall. The rear wheels of the Isuzu truck then ran over Francisco, which resulted in his instantaneous death. Fearing for his life, petitioner Secosa left his truck and fled the scene of the collision.[3]

Respondents, the parents of Erwin Francisco, thus filed an action for damages against Raymond Odani Secosa, Dassad Warehousing and Port Services, Inc. and Dassad's president, El Buenasucenso Sy. The complaint was docketed as Civil Case No. 96-79554 of the RTC of Manila, Branch 20.

On June 19, 1998, after a full-blown trial, the court *a quo* rendered a decision in favor of herein respondents, the dispositive portion of which states:

WHEREFORE, premised on the foregoing, judgment is hereby rendered in favor of the plaintiffs ordering the defendants to pay plaintiffs jointly and severally:

1. The sum of ₱55,000.00 as actual and compensatory damages;
2. The sum of ₱20,000.00 for the repair of the motorcycle;
3. The sum of ₱100,000.00 for the loss of earning capacity;
4. The sum of ₱500,000.00 as moral damages;
5. The sum of ₱50,000.00 as exemplary damages;

[3] *Rollo*, pp. 25-26.

6. The sum of ₱50,000.00 as attorney's fees plus cost of suit.

SO ORDERED.

Petitioners appealed the decision to the Court of Appeals, which affirmed the appealed decision *in toto*.[4]

Hence the present petition, based on the following arguments:

I.

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT THAT PETITIONER DASSAD DID NOT EXERCISE THE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES WHICH IS NOT IN ACCORDANCE WITH ARTICLE 2180 OF THE NEW CIVIL CODE AND RELATED JURISPRUDENCE ON THE MATTER.

II.

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT IN HOLDING PETITIONER EL BUENASENSO SY SOLIDARILY LIABLE WITH PETITIONERS DASSAD AND SECOSA IN VIOLATION OF THE CORPORATION LAW AND RELATED JURISPRUDENCE ON THE MATTER.

III.

THE JUDGMENT OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS AWARDING ₱500,000.00 AS MORAL DAMAGES IS MANIFESTLY ABSURD, MISTAKEN AND UNJUST.[5]

The petition is partly impressed with merit.

On the issue of whether petitioner Dassad Warehousing and Port Services, Inc. exercised the diligence of a good father of a family in the selection and supervision of its employees, we find the assailed decision to be in full accord with pertinent provisions of law and established jurisprudence.

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[4] *Id.*, p. 31.

[5] *Id.*, p. 15.

Article 2176 of the Civil Code provides:

> Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

On the other hand, Article 2180, in pertinent part, states:

> The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible xxx
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry xxx
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Based on the foregoing provisions, when an injury is caused by the negligence of an employee, there instantly arises a presumption that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to evade solidary liability for quasi-delict committed by an employee, the employer must adduce sufficient proof that it exercised such degree of care.[6]

How does an employer prove that he indeed exercised the diligence of a good father of a family in the selection and

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[6] *Baliwag Transit, Inc. v. Court of Appeals, et al.,* G.R. No. 116624, 20 September 1996, 262 SCRA 230. See also, *Philippine Air Lines v. Court of Appeals,* G.R. No. L-46036, 18 May 1990, 185 SCRA 449.

supervision of his employee? The case of *Metro Manila Transit Corporation v. Court of Appeals*[7] is instructive:

In fine, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment[8] . . . In making proof in its or his case, it is paramount that the best and most complete evidence is formally entered.[9]

Coming now to the case at bar, while there is no rule which requires that testimonial evidence, to hold sway, must be corroborated by documentary evidence, inasmuch as the witnesses' testimonies dwelt on mere generalities, we cannot consider the same as sufficiently persuasive proof that there was observance of due diligence in the selection and supervision of employees. Petitioner's attempt to prove its "*deligentissimi patris familias*" in the selection and supervision of employees through oral evidence must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony.[10]

Our view that the evidence for petitioner MMTC falls short of the required evidentiary quantum as would convincingly and undoubtedly prove its observance of the diligence of a good father of a family has its precursor in the underlying rationale pronounced in the earlier case of *Central Taxicab Corp. vs. Ex-Meralco Employees Transportation Co., et al.*,[11] set amidst an almost identical factual setting, where we held that:

> "The failure of the defendant company to produce in court any 'record' or other documentary proof tending to establish that it had exercised all the diligence of a good father of a family in the selection and supervision of its drivers and buses, notwithstanding the calls therefor by both the trial court and the opposing counsel, argues strongly against its pretensions.

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[7] G.R. No. 104408, 21 June 1993, 223 SCRA 521.

[8] Citing *Republic v. Court of Appeals*, G.R. No. 84966, 21 November 1991, 204 SCRA 160.

[9] *U.S. v. Tria*, 17 Phil. 303 (1910).

[10] *Garcia v. Gonzales*, G.R. No. 48184, 12 March 1990, 183 SCRA 72.

[11] 54 O.G., No. 31, 7415 (1958).

> We are fully aware that there is no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid defense to the legal presumption of negligence on the part of an employer or master whose employee has by his negligence, caused damage to another. xxx (R)educing the testimony of Albert to its proper proportion, we do not have enough trustworthy evidence left to go by. We are of the considered opinion, therefore, that the believable evidence on the degree of care and diligence that has been exercised in the selection and supervision of Roberto Leon *y* Salazar, is not legally sufficient to overcome the presumption of negligence against the defendant company.

The above-quoted ruling was reiterated in a recent case again involving the Metro Manila Transit Corporation,[12] thus:

> In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records.[13] On the other hand, with respect to the supervision of employees, employers should formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence.
>
> In this case, MMTC sought to prove that it exercised the diligence of a good father of a family with respect to the selection of employees by presenting mainly testimonial evidence on its hiring procedure. According to MMTC, applicants are required to submit professional driving licenses, certifications of work experience, and clearances from the National Bureau of Investigation; to undergo tests of their driving skills, concentration, reflexes, and vision; and, to complete training programs on traffic rules, vehicle maintenance, and standard operating procedures during emergency cases.
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> xxx xxx xxx

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[12] *Metro Manila Transit Corporation v. Court of Appeals, et al.,* G.R. No. 116617, 16 November 1998, 298 SCRA 495.

[13] *Campo v. Camarote*, 100 Phil. 459, 463 (1956).

Although testimonies were offered that in the case of Pedro Musa all these precautions were followed, the records of his interview, of the results of his examinations, and of his service were not presented. . . [T]here is no record that Musa attended such training programs and passed the said examinations before he was employed. No proof was presented that Musa did not have any record of traffic violations. Nor were records of daily inspections, allegedly conducted by supervisors, ever presented. . . The failure of MMTC to present such documentary proof puts in doubt the credibility of its witnesses.

Jurisprudentially, therefore, the employer must not merely present testimonial evidence to prove that he observed the diligence of a good father of a family in the selection and supervision of his employee, but he must also support such testimonial evidence with concrete or documentary evidence. The reason for this is to obviate the biased nature of the employer's testimony or that of his witnesses.[14]

Applying the foregoing doctrines to the present case, we hold that petitioner Dassad Warehousing and Port Services, Inc. failed to conclusively prove that it had exercised the requisite diligence of a good father of a family in the selection and supervision of its employees.

Edilberto Duerme, the lone witness presented by Dassad Warehousing and Port Services, Inc. to support its position that it had exercised the diligence of a good father of a family in the selection and supervision of its employees, testified that he was the one who recommended petitioner Raymundo Secosa as a driver to Dassad Warehousing and Port Services, Inc.; that it was his duty to scrutinize the capabilities of drivers; and that he believed petitioner to be physically and mentally fit for he had undergone rigid training and attended the PPA safety seminar.[15]

Petitioner Dassad Warehousing and Port Services, Inc. failed to support the testimony of its lone witness with documentary evidence which would have strengthened its claim of due diligence

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[14] *Ernesto Syki v. Salvador Begasa*, G.R. No. 149149, 23 October 2003.

[15] *Rollo*, p. 27.

in the selection and supervision of its employees. Such an omission is fatal to its position, on account of which, Dassad can be rightfully held solidarily liable with its co-petitioner Raymundo Secosa for the damages suffered by the heirs of Erwin Francisco.

However, we find that petitioner El Buenasenso Sy cannot be held solidarily liable with his co-petitioners. While it may be true that Sy is the president of petitioner Dassad Warehousing and Port Services, Inc., such fact is not by itself sufficient to hold him solidarily liable for the liabilities adjudged against his co-petitioners.

It is a settled precept in this jurisdiction that a corporation is invested by law with a personality separate from that of its stockholders or members.[16] It has a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not in itself sufficient ground for disregarding the separate corporate personality.[17] A corporation's authority to act and its liability for its actions are separate and apart from the individuals who own it.[18]

The so-called veil of corporation fiction treats as separate and distinct the affairs of a corporation and its officers and stockholders. As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.[19] Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights

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[16] Villanueva, *Philippine Commercial Law Review*, 1998 edition, p. 345.

[17] *Sunio v. NLRC*, G.R. No. L-57767, 31 January 1984, 127 SCRA 390.

[18] Jentz, Miller, Cross and Clarkson, *West's Business Law*, 4th edition, p. 614.

[19] Volume 1, Fletcher Cyclopedia Corporations, Chapter 2, Section 41.7.

of the public or third persons. In both instances, there must have been fraud and proof of it. For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established.[20] It cannot be presumed.[21]

The records of this case are bereft of any evidence tending to show the presence of any grounds enumerated above that will justify the piercing of the veil of corporate fiction such as to hold the president of Dassad Warehousing and Port Services, Inc. solidarily liable with it.

The Isuzu cargo truck which ran over Erwin Francisco was registered in the name of Dassad Warehousing and Port Services, Inc., and not in the name of El Buenasenso Sy. Raymundo Secosa is an employee of Dassad Warehousing and Port Services, Inc. and not of El Buenasenso Sy. All these things, when taken collectively, point toward El Buenasenso Sy's exclusion from liability for damages arising from the death of Erwin Francisco.

Having both found Raymundo Secosa and Dassad Warehousing and Port Services, Inc. liable for negligence for the death of Erwin Francisco on June 27, 1996, we now consider the question of moral damages which his parents, herein respondents, are entitled to recover. Petitioners assail the award of moral damages of ₱500,000.00 for being manifestly absurd, mistaken and unjust. We are not persuaded.

Under Article 2206, the "spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish for the death of the deceased." The reason for the grant of moral damages has been explained in this wise:

. . . the award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status *quo ante*; and therefore,

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[20] *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, G.R. No. 98310, 24 October 1996, 263 SCRA 490, 509.

[21] *Avelina G. Ramoso, et al. v. Court of Appeals, et al.*, G.R. No. 117416, 8 December 2000, 347 SCRA 463.

it must be proportionate to the suffering inflicted. The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity of affection for him and bears no relation whatsoever with the wealth or means of the offender."[22]

In the instant case, the spouses Francisco presented evidence of the searing pain that they felt when the premature loss of their son was relayed to them. That pain was highly evident in the testimony of the father who was forever deprived of a son, a son whose untimely death came at that point when the latter was nearing the culmination of every parent's wish to educate their children. The death of Francis has indeed left a void in the lives of the respondents. Antonio Francisco testified on the effect of the death of his son, Francis, in this manner:

Q: (Atty. Balanag): What did you do when you learned that your son was killed on June 27, 1996?
A: (ANTONIO FRANCISCO): I boxed the door and pushed the image of St. Niño telling why this happened to us.

Q: Mr. Witness, how did you feel when you learned of the untimely death of your son, Erwin Suares (sic)?
A: *Masakit po ang mawalan ng anak*. It's really hard for me, the thought that my son is dead.

xxx xxx xxx

Q: How did your family react to the death of Erwin Suarez Francisco?
A: All of my family and relatives were felt (sic) sorrow because they knew that my son is (sic) good.

Q: We know that it is impossible to put money terms(s) [on] the life of [a] human, but since you are now in court and if you were to ask this court how much would you and your family compensate? (sic)
A: Even if they pay me millions, they cannot remove the anguish of my son (sic).[23]

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[22] Sangco, *Torts and Damages*, 986 [1994 ed.].

[23] TSN, March 20, 1997, pp. 4-6.

Moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. They are awarded to allow the former to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted.[24] We have previously held as proper an award of ₱500,000.00 as moral damages to the heirs of a deceased family member who died in a vehicular accident. In our 2002 decision in *Metro Manila Transit Corporation v. Court of Appeals, et al.*,[25] we affirmed the award of moral damages of ₱500,000.00 to the heirs of the victim, a mother, who died from injuries she sustained when a bus driven by an employee of the petitioner hit her. In the case at bar, we likewise affirm the portion of the assailed decision awarding the moral damages.

Since the petitioners did not question the other damages adjudged against them by the court *a quo*, we affirm the award of these damages to the respondents.

WHEREFORE, the petition is *DENIED*. The assailed decision is *AFFIRMED* with the *MODIFICATION* that petitioner El Buenasenso Sy is *ABSOLVED* from any liability adjudged against his co-petitioners in this case.

Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Carpio, and *Azcuna, JJ.,* concur.

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[24] *Philtranco Service Enterprises v. Court of Appeals, et al.,* G.R. No. 120553, 17 June 1997, 273 SCRA 562.

[25] G.R. No. 141089, 1 August 2002.

EN BANC

[A.M. No. 2004-09-SC. June 30, 2004]

MRS. BRENDA B. NARVASA-KAMPANA, *complainant, vs.* **MS. NORMA C. JOSUE, Buyer IV, Property Division,** *respondent*.

SYNOPSIS

Respondent was charged with discourtesy and conduct unbecoming a court employee for uttering sarcastic words to the complainant who was inquiring as to where she could get a certification for the accreditation of a bonding company in relation to a probate case. The Office of Administrative Services found the respondent discourteous in the way she conversed and dealt with the complainant and recommended that she be reprimanded.

In finding the respondent guilty of simple discourtesy and conduct unbecoming a court employee, the Supreme Court ruled that apart from the sarcastic words she uttered, she did not raise her voice at the complainant. Public officials and employees are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. They, as recipients of the public trust, should demonstrate courtesy, civility, and self-restraint in their official actuations to the public at all times even when confronted with rudeness and insulting behavior. In particular, the conduct of court employees must always be characterized by strict propriety and decorum in dealing with other people. There is no room for discourtesy of any kind in the ranks of court employees. This being her first offense, the respondent was reprimanded.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT EMPLOYEES; SIMPLE DISCOURTESY AND CONDUCT UNBECOMING A COURT EMPLOYEE; COMMITTED IN CASE AT BAR.— The respondent did not deny the complainant's allegation that

when the latter greeted her, "*Good Afternoon,*" she replied, "*Ano yon*?" Neither did she squarely deny that in response to the complainant's inquiry as to where the latter can secure the accreditation of a bonding company, she asked, "*Di ba alam mo Property ito? Alam mo ba ang ibig sabihin ng property?*" and added, "*Ang layo layo ng property sa surety bond na hinahanap mo.*" These remarks, uttered with thinly-veiled sarcasm, are clearly discourteous. If, as she claimed, she did not comprehend what the complainant was inquiring about, she should have graciously ended their discussion and thereby prevented the unfortunate incident from happening. … However, the respondent's conduct on the whole may only be characterized as plain and simple discourtesy. After all, apart from the sarcastic words she uttered, she did not raise her voice at the complainant. … In view of the foregoing, we find the respondent guilty of simple discourtesy and conduct unbecoming a court employee. This being her first offense, the respondent should be reprimanded in accordance with the Omnibus Civil Service Rules and Regulations.

2. ID.; ID.; ID.; ID.; THE CONDUCT OF COURT EMPLOYEES MUST ALWAYS BE CHARACTERIZED BY STRICT PROPRIETY AND DECORUM IN DEALING WITH OTHER PEOPLE.— Public officials and employees are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. They, as recipients of the public trust, should demonstrate courtesy, civility, and self-restraint in their official actuations to the public at all times even when confronted with rudeness and insulting behavior. In particular, the conduct of court employees must always be characterized by strict propriety and decorum in dealing with other people. There is no room for discourtesy of any kind in the ranks of court employees.

D E C I S I O N

TINGA, *J.*:

This administrative case arose from a letter-complaint[1] dated March 11, 2004 filed by Brenda B. Narvasa-Kampana against

[1] *Rollo*, pp. 40-43.

Norma C. Josue, Buyer IV, Property Division of this Court for Discourtesy and Conduct Unbecoming a Court Employee.

The antecedents as gathered from the parties' submissions are as follows:[2]

The complainant came to the court at around 3:00 o'clock in the afternoon on March 11, 2004. She inquired from the guard stationed at the entrance of the Centennial Building where she could get a certification for the accreditation of a bonding company. The guard directed the complainant to go to the Property Division and look for a certain "Norma."

Upon entering the Property Division, the complainant approached a table of a male staff and inquired from him as to where she could get a certification for the accreditation of a bonding company. The man told her the same thing, to go to "Norma" while pointing to the direction where to find her. The complainant proceeded. According to her she greeted the respondent "*Good Afternoon*" as soon as she approached her, to which the respondent replied "*Ano yon?"* Then, she inquired "*Dito ba kinukuha ang certification ng accreditation ng isang insurance or bonding company?"*

The respondent seemed not to understand what (sic) have been said by the complainant, and so the respondent asked "*Kaso ba yan?"* The complainant responded "*Yes, Probate ng last will*." However, the statement appeared to have made the respondent even more confused. The complainant felt hesitant to continue. She claimed that aside from the respondent appearing so confused, she stated that the respondent, too, was sarcastic all along in the course of their conversation.

The above notwithstanding, the complainant tried to explain why she would need a certification from the Court. She claimed that, "they," referring to her siblings who were parties to the probate case, "were able to buy a surety bond from an insurance company, however, it so happened that such insurance company was not accredited by the Court which accreditation was required by the lower court where their case was pending." However, even before she could finish explaining, the respondent in a sarcastic manner and with such

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[2] *Id*. at 2-7, Memorandum for the Chief Justice dated June 9, 2004 from Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, Office of Administrative Services.

facial expression asked "*Di ba alam mo Property ito? Alam mo ba ang ibig sabihin ng property?"*

The complainant replied "*Oo, alam ko pero dito ako itinuro kaya nga narito ako sa iyo*." The respondent answered "*Kasi kung dito yan di sana kanina pa tayo nagkakaintindihan, kaso nga hindi dito*."

The complainant felt so insulted and got very angry particularly when she was sarcastically asked by the respondent what was meant by "Property." She expressed dismay on the discourteous act of Ms. Josue considering the fact that she is an employee of the Court, prompting her to utter "*Bastos ka, bastos ka, hindi ka pala magandang makipagusap, bastos ka talaga*!"

On the same day, right after the incident, the complainant filed her handwritten sworn letter-complaint in which she indicated that when she was writing the same, she was still "trembling in anger."

In a letter dated March 15, 2004, this Office directed the respondent to submit her comment to the letter-complaint, which she complied with in a letter dated March 16, 2004 filed with this Office on March 17, 2004.

In her comment, the respondent denied the allegation of the complainant that she was discourteous. However, she admitted to the allegation that she could not comprehend then what the complainant's request was all about. Furthermore, she stated "xxx *With all honesty and respect, at that time I tried my best to answer her courteously and there never was a word of insult I uttered against her*." In fact according to her, it was the respondent who first shouted at her "*Bastos ka, bastos ka talaga. Hindi ko gusto tabas ng dila mo ikaw ang tinuro tapos sasabihin mo, hindi mo ko naiintindihan. Bastos kang kausap!"*

In addition, she stated that the incident was witnessed by some of her officemates who could testify on what really happened and also to the fact that the respondent was not discourteous.

On April 13, 2004, in compliance with this Office's directive, the complainant filed her Reply to the respondent's comment wherein the former affirmed all her allegations in her letter-complaint. She claimed that the facts were distorted by the respondent in order to hide the truth. She indicated therein her willingness to submit herself for a formal investigation.

Also forming part of the record of the case is a letter signed by several officemates of the respondent who have expressed their support to Ms. Norma Josue. They expressed their belief that the respondent did not commit the act being charged against her. They also vouched for the good conduct of the respondent who they claimed was never discourteous with her co-employees and to the public.

The investigation commenced. During her testimony, the respondent maintained all her allegations in her comment. She vehemently denied having committed the acts being complained of and avowed not to give room for settling the matter amicably if she were to acknowledge that she was the one at fault. She even added that she did not even raise her voice to justify the complainant's shouting at her.

When it was the complainant's turn to testify, she said that the reason for her filing of the complaint was to make sure that the Court take the proper disciplinary action against erring employees like the respondent. At the outset, she said she mainly intended to bring the matter to the attention of the Chief of the Property Division as much as possible. However, she testified that no head or chief of office came forward then and no one would tell her who the chief of office was. Furthermore, she said she would not have filed the complaint, which she knew would entail her time and effort, had the respondent dealt with her properly.

Also summoned to appear for investigation were two (2) of the employees of the Property Division. The two (2) occupy the most proximate desks to that of the respondent's, and were present during that afternoon. However, this Office was only able to establish the following from their testimonies: That the two (2) of them only came to know the presence of the complainant when she shouted loudly. That they did not know what transpired before that, neither did they hear the conversation of the two (2) prior to the shouting because they themselves were busy with their respective works during that afternoon. In short, they only testified that it was the complainant who shouted first and her shouting caught their attention.[3]

After a careful evaluation of the foregoing facts, the Office of Administrative Services (OAS) found the respondent discourteous in the way she conversed and dealt with the

[3] *Id.* at 2-4.

complainant. Accordingly, the OAS recommended that the respondent be reprimanded.

We wholly agree with the findings and recommendation of the OAS.

Since the witnesses presented testified that they did not actually hear what transpired before the complainant shouted at the respondent,[4] the decision in this case actually hinges on the credibility of the parties. Better still, the decisive issue is who between the parties is credible.

The respondent did not deny the complainant's allegation that when the latter greeted her, "*Good Afternoon*," she replied, "*Ano yon*?" Neither did she squarely deny[5] that in response to the complainant's inquiry as to where the latter can secure the accreditation of a bonding company, she asked, "*Di ba alam mo Property ito? Alam mo ba ang ibig sabihin ng property?"* and added, "*Ang layo layo ng property sa surety bond na hinahanap mo."*

These remarks, uttered with thinly-veiled sarcasm, are clearly discourteous. If, as she claimed, she did not comprehend what the complainant was inquiring about, she should have graciously ended their discussion and thereby prevented the unfortunate incident from happening.

In the face of the complainant's positive account of her conversation with the respondent prepared soon after the incident

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[4] *Id*. at 22-32, Sworn Statements of Shirley Mary A. Santos and Lovely E. Balmaceda.

[5] Par. 2 of the respondent's letter-comment dated March 16, 2004 states:

"2. I immediately reminded her that our office is the Property Division and she might be in the wrong office because I was only handling papers relative to bidding and not cases. She answered back angrily and in a loud voice remarked, "*Alam ko Property ito dahil dito nga ako tinuro ng security at ikaw ang tinuro sa dulo, tapos sasabihin mo na hindi mo ako maintindihan. Iniinsulto mo ba ako?"* I told her again "*Ma'am, hindi nga po tayo magkaintindihan kasi hindi ko po trabaho yang sinasabi ninyo, saglit lang po . . .*"

occurred and which the latter did not meet head on, we find that there is substantial evidence to warrant a finding of guilt on the part of the respondent.

However, the respondent's conduct on the whole may only be characterized as plain and simple discourtesy. After all, apart from the sarcastic words she uttered, she did not raise her voice at the complainant.[6]

The Court has constantly stressed the need for promptness, courtesy and diligence in public service. We shall do so again.

Public officials and employees are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. They, as recipients of the public trust, should demonstrate courtesy, civility, and self-restraint in their official actuations to the public at all times even when confronted with rudeness and insulting behavior. [7] In particular, the conduct of court employees must always be characterized by strict propriety and decorum in dealing with other people. There is no room for discourtesy of any kind in the ranks of court employees.[8]

In view of the foregoing, we find the respondent guilty of simple discourtesy and conduct unbecoming a court employee. This being her first offense, the respondent should be reprimanded in accordance with the Omnibus Civil Service Rules and Regulations.[9]

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[6] *Supra*, note 1 at 5.

[7] *Paras v. Lofranco*, A.M. No. P-01-1469, March 26, 2001, 355 SCRA 49, citing *Policarpio v. Fortus*, 248 SCRA 272 (1995).

[8] *Balisi-Umali v. Peñalosa*, A.M. No. P-99-1326, November 18, 1999, 318 SCRA 406.

[9] "Sec. 23. . . .

The following are light offenses with their corresponding penalties:

(a) Discourtesy in the Course of Official Duties

1st Offense — Reprimand

2nd Offense — Suspension for one (1) to thirty (30) days.

WHEREFORE, respondent Norma C. Josue, Buyer IV, Property Division of this Court, is hereby *REPRIMANDED* for discourtesy in the performance of official duty and conduct unbecoming a court employee with a *WARNING* that any similar act of discourtesy in the future will be dealt with more severely. Let this decision be noted in the personal record of herein respondent.

SO ORDERED.

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

Vitug, Ynares-Santiago, and *Austria-Martinez, JJ.,* on leave.

THIRD DIVISION

[G.R. No. 145504. June 30, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LARRY CAGAS,** *appellant*.

SYNOPSIS

Appellant was found guilty by the trial court of the crime of murder qualified by treachery for the killing of one Venecio Elicano. The trial court held that appellant's plea of self-defense lacked probative value for being self-serving. Consequently, appellant was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

3rd Offense — Dismissal . . ." Rule XIV, Omnibus Civil Service Rules and Regulations.

In affirming the conviction of appellant, the Supreme Court ruled that when an accused invokes self-defense, the burden of evidence is shifted on him to prove it clearly and convincingly. He must rely on its strength and not on the weakness of the evidence of the prosecution, failing which the evidence for the prosecution can no longer be disbelieved and the accused can no longer be exonerated. In the case at bar, appellant failed to discharge such burden.

The Court likewise held that treachery attended the stabbing of the victim. The two elements of treachery are present in the case at bar, to wit: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the said means of execution was deliberately or consciously adopted.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF EVIDENCE; SHIFTED ON THE ACCUSED WHO INVOKES SELF-DEFENSE TO PROVE IT CONVINCINGLY.— When an accused invokes self-defense, the burden of evidence is shifted on him to prove it clearly and convincingly. He must rely on its strength and not on the weakness of the evidence of the prosecution, failing which the evidence for the prosecution can no longer be disbelieved and the accused can no longer be exonerated. At all events, the nature and number of wounds inflicted on the victim disprove self-defense. As appellant himself testified, the first wound he inflicted on the victim was on his *neck* which was followed by two more stab wounds on the *chest*. Infliction of three successive stab wounds, especially on *vital spots of the body*, negates appellant's pretensions of self-defense and, in fact, indicates a determined effort on his part to kill and not just defend himself.

2. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS.— There is treachery when the offender commits a crime 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 any defensive or retaliatory act which the victim might make. Two essential elements must thus concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the

said means of execution was deliberately or consciously adopted.

3. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES.— The following are the requisites of voluntary surrender: (1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority or to the latter's agent; (3) the surrender was voluntary; and (4) there is no pending warrant of arrest or information filed. For surrender to be voluntary, it must be spontaneous and must also show the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense incidental to his search and capture.

4. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; AWARDED IN CASE AT BAR.— As to actual damages, the trial court correctly awarded ₱28,000.00 for the funeral services as it was duly substantiated by a receipt.

5. ID.; ID.; EXEMPLARY DAMAGES; AWARDED AS PART OF CIVIL LIABILITY WHEN A CRIME IS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES; CASE AT BAR.— [E]xemplary damages in the amount of ₱25,000.00 must be awarded, given the presence of treachery which qualified the killing to murder. Under Article 2230 of the Civil Code which allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances, the term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the August 17, 2000 of the Regional Trial Court of Surigao City, Branch 30 convicting Larry Cagas (appellant) of murder and sentencing him to suffer *reclusion perpetua*.

In the December 18, 1995 Information[1] filed against appellant, he was charged as follows:

> That on or about the 2nd day of November 1995 at 2:00 o'clock in the afternoon, more or less, at the Roman Catholic Cemetery, Poblacion Bacuag, Surigao del Norte, and within the jurisdiction of this Honorable Court, accused Larry Cagas, with intent to kill, through treachery, did then and there willfully, unlawfully and feloniously stab one Venecio Elicano, using a Batangas Knife, thereby inflicting fatal wounds upon Venecio Elicano which caused his instantaneous death to the damage and prejudice of the heirs of Venecio Elicano in such amount as shall be established in court.
>
> CONTRARY TO LAW with the qualifying circumstance of treachery.

Following appellant's arraignment on June 6, 1996 during which he entered a plea of not guilty,[2] the case was tried.

Around 2:00 p.m. of November 2, 1995, all Souls Day, while Venecio Elicano (the victim) and his friend Alejandro Jamero, Jr. were seated on a bench at the store near the entrance of the public cemetery of Bacuag, Surigao del Norte, the victim was thrice stabbed with a Batangas knife by appellant. The victim was immediately brought to the hospital but was pronounced dead on arrival.[3]

Soon after the police was informed of the incident, PO2 Rey Tadifa repaired to the cemetery proper where appellant fled. PO2 Tadifa, on seeing appellant, advised him to surrender the knife which appellant heeded.[4]

The evidence for the prosecution shows that as the victim and Jamero were sitting on the bench, appellant who was then drunk, together with Cocoy Ibarra and two others, approached the victim and told the latter that they were cousins ("*Magpinsan*

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[1] Records at 1-2.

[2] *Id*. at 33.

[3] Transcript of Stenographic Notes (TSN), February 10, 1997 at 3-6.

[4] TSN, June 17, 1997 at 4-5.

pa tayo '*tol*"), drawing the victim to respond: "Is that so?"; and that following the shaking of hands by appellant and the victim, appellant suddenly stabbed the victim.[5]

Upon the other hand, appellant, interposing self-defense, declared as follows: On reaching the store where he was to buy an additional candle and cigarette, the victim asked him his name and where he is from. On giving his name and stating that he came from Barangay Pungtod, the victim suddenly grabbed him by the collar while his (the victim's) companions stood up. As he got scared, he told the victim: "*Brod*, no because we are still relative[s]" even if they were not. The victim went on to box him twice, however, and he was able to lean on the table. The victim again boxed him, and as he thought that the victim's two other companions might attack him, he grabbed a Batangas knife lying on the table and thrice stabbed the victim. He then went to the police following the incident.[6]

At the witness stand, when appellant was asked if he submitted himself for medical examination in light of his claim that he was boxed several times, he answered in the negative, he explaining that he was afraid because he was almost shot by a policeman who happened to be a relative of the victim.[7]

The post-mortem examination conducted on the victim by Dr. Manolo Tan, Municipal Health Officer, showed that the victim suffered the following wounds:

1. Clean-cut wound 6 cm. length, 7 cm. depth with blood air bubbles, one centimeter above the suprasternal notch.
2. Open wound, 2 cm. length, 4 cm. lateral to midsternal line level of right nipple, directed upward, 4 cm. depth.
3. Open wound, 2 cm. length, 3 cm. lateral to right nipple, directed upward 3 cm. depth.

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[5] TSN, February 10, 1997 at 3-6.

[6] TSN, October 6, 1998 at 3-10.

[7] *Id*. at 14.

4. Open wound 2 cm. length at lateral distal 3rd of right arm with point of exit at medial distal 3rd of right arm.[8]

Testifying for the defense, Tanny Bayang claimed seeing appellant being boxed by a man whom he does not know. [9]

Another defense witness Pablo Placeros, on being asked what the victim was doing at the cemetery, answered that he was doing "nothing at all." On being subsequently asked how the victim boxed appellant, however, he declared that the victim was hit on the chest.[10]

The other defense witness Max Manliguis testified that he saw appellant surrender the knife to SPO2 Tadifa. [11]

By the decision[12] on review, the trial court disposed as follows:

WHEREFORE, finding the accused Larry Cagas GUILTY beyond reasonable doubt as principal in the crime of murder, defined and penalized in Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, and after considering in his favor the mitigating circumstance of voluntary surrender, there being no aggravating circumstance to offset the same, this Court hereby imposes upon him the penalty of *reclusion perpetua*, together with accessory penalties, and to pay the costs.

The accused is hereby ordered to indemnify the heirs of Venecio Elicano in the sum of Fifty Thousand Pesos (₱50,000.00) and to pay private complainant Luciano Elicano the sum of Twenty-Eight Thousand Pesos (₱28,000.00) for actual damages and another Fifty Thousand Pesos (₱50,000.00) for moral damages.

Four-fifths (4/5) of the preventive detention of the said accused shall be credited in his favor.

In its decision, the trial court held that appellant's plea of self-defense lacked probative value:

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[8] Exhibit "A", Folder I.

[9] TSN, February 8, 1999 at 5.

[10] TSN, June 14, 1999 at 5-6.

[11] TSN, January 25, 1999 at 4.

[12] *Rollo* at 14-21.

In the case at bench, the testimony of the accused that he stabbed Venecio Elicano because the latter boxed him, has no probative value for being self-serving, *the said testimony not being corroborated by any other witnesses for the defense*.

Defense witness Max Manliguis admitted, on direct examination, that he has no personal knowledge of the stabbing in question; defense witness Tanny Bayang did not say that it was Venecio Elicano who boxed the herein accused, although said witness declared that he saw the latter being boxed; and defense witness Pablo Placeros admitted, on direct examination, that he has not actually seen the accused stab Venecio Elicano and that when the said witness was in the public cemetery of Bacuag, Surigao del Norte, at 2:00 o'clock in the afternoon of 2 November 1995, he saw Venecio Elicano there, doing "nothing at all."

Moreover, the assertion of the accused that it was Venecio Elicano who initiated the unlawful aggression in this case is rendered doubtful by the fact that *no evidence whatsoever is adduced by the defense showing physical injuries sustained by the accused, in spite of his having been allegedly hit on his breast, right arm and left lower cheek* by the fistic blows of Venecio Elicano. The explanation of the accused that he did not have himself examined by a doctor because he was afraid of a certain Besande, a policeman, and the latter's two companions, who are relatives of Venecio Elicano, is more imaginary than real, if not flimsy. The accused after the incident in question, was placed under preventive detention in the Bacuag Municipal Jail for more than one week and he was not armed by Besande and his companions until now. *Res ipsa lo[q]uitur* (the thing speaks for itself). The contention of the accused that he was almost shot by Policeman Besande is untenable, otherwise said accused would have already filed criminal or administrative charges against the said policeman. This, the accused failed to do.[13] (Italics in the original; citations omitted)

In his Brief,[14] appellant assigns to the trial court the following errors:

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[13] *Id*. at 17.

[14] *Id*. at 39-56.

I.

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE CLAIM OF ACCUSED-APPELLANT OF SELF-DEFENSE.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT PROVEN BEYOND REASONABLE DOUBT.[15]

Insisting that the three requisites of the justifying circumstance of self-defense are present,[16] appellant explains that it is evident from the testimonies of the defense witnesses that it was the victim who initially boxed him in the presence of his companions who positioned themselves in a threatening manner, hence, it was only reasonable for him to feel that his life was in danger.[17] Appellant adds that as he was pushed against the table, he had no other recourse but to make use of the knife lying thereon which is deemed reasonable under the circumstances considering that the victim was in the company of several others.[18]

This Court finds the rejection of appellant's plea of self-defense well-taken.

When an accused invokes self-defense, the burden of evidence is shifted on him to prove it clearly and convincingly. He must rely on its strength and not on the weakness of the evidence of the prosecution, failing which the evidence for the prosecution can no longer be disbelieved and the accused can no longer be exonerated. [19]

In the case at bar, appellant failed to discharge such burden. Though defense witness Bayang claimed to have seen someone box appellant, he did not point to the victim as the assailant.

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[15] *Id*. at 39.

[16] *Id*. at 47.

[17] *Id*. at 50.

[18] *Id*. at 51.

[19] *People v. Marcelo,* G.R. No. 140385, April 14, 2004.

As for defense witness Placeros, his testimony was laced with inconsistencies to thereby render it incredible:

COURT

Q: Do you know why Cagas stabbed Elicano?
A: I do not know, your Honor.

COURT

Go ahead.

ATTY. A. MOLETA

Q: You said that on November 2, 1995, at the Bacuag public cemetery, you saw the stabbing incident between Venecio Elicano and Larry Cagas at exactly what time after your arrival at one o'clock p.m. [at] said place that you saw Venecio Elicano in the same place?
A: More or less at two o'clock p.m.

Q: *When you saw Venecio Elicano in the said public cemetery at two o'clock p.m. of November 2, 1995***, may we know what was he doing at that time?**
A: Nothing at all.

Q: *Do you mean the deceased in this case, the one according to you was stabbed [b]y* **Larry Cagas was simply doing nothing at two o'clock p.m. of Nov. 2, 1995 at the Bacuag cemetery?**

ATTY. CATRE [*defense counsel***]**

Already answered.

COURT

*Sustained***.**

Q: Mr. Placeros, what do you mean doing nothing? Was he simply standing or sitting?
A:

ATTY. CATRE

Objection

ATTY. A. MOLETA

Q**:** *How did Venecio Elicano box Larry Cagas*?

A**:** *He boxed Larry Cagas and Cagas was hit on the chest (pointing to his left chest)*

Q: The arm or feet was used [by] Elicano in boxing Larry Cagas?
A: Right hand, sir.

Q: Where was Larry Cagas when he was boxed by Elicano?
A: On the lower portion of the cemetery.

Q: You said that [V]enecio Elicano boxed Larry Cagas, was Larry Cagas hit when he was boxed by Elicano?
A: Yes, sir, on the chest.

Q: **How did Elicano box Larry Ca[g]as, how many times?**
A: **Only once**.

COURT

Q: When he was hit on the chest by Elicano, what happened to Cagas?
A: Larry Cagas . . . staggered and back track (sic), your Honor.

Q: After Cagas was staggered, what did he do?
A: I did not see what happened next, your Honor, because the commotion ensued after that.

Q: What did you do?
A: I ran away.

xxx xxx xxx[20] (Emphasis and italics supplied)

At all events, the nature and number of wounds inflicted on the victim disprove self-defense.[21] As appellant himself testified, the first wound he inflicted on the victim was on his *neck* which was followed by two more stab wounds on the *chest*. Infliction of three successive stab wounds, especially on *vital spots of the body*, negates appellant's pretensions of self-defense and, in fact, indicates a determined effort on his part to kill and not just defend himself.[22]

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[20] TSN, June 14, 1999 at 4-6.

[21] *People v. Damitan*, 371 SCRA 629, 638 (2001).

[22] *People v. Herrera*, 371 SCRA 480, 500 (2001).

As for the qualifying circumstance of treachery, appellant argues its absence in light of the failure of the prosecution to present any evidence proving that he consciously and deliberately adopted his mode of attack to insure the death of the victim without risk to himself.[23]

Appellant thus claims that the stabbing of the victim was merely a spur-of-the moment act which was ignited by the basic instinct of self-preservation[24] and the likelihood that the victim's best friend could go to his aid at anytime. If he wanted to insure that no risk would go to him, appellant proffers that he could have chosen another time and place to harm the victim.[25]

Appellant's plea is bereft of merit.

There is treachery when the offender commits a crime 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 any defensive or retaliatory act which the victim might make. Two essential elements must thus concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the said means of execution was deliberately or consciously adopted.[26]

A close review of the records of the case reveals that the two elements of treachery are present in the case at bar. Thus, when appellant met the victim and admittedly apprised the victim that he was a relative, the victim would not have imagined that appellant would harm him. As the Solicitor-General puts it:

> Accused-appellant's arguments would hold water were it not for the fact that it is not only the mere suddenness of the attack that is disconcerting in this case. The **acts** of accused-appellant **prior to and after the sudden stabbing** betray its treacherous nature.

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[23] *Rollo* at 52.

[24] *Id*. at 54.

[25] *Id*. at 53.

[26] *People v. Berdin*, G.R. No. 137598, November 28, 2003.

Accused-appellant introduced himself to Venecio as his relative, his cousin. *They even shook hands. Truly, when one introduces himself as "one's cousin," extends his hand in gesture of amity, and then in one swift blow, stabs the person to whom he introduced himself to, he undoubtedly performs a treacherous act***.** For how could Venecio have been prepared for such an attack, when accused-appellant already represented himself as his relative, a person who generally, would not harm him? **Venecio was caught off guard**. Truly, the attack on this basis alone was indeed unexpected.

It should also be noted that accused-appellant suddenly stabbed Venecio while he was talking to accused-appellant's companion, Cocoy Ibarra. From this, it could be gathered that **Venecio was truly clueless** of the fatal attack that was to befall him.

Notable also was that Venecio was in a sitting position when the first stab wound was delivered by accused-appellant. When one is in a sitting position, he is **more helpless and vulnerable**. For one to be attacked under such circumstances would be treacherous indeed.

xxx xxx xxx

For treachery to exist, it is essential that the accused employ means, which tend directly and especially to aid in its execution, without risk arising **from any defense of the victim might make**. The risk pertains to any defense of the victim himself and does not refer to any action that might be taken by other people that might aid the victim.[27] (Emphasis and italics in the original; citations omitted)

In fine, treachery attended the stabbing of the victim.

Treachery having qualified the case to murder the penalty for which is composed of two indivisible penalties — *reclusion perpetua* to death,[28] the following provision of Article 63 of the Revised Penal Code (RPC) thus applies:

ARTICLE 63.*Rules for the application of indivisible penalties*.—

xxx xxx xxx

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[27] *Rollo* at 90-92.

[28] Article 248 of the RPC reads:

ARTICLE 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder

In all cases which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When 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. (Italics supplied)

In the case at bar, no aggravating circumstance was alleged and proved against appellant. The lesser penalty of *reclusion perpetua* is thus imposable. However, as the trial court appreciated the ordinary mitigating circumstance of voluntary surrender in favor of appellant, this Court will pass upon it even if it does not have the effect of lowering the penalty to be imposed on appellant.

The following are the requisites of voluntary surrender: (1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority or to the latter's agent; (3) the surrender was voluntary; and (4) there is no pending warrant of arrest or information filed.

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and shall be punished by *reclusion perpetua, to death* if committed with any of the following attendant circumstances:

1. *With treachery*, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means to insure or afford impunity;

xxx xxx xxx (Italics supplied)

For surrender to be voluntary, it must be spontaneous and must also show the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense incidental to his search and capture.[29]

The facts show that after the stabbing incident, appellant ran to the upper portion of the cemetery where PO2 Tadifa caught up with him. If appellant did then and there surrender, it was because he was left with no choice. The "surrender" was not thus spontaneous.

As to actual damages, the trial court correctly awarded ₱28,000.00 for the funeral services as it was duly substantiated by a receipt.[30] As to the list of expenses[31] during the burial of Venecio, the amount indicated therein cannot be awarded as no receipts were presented.[32]

In addition to the civil indemnity and damages awarded by the trial court, exemplary damages in the amount of ₱25,000.00 must be awarded, given the presence of treachery which qualified the killing to murder. Under Article 2230 of the Civil Code which allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances, the term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.[33]

WHEREFORE, the August 17, 2000 Decision of the Regional Trial Court of Surigao City, Branch 30 in Criminal Case No. 4643 finding appellant, Larry Cagas, guilty beyond reasonable doubt of murder is *AFFIRMED* with the *MODIFICATION*

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[29] *People v. Taraya*, 344 SCRA 401, 417 (2000).

[30] Exhibit "C"; Folder I.

[31] Exhibit "B"; Folder I.

[32] *People v. Malinao, supra*.

[33] *People v. Demate*, G.R. Nos. 132310 & 143968-69, January 20, 2004.

that appellant is further ordered to pay the heirs of Venecio Elicano ₱25,000.00 as exemplary damages.

SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.*, concur.

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

THIRD DIVISION

[G.R. No. 145803. June 30, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BENJIE PABIONA, ROSELO BASALATAN, ANTONIO SILARCA, ROBERTO METANO, and CHRISTOPHER DELOS REYES (at large),** *accused***. BENJIE PABIONA, ROSELO BASALATAN, ROBERTO METANO and ANTONIO SILARCA,** *appellants*.

SYNOPSIS

Appellants were found guilty by the trial court of the crime of murder for the death of one Robert Pagayon on the basis of circumstantial evidence. They were sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal revolving on the issue of whether or not there was sufficient circumstantial evidence to sustain the trial court's judgment finding appellants guilty beyond reasonable doubt.

The Supreme Court held that the evidence adduced by the prosecution did not prove the guilt beyond reasonable doubt of appellants. Where the evidence is capable of two or more inferences, one of which is consistent with the presumption of innocence and the other compatible with a finding of guilt, the court must acquit the accused because the evidence does not fulfill the test of moral certainty and therefore is insufficient

to support a judgment of conviction. Where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. In the case at bar, two antithetical interpretations may be inferred from the evidence presented. The pieces of circumstantial evidence do not inexorably lead to the conclusion that appellants were guilty of the crime charged. Thus, appellants were acquitted of the charge of murder on the ground of reasonable doubt.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; DEFINED.— Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.

2. ID.; ID.; ID.; WHEN SUFFICIENT TO CONVICT ACCUSED.— Section 4 of Rule 133 of the Rules on Evidence provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with: (1) there is 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. With respect to the third requisite, the circumstantial evidence presented must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person. All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.

3. ID.; ID.; PRESENCE OF A PERSON AT AN ALLEGED *LOCUS CRIMINIS* DOES NOT SUFFICE TO IMPLICATE HIM IN A CRIME.—The mere presence of appellants at an alleged *locus criminis* does not suffice to implicate them in a crime, more so as in the case at bar where appellants' presence was sufficiently explained to have been due to their digging of the

well on appellant Pabiona's property which commenced long before November 20, 1996.

4. ID.; ID.; MOTIVE; BECOMES IMPORTANT WHEN THE EVIDENCE OF THE COMMISSION OF THE CRIME IS PURELY CIRCUMSTANTIAL.— While the motive of the accused in a criminal case is generally held to be immaterial, not being an element of the crime, motive becomes important when, as in this case, the evidence of the commission of the crime is purely circumstantial or inconclusive and there is some doubt on whether a crime has been committed or whether the accused has committed it. In the case at bar, the prosecution was unable to establish motive of the appellants in allegedly perpetrating the offense charged.

5.ID.; ID.; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DELAY IN REPORTING THE CRIME TO THE AUTHORITIES; CASE AT BAR.—This Court likewise notes prosecution eyewitness Michael Pagayon's inordinate delay in reporting what he allegedly saw on the night of November 20, 1996. Even after hearing the radio news report on his cousin-the victim's death on December 1, 1996 and deducing that he was the victim of the mauling that he claimed to have witnessed, he only reported such incident to his aunt Marina and the authorities two months later. It is but logical for a relative who was an eyewitness to a crime to promptly and audaciously take the necessary steps to bring the culprit into the hands of the law and seek justice for the poor victim.

6. CRIMINAL LAW; WHERE THE EVIDENCE IS CAPABLE OF TWO OR MORE INFERENCES, ONE OF WHICH IS CONSISTENT WITH THE PRESUMPTION OF INNOCENCE AND THE OTHER COMPATIBLE WITH A FINDING OF GUILT, THE COURT MUST ACQUIT THE ACCUSED.— It is a basic principle in criminal law that where the evidence is capable of two or more inferences, one of which is consistent with the presumption of innocence and the other compatible with a finding of guilt, the court must acquit the accused because the evidence does not fulfill the test of moral certainty and therefore is insufficient to support a judgment of conviction. Where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.

7.REMEDIAL LAW; EVIDENCE; IT IS NOT SUFFICIENT FOR A CONVICTION THAT THE EVIDENCE ESTABLISHES A STRONG SUSPICION OR PROBABILITY OF GUILT.— The circumstances proferred by the prosecution and relied upon by the trial court only create suspicion that appellants probably perpetrated the crime charged. However, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt.

8. ID.; CRIMINAL PROCEDURE; JUDGMENT OF ACQUITTAL BASED ON REASONABLE DOUBT; REASONABLE DOUBT, DEFINED.— By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal conviction rests on the *strength of the evidence of the prosecution* and not on the weakness of the evidence of the defense.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Romeo R. Robiso for accused-appellant B. Pabiona.
Romeo P. Gerochi for accused-appellant R. Basalatan.

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the May 30, 2000 Decision[1] of the Regional Trial Court of Iloilo City, Branch 23 convicting appellants Benjie Pabiona, Roselo Basalatan, Roberto Metano and Antonio Silarca of the crime of murder, sentencing them to suffer the penalty of *reclusion perpetua*, and ordering them to pay the heirs of the victim, Robert Pagayon, the amounts of ₱232,100.00 as actual damages and ₱50,000.00 as civil indemnity.

[1] *Rollo* at 29-64.

The Information[2] dated May 31, 1997 charging the appellants and accused Christopher de los Reyes with murder reads as follows:

> That on or about the 20th day of November, 1996, in the Municipality of Passi, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with treachery and deliberate intent to kill, did then and there willfully, unlawfully and feloniously, attack and assault ROBERT PAGAYON with fist and kick blows and bamboo poles, as a result of which the said Robert Pagayon suffered multiple physical injuries on his body which caused his death thereafter.
>
> CONTRARY TO LAW.

Upon arraignment[3] on June 30, 1997, appellants pleaded not guilty to the offense charged. Trial thereafter ensued. Their co-accused, Christopher de los Reyes, has remained at large.

The prosecution presented the following witnesses whose testimonies follow after their respective names:

Michael Pagayon (Michael), a cousin of the victim, testified that on November 20, 1996, at about 9 p.m. at Barangay Agtambo, Passi, Iloilo, while he was on his way to the house of his aunt, Rosalina Padernal, he heard a cry for help emanating from a nearby river.[4] When he was about ten (10) meters from the river, he saw appellants, including accused Christopher de los Reyes, wielding bamboo poles. All of the accused were striking and kicking an unidentified man who was crawling. He then heard appellant Pabiona say, "*What did you tell, ha*?"[5] Michael then proceeded to his aunt's house and spent the night there.

The following morning, at about 6 a.m., Michael left his aunt's house. On his way to work at Villa, Iloilo, he passed by

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[2] *Id*. at 13.

[3] Records at 206.

[4] TSN, August 12, 1997 at 8.

[5] *Id*. at 15.

the place where he saw appellants beating up the unidentified man. He saw two men at the area but he kept on walking and was not able to identify them.[6]

Two weeks later, he heard a radio news report that his cousin Robert died at Barangay Agtambo after falling into a well on the date he witnessed appellants mauling an unknown victim.[7] He then narrated what he saw on the night of November 20, 1996 to his wife. Two months after hearing the radio report, he recounted what he witnessed to the mother of the victim, Marina Pagayon.[8]

Marina Pagayon (Marina) who, like the rest of the accused, was a member of appellant Pabiona's religious group, Catholic Movement of Jesus and Mary (CMJM), testified that at about 7 p.m. on November 20, 1996, appellant Pabiona and his brother Popoy went to her house at Gines Viejo, Passi, Iloilo and asked her to spend the night at his house in Dorillo Street, Passi, Iloilo and that Robert go along with them and resume work at his well. She acquiesced. Later that evening, appellant Basalatan, his wife Teresita and two others arrived at the Pagayon house and they all boarded appellant Basalatan's jeepney and headed for appellant Pabiona's house at Dorillo where she and Popoy Pabiona alighted. Appellant Basalatan and the rest of the passengers then proceeded to the well at Barangay Agtambo.

The morning after, Marina went back to her house to attend to her grandson. At about 11 a.m., Popoy Pabiona and Annie Ardales arrived at her house and told her to go to Barangay Agtambo.[9] Upon arriving thereat, she saw appellants Pabiona, Metano, Silarca, appellant Pabiona's mother Avelina, and a certain Cheryl Pampag at Pabiona's nipa hut. She then saw the lifeless body of her son — the victim on the floor of the hut. She cried and asked appellant Pabiona what had happened.

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[6] *Id*. at 62.

[7] *Id*. at 19-20.

[8] *Id*. at 25.

[9] TSN, October 7, 1997 at 23.

Appellant Pabiona told her that her son died after falling into the well at about 9 a.m. She then asked why they did not bring him to a hospital to which appellant Pabiona replied that the victim was already dead when they found him. Marina then noticed that her son's body was clean and he was wearing a pair of shorts which did not belong to him, prompting her to ask appellant Pabiona, "*If he fell why is it there is no mud on the body and he is already clean*." Appellant Pabiona replied that they already bathed Robert before she arrived.[10]

A jeepney from Funeraria Pamplona later arrived to take the victim's body. While on the jeepney, appellant Pabiona instructed Marina to keep quiet and not cry loudly as other people might hear her. He likewise instructed her to cover the victim with a blanket and made to sit beside the driver so that other people would not know that he was dead. Because the victim's body had already hardened, however, he was laid down on the jeepney. His body was then taken to Funeraria Pamplona.

As Marina had misgivings about the cause of her son's death, she went to appellant Pabiona's house to talk to him and ask him again about what really transpired before the victim died. Appellant Pabiona told her to accept that what happened was an accident and suggested that there be no autopsy conducted on the victim's body as it might cause trouble. Avelina, appellant Pabiona's mother, then told her that she should not be saddened as they would shoulder all the funeral expenses. [11] As she still could not think clearly, she agreed to everything that appellant Pabiona and his mother had told her.

Emma Pagayon (Emma), the victim's sister-in-law, testified that at about 6:30 a.m. on November 22, 1996, she was informed by Tessie Basalatan (Tessie), the wife of appellant Basalatan, and Gina Panerio (Gina), a member of CMJM, that the victim died after falling from the roof of appellant Pabiona's nipa hut in Barangay Agtambo.[12] Emma thus woke up her husband Renato

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[10] *Id*. at 31.

[11] *Id*. at 37.

[12] TSN, August 25, 1997 at 4.

Pagayon and they interrogated Tessie and Gina about the circumstances surrounding the victim's alleged fall from the roof. They were told that Robert fell face down on the ground and hit a hard object,[13] and that he was no longer brought to a hospital as he died immediately. Upon further questioning by the Pagayons, Tessie and Gina told them that nobody reported the incident to the police as all of them were "demoralized" by the victim's death.[14]

Emma thereupon repaired to Funeraria Pamplona and had photographs of her brother-in-law taken as she planned to request for an autopsy of his body. When she broached the idea of subjecting the victim's body to an autopsy to Marina, the latter initially refused because of appellant Pabiona's instructions. She later agreed upon Emma's prodding.

Emma then went to Dr. Leonardo Deza, the municipal health officer of Passi, Iloilo, and requested for an autopsy of the victim's body. Dr. Deza was astonished and told Emma that he had already released the victim's death certificate[15] upon processing by an unidentified woman.[16] He then immediately caused the cancellation[17] of the death certificate at the Office of the Civil Registrar. Upon examination of the cancelled death certificate, Emma noticed that her mother-in-law's signature therein was forged.[18]

On November 25, 1996, Emma went to Dr. Owen Jaen Lebaquin, medico-legal officer of the Philippine National Police Crime Laboratory Service in Camp Delgado, Iloilo City, and requested for an autopsy of the victim's body.

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13 *Id*. at 6.

14 *Id*. at 7.

15 Exhibit "G", Records at 7.

16 TSN, August 26, 1997 at 6.

17 Exhibit "I", Records at 9.

18 TSN, August 25, 1997 at 15.

Gathered from the postmortem examination conducted on the body of the victim on December 2, 1996 by Dr. Lebaquin are the following:

FINDINGS:

Fairly nourished, fairly developed previously embalmed male cadaver. Embalming incision sites are noted at the right lateral of the neck and at the umbilical area.

HEAD, TRUNK AND EXTREMITIES:

1) Hematoma, left periorbital area, measuring 4 x 4 cm., 5 cm. from its anterior midline.

2) Abrasion, left mandibular area, measuring 2 x 0.5 cm., 9 cm. from its anterior midline.

3) Area of multiple abrasion, right infraclavicular area, measuring 11 x 6 cm., 5 cm. from its anterior midline.

4) Area of multiple abrasion, sternal notch area extending to the left supraclavicular area, measuring 8 x 6 cm., 5 cm. from its anterior midline.

5) Area of multiple abrasion, left parasternal area extending to the left clavicular area, measuring 24 x 6 cm., 13 cm. from its anterior midline.

6) Area of multiple abrasion, right costal margin extending to the epigastric area, measuring 29 x 11 cm., 9 cm. from its anterior midline.

7) Abrasion, left iliac area, measuring 6 x 5 cm., 11 cm. from its anterior midline.

8) Abrasion, distal 3rd of the right thigh, measuring 9 x 3 cm., 7 cm. medial to its anterior midline.

9) Abrasion, umbilical area, measuring 7 x 5 cm., 3 cm. from its anterior midline.

10) Area of Multiple Abrasion, nape area along the paravertebral area extending to the lumbar area, measuring 30 x 13 cm. bisected by its posterior midline.

A linear fracture is noted at the left sphenoid.

A blood clot measuring 2 x 1 cm. at the parietal lobe of the brain left side is noted.

Scalp hematoma is noted at the occipital area of the head.

Hemorrhagic areas are likewise noted at the underlying tissue of the left clavicular area.

Stomach is ½ full of partially digested food consisting mostly of rice.

CONCLUSION:

Cause of death is Cardiorespiratory arrest due to shock and hemorrhage as a result of multiple traumatic injuries to the body.[19]

Upon the other hand, the defense presented appellants and Rosalina Padernal whose testimonies follow after their respective names:

Appellant Pabiona testified that at about 7 p.m. on November 20, 1996, he was told by his mother that Marina went to their house earlier to inform him that her son — the victim would resume work at his well.[20] He thereupon asked his brother to accompany him in fetching the victim. On arrival at the Pagayon house at about 7:30 p.m., Marina told them to wait while she prepared Robert's belongings. In the meantime, appellant Basalatan, together with his wife Teresita, arrived. The six of them, on board appellant Basalatan's jeepney, then left for appellant Pabiona's house where Marina and appellant Pabiona's brother alighted as they were to spend the night there. The rest of them proceeded to appellant Pabiona's farm in Barangay Agtambo at about 9 p.m. as they planned to continue digging at the well the following day.[21]

Appellant Pabiona and company arrived at the farm at about 9:30 p.m. and proceeded to a nipa hut, ten (10) meters away from the well, where they met appellants Metano, Silarca and

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[19] Exhibit "A", Records at 1-2.

[20] TSN, August 3, 1999 at 6.

[21] *Id*. at 10.

accused de los Reyes.[22] They took supper after which appellant Basalatan and his wife Teresita left for home. The five remaining men then slept at the nipa hut.

Appellant Pabiona woke up the next day at about 5:45 a.m. and joined his companions who were drinking coffee. At around 7 a.m., he told them to stay at the nipa hut while he walked around the farm. His companions then told him that they would start digging shortly after he leaves.

At around 11:00 a.m., when appellant Pabiona was about 500 meters from the nipa hut, he was startled to find appellant Silarca running towards him, shouting that the victim fell down the well.[23] Both of them thus repaired to the well and found appellant Metano crying while accused de los Reyes was inside the well cradling the victim. Appellant Pabiona then instructed appellants Metano and Silarca to help the victim. After much difficulty, the victim being heavy, they were finally able to lift him from the 15 meter deep well by spreading his legs, placing him astride appellant Silarca's shoulders, tying a blanket which was connected to a rope around his armpits, pulling the rope (by appellant Pabiona) as appellant Metano and accused de los Reyes helped appellant Silarca climb the bamboo ladder inside the well.

After lifting the victim from the well, appellant Silarca performed mouth to mouth resuscitation in order to revive Robert, but to no avail [24] They thereupon brought him to the nipa hut. Appellant Pabiona instructed accused de los Reyes to look for a vehicle so they could bring Robert to a doctor. He likewise ordered him to inform Marina that her son was involved in an accident.[25]

At about 12 noon, Marina, together with Annie Ardales, arrived at the nipa hut. Appellant Pabiona left for home at about 2:30

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

[23] *Id*. at 20-21.

[24] *Id*. at 25, TSN, November 12, 1998 at 21.

[25] TSN, August 31, 1999 at 4.

p.m.[26] while appellants Metano and Silarca remained in the hut with Marina and Annie.

Appellant Silarca testified that at about 9:30 p.m. on November 20, 1996, he, together with appellant Metano and accused de los Reyes, was at appellant Pabiona's nipa hut at Barangay Agtambo to work on the nearby well when appellants Pabiona and Basalatan, Teresita Basalatan and the victim arrived. [27] He then substantially corroborated appellant Pabiona's testimony regarding the events that transpired that night.

The following morning, with appellant Metano, accused de los Reyes and the victim, appellant Silarca prepared to work on the well. An iron bar, two bamboo poles and a shovel were inside the well.[28] While the victim was going down the bamboo ladder, he slipped on one of the rungs and let out a cry.[29] Appellants Silarca and accused de los Reyes were about seven meters away while appellant Metano was about a meter away when the victim slipped. Accused de los Reyes and appellant Metano went down the well to help the victim who fell on the objects earlier placed therein while he ran to find appellant Pabiona. He then corroborated appellant Pabiona's version of the events that transpired thereafter, adding only that they washed the victim's body after lifting him from the well in order to check his injuries, his body being covered by mud from the well. [30]

Appellant Basalatan corroborated his co-appellants' version of what happened on the night of November 20, 1996 and added that he and his wife Teresita left the nipa hut at Barangay Agtambo at about 11:30 p.m. and proceeded to their home.[31] The following day, at about 6:30 a.m., he traveled to Iloilo City for some business and went home to Passi, Iloilo at about 4 p.m. He was

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[26] TSN, August 3, 1999 at 28.

[27] TSN, November 12, 1998 at 4-5.

[28] *Id*. at 18.

[29] *Id*. at 10.

[30] *Id*. at 20-21.

[31] TSN, May 4, 1999 at 19.

then informed by his wife that the victim died after falling from the well at appellant Pabiona's farm.[32]

Appellant Metano corroborated his co-appellants' testimonies.

Rosalina Padernal, the aunt of Michael Pagayon, testified that, contrary to her nephew's testimony, Michael did not spend the night at her house on November 20, 1996.[33] She likewise testified that sometime in April 1997, Michael, together with a companion, went to her house and told her that if anyone asks whether he spent the night at her place on November 20, 1996, she should answer in the affirmative.[34]

By Decision of May 30, 2000, the trial court found appellants guilty of murder. The dispositive portion reads, quoted *verbatim*:

> WHEREFORE, premises considered and in the light of the facts obtaining and the jurisprudence aforecited, judgment is hereby rendered finding the accused Benjie Pabiona, Roselo Basalatan, Antonio Silarca and Roberto Metano GUILTY beyond reasonable doubt of the crime of MURDER hereby sentencing the aforenamed accused to a penalty of *RECLUSION PERPETUA* and further condemning all of the said accused to indemnify the heirs of the victim actual damages in the amount of ₱232,100.00 and death compensation in the sum of ₱50,000.00
>
> The bail bond posted by the accused are ordered cancelled and their subsequent arrest and confinement is ordered. The Jail Warden, Iloilo Rehabilitation Center, is ordered to remit (sic) National Penitentiary, New Bilibid Prison, Muntinlupa City at the earliest opportunity.
>
> Let there be issued an alias order of arrest to the accused Christopher de los Reyes who remained (sic) at-large up to the present time.
>
> SO ORDERED.[35]

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[32] *Id*. at 21.

[33] TSN, September 15, 1998 at 7.

[34] *Id*. at 8.

[35] *Rollo* at 63-64.

Dissatisfied with the decision, the four appellants filed their Notice of Appeal[36] on July 20, 2000.

In their joint brief of February 4, 2002, appellants Basalatan and Silarca assign the following as errors of the trial court:

I

THE HONORABLE TRIAL COURT ERRED IN GIVEN (sic) CREDENCE TO THE UNCORROBORATED TESTIMONY OF THE LONE WITNESS OF THE PROSECUTION MICHAEL PAGAYON

II

THE PROSECUTION EVIDENCE IS PURELY CIRCUMSTANTIAL AND DOES NOT SATISFY THE REQUIREMENTS FOR SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE TO CONVICT THE ACCUSED

III

THE PROSECUTION HAS NOT OVERCOME THE BURDEN OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT[37]

In his brief of March 9, 2002, appellant Pabiona imputes the following errors:

I

THE HONORABLE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF LONE EYE-WITNESS MICHAEL PAGAYON

II

THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT, IN THE ALTERNATIVE, THERE IS CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO WARRANT CONVICTION OF THE ACCUSED

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[36] *Id*. at 65.

[37] *Id*. at 166.

III

THE HONORABLE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF MURDER BEYOND REASONABLE DOUBT[38]

Per certification[39] dated April 9, 2003 issued by Assistant Director Joselito A. Fajardo of the Bureau of Corrections, Muntinlupa City, this Court was informed of the death of appellant Metano on August 30, 2002.[40]

In rendering its decision, the trial court disregarded appellants' version of what transpired and relied on circumstantial evidence culled from the testimonies of the prosecution witnesses, which it enumerated as follows:

a) the accused Benjie Pabiona and Roselo Basalatan personally brought the victim Robert Pagayon to the crime scene in the evening of November 20, 1996 situated on the property of the Pabiona family;

b) the presence of all the accused in the scene of the crime immediately before, during and immediately after the incident;

c) no one reported the death of the victim to the police authorities nor to any *barangay* officials;

d) the victim was not brought by the accused to the hospital immediately after the incident;

e) the driver and a laborer of Pamplona Funeral Homes were instructed not to bring any casket when they got the cadaver of the victim from the crime scene;

f) the cadaver of the victim was washed by the accused and seen by the victim's mother naked with his clothes nowhere to be found except for a stripe (sic) short pants on not belonging to the victim;

g) the well where the victim accidentally fell as claimed by the accused is only five (5) meters deep with sandy soil and one (1) foot deep water at the bottom thereof; and

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[38] *Id.* at 112.

[39] *Id.* at 361.

[40] *Id.* at 362.

h) no other person/persons were present before, during and after the incident except the five (5) accused.[41]

The trial court likewise relied upon the testimony of Michael Pagayon, the pertinent portions of which read:

Q: Because you said you slept in the house of your aunt Rosalina Padernal because you were not able to catch up (sic) a ride at 6:00 o'clock, at 9:00 o'clock in the evening, where were you specifically at Brgy. Agtambo?

A: At around 9:00 o'clock I went to a store to buy cigarettes but the store was already closed.

Q: Because the store was already closed at 9:00 o'clock when you intended to buy cigarettes, what happened next?

A: I walked home because there was no cigarettes.

Q: From the store where you intended to buy cigarettes from the house of your aunt Rosalina Padernal, how far is that in terms of meters, more or less?

A: About 300 meters.

xxx xxx xxx

Q: When you were walking from the store where you intended to buy cigarettes back to your house, to the house of your aunt Rosalina Padernal, did you notice of (sic) any unusual incident?

A: Yes, sir.

Q: What was that about?

A: I heard a shout asking for help.

Q: When you heard a shout asking for help, what did you do?

A: I went near.

Q: From where [did] that shout of help came (sic) from?

A: From the river.

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[41] *Id*. at 62-63.

Q: From where you were standing at that time towards the place in the river where the shout came from, how far from (sic) you?

A: 10 meters.

Q: Were you able to reach the river where the shout for help came from?

A: No, sir.

Q: You said you were not able to reach the river where the shout came from, how many meters more or less were you from the place where the shout came from?

A: 10 meters.

xxx xxx xxx

Q: You said you saw them mauling and kicking a person, why were you able to see those people mauling and kicking a person?

A: Because I went there.

xxx xxx xxx

Q: How many people were mauling that person?

A: Five.

Q: How many persons were being mauled and kicked?

A: One.

Q: Do you know these persons who mauled the person?

A: Yes, sir.

Q: Can you mention their names?

A: Yes, sir.

Q: Please tell the Court?

A: Benjie Pabiona, Antonio Silarcan (sic), Roberto Metano (Witness pointing to persons seated on the accused bench), Roselo Basalatan, Christopher delos Reyes.

Q: This Benjie Pabiona that you mentioned, is he inside the Courtroom?

A: Yes, sir.

Q: Please point to him? (Witness pointing to a person inside the Courtroom who when asked answered to the name of Benjie Pabiona.

Q: How about Antonio Silarca, is he inside the Courtroom?

A: Yes, sir.

Q: Please point to the accused. (Witness pointing to a person when asked answered to the name of Antonio Silarca).

Q: How about Roselo Basalatan? (Witness pointing to a person when asked answered to the name of Roselo Basalatan).

Q: How about Roberto Metano? (Witness pointing to a person who answered to the name of Roberto Metano).

Q: How about Christopher delos Reyes, is he inside the Courtroom?

A: No, sir.

Q: You said that these people were mauling aperson (sic), what was Benjie Pabiona particularly doing at that time you saw (sic)?

A: Holding a bamboo.

Q: What was he doing with the bamboo?

A: Striking.

Q: While he was striking the person with the bamboo, was he saying anything?

A: Yes, sir.

Q: What did he say?

A: What I have heard, "What did you tell, ha?"

Q: How about this Antonio Silarca, what was he doing actually?

A: Also holding a bamboo.

Q: What was he doing with the bamboo?

A: Striking with the bamboo.

Q: How about Roselo Basalatan, what was he doing at that time?

A: Also holding a bamboo.

Q: What was he doing?

A: Also hitting.

Q: How about Roberto Metano, what was he doing at that time?

A: Also the same.

Q: How about Christopher delos Reyes, what was he doing at that time?

A: Also the same.

Q: Have you seen how big is the bamboo being held by Benjie Pabiona?

A: Yes, sir.

Q: Will you please show?

A: As big as my wrist which is about 2 inches in diameter.

xxx xxx xxx

Q: At thattime (sic), at about 9:00 o'clock in the evening that you saw these people mauling the person, do you know the person being mauled at that time?

A: No, sir.

Q: Because that night you did not know who the person being mauled (sic), what did you do?

A: I went home.

Q: You went home to whose house?

A: Antie (sic) Saling.

Q: The following morning what time did you wake up?

A: 6:00 o'clock.

Q: When you woke up where did you go?

A: I went back to Iloilo to my work.

xxx xxx xxx

Q: Were you present when Robert Pagayon died?

A: No, sir.

Q: So you do not personally know at what time did Robert Pagayon die?

A: No, sir.

Q: Also you do not know on what date Robert Pagayon died because you were not there?

A: I do not know the time, place on November 21 and November 20 when he died.

Q: Also you do not know the actual circumstances and how Robert Pagayon died because you were not there?

A: I know.

Q: You were there when Robert Pagayon died?

A: No, sir.

Q: So how did you know how Robert Pagayon died because you said you do (sic) were not there?

A: When he was mauled he is not yet dead.

Q: Did you see Robert Pagayon being mauled?

A: Yes, sir.

Q: You are very positive that you saw Robert Pagayon being mauled?

A: Yes, sir.

Q: You said that because you saw the person being mauled?

A: The one being mauled I do not know him when he was being mauled.

Q: And you are saying that you are merely making a conclusion and your opinion that the person mauled was Robert Pagayon?

A: Yes, sir.

Q: That is your own belief?

A: Yes, sir.[42]

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[42] TSN, August 12, 1997 at 7-82.

The fundamental issue in the instant appeal is whether or not there is sufficient circumstantial evidence to sustain the trial court's judgment finding appellants guilty beyond reasonable doubt.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.[43] Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.[44]

Section 4 of Rule 133 of the Rules on Evidence provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with: (1) there is 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. With respect to the third requisite, the circumstantial evidence presented must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person.[45] All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[46]

From a considered scrutiny of the evidence in the case at bar in light of the standards set forth above, this Court holds that the evidence adduced by the prosecution does not prove the guilt beyond reasonable doubt of appellants.

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[43] *People v. Ayola*, 364 SCRA 451, 461 (2001), *People v. Lugod*, 352 SCRA 498, 515 (citation omitted), *People v. Rondero*, 320 SCRA 383, 396 (1999) (citation omitted).

[44] *People v. Ayola*, 364 SCRA 451, 461 (2001) (citations omitted).

[45] *People v. Sevilleno*, G.R. No. 152954, March 10, 2004 (citation omitted), *People v. Leaño*, 366 SCRA 774, 786 (2001), *People v. Balderas*, 276 SCRA 470, 483 (1997) (citation omitted).

[46] *People v. Espina*, 326 SCRA 753, 763 (2000) (citations omitted), *Abad v. Court of Appeals*, 291 SCRA 56, 61 (1998) (citations omitted), *People v. De Guzman*, 250 SCRA 118, 125-126 (1995) (citations omitted).

The evidence does not rule out the possibility that there had only been an accidental death. Hitting one's head on a hard object such as an iron bar or shovel after accidentally slipping could account for the fracture, blood clot and scalp hematoma found on the back of the victim's head which, in turn, could have caused his death soon thereafter. As testified to by Dr. Lebaquin:

Q: Of these injuries mentioned, what could have been considered as the fatal injury which caused the death?

A: Fracture of the skull.

xxx xxx xxx

Q: In terms of minutes, how many minutes or hours will death occur after these injuries were sustained?

A: There was a blood clot. I think immediately, it is possible the victim could have died minutes after.

Q: 5 minutes?

A: Possible.

Q: 10 minutes?

A: Possible.[47]

The victim's injuries, contrary to the trial court's evaluation, are more consistent with appellants' version of the events that transpired on November 21, 1996. While the victim sustained a fracture, a hematoma and a blood clot on his head, the rest of the injuries on his body are mere abrasions.[48] Abrasions are injuries characterized by the removal of the superficial epithelial layer of the skin caused by rubbing or friction against a hard rough surface.[49] Such abrasions found on the victim's body are more likely to have been caused by his slipping from the bamboo ladder and falling into the well rather than by force applied by

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[47] TSN, August 11, 1997 at 22-23.

[48] Exhibit "A", Records at 1.

[49] P. SOLIS, *LEGAL MEDICINE* 260 (1987).

five able-bodied men striking him with bamboo poles and kicking him as claimed by the prosecution. As testified to by Dr. Lebaquin:

Q: Next item, Injury No. 2. Abrasion, left mandibular area, measuring 2 x 0.5 cm. 9 cm. from its anterior midline. Please point to the Court where is this situated?

A: Left jaw.

Q: In the layman's language, please kindly explain to the Court this injury?

A: In our dialect this is called "gasgas," caused by rubbing in a rough surface.

Q: Please explain what could have caused this?

A: Rubbing of the skin at hard object.[50]

The mere presence of appellants at an alleged *locus criminis* does not suffice to implicate them in a crime,[51] more so as in the case at bar where appellants' presence was sufficiently explained to have been due to their digging of the well on appellant Pabiona's property which commenced long before November 20, 1996.

While the motive of the accused in a criminal case is generally held to be immaterial, not being an element of the crime, motive becomes important when, as in this case, the evidence of the commission of the crime is purely circumstantial or inconclusive and there is some doubt on whether a crime has been committed or whether the accused has committed it.[52]

In the case at bar, the prosecution was unable to establish motive of the appellants in allegedly perpetrating the offense charged. In fact, prosecution eyewitness Michael Pagayon testified:

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[50] TSN, August 11, 1997 at 10.

[51] *Abad v. Court of Appeals*, 291 SCRA 56, 62 (1998) (citations omitted), *People v. Parel*, 261 SCRA 720, 734-735 (1996).

[52] *People v. Leaño*, 366 SCRA 774, 791 (2001), *People v. Galano*, 327 SCRA 462, 473-474 (2000).

Q: Before November 20, 1996, do you know if there was any misunderstanding or quarrel between Robert Pagayon on the one hand and any or all of the accused here in Court?

A: No, sir, he has no enemy.[53]

The records reveal, on the other hand, that the Pagayons enjoyed close relations with appellants, Marina being, as reflected above, a co-member of the appellants in CMJM. It was even shown that she was accustomed to sleeping over at the Pabiona residence at every opportunity.[54]

This Court likewise notes prosecution eyewitness Michael Pagayon's inordinate delay in reporting what he allegedly saw on the night of November 20, 1996. Even after hearing the radio news report on his cousin — the victim's death on December 1, 1996 and deducing that he was the victim of the mauling that he claimed to have witnessed, he only reported such incident to his aunt Marina and the authorities two months later. It is but logical for a relative who was an eyewitness to a crime to promptly and audaciously take the necessary steps to bring the culprit into the hands of the law and seek justice for the poor victim.[55]

It may be relevant to note too that while in his direct examination, Michael categorically declared that he saw only five persons mauling an unidentified man,[56] in his cross-examination, he testified that there were actually seven men:

Q: In this affidavit of yours you stated that aside from the five accused here, there were 2 other persons because you said there were seven (7) persons mauling another, do you remember that?

xxx xxx xxx

A: I saw the two but I do not know them.

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[53] TSN, August 12, 1997 at 80.

[54] TSN, August 3, 1999 at 9-10.

[55] *People v. Capili*, 333 SCRA 354, 365 (2000).

[56] TSN, August 12, 1997 at 12.

Q: But during the direct examination you said there were five (5) persons who mauled (sic)?

A: Yes, sir.[57]

That appellants were the malefactors cannot be simply inferred from the mere fact that appellant Pabiona and his family offered to shoulder the expenses for the burial of Robert. As the victim was in appellant Pabiona's employ and died while working at his well, it was not unnatural for him to make an offer to bear the expenses that Marina would incur attendant to the burial of her son.

Nor can appellants' failure to report the victim's death to police authorities and *barangay* officials be considered as an indication of their guilt, as the records show that they, through their relatives,[58] immediately informed the victim's mother and brother that he died.

The other circumstances enumerated by the trial court are too equivocal to establish appellants' guilt beyond reasonable doubt.

In *People v. Capili*,[59] this Court similarly ruled that the circumstantial evidence adduced by the prosecution was utterly inadequate to justify a judgment of conviction:

> In fact, there is even some possibility that Badua's identification of accused-appellant as the perpetrator was a mere afterthought, there being no definite lead as to the identity of the author of the crime even after the lapse of several days following the finding of the cadaver of the victim by the riverside on October 7, 1994. The foregoing considerations taken together cast reasonable doubt on the culpability of accused-appellant as killer of Alberto Capili. The evidence which stands on record does not eliminate the possibility of absence of foul-play, *i.e.*, that there had been only an accidental death by drowning. Striking a rock after accidentally slipping could

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[57] *Id.* at 77.

[58] TSN, August 25, 1997 at 3, TSN, October 7, 1997 at 23.

[59] 333 SCRA 354, 366 (2000).

cause contusions similar to those found at the back of the victim's head and shoulders and result in the loss of consciousness leading to drowning. Only by proof beyond reasonable doubt, which requires moral certainty, may the presumption of innocence be overcome. Moral certainty has been defined as "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it." Absent the moral certainty that accused-appellant caused the death of the victim, acquittal perforce follows.[60]

It is a basic principle in criminal law that where the evidence is capable of two or more inferences, one of which is consistent with the presumption of innocence and the other compatible with a finding of guilt, the court must acquit the accused because the evidence does not fulfill the test of moral certainty and therefore is insufficient to support a judgment of conviction.[61] Where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.[62]

In the case at bar, two antithetical interpretations may be inferred from the evidence presented. The pieces of circumstantial evidence do not inexorably lead to the conclusion that appellants are guilty of the crime charged.

The circumstances proffered by the prosecution and relied upon by the trial court only create suspicion that appellants probably perpetrated the crime charged. However, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt.[63]

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[60] *Id.* at 366 (citations omitted).

[61] *People v. Cañete*, G.R. No. 128321, March 11, 2004, *People v. Leaño*, 366 SCRA 774, 791 (2001), *People v. Ayola*, 364 SCRA 451, 463 (2001) (citation omitted), *People v. Mijares*, 297 SCRA 520, 531 (1998) (citation omitted), *People v. Cawaling*, 293 SCRA 267, 307 (1998) (citation omitted), *People v. De Guzman*, 250 SCRA 118, 126 (1995) (citation omitted).

[62] *Tin v. People*, 362 SCRA 594, 605 (2001) (citation omitted).

[63] *People v. Morada*, 307 SCRA 362, 380 (1999).

The basis of acquittal in this case is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellants with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt.[64] An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal conviction rests on the **s***trength of the evidence of the prosecution* and not on the weakness of the evidence of the defense.[65]

WHEREFORE, the May 30, 2000 decision of the Regional Trial Court of Iloilo City, Branch 23 is hereby *REVERSED* and *SET ASIDE*. Appellants Benjie Pabiona, Roselo Basalatan, and Antonio Silarca are *ACQUITTED* of the charge of murder on the ground of reasonable doubt. Their immediate release from custody is hereby ordered unless they are being held for other lawful causes.

SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.,* concur.

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

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[64] *People v. Cañete*, G.R. No. 128321, March 11, 2004.

[65] *People v. Leaño*, 366 SCRA 774, 792 (2001).

FIRST DIVISION

[G.R. No. 150629. June 30, 2004]

RENATO TICHANGCO; ROMEO RAMOS, for himself and the SAMAHANG MAGKAKAPITBAHAY NG DULONG GAGALANGIN; ANTONIO PASCO, for himself and the SAMAHANG MAGKAKAPITBAHAY NG BARANGAY 186; CELSO SANTIAGO, for himself and the SAMAHANG NAGKAKAISANG DAMDAMIN NG SUNOG APOG; and ARTURO BALLO, for himself and the FEDERATION KAPIT-BISIG HOMEOWNERS ASSOCIATION, INC., *petitioners, vs.* **The Honorable ALFREDO ENRIQUEZ, Administrator, Land Registration Authority; The LAND REGISTRATION AUTHORITY; and/or The SUCCESSORS-IN-INTEREST OF SEVERINO MANOTOK, BENITA MANOTOK, AMBROSIO MANOTOK and/or RICARDO MANOTOK, namely, PATRICIA L. TIONGSON and/or ELISA V. MANOTOK,** *respondents.*

SYNOPSIS

Original Certificate of Title (OCT) Nos. 820 and 7477 were previously issued pursuant to a decree of registration. Petitioners sought to nullify the OCTs and the subsequent titles derived therefrom covering parcels of land registered in the names of private respondents, but the public respondent found no ground to nullify the OCTs. Petitioners appealed to the Court of Appeals which affirmed the decision of public respondent. Petitioners' motion for reconsideration was denied. Hence, this petition where petitioners claimed that (1) OCT No. 820 is null and void as it was issued before the completion of the magnetic survey of the parcels of land it covered; and (2) OCT No. 7477 is likewise null and void because the parcels of land it covered were formerly part of inalienable lands of the public domain intended for public use.

In denying the petition, the Supreme Court ruled that OCT No. 20 had been more than 90 years ago in 1997, but the original certificate is still existing in the Register of Deeds. Having

been issued under the Torrens System, said OCT No. 820 enjoys a presumption of validity. Correlatively, it also carries a strong presumption that the provisions of the law governing the registration of land under the Torrens System have duly been followed.

By legal presumption, public officers are deemed to have regularly performed their official duties. Thus, the proceedings for land registration that led to the issuance of OCT No. 820 are presumed to have been regularly and properly been conducted. To overturn this legal presumption after more than 90 years since the termination of the case, will not only endanger judicial stability, but also violate the underlying principle of the Torrens System.

As to OCT No. 7477, the Court ruled that private respondents have overcome the presumption that the parcels of land in question are within an unclassified property of the public domain. Moreover, petitioners failed to show that the facts they rely upon to justify a review of the decree which led to the issuance of the said OCT constitute actual extrinsic fraud.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NATURE.— "*Certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop." It involves a correction of errors of jurisdiction only, or grave abuse of discretion amounting to lack or excess of jurisdiction. It is not a substitute for an appeal, when the latter remedy is available.

2. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION LAW; PURPOSE.— The fundamental purpose of the Land Registration Law (Act No. 496, now PD 1529) is to finally settle title to real property in order to preempt any question on the legality of the title — except claims that were noted on the certificate itself at the time of registration or those that arose subsequent thereto. Consequently, once the title is registered under the said law, owners can rest secure on their ownership and possession.

3. ID.; ID.; ID.; A TITLE CANNOT BE COLLATERALLY QUESTIONED AFTER A DECREE OF REGISTRATION

UNDER THE TORRENS SYSTEM IS MADE AND THE REGLEMENTARY PERIOD WITHIN WHICH TO QUESTION THE DECREE HAS PASSED.— The proceedings for the judicial registration of land under the Torrens system involve more consequences than an ordinary action would. Once a decree of registration is made under the Torrens system, and the reglementary period has passed within which the decree may be questioned, the title is perfected and cannot be collaterally questioned later on.

4. ID.; ID.; ID.; AFTER THE REGISTRATION IS COMPLETED IN THE REGULAR COURSE, THE RIGHTS OF ALL ADVERSE CLAIMANTS ARE FORECLOSED BY THE DECREE OF REGISTRATION.— While registration proceedings are judicial, they involve more consequences than an ordinary action would. The entire world, including the government, is given a chance to participate in the case. After the registration is completed and finalized in the regular course, the rights of all adverse claimants are foreclosed by the decree of registration. The government itself assumes the burden of giving notice to all parties. The very purpose and intent of the law, however, would be defeated by permitting persons to litigate again on the basis of the same adverse claims in the registration proceedings, after they have already been given the opportunity to do so. For them to raise the same questions anew would be to cast doubt again upon the validity of the registered title.

5. ID.; ID.; PRESIDENTIAL DECREE NO.1529 (PROPERTY REGISTRATION DECREE); REVIEW OF DECREE OF REGISTRATION WOULD PROSPER ONLY UPON PROOF THAT REGISTRATION WAS PROCURED THROUGH ACTUAL FRAUD.— [T]he review of a decree of registration under Section 38 of Act No. 496 (Section 32 of Presidential Decree No. 1529) would prosper only upon proof that the registration was procured through actual fraud. "The fraud must be actual and extrinsic, not merely constructive or intrinsic; the evidence thereof must be clear, convincing and more than merely preponderant, because the proceedings which are assailed as having been fraudulent are judicial proceedings which by law, are presumed to have been fair and regular."

6. ID.; ID.; ID.; EXTRINSIC AND INTRINSIC FRAUD, DISTINGUISHED.— Actual fraud proceeds from an intentional

deception perpetrated through the misrepresentation or the concealment of a material fact. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant. The fraud is intrinsic if that which is alleged in the petition to set aside the decree is the fraud involved in the same proceedings in which the parties seeking relief have had ample opportunity to assert their right, to attack the document presented by the applicant for registration, and to cross-examine the witnesses who have testified thereon. Inquiry into this latter kind of fraud is barred after the judgment of the land registration court has become final.

7. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; LEGAL STANDING, DEFINED.— "Legal standing has been defined as a personal and substantial interest in the case, such that the party has sustained or will sustain direct injury as a result of the challenged act. Interest means a material interest in issue that is affected by the questioned act or instrument, as distinguished from a mere incidental interest in the question involved."

8. POLITICAL LAW; CONSTITUTIONAL LAW; SECTION 14, ARTICLE VIII OF THE CONSTITUTION; NOT VIOLATED BY MERE FAILURE TO SPECIFY THE CONTENTIONS OF THE PARTIES AND THE REASONS FOR REFUSING TO BELIEVE THEM.— The first paragraph of Section 14 of Article VIII of the Constitution mandates that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." … What the law insists on is that a decision state the "essential ultimate facts." Indeed, the "mere failure to specify xxx the contentions of the petitioner and the reasons for refusing to believe them is not sufficient to hold the same contrary to the requirements of the provision of law and the Constitution."

9. ID.; ID.; ID.; IN APPELLATE COURTS, THE RULE DOES NOT REQUIRE ANY COMPREHENSIVE STATEMENT OF FACTS OR MENTION OF THE APPLICABLE LAW, BUT MERELY A STATEMENT OF THE LEGAL BASIS FOR DENYING DUE COURSE.— This constitutional provision deals with the disposition of petitions for review and of motions for reconsideration. In appellate courts, the rule does not require any comprehensive statement of facts or mention of the

applicable law, but merely a statement of the "legal basis" for denying due course. Thus, there is sufficient compliance with the constitutional requirement when a collegiate appellate court, after deliberation, decides to deny a motion; states that the questions raised are factual or have already been passed upon; or cites some other legal basis. There is no need to explain fully the court's denial, since the facts and the law have already been laid out in the assailed Decision.

APPEARANCES OF COUNSEL

Reynaldo B. Aralar & Associates for petitioners.
Felix B. Lerio for private respondents.

D E C I S I O N

PANGANIBAN, *J.*:

Unless contrary substantial evidence is presented in the proper proceedings by the proper party, a Torrens certificate of title cannot be overturned. The Torrens system rests on stability — on the assurance that once ownership is recorded in the proper registry, owners can rest easy on their properties.

The Case

Before us is a Petition for Review[1] challenging the August 8, 2001 Decision[2] and the October 29, 2002 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 54648. The assailed Decision affirmed the findings of the then Land Registration Authority (LRA) administrator, Alfredo Enriquez, that there

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[1] *Rollo*, pp. 3-23. Petitioners erroneously labeled their recourse as one for "*certiorari*" under "Rule 65." Since they are questioning a decision of the Court of Appeals, the proper remedy is a petition for review under Rule 45. Inasmuch as the herein Petition had actually been filed within the 15-day regulatory period, the Court treated the Petition as one filed under Rule 45.

[2] *Id*., pp. 59-68. *Fifteenth Division*. Penned by Justice Romeo A. Brawner (Division chairman), with the concurrence of Justices Remedios Salazar-Fernando and Rebecca de Guia-Salvador (members).

[3] *Id*., pp. 86-87.

were no legal grounds to initiate appropriate proceedings to nullify Original Certificate of Title (OCT) Nos. 820 and 7477 and the subsequent titles derived therefrom: Transfer Certificate of Title (TCT) Nos. 128240 to 128249, inclusive, and TCT No. 128270 — all covering parcels of land in Tondo, Manila registered in the names of private respondents.

The challenged Resolution denied reconsideration.

The Facts

The antecedents are summarized in the Decision of the CA as follows:

> Sometime in March 1996, Renato Tichangco, in behalf of the homeowners' association of Gagalangin and Sunog Apog (Tondo, Manila), who are occupants of various parcels of land in Gagalangin, Tondo, filed a land title verification request with the Land Registration Authority (LRA), docketed as LTV No. 96-0376. The verification request was prompted by an alleged claim of ownership of a certain Manotok over the land which petitioners occupy, and which they perceive as public land, being portions of the dried or filled bed of Estero de Maypajo and Sunog Apog area, and which allegedly have already been identified as Area for Priority Development under the Urban Poor Law. Manotok's claim is anchored upon Survey Plan Psd-25141, allegedly covering Lots 62-B and 69, Blk. 2918 of the Manila Cadastre, dated 22 December 1948 and Survey Plan (LRC) Psd-44026, allegedly covering Lots 86-A to C and 80-C-1 to 3, also of the Manila Cadastre. On 23 October 1996, the LRA-Task Force issued a report stating, among others, that "(a)s appearing on the survey plan (*i.e.*, plan Psd-25141), Lots 62 and 69 were bounded among others by ESTERO DE MAYPAJO and Lot 55-C, Psd-11746." The task force also found that Psd-25141 and (LRC) Psd-44026 overlap with other surveys. Moreover, it found that "(t)he Lands Management Bureau xxx has no record showing that Lot 55-C, Psd-11746 was issued patent in favor of some private persons," and that "(v)erification on MIS No. 1955 for Manila, in the file with this Authority, disclosed no previous plotting of a title over 'Lot 55-C, Psd-11746' located near the Estero de Maypajo, Tondo, Manila and appearing as boundary in survey plan Psd-25141 of Ricardo Manotok."
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> Subsequently, the Estero de Sunog Apog homeowners, thru City Councilor Danilo Varona, 2nd District, Tondo, Manila, made similar requests for verification of TCTs Nos. 12870, and 128240 to 128249,

inclusive, with the LRA, docketed as LTV-98-1222. The LRA-Task Force found that "[s]ubject titles covered ten (10) lots under (LRC) Pcs-14840, which were consolidation-subdivision of Psd-11746 and (LRC) Psd-7815." TCT Nos. 128240 to 128249 had its origin from two Original Certificate of Title (OCT) No. 820, issued pursuant to Decree of Registration No. 1424 (31 January 1905), Expediente Number 302. These consist of Lots 1 to [10] of the consolidation-subdivision plan (LRC) Pcs-14840, portions of the consolidation of Lots 55-B and 55-C, Block 2918, Psd-11746, B, (LRC) Psd-7815, LRC Record No. 302 & N-1555. TCT No. 128270, on the other hand, had its origin from OCT No. 520 (sic) and 7477, issued pursuant to Decree Nos. 1424 and N-[23419], LRC Record No[s. 302,] N-1555. This lot is more particularly identified as Lot 10 of the consolidation-subdivision plan (LRC) Pcs-14686, portion of the consolidated Lots A, (LRC) Psd-7815, Psu-117259 & 55-A, Blk. 2918, Psd-11746, LRC Cad. No. 302 & Rec. No. N-1555. Moreover, the task force found that "(i)n plotting, based on the Manila Cadastral Map, surveys (LRC) Pcs-14686 and (LRC) Pcs-14840, of the above subjects, have encroached:

1. Over the Estero de Sunog Apog by an estimated 30 meters; and

2. Over all of the Sapang Visita."

The task force hence referred the matter to the LRA-OSG Task Force for appropriate action.

Petitioners sought the assistance of the Office of the Solicitor General (OSG) for legal action on OCTs Nos. 820 and 7477. On 18 February 1999, the OSG wrote a letter to public respondent for a review and evaluation of the records on the issuance of TCTs Nos. 128240 to 128249, and 128270 covering parcels of land in Gagalangin, Tondo, Manila, docketed as Task Force TM No. 98-0087. In reply, public respondent issued the assailed "final resolution", stating, *inter alia*, that the parcels of land described in TCTs Nos. 128240 to 128249 were originally registered on 09 January 1907 in the Manila Registry of Deeds as OCT No. 820 pursuant to Decree No. 1424 in Record No. 702 [sic]. In finding no legal grounds to initiate an action for the nullification of the assailed certificates of title, public respondent ratiocinated that:

> "Upon thorough examination of Lots 55-A (28,525 sqm.), 55-B (28,525.4 sqm.) and 55-C (15,377.8 sqm.) of Plan 11746

covered by TCTs Nos. 49286 to 49288, respectively, which emanated from OCT No. 820, the following were established:

1. That the adjoining on the S.W., N.W. of Lot 55-A, Block 2918, of the subdivision plan Psd-11746, covering TCT No. 42986 are by Lots 56, 70, Block 2918, Manila Cadastre and Sapang Visita and by Sunog Apog, respectively;

2. That the adjoining on the West of Lot 55-B, Block 2918 of the subdivision plan Psd-11746, covering TCT No. 42987 is by Estero de Sapang (sic) Apog;

3. That the adjoining N.E., N.W. of Lot 55-C, Block 2918 of the subdivision plan Psd-11746, covering TCT No. 49288 are by Estero de Maypajo and Estero de Sunog Apog, respectively;

4. That it was mentioned on the decision dated April 25, 1955 that the parcel of land Psu-117186 and Psu-117259 decreed under N-23419, issued in the name of Severino Manotoc, are the adjoining properties of Lot 55-A, 55-B and 55-C, Block No. 2918 of the subdivision plan Psd-11746, covered by TCTs Nos. 49286, 24542 and 24522, respectively, and was further mentioned in the said decision that the said land were really acquired by accretion as the Sapang Visita is no longer navigable and Estero de Maypajo and Sapang (sic) Apog Creek is generally dried[;]

5. That in the course of examining the subdivision plan (LRC) Psd-7815, it appears that the adjoining on the N.E. and S.W. are Lots 1 and 3 of Plan Psu-174649 and Psu-11259 in the name of Severino Manotoc and beyond of which are Estero de Maypajo (10 to 12 meters wide), Estero de Sunog Apog (20 meters wide) and Sapang Visita, respectively.

"On the other hand, Lot 10 of Plan (LRC) Pcs-14684, 'being a portion of the consolidation of Lots A, (LRC) Psd-7815, Psu-117259 & 55-A, Blk. 2918, Psd-11746,' was originally registered in Manila Registry of Deeds as OCT No. 820 (erroneously typed therein as OCT No. '520') and OCT No. 7477. In other words, Lot 10 is the result of the earlier consolidation and subdivision of certain parcels of land covered

by certificates of title which emanated from OCT No. 820 and OCT No. 7477, as evidenced by Plan (LRC) Pcs-14648 (approved by LRA on 19 December 1972), Plan (LRC) Psd-7815 (approved by LRA on 24 July 1969), Plan Psu-117259 (appears to have been approved by the Bureau of Lands on 11 February 1936).

"OCT No. 7477 was issued by the Manila Register of Deeds in 1955 pursuant to Decree No. N-23419 in Land Registration Case No. N-1-LRC Record No. N-1555 in favor of Severino Manotok, covering two (2) parcels of land described in Plan Psu-117186 (8,838 sq. meters) and Plan Psu-117259 (1,689.30 sq. meters). Decree No. N-23419 was issued by this Authority on 18 June 1955 pursuant to the Decision dated 25 A[pril] 1955 of former Judge Bienvenido A. Tan of the then Court of First Instance of Manila in GLRO Record No. 1555 (*Severino Manotok*, applicant *vs. The Director of Lands*, Oppositor), the pertinent portions of which read:

> 'It is conceded that the two parcels of land are agricultural in nature, and the only question to be decided is whether they are public or private lands. The decision of the Court of Appeals raises no other question but the following:
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> 'Applicant likewise contended that he, his coheirs and his late father, (Severino), had always believed that the land, sought for registration was a part, and in fact included, in their old registered property. Such contention could have been properly substantiated by the certificate of title covering the old property and the tax declaration for assessment purposes, showing whether it was bounded by the creeks now cited as boundaries of the Lot in question. But they were not presented as evidence.
>
> 'Now that the said certificates of title were presented together with the memorandum of the Commissioner of Land Registration, the contention of the applicant is duly corroborated. The parcels of land sought to be registered are not included in the titles issued; but are adjoining the lots covered by said certificates of title. There is no question that the said parcels of land have been in the actual possession of the applicant and that his possession as well as that of his predecessors have been open,

> exclusive, continuous, adverse and in the concept of owner for the number of years required by law as the Sapang Visita is no longer navigable and its bed is dry, and that the Sunog Apog Creek is generally dried up due to the ordinary course of its current. The fact that his physical possession of these two parcels of land for the number of years required cannot be denied, and has not been denied or contradicted by any other evidence submitted by the oppositor. As well remarked by the Court of Appeals in its decision, the oppositor by a mere inference would make us believe that the applicant or his predecessors could not have occupied these Lots from time immemorial, as alleged. They got flooded at high tide, and only on Lot B does bacaoan grow and sparsely.'

"Based on the said decision, it would appear that the parcels of land covered by OCT No. 7477 were formerly part of Estero de Maypajo, Sapang Visita and Estero de Sunog Apog which had dried up.

"Accordingly, and considering that the dried up portion of the esteros were the subject of regular land registration proceedings; and that a period of one (1) year from the decree of registration and original certificate of title had already lapsed without said decrees being controverted by any adverse party within the reglementary period, the certificate of title become incontrovertible. (Sec. 32, PD 1529; *Pamintuan vs. San Agustin*, 343 Phil. 558)

"As narrated above, the issuance of TCTs Nos. 128240 to 128249, which emanated from OCT No. 820, are supported by the records of the Manila Registry of Deeds."[4]

Ruling of the Court of Appeals

The CA held that OCT No. 820 had been issued on January 7, 1907, not on January 31, 1905, as petitioners claim. True, Decree No. 1424 had been issued on January 31, 1905, but it was entered or transcribed in the registration book of the Register of Deeds only in 1907. Pursuant to Section 42 of Act No. 496[5]

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[4] CA Decision, pp. 2-5; *rollo*, pp. 60-63.

[5] "Sec. 42. The certificate first registered in pursuance of the decree of registration in regard to any parcel of land shall be entitled in the registration

(otherwise known as the Land Registration Act), OCT No. 820 took effect on January 7, 1907, the date of the transcription of the decree. The record number of Decree No. 1424, however, should be 786. Further, the appellate court held that an OCT was conclusive on all matters stated therein. Hence, the fact that the copy of Decree No. 1424 was no longer extant in the records of the LRA was of no moment.

The CA also held that OCT No. 7477 was already incontrovertible, because it had been the subject of regular land registration proceedings. More than one year after its registration, the decree was not controverted by any adverse party.

In their Motion for Reconsideration, petitioners raised the minority of the land registration applicants — Severino, Benita, Ambrosio and Ricardo, all surnamed Manotok — as an additional ground to nullify OCT No. 820. Ostensibly, they had filed their application without the assistance of a legally appointed guardian. The CA, however, denied petitioners' Motion for Reconsideration for lack of merit.[6]

Hence, this present recourse entitled by petitioners as a "Petition for *Certiorari* under Rule 65," filed on November 20, 2001.

On December 10, 2001, this Court (Third Division) dismissed the Petition, because *certiorari* was not a substitute for the lost remedy of appeal.[7]

On February 6, 2002, the Court — upon reconsideration — deemed the Petition as one filed under Rule 45 and required respondents to comment thereon.[8] After all, it had been submitted within the 15-day period required by Rule 45.

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book, 'Original certificate of title, entered pursuant to the decree of the Court of Land Registration, dated at' (stating time and place of entry of decree and the number of the case). This certificate shall take effect upon the date of the transcription of the decree xxx"

[6] See CA Resolution, p. 1; *rollo*, p. 86.

[7] See Resolution; *id*., p. 88.

[8] This case was deemed submitted for decision on October 10, 2002, upon this Court's receipt of petitioners' Reply to the Memorandum of public respondents. Petitioners' Memorandum was received on July 23, 2002, that

Issues

Petitioners raise the following issues:

"A. With respect to OCT No. 820

(10) Did respondent Court of Appeals commit grave abuse of discretion tantamount to or in excess of jurisdiction when it failed to declare null and void OCT No. 820, despite the following undisputed facts:

> (1) OCT No. 820 was issued in the name of [m]inors Severino, Benita, Ambrosio and Ricardo, all surnamed Manotok, aged 17, 14, 12 and 10, without a court appointed guardian; and
>
> (2) Decree of Registration No. 1424 of January 31, 1905 (which led to the issuance of OCT No. 820) was issued before completion of the magnetic survey of the parcels of land covered by OCT No. 820 on November 15, 1906.

(11) Did respondent Court of Appeals violate Section 14, Article VIII, 1987 Constitution when it omitted in its narration of facts that the Magnetic Survey of the parcels of land covered by OCT No. 820 was made and completed only on November 15, 1906?

"B. With respect to OCT No. 7477

(12) Did respondent Court of Appeals commit grave abuse of discretion tantamount to or in excess of jurisdiction when it failed to declare OCT No. 7477 null and void despite the undisputed and conclusive fact that the parcels of land it covers were formerly part of the Estero de Maypajo, Estero de Sunog Apog and Sapang Visita, or inalienable lands of the public domain intended for public use?"[9]

In simpler and more understandable language, the issues raised by petitioners are as follows: 1) whether OCT Nos. 820 and 7477 are valid; and 2) whether the CA complied with Section 14 of Article VIII of the 1987 Constitution.

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of private respondents' on August 9, 2002, and that of public respondents on September 24, 2002. Petitioners' Memorandum was signed by Atty. Reynaldo B. Aralar; private respondents' by Atty. Felix B. Lerio; and public respondents' by Asst. Solicitors General Carlos N. Ortega and Josefina C. Castillo and Solicitor Violeta A. Ticzon.

[9] Petitioners' Memorandum, pp. 5-6; *rollo*, pp. 190-191.

The Court's Ruling

The Petition has no merit.

Preliminary Issue:
Propriety of Petition for Certiorari Under Rule 65

At the outset, this Court notes that petitioners erroneously anchor their Petition on Rule 65. Their remedy should be based on Rule 45, because they are appealing a final disposition of the Court of Appeals.

"*Certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop."[10] It involves a correction of errors of jurisdiction only, or grave abuse of discretion amounting to lack or excess of jurisdiction. It is not a substitute for an appeal, when the latter remedy is available.[11]

Indubitably, the CA had jurisdiction over petitioners' appeal from the Resolution of the LRA and rendered the assailed Decision in the proper exercise of that jurisdiction. Under the circumstances, Rule 45 was the plain, speedy and adequate remedy in the ordinary course of law.

Since the Petition was filed within the 15-day period, in the interest of justice it shall be treated as one for review under Rule 45, and not for *certiorari* under Rule 65.

First Issue:
Validity of OCT Nos. 820 and 7477

The fundamental purpose of the Land Registration Law (Act No. 496, now PD 1529) is to finally settle title to real property[12] in order to preempt any question on the legality of the title —

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[10] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, per Callejo Sr., J.

[11] *Ibid. De Castro v. Delta Motor Sales Corp.*, 57 SCRA 344, May 31, 1974.

[12] *Reyes and Nadres v. Borbon*, 50 Phil. 791, September 30, 1927.

except claims that were noted on the certificate itself at the time of registration or those that arose subsequent thereto.[13] Consequently, once the title is registered under the said law, owners can rest secure on their ownership and possession.

The proceedings for the judicial registration of land under the Torrens system involve more consequences than an ordinary action would.[14] Once a decree of registration is made under the Torrens system, and the reglementary period has passed within which the decree may be questioned, the title is perfected and cannot be collaterally questioned later on.[15]

OCT No. 820

In assailing the validity of OCT No. 820, petitioners capitalize on the plain statement written on the face of the Certificate that the magnetic survey was completed only on November 15, 1906, while the decree had been issued earlier on January 31, 1905. They insist that the land registration court acquired no jurisdiction over the land that was the subject of the registration proceedings; and that — as no survey had been made, completed and submitted to it — therefore, the court had no authority to issue the decree.

We are not persuaded. Petitioners erroneously and baselessly speculate that the magnetic survey of the land was the only survey conducted, or that no other plan was submitted to the registration court, or that the land was not surveyed at all. Mere conclusions and speculations are not sufficient to defeat or impair the title of private respondents.

OCT No. 820 was issued more than 90 years ago in 1907, but the original Certificate is still existing in the records of the Register of Deeds. Having been issued under the Torrens system, the original Certificate enjoys a presumption of validity.[16]

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[13] *Benin v. Tuason*, 156 Phil. 525, June 28, 1974.

[14] *Legarda and Prieto v. Saleeby*, 31 Phil. 590, October 2, 1915.

[15] *Abad v. Government of the Philippines*, 103 Phil. 247, March 29, 1958.

[16] *Ramos v. Hon. Rodriguez*, 314 Phil. 326, May 29, 1995.

Correlatively, it also carries a strong presumption that the provisions of the law governing the registration of land under the Torrens system have duly been followed.

The law applicable at the time of registration of OCT No. 820, Act No. 496, provides thus:

"SEC. 26. The applicant shall file with the application a plan of the land, and an original muniments of title within his control mentioned in the schedule of documents, such original muniments to be produced before the court at the hearing when required. When an application is dismissed or discontinued, the applicant may, with the consent of the court, withdraw such original muniments of title."

"SEC. 36. xxxThe court may in any case before decree require a survey to be made for the purpose of determining boundaries, and may order durable bounds to be set, and referred to in the application, by amendment xxx"

"SEC. 40. Every decree of registration shall bear the day of the year, hour, and minute of its entry, and shall be signed by the clerk xxx It shall contain a description of the land as finally determined by the court,xxx"

Based on the foregoing, an original survey plan other than that completed in 1906 was presumably submitted to the land registration court prior to the issuance of the decree. In his Comment,[17] then LRA Director Benjamin A. Flestado quoted a portion of the Decision in Land Registration Case No. N-1-LRC, Record No. N-1555, pertaining to the history of the two lots embraced in OCT No. 820. The Decision stated that a survey of those lots had been undertaken by American surveyors on or before 1905. That Decision is certainly more reliable than the plain assertions of petitioners, who obviously had no personal knowledge of the original land registration proceedings.

The completion of the magnetic survey does not discount the existence and the submission of a prior survey plan. Relevant is the Court's ruling in *Francisco v. Borja*,[18] from which we quote:

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[17] *Rollo*, pp. 278-286.

[18] 73 Phil. 578, May 14, 1942.

"xxx When surveys under the old system are not correct and differ from the result obtained by the modern and more scientific way of surveying, corrections of errors contained in the old plan should be permitted by the court so long as the boundaries laid down in the description as enclosing the land and indicating its limits are not changed. If they are not allowed in the *expediente* of the case, no other remedy may be resorted to by which errors or imperfections in the old plan can be cured and to permit a decree based on such erroneous survey to stand would be absurd. The decree is not reopened and thereby modified. *It is the new plan that is made to conform to the decree, which procedure should be allowed and even encouraged in these Islands where, as court records show, many certificates of title are still based on the old and highly defective surveys* xxx**"**[19]

From the above, it is clear that a new survey may be conducted to conform to a decree, even after it has been issued.

In the same Comment, Director Flestado stated that Decree No. 1424, issued before the Second World War, had either been lost or destroyed during that war. Thus, it could no longer be the basis for determining which parcels of land were covered by the decree and on what date they had originally been surveyed.[20]

At any rate, by legal presumption, public officers are deemed to have regularly performed their official duties. Thus, the proceedings for land registration that led to the issuance of OCT No. 820 are presumed to have regularly and properly been conducted. To overturn this legal presumption carelessly — more than 90 years since the termination of the case — will not only endanger judicial stability, but also violate the underlying principle of the Torrens system. Indeed, to do so would reduce the vaunted legal indefeasibility of Torrens titles to meaningless verbiage.

In the same vein, we reject the contention of petitioners that OCT No. 820 is null and void on the ground that the applicants

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[19] *Ibid.*, per Paras, *J.* Emphasis supplied.

[20] *Ibid*.

for land registration were minors who were not assisted by a legal guardian. They allege that while the names of the minor applicants were contained in the title, no legal guardian was named therein.

Again, petitioners rely on mere speculations and conjectures, which cannot be sustained by this Court. The mere failure to mention on the title the names of the legal guardians does not necessarily imply their absence during the actual land registration proceedings. Besides, the absence of legal guardians cannot be used as a basis for depriving minors of benefits that have accrued to them. If at all, it could be a ground to invalidate an imprudent attack against their interest, not to deprive them of any advantage or gain.

OCT No. 7477

It cannot be denied that OCT No. 7477 was the subject of judicial proceedings in which the government, represented by the director of lands, amply participated. We quote hereunder pertinent portions of the April 25, 1955 Decision of Judge Bienvenido A. Tan of the then Court of First Instance of Manila in GLRO (General Land Registration Office) Record No. 1555, entitled *Severino Manotok, Applicant v. The Director of Lands, Oppositor:*

> The Director of Lands filed an opposition alleging that the parcels of land are public domain belonging to the Republic of the Philippines and the applicant has no title and possession under claim of ownership since 26 July 1894; that on 18 November 1950, a decision was rendered denying the application, which decision was appealed to the Court of Appeals in due time; that eventually the Decision dated 18 November 1950 was set aside and a new trial was ordered; that pursuant to the order of CA for new trial, the Chief Surveyor of LRC was ordered "to determine whether or not said parcels of land . . . are included in any certificate of title of the applicant"; that in due time, the LRC submitted a report stating that the lands "are not included in any of the TCT Nos. 49286, 24542 and 24522 submitted to this Commission by the applicant" and that said certificates of title "cover Lots 55-A, 55-B and 55-C, Block No. 2918 of the subdivision plan Psd-11746" which lots adjoin the parcels of land subject matter of the instant case (Record No. 1555); that during

the trial, the applicant testified that the lands in question are not included in the land described in OCT No. 820; that the said parcels of land were believed by him and his predecessors as included therein "because on the West the first parcel in OCT No. 820, the boundary is the *Sunog Apog Creek*, and that on the South, the boundary is the Sapang Visita"; that the first parcel of land covered by OCT No. 820 was subdivided into 3 Lots, known as Lots 55-a, 55-b and 55-c, the last two Lots were bought by the applicant from Ricardo Manotok (1 August 1946) and Benita Manotok de Geronimo (17 September 1949) while Lot 55-a was adjudicated to him and now covered by TCT No. 49286.

Public Land Surveyor Gregorio M. Aranzas testified on cross examination that the shore-line of Sunog Apog Creek "is traced by him by dotted lines on Exh. A and marked as Exh. O" and the shoreline of Sapang Visita "is that traced by him, also by a dotted line, and marked as Exh. P on Exh. B"; that while the applicant testified that the lands in question "are now high and are dry even during rainy season," no evidence to the contrary "has been presented by the oppositor," thus it "only goes to show that the lands in question are no longer banks of the Sunog Apog Creek and the Sapang Visita, as previously contended by the Director of Lands."

That the parcels of land sought to be registered are not included in titles already issued; that the lands have been in the actual possession of the applicant and his possession, as well as that of his predecessors, "has been open, exclusive, continuous, adverse and in the concept of owner for the number of years required by law"; that portions of said land "were really acquired by accretions as the Sapang Visita is no longer navigable and its bed is dry, and that the Sunog Apog Creek is generally dried up due to the ordinary course of its current"; that the herein applicant sought registration of these land only in 1947 "as it was then that he discovered that the lands were not included in the old title."[21]

As things stand now, private respondents have in their favor a judicial pronouncement showing, *prima facie* at least, that the expanded areas do not belong to the public domain, and that they have acquired rights of ownership over them by accretion.

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[21] Cited by Director Flestado in his Comment, pp. 7-8; *rollo*, pp. 284-285.

In brief, they have overcome the presumption that the land is within an unclassified property of the public domain.[22]

While registration proceedings are judicial, they involve more consequences than an ordinary action would. The entire world, including the government, is given a chance to participate in the case.

After the registration is completed and finalized in the regular course, the rights of all adverse claimants are foreclosed by the decree of registration.[23] The government itself assumes the burden of giving notice to all parties. The very purpose and intent of the law, however, would be defeated by permitting persons to litigate again on the basis of the same adverse claims in the registration proceedings, after they have already been given the opportunity to do so. For them to raise the same questions anew would be to cast doubt again upon the validity of the registered title.[24]

Even assuming that petitioners may still institute an action for the nullification of OCT No. 7477, the review of a decree of registration under Section 38 of Act No. 496 (Section 32 of Presidential Decree No. 1529) would prosper only upon proof that the registration was procured through actual fraud.[25] "The

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[22] *Republic vs. Alon*, 199 SCRA 396, July 18, 1991.

[23] *Castelo v. Director of Lands*, 48 Phil. 589, January 12, 1926.

[24] *Legarda and Prieto v. Saleeby, supra*.

[25] §32 of PD No. 1529 provides:

"SEC. 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by *actual fraud*, to file in the proper Court of First Instance (now Regional Trial Court) a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced xxx" (Italics and parentheses supplied.)

fraud must be actual and extrinsic, not merely constructive or intrinsic; the evidence thereof must be clear, convincing and more than merely preponderant, because the proceedings which are assailed as having been fraudulent are judicial proceedings which by law, are presumed to have been fair and regular."[26]

Actual fraud proceeds from an intentional deception perpetrated through the misrepresentation or the concealment of a material fact.[27] The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant. The fraud is intrinsic if that which is alleged in the petition to set aside the decree is the fraud involved in the same proceedings in which the parties seeking relief have had ample opportunity to assert their right, to attack the document presented by the applicant for registration, and to cross-examine the witnesses who have testified thereon.[28] Inquiry into this latter kind of fraud is barred after the judgment of the land registration court has become final.

Petitioners fail to convince the Court that the facts they rely upon to justify a review of the decree in question constitute actual extrinsic fraud.

Legal Standing

Finally, assuming *arguendo* that the validity of the two titles may still be impugned, petitioners do not have any legal standing to ask directly for their annulment.

We can only infer the interest, supposedly in their favor, from their allegation that they were occupants of a portion of the parcel covered by OCT Nos. 820 and 7477, which they perceive to be public land. Petitioners were neither applicants

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[26] Peña, *Registration of Land Titles and Deeds*, 1994 ed., p. 126 citing *Flores v. Valdepeñas*, 58 O.G. 38, September 17, 1962, CA; *Libudan v. Palma Gil*, G.R. Nos. L-21163 & L-25495, May 17, 1972; 45 SCRA 17.

[27] *Heirs of Manuel A. Roxas v. Court of Appeals*, 337 Phil. 41, March 21, 1997.

[28] *Frias v. Esquivel*, 115 Phil. 755, July 31, 1962.

nor claimants of any preferential right over the aforesaid disputed lands. Being too vague, too highly speculative and uncertain, their presumed interest does not suffice to constitute a legal right or interest that would grant them standing in court.

"Legal standing has been defined as a personal and substantial interest in the case, such that the party has sustained or will sustain direct injury as a result of the challenged act. Interest means a material interest in issue that is affected by the questioned act or instrument, as distinguished from a mere incidental interest in the question involved."[29] Since the parcels they claim are properties of the public domain, only the government can bring an action to nullify the TCTs.[30]

Second Issue:
Compliance with the Constitution

The first paragraph of Section 14 of Article VIII of the Constitution mandates that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

Petitioners attack the validity of the assailed CA Decision for its failure to mention that a magnetic survey was completed only on November 15, 1906, a fact that they perceived to be crucial to the determination of the case. The untenability of such grasping at straws can easily be demonstrated.

In its assailed Decision, the CA affirmed the resolution of LRA Administrator Enriquez. The appellate court deliberated on the law and the reasons it relied upon in its determination of the issues presented only after giving a detailed account and assessment of the factual antecedents found by respondent administrator.

Since the Decision of the CA contains the necessary antecedents to warrant its conclusions, the appellate court cannot be said to

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[29] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, per Panganiban, J.

[30] *Urquiaga v. Court of Appeals*, 361 Phil. 660, January 22, 1999; *Roxas v. Cuevas*, 8 Phil. 469, August 31, 1907.

have withheld "any specific finding of facts." What the law insists on is that a decision state the "essential ultimate facts." Indeed, the "mere failure to specify xxx the contentions of the petitioner and the reasons for refusing to believe them is not sufficient to hold the same contrary to the requirements of the provision of law and the Constitution."[31]

This constitutional provision deals with the disposition of petitions for review and of motions for reconsideration. In appellate courts, the rule does not require any comprehensive statement of facts or mention of the applicable law, but merely a statement of the "legal basis" for denying due course.[32]

Thus, there is sufficient compliance with the constitutional requirement when a collegiate appellate court, after deliberation, decides to deny a motion; states that the questions raised are factual or have already been passed upon; or cites some other legal basis.[33] There is no need to explain fully the court's denial, since the facts and the law have already been laid out in the assailed Decision.

WHEREFORE, the Petition is *DENIED* and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[31] *Air France v. Carrascoso*, 124 Phil. 724, 728, September 28, 1966, per Sanchez, *J.*

[32] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (1996), p. 893.

[33] *Komatsu Industries (Phils.), Inc. v. Court of Appeals*, 352 Phil. 440, April 24, 1998.

EN BANC

[G.R. No. 160657. June 30, 2004]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **NIMFA P. ASENSI,** *respondent.*

SYNOPSIS

Respondent was ordered dismissed by petitioner Civil Service Commission from her position as Revenue District Officer of the Bureau of Internal Revenue in Lucena City, for falsifying entries in her Personal Data Sheet relative to her educational background. Aggrieved, respondent filed a petition for *certiorari* with the Court of Appeals. The CA ruled that the dismissal of respondent was not warranted. Petitioner's motion for reconsideration was denied. Petitioner, through its Office of Legal Affairs, filed with the Supreme Court a petition for *certiorari* under Rule 65. Respondent prayed for the immediate dismissal of the petition, as the proper remedy for the petitioner was not the special civil action for *certiorari* under Rule 65, but a petition for review under Rule 45.

In dismissing the petition, the Supreme Court ruled that the special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. The grave abuse of discretion imputed to the CA was its finding that respondent was not guilty of the charges against her, a charge that if true, would only constitute an error in law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. 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 errors of judgment which are reviewable by timely appeal and not by special civil action for *certiorari*. Neither is *certiorari* warranted if there is another plain, speedy and adequate remedy in the ordinary course of law. The remedy to the adverse decision of the CA in this case is a petition for review under Rule 45.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AVAILABLE.— The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. The grave abuse of discretion imputed to the Court of Appeals was its finding that respondent was not guilty of the charges against her, a charge that if true, would only constitute an error in law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by special civil action for *certiorari*. Neither is *certiorari* warranted if there is another plain, speedy and adequate remedy in the ordinary course of law. The remedy to the adverse decision of the Court of Appeals in this case is a petition for review under Rule 45.

2. ID.; ID.; APPEALS; THE SOLICITOR GENERAL HAS THE PRIMARY RESPONSIBILITY TO APPEAR FOR THE GOVERNMENT IN APPELLATE PROCEEDINGS; EXCEPTION.— The CSC's assertion as to the capacity of its Office of Legal Affairs to appear before this Court is of dubious legal basis. A similar issue was raised, albeit pertaining to the legal officers of the Bureau of Internal Revenue, in the Court's *Resolution* in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*. The BIR therein asserted that on the basis of Section 220 of the Tax Reform Act of 1997, its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government. The Court disagreed, saying that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings, it being the principal law officer and legal defender of the government. The Court also cited with approval, the exception enunciated in *Orbos v. Civil Service Commission* which is that the government office may appear in its own behalf through its legal personnel or representative only if it is adversely affected by the contrary position taken by the OSG. Herein, there is no indication that the OSG has adopted a position contrary to that of the CSC; hence, appearance by the CSC on its own behalf would not be warranted.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dennis R. Gascon & Romeo C. Dela Cruz & Associates for respondent.

R E S O L U T I O N

TINGA, *J.*:

Respondent Nimfa Asensi was ordered dismissed by petitioner Civil Service Commission ("CSC") from her position as Revenue District Officer of the Bureau of Internal Revenue in Lucena City. Her dismissal came after an investigation revealed that she had falsified entries in her Personal Data Sheet (PDS) relative to her educational background.[1] Aggrieved, respondent filed a petition for *certiorari* with the Court of Appeals, assailing the CSC Resolution ordering her dismissal.

On 9 July 2003, the Court of Appeals' Fourth Division promulgated a *Decision*[2] holding that the dismissal of respondent was not warranted, and setting aside the assailed resolution of the CSC.[3] Acting upon the CSC's motion for reconsideration, the Court of Appeals denied it in a *Resolution* dated 29 October 2003.

The Office of the Solicitor General ("OSG") received a copy of the 29 October 2003 *Resolution* on 7 November 2003. Having until 22 November 2003 to file a petition for review on *certiorari* before this Court, on 21 November 2003, the OSG filed a motion for extension until 22 December 2003 to file the petition for

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[1] In particular, respondent was charged with having stated in her 1997 Personal Data Sheet that she had earned a degree of Bachelor of Science and Business Administration in 1973, when in fact, she had earned her Bachelor of Science in Commerce degree only in 1985. See *Rollo*, p. 30.

[2] Penned by Justice Danilo B. Pine, and concurred in by Justices Godardo A. Jacinto and Renato C. Dacudao.

[3] *Rollo*, pp. 26-31. The Court of Appeals concluded that respondent was guilty only of carelessness in misstating her college attainment, but not of falsification.

review.[4] This Court granted the OSG's motion in a *Resolution* dated 9 December 2003.[5]

Apparently, the CSC remained in the dark as to the legal moves made by its counsel, the OSG. On 25 November 2003, the CSC, filed a *Manifestation To File Its Own Petition for Review*.[6] This *Manifestation* was signed by three lawyers from the Office of Legal Affairs of the CSC.[7]

On 27 November 2003, the CSC, through its Office of Legal Affairs, filed with this Court a *Petition for Certiorari* under Rule 65, assailing the 9 July 2003 *Decision* of the Court of Appeals, which it received on 30 July 2003.[8] In a *Resolution* dated 13 January 2004, the Court, without giving due course to the petition, directed the respondent to file her comment thereon.[9]

The OSG was surprised by the twin legal moves taken by the CSC without their consent and participation. On 22 December 2003, the OSG filed a *Manifestation and Motion* stating that considering the CSC's manifested intention to file its own petition, the OSG had no recourse but to withdraw its 21 November 2003 *Motion for Extension* and allow the CSC to actively pursue its own case.[10] We required the CSC to comment on the OSG's Manifestation and Motion.[11] In their Comment filed on 27 April 2004, the CSC asserted that Under Section 16(3), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987, its Office for Legal Affairs was authorized to represent the CSC "before any Court or tribunal."[12]

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[4] *Rollo*, pp. 2-3.

[5] *Id*. at 6.

[6] *Id*. at 7-8.

[7] Namely Attys. Karin Litz P. Zerna, Alexis Palomar-Tabino, and Ma. Emelina A. De Vera.

[8] *Rollo*, pp. 13-24.

[9] *Id*. at 36.

[10] *Id*. at 37-38.

[11] In a Resolution dated 10 February 2004. *Rollo*, p. 64.

[12] *Rollo*, p. 92.

In the meantime, respondent filed her *Comment* on the *Petition for Certiorari*.[13] She prayed for the immediate dismissal of the petition, as the proper remedy for the CSC was not the special civil action for *certiorari* under Rule 65, but a petition for review under Rule 45. Moreover, since the period for filing a petition for review had already elapsed, according to the respondent, the CSC had deliberately resorted to the special civil action.

We agree with the respondent. So, we dismiss the petition. There is little need to elaborate on the reasons, which are after all, elementary in procedural law. The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion.[14] The grave abuse of discretion imputed to the Court of Appeals was its finding that respondent was not guilty of the charges against her, a charge that if true, would only constitute an error in law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by special civil action for *certiorari*.[15] Neither is *certiorari* warranted if there is another plain, speedy and adequate remedy in the ordinary course of law.[16] The remedy to the adverse decision of the Court of Appeals in this case is a petition for review under Rule 45.[17]

The OSG, counsel of record for the CSC, well understood the proper procedure for appeal, and undertook the initiatory step for a petition for review by filing a *Motion for Extension of Time* to file such petition.[18] It is unclear if the CSC had

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[13] *Id*. at 73-84.

[14] See Section 1, Rule 65, 1997 Rules of Civil Procedure.

[15] *Sahali v. COMELEC*, G.R. No. 134169, 2 February 2000, 324 SCRA 510.

[16] *Supra*, note 14.

[17] See Section 1, Rule 45, 1997 Rules of Civil Procedure.

[18] *Supra* note 4.

known about the OSG's *Motion*, though the answer to that question does not really matter to the disposition of this case. The Court granted the OSG's *Motion*, allowing the OSG to file its *Petition* until 22 December 2003. The OSG, being the designated legal representative of the Government and its instrumentalities, has a long history of association with this Court and acquired in the process an awesome wealth of experience in appellate practice. Had the CSC relied on its counsel's expertise, it would have been spared of the needless burden of salvaging its petition from outright dismissal and, of course, the inevitable ignominy which such dismissal entails.

Instead, the CSC, using its own lawyers, filed the wrong mode of review. The CSC's assertion as to the capacity of its Office of Legal Affairs to appear before this Court is of dubious legal basis. A similar issue was raised, albeit pertaining to the legal officers of the Bureau of Internal Revenue, in the Court's *Resolution* in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*.[19] The BIR therein asserted that on the basis of Section 220 of the Tax Reform Act of 1997, its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government. The Court disagreed, saying that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings,[20] it being the principal law officer and legal defender of the government.[21] The Court also cited with approval, the exception enunciated in *Orbos v. Civil Service Commission*[22] which is that the government office may appear in its own behalf through its legal personnel or representative only if it is adversely affected by the contrary position taken by the OSG. Herein, there is no indication that the OSG has adopted a position contrary

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[19] G.R. No. 144942, 4 July 2002, 384 SCRA 117.

[20] *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory, Supra*, citing *Republic v. Register of Deeds of Quezon*, 244 SCRA 537 (1995), and *CIR v. S.C. Johnson and Son, Inc*., 309 SCRA 87 (1999).

[21] *Supra*, note 19 at 119.

[22] G.R. No. 92561, 12 September 1990, 189 SCRA 459.

to that of the CSC; hence, appearance by the CSC on its own behalf would not be warranted.

Yet, even if the CSC Office of Legal Affairs were allowed to represent the CSC in this petition, still the dismissal of the case would still be warranted in view of the erroneous mode by which the assailed Court of Appeals *Decision* was elevated. Moreover, the OSG, which had been given until 22 December 2003 to file the petition for review, did not file any such petition, interposing instead the *Manifestation and Motion*.[23] This *Manifestation*, of course, did not stay the period for filing the petition for review. Thus, such period has already elapsed for good. On account of the lapse of the period, there is no need for us to pass upon the OSG's *Manifestation and Motion*.

We are hardly sympathetic to the CSC's predicament. Not only did it supply the noose by which it was hung, it also tied the knot. Had the CSC been in consultation with its counsel of record, the petition could have been taken without incident. Instead, without seeking the heed of sager minds, it went off by its lonesome into high noon, ill-equipped. There is nothing left to do but pronounce the demise of the case.

The *Petition* is *DISMISSED*. No costs.

SO ORDERED.

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

Vitug, Ynares-Santiago ,and *Austria Martinez, JJ.*, on leave.

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[23] *Supra* note 10.

SECOND DIVISION

[G.R. No. 113576. July 1, 2004]

CARLOS A. GOTHONG LINES, INC., *petitioner, vs.* **COURT OF APPEALS, HON. PACIENCIO M. BALBON, & COKALIONG SHIPPING LINES, INC.,** *respondents*.

[G.R. No. 118235. July 1, 2004]

CARLOS GOTHONG LINES, INC., *petitioner, vs.* **COURT OF APPEALS and COKALIONG SHIPPING LINES, INC.,** *respondents*.

SYNOPSIS

Acting on its application, the Gothong Lines, Inc. (Gothong) was granted a provisional authority by the Maritime Industry Authority (MARINA) to re-route its vessel M/V Our Lady of Guadalupe. Cokaliong Shipping Lines, Inc. (Cokaliong), who was opposing the same, filed a motion alleging the vessel was unseaworthy. When the MARINA thus issued an Order suspending the provisional authority granted, Gothong filed a petition for *certiorari* with the Court of Appeals (CA) docketed as CA-G.R. SP No. 32307. It was agreed by the parties to maintain their *status quo* prior to the petition. Later, Gothong filed a motion with the MARINA for extension of its provisional authority to operate the vessel. The same was granted prompting Cokaliong to file a petition with the CA for the nullification of the extension granted. The case was docketed as CA-G.R. SP No. 33174 where the CA issued a writ of preliminary injunction.

Whether the filing of CA-GR No. 33174 despite the pending CA-G.R. SP No. 32307 constitutes forum shopping, the Court ruled in the negative. The reliefs prayed for in the two petitions were different. On the non-consolidation of the two petitions, the Court ruled the same was proper. The Order granting Gothong extension of the provisional authority, sought to be nullified under CA-G.R. SP No. 33174, was issued not because of CA-G.R. SP No. 32307 but because of the alleged public demand of the seaworthy vessel. On the issuance in CA- G.R. SP No. 33174

of the temporary restraining order in favor of Cokaliong, later converted into a writ of preliminary injunction, the Court found no abuse of discretion on the part of the CA. Finally, on the propriety of G.R. SP No. 32307, the Court ruled that Gothong should have filed a motion for reconsideration with the MARINA for suspending its provisional authority instead of filing a petition for *Certiorari* with the CA.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; NOT APPLICABLE WHERE RELIEFS PRAYED FOR ARE DIFFERENT.—** The subject of the petition in *CA-G.R. SP No. 32307* was *the Order issued by the MARINA dated **October 8, 1998**, suspending, ex parte, the provisional authority it issued on October 1, 1993 in favor of the petitioner.* The petitioner alleged therein that the MARINA violated its right to due process by suspending its provisional authority *ex parte* and declaring the suspension order immediately effective until the motion for reconsideration of the respondent shall have been resolved by it. On the other hand, the subject of the respondent's petition in *CA-G.R. SP No. 33174*, was *the Order of the MARINA dated **December 29, 1993**, extending the provisional authority of the petitioner for another three months from January 1, 1994.* Any judgment of the Court of Appeals in CA-G.R. SP No. 32307 would not then constitute *res judicata* in CA-G.R. SP No. 37174, and *vice versa.* The reliefs prayed for in CA-G.R. SP No. 32307 are different from those in CA-G.R. SP No. 33174. As such, the pendency of one case did not bar the filing of the petition in the other case. Thus, the prescription against forum shopping is not applicable in the case at bar.

2. **ID.; ID.; CONSOLIDATION OF CASES; NOT PROPER WHERE ONE CASE HAS NOTHING TO DO WITH THE OTHER.—** The petitioner avers that the Court of Appeals erred in denying the consolidation of CA-G.R. SP No. 32307 and CA-G.R. SP No. 33174, on its claim that the petitions in the said cases involved the same parties and the same basic issues. The petitioner posits that the MARINA extended its provisional authority for another three months from the expiry of the original period therefor precisely because of the pendency in the Court of Appeals of CA-G.R. SP No. 32307, and the existence of

the parties' *status quo* agreement allowing the operation of the vessel pending the CA's resolution of its petition for a writ of preliminary injunction. In resolving the issue, the CA ratiocinated that a consolidation of the two cases was inappropriate. We are in full accord with the Court of Appeals. Contrary to the petitioner's contention, it applied for an extension of its provisional authority on December 20, 1993 not because of the pendency of CA-G.R. SP No. 32307 in the Court of Appeals and the *status quo* agreement of the parties, but solely on the following allegation it made in its motion before the MARINA: 3. That there is a continuing and insistent public demand for the operation of the vessel M/V OUR LADY OF GUADALUPE in the route: Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu- Maasin-Cebu for the transportation of passengers and cargoes. 4. Therefore, there is need to renew the subject Provisional Authority. 5. The vessel M/V OUR LADY OF GUADALUPE has complete and valid certificate to attest to her seaworthiness. The MARINA, in the exercise of its discretion, found merit in the petitioner's motion and granted the same in an Order dated December 23, 1993. The Court has reviewed the said Order of the MARINA and found no showing therein that the order was issued precisely because of the pendency of CA-G.R. SP No. 32307 and the November 16, 1993 *status quo* agreement of the parties made before the Court of Appeals.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE DISCRETIONARY TO THE COURT. – The matter of the issuance of a writ of preliminary injunction and a temporary restraining order is addressed to the sound judicial discretion of the court, and this Court will not interfere with the appellate court's exercise of its discretion unless of manifest abuse.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHERE AGGRIEVED PARTY HAS OTHER REMEDY AT LAW. – The provisional authority granted to the petitioner may be cancelled, revoked or modified at any time by the MARINA as public interest may require. The respondent alleged that the vessel of the petitioner, the M/V OUR LADY OF GUADALUPE, was unseaworthy and submitted documentary evidence to prove its claim. In light of such evidence, the MARINA resolved to suspend the efficacy of the provisional

authority it earlier granted to the petitioner, pending the resolution of Cokaliong's motion for the revocation of the provisional authority granted to the petitioner. Instead of filing its petition for *certiorari* in the Court of Appeals, the petitioner should have filed a motion for the reconsideration of the assailed Order, and adduced documentary evidence to controvert that of the respondent's to enable the MARINA to reconsider the suspension of the provisional authority granted to the petitioner. It bears stressing that *certiorari* will not lie if the aggrieved party has a speedy and adequate remedy at law.

APPEARANCES OF COUNSEL

Arthur D. Lim for petitioner.
Lamberto V. Pia for public respondent.
Jose Villanueva for Cokaliong Shipping Lines.

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court are two petitions for review on *certiorari*. The first petition, docketed as G.R. No. 118235, assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 32307. The second petition, docketed as G.R. No. 113576, assails the Resolution[2] of the Court of Appeals in CA-G.R. SP No. 33174.

The Antecedents

Carlos A. Gothong Lines, Inc. (Gothong, for brevity), filed an application, docketed as Case No. 93-036, with the Maritime Industry Authority (MARINA) for provisional authority to re-route its vessel M/V Our Lady of Guadalupe.[3] In due course,

[1] Penned by Associate Justice Jeorge S. Imperial, with Associate Justices Pacita Cañizares-Nye and Eduardo G. Montenegro concurring.

[2] Penned by Associate Justice Oscar M. Herrera, with Associate Justices Consuelo Ynares-Santiago and Corona Ibay-Somera concurring.

[3] Annex "C", Petition, G.R. No. 118235.

Gothong was granted a special permit by the MARINA to operate its vessel in the Cebu-Cagayan-Cebu-Cagayan-Cebu-Cagayan-Jagna-Cagayan route. Gothong prayed in its application, *viz*:

> WHEREFORE, in view of the foregoing, it is respectfully prayed of this Honorable Authority:
>
> 1. That a Provisional Authority be immediately granted the applicant for the vessel M/V OUR LADY OF GUADALUPE in the route herein applied for, to wit: Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu;
>
> 2. That upon due notice and hearing, this Authority grant the herein applicant Certificate of Public Convenience for the vessel M/V OUR LADY OF GUADALUPE in the route applied for; and
>
> 3. That Applicant be granted such other relief and remedies just, fair, and equitable under the circumstances.[4]

Cokaliong Shipping Lines, Inc. (Cokaliong, for brevity), the owner-operator of two vessels, the M/V Filipinas-Tandag and M/V Filipinas-Surigao, opposed the application, alleging that the MARINA had previously issued in its favor a permit to operate its vessels serving the Cebu-Surigao-Tandang link and the Cebu-Maasin link. It also alleged that to allow Gothong to operate its vessel along the said routes could be a cause of over-tonnage and a big possibility of a cut-throat competition.[5]

After Gothong's documentary evidence was admitted, the MARINA considered the application for a provisional authority submitted for resolution on July 22, 1993.

On August 10, 1993, the MARINA issued an Order denying the application of Gothong for a provisional authority until such time that MARINA had conducted the necessary actual market study/survey in the applied route. The dispositive portion of the Order reads:

> In view thereof, the applicant's request for Provisional Authority to operate the vessel M/V "OUR LADY OF GUADALUPE" in the

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[4] *Rollo*, p. 57 (G.R. No. 113576).

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

Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu route is hereby DENIED, until such time that this Authority has conducted the necessary actual market study/survey in the applied route to verify if additional shipping services/frequency of trips are warranted therein.

SO ORDERED.[6]

Gothong filed a motion for the reconsideration of the order, to which Cokaliong filed an opposition. Gothong complained that the denial of its application for a provisional authority effectively dismissed its application without any countervailing evidence being submitted by the oppositor. It asserted that the order was based solely on Cokaliong's opposition, and that its evidence was sufficient for the MARINA to grant its application for provisional authority. In an Urgent Motion dated September 29, 1983, Cokaliong submitted documents showing that the M/V Our Lady of Guadalupe was unseaworthy.[7]

On October 1, 1993, the MARINA issued an Order granting the application of Gothong for provisional authority to carry passengers and cargoes for the Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu route of its vessel, the M/V Our Lady of Guadalupe.[8] The provisional authority granted to Gothong was subject to several conditions, one of which reads:

20. That this PROVISIONAL AUTHORITY shall be valid for a period of THREE (3) MONTHS from date hereof.

It may be cancelled, revoked or modified at any time as public interest may require and is without prejudice to whatever decision this Authority may finally render on the basic application for a Certificate of Public Convenience.[9]

On October 6, 1993, Cokaliong filed a Motion for Revocation of the provisional authority on the following grounds:

1. Market condition does not warrant additional capacities:

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[6] *Id.* at 41.

[7] *Id.* at 52-69.

[8] *Id.* at 70-77.

[9] *Rollo*, p. 532 (G.R. No. 118235).

2. There has been an increase in vessels plying the subject route, therefore, the route is over-tonnaged;

3. The route is being adequately served by oppositor, as well as by Trans-Asia Shipping lines, Inc. and Escano Lines and therefore there is no urgent public need; and

4. M/V "OUR LADY OF GUADALUPE" is unseaworthy.[10]

However, Cokaliong failed to serve copies of its motion on Gothong and to set the same for hearing on a specific date and time.

On October 8, 1993, the MARINA issued an Order setting the motion of Cokaliong for hearing on October 21, 1993 at 9:30 a.m.[11] However, the MARINA also suspended the provisional authority it issued in Gothong's favor pending the said hearing, on account of the therein alleged unseaworthiness of the vessel. It ordered Gothong to cease and desist from operating the vessel until the motion shall have been resolved. The MARINA also ordered Gothong to file its reply to Cokaliong's pleading.

Instead of doing so, Gothong filed a petition for *certiorari* and prohibition on October 12, 1993 with the Court of Appeals with a prayer for a temporary restraining order and for writ of preliminary injunction assailing the October 8, 1993 Order of the MARINA. Gothong claimed that the MARINA acted with grave abuse of discretion amounting to excess or lack of jurisdiction when it suspended the operation of the M/V Our Lady of Guadalupe *ex parte* and without any notice of hearing of Cokaliong's motion and the proper and timely service thereof on it. The petition was docketed as CA-G.R. SP No. 32307 and was raffled to the 16th Division of the CA. On October 15, 1993, the Court of Appeals issued a Resolution requiring the respondents MARINA and Cokaliong to file their comment thereon and ordering them to desist from enforcing or directing the enforcement of the assailed order.[12] The Court set for hearing

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[10] *Rollo*, p. 83 (G.R. No. 113576).

[11] *Id.* at 105-106.

[12] *Id.* at 150-151.

the petitioner's plea for a preliminary injunction on November 16, 1993. During the hearing the parties agreed to maintain the *status quo* until the resolution of Gothong's plea for a writ of preliminary injunction.[13]

On December 20, 1993, Gothong filed a motion with the MARINA for an extension of its provisional authority to operate the vessel for a period of three months from January 1, 1994. The MARINA issued the Order granting the motion on December 29, 1993.[14]

In the meantime, the respondent MARINA filed in CA-G.R. SP No. 32307 its comment and supplement thereto.[15] Respondent Cokaliong, likewise, filed its comment.[16]

On February 1, 1994, Cokaliong filed a petition for *certiorari* and prohibition in the Court of Appeals with a prayer for a temporary restraining order and/or writ of preliminary injunction for the nullification of the December 29, 1993 Order of the MARINA granting an extension of Gothong's provisional authority to operate its vessel. The case was docketed as CA-G.R. SP No. 33174 and raffled to the 13th Division of the Court of Appeals.

On February 22, 1994, the Court of Appeals issued a temporary restraining order in CA-G.R. SP No. 33174 directing the respondents to cease and desist from enforcing the assailed Order of the MARINA. It also issued a resolution in the same case, holding that there was no need to consolidate the case with CA-G.R. SP No. 32307 pending in the 16th Division of the appellate court, since the issues raised therein were different. The CA also granted in the same Order Cokaliong's plea for a writ of preliminary injunction on a bond of ₱500,000.00.[17]

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[13] *Id.* at 323-324.

[14] *Id.* at 204-205.

[15] *Id.* at 152-186.

[16] *Id.* at 187.

[17] *Id.* at 369-380.

On February 11, 1994, Gothong filed a petition for review on *certiorari* in this Court, docketed as G.R. No. 113576, for the nullification of the February 3, 1994 Resolution of the Court of Appeals in G.R. SP No. 33174 and for the Court to order the CA to consolidate CA-G.R. No. 33174 with CA-G.R. No. 32307 pending in the 16th Division of the CA. On February 28, 1994, the Court issued a temporary restraining order in G.R. No. 113576 and required the respondents to comment on the petition.

On March 9, 1994, the Court of Appeals rendered judgment in CA-G.R. SP No. 32307 dismissing the petition for the petitioner's failure to file a motion for reconsideration of the assailed order with the MARINA before filing its petition in the Court of Appeals.[18] Gothong filed a motion for reconsideration of the decision, but the CA denied the same. Gothong then filed its petition for review on *certiorari* with this Court for the reversal of the CA decision. The case was docketed as G.R. No. 118235. The two petitions were then consolidated for resolution.

The Issues

From our review of the records, the issues for resolution in the two petitions are (a) whether the private respondent Cokaliong is guilty of forum shopping in filing its petition in the Court of Appeals, docketed as CA-G.R. SP No. 33174, despite the pendency of the petition filed by Gothong, docketed as CA-G.R. SP No. 32307; (b) whether the Court of Appeals erred in not consolidating CA-G.R. SP No. 33174, raffled to its 13th Division, with CA-G.R. SP No. 32307 pending before the 16th Division; (c) whether the Court of Appeals erred in issuing a temporary restraining order in CA-G.R. SP No. 33174; and, (d) whether the 16th Division of the appellate court erred in dismissing the petition for *certiorari* in CA-G.R. SP No. 32307 filed by Gothong, for its failure to file a motion for reconsideration of the assailed order.

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[18] *Rollo*, pp. 40-48 (G.R. No. 118235).

The Ruling of the Court

On the first issue, petitioner Gothong asserts that the respondent was present during the hearing in CA-G.R. SP No. 32307 on November 16, 1993 and agreed to maintain the *status quo*, yet it filed its petition, docketed as CA-G.R. SP No. 33174, in the CA. It contends that the act of respondent Cokaliong constitutes forum shopping or malpractice proscribed by Section 17 of the Interim Rules, because it violated the *status quo* agreement of the parties during the hearing of November 16, 1993 in the Court of Appeals. The petitioner avers that the extension of the provisional authority granted to it by the MARINA was ministerial, in view of the *status quo* order of the CA in CA-G.R. SP No. 32307. It avers that if the MARINA erred in extending its provisional authority, it behooved the respondent to have assailed the same in CA-G.R. SP No. 32307, instead of filing its petition in CA-G.R. SP No. 33174.

On the issue of forum shopping, the Court of Appeals ruled as follows:

> There is forum shopping when a party seek (sic) to obtain remedies in an action in one court which had already been solicited and, what is worse, already refused in other actions and proceedings in other tribunal (*MB Finance Corp. v. Abesamis*, G.R. No. 93875, March 22, 1991) 195 SCRA 592.
>
> In *GSIS v. Rebecca Panlilio, et al*., G.R. No. 83385, Nov. 26, 1990, 191 SCRA 655, it was held that: "forum shopping" exists "whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another." However, as held in another case," both actions, (must) involve *the same transactions, same essential facts and circumstances*." (citing *Palm Avenue Realty Dev't. Corp. v. PCGG*, 153 SCRA 579, 591).
>
> In the present case, COKALIANG (sic) does not seek to obtain a remedy against the original three months provisional authority granted by MARINA to GO THONG. The action in this case seeks a remedy against the Order granting GO THONG an extension of its Provisional Authority. In the first case, GO THONG claims that there was a violation of due process. In this case, it is COKALIONG that

is claiming lack of due process. The two actions involve different events, facts and circumstances.[19]

We agree with the Court of Appeals. The subject of the petition in CA-G.R. SP No. 32307 was *the Order issued by the MARINA dated* ***October 8, 1998****, suspending, ex parte, the provisional authority it issued on October 1, 1993 in favor of the petitioner*. The petitioner alleged therein that the MARINA violated its right to due process by suspending its provisional authority *ex parte* and declaring the suspension order immediately effective until the motion for reconsideration of the respondent shall have been resolved by it. On the other hand, the subject of the respondent's petition in CA-G.R. SP No. 33174, was *the Order of the MARINA dated* ***December 29, 1993****, extending the provisional authority of the petitioner for another three months from January 1, 1994*. Any judgment of the Court of Appeals in CA-G.R. SP No. 32307 would not then constitute *res judicata* in CA-G.R. SP No. 37174, and *vice versa*. The reliefs prayed for in CA-G.R. SP No. 32307 are different from those in CA-G.R. SP No. 33174. As such, the pendency of one case did not bar the filing of the petition in the other case. Thus, the prescription against forum shopping is not applicable in the case at bar.[20]

On the second issue, the petitioner avers that the Court of Appeals erred in denying the consolidation of CA-G.R. SP No. 32307 and CA-G.R. SP No. 33174, on its claim that the petitions in the said cases involved the same parties and the same basic issues. The petitioner posits that the MARINA extended its provisional authority for another three months from the expiry of the original period therefor precisely because of the pendency in the Court of Appeals of CA-G.R. SP No. 32307, and the existence of the parties' *status quo* agreement allowing the operation of the vessel pending the CA's resolution of its petition for a writ of preliminary injunction.

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[19] *Id.* at 382.

[20] See *Gochan v. Gochan*, 372 SCRA 256 (2001).

In resolving the issue, the CA ratiocinated that a consolidation of the two cases was inappropriate on the following grounds:

The Sixteenth Division had in effect already rejected this case when Justice Montenegro returned the case for reraffle. Under Section 7, Rule 3 of the RIRCA (Revised Internal Rules of the Court of Appeals), consolidation of cases which is merely permissive, should be with the conformity of *all* the Justices concerned and may be allowed when the cases to be consolidated involve the same parties and/or related questions of fact and/or law. In this case, Justice Montenegro of the Sixteenth Division and who was a member of the Division who participated in CA-G.R. SP 32307 had in effect rejected consolidation when he asked that the case be reraffled.

In any event, there was no need of consolidation or referral to the Sixteenth Division, because the issues in the two (2) cases are different.

In CA-G.R. SP No. 32307, the petitioner is GO THONG. It seeks to restrains (sic) MARINA from implementing the order of October 8, 1993 suspending the provisional authority granted by MARINA for GO THONG to service the Cebu-Surigao Lines for a period of three months from October 3, 1993 to December 29, 1993. This is the order which it seeks to nullify for having been issued without due process. When the sixteenth division issued the first *status quo* resolution, the Court specifically mentioned the order of October 8. Otherwise stated, the *status quo* which the Court ordered to be maintained, was the Provisional Authority for GO THONG to service the Cebu-Surigao Lines from October 3, 1993 to December 29, 1993. With the expiration of this period, the contention of COKALIONG that SP No. 32307 may have already been rendered moot and academic is not without merit. But we leave this to the Sixteenth Division.

The present case is totally different. The petitioner here is COKALIONG. The petitioner do not seek to interfere with the *status quo* referred to in SP No. 32307 which is the Provisional Authority granted to GO THONG to operate subject route from October 3, 1993 to December 29, 1993. The Order sought to be herein annulled and restrained is totally different and was not yet in existence when the *status quo* order was issued in SP No. 32307. The Order sought to be annulled and restrained in this case as having been allegedly issued without due process is the Order of December 29, 1993

granting GO THONG an extension of its Provisional Authority to operate and service the Cebu-Surigao lines from January 1, 1994. This is a supervening event which is not within the *status quo* order in SP 32307.

The issue of due process raised by GO THONG in SP No. 32307 is not the same issue of due process raised by COKALIONG in this case. COKALIONG could not raise the issue of lack of due process in SP No. 32307 first because, it is not a petitioner in said case, and second, when the petition therein was filed, its right to due process have not yet been violated.[21]

We are in full accord with the Court of Appeals. Contrary to the petitioner's contention, it applied for an extension of its provisional authority on December 20, 1993 not because of the pendency of CA-G.R. SP No. 32307 in the Court of Appeals and the *status quo* agreement of the parties, but solely on the following allegation it made in its motion before the MARINA:

3. That there is a continuing and insistent public demand for the operation of the vessel M/V OUR LADY OF GUADALUPE in the route: Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu for the transportation of passengers and cargoes.

4. Therefore, there is need to renew the subject Provisional Authority.

5. The vessel M/V OUR LADY OF GUADALUPE has complete and valid certificate to attest to her seaworthiness.[22]

The MARINA, in the exercise of its discretion, found merit in the petitioner's motion and granted the same in an Order dated December 23, 1993. The Court has reviewed the said Order of the MARINA and found no showing therein that the order was issued precisely because of the pendency of CA-G.R. SP No. 32307 and the November 16, 1993 *status quo* agreement of the parties made before the Court of Appeals.

On the third issue, the Court of Appeals resolved to issue a temporary restraining order in favor of the respondent, later

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[21] *Rollo*, pp. 498-499 (G.R. No. 113576).

[22] *Id.* at 420.

converting it into a writ of preliminary injunction on a bond of ₱500,000.00, ratiocinating as follows:

> Whether or not it is the ministerial duty of MARINA to grant an extension of the Provisional Authority of GO THONG is what this petition is all about. MARINA has not made this pretense but denied that there was denial of due process. Significantly, MARINA originally denied GO THONG's application only to reconsider it, and, thereafter to suspend it pending COKALIONG's Motion for Revocation in view of COKALIONG's allegation of Guadalupe's unseaworthiness, only to extend it, after the expiration of the provisional authority which it tried to suspend were it not for the *status quo* order of [the] 16th division. MARINA does not deny that there was no hearing on GO THONG's application for extension. Given the strong allegations of petitioner of the absence of due process and the denial — grant — suspension — extension stance of MARINA, this Court is of the considered view that it has to look into the verity of these allegations if it were to remain faithful to its sworn duty to uphold the constitution, in view of the primacy of due process in the hierarchy of constitutional rights. To do so, it has to delve deeper into the merits of the petition.
>
> When MARINA issued the 3-month Provisional Authority, it sustained the erroneous argument of Go Thong in its "Manifestation with Urgent Motion for Reconsideration" that the August 10, 1993 denial of its application was based solely on oppositor's pleading.
>
> This is far from the truth. The initial denial was based on.
>
> Considering that the continuance of the acts complained of unless restrained, would render the judgment in this case ineffectual and probably work an injustice on petitioner, we resolve to issue the writ prayed for.[23]

The petitioner avers that the Court of Appeals should have dismissed outright the petition in CA-G.R. SP No. 33174 because of the pendency of CA-G.R. SP No. 32307 in the said court. Instead, the CA issued a temporary restraining order enjoining the enforcement of the MARINA's December 29, 1993 Order. The petitioner argues that the CA, thus, committed grave abuse of discretion amounting to excess or lack of jurisdiction.

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[23] *Id.* at 500-502.

We do not agree with the petitioner. With our ruling that the proceedings in CA-G.R. SP No. 32307 did not bar the filing of the petition in CA-G.R. SP No. 33174, it follows that the appellate court had to take cognizance of the petition in CA-G.R. SP No. 33174, and consider the plea for a temporary restraining order and a writ of preliminary injunction. It bears stressing that the matter of the issuance of a writ of preliminary injunction and a temporary restraining order is addressed to the sound judicial discretion of the court, and this Court will not interfere with the appellate court's exercise of its discretion unless of manifest abuse.[24] In this case, we find no abuse of discretion on the part of the CA in issuing a temporary restraining order and a writ of preliminary injunction. The Court notes that although the MARINA suspended on October 8, 1993 the efficacy of the provisional authority granted in favor of the petitioner pending resolution of the motion for reconsideration of the respondent, it later issued an Order on December 29, 1993 extending such provisional authority for a period of three months from January 1, 1994.

On the last issue, the petitioner contends that the CA erred when it dismissed its petition in CA-G.R. SP No. 32307 merely because it did not file a motion for reconsideration of the assailed Order of the MARINA before it filed its petition in the Court of Appeals. The petitioner argues that the procedural requirement of exhaustion of administrative remedies does not apply:

> In the instant case, MARINA immediately suspended the petitioner's PA on the basis solely of the defective "motion for revocation" filed by defendant Cokaliong. No notice or opportunity to be heard was accorded Gothong. While MARINA required Gothong to file a reply to said "motion for revocation" which MARINA also set for hearing on October 21, 1993, the fact remains that without notice or opportunity to be heard the Gothong PA was suspended and rights thereunder created were peremptorily revoked. It was really a case of "shoot first, ask questions later." This is contrary to the essence of due process of law.[25]

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[24] *Reyes v. Court of Appeals*, 321 SCRA 368 (1999).

[25] *Rollo*, p. 31 (G.R. No. 111832).

The CA, on the other hand, dismissed the petition for prematurity, *viz*:

> What is evident is that Petitioner opted to file the instant Petition and completely disregarded the principle of "exhaustion of administrative remedies." If any party like the petitioner feels aggrieved by any order, decision, ruling, regulation or policy promulgated by the Public Respondent MARINA, then such aggrieved party must first exhaust administrative remedies before invoking judicial intervention. Hence, what can be reasonably inferred from the action of Petitioner in filing the instant Petition is that it waived its opportunity to be heard and submit its evidence to refute Private respondent's allegations by not complying with the directive contained in the disputed order being assailed by herein Petitioner.
>
> "Failure to exhaust administrative remedies when the same is available before filing an action for *certiorari* is fatal" (*Ganub vs. Ramos*, 27 SCRA 1174).
>
> Besides, petitioner's allegation that the sole reason or consideration which served as the basis of the issuance of the 08 October 1993 Order was herein private respondent's motion for revocation is not well founded, it appearing clearly that public respondent was guided by considerations of "public interest" and "public safety" in suspending the provisional authority contained in the 01 October 1993 Order, in view of the call to consider the issue of "seaworthiness" raised by herein private respondent.[26]

We agree with the Court of Appeals. We note that the provisional authority granted to the petitioner may be cancelled, revoked or modified at any time by the MARINA as public interest may require. The respondent alleged that the vessel of the petitioner, the M/V OUR LADY OF GUADALUPE, was unseaworthy and submitted documentary evidence to prove its claim. In light of such evidence, the MARINA resolved to suspend the efficacy of the provisional authority it earlier granted to the petitioner, pending the resolution of Cokaliong's motion for the revocation of the provisional authority granted to the petitioner. Instead of filing its petition for *certiorari* in the Court of Appeals,

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[26] *Id*. at 46-47.

the petitioner should have filed a motion for the reconsideration of the assailed Order, and adduced documentary evidence to controvert that of the respondent's to enable the MARINA to reconsider the suspension of the provisional authority granted to the petitioner. It bears stressing that *certiorari* will not lie if the aggrieved party has a speedy and adequate remedy at law.

Certiorari is an extraordinary remedy and will not issue in the absence of a grave abuse of discretion on the part of the public respondent, in this case, the MARINA. Since the MARINA, in the interest of the public service, is authorized to cancel, revoke or modify, at any time, the provisional authority granted to the petitioner, it cannot be claimed that it committed a grave abuse of its discretion in suspending the efficacy of the provisional authority issued to the petitioner pending resolution of the respondent's claim that the M/V OUR LADY OF GUADALUPE was unseaworthy.

IN LIGHT OF ALL THE FOREGOING, the petitions in G.R. No. 113576 and G.R. No. 118235 are *DENIED* for lack of merit.

Costs against the petitioner.

SO ORDERED.

Puno, Quisumbing, and *Tinga, JJ.,* concur.

Austria-Martinez, J., on leave.

SECOND DIVISION

[G.R. No. 150763. July 2, 2004]

RURAL BANK OF MAKATI, INC., ESTEBAN S. SILVA and MAGDALENA V. LANDICHO, *petitioners, vs.* **MUNICIPALITY OF MAKATI and ATTY. VICTOR A. L. VALERO,** *respondents.*

SYNOPSIS

Petitioner Rural Bank was charged in two Informations: for non-payment of mayor's permit, and for non-payment of annual business tax. While the cases were pending, respondent municipality ordered the closure of the bank, prompting petitioner to pay under protest the sum of ₱82,408.66 .

Whether petitioner bank was liable to pay the business taxes and mayor's permit fees imposed by the municipality, the Court ruled in the positive. By virtue of EO No. 93 withdrawing all taxes and duty incentives provided under RA No. 720 as amended by RA No. 4106 to rural banks, petitioner could no longer claim any exemption from payment of business taxes and permit fees. Whether the closure of the bank was valid, the Court ruled in the negative as closure was not provided as one remedy to enforce payment of delinquent taxes and fees. It violated petitioner's right to due process. Whether the bank was entitled to damages, the Court ruled in the negative. Moral damages cannot be granted to corporations and hence there was no basis to award exemplary damages.

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT UNITS; POWER OF TAXATION; PAYMENT OF BUSINESS TAXES AND PERMIT FEES OF RURAL BANKS; EXEMPTION UNDER RA 720 AS AMENDED BY RA 4106 WITHDRAWN UNDER EO NO. 93.— Section 14 of Rep. Act No. 720, as amended by Republic Act No. 4106, approved on July 19, 1964, had exempted rural banks with net assets not exceeding one million pesos (₱1,000,000) from the payment of all taxes, charges and fees. The records show that as of December 29, 1986,

petitioner bank's net assets amounted only to ₱745,432.29 or below the one million ceiling provided for in Section 14 of the old Rural Banking Act. Hence, under Rep. Act No. 720, petitioner bank could claim to be exempt from payment of all taxes, charges and fees under the aforementioned provision. However, on December 17, 1986, Executive Order No. 93 was issued by then President Corazon Aquino, withdrawing all tax and duty incentives with certain exceptions. Notably, not included among the exceptions were those granted to rural banks under Rep. Act No. 720. With the passage of said law, petitioner could no longer claim any exemption from payment of business taxes and permit fees.

2. REMEDIAL LAW; EVIDENCE; FINDINGS OF THE COURT OF APPEALS, RESPECTED. — Factual findings of the Court of Appeals, which are supported on record, are binding and conclusive upon this Court. As repeatedly held, such findings will not be disturbed unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts. Moreover, in a petition for review, only questions of law are properly raised. On this score, the refund sought by petitioners could not be entertained much less granted.

3. POLITICAL LAW; LOCAL GOVERNMENT UNITS; GENERAL WELFARE CLAUSE; POLICE POWER; VALIDLY EXERCISED IN CLOSURE OF BANK. — Indeed the Local Government Code of 1991 was not yet in effect when the municipality ordered petitioner bank's closure on July 31, 1991. However, the general welfare clause invoked by the Court of Appeals is not found on the provisions of said law alone. Even under the old Local Government Code (Batas Pambansa Blg. 337) which was then in effect, a general welfare clause was provided for in Section 7 thereof. Municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation. The authority of a local government unit to exercise police power under a general welfare clause is not a recent development. This was already provided for as early as the Administrative Code of 1917. Since then it has been reenacted and implemented by new statutes on the matter. Thus, the closure of the bank was a valid exercise

of police power pursuant to the general welfare clause contained in and restated by B.P. Blg. 337, which was then the law governing local government units. No reversible error arises in this instance insofar as the validity of respondent municipality's exercise of police power for the general welfare is concerned.

4. ID.; ID.; ID.; GENERAL LEGISLATIVE POWER; MAKING OF ORDINANCES IMPOSING LICENSES AND REQUIRING PERMITS FOR BUSINESS ESTABLISHMENT.— The general welfare clause has two branches. The first, known as the *general legislative power*, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the *police power proper*, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property. In the present case, the ordinances imposing licenses and requiring permits for any business establishment, for purposes of regulation enacted by the municipal council of Makati, fall within the purview of the first branch of the general welfare clause.

5. ID.; ID.; POWER OF TAXATION; EXERCISED IN THE IMPOSITION OF ANNUAL BUSINESS TAX.— The ordinance of the municipality imposing the annual business tax is part of the power of taxation vested upon local governments as provided for under Section 8 of B.P. Blg. 337, to wit: Sec. 8. *Authority to Create Sources of Revenue.* — (1) Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law.

6. ID.; ID.; IMPLEMENTATION OF ORDINANCES VESTED IN THE MUNICIPAL MAYOR.— Implementation of the ordinances is vested in the municipal mayor, who is the chief executive of the municipality as provided for under the Local Government Code. Consequently, the municipal mayor, as chief executive, was clothed with authority to create a Special Task Force headed by respondent Atty. Victor A.L. Valero to enforce and implement said ordinances and resolutions and to file appropriate charges and prosecute violators.

7. ID.; ID.;LOCAL TAX CODE; REMEDIES TO ENFORCE PAYMENT OF DELINQUENT TAXES OR FEES DOES NOT INCLUDE CLOSURE OF BANK.— On the issue of the closure of the bank, we find that the bank was not engaged in any illegal or immoral activities to warrant its outright closure. The appropriate remedies to enforce payment of delinquent taxes or fees are provided for in Section 62 of the Local Tax Code. Said Section 62 did not provide for closure. Moreover, the order of closure violated petitioner's right to due process, considering that the records show that the bank exercised good faith and presented what it thought was a valid and legal justification for not paying the required taxes and fees. The violation of a municipal ordinance does not empower a municipal mayor to avail of extrajudicial remedies. It should have observed due process before ordering the bank's closure.

8. CIVIL LAW; DAMAGES; MORAL DAMAGES CANNOT BE AWARDED TO CORPORATIONS.—The bank is not entitled to any damages. The award of moral damages cannot be granted to a corporation, it being an artificial person that exists only in legal contemplation and cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system.

9. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES, NOT PROPER. — There being no moral damages, exemplary damages could not be awarded also. As to attorney's fees, aside from lack of adequate support and proof on the matter, these fees are not recoverable as a matter of right but depend on the sound discretion of the courts.

10. ID.; ID.; NOT PROPER WHERE ALLEGED MALICE FOR IMPLEADING A PARTY NOT PRESENT. — Under the circumstances of this case, the award of damages to Atty. Valero is also baseless. We cannot ascribe any illegal motive or malice to the bank for impleading Atty. Valero as an officer of respondent municipality. The bank filed the case against respondent municipality in the honest belief that it is exempt from paying taxes and fees. Since Atty. Valero was the official charged with the implementation of the ordinances of respondent municipality, he was rightly impleaded as a necessary party in the case.

APPEARANCES OF COUNSEL

Ariel M. Los Baños for petitioners.
Paciano B. Balita for private respondent.
Raymundo s. Defante, Jr. for respondent City of Manila.

D E C I S I O N

QUISUMBING, *J.*:

In its decision[1] dated July 17, 2001, in CA-G.R. CV No. 58214, the Court of Appeals affirmed the decision[2] dated October 22, 1996 of the Regional Trial Court of Makati City, Branch 134, in Civil Case No. 91-2866 dismissing petitioners' complaint for recovery of a sum of money and damages. Petitioners now assail said CA decision as well as the Resolution[3] dated November 9, 2001, which denied their Motion for Reconsideration.

The facts are as follows:

Sometime in August 1990, Atty. Victor A.L. Valero, then the municipal attorney of the Municipality of Makati, upon request of the municipal treasurer, went to the Rural Bank of Makati to inquire about the bank's payments of taxes and fees to the municipality. He was informed, however, by petitioner Magdalena V. Landicho, corporate secretary of the bank, that the bank was exempt from paying taxes under Republic Act No. 720, as amended.[4]

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[1] *Rollo*, pp. 34-43. Penned by Associate Justice Presbitero J. Velasco, Jr., with Associate Justices Bienvenido L. Reyes, and Juan Q. Enriquez, Jr. concurring.

[2] CA *Rollo*, pp. 51-A-57.

[3] *Rollo*, p. 60.

[4] Republic Act No. 720. Entitled "An Act Providing For The Creation, Organization And Operation Of Rural Banks, And For Other Purposes."

SEC. 14. of said law reads: "All rural banks created and organized under the provisions of this Act with net assets not exceeding one million pesos, excluding the counterpart capital subscribed and paid in by the Government under Sections seven and eight of this Act, shall be exempt from

On November 19, 1990, the municipality lodged a complaint with the Prosecutor's Office, charging petitioners Esteban S. Silva, president and general manager of the bank and Magdalena V. Landicho for violation of Section 21(a), Chapter II, Article 3 in relation to Sections 105 and 169 of the Metropolitan Tax Code.

On April 5, 1991, an Information docketed as Criminal Case No. 140208, for violation of Municipal Ordinance Nos. 122 and 39 for non-payment of the mayor's permit fee, was filed with the Metropolitan Trial Court (MeTC) of Makati against petitioners. Another Information, docketed as Criminal Case No. 140209, for non-payment of annual business tax, in violation of Metro Manila Commission Ordinance No. 82-03, Section 21(a), Chapter II, Article 3, was likewise filed with the MeTC.

While said cases were pending with the municipal court, respondent municipality ordered the closure of the bank. This prompted petitioners to pay, under protest, the mayor's permit fee and the annual fixed tax in the amount of ₱82,408.66.

On October 18, 1991, petitioners filed with the RTC of Makati a Complaint for Sum of Money and Damages, docketed as Civil Case No. 91-2866. Petitioners alleged that they were constrained to pay the amount of ₱82,408.66 because of the closure order, issued despite the pendency of Criminal Cases Nos. 140208-09 and the lack of any notice or assessment of the fees to be paid. They averred that the collection of the taxes/fees was oppressive, arbitrary, unjust and illegal. Additionally, they alleged that respondent Atty. Valero had no power to enforce laws and ordinances, thus his action in enforcing the collection of the permit fees and business taxes was *ultra vires*. Petitioners claimed that the bank lost expected earnings

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the payment of all taxes, charges and fees of whatever nature and description: *Provided, however*, That when the net assets of a rural bank exceed one million pesos, the taxes, charges and fees shall be levied in the proportion that such excess bears to the said net assets: *Provided, finally*, That when the net assets of a rural bank exceed three million pesos, it shall pay taxes, fees and charges like any other bank."

in the amount of ₱19,778. Petitioners then assailed the municipal ordinances of Makati as invalid for want of the requisite publication.

In its Answer, respondent municipality asserted that petitioners' payment of ₱82,408.66 was for a legal obligation because the payment of the mayor's permit fee as well as the municipal business license was required of all business concerns. According to respondent, said requirement was in furtherance of the police power of the municipality to regulate businesses.

For his part, Atty. Valero filed an Answer claiming that there was no coercion committed by the municipality, that payment was a legal obligation of the bank, and that its claim of exemption had no legal basis. He further alleged that petitioners' action was clearly intended to harass and humiliate him and as counterclaim, he asked for moral and other damages.

On October 22, 1996, the RTC decided Civil Case No. 91-2866 as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered dismissing the complaint.
>
> On the counterclaim, the plaintiffs are hereby ordered jointly and severally to pay to defendant Victor Valero the sum of ₱200,000.00 as moral damages and the amount of ₱50,000.00 as attorney's fees.
>
> The counterclaim of defendant Municipality is dismissed.
>
> Cost against the plaintiffs.
>
> SO ORDERED.[5]

In finding for respondents, the RTC ruled that the bank was engaged in business as a rural bank. Hence, it should secure the necessary permit and business license, as well as pay the corresponding charges and fees. It found that the municipality had authority to impose licenses and permit fees on persons engaging in business, under its police power embodied under the general welfare clause. Also, the RTC declared unmeritorious

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[5] Records, p. 377.

petitioners' claim for exemption under Rep. Act No. 720 since said exemption had been withdrawn by Executive Order No. 93[6] and the Rural Bank Act of 1992.[7] These statutes no longer exempted rural banks from paying corporate income taxes and local taxes, fees and charges. It also found petitioners' claim of lack of publication of MMC Ordinance Nos. 82-03 and Municipal Ordinance No. 122 to be mere allegations unsupported by clear and convincing evidence.

In awarding damages to Atty. Valero, the RTC found that he had been maliciously impleaded as defendant. It noted that Atty. Valero, as a municipal legal officer, was tasked to enforce municipal ordinances. In short, he was merely an agent of the local chief executive and should not be faulted for performing his assigned task.

Petitioners seasonably moved for reconsideration, but this was denied by the RTC in its Order dated January 10, 1997.[8]

Petitioners appealed to the Court of Appeals in CA-G.R. CV No. 58214. The appellate court sustained the lower court in this wise:

> WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED *in toto.*
>
> SO ORDERED.[9]

The Court of Appeals found the order of closure of the bank valid and justified since the bank was operating without any permit and without having paid the requisite permit fee. Thus,

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[6] E.O. No. 93. Entitled "*Withdrawing All Tax and Duty Incentives, Subject to Certain Exceptions, Expanding the Powers of the Fiscal Incentives Review Board, and For Other Purposes.*" Section 1 of said Executive Order states in part: "The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn — . . ."

[7] Republic Act No. 7353. AN ACT PROVIDING FOR THE CREATION, ORGANIZATION AND OPERATION OF RURAL BANKS, AND FOR OTHER PURPOSES.

[8] Records, p. 398.

[9] *Rollo*, p. 42.

declared the Court of Appeals, "it is not merely a matter of enforcement and collection of fees, as the appellants would have it, but a violation of the municipality's authority to regulate the businesses operating within its territory."[10]

The appellate court also brushed aside petitioners' claim that the general welfare clause is limited only to legislative action. It declared that the exercise of police power by the municipality was mandated by the general welfare clause, which authorizes the local government units to enact ordinances, not only to carry into effect and discharge such duties as are conferred upon them by law, but also those for the good of the municipality and its inhabitants. This mandate includes the regulation of useful occupations and enterprises.

Petitioner moved for reconsideration, but the appellate court in its Resolution[11] of November 9, 2001 denied the same.

Hence, this instant petition alleging that the Honorable Court of Appeals seriously erred in:

1) ... HOLDING THAT THE CLOSURE BY THE APPELLEE, VICTOR VALERO, OF THE APPELLANT BANK WAS A LEGITIMATE EXERCISE OF POLICE POWER BY THE MUNICIPALITY OF MAKATI;

2) ... NOT CONSIDERING THE FACT THAT MAKATI ORDINANCE 122 REQUIRING MAYOR'S PERMIT FOR OPERATION OF AN ESTABLISHMENT AND MMC ORDINANCE NO. 82-03 WERE ADMITTED AS NOT PUBLISHED AS REQUIRED IN *TAÑADA, ET AL.*, vs. *TUVERA*, NO. L-63915, DECEMBER 29, 1986 AND THAT NO TAX ASSESSMENT WAS PRESENTED TO THE BANK;

3) ... AWARDING MORAL DAMAGES TO APPELLEE VICTOR VALERO IN THE AMOUNT OF ₱200,000.00 AND ATTORNEY'S FEES IN THE SUM OF ₱50,000.00;

4) ... NOT AWARDING TO THE APPELLANT BANK, THE AMOUNT OF ₱57,854.00 REPRESENTING THE AMOUNT

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[10] *Id*. at 39.

[11] *Id*. at 60.

UNJUSTLY AND ILLEGALLY COLLECTED FROM THE APPELLANT BANK;

5) ... NOT AWARDING THE AMOUNT OF P10,413.75 YEARLY REPRESENTING THE UNREALIZED PROFIT WHICH THE APPELLANT BANK IS BEING DEPRIVED OF IN THE USE OF THE AFORESAID AMOUNT PLUS LEGAL INTEREST ALLOWED IN JUDGMENT FROM THE TIME OF THE EXTRAJUDICIAL DEMAND. (DEMAND LETTER, DATED OCTOBER 4, 1991, EXHIBIT "O" FOR THE APPELLANTS);

6) ... NOT GRANTING TO APPELLANTS ESTEBAN S. SILVA AND MAGDALENA LANDICHO MORAL DAMAGES IN THE AMOUNT OF ₱15,000.00;

7) ... NOT AWARDING TO APPELLANTS, ₱1,000,000.00 EXEMPLARY DAMAGES; 25% OF THE APPELLANTS CLAIM AS AND FOR ATTORNEYS' FEE AND COSTS OF SUIT.[12]

Essentially, the following are the relevant issues for our resolution:

1. Whether or not petitioner bank is liable to pay the business taxes and mayor's permit fees imposed by respondent;

2. Whether or not the closure of petitioner bank is valid;

3. Whether or not petitioners are entitled to an award of unrealized profit and damages;

4. Whether or not respondent Atty. Victor Valero is entitled to damages.

On the *first issue*, petitioner bank claims that of the ₱82,408.66 it paid under protest, it is actually liable only for the amount of ₱24,154, representing taxes, fees and charges due beginning 1987, or after the issuance of E.O. No. 93. Prior to said year, it was exempt from paying any taxes, fees, and charges by virtue of Rep. Act No. 720.

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[12] *Id*. at 9-10.

We find the bank's claim for refund untenable now.

Section 14 of Rep. Act No. 720, as amended by Republic Act No. 4106,[13] approved on July 19, 1964, had exempted rural banks with net assets not exceeding one million pesos (₱1,000,000) from the payment of all taxes, charges and fees. The records show that as of December 29, 1986, petitioner bank's net assets amounted only to ₱745,432.29[14] or below the one million ceiling provided for in Section 14 of the old Rural Banking Act. Hence, under Rep. Act No. 720, petitioner bank could claim to be exempt from payment of all taxes, charges and fees under the aforementioned provision.

However, on December 17, 1986, Executive Order No. 93 was issued by then President Corazon Aquino, withdrawing all tax and duty incentives with certain exceptions. Notably, not included among the exceptions were those granted to rural banks under Rep. Act No. 720. With the passage of said law, petitioner could no longer claim any exemption from payment of business taxes and permit fees.

Now, as to the refund of ₱57,854 claimed by petitioners allegedly because of overpayment of taxes and fees, we note that petitioners have not adequately substantiated their claim. As found by the Court of Appeals:

> As to the computation of the payable fees, the plaintiffs-appellants claim an overpayment and pray for a refund. It is not clearly shown from their argument that such overpayment exists. And from their initial complaint, they even asked for the refund of the whole ₱82,408.66 paid, which complaint was instituted in 1991. They claim having paid the fees and charges due since 1991, which is irrelevant, since the ₱82,408.66 was paid for the period before 1991, and thus no deduction can be made for payments after that period. It is not clear where their computation of ₱57,854.00 owed them came from, and lacking solid support, their prayer for a partial refund must fail.

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[13] An Act to Further Amend Section Fourteen of Republic Act Numbered Seven Hundred Twenty, As Amended, Otherwise known as Rural Banks' Act.

[14] Records, p. 251; Statement of Condition, p. 2.

Plaintiffs-appellants have failed to show that the payment of fees and charges even covered the period before their exemption was withdrawn.[15]

Factual findings of the Court of Appeals, which are supported on record, are binding and conclusive upon this Court. As repeatedly held, such findings will not be disturbed unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts.[16] Moreover, in a petition for review, only questions of law are properly raised. On this score, the refund sought by petitioners could not be entertained much less granted.

Anent the *second issue*, petitioner bank claims that the closure of respondent bank was an improper exercise of police power because a municipal corporation has no inherent but only delegated police power, which must be exercised not by the municipal mayor but by the municipal council through the enactment of ordinances. It also assailed the Court of Appeals for invoking the General Welfare Clause embodied in Section 16[17] of the Local Government Code of 1991, which took effect in 1992,[18]

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[15] *Rollo*, p. 41.

[16] *Austria v. Court of Appeals*, G.R. No. 133323, 9 March 2000, 327 SCRA 668, 674.

[17] SEC. 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[18] SEC. 536. *Effectivity Clause*. — This Code shall take effect on January first, nineteen hundred and ninety-two, unless otherwise provided herein, after its complete publication in at least one (1) newspaper of general circulation.

when the closure of the bank was actually done on July 31, 1991.

Indeed the Local Government Code of 1991 was not yet in effect when the municipality ordered petitioner bank's closure on July 31, 1991. However, the general welfare clause invoked by the Court of Appeals is not found on the provisions of said law alone. Even under the old Local Government Code (Batas Pambansa Blg. 337)[19] which was then in effect, a general welfare clause was provided for in Section 7 thereof. Municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation.[20] The authority of a local government unit to exercise police power under a general welfare clause is not a recent development. This was already provided for as early as the Administrative Code of 1917.[21] Since then it has been reenacted and implemented by new statutes on the matter. Thus, the closure of the bank was a valid exercise of police power pursuant to the general welfare clause contained in and restated by B.P. Blg. 337, which was then the law governing local government units. No reversible error arises in this instance insofar as the validity of respondent municipality's exercise of police power for the general welfare is concerned.

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[19] B.P. Blg. 337, Sec. 7. *Governmental Powers in General.* — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein.

[20] *Tatel v. Municipality of Virac*, G.R. No. 40243, 11 March 1992, 207 SCRA 157, 160.

[21] SEC. 2238. *General power of council to enact ordinances and make regulations.* — The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein.

The general welfare clause has two branches. The first, known as the *general legislative power*, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the *police power proper*, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property.[22]

In the present case, the ordinances imposing licenses and requiring permits for any business establishment, for purposes of regulation enacted by the municipal council of Makati, fall within the purview of the first branch of the general welfare clause. Moreover, the ordinance of the municipality imposing the annual business tax is part of the power of taxation vested upon local governments as provided for under Section 8 of B.P. Blg. 337,[23] to wit:

> Sec. 8. *Authority to Create Sources of Revenue*. — (1) Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law.
>
> ... ...

Implementation of these ordinances is vested in the municipal mayor, who is the chief executive of the municipality as provided for under the Local Government Code, to wit:

> Sec. 141. *Powers and Duties.* —
>
> (1) The mayor shall be the chief executive of the municipal government and shall exercise such powers, duties and functions as provided in this Code and other laws.
>
> (2) He shall:
>
> ... ...

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[22] See *RUPERTO G. MARTIN, PUBLIC CORPORATIONS* 165 (1971 Ed.)

[23] Now Section 18 of the Local Government Code of 1991.

> (k) **Grant licenses and permits** in accordance with existing laws or municipal ordinances and **revoke** them for violation of the conditions upon which they have been granted;
>
> ... ...
>
> (o) *Enforce laws, municipal ordinances and resolutions* and issue necessary orders for their faithful and proper enforcement and execution;
>
> (p) **Ensure that all taxes and other revenues of the municipality are collected**, and that municipal funds are spent in accordance with law, ordinances and regulations;
>
> ... ...
>
> (t) Cause to be instituted judicial proceedings in connection with the violation of ordinances, for the collection of taxes, fees and charges, and for the recovery of property and funds of the municipality, and otherwise to protect the interest of the municipality;[24] (Italics supplied)
>
> ... ...

Consequently, the municipal mayor, as chief executive, was clothed with authority to create a Special Task Force headed by respondent Atty. Victor A.L. Valero to enforce and implement said ordinances and resolutions and to file appropriate charges and prosecute violators.[25] Respondent Valero could hardly be faulted for performing his official duties under the cited circumstances.

Petitioners contend that MMC Ordinance No. 82-03 and Municipal Ordinance No. 122 are void for lack of publication. This again raises a factual issue, which this Court may not look into. As repeatedly held, this Court is not a trier of facts.[26] Besides, both the Court of Appeals and the trial court found lack of sufficient evidence on this point to support petitioners' claim, thus:

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[24] Section 141, B.P. Blg. 337, Local Government Code.

[25] Records, pp. 321-323.

[26] *Tan v. Mendez, Jr.,* G.R. No. 138669, 6 June 2002, 383 SCRA 202, 211.

And finally the matter of the lack of publication is once again alleged by the plaintiffs-appellants, claiming that the matter was skirted by the trial court. This argument must fail, in the light of the trial court's squarely finding lack of evidence to support the allegation of the plaintiffs-appellants. We quote from the trial court's decision:

> The contention that MMC Ordinance No. 82-03 and Municipal Ordinance No. 122 of Makati are void as they were not publishced (sic) is untenable. The mere allegation of the plaintiff is not sufficient to declare said ordinances void. The plaintiffs failed to adduce clear, convincing and competent evidence to prove said Ordinances void. Moreover, in this jurisdiction, an ordinance is presumed to be valid unless declared otherwise by a Court in an appropriate proceeding where the validity of the ordinance is directly put in issue.[27]

On the issue of the closure of the bank, we find that the bank was not engaged in any illegal or immoral activities to warrant its outright closure. The appropriate remedies to enforce payment of delinquent taxes or fees are provided for in Section 62 of the Local Tax Code, to wit:

> SEC. 62. *Civil Remedies.* — The civil remedies available to enforce payment of delinquent taxes shall be by distraint of personal property, and by legal action. Either of these remedies or both simultaneously may be pursued at the discretion of the proper authority.
>
> The payment of other revenues accruing to local governments shall be enforced by legal action.[28]

Said Section 62 did not provide for closure. Moreover, the order of closure violated petitioner's right to due process, considering that the records show that the bank exercised good faith and presented what it thought was a valid and legal justification for not paying the required taxes and fees. The violation of a municipal ordinance does not empower a municipal mayor to

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[27] *Rollo*, pp. 41-42.

[28] Section 62, P.D. No. 231, as amended, also known as the "Local Tax Code."

avail of extrajudicial remedies.[29] It should have observed due process before ordering the bank's closure.

Finally, on the issue of damages, we agree with both the trial and the appellate courts that the bank is not entitled to any damages. The award of moral damages cannot be granted to a corporation, it being an artificial person that exists only in legal contemplation and cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system.[30] There is also no sufficient basis for the award of exemplary damages. There being no moral damages, exemplary damages could not be awarded also. As to attorney's fees, aside from lack of adequate support and proof on the matter, these fees are not recoverable as a matter of right but depend on the sound discretion of the courts.[31]

Under the circumstances of this case, the award of damages to Atty. Valero is also baseless. We cannot ascribe any illegal motive or malice to the bank for impleading Atty. Valero as an officer of respondent municipality. The bank filed the case against respondent municipality in the honest belief that it is exempt from paying taxes and fees. Since Atty. Valero was the official charged with the implementation of the ordinances of respondent municipality, he was rightly impleaded as a necessary party in the case.

WHEREFORE, the assailed Decision dated July 17, 2001, of the Court of Appeals in CA-G.R. CV No. 58214 is *AFFIRMED* with *MODIFICATIONS*, so that (1) the order denying any claim for refunds and fees allegedly overpaid by the bank, as well as the denial of any award for damages and unrealized profits, is hereby *SUSTAINED*; (2) the order decreeing the closure of petitioner bank is *SET ASIDE*; and (3) the award of moral damages

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[29] *Estate of Gregoria Francisco v. Court of Appeals*, G.R. No. 95279, 25 July 1991, 199 SCRA 595, 600.

[30] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, 21 January 1999, 301 SCRA 572, 602-603.

[31] Article 2233, Civil Code of the Philippines.

and attorney's fees to Atty. Victor A.L. Valero is *DELETED*. No pronouncement as to costs.

SO ORDERED.

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

Austria-Martinez, J., on leave.

SECOND DIVISION

[G.R. No. 151135. July 2, 2004]

CONTEX CORPORATION, *petitioner, vs.* **HON. COMMISSIONER OF INTERNAL REVENUE,** *respondent*.

SYNOPSIS

Petitioner Corporation was a Subic Bay Freeport Enterprise registered with the Subic Bay Metropolitan Authority (SBMA) pursuant to RA No. 7227. As such, it was exempt from all local and national internal revenue taxes. Further, petitioner was a non-VAT taxpayer registered with the Bureau of Internal Revenue (BIR). From January 1, 1997 to December 31, 1998, where petitioner purchased various supplies for its business, the suppliers shifted unto petitioner the 10% VAT on the purchased items. Whether petitioner was VAT exempt and thus entitled to tax refund, the Court ruled that only VAT-Registered entities can claim Input VAT Credit/Refund. That while it was true that petitioner should not have been liable for the VAT inadvertently passed on it by its supplier since the transaction was a zero-rated sale on the part of the supplier, the petitioner was not the proper party to claim the VAT refund. It was the petitioner's supplier who may claim an Input VAT credit with no corresponding Output VAT passed on to the petitioner. Thus, it was the petitioner's suppliers who should

claim the tax credit and accordingly refund the petitioner the VAT erroneously passed on to the latter.

SYLLABUS

1. TAXATION; VALUE ADDED TAX; ELUCIDATED. — The VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee. Unlike a direct tax, such as the income tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures. Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.

2. ID.; ID.; EXEMPTIONS; ELUCIDATED. — Exemptions from VAT are granted by express provision of the Tax Code or special laws. Under VAT, the transaction can have preferential treatment in the following ways: (a) VAT Exemption. An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid. This is a case wherein the VAT is removed at the exempt stage (*i.e.*, at the point of the sale, barter or exchange of the goods or properties). The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject

to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods/properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt. (b) Zero-rated Sales. There are sales by VAT-registered persons which are subject to 0% rate, meaning the tax burden is not passed on to the purchaser. A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations. Under Zero-rating, all VAT is removed from the zero-rated goods, activity or firm. In contrast, exemption only removes the VAT at the exempt stage, and it will actually increase, rather than reduce the total taxes paid by the exempt firm's business or non-retail customers. It is for this reason that a sharp distinction must be made between zero-rating and exemption in designating a value-added tax.

3. ID.; ID.; ID.; INPUT VAT CREDIT/REFUND, PROPER ONLY FOR VAT-REGISTERED ENTITIES. — The petitioner's claim to VAT exemption in the instant case for its purchases of supplies and raw materials is founded mainly on Section 12 (b) and (c) of Rep. Act No. 7227, which basically exempts them from all national and local internal revenue taxes, including VAT and Section 4 (A)(a) of BIR Revenue Regulations No. 1-95. On this point, petitioner rightly claims that it is indeed VAT-Exempt and this fact is not controverted by the respondent. In fact, petitioner is registered as a NON-VAT taxpayer per Certificate of Registration issued by the BIR. As such, it is exempt from VAT on all its sales and importations of goods and services. Petitioner's claim, however, for exemption from VAT for its purchases of supplies and raw materials is incongruous with its claim that it is VAT-Exempt, for only VAT-Registered entities can claim Input VAT Credit/Refund. The point of contention here is whether or not the petitioner may claim a refund on the Input VAT erroneously passed on to it by its suppliers. While it is true that the petitioner should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund. It is the petitioner's supplier who may claim an Input VAT credit with no corresponding Output VAT liability.

Congruently, no Output VAT may be passed on to the petitioner. Therefore, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
The Solicitor General and *Pablo M. Bastes, Jr.* and *Rhodora J. Corcuera-Menzon for B.I. R.*

D E C I S I O N

QUISUMBING, *J.*:

For review is the Decision[1] dated September 3, 2001, of the Court of Appeals, in CA-G.R. SP No. 62823, which reversed and set aside the decision[2] dated October 13, 2000, of the Court of Tax Appeals (CTA). The CTA had ordered the Commissioner of Internal Revenue (CIR) to refund the sum of ₱683,061.90 to petitioner as erroneously paid input value-added tax (VAT) or in the alternative, to issue a tax credit certificate for said amount. Petitioner also assails the appellate court's Resolution,[3] dated December 19, 2001, denying the motion for reconsideration.

Petitioner is a domestic corporation engaged in the business of manufacturing hospital textiles and garments and other hospital supplies for export. Petitioner's place of business is at the Subic Bay Freeport Zone (SBFZ). It is duly registered with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise, pursuant to the provisions of Republic Act No. 7227.[4] As an SBMA-registered firm, petitioner is exempt from all local

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[1] *Rollo*, pp. 29-38. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona, and Bienvenido L. Reyes concurring.

[2] *Id.* at 59-70.

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

[4] The Bases Conversion and Development Act of 1992.

and national internal revenue taxes except for the preferential tax provided for in Section 12(c)[5] of Rep. Act No. 7227. Petitioner also registered with the Bureau of Internal Revenue (BIR) as a non-VAT taxpayer under Certificate of Registration RDO Control No. 95-180-000133.

From January 1, 1997 to December 31, 1998, petitioner purchased various supplies and materials necessary in the conduct of its manufacturing business. *The suppliers of these goods shifted unto petitioner the 10% VAT on the purchased items, which led the petitioner to pay input taxes in the amounts of ₱539,411.88 and ₱504,057.49 for 1997 and 1998, respectively.*[6]

Acting on the belief that it was exempt from all national and local taxes, including VAT, pursuant to Rep. Act No. 7227,

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[5] SEC. 12. *Subic Special Economic Zone*. — Subject to the concurrence by resolution of the *sangguniang panlungsod* of the City of Olongapo and the *sangguniang bayan* of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Freeport Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales . . .

The abovementioned zone shall be subject to the following policies:

... ...

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, *no taxes, local and national, shall be imposed within the Subic Special Economic Zone* (stress supplied). In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter (stress supplied).

... ...

[6] Italics supplied.

petitioner filed two applications for tax refund or tax credit of the VAT it paid. Mr. Edilberto Carlos, revenue district officer of BIR RDO No. 19, denied the first application letter, dated December 29, 1998.

Unfazed by the denial, petitioner on May 4, 1999, filed another application for tax refund/credit, this time directly with Atty. Alberto Pagabao, the regional director of BIR Revenue Region No. 4. The second letter sought a refund or issuance of a tax credit certificate in the amount of ₱1,108,307.72, representing erroneously paid input VAT for the period January 1, 1997 to November 30, 1998.

When no response was forthcoming from the BIR Regional Director, petitioner then elevated the matter to the Court of Tax Appeals, in a petition for review docketed as CTA Case No. 5895. Petitioner stressed that Section 112(A)[7] if read in relation to Section 106(A)(2)(a)[8] of the National Internal Revenue Code, as amended and Section 12(b)[9] and (c) of Rep. Act No.

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[7] SEC. 112. *Refunds or Tax Credits of Input Tax —*

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any *VAT-registered person*, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): . . .

[8] SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —

... ...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term '*export sales*' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon . . .

[9] SEC. 12. (b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic

7227 would show that it was not liable in any way for any value-added tax.

In opposing the claim for tax refund or tax credit, the BIR asked the CTA to apply the rule that claims for refund are strictly construed against the taxpayer. Since petitioner failed to establish both its right to a tax refund or tax credit and its compliance with the rules on tax refund as provided for in Sections 204[10] and 229[11] of the Tax Code, its claim should be denied, according to the BIR.

Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines.

[10] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

... ...

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

... ...

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition . . . No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: . . .

... ...

[11] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*— . . .

. . . *no such suit or proceeding shall be filed after the* expiration of *two (2) years from the date of payment of the tax or penalty* regardless of any supervening cause that may arise after payment: *Provided, however,*

On October 13, 2000, the CTA decided CTA Case No. 5895 as follows:

> WHEREFORE, in view of the foregoing, the Petition for Review is hereby PARTIALLY GRANTED. Respondent is hereby ORDERED to REFUND or in the alternative to ISSUE A TAX CREDIT CERTIFICATE in favor of Petitioner the sum of ₱683,061.90, representing erroneously paid input VAT.
>
> SO ORDERED.[12]

In granting a partial refund, the CTA ruled that petitioner misread Sections 106(A)(2)(a) and 112(A) of the Tax Code. The tax court stressed that these provisions apply only to those entities registered as VAT taxpayers whose sales are zero-rated. Petitioner does not fall under this category, since it is a non-VAT taxpayer as evidenced by the Certificate of Registration RDO Control No. 95-180-000133 issued by RDO Rosemarie Ragasa of BIR RDO No. 18 of the Subic Bay Freeport Zone and thus it is exempt from VAT, pursuant to Rep. Act No. 7227, said the CTA.

Nonetheless, the CTA held that the petitioner is exempt from the imposition of input VAT on its purchases of supplies and materials. It pointed out that under Section 12(c) of Rep. Act No. 7227 and the Implementing Rules and Regulations of the Bases Conversion and Development Act of 1992, all that petitioner is required to pay as a SBFZ-registered enterprise is a 5% preferential tax.

The CTA also disallowed all refunds of input VAT paid by the petitioner prior to June 29, 1997 for being barred by the two-year prescriptive period under Section 229 of the Tax Code. The tax court also limited the refund only to the input VAT paid by the petitioner on the supplies and materials directly used by the petitioner in the manufacture of its goods. It struck down all claims for input VAT paid on maintenance, office

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That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[12] *Rollo*, p. 69.

supplies, freight charges, and all materials and supplies shipped or delivered to the petitioner's Makati and Pasay City offices.

Respondent CIR then filed a petition, docketed as CA-G.R. SP No. 62823, for review of the CTA decision by the Court of Appeals. Respondent maintained that the exemption of Contex Corp. under Rep. Act No. 7227 was limited only to direct taxes and not to indirect taxes such as the input component of the VAT. The Commissioner pointed out that from its very nature, the value-added tax is a burden passed on by a VAT registered person to the end users; hence, the direct liability for the tax lies with the suppliers and not Contex.

Finding merit in the CIR's arguments, the appellate court decided CA-G.R. SP No. 62823 in his favor, thus:

> WHEREFORE, premises considered, the appealed decision is hereby REVERSED AND SET ASIDE. Contex's claim for refund of erroneously paid taxes is DENIED accordingly.
>
> SO ORDERED.[13]

In reversing the CTA, the Court of Appeals held that the exemption from duties and taxes on the importation of raw materials, capital, and equipment of SBFZ-registered enterprises under Rep. Act No. 7227 and its implementing rules covers only "the VAT imposable under Section 107 of the [Tax Code], which is a direct liability of the importer, and in no way includes the value-added tax of the seller-exporter the burden of which was passed on to the importer as an additional costs of the goods."[14] This was because the exemption granted by Rep. Act No. 7227 relates to the act of importation and Section 107[15] of

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[13] *Id*. at 38.

[14] *Id*. at 37.

[15] SEC. 107. *Value-Added Tax on Importation of Goods.* —

(A) *In General*. — There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: *Provided*, That where the customs duties are determined

the Tax Code specifically imposes the VAT on importations. The appellate court applied the principle that tax exemptions are strictly construed against the taxpayer. The Court of Appeals pointed out that under the implementing rules of Rep. Act No. 7227, the exemption of SBFZ-registered enterprises from internal revenue taxes is qualified as pertaining only to those for which they may be directly liable. It then stated that apparently, the legislative intent behind Rep. Act No. 7227 was to grant exemptions only to direct taxes, which SBFZ-registered enterprise may be liable for and only in connection with their importation of raw materials, capital, and equipment as well as the sale of their goods and services.

Petitioner timely moved for reconsideration of the Court of Appeals decision, but the motion was denied.

Hence, the instant petition raising as issues for our resolution the following:

A. WHETHER OR NOT THE EXEMPTION FROM ALL LOCAL AND NATIONAL INTERNAL REVENUE TAXES PROVIDED IN REPUBLIC ACT NO. 7227 COVERS THE VALUE ADDED TAX PAID BY PETITIONER, A SUBIC BAY FREEPORT ENTERPRISE ON ITS PURCHASES OF SUPPLIES AND MATERIALS.

B. WHETHER OR NOT THE COURT OF TAX APPEALS CORRECTLY HELD THAT PETITIONER IS ENTITLED TO A TAX CREDIT OR REFUND OF THE VAT PAID ON ITS PURCHASES OF SUPPLIES AND RAW MATERIALS FOR THE YEARS 1997 AND 1998.[16]

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on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.

(B) *Transfer of Goods by Tax-exempt Persons*. — In the case of tax-free importation of goods into the Philippines by persons, entities or agencies exempt from tax where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation. The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.

[16] *Rollo,* p. 11.

Simply stated, we shall resolve now the issues concerning: (1) the correctness of the finding of the Court of Appeals that the VAT exemption embodied in Rep. Act No. 7227 does not apply to petitioner as a purchaser; and (2) the entitlement of the petitioner to a tax refund on its purchases of supplies and raw materials for 1997 and 1998.

On the *first issue*, petitioner argues that the appellate court's restrictive interpretation of petitioner's VAT exemption as limited to those covered by Section 107 of the Tax Code is erroneous and devoid of legal basis. It contends that the provisions of Rep. Act No. 7227 clearly and unambiguously mandate that no local and national taxes shall be imposed upon SBFZ-registered firms and hence, said law should govern the case. Petitioner calls our attention to regulations issued by both the SBMA and BIR clearly and categorically providing that the tax exemption provided for by Rep. Act No. 7227 includes exemption from the imposition of VAT on purchases of supplies and materials.

The respondent takes the diametrically opposite view that while Rep. Act No. 7227 does grant tax exemptions, such grant is not all-encompassing but is limited only to those taxes for which a SBFZ-registered business may be directly liable. Hence, SBFZ locators are not relieved from the indirect taxes that may be shifted to them by a VAT-registered seller.

At this juncture, it must be stressed that the VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee.[17] Unlike a direct tax, such as the income

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[17] SEC. 105. *Persons Liable.* — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures.

Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax.[18] Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.[19]

Exemptions from VAT are granted by express provision of the Tax Code or special laws. Under VAT, the transaction can have preferential treatment in the following ways:

The phrase '*in the course of trade or business*' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

[18] DEOFERIO, JR. and MAMALATEO, *THE VALUE ADDED TAX IN THE PHILIPPINES* 35–36 (1st ed. 2000).

[19] DEOFERIO, JR. and MAMALATEO, *op.cit*. 117.

(a) VAT Exemption. — An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.[20] This is a case wherein the VAT is removed at the exempt stage (i.e., at the point of the sale, barter or exchange of the goods or properties).

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods/properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.[21]

(b) Zero-rated Sales. — These are sales by VAT-registered persons which are subject to 0% rate, meaning the tax burden is not passed on to the purchaser. A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.[22]

Under Zero-rating, all VAT is removed from the zero-rated goods, activity or firm. In contrast, exemption only removes the VAT at the exempt stage, and it will actually increase, rather than reduce the total taxes paid by the exempt firm's business or non-retail customers. It is for this reason that a sharp distinction must be made between zero-rating and exemption in designating a value-added tax.[23]

Apropos, the petitioner's claim to VAT exemption in the instant case for its purchases of supplies and raw materials is founded mainly on Section 12(b) and (c) of Rep. Act No. 7227, which basically exempts them from all national and local internal revenue

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[20] BIR Revenue Regulations No. 7-95, Section 4.103-1.

[21] *Ibid*.

[22] *Id.* at Section 4.100-2.

[23] Vitug and Acosta. *TAX LAW AND JURISPRUDENCE 241* (2nd ed. 2000).

taxes, including VAT and Section 4(A)(a) of BIR Revenue Regulations No. 1-95.[24]

On this point, petitioner rightly claims that it is indeed VAT-Exempt and this fact is not controverted by the respondent. In fact, petitioner is registered as a NON-VAT taxpayer per Certificate of Registration[25] issued by the BIR. As such, it is exempt from VAT on all its sales and importations of goods and services.

Petitioner's claim, however, for exemption from VAT for its purchases of supplies and raw materials is incongruous with its claim that it is VAT-Exempt, for only VAT-Registered entities can claim Input VAT Credit/Refund.

The point of contention here is whether or not the petitioner may claim a refund on the Input VAT erroneously passed on to it by its suppliers.

While it is true that the petitioner should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund.

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[24] BIR Revenue Regulations No. 1-95, or the "Rules and Regulations to Implement the Tax Incentives Provisions under Paragraphs (b) and (c) of Section 12, Republic Act No. 7227 Otherwise Known as the Bases Conversion and Development Act of 1992."

"Section 4. Exemptions and Incentives. —

A. All SBMA registered enterprises doing business within the Secured Area in the Zone shall enjoy the following:

a. Exemption from customs and import duties and national internal revenue taxes on importations of raw materials for manufacture into finished products and capital goods and equipment needed for their business operation within the Secured Area . . .

... ...

e. Purchases of raw materials, capital goods and equipment and services by the SBMA and SBF accredited enterprises from enterprises in the Customs Territory shall be considered effectively zero-rated for VAT purposes . . ."

[25] *Rollo*, p. 49.

Section 4.100-2 of BIR's Revenue Regulations 7-95, as amended, or the "*Consolidated Value-Added Tax Regulations*" provide:

> Sec. 4.100-2. Zero-rated Sales. — A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.
>
> The following sales by VAT-registered persons shall be subject to 0%:
>
> (a) Export Sales
>
> "Export Sales" shall mean
>
> ... ...
>
> (5) Those considered export sales under Articles 23 and 77 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws, *e.g.* Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.
>
> ... ...
>
> (c) Sales to persons or entities whose exemption under special laws, *e.g.* R.A. No. 7227 duly registered and accredited enterprises with Subic Bay Metropolitan Authority (SBMA) and Clark Development Authority (CDA), R.A. No. 7916, Philippine Economic Zone Authority (PEZA), or international agreements, *e.g.* Asian Development Bank (ADB), International Rice Research Institute (IRRI), *etc.* to which the Philippines is a signatory effectively subject such sales to zero-rate."

Since the transaction is deemed a zero-rated sale, petitioner's supplier may claim an Input VAT credit with no corresponding Output VAT liability. Congruently, no Output VAT may be passed on to the petitioner.

On the *second issue*, it may not be amiss to re-emphasize that the petitioner is registered as a NON-VAT taxpayer and

thus, is exempt from VAT. As an exempt VAT taxpayer, it is not allowed any tax credit on VAT (input tax) previously paid. In fine, even if we are to assume that exemption from the burden of VAT on petitioner's purchases did exist, petitioner is still not entitled to any tax credit or refund on the input tax previously paid as petitioner is an exempt VAT taxpayer.

Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

Accordingly, we find that the Court of Appeals did not commit any reversible error of law in holding that petitioner's VAT exemption under Rep. Act No. 7227 is limited to the VAT on which it is directly liable as a seller and hence, it cannot claim any refund or exemption for any input VAT it paid, if any, on its purchases of raw materials and supplies.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated September 3, 2001, of the Court of Appeals in CA-G.R. SP No. 62823, as well as its Resolution of December 19, 2001 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

Austria-Martinez, J., on leave.

EN BANC

[G.R. Nos. 148145-46. July 5, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELIX VENTURA *y* QUINDOY and ARANTE FLORES *y* VENTURA**, *appellants*.

SYNOPSIS

The Court found appellants guilty by conspiracy of two crimes: murder qualified by abuse of superior strength with aggravating circumstances of evident premeditation, dwelling and nighttime; and, attempted murder qualified by evident premeditation with aggravating circumstances of dwelling and nighttime. Appellants admittedly arrived at the victim's residence at 11:00 pm and surreptitiously entered the house at 2:00 am, when the premises were decidedly dark and all the members of the household were fast asleep. Armed with a gun and a knife, they proceeded directly to the bedroom of the victim spouses Jaime and Aileen. These actuations betray an unmistakable intention to kill the intended victim, Jaime. And by stabbing Jaime pursuant to their pre-conceived plot, appellants commenced killing the former which, however, failed to inflict a mortal wound. Hence, appellants were liable for attempted murder. Aileen, who was thereafter awakened, was stabbed when she started shouting for help. Evident premeditation was considered here as it was shown that the conspirators were determined to kill not only the intended victim but anyone who may help put resistance to the crime.

SYLLABUS

1. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS; PRESENT IN CASE AT BAR. – The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the *time* when the accused *determined to commit* the crime; (2) an *act* manifestly indicating that the accused *clung to his*

determination; and (3) *sufficient lapse of time* between such determination and execution to allow him to reflect upon the circumstances of his act. . . . Appellants admittedly arrived at the Bocateja residence at 11:00 p.m. and surreptitiously entered therein at 2:00 a.m. At that time, the surrounding premises were decidedly dark, and all the members of the household were fast asleep. Armed with a gun and a knife, they proceeded directly to the bedroom of the spouses, where appellant Ventura woke up Jaime. These actuations are not of those seeking parley, but instead betray an unmistakable intention to kill, not merely confront Jaime. . . Undoubtedly, the accounts of appellants evince not only their resolve to kill Jaime, but the calm and methodical manner by which they sought to carry out his murder. As pointed out by the Solicitor General, unless shown to be customary, appellants' act of arming themselves with a gun and a knife constitutes direct evidence of a careful and deliberate plan to carry out a killing. . . From the time appellants left Murcia, Negros Occidental, after they had resolved to go to confront Jaime, to the time they entered the Bocateja residence in Bacolod City, ten hours had elapsed — sufficient for appellants to dispassionately reflect on the consequences of their actions and allow for their conscience and better judgment to overcome the resolution of their will and desist from carrying out their evil scheme, if only they had desired to hearken to such warnings. In spite of this, appellants evidently clung to their determination to kill Jaime.

2. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS. – That evident premeditation was established through the testimonies of appellants and not by those of the prosecution witnesses is of no moment. While appellants could not have been compelled to be witnesses against themselves, they waived this right by voluntarily taking the witness stand. Consequently, they were subject to cross-examination on matters covered by their direct examination. Their admissions before the trial court constitute relevant and competent evidence which the trial court correctly appreciated against them.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; DEFENSE OF A RELATIVE; REQUISITES; NOT ESTABLISHED IN CASE AT BAR. – Although he admitted stabbing Jaime, appellant Flores sought to justify his actions by claiming that he was impelled by the need to prevent Jaime

from shooting his uncle, appellant Ventura. This pretense does not impress. To successfully claim that he acted in defense of a relative, the accused must prove the concurrence of the following requisites: (1) unlawful aggression on the part of the person killed or injured; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) the person defending the relative had no part in provoking the assailant, should any provocation have been given by the relative attacked. Of these, the requisite of "unlawful aggression" is primary and indispensable without which defense of relative, whether complete or otherwise, cannot be validly invoked. Not one of the foregoing requisites of defense of a relative is present. From all accounts, it was appellants who initiated the unlawful aggression, and it was the victim Jaime who acted in self-defense. Hence, neither the justifying circumstance of defense of a relative nor the special mitigating circumstance of incomplete defense of a relative may be appreciated in appellant Flores' favor.

4. ID.; CONSPIRACY, ADEQUATELY PROVEN IN CASES AT BAR; ALL CONSPIRATORS LIABLE AS CO-PRINCIPALS. – While appellant Ventura did not directly participate in the stabbing of Jaime, the trial court correctly held both appellants collectively liable for the attempt on the latter's life since they were shown to have acted in conspiracy with each other. There is a conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Where conspiracy has been adequately proven, as in these cases, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all. . . Co-conspirators are liable for such other crimes which could be foreseen and are the natural and logical consequences of the conspiracy.

5. ID.; ATTEMPTED MURDER, COMMITTED IN CASE AT BAR. – By stabbing Jaime Bocateja pursuant to their pre-conceived plot, appellants commenced the commission of murder directly by overt acts. Despite their efforts, however, they failed to inflict a mortal wound on Jaime, hence, their liability only for attempted murder.

6. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TAKING ADVANTAGE OF SUPERIOR STRENGTH, ELUCIDATED. – To take advantage of superior strength means to purposely

use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size and strength of the parties, and is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a superiority of strength notoriously advantageous to the aggressor, which is selected or taken advantage of by him in the commission of the crime. . . Unlike in treachery, where the victim is not given the opportunity to defend himself or repel the aggression, taking advantage of superior strength does not mean that the victim was completely defenseless. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the momentary position of both and the employment of means weakening the defense, *although not annulling it*. Hence, the fact that Aileen attempted to fend off the attack on her and her husband by throwing nearby objects, such as an electric cord, at appellant Flores does not automatically negate the possibility that the latter was able to take advantage of his superior strength. On the contrary, this Court in a very long line of cases has consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. . . [Here,] by deliberately employing a deadly weapon against Aileen, appellant Flores clearly took advantage of the superiority which his strength, sex and weapon gave him over his unarmed victim.

7. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES, NOT PROVEN IN CASE AT BAR. – As for appellant Flores' claim of self-defense, it cannot be sustained. As in defense of a relative, one claiming self-defense must prove by clear and convincing evidence both unlawful aggression on the part of the person killed or injured and reasonable necessity of the means employed to prevent or repel the unlawful aggression. As a third requisite, he must also prove lack of sufficient provocation on his part. None of these requisites was shown to be present.

8. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION, CONSIDERED AS PRESENT EVEN IF PERSON OTHER THAN INTENDED VICTIM WAS

KILLED, IF CONSPIRATORS WERE DETERMINED TO KILL ANYONE WHO MAY INTERFERE. – [T]he trial court, citing *People v. Dueno*, did not consider evident premeditation as having aggravated the killing of Aileen since she was not the intended victim of appellants' conspiracy. Upon further scrutiny, however, this Court finds that this aggravating circumstance should have been appreciated in connection with Aileen's murder. Jurisprudence is to the effect that evident premeditation may be considered as present, even if a person other than the intended victim was killed, if it is shown that the conspirators were determined to kill not only the intended victim but also anyone who may help him put a violent resistance. Here, it was established that upon seeing her husband being attacked by appellants, Aileen immediately called for help and hurled objects at appellant Flores. And it was because of this passionate defense of her husband that appellant Flores hacked at her face and stabbed her four times. Indeed, since they deliberately planned to attack Jaime in the sanctity of his bedroom where his wife Aileen was also sleeping, appellants cannot now claim that the latter's violent resistance was an unforeseen circumstance. Hence, neither of them can escape accountability for the tragic consequences of their actions.

9. ID.; ID.; DWELLING, APPRECIATED IN CASE AT BAR. – Dwelling is considered aggravating because of the sanctity of privacy that the law accords to human abode. Thus, it has been said that the commission of the crime in another's dwelling shows greater perversity in the accused and produces greater alarm. Here, dwelling was correctly appreciated since the crimes were committed in the place of abode of the victims who had not given immediate provocation.

10. ID.; ID.; BREAKING OF DOOR, NOT APPRECIATED WHEN NOT ALLEGED IN THE INFORMATION. – [T]he breaking of a door was not alleged in either of the two informations. Thus, the same cannot be appreciated against appellants.

11. ID.; ID.; NOCTURNITY, APPRECIATED WHERE NIGHTTIME WAS TAKEN ADVANTAGE OF IN FURTHERANCE OF MURDEROUS INTENT. – In determining nocturnity, two tests are employed in the alternative: (1) the objective test, under which nighttime is aggravating because the darkness facilitated the commission

of the offense; and (2) the subjective test, under which nighttime is aggravating because the darkness was purposely sought by the offender. Applying these tests to the established factual circumstances, this Court concludes that nocturnity was correctly appreciated in connection with both crimes. While the bedroom where the crimes occurred was well-lit, the evidence shows that, in furtherance of their murderous intent, appellants deliberately took advantage of nighttime, as well as the fact that the household members were asleep, in order to gain entry into the Bocateja residence. Indeed, their own testimony indicates that while they were already outside the Bocateja house at around 11:00 p.m., they purposely waited until 2:00 a.m. before breaking into the residence so as not to call the attention of the Bocatejas and/or their neighbors. It is thus clear that appellants deliberately took advantage of the darkness of the night, not to mention the fact that the Bocatejas were fast asleep, to conceal their actions and to facilitate and insure that their entry into the victims' home would be undetected.

12. ID.; MITIGATING CIRCUMSTANCES; PASSION OR OBFUSCATION CAUSED BY JEALOUSY; WHEN APPRECIATED. – While jealousy may give rise to passion or obfuscation, for the appreciation of this mitigating circumstance it is necessary that the act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.

13. ID.; ID.; IMMEDIATE VINDICATION OF A GRAVE OFFENSE, NOT CONSIDERED WHERE SUFFICIENT TIME ELAPSED FOR ACCUSED TO REGAIN COMPOSURE. – [W]hile "immediate" vindication should be construed as "proximate" vindication in accordance with the controlling Spanish text of the Revised Penal Code, still this mitigating circumstance cannot be considered where sufficient time elapsed for the accused to regain his composure.

14. ID.; ATTEMPTED MURDER; PROPER PENALTY WHERE TWO AGGRAVATING CIRCUMSTANCES ARE PRESENT. – [F]or stabbing Jaime, appellants are guilty beyond reasonable doubt of attempted murder qualified by evident premeditation with the aggravating circumstances of dwelling and nighttime. Article 51 of the Revised Penal Code provides that a penalty

two degrees lower than that prescribed for the consummated penalty shall be imposed upon the principals in an attempted felony. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is *reclusion perpetua* to death. The penalty two degrees lower is *prision mayor*. Applying Section 1 of Act No. 4103, as amended, otherwise known as the Indeterminate Sentence Law, and considering the presence of two aggravating circumstances, the proper imposable penalty falls within the range of *prision mayor* in its maximum period (from Ten (10) Years and One (1) Day to Twelve (12) Years) as maximum and *prision correccional* (from Six (6) Months and One (1) Day to Six (6) Years) as minimum. Accordingly, this Court hereby sentences appellants to an indeterminate penalty of Six (6) Years of *prision correccional* as minimum to Twelve (12) Years of *prision mayor* as maximum.

15. ID.; MURDER; DEATH PENALTY, PROPER WHERE AGGRAVATING CIRCUMSTANCES ARE PRESENT. – For fatally stabbing Aileen, appellants are guilty beyond reasonable doubt of murder qualified by abuse of superior strength with the aggravating circumstances of evident premeditation, dwelling and nighttime. The penalty for murder is *reclusion perpetua* to death. Article 63 of the Revised Penal Code provides that when the law prescribes two indivisible penalties, the greater penalty shall be imposed when, in the commission of the deed, one aggravating circumstance is present. Consequently, the trial court's imposition of the supreme penalty of death must be sustained.

16. ID.; ID.; CIVIL INDEMNITY; PENALTIES. – The award of moral damages to her heirs is likewise proper considering that the prosecution presented adequate proof that they suffered mental anguish and wounded feelings. However, the amount of moral damages awarded by the trial court is hereby reduced from ₱100,000.00 to ₱50,000.00 in line with current jurisprudence. It should be borne in mind that the purpose for such award is to compensate the heirs of the victim for the injuries to their feelings and not to enrich them. The award of exemplary damages should be increased from ₱20,000.00 to ₱25,000.00. Such award is proper in view of the presence of aggravating circumstances. Furthermore, considering that counsel for appellants admitted that the heirs of Aileen incurred

funeral expenses of ₱100,000.00 and such admission has not been shown to have been made through palpable mistake, the same should be awarded as actual damages.

17. ID.; ATTEMPTED MURDER; PROPER CIVIL PENALTIES. – In Criminal Case No. 00-20692 [for Attempted Murder], the trial court did not grant Jaime's claim for ₱20,000.00 in actual damages for hospitalization expenses since he failed to present any receipts to substantiate the same. Nonetheless, in light of the fact that Jaime was actually hospitalized and operated upon, this Court deems it prudent to award ₱20,000.00 as temperate damages. Moreover, Jaime is also entitled to moral damages in accordance with Article 2219, paragraph 2 of the Civil Code, which this Court hereby awards in the amount of ₱25,000.00. Finally, exemplary damages of ₱25,000.00 are also in order considering that the crime was attended by two aggravating circumstances.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PER CURIAM **:**

On automatic appeal[1] before this Court is the Decision of the Regional Trial Court of Negros Occidental, Branch 50, finding appellants Felix Ventura (Ventura) and Arante Flores (Flores) guilty beyond reasonable doubt of Murder in Criminal Case No. 00-20692 and Attempted Murder in Criminal Case No. 00-20693.

The accusatory portion of the Information for Murder in Criminal Case No. 00-20692 reads as follows:

That on or about the 23rd day of February, 2000 in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable

[1] Rules of Court, Rule 122, Secs. 3 and 10.

Court, the herein accused, *conspiring, confederating and acting in concert*, without any justifiable cause or motive, with intent to kill and *by means of treachery and evident premeditation*, accused Felix Q. Ventura armed with a .38 Caliber Home-made Revolver and Arante V. Flores armed with a bladed weapon, and *by taking advantage of their superior strength*, did, then and there willfully, unlawfully and feloniously assault, attack and stab with bladed weapon one Aileen Bocateja *y* Peruelo, thereby inflicting upon the person of the latter the following wounds, to wit:

- Cardio respiratory arrest
- Hemothorax
- stab wounds

which wounds were the direct and immediate cause of the death of said victim, to the damage and prejudice of the heirs of the latter.

That the crime was committed *with the aggravating circumstances of dwelling, night time and with the use of an unlicensed firearm*.

Act contrary to law.[2] (Italics supplied)

The accusatory portion of the Information for Frustrated Murder in Criminal Case No. 00-20693 reads as follows:

That on or about the 23rd day of February, 2000 in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, *conspiring, confederating and mutually helping each other*, without any justifiable cause or motive, accused Felix Q. Ventura armed with a .38 Caliber Homemade Revolver and Arante Flores *y* Ventura armed with a bladed weapon, with intent to kill and *by means of treachery and evident premeditation, and abuse of superior strength*, did, then and there willfully, unlawfully and feloniously assault, attack and stab with said bladed weapon one Jaime Bocateja, thereby causing upon of the latter the following wounds, to wit:

- multiple stab wounds
- #1 Posterior axillary area right
- #2 Posterior axillary area left with minimal hemothorax

[2] Records at 1.

- lacerated wound right parietal area

OPERATION PERFORMED:

- Exploration of wound right parietal for removal of foreign body

thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless, did not produce it by reason of some cause or accident independent of the will of the perpetrator, that is, due to the timely and able medical assistance, which saved the life of the victim and the victim was able to escape.

That the crime was committed *with the aggravating circumstances of dwelling, night time, and with the use of an unlicensed firearm.*

Act contrary to law.[3] (Italics supplied)

When arraigned, appellants pleaded not guilty to both charges.[4] The two criminal cases were consolidated following which they were jointly tried.[5]

The spouses Jaime and Aileen Bocateja were, in the early hours of February 23, 2000, fast asleep in their room on the ground floor of their two-storey house at Alunan-Yulo in Bacolod City, Negros Occidental. The room had a glass wall with a glass sliding door which was closed but not locked. The kitchen light was open, as was the light in the adjoining room where the couple's young children, Jummylin and Janine, were sleeping. Their niece, Aireen Bocateja, and Jaime's elder daughter, Rizza Mae, were asleep in their rooms on the second floor.[6]

At around 2:00 a.m.,[7] Jaime was roused from his sleep by appellant Ventura who, together with his nephew appellant Flores,

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[3] *Id.* at 33.

[4] *Id.* at 21 and 58.

[5] *Id.* at 51-52, 58.

[6] Transcript of Stenographic Notes (TSN), June 16, 2000 at 9-16.

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

had stealthily entered the couple's room after they gained entry into the house by cutting a hole in the kitchen door.

As established by the testimonial and object evidence for the prosecution, the following transpired thereafter:

Appellant Ventura pointed a revolver at Jaime's face, announced a hold-up, hit Jaime on the head with the gun and asked him for his keys.[8]

When appellant Ventura struck him again, Jaime called out for help and tried to grab the revolver. The two men then struggled for possession of the gun. As Jaime almost succeeded in wresting possession of the gun from him, appellant Flores shouted to appellant Ventura to stab Jaime. Using the knife he was carrying, appellant Flores stabbed Jaime three times. Jaime thereupon released the gun, threw a nearby plastic stool at the jalousy glass window causing it to break and cried out for help.[9]

In the meantime, Aileen who had been awakened, began shouting for help as she saw her husband in mortal danger. Appellant Flores stabbed her, however, with his knife, and although Aileen tried to defend herself with an electric cord, appellant Flores continued stabbing her.[10]

Awakened by the commotion, Aireen descended the stairs and saw the knife wielding appellant Flores whom she recognized as a former employee of the butcher shop of the Bocataje spouses. Pleading with appellant Flores not to harm her, Aireen ran back upstairs into Rizza Mae's room, and the two called to their neighbors for help.[11]

Appellants Ventura and Flores thereupon fled the Bocateja house,[12] bringing nothing with them.[13]

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[8] *Id*. at 10, 13-14, 19, 61-62.

[9] *Id*. at 19-27.

[10] *Id*. at 20, 27-28, 63-67.

[11] TSN, May 22, 2000 at 13-21, 28-29.

[12] TSN, June 16, 2000 at 28.

[13] *Id*. at 55.

Soon members of the Central Investigation Unit (CIU) of the Philippine National Police (PNP) arrived in response to a flash report.[14] Some of the police officers took the spouses to the Western Visayas Regional Hospital,[15] while other elements of the CIU team intercepted appellants Ventura and Flores who were being pursued by neighbors of the spouses at the corner of Araneta-Yulo. Recovered from appellant Ventura was a .38 caliber revolver with five (5) live bullets, and from appellant Flores a blood stained knife [16] measuring 14½ inches from tip to handle with a 10-inch blade. [17]

Shortly after their arrest, appellants were interviewed by reporters from Bombo Radio to whom they admitted responsibility for stabbing Jaime and Aileen. In response to questions from the reporters, appellant Ventura explained that he suspected his wife was carrying on an affair with Jaime.[18]

In the ocular inspection of the Bocateja residence, the CIU team found the spouses' room in disarray, with some cabinets opened and blood splattered all over the floor, the bed and the ceiling.[19]

Aileen eventually died in the hospital on the same day of the commission of the crime.[20] Dr. Luis Gamboa, City Health Officer of Bacolod City who conducted the autopsy of her body, found that she suffered a hack wound on her face and four stab wounds on her body, three at the chest and one at the back of the right shoulder, all caused by a sharp bladed instrument, such as the knife recovered from appellant Flores. One of the stab wounds penetrated Aileen's chest near the left nipple, the intercoastal

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[14] TSN, June 7, 2000 at 53.

[15] TSN, June 16, 2000 at 29-30.

[16] TSN, June 7, 2000 at 53-59, 72, 82-83.

[17] TSN, May 22, 2000 at 27.

[18] TSN, June 7, 2000 at 83-84.

[19] *Id*. at 61-65.

[20] TSN, June 16, 2000 at 30; Exhibit "J", Records at 86.

space and the middle of her right lung causing internal hemorrhage and ultimately resulting in her death.[21]

Jaime who was hospitalized for a total of six days, was treated by Dr. Jose Jocson,[22] who certified that he sustained the following non-lethal injuries:[23]

MULTIPLE STAB WOUNDS
#1 POSTERIOR AXILLARY AREA RIGHT
#2 POSTERIOR AXILLARY AREA LEFT WITH MINIMAL HEMOTHORAX
LACERATED WOUND RIGHT PARIETAL AREA[24]

From the evidence for the defense consisting of the testimonies of appellants Ventura and Flores and Primitiva Empirado, the following version is culled:

Four days after February 13, 2000 when appellant Ventura arrived in Negros Occidental from Manila where he had been working as a security guard, [25] he noticed that his wife, Johanna, who had previously been employed as a house helper of the Bocateja spouses, was wearing a new ring. When he confronted her, she said that it came from Jaime who was courting her, and that it was because Jaime's wife, Aileen, had discovered their illicit relationship that she had been dismissed from the Bocateja household. Incensed at the revelation, he slapped his wife whereupon she left the conjugal home.[26]

On February 22, 2000, Johanna returned to the conjugal home in Barangay Alegria, Municipality of Murcia, Negros Occidental to get her things. After a verbal confrontation with her husband, she left to find work in Kabankalan, Negros Occidental. This

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[21] TSN, June 7, 2000 at 16-23, 25-28, 31-32.

[22] TSN, June 16, 2000 at 30-34.

[23] TSN, July 3, 2000 at 7-13.

[24] Exhibit "K", Records at 87.

[25] TSN, August 21, 2000 at 6.

[26] *Id*. at 10-13.

was the last time that Johanna and appellant Ventura saw each other.[27]

That same day, appellant Flores visited his uncle-appellant Ventura. The two spoke at length and appellant Flores, who had previously worked for a day at the meat shop of the Bocateja spouses, confirmed that Johanna and Jaime were having an affair.[28]

Since appellant Flores knew where the Bocateja spouses lived, appellant Ventura asked him to go with him to their residence so he could confront Jaime about his affair with Johanna.[29]

Appellants, armed with an unlicensed revolver and a knife, thus repaired to the Bocateja residence still on the same day, February 22, 2000, arriving there at around 11:00 p.m. They were not able to immediately enter the premises, however. After boring a hole through the kitchen door with the knife, appellants entered the Bocateja residence at 2:00 a.m. of the next day, February 23, 2000.[30]

Once inside, appellants entered the room of the Bocateja spouses through the unlocked sliding door. Appellant Ventura woke Jaime up, confronted him and told him to stop his relationship with Johanna. Jaime fought back, and he and appellant Ventura grappled for possession of the latter's gun.[31]

Soon after, Aileen woke up, screamed for help, and began throwing things at appellant Flores whom she attempted to strangle with an electrical extension cord. Unable to breathe, appellant Ventura stabbed Aileen twice with his knife. And seeing that Jaime had wrested control of the gun from appellant Ventura, appellant Flores also stabbed Jaime.[32]

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[27] *Id*. at 7-9.

[28] TSN, August 21, 2000 at 14-15; TSN, September 8, 2000 at 6-8, 39-40.

[29] *Id*. at 15-16; *Id*. at 10-11.

[30] *Id*. at 16-17, 28-30, 47-48; *Id*. at 12-14, 22-26, 32-34.

[31] *Id*. at 16-19; *Id*. at 15-16.

[32] *Id*. at 19; *Id*. at 16-19, 28-32, 34-38.

Since appellants had not intended to kill Aileen or stab Jaime, they fled in the course of which Jaime began shooting at them with a 9 mm pistol. Appellants were eventually intercepted by policemen who placed them under arrest.[33]

Interviewed by the media after his arrest, appellant Ventura stressed that he just wanted to confront Jaime about the latter's relationship with appellant's wife, Johanna.[34]

By the appealed Decision of December 15, 2000, the trial court disposed as follows:

> FOR ALL THE FOREGOING, the Court finds the accused FELIX VENTURA *y* QUINDOY and ARANTE FLORES y VENTURA GUILTY beyond reasonable doubt as Principals by Direct Participation of the crime of *ATTEMPTED MURDER* as alleged in Criminal Information No. 00-20693 *with the aggravating circumstances of evident premeditation, dwelling, nighttime and the breaking of door* to gain entrance to the house and with no mitigating circumstance. Accordingly, they are sentenced to suffer the penalty of *Reclusion Temporal* in its maximum period. Applying the Indeterminate Sentence Law, they shall serve a prison term of from Eight (8) years of *Prision Mayor* as Minimum to Eighteen (18) years of *Reclusion Temporal* as Maximum.
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> The Court also finds the two (2) above-named accused GUILTY as Principal[s] by Direct participation for the crime of *Murder* as alleged in Criminal Information No. 00-20692 *qualified by abuse of superior strength. The aggravating circumstances of dwelling, nighttime and by the breaking of a door are present in the commission of the crime*. There is no mitigating circumstance. The accused, therefore, are meted the Supreme penalty of DEATH.
>
> By way of civil liability, the accused are solidarily ordered to pay the heirs of Aileen Bocateja the sum of ₱50,000.00 as death indemnity. The accused are likewise held solidarily liable to pay Jaime Bocateja the sum of ₱100,000.00 as moral damages and the sum of ₱20,000.00 as exemplary damages.[35] (Italics supplied)

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[33] *Id.* at 19-22; *Id.* at 19-20.

[34] TSN, August 21, 2000 at 48-49.

[35] *Rollo* at 44-45.

In their Brief,[36] appellants contend that the trial court erred (1) in convicting them despite the failure of the prosecution to prove their guilt beyond reasonable doubt; (2) in considering abuse of superior strength as a qualifying circumstance in Criminal Case No. 00-20892; (3) in considering evident premeditation as a qualifying circumstance in Criminal Case No. 00-20893; and (4) in considering the aggravating circumstances of breaking of door and nocturnity in both cases.[37]

Appellants argue that, at most, they can only be convicted of attempted homicide for the stabbing of Jaime and homicide for the fatal stabbing of Aileen.[38]

From a considered review of the records and applicable jurisprudence, the instant appeal fails.

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[39] For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the *time* when the accused *determined to commit* the crime; (2) an *act* manifestly indicating that the accused *clung to his determination*; and (3) *sufficient lapse of time* between such determination and execution to allow him to reflect upon the circumstances of his act.[40]

By appellants' argument, even if appellant Ventura became jealous when he learned of the illicit affair between his wife and Jaime, it is not, by itself, sufficient proof that he determined to kill the latter; that with Jaime's testimony that appellant had

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[36] *Id*. at 66-89.

[37] *Id*. at 68-69.

[38] *Id*. at 81.

[39] *People v. Durante*, 53 Phil. 363, 369 (1929); *People v. Escabarte*, 158 SCRA 602, 612 (1988); *People v. Escarlos*, G.R. No. 148912, September 10, 2003; *People v. Sayaboc, et al.*, G.R. No. 147201, January 15, 2004.

[40] *People v. Requipo*, 188 SCRA 571, 577 (1990); *People v. Valdez*, 304 SCRA 611, 626 (1999) *People v. Kinok*, 368 SCRA 510, 521 (2001); *People v. Manlansing*, 378 SCRA 685, 701 (2002).

announced a "hold-up," they, at most, intended to rob, but not kill the spouses; that their only purpose was to confront Jaime regarding his supposed affair with appellant Ventura's wife, Johanna; and that if they had truly intended to kill Jaime, then appellant Ventura would not have bothered to awaken him, but would just have shot him in his sleep.

These assertions run counter to the established facts and are debunked by appellants' own admissions.

Appellants admittedly arrived at the Bocateja residence at 11:00 p.m. and surreptitiously entered therein at 2:00 a.m. At that time, the surrounding premises were decidedly dark, and all the members of the household were fast asleep. Armed with a gun and a knife, they proceeded directly to the bedroom of the spouses, where appellant Ventura woke up Jaime. These actuations are not of those seeking parley, but instead betray an unmistakable intention to kill, not merely confront, Jaime.

Indeed, when pressed during cross-examination to explain why he chose to "confront" Jaime under the foregoing circumstances, appellant Ventura became evasive and did not give a clear answer:

Q Mr. Witness, you said that your purpose in going to the house of Jaime was only to confront him. My question is, *why is it that you went there at 11:00 o'clock in the evening and not in the morning so that you will have all the opportunity to confront him*?

A *Because at that time, I was not on my proper frame of mind.*

Q Why, is it not a fact that as early as February 17, 2000, you were already told by your wife that there was that relationship with Jaime Bocateja and your wife?

A Yes, sir.

Q *Why did you not immediately confront Mr. Bocateja after that day or February 17*?

WITNESS:

A *On that day, I don't know Jaime Bocateja.*

xxx xxx xxx

ATTY. ORTIZ:

Q On February 22. *So that you did not ask your wife where the place of Jaime Bocateja was at that time you were by him on February 22, 2000?*

A *Johanna did not tell me the place of Jaime Bocateja.*

Q *Why did you not ask her where the house is, at that time?*

A *What she told me was that, she is working in Bacolod City.*

Q *Mr. Witness, you had from February 17 to 22, a number of days to confront Mr. Jaime Bocateja. Did you not confront your wife or perhaps ask her about the place or where this Jaime Bocateja was at that time and have the intention to confront him, if that was really your intention to confront him*?

WITNESS:

A *No, I did not ask her because we had a confrontation and the next day, February 17, she left.*

Q Of course, when you arrived at the house of the Bocateja [spouses] at 11:00 o'clock in the evening, you were armed at that time, is that right, you and your companion, Arante Flores?

A Yes, sir.

Q What was that weapon at that time?

A .38 caliber revolver.

xxx xxx xxx

ATTY. ORTIZ:

Q Mr. Witness, *if your intention was only to confront Mr. Jaime Bocateja, why is it that you did not wait or you did not come to that place earlier so that at that time, Jaime Bocateja was still awake or perhaps waited until the next day?*

COURT:

Already answered. He said that he was not at the proper frame of his mind.[41] (Italics supplied)

Cross-examined on the same point, appellant Flores was equally evasive, but eventually revealed that the timing and method of

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[41] TSN, August 21, 2000, at 26-31.

entry were purposely chosen to avoid detection by either the Bocateja family or their neighbors:

Q *You arrived in the house of Bocateja at about 11:00 o'clock is that right*?
A *Yes, sir.*

Q And your purpose in going to the house of Bocateja was only to confront Jaime Bocateja about his relationship with Johanna is that right?
A Yes, sir.

ATTY. ORTIZ:
Q Why did you wait *Mr. Witness why did you and the other accused Felix Ventura wait for three (3) hours for you to confront him in his house?*

WITNESS:
A *Because we were not able to enter the door right away because the door could not be opened.*

Q *My question Mr. Witness, is this you ate your supper at Libertad market at about 8:00 o'clock why did you not go to the house of Jaime Bocateja at 9:00 o'clock immediately after supper? At that time when the members of the family were yet awake?*
A *We stayed at Burgos market and then from Burgos to Libertad we only walk and from Libertad to the house of Bocateja.*

ATTY. ORTIZ:
Q *You will admit Mr. Witness at the time you left your place at Brgy. Alegria you were already armed, is that right?*

WITNESS:
A *Yes, sir.*

Q Your uncle Felix Ventura was armed with [a] .38 caliber revolver, is that right?
A Yes, sir.

Q And you were also armed with a bladed weapon is that correct?
A Yes, sir.

Q *Why do you have to bring this weapon Mr. Witness*?
A *We brought this weapon just to frighten Jaime Bocateja during [the] confrontation.*

ATTY. ORTIZ:
Q *Are you saying Mr. Witness if your purpose was only to confront him you have to bring this [sic] weapons*?

WITNESS:
A *Yes, sir.*

Q When you arrived at the house of Jaime Bocateja about 11:00 o'clock . . . by the way when did you arrive at the house of Jaime Bocateja?
A 11:00 in the evening.

Q *Of course you did not anymore knock at the door Mr. Witness?*
A *No, sir.*

Q *Or you did not also call any member of the family to open [the door for] you, is that right?*

WITNESS:
A *No, sir.*

ATTY. ORTIZ:
Q As a matter of fact you only broke the gate Mr. Witness in order to enter the compound of the Bocateja family?
A We scaled over the gate.

Q *And why do you have Mr. Witness to go over the fence and open a hole at the kitchen for you to confront Mr. Jaime Bocateja if that was your purpose?*
A *The purpose of my uncle was just to confront Jaime.*

Q *And when you confront, are you saying that you cannot any more knock at the door, perhaps call any member of the family inside the house?*

WITNESS:
A *No, sir.*

ATTY. ORTIZ:
Q *Why Mr. Witness, Why*?
A **We did not call or knock at the person inside the house because it will make noise or calls and alarm to the neighbors**.[42] (Emphasis and italics supplied)

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[42] TSN, September 8, 2000, at 22-27.

To be sure, all the elements of evident premeditation were clearly established from the lips of appellants themselves. Thus, on clarificatory questioning by the trial court, appellant Ventura testified:

COURT:
Q I recall that you left Murcia [at] 4:00 o'clock. Is that morning or afternoon?
A *I left Murcia at 4:00 o'clock in the afternoon.*

Q *4:00 o'clock from Alegria then to Alangilan, then to Bacolod, is that correct*?
A *Yes, sir.*

Q From Alangilan to Bacolod, what mode of transportation did you make?
A *From Alegria to Alangilan, we only hiked and then from Alangilan to Bacolod we took the passenger jeepney.*

Q *From Alegria to Alangilan, how long did it take you to walk? How many kilometers?*
A *Four (4) kilometers.*

Q *And, I assume that while you were walking, you were talking with Arante Flores, your nephew, about the plans to go to the house of Jaime Bocateja?*
A *Yes, sir.*

COURT:
Q *By the way, what did you do at Alangilan?*
A *I went there because my clothes were at my sister's house.*

Q So, what time did you arrive in [Bacolod]?
A *We arrived here in [Bacolod] late in the evening.*

Q I assume that you disembarked at Burgos Market?
A Yes, sir.

Q And you just walked from Burgos Market to Libertad Baybay to the house of Jaime Bocateja?
A Yes, sir.

Q *It took you about thirty (30) [minutes] to one (1) hour, more or less?*
A *More than one (1) hour.*

Q *And during this time, you were talking again with Arante Flores [about] the course of action that you will take once a confrontation takes place with Jaime Bocateja?*

WITNESS:
A *Yes, I asked him the location of 3rd Road since I do not know the house of Jaime Bocateja.*

COURT:
Q I assume that the front main door of the house was close[d] at that time, correct?
A Yes, sir.

Q *You scaled that door, the front main door of the gate?*
A *Yes, sir, we scaled the gate.*

Q You were not able to open it but you simply scaled, you went over?
A Yes, sir.

Q *And you said yet, you destroyed the main door of the house. Can you tell the Court, how did you destroy the main door of the house?*
A *No, the kitchen door, sir.*

COURT:
Q How were you able to destroy it?

WITNESS:
A *We used the knife in unlocking the door. We made a hole.*

Q You made a hole and with the use of your hand, you were able to unlock the inside lock because of the hole?
A Yes, sir.

Q *And I assume that it took you twenty (20) - thirty (30) minutes to make that hole?*
A *Yes, sir.*[43] (Italics supplied)

The immediately foregoing narration was echoed by appellant Flores who gave the following testimony on direct examination:

ATTY. JACILDO:
Q So from Brgy. Alegria where did you proceed?

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[43] TSN, August 21, 2000, at 45-48.

WITNESS:
A We proceeded to Brgy. Alangilan.

Q This Brgy. Alegria how far is it from Brgy. Alangilan?
A *The distance between Brgy. Alegria to Brgy. Alangilan is about three (3) kilometers*.

Q So, what means of transportation did you use in going to Alangilan?
A *We walked in going to Alangilan.*

Q When you arrived at Brgy. Alangilan what did you do?

WITNESS:
A We went to our aunt's house.

ATTY. JACILDO:
Q From Alangilan where did you proceed?
A *In Alangilan, we stayed at the house of my aunt and then we proceeded to Bacolod.*

Q *So what time did you arrived [sic] in Bacolod?*
A *8:00 o'clock in the evening.*

Q When you arrived in Bacolod, what did you do?
A *We ate our supper at Libertad Market.*

Q After eating your dinner at Libertad, what did you do?
A *After eating our supper, we proceeded to the house of Jaime Bocateja.*

ATTY. JACILDO:
Q *What time did you arrived [sic] at the house of Jaime?*

WITNESS:
A *11:00 o'clock in the evening.*

Q When you arrived at the house of Jaime, what did you do?
A We enter[ed] the gate of their house.

Q Please continue?
A Then, we opened the door.

Q And then?
A *We reach[ed] [the Bocateja residence] at around 11:00 o'clock and we tried to open the door but we could not open the door immediately. We made a hole so that we*

> *can get in the house. We entered the house at about 2:00 o'clock in the morning the following day*.[44] (Italics supplied)

Undoubtedly, the accounts of appellants evince not only their resolve to kill Jaime, but the calm and methodical manner by which they sought to carry out his murder. As pointed out by the Solicitor General, unless shown to be customary,[45] appellants' act of arming themselves with a gun and a knife constitutes direct evidence of a careful and deliberate plan to carry out a killing. Consider the following ruling of this Court in *People v. Samolde*:[46]

> As stated earlier, accused-appellant and Armando Andres tried to borrow Cabalin's tear gas gun. *This attempt by the accused-appellant and his co-accused to arm themselves prior to the commission of the crime constitutes direct evidence that the killing of Feliciano Nepomuceno had been planned with care and executed with utmost deliberation.* From the time the two agreed to commit the crime to the time of the killing itself, sufficient time had lapsed for them to desist from their criminal plan had they wanted to. Instead, they clung to their determination and went ahead with their nefarious plan xxx[47] (Italics supplied)

From the time appellants left Murcia, Negros Occidental, after they had resolved to go to confront Jaime, to the time they entered the Bocateja residence in Bacolod City, ten hours had elapsed — sufficient for appellants to dispassionately reflect on the consequences of their actions and allow for their conscience and better judgment to overcome the resolution of their will and desist from carrying out their evil scheme, if only they had desired to hearken to such warnings. In spite of this, appellants evidently clung to their determination to kill Jaime.

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[44] TSN, September 8, 2000, at 12-14.

[45] *People v. Guillermo*, 302 SCRA 257, 273-324 (1999) citing: *People v. Diokno,* 63 Phil. 601 (1936).

[46] 336 SCRA 632 (2000).

[47] *Id*. at 653; *vide*: *U.S. v. Cornejo*, 28 Phil. 457, 461 (1914); *People v. Bautista*, 65 SCRA 460, 470 (1975); *People v. Tampus*, 96 SCRA 624, 633 (1980).

That evident premeditation was established through the testimonies of appellants and not by those of the prosecution witnesses is of no moment. While appellants could not have been compelled to be witnesses against themselves,[48] they waived this right by voluntarily taking the witness stand. Consequently, they were subject to cross-examination on matters covered by their direct examination.[49] Their admissions before the trial court constitute relevant and competent evidence which the trial court correctly appreciated against them.[50]

Although he admitted stabbing Jaime, appellant Flores sought to justify his actions by claiming that he was impelled by the need to prevent Jaime from shooting his uncle, appellant Ventura. This pretense does not impress.

To successfully claim that he acted in defense of a relative, the accused must prove the concurrence of the following requisites: (1) unlawful aggression on the part of the person killed or injured; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) the person defending the relative had no part in provoking the assailant, should any provocation have been given by the relative attacked.[51] Of these, the requisite of "unlawful aggression" is primary and indispensable without which defense of relative, whether complete or otherwise, cannot be validly invoked.[52]

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[48] CONST. Art. III, Sec. 17.

[49] RULES OF COURT, Rule 115, Sec. 1, par. (d).

[50] RULES OF COURT, Rule 129, Sec. 4; *U.S. v. Ching Po*, 23 Phil. 578, 583 (1912); *People v. Hernane*, 75 Phil. 554, 558 (1945); *People v. De los Santos*, 150 SCRA 311, 320 (1987); *Rodillas v. Sandiganbayan*, 161 SCRA 347, 352 (1988); *Ke Cuison v. Court of Appeals*, 227 SCRA 391, 398 (1993); *People v. Samolde, supra* at 651; *People v. Tiu Won Chua*, G.R. No. 149878, July 1, 2003.

[51] *People v. Agapinay*, 186 SCRA 812, 823 (1990); *People v. Eduarte*, 187 SCRA 291, 295 (1990); *People v. Bausing*, 199 SCRA 355, 361 (1991); *Roca v. Court of Appeals*, 350 SCRA 414, 422 (2001).

[52] *U.S. v. Carrero*, 9 Phil. 544 (1908); *People v. Cañete*, 175 SCRA 111 (1989); *People v. Delgado*, 182 SCRA 343 (1990); *People v. Agapinay, supra; De Luna v. Court of Appeals*, 244 SCRA 758, 763 (1995); *People v. Francisco*, 330 SCRA 497, 504 (2000); *Roca v. Court of Appeals, supra*.

Not one of the foregoing requisites of defense of a relative is present. From all accounts, it was appellants who initiated the unlawful aggression, and it was the victim Jaime who acted in self-defense. Hence, neither the justifying circumstance of defense of a relative[53] nor the special mitigating circumstance of incomplete defense of a relative[54] may be appreciated in appellant Flores' favor.

While appellant Ventura did not directly participate in the stabbing of Jaime, the trial court correctly held both appellants collectively liable for the attempt on the latter's life since they were shown to have acted in conspiracy with each other.

There is a conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[55] Where conspiracy has been adequately proven, as in these cases, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.[56]

By stabbing Jaime Bocateja pursuant to their pre-conceived plot, appellants commenced the commission of murder directly by overt acts. Despite their efforts, however, they failed to inflict a mortal wound on Jaime, hence, their liability only for attempted murder.[57]

With respect to the death of Aileen, the trial court found both appellants guilty of murder qualified not by evident premeditation but by taking advantage of superior strength, [58] to wit:

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[53] Revised Penal Code, Art. 11, par. 2.

[54] Revised Penal Code, Art. 69.

[55] Revised Penal Code, Art. 8.

[56] *People v. Loreno*, 130 SCRA 311, 324 (1984); *People v. Tamba*, 147 SCRA 427 (1987); *People v. De la Cruz*, 183 SCRA 763, 778 (1990); *People v. Alvarez*, 201 SCRA 364, 380 (1991); *People v. Azugue*, 268 SCRA 711, 724-725 (1997); *People v. Maldo*, 307 SCRA 424, 436 (1999); *People v. Drew*, 371 SCRA 279, 293 (2001).

[57] *Vide*: Revised Penal Code, Art. 248 in relation to Art. 6.

[58] Revised Penal Code, Art. 248, par. 1.

The killing of Aileen Bocateja is qualified by the aggravating circumstance of abuse of superior strength. *The accused Arante Flores who delivered the stabbing blow is big and strong, standing about five feet and six (5'6") inches tall. His weapon was a 14 inch dagger. Aileen Bocateja [stood] only about five (5'0") feet tall. The disparity of their strength is enormous.*[59] (Italics supplied)

To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked.[60] The appreciation of this aggravating circumstance depends on the age, size and strength of the parties, and is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a superiority of strength notoriously advantageous to the aggressor, which is selected or taken advantage of by him in the commission of the crime.[61]

Appellants "agree with the trial court that accused-appellant Arante Flores is taller, and probably stronger than the victim Aileen Bocateja because of their difference in sex as well as the fact that the accused appellant Flores was armed at that time xxx"[62] Nevertheless, they argue that Aileen's death was not attended by abuse of superior strength since: (1) though ultimately unsuccessful, she was able to put up a defense against appellant Flores; and (2) the prosecution failed to show that appellant Flores deliberately took advantage of the disparity in their size and sex in order to facilitate the commission of the crime.

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[59] *Rollo* at 39.

[60] *People v. Cabiling*, 74 SCRA 285, 304 (1976); *People v. Sarabia*, 96 SCRA 714, 719-720 (1980); *People v. Cabato*, 160 SCRA 98, 110 (1988); *People v. Carpio*, 191 SCRA 108, 119 (1990); *People v. Moka*, 196 SCRA 378, 387 (1991); *People v. De Leon*, 320 SCRA 495, 505 (1999).

[61] *People v. Cabiling, supra* at 303; *People v. Carpio, supra* at 119 (1990); *People v. Cabato, supra* at 110 (1988); *People v. Moka, supra* at 387; *People v. De Leon, supra* at 505.

[62] *Rollo* at 84.

Unlike in treachery, where the victim is not given the opportunity to defend himself or repel the aggression,[63] taking advantage of superior strength does not mean that the victim was completely defenseless. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the momentary position of both and the employment of means weakening the defense, *although not annulling it*.[64] Hence, the fact that Aileen attempted to fend off the attack on her and her husband by throwing nearby objects, such as an electric cord, at appellant Flores does not automatically negate the possibility that the latter was able to take advantage of his superior strength.

On the contrary, this Court in a very long line of cases has consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[65] Thus, in *People v. Molas,*[66] where the accused was convicted of murder for stabbing to death two women and an eight year old boy, this Court discoursed:

> While treachery was not appreciated as a qualifying circumstance against Molas, the killing of the three victims was raised to murder by the presence of the qualifying circumstance of abuse of superior strength. *There was abuse of superior strength when Molas inflicted several mortal wounds upon Soledad. Molas, besides being younger*

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[63] Vide: *People v. Rey,* 172 SCRA 149,158 (1989); *People v. Tiozon.,* 198 SCRA 368, 387 (1991); *People v. Narit,* 197 SCRA 334, 351 (1991).

[64] *People v. Loreto,* 398 SCRA 448, 462 (2003); vide: I R.C. Aquino and C. Griño-Aquino, *The Revised Penal Code* 387–388 (1997); Decision of the Supreme Court of Spain of March 6, 1928 cited in the dissenting opinion of Justice Diaz in *People v. Diokno, et al.,* 63 Phil. 601, 614 (1936).

[65] *U.S. v. Consuelo,* 13 Phil. 612, 614 (1909); *People v. Quesada,* 62 Phil. 446, 450 (1935); *People v. Guzman,* 107 Phil. 1122, 1127 (1960); *People v. Braña,* 30 SCRA 307, 315 (1969); *People v. Amoto,* 111 SCRA 39, 46 (1982); *People v. Alcartado,* 261 SCRA 291, 300 (1996); *People v. Espina,* 326 SCRA 753, 764-765 (2000); *People v. Amazan, et al.,* 349 SCRA 218, 236 (2001); *People v. Barcelon, Jr.,* 389 SCRA 556, 567 (2002).

[66] 218 SCRA 473 (1993).

and stronger, was armed with a weapon which he used in seriously wounding her. That circumstance was also present when he hacked eight-year old Abelaro and also Dulcesima who, besides being a woman of lesser strength was unarmed.[67] (Italics supplied)

And in the more recent case of *People v. Loreto*,[68] this Court opined:

The contention of accused-appellant is barren of merit. Article 14, paragraph 15 of the Revised Penal Code provides that a crime against persons is aggravated by the accused taking advantage of superior strength. There are no fixed and invariable rules regarding abuse of superior strength or employing means to weaken the defense of the victim. Superiority does not always mean numerical superiority. Abuse of superiority depends upon the relative strength of the aggressor *vis-à-vis* the victim. There is abuse of superior strength even if there is only one malefactor and one victim. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both and the employment of means to weaken the defense, although not annulling it. The aggressor must have advantage of his natural strength to insure the commission of the crime. *In this case, accused-appellant was armed with a knife and used the same in repeatedly stabbing Leah, a young wisp of a girl, no less than eighteen times after overtaking her in the sala of Dan's house. Irrefragably, then, accused-appellant abused his superior strength in stabbing Leah.* In a case of early vintage [*People v. Guzman, supra* at 1127], the Court held that:

> There is nothing to the argument that the accused was erroneously convicted of murder. *An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself* (*U.S. vs. Camiloy*, 36 Phil. 757; *U.S. vs. Consuelo*, 13 Phil. 612; *People vs. Quesada*, 62 Phil. 446). The circumstance of abuse of superior strength was, therefore,

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[67] *Id.* at 481-482.

[68] *Supra*.

correctly appreciated by the trial court, as qualifying the offense as murder.[69] (Italics supplied; citations omitted)

By deliberately employing a deadly weapon against Aileen, appellant Flores clearly took advantage of the superiority which his strength, sex and weapon gave him over his unarmed victim.

As for appellant Flores' claim of self-defense, it cannot be sustained. As in defense of a relative, one claiming self-defense must prove by clear and convincing evidence[70] both unlawful aggression on the part of the person killed or injured and reasonable necessity of the means employed to prevent or repel the unlawful aggression. As a third requisite, he must also prove lack of sufficient provocation on his part.[71] None of these requisites was shown to be present. As expounded by the trial court:

Arante declared that Aileen panicked and screamed and was hitting him with an extension cord so he stabbed her. Arante was suggesting that had Ai[l]een remained cool, composed and friendly, she would not have died.

This perverted reasoning need not detain the Court. There was an on-going aggression being committed inside her house and within the confines of her room, hence, Aileen's actuations were perfectly just and legitimate.[72]

As adverted to earlier, the trial court, citing *People v. Dueno*,[73] did not consider evident premeditation as having aggravated the killing of Aileen since she was not the intended victim of appellants' conspiracy. Upon further scrutiny, however, this Court finds that this aggravating circumstance should have been

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[69] *Id.* at 462-463.

[70] *People v. Ardisa*, 55 SCRA 245, 254 (1974); *People v. Siazon*, 189 SCRA 700, 704 (1990); *People v. Mendoza*, 327 SCRA 695, 704-705 (2000); *People v. Francisco*, 330 SCRA 497, 503 (2000).

[71] Revised Penal Code, Art. 11, par. 1; *vide*: *People v. Cañete*, *supra* at 116 (1989); *People v. Uribe*, 182 SCRA 624, 630-631 (1990); *People v. Mana-ay*, 345 SCRA 213, 230 (2000).

[72] *Rollo* at 37-38.

[73] 90 SCRA 23 (1979).

appreciated in connection with Aileen's murder. Jurisprudence is to the effect that evident premeditation may be considered as present, even if a person other than the intended victim was killed, if it is shown that the conspirators were determined to kill not only the intended victim but also anyone who may help him put a violent resistance.[74]

Here, it was established that upon seeing her husband being attacked by appellants, Aileen immediately called for help and hurled objects at appellant Flores. And it was because of this passionate defense of her husband that appellant Flores hacked at her face and stabbed her four times. These factual circumstances are analogous to those in *People v. Belga*,[75] where this Court had occasion to state that:

> While it would seem that the main target of the malefactors were Alberto and Arlene Rose, this does not negative the presence of evident premeditation on the physical assault on the person of Raymundo Roque. *We have established jurisprudence to the effect that evident premeditation may be considered as present, even if a person other than the intended victim was killed (or wounded, as in this case), if it is shown that the conspirators were determined to kill not only the intended victim but also anyone who may help him put a violent resistance. Here,* **Raymundo Roque provided such violent resistance against the conspirators, giving the latter no choice but to eliminate him from their path**.[76] (Emphasis and italics supplied, citations omitted)

Thus, while appellants' original objective may have only been the killing of Jaime, the trial court correctly held both of them responsible for the murder of Aileen. Co-conspirators are liable for such other crimes which could be foreseen and are the natural

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[74] *People v. Ubiña*, 97 Phil. 515, 535-536 (1955) citing *People vs. Timbol, et al.*, G.R. Nos. 47471-47473, August 4, 1944.

[75] 258 SCRA 583 (1996).

[76] *Id.* at 602.

and logical consequences of the conspiracy.[77] In *Pring, et al. v. Court of Appeals*,[78] this Court held:

While the acts done by the petitioners herein vary from those of their co-accused, there is no question that they were all prompted and linked by a common desire to assault and retaliate against the group of Loreto Navarro. Thus, they must share equal liability for all the acts done by the participants in such a felonious undertaking. While petitioners herein, Rogelio Pring and Alberto (Roberto) Roxas, on their part, had ganged up Jesus Yumol who belonged to the group of their adversaries by hitting the latter with a bench and a piece of wood, and that it was a certain David Ravago who stabbed the deceased Loreto Navarro, nevertheless, *it is a rule that conspirators would necessarily be liable also for the acts of the other conspirators unless such acts differ radically or substantially from that which they intended to commit* (*People vs. Enriquez*, 58 Phil. 536; *People vs. Rosario*, 68 Phil. 720).

The pronouncements made by this Court in the aforecited case of *People vs. Enriquez*, still serve as the governing rule that should be applied to the case at bar. In the said case, this Court stated:

"xxx xxx xxx

'We are of the opinion that this contention is not tenable. The accused had undoubtedly conspired to do grave personal injury to the deceased, and now that the injuries actually inflicted have resulted in death, they cannot escape from the legal effect of their acts on the ground that one of the wounds was inflicted in a different way from that which had been intended xxx

'As has been said by the Supreme Court of the United States, *'If a number of persons agree to commit, and enter upon the commission of the crime which will probably endanger human life such as robbery, all of them are responsible for the death of a person that ensues as a consequence.'* (*Boyd vs. U.S.*, 142 U.S. 450; 35 Law. ed. 1077). In *United States vs. Patten*, the court said: 'Conspirators who join in a criminal attack on a defenseless man with dangerous weapons, knock

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[77] F.D. Regalado, *CRIMINAL LAW CONSPECTUS* 38 (2003); *vide*: *People v. Enriquez*, 58 Phil. 536, 542-543 (1933); *People v. Del Rosario*, 68 Phil. 720 (1939).

[78] 138 SCRA 185 (1985).

> him down, and when he tries to escape, pursue him with increased numbers, and continue the assault, are liable for manslaughter when the victim is killed by a knife wound inflicted by one of them during the beating, although in the beginning they did not contemplate the use of a knife.' (42 Appeals, D.C., 239)"

Although during the incident in question the aggression committed by the petitioners herein was directed against the other members of the group of Loreto Navarro and not on the deceased, this would not relieve them from the consequence of the acts jointly done by another member of the petitioners' group who stabbed the deceased Loreto Navarro.[79] (Italics supplied, citations omitted)

And in the more recent case of *People v. Bisda, et al.*,[80] this Court held:

> *Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.* Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. *Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit.* As Judge Learned Hand put it in *United States v. Andolscheck*, "when a conspirator embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them." (Italics supplied; citations omitted)

Indeed, since they deliberately planned to attack Jaime in the sanctity of his bedroom where his wife Aileen was also sleeping, appellants cannot now claim that the latter's violent

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[79] *Id.* at 190-191.

[80] G.R. No. 140895, July 17, 2003; *vide*: *People v. Pagalasan, et al.*, G.R. Nos. 131926 & 138991, June 18, 2003.

resistance was an unforeseen circumstance. Hence, neither of them can escape accountability for the tragic consequences of their actions.

In determining appellants' criminal liability, the trial court appreciated the generic aggravating circumstances of dwelling,[81] nighttime[82] and breaking of door[83] in connection with both crimes.

Dwelling is considered aggravating because of the sanctity of privacy that the law accords to human abode. [84] Thus, it has been said that the commission of the crime in another's dwelling shows greater perversity in the accused and produces greater alarm. [85] Here, dwelling was correctly appreciated since the crimes were committed in the place of abode of the victims who had not given immediate provocation.[86]

Upon the other hand, as pointed out by both appellants and the Solicitor General, the breaking of a door was not alleged in either of the two informations. Thus, the same cannot be appreciated against appellants. On this point, this Court's discussion in *People v. Legaspi*,[87] quoted in the Solicitor General's Brief, is instructive:

> Nonetheless, it is to be noted that the appreciation by the trial court of the aggravating circumstances of dwelling and nighttime, despite the non-allegation thereof in the Information, resulted in the imposition of the supreme penalty of death upon accused-appellant. In *People v. Gallego* (G.R. No. 130603, 338 SCRA 21, August 15, 2000), We had occasion to rule thus:

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[81] Revised Penal Code, art. 14, par. 3.

[82] *Id*. par. 6.

[83] *Id*. par. 19.

[84] *People v. Belo*, 299 SCRA 654, 667 (1998).

[85] *People v. Parazo*, 272 SCRA 512, 524 (1997).

[86] Revised Penal Code, Art. 14, par. 3; *vide*: *People v. Manegdeg*, 316 SCRA 689, 837 (1999); *People v. Rios*, 333 SCRA 823, 837 (2000).

[87] 357 SCRA 234 (2001)

"In *People v. Albert* (251 SCRA 136, 1995), we admonished courts to proceed with more care where the possible punishment is in its severest form — death — because the execution of such a sentence is irrevocable. Any decision authorizing the State to take life must be as error-free as possible, hence it is the bounden duty of the Court to exercise extreme caution in reviewing the parties' evidence. Safeguards designed to reduce to a minimum, if not eliminate the grain of human fault ought not to be ignored in a case involving the imposition of capital punishment for an erroneous conviction 'will leave a lasting stain in our escutcheon of justice.' *The accused must thence be afforded every opportunity to present his defense on an aggravating circumstance that would spell the difference between life and death* in order for the Court to properly 'exercise extreme caution in reviewing the parties' evidence.' *This, the accused can do only if he is appraised of the aggravating circumstance raising the penalty imposable upon him to death.* **Such aggravating circumstance must be alleged in the information, otherwise the Court cannot appreciate it**. The death sentence being irrevocable, we cannot allow the decision to take away life to hinge on the inadvertence or keenness of the accused in predicting what aggravating circumstance will be appreciated against him.

xxx xxx xxx

The principle above-enunciated is applicable to the case at bar. Consequently, we hold that due to their non-allegation in the Information for rape filed against accused-appellant, the aggravating circumstances of nighttime and dwelling cannot be considered in raising the penalty imposable upon accused-appellant from *reclusion perpetua* to death.

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It is to be noted carefully that the rule on generic aggravating circumstances has now been formalized in the Revised Rules of Criminal procedure, which took effect on December 1, 2000. Section 8 of Rule 110 now provides that:

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.
>
> Likewise, Section 9 of the same Rule provides:
>
> Sec. 9. *Cause of the accusation*. — The acts or omission 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 offense is being charged as well as its* qualifying and *aggravating circumstances* and for the court to pronounce judgment.[88] (Italics supplied)

Appellants and the Solicitor General also argue that nocturnity should not have been considered since Jaime himself testified that their bedroom was well-lit and there was light coming from the kitchen and the adjoining bedroom of their children.[89]

In determining nocturnity, two tests are employed in the alternative: (1) the objective test, under which nighttime is aggravating because the darkness facilitated the commission of the offense; and (2) the subjective test, under which nighttime is aggravating because the darkness was purposely sought by the offender.[90] Applying these tests to the established factual circumstances, this Court concludes that nocturnity was correctly appreciated in connection with both crimes.

While the bedroom where the crimes occurred was well-lit, the evidence shows that, in furtherance of their murderous intent, appellants deliberately took advantage of nighttime, as well as the fact that the household members were asleep, in order to gain entry into the Bocateja residence. Indeed, their own testimony indicates that while they were already outside the Bocateja house at around 11:00 p.m., they purposely waited until 2:00 a.m.

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[88] *Id.* at 245-247.

[89] TSN, June 16, 2000 at 14-15.

[90] *People v. Lomerio*, 326 SCRA 530, 551 (2000) citing *People v. Parazo*, 272 SCRA 512 (1997); *vide*: *People v. Garcia*, 94 SCRA 14 (1979); *People v. Palon*, 127 SCRA 529 (1984).

before breaking into the residence so as not to call the attention of the Bocatejas and/or their neighbors. It is thus clear that appellants deliberately took advantage of the darkness of the night, not to mention the fact that the Bocatejas were fast asleep, to conceal their actions and to facilitate and insure that their entry into the victims' home would be undetected.

No mitigating circumstances are present to offset the foregoing aggravating circumstances. While the trial Court noted that appellants were apparently motivated by their belief that Johanna and Jaime were carrying on an illicit relationship, to wit:

> The accused presented evidence to prove that Jaime Bocateja and Johanna Ventura, wife of the accused Felix Ventura, were maintaining an illicit relationship. The evidence on this point is principally hearsay — the alleged admissions made by Johanna of the relationship. There is no doubt, however, that the accused Ventura believes that [his] wife and Jaime Bocateja are clandestine lovers. It is fairly reasonable, in the absence of any evidence to the contrary, that it is Ventura's belief of this illicit relationship which prompted him to confront Jaime Bocateja,[91]

it nevertheless ruled out passion or obfuscation[92] or immediate vindication of a grave offense[93] as mitigating circumstances.

While jealousy may give rise to passion or obfuscation,[94] for the appreciation of this mitigating circumstance it is necessary that the act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[95] In the same vein, while "immediate" vindication

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[91] *Rollo* at 41.

[92] Revised Penal Code, Art. 13, par. 6.

[93] *Id*. par. 5.

[94] *People v. Marasigan*, 70 Phil. 583 (1940); *People v. Muit*, 117 SCRA 696, 709 (1982).

[95] *People v. Alanguilang*, 52 Phil, 663; *People v. Gervacio*, G.R. No. L-21965, Aug. 30, 1968; *People v. Gravino*, 122 SCRA 123, 134 (1983); *People v. Sicat*, 213 SCRA 603, 610; *People v. Feliciano*, 365 SCRA 613, 630-631 (2001).

should be construed as "proximate" vindication in accordance with the controlling Spanish text[96] of the Revised Penal Code, still this mitigating circumstance cannot be considered where sufficient time elapsed for the accused to regain his composure.[97]

In these cases, appellant Ventura's suspicions were aroused as early as February 17, almost a week before the stabbing incidents on February 23, when he first confronted his wife about her ring. Moreover, as previously noted, ten hours had elapsed from the time appellants left Murcia, Negros Occidental, weapons in hand, to the time they entered the Bocateja residence in Bacolod City. Within that period appellant Ventura had opportunity to change his clothes at a relatives' house in a neighboring *barangay* and both appellants were able to take their dinner at the Burgos Market in Bacolod City. They even waited three hours outside the Bocateja residence before carrying out their plan. Without question, sufficient time had passed for appellants' emotions to cool and for them to recover their equanimity.

In fine, for stabbing Jaime, appellants are guilty beyond reasonable doubt of attempted murder qualified by evident premeditation with the aggravating circumstances of dwelling and nighttime. However, as pointed out by the Solicitor General, the trial court erred in imposing the sentence of Eight (8) Years of *prision mayor* as minimum to Eighteen (18) Years of *reclusion temporal* as maximum.

Article 51 of the Revised Penal Code provides that a penalty two degrees lower than that prescribed for the consummated penalty shall be imposed upon the principals in an attempted felony. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is *reclusion perpetua* to death. The penalty two degrees lower is *prision*

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[96] "*la de haber ejecutado en vindicacion proxima de una ofensa grave*."

[97] *People v. Palabrica*, 357 SCRA 533, 543 (2001); *People v. Sambulan*, 289 SCRA 500, 518 (1998) citing *People v. Santos*, 255 SCRA 309 (1996);*People v. Pajares*, 210 SCRA 237 (1992); *People v. Benito*, 74 SCRA 271 (1976); *People v. Palabrica*, 357 SCRA 533, 543 (2001).

mayor.[98] Applying Section 1 of Act No. 4103,[99] as amended, otherwise known as the Indeterminate Sentence Law, and considering the presence of two aggravating circumstances, the proper imposable penalty falls within the range of *prision mayor* in its maximum period (from Ten (10) Years and One (1) Day to Twelve (12) Years) as maximum and *prision correccional* (from Six (6) Months and One (1) Day to Six (6) Years) as minimum. Accordingly, this Court hereby sentences appellants to an indeterminate penalty of Six (6) Years of *prision correccional* as minimum to Twelve (12) Years of *prision mayor* as maximum.

For fatally stabbing Aileen, appellants are guilty beyond reasonable doubt of murder qualified by abuse of superior strength with the aggravating circumstances of evident premeditation, dwelling and nighttime. As already noted, the penalty for murder is *reclusion perpetua* to death. Article 63 of the Revised Penal Code provides that when the law prescribes two indivisible penalties, the greater penalty shall be imposed when, in the commission of the deed, one aggravating circumstance is present. Consequently, the trial court's imposition of the supreme penalty of death must be sustained.

Three members of the Court maintain their adherence to the separate opinions expressed in *People vs. Echegaray*[100] that Republic Act No. 7659, insofar as it prescribes the penalty of death, is unconstitutional; nevertheless they submit to the ruling

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[98] Revised Penal Code, Art. 61 in relation to Art. 71.

[99] SEC. 1. Hereinafter, *in imposing a prison sentence for an offense punished 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. (Italics supplied)

[100] 267 SCRA 682 (1997).

of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

As regards the civil liability of the appellants, the award of the trial court is hereby modified as follows:

In Criminal Case No. 00-20692, the award of ₱50,000.00 to the heirs of Aileen as civil indemnity for her death is sustained, the commission of the crime by appellants having been duly proven.[101] The award of moral damages to her heirs is likewise proper considering that the prosecution presented adequate proof that they suffered mental anguish and wounded feelings.[102] However, the amount of moral damages awarded by the trial court is hereby reduced from ₱100,000.00 to ₱50,000.00 in line with current jurisprudence.[103] It should be borne in mind that the purpose for such award is to compensate the heirs of the victim for the injuries to their feelings and not to enrich them.[104]

The award of exemplary damages should be increased from ₱20,000.00 to ₱25,000.00. Such award is proper in view of the presence of aggravating circumstances.[105] Furthermore, considering that counsel for appellants admitted that the heirs of Aileen incurred funeral expenses of ₱100,000.00[106] and such admission has not been shown to have been made through palpable mistake, the same should be awarded as actual damages.[107]

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[101] *People v. Guillermo*, G.R. No. 147786, January 20, 2004; *People v. Factao*, G.R. No. 125966, January 13, 2004 citing *People v. Narca*, 339 SCRA 76, 85 (2000); *People v. Villamor*, 284 SCRA 184, 198 (1998).

[102] TSN, June 16, 2000 at 38.

[103] *People v. Malinao*, G.R. No. 128148, February 16, 2004; *vide People v. Panado,* 348 SCRA 679, 690 (2000).

[104] *People v. Hormina*, G.R. No. 144383, January 16, 2004 citing: *People v. Obosa,* 380 SCRA 22, 35 (2002).

[105] *People v. Factao, supra*, *vide People v. Mangompit*, 353 SCRA 833, 853 (2000).

[106] TSN, June 16, 2000 at 39.

[107] *People v. Bautista*, G.R. No. 139530, February 27, 2004 citing *People v. Bolinget, et al.*, G.R. Nos. 137949-52, December 11, 2003 and *People v. Arellano*, 334 SCRA 775 (2000).

In Criminal Case No. 00-20692, the trial court did not grant Jaime's claim for ₱20,000.00 in actual damages for hospitalization expenses since he failed to present any receipts to substantiate the same. Nonetheless, in light of the fact that Jaime was actually hospitalized and operated upon, this Court deems it prudent to award ₱20,000.00 as temperate damages.[108] Moreover, Jaime is also entitled to moral damages in accordance with Article 2219, paragraph 2 of the Civil Code, which this Court hereby awards in the amount of ₱25,000.00.[109] Finally, exemplary damages of ₱25,000.00 are also in order considering that the crime was attended by two aggravating circumstances.[110]

WHEREFORE, the judgment in Criminal Case No. 00-20693 is hereby AFFIRMED with MODIFICATION. Appellants Felix Ventura and Arante Flores are found GUILTY beyond reasonable doubt of the crime of attempted murder qualified by evident premeditation with the aggravating circumstances of dwelling and nighttime and are hereby SENTENCED to an indeterminate penalty of Six (6) Years of *Prision Correccional* as minimum to Twelve (12) Years of *Prision Mayor* as maximum.

Appellants are solidarily ORDERED to pay the victim, Jaime Bocateja, the amounts of: (a) Twenty Thousand Pesos (₱20,000.00) as temperate damages; (b) Twenty Five Thousand Pesos (₱25,000.00) as moral damages; and (c) Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages.

The judgment in Criminal Case No. 00-20692 is likewise AFFIRMED with MODIFICATION. Appellants Felix Ventura and Arante Flores are found GUILTY beyond reasonable doubt of murder qualified by abuse of superior strength with the aggravating circumstances of evident premeditation, dwelling and nighttime and are SENTENCED to the supreme penalty of DEATH.

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[108] *People v. Flores*, G.R. Nos. 143435-36, November 28, 2003 citing *People v. Abrazaldo,* 397 SCRA 137, 149 (2003).

[109] *People v. Darilay*, G.R. Nos. 139751-52. January 26, 2004.

[110] *Ibid*.

Appellants are solidarily ORDERED to pay the heirs of Aileen Bocateja the amounts of: (a) Fifty Thousand Pesos (₱50,000.00) as civil indemnity; (b) One Hundred Thousand Pesos (₱100,000.00) as actual damages; (c) Fifty Thousand Pesos (₱50,000.00) as moral damages; and (d) Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages.

Upon the finality of this Decision, and pursuant to Art. 83 of the Revised Penal Code, as amended by Sec. 25 of R.A. No. 7659, let the records of the cases be immediately forwarded to the President of the Philippines for the exercise, at her discretion, of her power to pardon appellants Felix Ventura and Arante Flores.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 111544. July 6, 2004]

VICENTE T. UY, *petitioner, vs.* **SANDIGANBAYAN, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PIEDRAS PETROLEUM COMPANY, INC. (PIEDRAS), RIZAL COMMERCIAL BANKING CORPORATION (RCBC), TRADERS ROYAL BANK (TRB), ORIENTAL PETROLEUM & MINERALS CORP. (OPMC) and ATTY. JOSE C. LAURETA**, *respondents*.

SYNOPSIS

PIEDRAS is a sequestered corporation voluntarily surrendered to the PCGG. It negotiated with the RCBC and the TRB to advance the amount needed by PIEDRAS to subscribe shares from the OPMC. This was opposed by Petitioner stockholder of the OPMC in a Petition filed with the Sandiganbayan. The Sandiganbayan, however, ruled that it was a purely intra-corporate matter which is outside of its jurisdiction.

The Court ruled in favor of the Sandiganbayan. The question raised was not on the propriety of sequestration of the PIEDRAS by the PCGG or any matter incidental thereto. Rather, petitioner essentially challenges the propriety of PIEDRAS' exercise of its pre-emptive rights as a corporate stockholder of the OPMC and the means it availed of in order to exercise this right. Petitioner's case was directed not really at the PCGG but rather at PIEDRAS, a private corporation. As to petitioner's legal standing, the Court ruled that the issues raised were not of paramount national interest and the transactions entered into by PIEDRAS did not violate petitioner's right as a citizen.

SYLLABUS

1. POLITICAL LAW; SANDIGANBAYAN, JURISDICTION; CASES INVOLVING RECOVERY OF ILL-GOTTEN WEALTH; EXTENT THEREOF.— The extent of the jurisdiction of the Sandiganbayan over cases involving the recovery of ill-gotten wealth has been passed upon in a number of cases decided by this Court. In *PCGG v. Hon. Emmanuel G. Peña, et al.*, this Court held: Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court. In subsequent cases jointly decided on August 10, 1988,

the Court pointed out that: "(the) exclusive jurisdiction conferred on the Sandiganbayan would evidently extend not only to the principal causes of action, *i.e.*, the recovery of alleged ill-gotten wealth, but also to 'all incidents arising from, incidental to, or related to, such cases,' such as the dispute over the sale of shares, the property of the issuance of ancillary writs or provisional remedies relative thereto, the sequestration thereof, which may not be made the subject of separate actions or proceedings in another forum." Likewise, in the case of *Republic v. Sandiganbayan*, we ruled that while the PCGG is ordinarily allowed a free hand in the exercise of its administrative or executive function, the Sandiganbayan is empowered to determine in an appropriate case, if in the exercise of such functions, the PCGG has gravely abused its discretion or has overstepped the boundaries of the power conferred upon it by law. In the recent case of *PCGG v. Sandiganbayan*, we stated that there is a need to vigorously guard sequestered assets and preserve them pending resolution of the sequestration case before the Sandiganbayan, considering the paramount public policy for the recovery of ill-gotten wealth. We ruled that sequestered assets and corporations are legally and technically in *custodia legis*, under the administration of the PCGG. Executive Order No. 2 specifically prohibits the transfer, conveyance, encumbrance, or otherwise depletion or concealment of such assets and properties, under pain of penalties prescribed by law. Thus, an action which can result in the deterioration and disappearance of the sequestered assets cannot be allowed, unless there is a final adjudication and disposition of the issue as to whether these assets are ill-gotten or not, since it may result in damage or prejudice to the Republic of the Philippines.

2. ID.; ID.; ID.; ID.; PROPRIETY OF BUSINESS JUDGMENT OF SEQUESTERED COMPANY, NOT INCLUDED. – In the case at bar, petitioner does not really seek to question the propriety of the sequestration of PIEDRAS by the PCGG or any matter incidental to or arising out of such sequestration. Rather, petitioner essentially challenges the propriety of PIEDRAS's exercise of its pre-emptive rights as a corporate stockholder of OPMC and the means it availed of in order to exercise this right. We agree with the respondents that petitioner's case is directed not really at the PCGG but rather at PIEDRAS, a private corporation. His point of contention deals mainly with the propriety of what is in essence a business

judgment. What is more, there is no longer any pending sequestration in the case at bar. A year prior to the transactions assailed in this case, six out of the seven original PIEDRAS stockholders (all nominees of Mr. Benedicto) have assigned their respective shareholdings to the Philippine Government, in exchange for immunity. Petitioner himself affirmed this fact and even stated that the compromise agreement was approved by the Sandiganbayan and later affirmed by this Court. As correctly pointed out by respondent PCGG, by the voluntary surrender of the corporation to the Philippine Government and the confirmation of the compromise agreement, the issue of ownership was no longer in question.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; RIGHT OF CONCERNED CITIZENS TO FILE SUITS ONLY IF THERE IS A CONSTITUTIONAL QUESTION RAISED THAT IS OF TRANSCENDENTAL IMPORTANCE WHICH MUST BE SETTLED EARLY. – We regret that motivations, however commendable, do not automatically bestow one with the personality to initiate a legal action. We have indeed validated the right of concerned citizens to file actions on certain issues in the case of *Kilosbayan v. Morato*. However, it must be noted that such suits are allowable if the constitutional question they raise is of transcendental importance which must be settled early. Thus: Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." (Citing *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 2d 633 [1962]). We fail to see how a private corporation's exercise of its pre-emptive rights to subscribe to additional shares could be of paramount national interest and how the transactions entered into by PIEDRAS could violate petitioner's rights as a citizen. Standing is a concept in constitutional law and here no constitutional question is actually involved. In the same light, while we admire petitioner's zeal for upholding the law and legal processes, there is no transgression upon which petitioner can build a solid case.

4. ID.; ID.; ID.; LEGAL STANDING IN THE CAPACITY OF LANDOWNER AND TAXPAYER. — Petitioner cannot likewise invoke legal standing in his capacity as a landowner and taxpayer. Not every action filed by a taxpayer can qualify to challenge the legality of acts done by the government. It bears stressing that a taxpayer's suit refers to a case where the act complained of directly involves the illegal disbursement of public funds from taxation. Undeniably, as a taxpayer, petitioner would somehow be adversely affected by an illegal use of public money. When, however, no such unlawful spending has been shown, as in the case at bar, petitioner, even as a taxpayer, cannot question the transaction validly executed by and between the PIEDRAS (even if the same be government-owned) and respondent banks for the simple reason that it is not privy to said contract. In fact, not a single centavo from the public coffers was spent in the agreements involved. Petitioner has absolutely no cause of action, and consequently no *locus standi* in the instant case. As correctly pointed out by respondent RCBC, it has not been shown that the present case involves the disbursement of public funds. We have held time and again that it is only when an act complained of involves the illegal expenditure of public money that the so-called taxpayer suit may be allowed.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; *DACION EN PAGO*; ELUCIDATED. – *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION. – A special civil action for *certiorari* is limited to the determination of whether or not public respondent acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed decisions. Grave abuse of discretion means such capricious

and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. We do not find any grave abuse of discretion on the part of the Sandiganbayan in this case.

APPEARANCES OF COUNSEL

Felipe Antonio B. Remollo for petitioner.
The Solicitor General for public respondents
Siguion Reyna Montecillo & Ongsiako for RCBC.
Rilloraza Africa De Ocampo & Africa for TRB.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the Resolution[1] of the Sandiganbayan promulgated on August 23, 1993 which dismissed petitioner Vicente Uy's original Petition for Prohibition and Injunction filed against respondents Presidential Commission on Good Government (PCGG), Piedras Petroleum Company, Inc. (PIEDRAS), Rizal Commercial Banking Corporation (RCBC), Traders Royal Bank (TRB), Oriental Petroleum & Minerals Corporation (OPMC) and Atty. Jose C. Laureta. Petitioner Uy filed this petition in his capacity as a practicing lawyer, landowner, taxpayer and stockholder of OPMC.

Respondent PIEDRAS is a sequestered corporation voluntarily surrendered by Mr. Roberto S. Benedicto to the PCGG under a Compromise Agreement entered into on November 3, 1990. PIEDRAS was the registered owner of 7,499,812,500 class "A" shares and 4,999,875,000 class "B" shares of OPMC. On

[1] Penned by Presiding Justice Francis Garchitorena; concurred in by Justices Jose Balajadia and Sabino de Leon, Jr.

September 18, 1991, OPMC put out a notice of the issuance of additional OPMC shares for which its existing stockholders may exercise their non-assignable pre-emptive rights. Additional shares can be subscribed to by the stockholders at a subscription ratio of one (1) OPMC share of stock for every two (2) OPMC shares owned as of July 26, 1991 valued at ₱0.02 per share. Thus, PIEDRAS was entitled to subscribe to 3,749,906,250 class "A" and 2,499,937,500 class "B" OPMC shares.

As a condition for the additional subscription, fifty percent of the purchase price for the entire subscription must be paid not later than 5:00 p.m. of October 31, 1991, and the other fifty percent to be remitted upon call by the OPMC Board of Directors. In order to avail of the total shares it is entitled to subscribe to, PIEDRAS needed One Hundred Twenty Four Million Nine Hundred Six Thousand and Eight Hundred Seventy Five Pesos (₱124,906,875.00). As PIEDRAS did not have sufficient funds, it negotiated for RCBC and TRB to advance the needed amount. The agreements with the respective banks were confirmed and authorized by the PCGG in an *En Banc* Resolution dated October 30, 1991.

The agreements between PIEDRAS and the respondent banks were embodied in the Memorandum of Agreement (MOA) between PIEDRAS and RCBC, executed on October 31, 1991, and the Stock Sharing Agreement (SSA) between PIEDRAS and TRB dated March 26, 1992. Under the MOA, RCBC agreed to advance to PIEDRAS half of the total subscription payment in the amount of Fifty Million Nine Hundred Fifty Seven Thousand Five Hundred Sixty Two Pesos and Fifty Centavos (₱50,957,562.50) on October 31, 1991. RCBC also committed itself to pay the remaining half of the subscription price upon call by the OPMC Board for full payment. It was agreed upon that the advances were non-interest bearing. However, payment of these advances shall be made by way of *dacion en pago* whereby RCBC shall receive 2,054,947,696 class "A" and 789,450,000 class "B" OPMC shares which account for 57.14% and 52.63%, respectively, of the total additional OPMC shares which PIEDRAS shall subscribe to. Stock Certificates representing the specified number of shares shall be issued directly in the

name of RCBC. In order to secure RCBC's advances, PIEDRAS shall execute a Deed of Pledge over its existing shareholdings in OPMC in favor of RCBC. PIEDRAS likewise agreed to pay the capital gains tax due on the transfer of the OPMC shares from it to RCBC.[2]

On the other hand, the SSA between PIEDRAS and TRB provided that TRB would advance the amount of Five Million Pesos (₱5,000,000.00) in order to pay for the additional subscription by PIEDRAS of 477,717,745 class "B" OPMC shares. In turn, TRB shall automatically own and participate in 262,744,760 class "B" OPMC shares or 55% of the total shares subscribed by PIEDRAS. The remaining unpaid amount for the subscription shall be paid by TRB upon call of the OPMC Board of Directors. The SSA, however, provided that TRB may opt to limit its exposure to the payment it has advanced, in which case, TRB's share of the subscribed shares shall be limited to the number of shares equivalent to its initial payment, *i.e.*, 137,500,000 class "B" OPMC shares. Likewise, PIEDRAS has the option to limit TRB's participation to the amount of the Five Million Pesos (₱5,000,000.00) advanced by the bank in which case PIEDRAS shall assume responsibility of paying the remaining balance of another Five Million Pesos (₱5,000,000.00).[3]

On October 31, 1991, the deadline set by OPMC for the exercise of its stockholders' pre-emptive rights, RCBC and TRB advanced the total amount of Fifty Five Million Nine Hundred Fifty Seven Thousand Five Hundred Sixty Two Pesos and Fifty Centavos (₱55,957,562.50) to PIEDRAS as initial payment for PIEDRAS's additional subscription. On June 20, 1993, petitioner filed with public respondent Sandiganbayan a Petition for Prohibition and Injunction with a Prayer for a Temporary Restraining Order[4] assailing the actions of the PCGG in negotiating with respondent banks for the advance of the funds needed by PIEDRAS to pay for its additional subscription. Petitioner likewise

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[2] Annex C, *Rollo*, pp. 62-67.

[3] Annex D, *Rollo*, pp. 69-70.

[4] Annex G, *Rollo*, pp. 74-89; docketed as Civil Case No. 0151.

sought to enjoin OPMC and Atty. Jose C. Laureta, OPMC's Corporate Secretary, from recognizing and giving effect to the MOA and SSA.

On June 25, 1993, the Sandiganbayan ordered petitioner to file a memorandum in support of his capacity to sue. Petitioner filed an Amended/Supplemental Petition, where he alleged that his capacity to sue is based on his being a landowner, taxpayer and stockholder of OPMC. On August 23, 1993, the First Division of the Sandiganbayan dismissed the petition on the ground of lack of jurisdiction over the subject matter which involved the alleged disturbance of petitioner's rights as a stockholder and the violation by PIEDRAS of the exclusivity of the pre-emptive offering by OPMC. This, the Sandiganbayan said, was a purely intra-corporate matter which is outside of its jurisdiction. The Sandiganbayan added that assuming it did have jurisdiction over the case, the petition failed to show abuse of discretion on the part of PIEDRAS or the PCGG. Moreover, petitioner, while a landowner and a taxpayer, does not have the capacity to sue as his case does not meet the requisites for a taxpayer's suit.[5]

Hence, this petition raising the following assignment of errors:

I.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN DISMISSING, *MOTU PROPRIO*, PETITIONER'S ORIGINAL PETITION THEREWITH FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER THEREOF, NOTWITHSTANDING THE FACT THAT IN HIS (DISMISSED) PETITION, PETITIONER PRINCIPALLY ASSAILED THE ACTS OF RESPONDENT PCGG IN INSTIGATING, AUTHORIZING AND CONFIRMING THE SALES AND/OR DISPOSITIONS OF THE OPMC SHARES OWNED BY RESPONDENT PIEDRAS (CEDED TO THE GOVERNMENT) TO PRIVATE RESPONDENT BANKS WITHOUT PUBLIC BIDDING.

II.

THE COURT *A QUO* GRAVELY ERRED IN DISMISSING, *MOTU PROPRIO*, THE ADVERTED CASE ON THE GROUND THAT

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[5] Annex A, *Rollo*, pp. 49-54.

HEREIN PETITIONER HAS NO *LOCUS STANDI* TO QUESTION THE PCGG/PIEDRAS-RCBC AND PCGG/PIEDRAS-TRB DEALS, DESPITE THE FACT THAT THE MATTER INVOLVED BEING PUBLIC INTEREST, PETITIONER AS A CITIZEN, A LAWYER, TAXPAYER-LANDOWNER AND STOCKHOLDER OF OPMC HAS THE RIGHT TO CHALLENGE.

III.

THE COURT *A QUO* PREJUDGED THE CASE BY DELVING INTO THE MERITS OF THE CASE WITHOUT GIVING THE PETITIONER THE OPPORTUNITY TO ADDUCE EVIDENCE IN SUPPORT OF HIS ALLEGATIONS IN THE PETITION.

The petition must fail.

Anent the first issue, petitioner argues that respondent Sandiganbayan has jurisdiction over his case since his principal action is the nullification of PCGG's actions in negotiating the assailed agreements with respondent banks. He insists that these agreements are violative of Commission on Audit Circular No. 89-296 which requires public bidding in the divestment or disposal of government property. Likewise, according to petitioner, the agreements are contrary to the mandate of the Comprehensive Agrarian Reform Law (CARL), Section 63(b) of which lists as a source of funding the proceeds of the sale of any ill-gotten wealth. Lastly, petitioner posits that the transactions violate the requirement on full public disclosure directed by the Constitution. The PCGG, in authorizing and confirming the agreements, abused its discretion and it is the Sandiganbayan which has jurisdiction over a case which seeks to rectify the wrong done.

In its decision dismissing petitioner's case, the Sandiganbayan stated that its jurisdiction pertains only to the determination of the propriety of the sequestration made by the PCGG. It cannot assume jurisdiction over petitioner's case which essentially raises the issue of whether it was proper for PIEDRAS to exercise its pre-emptive rights. The PCGG, in its Comment, argued that PIEDRAS's OPMC shares of stock had been previously subject of a compromise agreement between itself and Mr. Roberto Benedicto. By virtue of the compromise agreement, the shares

were given back to the Philippine Government. Necessarily, the issue of ownership of the subject shares had already been determined. The Sandiganbayan no longer has jurisdiction over any action arising out of any controversy regarding the exercise of ownership rights over said shares of stock. Furthermore, the agreements were beyond the ambit of the COA Circular which requires public bidding since *dacion en pago* transactions are expressly excepted therefrom. Finally, there was no violation of the CARL since there was no disposition yet of ill-gotten wealth from which receipts may be applied and used for the agrarian reform program.

The extent of the jurisdiction of the Sandiganbayan over cases involving the recovery of ill-gotten wealth has been passed upon in a number of cases decided by this Court. In *PCGG v. Hon. Emmanuel G. Peña, et al.*,[6] this Court held:

> Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court.

In subsequent cases jointly decided on August 10, 1988, the Court pointed out that: "(the) exclusive jurisdiction conferred on the Sandiganbayan would evidently extend not only to the principal causes of action, *i.e.*, the recovery of alleged ill-gotten wealth, but also to 'all incidents arising from, incidental to, or related to, such cases,' such as the dispute over the sale of shares, the propriety of the issuance of ancillary writs or provisional remedies relative thereto, the sequestration thereof, which may

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[6] G.R. No. L-77663, 12 April 1988, 159 SCRA 556.

not be made the subject of separate actions or proceedings in another forum."[7]

Likewise, in the case of *Republic v. Sandiganbayan*,[8] we ruled that while the PCGG is ordinarily allowed a free hand in the exercise of its administrative or executive function, the Sandiganbayan is empowered to determine in an appropriate case, if in the exercise of such functions, the PCGG has gravely abused its discretion or has overstepped the boundaries of the power conferred upon it by law. We stated:

> Any act or order transgressing the parameter of the objectives for which the PCGG was created, if tainted with abuse of discretion, is subject to a remedial action by the Sandiganbayan, the court vested with exclusive and original jurisdiction over cases involving the PCGG (*PCGG v. Peña*, 159 SCRA 556 [1988]; *PCGG v. Securities and Exchange Commission*, G.R. No. 82188, June 30, 1988) including cases filed by those who challenge PCGG's acts or orders (*Holiday Inn [Phil.] v. Sandiganbayan*, 186 SCRA 447 [1990]). Settled is the rule that when a law confers jurisdiction upon a court, it is deemed to have all the incidental powers necessary to render the exercise of such jurisdiction effective (*Zuñiga v. Court of Appeals*, 95 SCRA 740 [1980]).

In the recent case of *PCGG v. Sandiganbayan*,[9] we stated that there is a need to vigorously guard sequestered assets and preserve them pending resolution of the sequestration case before the Sandiganbayan, considering the paramount public policy for the recovery of ill-gotten wealth. We ruled that sequestered assets and corporations are legally and technically in *custodia legis*, under the administration of the PCGG. Executive Order No. 2 specifically prohibits the transfer, conveyance, encumbrance, or otherwise depletion or concealment of such assets and properties, under pain of penalties prescribed by law. Thus, an action which can result in the deterioration and

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[7] *Soriano III v. Yuzon*, G.R. Nos. L-74910, L-75075, L-75094, L-76397, L-79459, and L-79520, 10 August 1988, 164 SCRA 226.

[8] G.R. No. 89553, 7 April 1993, 221 SCRA 189.

[9] G.R. No. 132738, 23 February 2000, 326 SCRA 346.

disappearance of the sequestered assets cannot be allowed, unless there is a final adjudication and disposition of the issue as to whether these assets are ill-gotten or not, since it may result in damage or prejudice to the Republic of the Philippines.

What must be resolved therefore in this petition is whether or not the issue raised by petitioner is one which the Sandiganbayan is empowered to resolve.

In the case at bar, petitioner does not really seek to question the propriety of the sequestration of PIEDRAS by the PCGG or any matter incidental to or arising out of such sequestration. Rather, petitioner essentially challenges the propriety of PIEDRAS's exercise of its pre-emptive rights as a corporate stockholder of OPMC and the means it availed of in order to exercise this right. We agree with the respondents that petitioner's case is directed not really at the PCGG but rather at PIEDRAS, a private corporation. His point of contention deals mainly with the propriety of what is in essence a business judgment.

That the assailed transactions were valid and legal corporate acts of PIEDRAS is proven by the Minutes of the Special Meeting of the Board of Directors of PIEDRAS dated October 31, 1991. The minutes contain the Resolutions of the Board of Directors authorizing PIEDRAS to enter into the financing agreements with the respondent banks "in order not to lose the opportunity to subscribe and to enable PIEDRAS to profitably benefit" from the offer for additional subscription.[10]

It is interesting to note, at this point, the case of *Holiday Inn (Phils.), Inc. v. Sandiganbayan,*[11] where the issue related to a management agreement terminated by the Board of Directors of a sequestered corporation, 2/3 of the members of such board being composed by PCGG nominees. The action for intervention was lodged with the Sandiganbayan in the main sequestration case. The petitioners in that case averred that the Sandiganbayan has jurisdiction over the action since the action to terminate the

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[10] Annex B-1 to B-6, *Rollo*, pp. 55-61.

[11] G.R. No. 85576, 8 June 1990, 186 SCRA 447.

management agreement bears the imprimatur of the PCGG nominees sitting at the Board, making PCGG the real party-in-interest. The Resolution of the Sandiganbayan, which was upheld by the Supreme Court, ruled on the contrary, thus:

> This Court is of the view that its jurisdiction refers to acts of the PCGG acting *as such* whether alone or with other persons, natural or juridical, and not generally where PCGG representatives act as part of another juridical person or entity. A rule of thumb might be thus: if the PCGG can be properly impleaded on a cause of action asserted before this Court as a distinct entity, then this Court would generally exercise jurisdiction; otherwise, it would not, because, then the 'PCGG character' of the act or omission in question may, at best, be only incidental.
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> After all, the presence of PCGG representatives in sequestered companies does not automatically tear down the corporate veil that distinguishes the corporation from its officers, directors or stockholders. Corporate officers whether nominated by the PCGG or not act, insofar as third parties are concerned, are (*sic*) corporate officers. Contracts entered into by the San Miguel Corporation, for example, in connection with its poultry operations and the cancellations thereof, are not PCGG activities which would justify the invocation of this Court's jurisdiction, even if the contract or suit were unanimously approved by its board of directors where PCGG representatives sit.

This Court added:

> The subject matter of petitioner's proposed complaint-in-intervention involves basically, an interpretation of contract, *i.e.*, whether or not the right of first refusal could and/or should have been observed . . . The question of whether or not the sequestered property was lawfully acquired by Roberto S. Benedicto has no bearing on the legality of the termination of the management contract by NRHDC's Board of Directors. The two are independent and unrelated issues and resolution of which may proceed independently of each other.
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> . . . (T)he Sandiganbayan correctly denied jurisdiction over the proposed complaint-in-intervention. The original and exclusive jurisdiction given to the Sandiganbayan over PCGG cases pertains to (a) *cases filed by the PCGG*, pursuant to the exercise of its power

under Executive Order Nos. 1, 2 and 14, as amended by the Office of the President, and Article XVIII, Section 26 of the Constitution, i.e., where the principal cause of action is the recovery of ill-gotten wealth, as well as all incidents arising from, incidental to or *related to such cases* and (b) *cases filed by those who wish to question or challenge the commission's acts or orders in such cases*.

What is more, unlike the cases cited above and invoked by petitioner, there is no longer any pending sequestration in the case at bar. A year prior to the transactions assailed in this case, six out of the seven original PIEDRAS stockholders (all nominees of Mr. Benedicto) have assigned their respective shareholdings to the Philippine Government, in exchange for immunity.[12] Petitioner himself affirmed this fact and even stated that the compromise agreement was approved by the Sandiganbayan and later affirmed by this Court.[13] As correctly pointed out by respondent PCGG, by the voluntary surrender of the corporation to the Philippine Government and the confirmation of the compromise agreement, the issue of ownership was no longer in question.

The participation of PCGG in this case, as we see it, is not so much as the constituted body tasked with the recovery of ill-gotten wealth as the representative or agent of the Philippine Government who is the conceded owner of PIEDRAS. This opinion is bolstered by the fact that the PCGG, through its then Chairman David M. Castro and Commissioner Mario C.V. Jalandoni, wrote then President Corazon C. Aquino on October 30, 1991.[14] In this letter, the PCGG related the situation of PIEDRAS and several other surrendered corporations, all shareholders of OPMC, intending to subscribe to some Eight Billion OPMC stock rights offered for additional subscription. The PCGG related that it had approached the Land Bank, GSIS, SSS, and other financial institutions for the necessary funds

[12] Annex 2, *Rollo*, p. 188.

[13] *Republic v. Sandiganbayan*, G.R. Nos. 108292, 108368, 108548-49, and 108550, 10 September 1993, 226 SCRA 314.

[14] *Supra*, at note 12.

but these institutions could not immediately fund the additional subscription due to various legal and technical difficulties. As far as PIEDRAS is concerned, the PCGG related that PIEDRAS stood to benefit from the transaction with respondents RCBC and TRB and if PIEDRAS will not enter into these arrangements, it will automatically forfeit its pre-emptive rights and get nothing. Thus, the PCGG requested the President's immediate consideration and prior clearance for the transactions. These facts were confirmed by then President Aquino's own letter to the Chairman of the Commission on Audit Eufemio C. Domingo dated July 28, 1992.[15]

We sustain the argument of respondent PCGG that the *dacion en pago* transactions are beyond the ambit of the COA Circular invoked by petitioner. We deem the agreements to be valid *dacion en pago* agreements for reasons which shall be discussed later. Neither do the agreements entered into by PIEDRAS violate the CARL. The language of the CARL provision[16] invoked by petitioner is clear:

> Section 63. Sources of funding or appropriation shall include the following:
>
> xxx xxx xxx
>
> b) All receipts from assets recovered and from sales of ill-gotten wealth recovered through the Presidential Commission on Good Government.

Simply, we find petitioner's action to be premature considering that based upon the transactions alone, there are as yet no receipts from assets recovered or from the sale of ill-gotten wealth since the shares have not yet been disposed by PIEDRAS. It is only when the shares are sold by PIEDRAS that receipts owing to the CARL funding shall accrue.

The second issue in this case pertains to petitioner's legal standing to file the present action. Petitioner argues that as a

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[15] Annex B and Annex 3, *Rollo*, pp. 190-191.

[16] Republic Act No. 6657.

citizen, he has the constitutional right to be duly informed on matters of public concern, particularly about government transactions that involve public interest. Petitioner contends that the agreements negotiated by PCGG, PIEDRAS, RCBC and TRB were deceitfully intended and actually conducted to be outright sales and/or disposition of OPMC shares held by PIEDRAS. As a lawyer, petitioner invokes his duty to uphold the Constitution and promote respect for the laws and legal processes. Petitioner likewise argues that as a landowner and taxpayer, he stands to lose in the diminution of the funds that ought to fund the agrarian reform program. Finally, petitioner contends that as a stockholder of OPMC, he has personality to file this action considering that the anomalous transactions have been made public and may affect the viability of the OPMC shares he holds.

In their respective comments, respondents argue that petitioner has no legal standing to question the subject agreements. The Sandiganbayan, in its decision, stated that petitioner has not made a case which shows that the PCGG abused its discretion. No disbursement of public funds collected primarily through taxation can be invoked by petitioner as basis for a taxpayer's suit. Likewise, respondents PCGG, RCBC and TRB argue that petitioner has not shown that he stands to be directly injured as a landowner by the acts complained of since petitioner's landholdings does not even reach the 5-hectare requirement under the CARL. Respondent PCGG added that assuming that petitioner has the legal standing to file this action as a stockholder of OPMC, the jurisdiction over such intra-corporate case belongs to the Securities and Exchange Commission.

We regret that motivations, however commendable, do not automatically bestow one with the personality to initiate a legal action. We have indeed validated the right of concerned citizens to file actions on certain issues in the case of *Kilosbayan v. Morato*.[17] However, it must be noted that such suits are allowable

[17] G.R. No. 118910, 17 July 1995, 246 SCRA 540.

if the constitutional question they raise is of transcendental importance which must be settled early.[18] Thus:

> Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." (Citing *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 2d 633 [1962]).[19]

We fail to see how a private corporation's exercise of its pre-emptive rights to subscribe to additional shares could be of paramount national interest and how the transactions entered into by PIEDRAS could violate petitioner's rights as a citizen. Standing is a concept in constitutional law and here no constitutional question is actually involved.[20] In the same light, while we admire petitioner's zeal for upholding the law and legal processes, there is no transgression upon which petitioner can build a solid case.

Petitioner cannot likewise invoke legal standing in his capacity as a landowner and taxpayer. Not every action filed by a taxpayer can qualify to challenge the legality of acts done by the government. It bears stressing that a taxpayer's suit refers to a case where the act complained of directly involves the illegal disbursement of public funds from taxation.[21] Undeniably, as a taxpayer, petitioner would somehow be adversely affected by an illegal use of public money. When, however, no such unlawful spending has been shown, as in the case at bar, petitioner, even as a

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[18] *Lim v. Executive Secretary*, G.R. No. 151445, 11 April 2002, 380 SCRA 739.

[19] *Kilosbayan v. Morato, supra.*

[20] *The Anti-Graft League of the Philippines, Inc. v. San Juan*, G.R. No. 97787, 1 August 1996, 260 SCRA 250.

[21] *Miranda v. Carreon*, G.R. No. 14350, 11 April 2003.

taxpayer, cannot question the transaction validly executed by and between the PIEDRAS (even if the same be government-owned) and respondent banks for the simple reason that it is not privy to said contract. In fact, not a single centavo from the public coffers was spent in the agreements involved. Petitioner has absolutely no cause of action, and consequently no *locus standi* in the instant case. As correctly pointed out by respondent RCBC, it has not been shown that the present case involves the disbursement of public funds. We have held time and again that it is only when an act complained of involves the illegal expenditure of public money that the so-called taxpayer suit may be allowed.[22]

As a stockholder, petitioner claims that the "anomalous" transactions have affected the viability of the OPMC shares which he holds. He claims that the feuds spurred by the transactions have caused the prices of OPMC shares to plunge, thus affecting his financial interests. We are not persuaded. The matters which petitioner complains of cannot be directly attributed to any invalid or illegal action by PIEDRAS. PIEDRAS acted well within its right to exercise its pre-emptive rights as a corporate stockholder of OPMC. We cannot grant the relief sought by petitioner when to do so would be tantamount to unjustly sanctioning PIEDRAS in its exercise of a legal right. Moreover, if there was any question as to PIEDRAS's resolution to subscribe to additional OPMC shares, only its own stockholders have legal capacity to lodge an action in court to enjoin the transactions assailed. Unfortunately, petitioner is not a stockholder of PIEDRAS.

As to the third assignment of error, petitioner calls attention to the fact that the tribunal, while dismissing his case for lack of jurisdiction, nonetheless commented on the merits of the case even before the petition was given due course. Moreover, petitioner contends that the Sandiganbayan was "overly technical"

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[22] *Lozada v. Comelec*, G.R. No. L-59068, 27 January 1983, 120 SCRA 337.

in disposing of petitioner's case and should have instead taken judicial notice of the fact that the issues raised by petitioner are undeniably of immense public significance. Petitioner argues that the agreements involved in the case at bar were not genuine *dacion en pago* transactions but actual contracts of sale of future shares. The agreements made it possible for respondents RCBC and TRB to exercise the stock rights of PIEDRAS which were non-assignable.

Respondents counter that the transactions were in accordance with the law and were a valid act of the PCGG in the exercise of its conservation powers. The PCGG argued that PIEDRAS was left without any other source of funding since the Land Bank, GSIS, SSS and other financing institutions were not able to outrightly lend the necessary funds to it. Without the *dacion en pago* transactions, the PCGG argued, the proportionate interest of PIEDRAS in OPMC would have been diluted much to the detriment of the Philippine Government which owns its.

The issue pertaining to the *dacion en pago* transactions is now moot and academic as far as respondent RCBC is concerned. A letter by respondent RCBC to PIEDRAS management dated May 10, 1994 contains an agreement forged between the PIEDRAS and respondent RCBC that the payment of the amount advanced by respondent bank shall be paid by PIEDRAS in cash instead of OPMC shares.[23] Considering that petitioner seeks to enjoin the transfer of the OPMC shares to respondent RCBC, this cause of action has been rendered moot when the *dacion en pago* transaction was not pursued by PIEDRAS and respondent RCBC. However, there is still a need to examine the nature of the *dacion en pago* transactions since the Stock Sharing Agreement between respondent TRB and PIEDRAS appears to be still effective.

Dacion en pago is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor

[23] Annex 1 to RCBC's Rejoinder, *Rollo*, p. 292.

who accepts it as equivalent of payment of an outstanding debt.[24] In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price.[25]

We do not see any infirmity in either the MOA or the SSA executed between PIEDRAS and respondent banks. By virtue of its shareholdings in OPMC, PIEDRAS was entitled to subscribe to 3,749,906,250 class "A" and 2,499,937,500 class "B" OPMC shares. Admittedly, it was financially sound for PIEDRAS to exercise its pre-emptive rights as an existing shareholder of OPMC lest its proportionate shareholdings be diluted to its detriment. However, PIEDRAS lacked the necessary funds to pay for the additional subscription. Thus, it resorted to contract loans from respondent banks to finance the payment of its additional subscription. The mode of payment agreed upon by the parties was that the payment would be made in the form of part of the shares subscribed to by PIEDRAS. The OPMC shares therefore were agreed upon by the parties to be equivalent payment for the amount advanced by respondent banks. We see the wisdom in the conditions of the loan transaction. In order to save PIEDRAS and/or the government from the trouble of selling the shares in order to raise funds to pay off the loans, an easier and more direct way was devised in the form of the *dacion en pago* agreements.

Moreover, we agree with the Sandiganbayan that neither PIEDRAS nor the government sustained any loss in these transactions. In fact, after deducting the shares to be given to respondent banks as payment for the shares, PIEDRAS stood to gain about 1,540,781,554 class "A" and 710,550,000 class "B" OPMC shares virtually for free. Indeed, the question that

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[24] *Mamerta vda. De Jayme, et al. v. Court of Appeals*, G.R. No. 128669, 4 October 2002, 390 SCRA 380.

[25] *Philippine Lawin Bus, Co. v. Court of Appeals*, G.R. No. 130972, 23 January 2002, 374 SCRA 332.

must be asked is whether or not PIEDRAS, in the exercise of its pre-emptive rights, would have been able to acquire any of these shares at all if it did not enter into the financing agreements with the respondent banks.

Lastly, a special civil action for *certiorari* is limited to the determination of whether or not public respondent acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed decisions.[26] Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[27] We do not find any grave abuse of discretion on the part of the Sandiganbayan in this case.

WHEREFORE, in view of the foregoing, the instant petition is *DISMISSED* and the Resolution of the Sandiganbayan dated August 23, 1993, which dismissed Civil Case No. 0151, is *AFFIRMED* ***in toto***.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Carpio, and *Azcuna, JJ.,* concur.

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[26] *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 115785, 4 August 2000, 337 SCRA 286.

[27] *Benito v. Commission on Elections*, G.R. No. 134913, 19 January 2001, 349 SCRA 705.

SECOND DIVISION

[G.R. No. 126025. July 6, 2004]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO ALMENDRAL *y* ALCASABAS**, *accused-appellant.*

SYNOPSIS

While the rape victim in this case testified that her father, herein appellant, had raped her for about forty (40) times when she was then aged 11 to 15, the Court ruled appellant guilty only for two counts of simple rape. The Information charged appellant with more than one count of rape; the acts committed on or about the year 1987, prior and subsequent thereto. The prosecution was able to prove only the first and the last incidents of the rape. Further, while minority of the victim at the time of rape and her relationship to the offender were established by the prosecution beyond reasonable doubt, they were not specified in the Information. Thus, appellant was sentenced to suffer the penalty of *reclusion perpetua*, and to pay the victim civil indemnity of ₱50,000, moral damages of ₱50,000 and exemplary damages of ₱25,000, all for each count of rape.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— The issue of credibility of the victim-witness is best addressed to the reasonable discretion of the trial court. As held by the Court a countless number of times, it is the trial court which has the unique opportunity to observe the witness firsthand and note her demeanor, conduct, and attitude under grueling examination. Hence, on the issue of credibility of witnesses, findings of the trial court will not be disturbed on appeal unless the lower court overlooked, ignored, misapprehended, or misinterpreted certain facts or circumstances so material such as to affect the outcome of the case.

2. ID.; ID.; ID.; NOT AFFECTED BY FAILURE TO RECALL THE EXACT DATES OF THE SEXUAL ASSAULT.— The victim's failure to recall the exact dates of the sexual assault

she experienced in the hands of appellant, a failure she frankly admitted in court, does not necessarily puncture her credibility. Forcible sexual invasion committed by no less than one's own father is an agonizing and distressful experience that, by human nature, is better left buried in the deepest recesses of one's memory. Repeated forty (40) times, the experience may only result in the victim's subconscious effort to erase and blot out any details thereof. Under the circumstances, it is enough that the victim was able to recount the first and last of the around forty (40) bestial sexual attacks against her.

3. ID.; ID.; ID.; NOT AFFECTED BY DELAY IN FILING THE CASE.— Jessica was likewise able to sufficiently explain the long delay in the filing of the rape charge. Among the reasons considered sufficient to explain delay are fear of reprisal, social humiliation, familial considerations, and economic reasons. Fear of maltreatment in the hands of appellant, who admitted to hitting and tying down the victim for the least of offenses, was a compelling reason that deterred her from revealing the sexual assaults. Only her marriage cut short her inaction. Even after her husband had inquired about the man who took her virginity, she could not immediately file the charge. Taking heed of her aunt's advice, the victim gave the matter deep thought. But once she decided to pursue the case, not even her mother and her sister could dissuade her from going through with prosecuting the case against her father.

4. ID.; CRIMINAL PROCEDURE; INFORMATION; SUFFICIENCY.— The information filed against an accused is intended to inform him of the accusations against him in order that he could adequately prepare his defense. It is thus textbook doctrine that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. To ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information must state the name of the accused, the designation given to the offense by the statute, a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense, and the place where the offense has been committed. It must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the

culpability and liability of the accused so that he can properly prepare for and undertake his defense.

5. ID.; ID.; INFORMATION; ALLEGATION OF EXACT DATE AND TIME WHEN CRIME COMMITTED, NOT REQUIRED IN RAPE CASE.— It is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense. Failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The date or time of the commission of the rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes places has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.

6. ID.; ID.; ID.; FAILURE TO RAISE ISSUE OF DEFECTIVE INFORMATION BEFORE MAKING A PLEA, WAIVED.— Appellant failed to raise the issue of the defective information before the trial court through a motion for bill of particulars or motion to quash the information. Such failure to object to the allegation in the information as to the time of commission of the rapes before appellant pleaded not guilty thereto amounted to a waiver of the defect in the Information. Objections as to matters of form or substance in the information cannot be made for the first time on appeal.

7. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; FAILURE TO SPECIFY THE SAME IN INFORMATION MAKES THE CRIME SIMPLE RAPE.— The failure to allege in the same *Information* the relationship between appellant and AAA is clearly the trial court's reason in finding him guilty of simple rape and imposing on him the penalty of *reclusion perpetua*. While AAA's minority at the time of the commission of the offenses and her relationship to the offender were established by the prosecution beyond doubt, these qualifying circumstances were not specified in the *Information*. It would certainly be a denial of appellant's right to be informed of the charges against him and to due process if he is charged with simple rape but convicted of its qualified form even if the

attendant qualifying circumstances are not set forth in the *Information*. However, the failure to plead these circumstances in the *Information* does not affect its sufficiency and validity as to the charge of simple rape, since the *Information* alleges facts which would warrant a conclusion that appellant sexually violated Jessica with its imputation therein of "carnal knowledge" "by means of force, violence and intimidation," the gravamen of the crime of rape. Carnal knowledge has a definite meaning in law; it is synonymous with sexual intercourse. There could not have been any mistaking the charge for any other offense and hence, the appellant was not deprived of due process by the manner by which the *Information* was crafted. An accused may be convicted of a crime and sentenced to a penalty prescribed therefor so long as the facts alleged in the information and proved at the trial shall constitute the crime for which he is convicted even though different from the crime designated and charted in the said information.

8. ID.; ID.; COURT MAY CONVICT ACCUSED OF AS MANY OFFENSES AS ARE CHARGED AND PROVED. – The court can also convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them, especially where the accused has waived his objection to the defects in the information. In this case, the *Information* charges the appellant with more than one count of rape, with its allegation that the acts were committed "on or about sometime (*sic*) 1987, *prior and subsequent thereto*," which the prosecution was able to prove by presenting evidence of the first and the last incidents of rape committed by appellant against Jessica. Appellant therefore should have been found guilty for two counts, each act of rape being considered separate and distinct from one another. The penalty to be imposed on appellant should thus be *reclusion perpetua* for each of the two (2) counts of rape.

9. ID.; ID.; PROPER CIVIL INDEMNITY AND MORAL DAMAGES. – The indemnity to be paid by appellant to the offended party should be fifty thousand pesos (₱50,000.00) for each count. Also moral damages of fifty thousand pesos (₱50,000.00) for each count. Also, moral damages of fifty thousand pesos (₱50,000.00) for each count should be awarded without need of showing that the rape victim suffered the trauma of mental, physical, and psychological suffering constituting

the basis thereof, most especially where the prosecution was able to prove two counts of rape.

10. ID.; ID.; EXEMPLARY DAMAGES; PROPER FOR RAPE COMMITTED BY FATHERS AGAINST THEIR DAUGHTERS. – Exemplary damages of twenty-five thousand pesos (₱25,000.00) for each count of rape should similarly be awarded to deter fathers with perverse tendencies and aberrant sexual behaviors from sexually abusing their daughters.

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.*:

In this case of incestuous rape, the victim claims she was defiled by her own father about forty (40) times. Moral justice demands that the father be punished for each and every despicable act on his minor daughter, but the law, restricted by the requirements of procedure, allows his conviction only for two counts of simple rape.

This is an appeal from the *Decision*[1] in Criminal Case No. 9116-B of the Regional Trial Court of San Pedro, Laguna, Branch 31, finding appellant Joselito Almendral *y* Alcasabas guilty beyond reasonable doubt of the crime of Rape and imposing upon him the penalty of *reclusion perpetua* and the payment to the complainant, his daughter AAA, of the amounts of fifty thousand pesos (₱50,000.00) as civil indemnity and one hundred thousand pesos (₱100,000.00) as moral damages.

The *Information* that spawned the *Decision* states:

That on or about sometime (*sic*) 1987, prior and subsequent thereto, in the Municipality of Biñan, Province of Laguna, Philippines and

[1] Penned by Judge Stella Cabuco-Andres and promulgated on March 18, 1996; *Rollo*, pp. 149-154.

within the jurisdiction of this Honorable Court, accused Joselito Almendral *y* Alcasabas, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[2]

Appellant pleaded not guilty to the charge.[3] Trial proceeded in accordance with the Rules. The prosecution presented two (2) witnesses, namely: AAA, the complaining witness, and HHH, sister-in-law of the appellant.

AAA was born on December 27, 1976 to appellant and his wife, BBB. The other children born to the couple were CCC(or CCC), DDD, EEE and FFF. They lived in xxx, xxx, xxx.

Sometime in 1987 when Jessica was eleven (11) years old and there were no other persons in the house, appellant summoned her to the room. He made her sit on the *papag* and touched her breast and her "private organ." As she was seated, he undressed her. Not knowing what was going on, AAA allowed appellant to undress her completely. Then he made her lie down and placed himself on top of her. He forcibly inserted his penis into her "private organ." At first, he failed to penetrate her but he tried to do it again and succeeded. Later, appellant dressed, told AAA not to tell her mother about what happened, and left the house. It was then that AAA noticed that her private part was bloody. Afraid that appellant might harm her should she tell her mother, she kept mum about the incident.[4]

Appellant did the same sex act to her around twenty (20) more times before she reached the age of thirteen (13) and twenty (20) more times after that, all in their house in xxx.[5]

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[2] *Rollo,* p. 9.

[3] Records, p. 19.

[4] TSN, May 23, 1995, pp. 6-7, 9-13.

[5] *Ibid.*, p. 25; June 5, 1995, pp. 3-4.

The last time appellant sexually violated her was in 1992 when she was fifteen (15) years old and in third year high school. He was lying down on the bed in the room that she shared with her sister CCC when appellant called her, "*AAA, halika*." AAA was not surprised to find her father in that room because that was the only bedroom in the house; her parents slept in the sala. They were alone then and when AAA approached appellant, he held her breast, made her lie down, and placed himself on top of her. AAA did not resist. She was afraid that should she reveal to anyone what happened, it would be communicated to other people and should he hear of it, appellant would pinpoint her as the source of "bad talks" about him.[6]

After her marriage on June 30, 1994, her husband, GGG, asked her "who was ahead of him" in deflowering her. AAA told her husband about the sexual incidents with her father. Later, she revealed the same incidents to her aunt, her cousins and some friends. Her mother learned that she and her sister CCC had been raped by their father only through a subpoena. AAA and her mother had a confrontation and her mother told AAA to withdraw the complaint.[7]

Sometime in October 1994, AAA and CCC accompanied by their aunt HHH filed their respective complaints for rape against appellant before the CIS at Camp Vicente Lim. CCC had narrated to AAA that she was asleep when their father raped her under threat of a firearm he carried. CCC later withdrew her complaint and asked AAA to do likewise through a letter she sent AAA through their mother.[8]

HHH, elder sister of appellant's wife BBB, was in her house on June 1, 1994 when CCC and AAA asked for help in reporting to the authorities the rapes committed against them by their father. HHH told AAA to think first before filing a

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[6] TSN, May 23, 1995, pp. 14, 17-21.

[7] *Ibid.*, pp. 22-23.

[8] *Id.* at 24; June 5, 1995, pp. 9-12.

complaint against appellant. It took four months before the two decided to report the crimes to the authorities and when they did, HHH accompanied them to Camp Vicente Lim because AAA and CCC asked that their complaints be filed with the CIS. They did not want to report to the *barangay* captain because appellant was then the *barangay* secretary. Because she helped AAA and CCC in lodging the complaints, BBB stopped talking to HHH.[9]

After the prosecution had rested its case, the defense presented evidence consisting of the testimonies of appellant's wife BBB, his daughter CCC, Rene Maravillas, and appellant himself.

BBB denied that her husband ever raped their daughters. She believed that the charges of rape were prompted by her sister HHH. According to BBB, HHH was mad at her and they did not talk to each other because HHH believed that she (BBB) caused the demolition of HHH's house, which was erected on BBB and appellant's lot.[10] BBB testified that appellant could not have committed the offenses because in 1987, appellant had left Biñan, Laguna to work as the private driver of Mayor Feliciano Bautista of Sta. Barbara, Pangasinan. In fact, because he was employed by the mayor for two years, appellant maintained a savings account with the Rural Bank of Sta. Barbara with the last entry therein being dated September 9, 1988. Because of his job, appellant seldom went home. He would only do so once a month although there were times when Emelinda herself would go to Sta. Barbara to get money.[11]

BBB also believed that AAA's husband, GGG, had encouraged AAA to file the complaint. GGG was allegedly mad at her and appellant because appellant confronted him about the story GGG banded around that he was forced to marry AAA. BBB even claims that AAA admitted to her that the filing of the case was

[9] TSN, July 4, 1995, pp. 3-12.

[10] TSN, August 21, 1995, p. 4.

[11] *Id.* pp. 5-10.

her husband's decision and she would do whatever her husband would tell her.[12]

CCC, testifying in favor of appellant, admitted that she filed a complaint for rape against her father but she did so only because she was mad at him. When CCC saw him detained at Camp Vicente Lim, her conscience bothered her. She did not tell the authorities that there was no basis for her complaint; neither did she do anything while her father languished at the detention center for a year. It was only when she testified in the case filed by AAA that CCC claimed that there was no truth to her complaint against her father.[13]

Eventually, on February 14, 1995, CCC filed an affidavit of desistance with respect to her own case, stating that she filed the complaint for rape because she had a grudge against her father and after thinking deeply, realized that filing the complaint was a mistake. CCC claimed that since childhood, appellant had been cruel to them and CCC resented him for this. When she found out that AAA had filed the complaint against their father, she also filed the same charge against him.[14]

Rene Maravillas testified that he recommended appellant to his brother-in-law, Mayor Bautista, as the latter's personal driver. As the "personal agent" of Mayor Bautista, Rene was with appellant from 1986 to 1988 and they would go home to Biñan, Laguna once a month.[15]

Testifying in his own defense, appellant denied AAA's allegations of rape. Appellant claimed that as a father he loved and took care of his children. He tried his best to discipline them. However, when AAA was about thirteen years old, she left the house and got hooked on vices such as taking drugs. To discipline her, appellant would hit and tie her down. He would

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[12] *Id*. pp. 14-16.

[13] TSN, September 26, 1995, pp. 3-7.

[14] *Id*. at 7-8, 12-14.

[15] TSN, December 6, 1995, pp. 4-7.

discipline all his children but he scolded, hit and tied down only AAA and CCC who, like AAA, also learned to take drugs.[16]

Appellant validated his wife BBB's testimony as to his whereabouts during the years that the crimes were committed, and his wife's theory that the rape charge was instigated by BBB's sister and AAA's husband.

Appellant testified that he was employed as the "personal security aid" of Mayor Feliciano Bautista of Sta. Barbara, Pangasinan from 1986 to 1988. He would go home to Biñan, Laguna once a month, and sometimes he would not go home at all.[17]

Appellant avers that there is no truth to AAA's claim that appellant raped her around forty (40) times. If that were true, then AAA should have filed the case against him as early as 1987. AAA and CCC filed the complaints only because they were influenced by other people like HHH and GGG. HHH had a grudge against him because his wife asked her and her family to vacate the place they were residing. There was bad blood between appellant and GGG. Appellant objected to AAA and GGG's marriage because the latter was a drug addict but ultimately gave his consent because the two had eloped and were living together for three days when they asked to be wed. Whenever GGG was drunk, he would utter slanderous remarks against appellant and his wife. GGG was disrespectful towards appellant and his wife, to the point that GGG even boxed BBB.[18]

As stated at the outset, the trial court found appellant guilty of the charge filed against him. Through his counsel, Atty. Jose B. Alvarez, appellant appealed to this Court. For failure to comply with his duty as counsel for appellant, Atty. Alvarez was suspended from the practice of law for five months in the *Resolution* of December 4, 2000.[19] The Court then appointed the Public

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[16] TSN, February 5, 1996, pp. 3-4.

[17] *Id*. at 4-6.

[18] *Id*. at 6-7.

[19] *Rollo*, pp. 120-122.

Attorneys' Office (PAO) as counsel *de oficio* of appellant and required the PAO to file appellant's brief.

In this appeal, appellant imputes error to the trial court in convicting him based on the "improbable and incredible testimony of the private complainant." AAA's testimony allegedly shows an inherent lack of credibility on crucial points, and disturbing improbabilities which cast doubt on the veracity of her story. Considering the implausible narration, the appellant believes that his guilt was not proven beyond reasonable doubt.[20]

The issue of credibility of the victim-witness is best addressed to the reasonable discretion of the trial court. As held by the Court a countless number of times, it is the trial court which has the unique opportunity to observe the witness firsthand and note her demeanor, conduct, and attitude under grueling examination. Hence, on the issue of credibility of witnesses, findings of the trial court will not be disturbed on appeal unless the lower court overlooked, ignored, misapprehended, or misinterpreted certain facts or circumstances so material such as to affect the outcome of the case.[21] In this instance, the trial court said:

> xxx In addition thereto, AAA related in a clear, straightforward and natural manner how she was raped by accused since she was 11 years old. xxx AAA went through all the shame and humiliation of appearing in court in a public trial in order to exact justice for the sexual abuse she suffered at the hands of her own father, the herein accused. In this regard, her testimony is entitled to full faith and credit xxx[22]

There is thus no reason to deviate from the findings of the trial court on the issue of credibility of the victim as a witness.

Appellant contends that the victim's testimony that she was raped about forty (40) times is incredible because she could

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[20] Appellant's Brief, *Rollo*, pp. 134, 140-146.

[21] *People v. Awing*, G.R. Nos. 133919-20, February 19, 2001, 352 SCRA 188, 204.

[22] RTC Decision, *Rollo*, pp. 148-149.

not even remember the approximate dates thereof. He alleges that the victim divulged her ordeal only after her husband discovered that he was not the first man in his wife's life and charging appellant with rape was "an easy way out indeed to appease the ire of her husband who ha(d) violent tendencies."[23]

The victim's failure to recall the exact dates of the sexual assault she experienced in the hands of appellant, a failure she frankly admitted in court, [24] does not necessarily puncture her credibility. Forcible sexual invasion committed by no less than one's own father is an agonizing and distressful experience that, by human nature, is better left buried in the deepest recesses of one's memory. Repeated forty (40) times, the experience may only result in the victim's subconscious effort to erase and blot out any details thereof. Thus, in *People v. Villar*, where the child victim claimed that the accused raped her more than a hundred times, the Court said:

> Furthermore, the Court cannot impose the burden of exactness in the victim's recollection of her harrowing experience more so in the present case where the victim was an innocent and tender 9-year old lass when she was first raped. It is all the more understandable that the victim in the present case may have been confused as to the exact details of each and every rape incident, considering that she claimed she had been sexually ravished for more than 100 times in a span of one whole year. It is in fact expected that such a victim would rather wish and even purposely forget the abhorrent memories of every single occasion. This being the case, it would be exacting too much should the Court demand a very accurate, detailed, and flawless account of the two occasions now subject of her charges out of the 100 occasions of forcible intercourse. In *People vs. Sagucio* (277 SCRA 183 [1997], where this Court faced the same issue of alleged inconsistencies in the victim's narration, we held that errorless testimony cannot be expected especially when a witness is recounting details of a harrowing experience. A court cannot expect a rape victim to remember every detail of the appalling outrage.[25]

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[23] Appellant's Brief, *Rollo*, pp. 142-143.

[24] TSN, June 5, 1995, p. 6.

[25] 379 Phil. 417, 428 (2000).

Under the circumstances, it is enough that the victim was able to recount the first and last of the around forty (40) bestial sexual attacks against her.

The candid admission of the victim that her husband inquired about the "first man" in her sexual life attests to her credibility. It could have indeed been a factor that led her to divulge her ordeal to other people. However, the victim's refusal to divulge her harrowing sexual experience to anyone until her husband inquired about the man who took her virginity is explained by the victim's testimony that appellant, who exercised "ascendancy" over her, was a cruel man who maltreated her. The claim of maltreatment was in fact corroborated by defense witness CCC.[26] Clearly, after her marriage, the victim found freedom from such "ascendancy" and an ally in her husband.

Hence, assuming that it was her husband who instigated the filing of the rape charge against appellant, it certainly strains credulity why the victim would fabricate a story against her own father even granting that he was cruel to her, and agree to expose her ordeal to the public if she really did not want the truth to come out and justice to prevail. Incestuous sexual affairs are generally treated with disdain and stigma, a taboo in this family-oriented society that may haunt any family for generations. If it was not her father who took her virginity, human nature would dictate that she pinpoint the real culprit as the author of her defilement. Not even the most ungrateful and resentful of daughters would even push her own father to the wall as the fall guy in any crime, unless the accusation against him was true. In this case, the victim stood by her story notwithstanding the arduous cross-examination that she underwent.

AAA was likewise able to sufficiently explain the long delay in the filing of the rape charge. Among the reasons considered sufficient to explain delay are fear of reprisal, social humiliation, familial considerations, and economic reasons.[27] Fear of

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[26] TSN, September 26, 1995, p. 13.

[27] *People v. Awing, supra* at 203.

maltreatment in the hands of appellant, who admitted to hitting and tying down the victim for the least of offenses, was a compelling reason that deterred her from revealing the sexual assaults. Only her marriage cut short her inaction. Even after her husband had inquired about the man who took her virginity, she could not immediately file the charge. Taking heed of her aunt's advice, the victim gave the matter deep thought. But once she decided to pursue the case, not even her mother and her sister could dissuade her from going through with prosecuting the case against her father.

Appellant interposed the defenses of denial and alibi, claiming that he could not have committed the crime because he was employed in Sta. Barbara, Pangasinan between 1986 and 1988. His alibi is supported by a certification[28] issued by Mayor Bautista that appellant was in his employ as his official driver from May 16, 1986 until its issuance on July 18, 1988. However, assuming the alibi to be true, the defense itself offered evidence that such alibi was not impregnable. Appellant admitted that he would go home to Biñan at least once a month during the two-year period. Noticeably, for the crimes committed between 1988 and 1992, there was no defense offered whatsoever; appellant did not lift a finger to rebut the prosecution evidence that subsequent to the victim's having reached the age of thirteen (13) in 1989, he still used her as a sex object.

It is noteworthy that appellant's claim that AAA was a drug dependent is unsupported by evidence other than his own self-serving testimony. Neither his wife nor daughter CCC testified on the alleged drug dependency of AAA to warrant giving credence to appellant's claim thereon.

In this appeal, appellant further raises for the first time the issue of the sufficiency of the *Information* filed against him. He argues that the trial court erred in convicting him under a defective information. He contends that he should not be convicted on the basis of the *Information* simply alleging "that on or about

[28] Exhibit "1", RTC Records, p. 141.

sometime (*sic*) 1987, prior and subsequent thereto" because it does not specify the circumstances under which the crime was committed. The vague *Information* purportedly left the appellant unable to defend himself properly, as he had no opportunity to explain his whereabouts from 1989 to 1992.[29] He adds that the lack of an allegation of an approximate date or month or even a single specific date when the rapes were committed sorely affected the credibility of the alleged victim.[30]

The information filed against an accused is intended to inform him of the accusations against him in order that he could adequately prepare his defense. It is thus textbook doctrine that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information.[31] To ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information must state the name of the accused, the designation given to the offense by the statute, a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense, and the place where the offense has been committed.[32] It must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that he can properly prepare for and undertake his defense.[33]

However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense.[34] Failure to

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[29] Appellant's Brief, *Rollo*, p. 146.

[30] Reply Brief, *Rollo*, p. 212.

[31] *People v. Pambid*, 384 Phil. 702, 730 (2000) citing *People v. Manalili*, 355 Phil. 652 (1998).

[32] *People v. Quitlong*, 354 Phil. 372, 388 (1998) citing Secs. 6 and 8, Rule 110 of the Rules of Court.

[33] *Ibid*.

[34] *People v. Santos*, 390 Phil. 150, 161 (2000).

specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The date or time of the commission of the rape is not a material ingredient of the said crime[35] because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes places has no substantial bearing on its commission.[36] As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[37]

Moreover, appellant failed to raise the issue of the defective information before the trial court through a motion for bill of particulars or motion to quash the information. Such failure to object to the allegation in the information as to the time of commission of the rapes before appellant pleaded not guilty thereto amounted to a waiver of the defect in the information. Objections as to matters of form or substance in the information cannot be made for the first time on appeal. [38]

Appellant likewise never objected to the presentation of evidence by the prosecution to prove that the offenses were committed "on or about sometime (*sic*) 1987, prior and subsequent thereto." He cannot now pretend that he was unable to defend himself in view of the vagueness of the allegation in the *Information* as to when the crimes were committed, as it was shown to the contrary that he participated in the trial and was even able to give an alibi in his defense.

The failure to allege in the same *Information* the relationship between appellant and Jessica is clearly the trial court's reason in finding him guilty of simple rape and imposing on him the

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[35] *People v. Dimapilis*, G.R. Nos. 128619-21, December 17, 1998, 300 SCRA 279.

[36] *People v. Bugarin*, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384.

[37] *People v. Magbanua*, 377 Phil. 750, 763 (1999).

[38] *People v. Razonable*, 386 Phil. 771, 780 (2000).

penalty of *reclusion perpetua*. While AAA's minority at the time of the commission of the offenses and her relationship to the offender were established by the prosecution beyond doubt, these qualifying circumstances were not specified in the *Information*. It would certainly be a denial of appellant's right to be informed of the charges against him and to due process if he is charged with simple rape but convicted of its qualified form even if the attendant qualifying circumstances are not set forth in the Information.

However, the failure to plead these circumstances in the *Information* does not affect its sufficiency and validity as to the charge of simple rape, since the Information alleges facts which would warrant a conclusion that appellant sexually violated Jessica with its imputation therein of "carnal knowledge" "by means of force, violence and intimidation," the gravamen of the crime of rape. Carnal knowledge has a definite meaning in law; it is synonymous with sexual intercourse.[39] There could not have been any mistaking the charge for any other offense and hence, the appellant was not deprived of due process by the manner by which the *Information* was crafted. An accused may be convicted of a crime and sentenced to a penalty prescribed therefor so long as the facts alleged in the information and proved at the trial shall constitute the crime for which he is convicted even though different from the crime designated and charted in the said information.[40]

The court can also convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them, especially where the accused has waived his objection to the defects in the information.[41] In *People*

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[39] 6 WORDS AND PHRASES 271 citing *State v. Croteau*, 184 A.2d 683, 684, 158 Me. 360.

[40] *People v. Demecillo*, G.R. No. 83186, June 4, 1990, 186 SCRA 161, 173.

[41] *People v. Ramon*, G.R. No. 130407, December 15, 1999, 320 SCRA 775, 783.

[42] *Ibid*.

v. Ramon,[42] the trial court found therein guilty of three counts of simple rape based on the imputation in the criminal complaint the commission of the offenses "on or about the month of May, 1995, and prior thereto." This Court affirmed the conviction of the accused for three counts of rape despite its finding that the complaint was indeed flawed, as it charged the accused with more than one count of rape by the bare added phrase "and prior thereto." For the accused's failure to timely question the defect through a motion to quash or a bill of particulars, he was deemed to have waived his objection to the multiplicity of charges.

Similarly, in *People v. Gianan*,[43] accused contended that the information alleging execution of the crime "sometime in November 1995, and some occasions prior and/or subsequent thereto" was defective because it charged more than one offense. The trial court convicted accused of multiple rape without stating the number of counts of rape involved. This Court however maintained that the failure of the accused to question the validity of the information is deemed a waiver of his objection and convicted accused of four counts of rape and one count of acts of lasciviousness proven by the prosecution.

In this case, the trial court found appellant guilty of a single count of simple rape, penalized with the single indivisible penalty of *reclusion perpetua* under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. However, the *Information* charges the appellant with more than one count of rape, with its allegation that the acts were committed "on or about sometime (*sic*) 1987, *prior and subsequent thereto*," which the prosecution was able to prove by presenting evidence of the first and the last incidents of rape committed by appellant against AAA.

Appellant therefore should have been found guilty for two counts, each act of rape being considered separate and distinct from one another. The penalty to be imposed on appellant should

[43] G.R. Nos. 135288-93, September 15, 2000, 340 SCRA 477.

thus be *reclusion perpetua* for each of the two (2) counts of rape.

The indemnity to be paid by appellant to the offended party should likewise be modified to fifty thousand pesos (P50,000.00) for each count. Moral damages of fifty thousand pesos (₱50,000.00) for each count should be awarded without need of showing that the rape victim suffered the trauma of mental, physical, and psychological suffering constituting the basis thereof, most especially where the prosecution was able to prove two counts of rape. Exemplary damages of twenty-five thousand pesos (₱25,000.00) for each count of rape should similarly be awarded to deter fathers with perverse tendencies and aberrant sexual behaviors from sexually abusing their daughters.[44]

WHEREFORE, the *Decision* of the Regional Trial Court of San Pedro, Laguna, Branch 31 is MODIFIED. Appellant Joselito Almendral is found guilty beyond reasonable doubt of two counts of simple rape and is sentenced to suffer the penalty of *reclusion perpetua* and to pay AAA civil indemnity of fifty thousand pesos (₱50,000.00), moral damages of fifty thousand pesos (₱50,000.00), and exemplary damages of twenty-five thousand pesos (₱25,000.00), for each count of rape.

SO ORDERED.

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

[44] *People v. Docena,* 379 Phil. 903, 918 (2000).

FIRST DIVISION

[G.R. No. 149634. July 6, 2004]

LORETA TORRES, MARILYN TANGTANG, ARMELA FIGURACION, RAQUEL BERNARTE, ESTRELLA TITO, RHEA ELLORDA, ROSITA FUENTES, ANITA LAPORRE, JOCELYN RIN, MATODIA DEREPAS, FELICISIMA ALEGRE, LEA MARTILLANA, EVANGELINE RAFON, ALICIA EMPILLO, AMY TORRES, EDNA JIMENEZ, EVELYN DOLOM, HAMILI UYVICO, CRISELINA ANQUILO, NILDA ALCAIDE, ROSARIO MABANA, ESTELA MANGUBAT, ROSIE BALDOVE, CARMELITA RUIZ and LUCILA JUSTARES, *petitioners, vs.* **SPECIALIZED PACKAGING DEVELOPMENT CORPORATION and/or ALFREDO GAO (President) and PETER CHUA (General Manager); EUSEBIO CAMACHO GENERAL SERVICES and/or EUSEBIO CAMACHO (President/General Manager); MPL SERVICES and/or MIGUELITO LAURIANO (President/General Manager),** *respondents.*

SYNOPSIS

Petitioners appealed the adverse ruling of the National Labor Relations Commission to the Court of Appeals (CA). The same, however, was dismissed on the ground that the verification and certification therein against forum shopping was executed by only two of the 25 petitioners.

On the issue of verification, the Court ruled that the requirement had been substantially complied with. The two signatories were unquestionable real parties-in-interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. On the issue of certificate against forum shopping, that the same should be signed by all the petitioners, the Court ruled that technical requirements may be dispensed with in meritorious appeals.

It has been consistently held that the ends of justice are better served when cases are determined on the merits, rather than on some procedural imperfections. Hence, the case remanded to the CA for proper determination of the substantive issues.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; ISSUES NOT PRESENTED BELOW CANNOT BE TAKEN FOR THE FIRST TIME ON APPEAL.— Elementary due process – which means giving the opposite party the opportunity to be heard, and the assailed court to consider every argument presented – bars this Court from taking up three not previously regarded issues in this Decision, even if doing so would speed up the final resolution of the case. Basic is the rule that issues not presented below cannot for the first time be taken up on appeal. Time-honored is the principle that when the law entrusts the review of factual and substantive issues to a lower court or to a quasi-judicial tribunal, that court or agency must be given the opportunity to pass upon those issues. Only thereafter may the parties resort to this Court.

2. ID.; ID.; ID.; REVIEW OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISION.— The proper procedure for seeking a review of the final dispositions of the NLRC was laid down in 1998 in *St. Martin Funeral Homes v. NLRC.* That case heralded two very important rules: 1) decisions and final resolutions of the NLRC may be reviewed only via a special civil action for *certiorari* under Rule 65 of the Rules of Court; and 2) such petition must be filed with the CA in strict observance of the doctrine of the hierarchy of courts.

3. ID.; ID.; PLEADINGS; VERIFICATION; EXECUTION THEREOF BY ONLY TWO OF THE 25 PETITIONERS, PROPER.— The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective. Indeed, verification is only a formal,

not a jurisdictional, requirement. In the present case, the problem is not the lack of a verification, but the adequacy of one executed by only two of the 25 petitioners. These two signatories are unquestionably real parties-in-interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with.

4. ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING.— The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. The lack of a certification against forum shopping, unlike that of verification, is *generally* not cured by its submission after the filing of the petition.

5. ID.; ID.; ID.; ID.; SHOULD BE SIGNED BY ALL PETITIONERS; EXCEPTION; REASONABLE CAUSE FOR FAILURE TO SIGN THE SAME.— In previous rulings, we have held that a certificate against forum shopping should be signed by all the petitioners, because a lone signatory cannot be presumed to have personal knowledge of the matters required to be stated in the attestation. The ruling is not without exception, however. In *Spouses Ortiz v. Court of Appeals* and similar rulings, the following has always been pointed out: "x x x. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. *To merit the Court's consideration, petitioners here must show reasonable cause for failure to personally sign the certification. The petitioners must convince the court that the outright dismissal of the petition would defeat the administration of justice.* x x x." Petitioners need only show, therefore, that there was reasonable cause for the failure of some of them to sign the certification against forum shopping, and that the outright dismissal of the Petition would defeat the administration of justice.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— The reasons adduced by petitioners for their failure to sign the certificate

against forum shopping are meritorious. First, it was extremely difficult to secure all the required signatures because several petitioners returned to their provinces when the case dragged for a long time. Second, the non-signing petitioners executed a "Natatanging Gawad ng Kapangyarihan" in favor of their counsel, which effectively forecloses the possibility they would file another action or claim through another counsel. Third, the apparent merits of the substantive aspects of the case is a "compelling reason" for allowing the Petition. The Court notes that the conflicting findings of the NLRC and of the labor arbiter provide ample justification for the CA's review of the merits.

7.ID.; ID.; ID.; ID.; PURPOSE OF PROCEDURAL REQUIREMENTS.— Indeed, rules of procedure are established to secure substantial justice. Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it. Technical requirements may thus be dispensed with in meritorious appeals. It has been our consistent holding that the ends of justice are better served when cases are determined on the merits - after all parties are given full opportunity to ventilate their causes and defenses - rather than on technicality or some procedural imperfections.

APPEARANCES OF COUNSEL

Reynaldo M. Maraan for petitioners.
Teoderico P. Fernandez for respondents.

D E C I S I O N

PANGANIBAN, *J.*:

The Court may give due course to a petition, even if the accompanying certificate against forum shopping has not been signed by all the petitioners, provided it is shown that, as in this case, there is a justifiable cause for such failure; and the outright dismissal of the petition would seriously impair the orderly administration of justice. In the interest of substantial justice, strict observance of procedural rules may be dispensed with for compelling reasons.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the January 15, 2001[2] and the August 28, 2001[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 62530. The first Resolution disposed as follows:

"ACCORDINGLY, and to strictly enforce the aforesaid circulars to attain their objectives (*Carrara Marble Phil., Inc. vs. Court of Appeals*, G.R. No. 127059, January 22, 1997; *Far Eastern Shipping Co. vs. Court of Appeals*, 297 SCRA 30), the Court [r]esolved to *DISMISS* the petition for a defective or insufficient verification and certification thereof."[4]

The second assailed Resolution, on the other hand, denied petitioners' Motion for Reconsideration.

The Antecedents

Petitioners claim to be employees of the Specialized Packaging Development Corporation (SPDC), a business entity engaged in the repackaging of cosmetic products. In three separate Complaints, they charged SPDC and alleged labor recruiters Eusebio Camacho General Services (ECGS) and MPL Services with illegal dismissal; and with nonpayment of overtime, premium and 13th month pays, and night differential.

The cases were later consolidated and assigned to Labor Arbiter (LA) Salimathar Nambi. On June 30, 1995, the LA issued his Decision in favor of petitioners, because SPDC and MPL Services had failed to submit their position papers on or before the deadline.

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[1] *Rollo*, pp. 13-49.

[2] *Id*., pp. 52-53. Eleventh Division. Penned by Justice Teodoro P. Regino, with the concurrence of Justices Delilah Vidallon-Magtolis (Division chair) and Josefina Guevara-Salonga (member).

[3] *Id*., pp. 50-51. Penned also by Justice Regino, with the concurrence of Justices Jose L. Sabio Jr. and Bienvenido L. Reyes.

[4] CA Resolution dated January 15, 2001, p. 2; *rollo*, p. 53.

SPDC was ordered to reinstate all petitioners to their former positions and to pay them back wages, premium pay for holidays and rest days, service incentive leave pay and 13th month pay.

The LA's Decision was appealed by SPDC to the National Labor Relations Commission (NLRC), which set aside the ruling and ordered the case remanded to LA Nambi for further proceedings.

The case was then set again for hearings. Respondents SPDC and ECGS submitted their position papers five months after the case had been considered submitted for decision.

On December 14, 1999, LA Nambi issued a second Decision finding petitioners' employment to have been illegally terminated by SPDC. The NLRC, however, again reversed and set aside this new Decision on June 9, 2000.

On January 29, 2001, petitioners appealed to the CA.

Ruling of the CA

The Petition was dismissed by the CA, which found the verification and the certification against forum shopping to be either defective or insufficient. It justified its ruling thus:

"xxx [I]t appears that there are twenty-five (25) principal parties-petitioners who were former workers of private respondent Corporation and complainants in NLRC NCR Case Nos. 00-04-03325-94, 00-05-03727-94 and 00-05-03971-94 as a result of their being laid-off from employment. Perusing the verification and certification[,] however, it also appears that it was executed and signed by only two (2) petitioners, namely, Evelyn Dolom and Criselina Anquilo, among the said twenty-five (25) principal petitioners. The duty to verify and certify under oath is strictly addressed to all the twenty-five (25) principal petitioners. To allow only two (2) of them to execute the required verification and certification, without the proper authorization of the others, would render Revised Circular No. 28-91 and Administrative Circular No. 04-94 (now Sec. 5, Rule 7 of the 1997 Rules of Civil Procedure) inutile in avoiding the practice of non-forum shopping because the other principal petitioners, who

did not execute and sign the same, much less execute the proper power of attorney, would not be bound by the certification executed by only two (2) of them. Any one of the twenty-three (23) remaining principal petitioners may just obtain the services of another lawyer to institute practically the same case in a different for[um]."[5]

Denying petitioners' Motion for Reconsideration, the appellate court pointed out that disregarding the rules could not be rationalized by invoking a liberal construction thereof. Furthermore, it found no satisfactory explanation why the 25 principal petitioners, who resided in different provinces, had not executed a special power of attorney in favor of either of the two petitioners or their counsel.

Hence, this Petition.[6]

Issues

Petitioners submit the following issues for our consideration:

"A.

Whether or not petitioners are employees of the Respondent Specialized Packaging Development Corporation (SPDC).

"B.

Whether or not petitioners were illegally dismissed by Respondent SPDC.

"C.

Whether or not petitioners are entitled to their money claims."[7]

The Court's Ruling

The Petition is meritorious.

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[5] *Id*., pp. 1-2 & 52-53.

[6] The Petition was deemed submitted for decision on November 25, 2002, upon the Court's receipt of respondents' Memorandum, signed by Atty. Teodorico P. Fernandez. Petitioners' Memorandum, signed by Atty. Reynaldo M. Maraan, was received by the Court on October 10, 2002.

Preliminary Issue:
Propriety of the Petition

At the outset we note that the present Petition is anchored on Rule 45, and that it assails the two CA Resolutions dismissing petitioners' earlier Petition for *Certiorari*. In accordance with Section 1 of Rule 45,[8] the herein Petition alleges reversible errors based on the supposedly defective verification and certification against forum shopping.

The above-quoted issues raised in the Memorandum of petitioners, however, were not the same ones raised in the Petition. Because these three substantive issues were sprung by the former only in their own Memorandum, respondents were not able to traverse these directly in their Comment[9] or Memorandum.[10] Hence, save for perfunctory references to the NLRC Decision, the latter were not given the opportunity to defend themselves on these questions.

Elementary due process — which means giving the opposite party the opportunity to be heard, and the assailed court to consider every argument presented [11] — bars this Court from taking up these three issues in this Decision, even if doing so would speed up the final resolution of the case. Basic is the rule that issues not presented below cannot for the first time be taken up on appeal.[12]

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[7] Petitioners' Memorandum, p. 17; *rollo*, p. 151. Original in upper case.

[8] Under §1 of Rule 45, only questions of law, distinctly set forth, may be raised.

[9] *Rollo*, pp. 73-78.

[10] *Id*., pp. 298-311.

[11] *Concepcion v. CA*, 415 Phil. 43, 55, August 10, 2001; *Co v. Judge Calimag Jr.*, 389 Phil. 389, 395, June 20, 2000; *Ginete v. CA*, 357 Phil. 36, 56, September 24, 1998.

[12] *Lim v. Queensland Tokyo Commodities, Inc*., 424 Phil. 35, 47, January 4, 2002; *Sañado v. CA*, 356 SCRA 546, 560, April 17, 2001; *Magellan Capital Management Corporation v. Zosa*, 355 SCRA 157, 170, March 26, 2001.

Review of NLRC Decisions

The proper procedure for seeking a review of the final dispositions of the NLRC was laid down in 1998 in *St. Martin Funeral Homes v. NLRC* .[13] That case heralded two very important rules: 1) decisions and final resolutions of the NLRC may be reviewed only via a special civil action for *certiorari* under Rule 65 of the Rules of Court; and 2) such petition must be filed with the CA in strict observance of the doctrine of the hierarchy of courts.

Thus, after St. Martin became final, special civil actions challenging NLRC rulings have been referred by this Court to the CA for proper disposition. Exceptions to this rule were those instances when — prior to the finality of *St. Martin* — both parties had already filed their respective memoranda with this Court, and it then opted to take final cognizance of the case.[14] Under AM No. 99-2-01-SC, however, all new cases erroneously filed with this Court after June 1, 1999, were dismissed forthwith.

Main Issue:
Propriety of the CA's Dismissal of the Petition

In their present Petition, petitioners plead a liberal construction of the rules. They argue that the verification and the certification against forum shopping executed by only two of the 25 petitioners have already satisfied the requirements under Sections 4[15] and

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[13] 356 Phil. 811, September 16, 1998.

[14] *Rural Bank of Alaminos Employees Union v. NLRC*, 376 Phil. 18, 27, October 29, 1999.

[15] §4 of Rule 7 of the Rules of Court provides:

"SEC. 4. *Verification.* — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

"A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

"A pleading required to be verified which contains a verification based on 'information and belief,' or upon 'knowledge, information and belief,' or lacks a proper verification, shall be treated as an unsigned pleading."

5[16] of Rule 7. On the other hand, the CA ruled that all 25 petitioners should have signed the verification and the certification of non-forum shopping. We clarify.

Actually, two separate rules are involved in the present controversy — one, on verification; and the other, on the certification against forum shopping.

Two Signatures Sufficient for Verification

The verification requirement is provided under Section 4 of Rule 7 of the Rules of Court, as follows:

"SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, [17] pleadings need not be under oath, verified or accompanied by affidavit.

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[16] §5 of Rule 7 of the Rules of Court provides:

"SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

"Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

[17] Under §1 of Rule 65 of the Rules of Court, a petition for *certiorari* must be verified.

"A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

"A pleading required to be verified which contains a verification based on 'information and belief,' or upon 'knowledge, information and belief,' or lacks a proper verification, shall be treated as an unsigned pleading." (Italics supplied)

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith; or are true and correct, not merely speculative.[18] This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective.[19] Indeed, verification is only a formal, not a jurisdictional, requirement.[20]

In the present case, the problem is not the lack of a verification, but the adequacy of one executed by only two of the 25 petitioners. These two signatories are unquestionably real parties-in-interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with.

Certification Against Forum Shopping Substantially Complied With

For petitions for *certiorari*, on the other hand, a certification against forum shopping is required under Section 3 of Rule 46[21] of the Rules of Court, as follows:

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[18] *Robern Development Corporation v. Judge Quitain*, 373 Phil. 773, 786, September 23, 1999.

[19] *Uy v. Land Bank of the Philippines*, 391 Phil. 303, 312, July 24, 2000.

[20] *Shipside Incorporated v. CA*, 352 SCRA 334, 345, February 20, 2001; *Joson v. Executive Secretary Torres*, 290 SCRA 279, May 20, 1998; *PASUDECO v. NLRC*, 339 Phil. 120, 127, May 29, 1997.

[21] The requirement was previously contained in Administrative Circular 04-94 which, in turn, adopted and incorporated the provisions of Revised Circular

"SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* — xxx

xxx xxx xxx

"The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

xxx xxx xxx

"The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."

The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure.[22] The lack of a certification against forum shopping, unlike that of verification, is *generally* not cured by its submission after the filing of the petition.[23]

The submission of a certificate against forum shopping is thus deemed obligatory, though not jurisdictional. [24] (Jurisdiction over the subject or nature of the action is conferred by law.) Not being jurisdictional, the requirement has been relaxed under

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No. 28-91 in Rules 7, 42, 43, 45, 46, 47, 64 and 65 of the Rules of Court. §3 of Rule 46, by specific reference, provides the requirement for Rule 65 petitions for *certiorari*. See also *Spouses Melo v. CA*, 376 Phil. 204, 214, November 16, 1999.

[22] *Robern Development Corporation v. Judge Quitain, supra,* p. 787.

[23] *Uy v. Land Bank of the Philippines, supra.*

[24] *Robern Development Corporation v. Judge Quitain, supra.*

justifiable circumstances[25] under the rule of substantial compliance.

In fact, the Court has allowed the belated filing of the certification against forum shopping because of compelling reasons.[26] In *Uy v. Land Bank*,[27] it even reinstated a petition it had already dismissed for lack of verification and certification against forum shopping, after petitioner had justified the reinstatement. Similarly, in *Roadway Express v. CA*,[28] the Court considered as substantial compliance the filing of the certification 14 days prior to the dismissal of the petition.

The rule of substantial compliance has likewise been availed of with respect to the contents of the certification.[29] *Gabionza v. Court of Appeals* accepted, as sufficient compliance therewith, petitioner's certification to the effect that "there is no similar petition [with] the same subject matter previously filed, pending, withdrawn or dismissed in the Supreme Court, in this Honorable Court [of Appeals] or different divisions thereof, or any other tribunal or agency."[30] It stressed that while Circular 28-91[31] required strict compliance, it did not thereby prevent substantial compliance under justifiable circumstances.[32]

In the present case, petitioners aver that the signatures of only two of them suffice as substantial compliance with the attestation requirement for a certificate against forum shopping.

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[25] *Ibid*.

[26] *Spouses Melo v. CA, supra*, p. 125.

[27] *Supra*, p. 313.

[28] 332 Phil. 733, 738, November 21, 1996. See also *Loyola v. CA*, 315 Phil. 529, 538, June 29, 1995.

[29] *MC Engineering Inc. v. NLRC*, 412 Phil. 614, 622-623, June 28, 2001; *Gabionza v. CA*, 234 SCRA 192, 197, July 18, 1994.

[30] Supra.

[31] The Circular was the precursor of Administrative Circular 04-94, which has been incorporated in the Rules of Court with regard to the requirement of a certification against forum shopping.

[32] *Gabionza v. CA, supra*, p. 198.

In effect, they are asking this Court to disregard a defect[33] in their Petition.

In previous rulings, we have held that a certificate against forum shopping should be signed by all the petitioners, because a lone signatory cannot be presumed to have personal knowledge of the matters required to be stated in the attestation.[34] The ruling is not without exception, however. In *Spouses Ortiz v. Court of Appeals*[35] and similar rulings, the following has always been pointed out:

"xxx The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. *To merit the Court's consideration, petitioners here must show reasonable cause for failure to personally sign the certification. The petitioners must convince the court that the outright dismissal of the petition would defeat the administration of justice* xxx" (Italics supplied)

Petitioners need only show, therefore, that there was reasonable cause for the failure of some of them to sign the certification against forum shopping, and that the outright dismissal of the Petition would defeat the administration of justice.

We find their reasons meritorious. *First*, as pointed out in the Motion for Reconsideration filed with the CA, the case dragged for an undeniably long time, because its remand to the labor arbiter forced many of the petitioners to go back to the provinces to await the final outcome, while those who remained in Metro Manila were forced out of temporary quarters every

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[33] *Loquias v. Office of Ombudsman*, 392 Phil. 596, 603, August 15, 2000. In the said case, it was ruled that the signing of the certificate against forum shopping by only one of the petitioners constituted a defect.

[34] *Ibid.; Docena v. Lapesura*, 355 SCRA 658, 667, March 29, 2001; *Spouses Ortiz v. CA*, 360 Phil. 95, 99, December 4, 1998; *Far Eastern Shipping Co. v. CA*, 357 Phil. 703, 720, October 1, 1998.

[35] *Supra*, p. 99, per Quisumbing, *J*. This pronouncement was reiterated in *Docena v. Lapesura*, *supra*; *Digital Microwave Corporation v. CA*, 384 Phil. 842, 847, March 16, 2000; *Five Star Bus Company Inc. v. CA*, 372 Phil. 249, 257, August 31, 1999; *Loquias v. Office of the Ombudsman*, *supra*, p. 604.

so often.[36] Under these circumstances, it was extremely difficult to secure all the required signatures.

Second, it is safe to assume that the matters alleged in the certificate against forum shopping have been complied with by the non-signing petitioners. Twenty-one of the petitioners executed in favor of their counsel, a "*Natatanging Gawad ng Kapangyarihan*,"[37] which gives him authority to represent them in all matters connected with the case. As it has not been revoked or superseded, the possibility of any of them filing another action or claim through another counsel is effectively foreclosed.

Third, the apparent merits of the substantive aspects of the case, as in *Uy*, should be deemed as a "special circumstance" or "compelling reason" for allowing the Petition. Pertinent thereto, the Court notes that the conflicting findings of the NLRC and of the labor arbiter — who ruled twice in favor of petitioners — provide ample justification for the CA's review of the merits. The outright dismissal of the Petition was therefore prejudicial to the substantial rights of the parties.

Indeed, rules of procedure are established to secure substantial justice.[38] Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it.[39] Technical requirements may thus be dispensed with in meritorious appeals.[40]

It has been our consistent holding that the ends of justice are better served when cases are determined on the merits — after all parties are given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections.[41]

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[36] Petitioners' Motion for Reconsideration, pp. 6-7; CA *rollo*, pp. 101-102.

[37] Annex "C" of the Petition; *rollo*, pp. 54–56.

[38] *Ibid*.

[39] *Far Eastern Shipping Co. v. CA, supra.*

[40] *Ibid*.

[41] *Paras v. Baldado*, 354 SCRA 141, 146, March 8, 2001.

Consequently, the case should be remanded to the CA for a proper determination of the substantive issues. Time-honored is the principle that when the law entrusts the review of factual and substantive issues to a lower court or to a quasi-judicial tribunal, that court or agency must be given the opportunity to pass upon those issues.[42] Only thereafter may the parties resort to this Court.[43]

WHEREFORE, this Petition is *GRANTED*. The assailed Resolutions of the Court of Appeals are *SET ASIDE*, and the case is remanded to the CA for a proper determination of the substantive issues. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[42] In original cases for *certiorari*, the CA has the power to resolve factual issues under §6 of Rule 46, which provides:

"SEC. 6. *Determination of factual issues*. — Whenever necessary to resolve factual issues, the court itself may conduct hearings thereon or delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office."

[43] *Premiere Development Bank v. NLRC*, 354 Phil. 851, 862, July 23, 1998.

FIRST DIVISION

[G.R. No. 152584. July 6, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GAUDENCIO ALBERIO,** *appellant*.

SYNOPSIS

Appellant was convicted with the crime of rape. The victim testified that she was raped by appellant, the father of a former classmate, when the victim tried to retrieve a book at the classmate's house. Appellant asked the victim to enter the house on the guise that her classmate was waiting inside. Thereafter, the victim was forbidden to go out of the house and appellant, armed with a knife, raped her against her will. Thereafter, she was warned not to tell her parents, or appellant would kill her and her parents. It was only when the victim was discovered pregnant that she finally revealed what happened.

The Court found no reason to overturn the ruling of the trial court. While appellant alleged failure of the victim to shout at the time of rape, the Court ruled that the victim was then being threatened with death; that during the whole sexual assault, appellant poked a knife at her neck. When a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently. Her failure to shout for help does not vitiate the credibility of her account. On the absence of lacerations or bruises, the Court ruled them not necessary to prove the charge of rape. What is significant and is that the victim was clear and consistent in asserting that appellant intimidated and raped her.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF TRIAL COURT, RESPECTED.— It is a well-settled rule that the trial court's assessment of witnesses' credibility will not be disturbed on appeal, absent any showing of palpable error or grave abuse of discretion. Appellate courts generally accord credence to the factual findings of the trial court, for the latter was in the best position to observe the witnesses' deportment

and manner of testifying. In the case at bar, we find no reason to overturn the ruling of the trial court that the victim's testimony was credible. Also settled is the rule that an accused can be convicted on the strength of the lone testimony of a rape victim. The clear and convincing testimony of the offended party, given ample credence by the trial court, suffices to merit a conviction in this case.

2. CRIMINAL LAW; RAPE; FORCE OR INTIMIDATION; NOT NEGATED BY FAILURE OF THE VICTIM TO SHOUT OR OFFER TENACIOUS RESISTANCE. — We disagree with the contention that the victim's failure to shout for help is fatal to the charge of rape. Furthermore, we are not persuaded by appellant's contention that the victim offered no resistance. Rape is committed when the accused has carnal knowledge of a woman by use of force or intimidation. Physical resistance is not an essential element of the felony, and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety. It is enough that the malefactor intimidated the complainant into submission. Failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused. Furthermore, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. In this case, AAA failed to shout for help as she was threatened with death by the appellant. During the whole sexual assault, appellant poked the knife at her neck. When a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently. Her failure to shout for help does not vitiate the credibility of her account. It must not be forgotten that the victim was only 14 years old at the time of the rape, inexperienced in the ways of the world. It is completely irrelevant that the victim was unable to show cuts, lacerations or bruises that would be ample physical evidence of the presence of a struggle. The presence or absence of physical bruises are not necessary in order to prove the charge of rape. Besides, due to extreme fear, the victim did not report the rape until four months after the incident, at which

point any bruises or injuries sustained during the sexual assault would already have healed.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. – Contrary to the contentions of the defense, the alleged inconsistencies are minor; they do not affect the credibility of the victim. Indeed, they should be taken as indicia of truth rather than as badges of falsehood for they erase any suspicion of a rehearsed testimony. After her traumatic experience, we do not expect the victim to remember vividly the appellant's threats or each and every ugly detail of the sexual assault. What is significant is that AAA was clear and consistent in asserting that the appellant intimidated and raped her. On the basis of the victim's credible testimony, the conviction of appellant is inevitable.

4. CRIMINAL LAW; RAPE; VICTIM'S PREGNANCY AND RESULTANT CHILDBIRTH, IRRELEVANT. – The victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Pregnancy is not an essential element of the crime of rape. Whether the child which Ana Liza bore was fathered by the accused, or by some unknown individual, is of no moment in the instant case. The veracity of her story is shown in her testimony. Her pregnancy and childbirth are merely corroborative.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF IMPROPER MOTIVE. – When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence. We have reviewed the records, and we found no reason why AAA should concoct a story as damaging to her reputation as this, if it were not true that she was raped. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true. It is unbelievable that a young barrio lass would concoct a tale of defloration, allow the examination of her

private parts, and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was in fact raped. No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it would be instinctive for her to protect her honor and obtain for the wicked acts committed upon her.

6. CRIMINAL LAW; RAPE; PROPER PENALTY AND CIVIL DAMAGES. – The trial court was correct in finding appellant guilty beyond reasonable doubt of Rape, penalized under Article 335, with *Reclusion Perpetua*. In accordance with current jurisprudence, the amount of moral damages is ₱50,000.00 and civil indemnity in the amount of ₱50,000.00 is also awarded to the victim, pursuant to prevailing case law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is an appeal from a decision[1] of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 37 in Criminal Case No. 13726, finding appellant Gaudencio Alberio guilty of Rape and sentencing him to suffer *Reclusíon Perpetua* and to pay the complainant, AAA, the sum of ₱100,000.00 as moral damages, as well as the costs of the suit.

The information against appellant alleged:

That sometime in November, 1997 at about 6:30 o'clock in the afternoon, at Barangay Bulado, Guihulngan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court the above-named accused by means of force and intimidation, willfully, unlawfully and feloniously did lie and succeeded in having sexual

[1] *Rollo,* p. 14.

intercourse with Ana Liza Calunsag, a 14 year old minor against the latter's will and which act resulted to the pregnancy of the victim.

Contrary to Article 335 of the Revised Penal Code as amended by Republic Act No. 8353, the Anti-Rape Law of 1997.[2]

When arraigned on March 22, 1999, appellant, assisted by counsel, pleaded "Not Guilty."[3]

The evidence for the prosecution is as follows:

AAA was, at the time material to this case, a 14-year old high school student. Sometime in November 1997, between 6:00 and 6:30 in the evening, she went to the house of a former classmate, Vivencia Alberio, [4] to retrieve a schoolbook which the latter had borrowed. She was met at the house by the appellant, Vivencia's father, who was well-known to the victim.

Appellant told the victim that Vivencia was waiting inside the kitchen. The victim went inside the house, entering through the main door at the second floor balcony before descending to the ground floor where the kitchen was located. Vivencia was nowhere to be found. The victim went back upstairs. She attempted to leave the house through the balcony but appellant blocked her egress.[5] He was clad only in short pants, and was half-naked from the waist up.[6] When the victim saw that he was carrying a knife, she attempted to run away.[7] Appellant hugged the victim, pointed the knife at her neck, and covered her mouth.[8] The victim struggled and attempted to shout, but to no avail. Appellant forced her to lie down, knelt on her legs to prevent her from struggling, pointed the knife at her mouth, stripped

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[2] Records, p. 3.

[3] *Id*., p. 50.

[4] Vivencia's name is also spelled in the Records as "Vevencia."

[5] TSN, 5 July 1999, p. 11.

[6] *Id*., p. 13.

[7] *Id*., pp. 13-14.

[8] *Id*., pp. 14-15.

her of her shorts and panties, and lifted her blouse.[9] The victim tried to kick appellant's knees but she could not move because her legs were pinned down.[10] Appellant then inserted two fingers into the victim's vagina.[11] She felt pain. She could not break free from his clutches because of her fear.

After about three minutes, appellant removed his shorts, lay down on top of the victim, and inserted his penis into her vagina. The victim knew he was no longer using his mere fingers to penetrate her because she saw both of his hands — one of his hands was supporting himself while the other was holding the knife which was pointed at the victim's mouth. [12] While he was on top of her, appellant made a pumping motion with his body. She felt pain.

After the sexual act, appellant dressed the victim up in her shorts and panties and allowed her to stand up.[13] The victim was in tears. Appellant warned the victim not to tell her parents about the incident, otherwise, he would kill both her and her parents. The victim then went home, still crying. She did not tell anyone what appellant did, not even her parents.[14]

Appellant continued to visit the *sari-sari* store owned by the victim's parents. Sometimes, the victim was the one tending the store, and he would give her threatening stares. Still afraid of appellant, the victim would be moved to tears.[15]

In the meantime, rumors circulated that the victim was pregnant. About four months after the incident, in March 1998, the victim's mother brought her to a *manghihilot* who confirmed the pregnancy of the victim.[16] The victim's parents asked her

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[9] *Id*., pp. 14-18.

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

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

[12] *Id*., p. 20.

[13] *Id*., p. 21.

[14] *Id*., pp. 20-21.

[15] *Id*., p. 25.

who was the father of her unborn child, but because of fear of appellant, she did not immediately disclose her ravisher's identity.[17] After being forced by her parents, the victim finally revealed that the appellant was the father of the child she was carrying.[18]

On April 3, 1998, the victim was examined by a certain Dr. Rogelio Regalado, a general practitioner, who testified that the victim was approximately nineteen weeks and three days pregnant on the date of his initial examination.[19] He based this finding on the victim's last menstrual period.

On June 24, 1998, the victim gave birth to a son, whom she named BBB.[20]

The defense opted not to present any evidence.

On January 7, 2002, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court finds the accused Gaudencio Alberio GUILTY beyond reasonable doubt of Rape penalized under Article 266-A, Revised Penal Code, as amended by R.A. No. 8353 (The Anti-Rape Law of 1997) and hereby sentences the said accused to suffer the penalty of *RECLUSION PERPETUA*, together with all the accessory penalties provided for by law, to pay the sum of ₱100,000.00 to victim AAA as moral damages, and the cost.
>
> The Jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of this case in accordance with law.
>
> SO ORDERED.[21]

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[16] *Id.*, p. 23.

[17] *Id.*, pp. 23-24.

[18] *Id.*, p. 25.

[19] TSN, 20 June 2000, pp. 6-7.

[20] TSN, 5 July 1999, pp. 27-28; Exhibit "A", Records, p. 132.

[21] *Rollo*, pp. 193-94.

Hence, this appeal, on the lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN MISAPPRECIATING MATERIAL FACTS OF IMPORTANCE WHICH IF CONSIDERED AND GIVEN PROBATIVE VALUE, WOULD HAVE TILTED THE SCALES OF JUSTICE IN FAVOR OF AN ACQUITTAL.[22]

While not unmindful of the constitutional presumption of innocence, and firmly aware that the accused's failure to take the witness stand is not to be taken against him, we consider that the prosecution has amply discharged its burden of proving the guilt of the accused. Not one scintilla of evidence was presented by the appellant to rebut the evidence of the prosecution. It is a well-settled rule that the trial court's assessment of witnesses' credibility will not be disturbed on appeal, absent any showing of palpable error or grave abuse of discretion.[23] Appellate courts generally accord credence to the factual findings of the trial court, for the latter was in the best position to observe the witnesses' deportment and manner of testifying.[24]

In the case at bar, we find no reason to overturn the ruling of the trial court that the victim's testimony was credible. Also settled is the rule that an accused can be convicted on the strength of the lone testimony of a rape victim.[25] The clear and convincing testimony of the offended party, given ample credence by the trial court, suffices to merit a conviction in this case.

In this appeal, the defense contends that the offended party did not exhibit the natural behavior of a rape victim.[26] Specifically, the defense assails the victim's narration as to how she was raped, pointing out that she did not make any outcry and did

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[22] *Rollo*, p. 28.

[23] *People v. Oliver*, 362 Phil. 414 (1999); *People v. Barredo*, 357 Phil. 924 (1998); *People v. Escandor*, 333 Phil. 227 (1996); *People v. Deopante*, 331 Phil. 998 (1996).

[24] *People v. Atop*, 349 Phil. 821 (1998); *People v. Agbayani*, 348 Phil. 341 (1998).

[25] *People v. Rabosa*, 339 Phil. 198 (1997).

[26] *Rollo*, pp. 31-35.

not sustain a single cut or bruise.[27] The defense then argues that the failure to make any outcry, and the failure to show physical evidence of any struggle, diminishes AAA's story that she was forced into the sexual act against her will.[28]

The contention has no merit.

We disagree with the contention that the victim's failure to shout for help is fatal to the charge of rape. Furthermore, we are not persuaded by appellant's contention that the victim offered no resistance. Rape is committed when the accused has carnal knowledge of a woman by use of force or intimidation.[29] Physical resistance is not an essential element of the felony, and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety.[30] It is enough that the malefactor intimidated the complainant into submission. Failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused.[31] Furthermore, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone.[32] The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[33]

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[27] *Id*., p. 34.

[28] *Id*., pp. 34-35.

[29] REVISED PENAL CODE, as amended, Art. 266-A, which provides in relevant part: "*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"; xxx

[30] *People v. Rebose*, 367 Phil. 768 (1999).

[31] *People v. Corea*, 336 Phil. 72 (1997).

[32] *People v. Cabel*, G.R. No. 121508, 14 December 1995, 282 SCRA 410.

[33] *People v. Malunes*, 317 Phil. 378 (1995).

In this case, AAA failed to shout for help as she was threatened with death by the appellant. During the whole sexual assault, appellant poked the knife at her neck. When a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently.[34] Her failure to shout for help does not vitiate the credibility of her account. It must not be forgotten that the victim was only 14 years old at the time of the rape, inexperienced in the ways of the world.

It is completely irrelevant that the victim was unable to show cuts, lacerations or bruises that would be ample physical evidence of the presence of a struggle. The presence or absence of physical bruises are not necessary in order to prove the charge of rape. Besides, due to extreme fear, the victim did not report the rape until four months after the incident, [35] at which point any bruises or injuries sustained during the sexual assault would already have healed.

The defense also argues that the fact that the victim pointed to the appellant as the father of her child negates her assertion that she was completely paralyzed with fear.[36] The defense claims that the improbabilities and inconsistencies in the testimony of the victim cast serious doubts as to its veracity. Specifically, the defense asserts that it was highly improbable that a victim so afraid of her ravisher would actually come forward to testify.

In this case, it must not be forgotten that the victim displayed the highest level of reluctance in pointing the finger at appellant, which conduct reinforces her story of constant fear, intimidations and threats. Indeed, the victim said she believed the appellant's story that she and her parents would be murdered if she revealed that she was raped.[37] Only the pressure exerted by her father broke through the victim's fear. She named her ravisher only when forced to do so by the circumstance of her pregnancy.[38]

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[34] *People v. Rebose, supra.*

[35] TSN, 5 July 1999, p. 24.

[36] *Rollo*, pp. 35-38.

[37] TSN, 5 July 1999, pp. 21, 22, 24.

[38] *Id.*, pp. 23-25.

Had she not been pregnant, appellant's hideous act may have remained a secret.

We thus see no inconsistency in the story presented by the victim. Contrary to the contentions of the defense, the alleged inconsistencies are minor; they do not affect the credibility of the victim. Indeed, they should be taken as indicia of truth rather than as badges of falsehood, for they erase any suspicion of a rehearsed testimony.[39] After her traumatic experience, we do not expect the victim to remember vividly the appellant's threats or each and every ugly detail of the sexual assault.[40] What is significant is that AAA was clear and consistent in asserting that the appellant intimidated and raped her. On the basis of the victim's credible testimony, the conviction of appellant is inevitable.

As a final argument, the defense assails the testimony of Dr. Regalado, who examined the victim during her pregnancy and assisted in the birth of the child. The defense argues that, based on the testimony of Dr. Regalado, the victim was already five months pregnant on April 3, 1998, the date of her first physical examination by Dr. Regalado. The defense argues that if the victim was already five months pregnant on that date, then the accused, who allegedly raped the victim in November 1997, roughly four months before, could not have been the father of the child she was carrying. Moreover, the defense argues that AAA gave birth to a full-term baby and not a premature infant, again negating her story as regards the child's paternity.

We have reviewed the testimony of Dr. Regalado, and fail to see that he made the purportedly categorical statements that the defense alleges. While conceding that the victim *could* have been as much as five months pregnant on April 3, 1998,[41] and

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[39] *People v. Salvatierra*, 342 Phil. 22 (1997); *People v. Zumil*, 341 Phil. 173 (1997); *People v. Bergonia*, 339 Phil. 284 (1997).

[40] *People v. Rabosa*, 339 Phil. 198 (1997); *People v. Butron*, 338 Phil. 856 (1997).

[41] TSN, 20 June 2000, pp. 13-14.

could have delivered a full-term infant on June 24, 1998,[42] he was more of the opinion that the victim was merely nineteen weeks and three days pregnant when he initially examined her,[43] and positive in his opinion that the child he delivered on June 24, 1998 was a premature infant, its birth weight notwithstanding.[44] These assertions support the victim's story of rape sometime in November 1997. Besides, the victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Pregnancy is not an essential element of the crime of rape. Whether the child which AAA bore was fathered by the accused, or by some unknown individual, is of no moment in the instant case. The veracity of her story is shown in her testimony. Her pregnancy and childbirth are merely corroborative. When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence.[45]

We have reviewed the records, and we found no reason why AAA should concoct a story as damaging to her reputation as this, if it were not true that she was raped. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[46] It is unbelievable that a young barrio lass would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal

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[42] *Id*., pp. 14-15, 16-17.

[43] *Id*., pp. 6-7, 9-10.

[44] *Id*., pp. 10-11.

[45] *People v. Escala*, 354 Phil. 46 (1998).

[46] *People v. Clopino*, 352 Phil. 1040 (1998).

of a public trial, unless she was in fact raped.[47] No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it would be instinctive for her to protect her honor and obtain justice for the wicked acts committed upon her.[48]

Thus, the trial court was correct in finding appellant guilty beyond reasonable doubt of Rape, penalized under Article 335, with *Reclusion Perpetua*.

We find, however, that the trial court erred in awarding ₱100,000.00 in moral damages to the victim AAA. In accordance with current jurisprudence, the amount of moral damages is hereby reduced to ₱50,000.00.[49] However, civil indemnity in the amount of ₱50,000.00 is also awarded to the victim, pursuant to prevailing case law.[50]

WHEREFORE, the decision of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 37, in Criminal Case No. 13726, finding appellant Gaudencio Alberio guilty beyond reasonable doubt of Rape and sentencing him to suffer the penalty of *Reclusion Perpetua*, is *AFFIRMED* with the *MODIFICATIONS* that appellant is *ORDERED* to pay the offended party, AAA, moral damages in the reduced amount of ₱50,000.00, and civil indemnity in the amount of ₱50,000.00.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), *Panganiban, Carpio,* and *Azcuna, JJ., concur*.

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[47] *People v. Auxtero*, 351 Phil. 1001 (1998).

[48] *People v. Travero*, 342 Phil. 263 (1997).

[49] *People v. Pagsanjan*, G.R. No. 139694, 27 December 2002.

[50] *People v. Biong*, G.R. Nos. 144445-47, 30 April 2003; *People v. Invencion*, G.R. No. 131636, 05 March 2003.

EN BANC

[A.C. No. 4334. July 7, 2004]

SUSAN CUIZON, *complainant, vs.* **ATTY. RODOLFO MACALINO,** *respondent.*

SYNOPSIS

Respondent counsel was found guilty of gross misconduct warranting a penalty of disbarment. That after agreeing to represent a client, taking possession of the latter's car and persuading him to sell the same to respondent for a nominal amount, respondent refused to carry out his duties as counsel prompting the client to secure the services of another lawyer. This was compounded by the fact that respondent issued a check in favor of the client which was later dishonored for having been drawn against a closed account. Further, respondent went into hiding in order to avoid service upon him of the warrant of arrest issued by the Court. Respondent also repeatedly failed to comply with the Court's Resolution requiring him to file his comment on the client's complaint.

SYLLABUS

1. LEGAL ETHICS; LAWYERS; DUTY TO CLIENTS. – It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. However, once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve his client with competence and diligence, and champion the latter's cause with whole-hearted fidelity. Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS SHALL NOT NEGLECT A LEGAL MATTER ENTRUSTED TO HIM; VIOLATED WHEN LAWYER REFUSED TO CARRY OUT HIS DUTIES AS COUNSEL. – In the instant case, after agreeing to represent the complainant's husband, taking possession of their car and

persuading the complainant to sell the same to him for a nominal amount, the respondent refused to carry out his duties as counsel prompting the complainant to secure the services of another lawyer to defend her husband. The respondent clearly breached his obligation under Rule 18.03, Canon 18 of the Code of Professional Responsibility which provides: A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

3. ID.; ID.; GOOD MORAL CHARACTER; ISSUANCE OF A CHECK DRAWN AGAINST A CLOSED ACCOUNT SHOWS LACK OF PERSONAL HONESTY. – The respondent's infraction is compounded by the fact that he issued a check in favor of the complainant's husband which was later dishonored for having been drawn against a closed account. Such conduct indicates the respondent's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence and constitutes a ground for disciplinary action.

4. ID.; ID.; LACK OF RESPECT TO THE COURT; FAILURE TO COMPLY WITH THE COURT'S RESOLUTIONS, A CASE OF. – The fact that the respondent went into hiding in order to avoid service upon him of the warrant of arrest issued by the Court exacerbates his offense. His repeated failure to comply with the Court's *Resolutions* requiring him to file his comment on the complaint should also be taken into account. By his repeated cavalier conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court. As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. A lawyer who willfully disobeys a court order requiring him to do something may not only be cited and punished for contempt but may also be disciplined as an officer of the court.

5. ID.; ID.; GROSS MISCONDUCT; PROPER PENALTY IS DISBARMENT. – Section 27, Rule 138 of the Rules of Court provides that: A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of

the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. The acts of the respondent constitute gross misconduct which renders him unfit to discharge the duties of his office and unworthy of the trust and confidence reposed on him as an officer of the court. His disbarment is consequently warranted.

APPEARANCES OF COUNSEL

Bautista A. Rosario for complainant.

D E C I S I O N

***PER CURIAM*:**

The saga of a client's one decade-long travails caused by a recalcitrant lawyer who defrauds his client and flouts the directives of the highest court of the land must deservedly end in tribulation for the lawyer and in victory for the higher ends of justice. The opening verses of the narrative may have been composed by the lawyer, but it is this Court that will have to, as it now does, write *finis* to this sordid tale, as well as to the lawyer's prized claim as a member of the Bar.

This administrative case against respondent Atty. Rodolfo Macalino was initiated by a letter-complaint[1] dated October 27, 1994 filed by Susan Cuizon with the Office of the Court Administrator charging the respondent with Grave Misconduct.

The antecedents[2] are as follows:

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[1] *Rollo*, Vol. 1, pp. 1-2.

[2] *Id*., at 78-80, Report and Recommendation of Investigating Commissioner Milagros V. San Juan dated October 27, 1998.

The legal services of the respondent was sought by the complainant in behalf of her husband Antolin Cuizon who was convicted for Violation of Dangerous Drug Act of 1972. When the spouses had no sufficient means to pay the legal fees, the respondent suggested that he be given possession of complainant's Mistubishi car, which was delivered to the respondent. Later respondent offered to buy the car for Eighty Five Thousand Pesos (₱85,000.00) for which he paid a down payment of Twenty Four Thousand Pesos (₱24,000.00). After the sale of the car, respondent failed to attend to the case of Antolin Cuizon, so complainant was forced to engage the services of another lawyer.

The respondent was required to comment on the complaint lodged against him as early as December 5, 1994.

On December 29, 1995 the respondent was ordered to show cause why he should not be meted with disciplinary action or declared in contempt for failure to comply with the order of the court, to comment on complaint.

On June 17, 1996, for failure to comply with the previous orders of the court, a fine of Five Hundred Pesos (₱500.00) was imposed upon him and the order requiring him to file his comment on the complaint was reiterated.

On July 24, 1996 respondent paid the Five Hundred Pesos (₱500.00) fine imposed on him, however he failed to fully comply with the order of the court.

On December 5, 1996 the Supreme Court received a letter from Antolin Cuizon informing the court that the respondent again committed another infraction of the law by issuing a check against a closed account.

On February 12, 1997 the Supreme Court issued a resolution increasing the imposed fine on respondent in the amount of Five Hundred Pesos (₱500.00) to One Thousand Pesos (₱1,000.00) and again the order requiring the respondent to file his comment was reiterated.

On November 13, 1997 the cashier of the Disbursement and Collection Division issued a certification that the imposed fine of One Thousand Pesos (₱1,000.00) has not been paid by the respondent.

On December 10, 1997 the Supreme Court issued a warrant of arrest directing the National Bureau of Investigation to detain the respondent until further Orders from the Court.

On February 23, 1998, Allen M. Mendoza Intelligence Agent of the NBI of San Fernando, Pampanga rendered a Report and Return of the Service of Warrant of Arrest to the effect that the warrant could not be served for reason that the subject is no longer residing at his given address.

On April 22, 1998 the court again issued another resolution requesting the complainants to furnish the court with the correct and present address of the respondent.

In compliance with this directive, the complainant reported that the respondent had not changed his residence. In fact, upon the information given by his own son, the respondent comes home at midnight and leaves at dawn.[3]

In the *Resolution*[4] dated July 27, 1998, the Court resolved to consider the *Resolution* of December 10, 1997 finding the respondent guilty of contempt of court and ordering his imprisonment until he complies with the *Resolution* of February 12, 1997, requiring him to pay a fine of ₱1,000.00 and to submit his comment on the instant administrative complaint served on the respondent by substituted service. The Court likewise declared the respondent to have waived his right to file his comment on the administrative complaint and referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Investigating Commissioner forthwith filed her *Report and Recommendation*[5] dated October 27, 1998 finding the respondent unfit to remain a member of the Bar and recommending that he be disbarred. The IBP adopted the *Report and Recommendation* with the modification that the respondent instead be suspended from the practice of law for three (3) years.[6]

In its *Resolution*[7] dated July 19, 2000, the Court resolved to return the case to the IBP which, in turn, remanded the case to

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[3] *Id.* at 71.

[4] *Id.* at 72.

[5] *Supra*, note 2.

[6] *Supra*, note 1 at 75, Resolution No. XIV-00-138 dated April 7, 2000.

[7] *Id.* at 81.

the Investigating Commissioner for further investigation and compliance with procedural due process.[8]

As directed, the Investigating Commissioner conducted further investigation and submitted her *Report and Recommendation*[9] dated November 16, 1999 stating that the respondent failed to appear during the scheduled hearings on January 5, 1999 and March 23, 1999. Moreover, despite his counsel's motion for extension of time within which to file a comment on the complaint having been granted, the respondent failed to file his comment. Hence, the Investigating Commissioner reiterated her recommendation that the respondent be disbarred.

The IBP modified the Investigating Commissioner's recommendation and urged instead that the respondent be suspended from the practice of law for five (5) years.[10] The Court noted the recommendation in its *Resolution*[11] dated September 8, 2003.

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. However, once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve his client with competence and diligence, and champion the latter's cause with whole-hearted fidelity.[12] Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.[13]

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[8] *Rollo*, Vol. II, p. 4, Resolution No. XIII-98-294 dated January 28, 1999.

[9] *Supra*, note 1 at 76-77.

[10] *Supra*, note 8 at 17, Resolution No. XV-2003-335 dated June 21, 2003.

[11] *Id*. at 23.

[12] *Santiago v. Fojas*, A.C. No. 4103, September 7, 1995, 248 SCRA 68, citations omitted; *Curimatmat v. Gojar*, A.C. No. 4411, June 10, 1999, 308 SCRA 123.

[13] *Orcino v. Gaspar*, A.C. No. 3773, September 24, 1997, 279 SCRA 379, citations omitted.

In the instant case, after agreeing to represent the complainant's husband, taking possession of their car and persuading the complainant to sell the same to him for a nominal amount, the respondent refused to carry out his duties as counsel prompting the complainant to secure the services of another lawyer to defend her husband. The respondent clearly breached his obligation under Rule 18.03, Canon 18 of the Code of Professional Responsibility which provides: A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

The respondent's infraction is compounded by the fact that he issued a check in favor of the complainant's husband which was later dishonored for having been drawn against a closed account.[14] Such conduct indicates the respondent's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence and constitutes a ground for disciplinary action.[15]

The fact that the respondent went into hiding in order to avoid service upon him of the warrant of arrest issued by the Court exacerbates his offense. His repeated failure to comply with the Court's *Resolutions* requiring him to file his comment on the complaint should also be taken into account. By his repeated cavalier conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court.[16]

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.[17] A lawyer who willfully disobeys a court

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[14] The complainant's husband, Antolin Cuizon, consequently filed a *Complaint-Affidavit* against the respondent for violation of B.P. 22; *Supra*, note 1 at 56-58.

[15] *Atty. Navarro v. Atty. Meneses III*, 349 Phil. 520. (1998).

[16] *Jardin v. Villar*, A.C. No. 5474, August 23, 2003.

[17] *Villaflor v. Sarita*, A.C.-CBD No. 471, June 10, 1999, 308 SCRA 129.

order requiring him to do something may not only be cited and punished for contempt but may also be disciplined as an officer of the court.[18]

Section 27, Rule 138 of the Rules of Court provides that:

> A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

The foregoing acts of the respondent constitute gross misconduct which renders him unfit to discharge the duties of his office and unworthy of the trust and confidence reposed on him as an officer of the court.[19] His disbarment is consequently warranted.[20]

WHEREFORE, respondent Rodolfo Macalino is hereby DISBARRED. Let a copy of this decision be attached to the respondent's personal records and furnished the Integrated Bar of the Philippines and all courts in the country.

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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[18] Agpalo, Ruben, *THE CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS,* 1991, citing *Casals v. Cusi, Jr.*, No. L-35766, July 12, 1973, 52 SCRA 58; *De Leon v. Torres,* 99 Phil. 463 (1956); *In re Almacen*, No. L-27654, February 18, 1970, 31 SCRA 562; and *Balasabas v. Aquilizan*, No. L-51414, July 31, 1981, 106 SCRA 489.

[19] Martin, Ruperto, *LEGAL AND JUDICIAL ETHICS, EIGHT EDITION,* 1984, citing *People v. Smith*, 93 Adm. St. Rep. 206.

[20] *Atty. Navarro v. Atty. Meneses III, supra.*

EN BANC

[A.M. No. 01-11-291-MTC. July 7, 2004]

RE: INITIAL REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT OF PULILAN, BULACAN.

SYNOPSIS

For failure to follow the Court Circulars in the manner of handling judiciary funds, the Court found Clerk of Court II Arturo Batongbacal guilty of gross dishonesty, gross misconduct, and malversation of public funds while in office. He failed to remit his funds on time, he did not regularly submit his reports, and he did not record his cash transactions in the cashbook. Hence, he was dismissed from service with forfeiture of his withheld salaries, the same to be applied to his accountabilities. Further, he was disqualified from re-employment in any government office.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DUTY TO BE FAMILIAR WITH DIFFERENT CIRCULARS OF THE COURT.— Suffice it to be stated that as the judge of a single sala court, Judge Viola was expected to be familiar with the different circulars of the Court as his duty was not confined to adjudicatory functions but includes the administrative responsibility of organizing and supervising the court personnel to secure a prompt and efficient dispatch of business. His designation of process server Caleon as his co-signatory in the bank transaction for the fiduciary fund and not Batongbacal as the appointed clerk of court violates Circular 50-95 which explicitly provides that the executive judge and the clerk of court are the authorized signatories in the bank transaction, be it deposit or withdrawal of the fiduciary funds. Thus, his claim that he was informed very much later that Batongbacal should be his co-signatory in the bank transaction regarding the fiduciary funds should have been subject to, at the very least, administrative admonition.

2. ID.; ID.; COURT EMPLOYEES; CLERKS OF COURT; DUTY TO IMMEDIATELY DEPOSIT FUNDS RECEIVED TO AUTHORIZED DEPOSITORY BANKS.— There is no doubt that Batongbacal had been remiss in the performance of his duties as clerk of court with regard to financial concerns. He failed to remit his funds on time; he did not regularly submit his reports; and did not record his cash transactions in the cashbook. Clerks of courts have always been reminded of their duty to immediately deposit the various funds received by them to the authorized depository banks. The Court has issued several circulars regarding court funds. Administrative Circuflar No. 31-90 issued on October 15, 1990, provides that the amounts accruing to the JDF should be deposited daily with the PNB. If depositing daily is not possible, deposits for the fund shall be every second and third Fridays at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days above indicated. SC Administrative Circular No. 5-93 was issued on April 30, 1993 designating the Land Bank of the Philippines (LBP) as the depository bank, in place of PNB, for all the amounts accruing to the Judiciary Development Fund under JDF-Supreme Court-Manila Savings Account No. 159-01163-1. These Circulars are mandatory in nature designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Batongbacal's responsibility of remitting the various court funds started from August 1, 1999. Therefore, he must be fully aware of these circulars for they are already extant when he assumed office. Neither can he proffer as an excuse overwork and lack of manpower or any other pretext. The moment he accepted his appointment as clerk of court, it is presumed and assumed that he likewise accepted the corresponding duties and responsibilities attached to it. He should have developed an appropriate system so that he can efficiently attend to his given tasks.

3. ID.; ID.; ID.; ID.; ID.; UNDUE DELAY IN REMITTING COLLECTIONS CONSTITUTES MISFEASANCE.— Clerks of courts are the chief administrative officers of their respective courts. They must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings. They are judicial officers entrusted to perform delicate functions with regard to the collection of

fees and are expected to correctly and effectively implement regulations such that even undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. They are the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the clerks of court are liable for any loss, shortage, destruction or impairment of said funds and property.

R E S O L U T I O N

***PER CURIAM*:**

The auditing team that conducted an on the spot audit examination and reconciliation of the book of accounts of the Municipal Trial Court of Pulilan, Bulacan on August 13-17, 2001 reported that:

1. Mr. Tomas E. Ocampo, Clerk of Court II, had shortages in his collections in the Judiciary Development Fund (JDF) amounting to ₱2,036.00 and in the Clerk of Court General Fund (CCGF) amounting to ₱667.00; and

2. Mr. Arturo S. Batongbacal, Clerk of Court II (successor of Mr. Tomas E. Ocampo), had shortages of ₱53,596.00 and ₱26,847.00 representing the Judiciary Development Fund (JDF) and Clerk of Court General Fund (CCGF), respectively.

   As to the Clerk of Court Fiduciary Funds, Mr. Arturo S. Batongbacal failed to present the much needed records and documents to finalize the audit on this account from January 1998 to present.

Former Clerk of Court Tomas E. Ocampo, who had earlier resigned from the service by reason of illness, complied with the aforesaid resolution by paying the shortages in the JDF and CCGF amounting to ₱2,036.00 and ₱667.00, respectively, on March 13, 2002 as evidenced by Supreme Court O.R. No. 15739545 for CCGF and Supreme Court O.R. No. 15740417 for JDF. Upon the recommendation of the OCA, this administrative matter insofar as Ocampo is concerned was considered closed and terminated in the Resolution of December 9, 2002.

Based on the aforesaid report of the auditing team and upon the recommendation of the OCA, the Court issued a Resolution dated January 14, 2003 which is reproduced as follows:

Administrative Matter No. 01-11-291-MTC (Re: Initial Report on the Financial Audit conducted in the Municipal Trial Court of Pulilan, Bulacan). — Acting on the initial report on the financial audit conducted in the Municipal Trial Court of Pulilan, Bulacan, the Court Resolves to:

(a) DIRECT: (1) Mr. Tomas E. Ocampo, former Clerk of Court, MTC, Pulilan, Bulacan, to: REMIT/DEPOSIT within fifteen (15) days from notice, the shortages in their corresponding accounts on JDF and COC General Fund amounting to Two Thousand Thirty Six Pesos (₱2,036.00) and Six Hundred Sixty Seven Pesos (P667.00), respectively, and to furnish the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, of such remittance advice/deposit slips;

(b) DIRECT Mr. Arturo S. Batongbacal, the present Clerk of Court, MTC, Pulilan, Bulacan, to: (1) RESTITUTE the shortages for the period July 2000 and July 31, 2001 in the amount of Fifty Three Thousand Five Hundred Ninety Six Pesos (₱53,596.00) for the JDF and Twenty Six Thousand Eight Hundred Forty Seven Pesos (₱26,847.00) for COC General Fund; (2) SUBMIT within ten (10) days from notice the required documents as directed by the Fiscal Monitoring Division, this Office, in its letter dated August 24, 2001, to finalize the audit of Fiduciary Fund; and (3) EXPLAIN within ten (10) days from notice why no administrative sanction shall be imposed upon him for his failure to: (aa) remit all collections for the period covering July 2000 to July 31, 2001 on JDF and COC General Fund; (bb) record daily transactions in the official cashbooks; (cc) submit monthly reports of collections and deposits/ withdrawals to the Accounting Division of the Office of the Court Administrator; and (dd) follow the circulars issued by the court in the manner of handling fiduciary funds; and

(c) DIRECT Judge Horacio T. Viola, Jr. to: (1) EXPLAIN within ten (10) days from notice why he: (aa) allowed the Process Server, Mr. Rolando Calleon to be his co-signatory in the bank transaction for Fiduciary Fund when it should be

> Mr. Arturo S. Batongbacal, being the appointed Clerk of Court which is in violation of Circular No. 50-95; and (bb) did not report the non-submission of Mr. Batongbacal of Monthly Report of Collections and Deposits/Withdrawals to the Accounting Division, Office of the Court Administrator; (2) RELIEVE Mr. Batongbacal as Accountable Officer and designate a competent staff in his stead; and (3) MONITOR the accountable officer to safeguard the judiciary funds; and
>
> (d) DIRECT the Financial Management Office, to WITHHOLD the salaries and other allowance of Mr. Arturo S. Batongbacal to cover possible shortages that may be found in his Fiduciary Fund collections pending the outcome of the audit.

In compliance with said Resolution, Batongbacal, on February 15, 2002, in his letter-explanation, related in detail his predicament as to why he failed to follow the circulars in the manner of handling judiciary funds which he attributed to overwork and lack of manpower. He likewise averred that there was no formal turnover effected by the former clerk of court and that there was no efficient recording system aggravated by the problem of termites and rodents which destroyed some documents filed in court.

As to the directive for him to restitute the unremitted funds, he states:

> I was order (*sic*) to restitute the supposedly (sic) shortages, but to date and with all honesty I am incapable of producing such amount, besides, as I have stated in the preceding paragraph, granting even that what I have done in the transferring of funds was technically a flaw, **said cash that I am ordered to restitute are handed as re-imbursements I made to litigants who have acknowledged receipt of such but was not withdrawn in the deposited Fiduciary funds of this court as they are part of the Fiduciary funds. In the course of the initial audit, and I have informed the court's auditor that there are still some documents that I have not retrieved owing to the construction being made then at the court. To date, some of those documents are retrieved and unearthed from the file in the temporary storage areas where it was** (*sic*) **deposited so as to effect the renovation of the court. With such documents, hopefully the records of the court's Judiciary Funds would be**

rectified, eventually freeing me of such shortages. That I have to resort to such and adapt (sic) such practice so that I won't be keeping a lot of cash in my table as the court is not equipped with a vault or protective storage for such amount. Incidentally, in recognition of said problem, construction of a vault is included in the Second-phase of the court's construction. Too, (*sic*) in an effort to minimize going to the Office of the Court Administrator, and spend one whole day out of the office, I have tried to remit through bank transfer the amount of some ₱69,000.00 but later I could gleaned (*sic*) that said amount, as it was not a duly supported by required documents, as it was made (*sic*) ordered deposited by the COA Auditor on the day of the audit, was not credited to my record of remittances. With such development, I again have to resort to what I think is the best given the premises. (Emphasis supplied)

Judge Viola submitted a letter-explanation dated February 16, 2002 stating that he designated Rolando Caleon, the court's process server, to be his co-signatory in the bank transaction for fiduciary funds as replacement of former Clerk of Court Ocampo who resigned by reason of disability. Allegedly, Caleon is the only staff with a vehicle needed in transporting the funds safely as the Land Bank of the Philippines is located at Baliuag, Bulacan a neighboring town around ten kilometers north and that Judge Viola was only informed very much later that Batongbacal, the appointed Clerk of Court, should be the undersigned's co-signatory. Judge Viola immediately made representations with the Land Bank relieving Caleon and designating Batongbacal as his replacement.

As to the monthly reports regarding the court's funds — collections, deposits and withdrawals, Judge Viola avers that all the while he knew his reports were up to date, but for reasons only known to Batongbacal, said reports were not submitted and the said non-submission came to his knowledge belatedly.

Judge Viola likewise reported that he had complied with directive (c-2) of the resolution by designating Remedios Roxas as accountable officer in place of Batongbacal.

In a Resolution dated November 17, 2003, this administrative matter was referred to the OCA for evaluation, report and recommendation.

In a Memorandum dated March 30, 2004, the OCA recommended that Batongbacal be:

1. SUSPENDED pending resolution of this administrative matter, for his continuous failure to comply with the resolution dated January 14, 2002 which directed him to:

a) Restitute the shortages amounting to FIFTY-THREE THOUSAND FIVE HUNDRED NINETY-SIX PESOS (₱53,596.00) for JDF and TWENTY-SIX THOUSAND EIGHT HUNDRED FORTY-SEVEN PESOS (₱26,847.00) for CCGF;

b) Submit to the Fiscal Monitoring Division and account the records of his collections to establish his accountabilities for Fiduciary Fund; and

2. DIRECTED to comply with the said resolution dated January 14, 2002 within twenty (20) days from notice. The Court finds the explanation of Mr. Batongbacal to be without merit.

The OCA did not delve on the explanation submitted by Judge Viola but referred to him as the "late Judge Horacio Viola."

Suffice it to be stated that as the judge of a single sala court, Judge Viola was expected to be familiar with the different circulars of the Court as his duty was not confined to adjudicatory functions but includes the administrative responsibility of organizing and supervising the court personnel to secure a prompt and efficient dispatch of business.[1] His designation of process server Caleon as his co-signatory in the bank transaction for the fiduciary fund and not Batongbacal as the appointed clerk of court violates Circular 50-95 which explicitly provides that the executive judge and the clerk of court are the authorized signatories in the bank transaction, be it deposit or withdrawal of the fiduciary funds. Thus, his claim that he was informed very much later that Batongbacal should be his co-signatory in the bank transaction regarding the fiduciary funds should have been subject to, at the very least, administrative admonition.

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[1] *Judge Alicia Gonzales-Decano vs. Judge Orlando Ana F. Siapno*, 353 SCRA 269, 275 (2001).

However, this is no longer possible as Judge Viola died on January 17, 2004 per verification from the Office of the Administrative Services of the OCA.

Anent the administrative case against Batongbacal.

There is no doubt that Batongbacal had been remiss in the performance of his duties as clerk of court with regard to financial concerns. He failed to remit his funds on time; he did not regularly submit his reports; and did not record his cash transactions in the cashbook. He explains that their court is a single sala court; that he is saddled by overwork and lack of manpower worsened by the lack of formal turnover of the records and documents effected by his predecessor and that he works with a workaholic judge so that he is pre-occupied with the daily hearings and other court adjudicatory concerns.

He also avers that he is unable to restitute the unremitted funds because he used these funds in reimbursing litigants of their cashbonds so he will not be keeping a lot of cash in his table considering that the MTC of Pulilan, Bulacan, then, had no vault or protective storage for such amount. This is bolstered by the initial report of the Auditing Team, *viz*:

Mr. Batongbacal was not able to present to us the much needed records and documents to finalize our audit on this account from January 1998 to present. Although we examined the docket books and case folders hoping that we can establish the accountabilities of Mr. Batongbacal, it turned out that the same was insufficient. **It was however noticed that Mr. Batongbacal has a faulty accounting practice by refunding cashbonds to various litigants the accumulated undeposited amount of collections for the Judiciary Development Fund, the Clerk of Court General Fund and the Fiduciary Fund**.[2] (Emphasis supplied)

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[2] Memorandum dated October 11, 2001 submitted by the Auditing Team to DCA Perez, re: Initial Report on the Financial Audit Conducted in the MTC of Pulilan, Bulacan.

Further, Batongbacal claims that he had remitted ₱69,000.00 through "bank transfer" but was not credited in the record of the remittances.

Clerks of courts have always been reminded of their duty to immediately deposit the various funds received by them to the authorized depository banks. The Court has issued several circulars regarding court funds. Administrative Circular No. 31-90 issued on October 15, 1990, provides that the amounts accruing to the JDF should be deposited daily with the PNB. If depositing daily is not possible, deposits for the fund shall be every second and third Fridays at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days above indicated. SC Administrative Circular No. 5-93 was issued on April 30, 1993 designating the Land Bank of the Philippines (LBP) as the depository bank, in place of PNB, for all the amounts accruing to the Judiciary Development Fund under JDF-Supreme Court-Manila Savings Account No. 159-01163-1. These Circulars are mandatory in nature designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature.[3]

Batongbacal's responsibility of remitting the various court funds started from August 1, 1999.[4] Therefore, he must be fully aware of these circulars for they are already extant when he assumed office. Neither can he proffer as an excuse overwork and lack of manpower or any other pretext. The moment he accepted his appointment as clerk of court, it is presumed and assumed that he likewise accepted the corresponding duties and responsibilities attached to it. He should have developed an appropriate system so that he can efficiently attend to his given tasks.

It was proper on the part of the auditing team not to have credited his alleged remittance of ₱69,000.00 through "bank

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[3] *Office of Court Administrator vs. Fortaleza* citing *Re:Report on the Financial Audit in the RTC, General Santos City and the RTC & MTC of Polomok, South Cotobato,* 385 SCRA 293, 303 (2002).

[4] OCA Memorandum dated March 30, 2004, p. 2.

transfer" considering that he has not produced any document like a bank certification confirming said deposit that would prove the same. He did not even mention the name of the bank. Moreover, all bank remittances should be done with the mandated depository bank, the LBP, as earlier discussed.

The Court in fact has accorded leniency to Batongbacal. The OCA reports in their Memorandum dated March 30, 2004, that for over two years now, he failed to comply with the Resolution of January 14, 2000 directing him to submit all source documents regarding the Fiduciary Funds in order for the auditing team to find out Batongbacal's accountability on this matter and to restitute the subject unremitted funds. And that for the same period of time, Batongbacal has not received his salaries and allowances pursuant to the directive to the Financial Management Office (FMO) to withhold them in the same Resolution of January 14, 2000. In fact, another Resolution was issued by the Third Division of this Court in A.M. No. 4-1-09-MTC[5] ordering the FMO to withhold his salaries and other benefits for failure to submit his DTRs starting August of 2003. The Court is absolutely appalled on why he does not exert an effort to comply with the Court's directives.

Clerks of courts are the chief administrative officers of their respective courts. They must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings. They are judicial officers entrusted to perform delicate functions with regard to the collection of fees and are expected to correctly and effectively implement regulations such that even undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance.[6] They are the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the clerks of court are liable for any loss, shortage, destruction or impairment of said funds and property.[7]

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[5] *Rollo,* p. 64.

[6] *Gutierrez vs. Quitalig,* 400 SCRA 391,399 (2003).

[7] *Office of the Court Administrator vs. Fortaleza, supra.*

WHEREFORE, the Court finds Clerk of Court II Arturo S. Batongbacal *GUILTY* of gross dishonesty, gross misconduct and malversation of public funds while in office. He is ordered *DISMISSED* from the service with forfeiture of his withheld salaries, the same to be applied to his accountabilities. He is further disqualified from re-employment in any branch of the government or in any government-owned or controlled corporations.

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.

EN BANC

[A.M. No. P-02-1626. July 7, 2004]
(Formerly A.M. No. 02-6-377-RTC)

Re: Complaint Against ATTY. WILFREDO B. CLAVERIA for Misappropriation of Judiciary Funds.

[A.M. No. P-03-1759. July 7, 2004]
(Formerly A.M. OCA IPI No. 01-1225-P)

STATE AUDITOR II RODOLFO P. SAÑANO of the Commission on Audit, *complainant, vs.* **ATTY. WILFREDO B. CLAVERIA, Clerk of Court VI, RTC-OCC, Pili, Camarines Sur**, *respondent.*

SYNOPSIS

Two consolidated administrative cases charged respondent Clerk of Court Claveria with misappropriation of judiciary funds. The Office of the Court Administrator gave him two directives to file his comment thereon. The Court also issued a Resolution directing him to explain in writing why no administrative sanction should be imposed upon him. Though issued in a span of almost ten months and all duly received by respondent, the orders were ignored and respondent chose to remain silent on the charges against him. Hence, the Court took respondent's silence as a waiver to file his comment and as an acknowledgement of the truthfulness of the charges against him. Respondent failed to live up to the standards of honesty and integrity expected of an officer of the court. His failure to turn over the money deposited with him and to explain and present evidence thereon constituted gross dishonesty, grave misconduct and malversation of public funds. The Court deemed it proper to dismiss respondent and further, he must be fined for contempt of Court for ignoring the orders of the Court.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; SILENCE IS IMPLIED ADMISSION OF AN ACCUSATION. – Respondent was given enough opportunity to explain his side. . . . [T]he OCA issued two directives requiring him to file his comment while [the Court] issued a Resolution directing him to explain in writing why no administrative sanction should be imposed upon him. These orders were issued in a span of almost ten months and were all duly received by respondent. This period is more than sufficient for respondent to answer and refute the truthfulness of the charges against him. Respondent ignored these directives and chose to remain silent on the charges against him. The natural instinct of a man is to resist an unfounded claim or imputation and defend himself, for it is totally against human nature to remain silent and say nothing in the face of false accusations. Silence in such cases is almost always construed as an implied admission of the truth thereof. Thus, in the absence of any compelling reason to hold otherwise, we take respondent's silence as a waiver to file his comment and an acknowledgment of the truthfulness of the charges against him. . . . Moreover, in *Himalin vs. Balderian,* we held

that: "[A] resolution of this Court requiring comment on an administrative complaint against officials and employees of the judiciary is not to be construed as a mere request from the Court. On the contrary, respondents in administrative cases are to take such resolutions seriously by commenting on all occusations or allegations against them as it is their duty to preserve the integrity of the judiciary. Any indifference to such resolutions has never been tolerated by this Court. For which respondent must be fined for contempt of court.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; FAILURE TO TURN OVER MONEY DEPOSITED TO THEM WITHOUT EXPLANATION THEREFOR WARRANTS DISMISSAL. – Respondent failed to live up to the standards of honesty and integrity expected of an officer of the court. . . . The failure of respondent to turn over the money deposited with him and to explain and present evidence thereon constitute gross dishonesty, grave misconduct and malversation of public funds for which dismissal from the service with forfeiture of all leave credits and of retirement privileges and with prejudice to reappointment are clearly appropriate.

R E S O L U T I O N

***PER CURIAM*:**

Before us are two consolidated administrative cases wherein Atty. Wilfredo B. Claveria is charged with misappropriation of judiciary funds.

These cases initially stemmed from an affidavit, dated June 23, 2000, executed by Rodolfo P. Sañano, State Auditor II of the Commission on Audit (COA), portions of which read as follows:

"1. That in compliance with Office Memorandum dated May 15, 2000, . . . an examination of the cash and accounts of the Accountable Officer, Office of the Clerk of Court, Regional Trial Court, 5th Judicial Region, Cadlan, Pili, Camarines Sur, was conducted covering the period from December 22, 1998 to March 15, 2000.

"2. That I examined the cash and accounts of Atty. Wilfredo B. Claveria, Clerk of Court VI and Ex-Oficio Provincial Sheriff, Office of the Clerk of Court, Regional Trial Court, 5th Judicial Region, Cadlan, Pili, Camarines Sur, being the Accountable Officer thereat;

"3. That to establish the total cash accountability of Atty. Wilfredo B. Claveria, as such Clerk of Court VI and Ex-Oficio Provincial Sheriff, we availed of and made use of all available financial records in his Office, and checked the official receipts issued and used in the transactions of his office in receiving collections, covering the period from December 22, 1998 to March 15, 2000, as shown in the attached Schedules of Cash Accountability for each fund;

"4. That as a result of said examination, Atty. Wilfredo B. Claveria was found short of his cash accountability by ₱284,610.58, as shown in the issued and served letter of demand dated May 22, 2000, in relation to the demand letters previously issued and served dated October 25, 1999 and November 4, 1999, which were personally received by the accountable officer on October 26, 1999, November 8, 1999 and June 15, 2000, respectively, copies of which are hereto attached and marked as Annexes 'D', 'E', and 'F';

"5. That despite of the above-mentioned demand letters which had been served to Atty. Wilfredo B. Claveria, directing him to produce immediately the missing funds and to explain in writing how the shortage came about, there was no reply made up to the present time, except for the submission of deposit slips which were duly validated by the bank in the amount of ₱34,856.80, thereby, reducing the shortage to ₱249,753.78 only;

"6. That Atty. Wilfredo B. Claveria, Clerk of Court VI and Ex-Oficio Provincial Sheriff of the Office of the Clerk of Court, Regional Trial Court, 5th Judicial Region, Cadlan, Pili, Camarines Sur, was relieved from his duties as accountable officer effective March 15, 2000 by the Honorable Executive Judge Martin Badong, Jr. in response to my letter dated March 6, 2000, copies of which are hereto attached and marked as Annexes 'G' and 'H';

"7. That the corresponding consolidated report of examination of the cash and accounts of Atty. Wilfredo B. Claveria together with the supporting schedules of cash accountability for each fund were accomplished and submitted to the COA Regional Director through the Provincial Auditor, Province of Camarines Sur, a copy

of which is hereto attached and marked as Annex 'I' and made an integral part of this affidavit;[1]

... ...

The Regional Office No. V of the COA submitted to the Office of the Deputy Ombudsman for Luzon (Deputy Ombudsman for brevity), a letter dated July 2, 2000, informing the latter that based on the findings of State Auditor Sañano, respondent appears to be guilty of Malversation of Public Funds; and recommending the filing of appropriate criminal charges against respondent Claveria.[2]

In deference to the provisions of Section 6, Article VIII of the Constitution and in consonance with the rulings of the Supreme Court in *Sanz Maceda vs. Vasquez*[3] and *Dolalas vs. Office of the Ombudsman-Mindanao*,[4] the Deputy Ombudsman, in its Order dated August 13, 2001,[5] referred the case to us through the Office of the Court Administrator (OCA). The case was docketed as OCA I.P.I. No. 01-1225-P.

In an Indorsement dated November 20, 2001, the OCA directed respondent to file his comment on the affidavit executed by State Auditor Sañano.[6] Respondent failed to file his comment. In a subsequent tracer, dated September 11, 2002,[7] the OCA reiterated its directive for respondent to file his comment but respondent continued to defy said order.

Meanwhile, acting on the same affidavit executed by State Auditor Sañano, the Fiscal Monitoring Division, Court Management Office (FMD-CMO) of the OCA sent an Audit Team to Pili,

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[1] *Rollo* of A.M. No. 01-1225-P, pp. 6-7.

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

[3] 221 SCRA 464.

[4] 265 SCRA 819.

[5] *Rollo* of A.M. No. 01-1225-P, p. 2.

[6] *Id.*, p. 39.

[7] *Id.*, p. 40.

Camarines Sur to conduct a financial audit on the books of account of respondent. The audit was conducted between February 18, 2002 and March 1, 2002.

In a Memorandum, dated June 17, 2002, addressed to Deputy Court Administrator Jose P. Perez, the FMD-CMO reported that there was indeed a shortage in the various court funds under the responsibility of Atty. Claveria, to wit:

Sheriffs' Trust Fund (STF)	₱1,349.95
Sheriffs' General Fund (SGF)	₱2,286.60
Judiciary Development Fund (JDF)	₱69,408.13
Clerk of Court General Fund (CCGF)	₱52,400.45
Fiduciary Fund (FF)	₱158,952.50
	₱284,397.63

According to the FMD-CMO report, Atty. Claveria admitted that he appropriated the missing funds for his personal use and expressed willingness to restitute the same.[8]

In a Resolution dated July 24, 2002, we resolved to docket the FMD-CMO report as a complaint against Atty. Wilfredo B. Claveria,[9] and directed respondent to explain in writing why no administrative sanction should be imposed upon him for misappropriation of judiciary funds.[10] In addition, we directed the FMO of the OCA to compute the actual amount of withheld salaries and other allowances of respondent and deduct therefrom the total amount of ₱284,397.63 to satisfy the shortages incurred by him;[11] and the Legal Office of the OCA to file appropriate

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[8] *Rollo* of A.M. No. P-02-1626, pp. 3-8.

[9] Docketed as A.M. No. P-02-1626, formerly docketed as A.M. No. 02-6-377-RTC.

[10] *Rollo* of A.M. No. P-02-1626, p. 9.

[11] The Financial Management Office-OCA earlier recommended the withholding of salaries and other benefits of Atty. Claveria beginning June 15, 1999 until December 31, 2000 for his failure to submit monthly reports of his collections, deposits and withdrawals. He was excluded from the payroll effective January 1, 2001.

criminal charges against respondent as a result of the financial audit.[12]

On September 13, 2002, respondent filed a Motion for Extension of Time to Submit Explanation.[13] We granted the motion in a Resolution dated December 9, 2002.[14] The OCA issued a certification that as of October 29, 2003, it has yet to receive the required explanation or comment of respondent on the charge filed against him.[15]

On August 14, 2003, the OCA submitted a report, denominated as OCA IPI No. 01-1225-P, on its evaluation of the instant administrative matter. Noting respondent's continued defiance of the Court's directive for him to file his comment, the OCA recommended that respondent be dismissed from the service with forfeiture of retirement benefits and leave credits to which he may be entitled, if any, with prejudice to his re-employment in any branch of the Government, including government-owned or controlled corporations.[16]

On September 3, 2003, we issued a Resolution consolidating OCA IPI No. 01-1225-P and A.M. No. P-02-1626, it appearing that both administrative matters stemmed from one and the same affidavit filed by State Auditor Sañano.[17]

On November 24, 2003, we issued a Resolution requiring the re-docketing of OCA IPI No. 01-1225-P as a regular administrative matter.[18] OCA IPI No. 01-1225-P was later re-docketed as A.M. No. P-03-1759.

We agree with the observations and recommendations of the OCA.

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[12] *Rollo* of A.M. No. P-02-1626, pp. 9-10.

[13] *Id.*, p. 14.

[14] *Id.*, p. 15.

[15] *Id.*, p. 20.

[16] *Rollo* of A.M. No. 01-1225-P, pp. 41-45.

[17] *Rollo* of A.M. No. P-02-1626, p. 18.

[18] *Id.*, p. 24.

Respondent was given enough opportunity to explain his side. As earlier stated, the OCA issued two directives requiring him to file his comment while we issued a Resolution directing him to explain in writing why no administrative sanction should be imposed upon him. These orders were issued in a span of almost ten months and were all duly received by respondent. This period is more than sufficient for respondent to answer and refute the truthfulness of the charges against him. Respondent ignored these directives and chose to remain silent on the charges against him.

The natural instinct of a man is to resist an unfounded claim or imputation and defend himself, for it is totally against human nature to remain silent and say nothing in the face of false accusations.[19] Silence in such cases is almost always construed as an implied admission of the truth thereof.[20] Thus, in the absence of any compelling reason to hold otherwise, we take respondent's silence as a waiver to file his comment and an acknowledgment of the truthfulness of the charges against him.

Respondent failed to live up to the standards of honesty and integrity expected of an officer of the court. In *Office of the Court Administrator vs. Galo*,[21] we held that:

"We have said time and again that those involved in the administration of justice from the highest official to the lowest clerk must live up to the strictest standards of honesty and integrity in the public service bearing in mind that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat. More particularly, we have repeatedly warned Clerks of Court, being next in rank to judges in courts of justice, that dishonesty, particularly that amounting to malversation of public funds will not be countenanced as they definitely reduce the image of courts of justice to mere havens of thievery and corruption. Hence, as custodian of court funds and revenues, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the

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[19] *Grefaldeo vs. Lacson*, 293 SCRA 524, 528 (1998).

[20] *Ibid*.

[21] 314 SCRA 705, 711 (1999).

authorized government depositories for they are not supposed to keep funds in their custody. For those who have fallen short of their accountabilities, we have not hesitated to impose the ultimate penalty. This Court had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system."[22]

The failure of respondent to turn over the money deposited with him and to explain and present evidence thereon constitute gross dishonesty, grave misconduct and malversation of public funds for which dismissal from the service with forfeiture of all leave credits and of retirement privileges and with prejudice to reappointment are clearly appropriate.[23]

Moreover, in *Himalin vs. Balderian*, we held that:

"[A] resolution of this Court requiring comment on an administrative complaint against officials and employees of the judiciary is not to be construed as a mere request from the Court. On the contrary, respondents in administrative cases are to take such resolutions seriously by commenting on all accusations or allegations against them as it is their duty to preserve the integrity of the judiciary. Any indifference to such resolutions has never been tolerated by this Court.[24]

for which respondent must be fined for contempt of court.

WHEREFORE, we find respondent *GUILTY* of *gross dishonesty, grave misconduct, and malversation of public funds.* He is *DISMISSED* from the service with forfeiture of all his accrued retirement benefits, leave credits except those already earned, and other privileges, if any, with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

Furthermore, we find respondent Atty. Wilfredo B. Claveria *GUILTY* of *Contempt of Court* and he is *fined* the amount of

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[22] *Ibid*.

[23] *Id*., p. 712.

[24] A.M. No. MTJ-03-1504, August 26, 2003.

Twenty Thousand Pesos (₱20,000.00) to be paid separately out of his earned leave credits.

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.

SECOND DIVISION

[A.M. No. P-04-1829. July 7, 2004]
(Formerly A.M. OCA IPI No. 00-838-P)

GLORIA R. SAYSON, FRANCISCO R. RELLOROSA, RUSTICO Y. CAPARAS, *complainants, vs.* **EFREN LUNA, Sheriff III, Metropolitan Trial Court, Branch 37, Quezon City,** *respondent.*

SYNOPSIS

Complainants charged respondent with grave misconduct and/or conduct prejudicial to the best interests of the service relative to Civil Case No. 37-15744 entitled *Serrano v. Rellorosa*. Allegedly, Rellosa's car was then to be levied upon pursuant to a Writ of Execution issued by the trial court. That it scheduled to be sold at public auction at 10:00 am on July 15, 1999. Respondent, however, told them that the scheduled auction sale had been postponed to July 19, 1999. Later, they learned that the auction sale was conducted on same date, July 15, 1999 at 2:00 p.m.

The Court ruled the respondent sheriff acted in accordance with the Writ of Execution. The duty of a sheriff in the execution of a writ is purely ministerial – he has no discretion on the same. A perusal of the notice of levy and sale will readily show

that the sale at public auction was to take place on July 15, 1999 at 10:00 a.m. or soon thereafter… Thus, the complainants failed to substantiate the charges against the respondent.

SYLLABUS

1. ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFF; MINISTERIAL DUTY IN THE EXECUTION OF A WRIT.— A Sheriff's duty in the execution of a writ is purely ministerial – he is to execute the order of the court strictly to the letter, and he has no discretion whether to execute the judgment or not.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL FUNCTIONS; PREVAILS AS AGAINST BARE ALLEGATIONS OF MISCONDUCT.— The complainants failed to substantiate the charges against the respondent. As against the bare allegations of misconduct with no cogent proof thereon, and the presumption of regularity in the performance of official functions, the latter shall prevail.

APPEARANCES OF COUNSEL

CEDO & Associates for complainants
Erenio Law Office for respondent.

R E S O L U T I O N

CALLEJO, SR., *J.*:

The instant administrative case arose from the Affidavit-Complaint[1] dated August 4, 1999 of Gloria R. Sayson, Francisco R. Rellorosa and Rustico Y. Caparas charging Efren Luna, Sheriff III, Metropolitan Trial Court, Branch 37, Quezon City, with grave misconduct and/or conduct prejudicial to the best interests

[1] *Rollo*, pp. 12-13.

The instant complaint was initially addressed to the Office of the Ombudsman and docketed as OMB-0-99-1612 for misrepresentation and deceit. In an Order dated August 24, 1999, the said complaint was dismissed for lack of merit, and was referred to the Court.

of the service relative to Civil Case No. 37-15744, entitled *Genaro Serrano v. Gregorio Rellorosa*.

The complainants alleged that the weekend before July 15, 1999, Gregorio Rellorosa informed them that his car would be levied upon pursuant to a writ of execution issued by the Metropolitan Trial Court of Quezon City, and that it was scheduled to be sold at public auction at 10:00 a.m. on July 15, 1999. Rellorosa requested them to participate in the bidding, to which they agreed, subject to the condition that in case one of them would win the bid, they would allow Rellorosa to redeem the car within one year at the bid price plus accrued interest.

The complainants alleged that at 9:00 a.m. of July 15, 1999, they met Rellorosa and agreed to pool their resources so that they would come out as the highest bidder. They also met the respondent sheriff that same morning. Upon being told that the scheduled auction sale had been postponed to July 19, 1999, the complainants left. They, however, later learned from Rellorosa that the respondent sheriff conducted the auction sale of the said car at 2:00 p.m. that same day.

In his comment, the respondent narrated that he levied the car in question pursuant to a writ of execution[2] issued by the court. The auction sale was set at 10:00 a.m. of July 15, 1999, with due notice to Gregorio Rellorosa. Three days prior to the scheduled auction sale or on July 12, 1999, Gregorio Rellorosa filed a "Petition for Relief from Judgment with Urgent Prayer for Preliminary Injunction *Inter Alia* and Temporary Restraining Order to Stop Sheriff's Sale Scheduled on July 15, 1999."[3] The respondent further averred that he came to see Gregorio Rellorosa alone in the morning of July 15, 1999, and informed the latter that his motion was denied. He also told Gregorio that the auction sale would not push through as scheduled, but would proceed any time of the day once the order was signed.

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[2] Annexes "1-C", "1-D", *Rollo*, pp. 93-94.

[3] Exhibit "1", *Rollo*, p. 90.

The respondent avers that he advised Gregorio to wait for the plaintiff, Genaro Serrano, to ask if the latter would postpone the auction sale, but Rellorosa immediately left.

The instant case was then referred to Second Vice-Executive Judge Thelma A. Ponferrada, Regional Trial Court, Branch 104, Quezon City. After conducting an investigation on the matter, the Executive Judge recommended the exoneration of the respondent, and opined that the latter was able to substantially comply with the requirements for the conduct of a public auction.

We agree.

The respondent sheriff acted in accordance with the Writ of Execution[4] dated June 11, 1999, as issued by Judge Augustus C. Diaz, Metropolitan Trial Court, Branch 37, Quezon City. Indeed, a sheriff's duty in the execution of a writ is purely ministerial-he is to execute the order of the court strictly to the letter, and he has no discretion whether to execute the judgment or not.[5] A perusal of the notice of levy and sale will also show that the sale at public auction was to take place on "July 15, 1999 at 10:00 a.m. or soon thereafter at the front of [the] Hall of Justice Building, Q.C."[6] As found by Executive Judge Ponferrada, such notice was served on July 8, 1999, or more than five (5) days before the scheduled auction sale. Furthermore, a sheriff's report, in this case the Minutes of the Auction Sale,[7] as a document, is clothed with the presumption of regularity, and since it was not objected to by the complainant, it must be upheld.[8]

The complainants failed to substantiate the charges against the respondent. As against the bare allegations of misconduct with no cogent proof thereon, and the presumption of regularity in the performance of official functions, the latter shall prevail.

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[4] *Supra* at note 2.

[5] *Garcia v. Yared*, 399 SCRA 331 (2003).

[6] Exhibit "6", *Rollo*, p. 66.

[7] Exhibit "3-R", *Id*. at 115.

[8] See *Sy v. Yerro*, 253 SCRA 340 (1996).

WHEREFORE, the Court resolves to *DISMISS* the complaint against respondent Efren Luna, Sheriff III, Metropolitan Trial Court, Branch 37, Quezon City, for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 130244. July 7, 2004]

SOLEDAD E. VELASCO, *petitioner, vs.* **COURT OF APPEALS, SOCIAL SECURITY COMMISSION, HERMINIO RIVERA, VICENTE SUDARIO, RENATO MANLANGIT, JOSE PUSING, REYNALDO SUGUI, MANUEL DINO, MARTIN VILLARUEL, PAQUITO BALISONG, JOSE POSADAS, MARIO POSADAS, FERNANDO CAYCO, RUBEN ROQUE, FERNANDO MANLANGIT, FRANCISCO ESTILLORE, NICOLAS AMARO, PAULINO SUDARIO, DIEGO CAHILLO, AND HERMINIO ANTONIO,** *respondents*. **SOCIAL SECURITY SYSTEM,** *intervenor*.

SYNOPSIS

In a Resolution issued by the Social Security Commission (SSC), the Velasco spouses were ordered to remit in full to the SSS the contributions in behalf of private respondents plus the corresponding penalties. The Velasco spouses filed a motion for reconsideration to the SSC but the same was denied. When appealed to the Court of Appeals (CA), the petition was dismissed outright on the ground that the copies of the assailed

SSC resolutions attached to the petition were not certified true copies.

Under Administrative Circular No. 1-95, the petition for review shall be accompanied by a clearly legible duplicate original or a certified true copy of the resolution appealed from, and failure thereof shall be sufficient ground for the dismissal of the petition. The Court ruled that here, although the copies of the resolution and order of the SSS submitted bear signs of being mere photostatic copies, a closer inspection of the documents readily shows that they indeed bore the marks of a dry seal which qualifies the document as a duplicate original copy. Hence, there was compliance with the requirement.

SYLLABUS

1. REMEDIAL LAW; ADMINISTRATIVE CIRCULAR NO. 1-95; APPEALS TO THE COURT OF APPEALS FROM JUDGMENTS OF QUASI-JUDICIAL AGENCIES; REQUISITES; THAT PETITION FOR REVIEW BE ACCOMPANIED BY DUPLICATE ORIGINAL COPY OF THE ORDER APPEALED FROM. – At the time the petition was filed with the CA on June 28, 1996, Administrative Circular No. 1-95, governing appeals to the CA from judgments or final orders of the Court of Tax Appeals and quasi-judicial agencies, was already in effect. Pertinent portions of Administrative Circular No. 1-95 are as follows: 6. *Contents of the petition.* – The petition for review shall . . . (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record as are referred to therein and other supporting papers; . . . 7. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with the foregoing requirements regarding . . . the contents of and the documents which should accompany the petition shall be sufficient grounds for the dismissal thereof.

2. ID.; ID.; ID.; ID.; ID.; DUPLICATE ORIGINAL COPY; ELUCIDATED. – To clarify the meaning of the requirements of the Rules for petitions "to the Supreme Court, or in petitions or other initiatory pleadings filed in other courts or other quasi-judicial agencies which have adopted the same or similar

provisions," the Court issued Administrative Circular No. 3-96 effective June 1, 1996, specifically stating therein the meaning of "duplicate original copy," thus: 1. The "duplicate original copy" shall be understood to be that copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same. . . . 2. The duplicate original copy must be duly signed or initiated by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy. . . .

APPEARANCES OF COUNSEL

Filio & Filio for petitioner.
Amador M. Monteiro & Rodrigo R. Castillo for SSS.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the petition for *certiorari* filed by Soledad E. Velasco seeking to set aside the Resolution[1] of the Court of Appeals (CA for brevity) dated February 14, 1997 dismissing her petition for review on *certiorari* docketed as CA-G.R. SP No. 41125 for her failure to submit certified true copies of the assailed resolutions of the Social Security Commission (SSC), and the CA's Resolution dated July 31, 1997 denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

Herein eighteen private respondents, led by Herminio Rivera, filed a petition before the SSC to compel their employer, spouses Salvador and Soledad Velasco, to report them for social security coverage and to remit contributions on their behalf for the period

[1] Penned by Associate Justice Lourdes K. Tayao-Jaguros, with Associate Justices Emeterio C. Cui and Romeo A. Brawner concurring.

of their employment. Private respondents alleged in their petition before the SSC that they were employed on various dates as drivers by the Velasco spouses, who are owners-operators of passenger jeepneys; and that despite the fact that the Velasco spouses deducted ₱1.00 and later ₱1.50 from their daily earnings as SS contributions, they were only reported for coverage of the system after they had already lodged with the SSS Regional Office No. 3, a complaint against the spouses for non-reporting.

The Velasco spouses denied the material allegations in the petition of private respondents before the SSC and contended that ten of them have already executed their respective quitclaims and releases; that the true relationship of the Velasco spouses with private respondents Herminio Rivera and Manuel Dino was that of lessor and lessee which commenced only in 1983; and that the SS contributions of private respondents were all paid and remitted by the Velasco spouses to the Social Security System (SSS).

On September 6, 1995, the SSC issued a resolution ordering Salvador Velasco to remit in full to the SSS the contributions in behalf of herein private respondents with corresponding penalties in the total amount of ₱774,149.86, computed as of September 15, 1995. The Velasco spouses filed a motion for reconsideration of said resolution of the SSC, but on May 8, 1996, the SSC issued a resolution denying the motion.

Salvador Velasco having died on May 27, 1996, only Soledad Velasco filed the petition for review before the CA on June 28, 1996 which was well within the extended period granted by the CA.

On February 14, 1997, the CA issued the assailed resolution dismissing the petition for failure to attach the required certified true copies of the questioned resolutions of the SSC, as required by Section 3-b, Rule 6 of the Revised Internal Rules of the Court of Appeals (RIRCA). The CA denied petitioner's motion for reconsideration in its Resolution dated July 31, 1997.

Hence, petitioner filed the present petition for *certiorari*, alleging the following:

I

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION FOR REVIEW ON THE ALLEGED GROUND OF INSUFFICIENCY IN FORM IN ACCORDANCE WITH SEC. 3-B, RULE 6 OF THE REVISED INTERNAL RULES OF THE COURT OF APPEALS AS AMENDED (RIRCA);

II

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT RULING THAT THE OBLIGATION OF THE ORIGINAL PETITIONER SALVADOR P. VELASCO WHO HAS BEEN SINGLY ORDERED BY RESPONDENT COMMISSION TO REMIT IN FULL THE SS CONTRIBUTIONS ON BEHALF OF PRIVATE RESPONDENTS HAS ALREADY BEEN EXTINGUISHED UPON THE DEATH OF THE SAID ORIGINAL PETITIONER;

III

PUBLIC RESPONDENT COURT COMMITTED *PRIMA FACIE* EVIDENCE OF ABUSE OF DISCRETION IN NOT REVERSING THE FINDINGS OF THE RESPONDENT COMMISSION IN ORDERING PETITIONER SALVADOR P. VELASCO TO REMIT TO THE SSS-INTERVENOR THE AMOUNT OF ₱774,149.86 AS OF SEPTEMBER 15, 1995, WITHOUT ANY DETAILED EXPLANATION AS TO THE INDIVIDUAL PRIVATE RESPONDENTS ENTITLED THERETO AND THE BASIS FOR SAID COMPUTATION; AND

IV

PRIMA FACIE EVIDENCE OF ABUSE OF DISCRETION WAS COMMITTED BY PUBLIC RESPONDENT COURT IN NOT RESOLVING THE FINDINGS OF RESPONDENT COMMISSION IN GIVING WEIGHT AND PROBATIVE VALUE TO PRIVATE RESPONDENTS' EXHIBITS NOT FORMALLY OFFERED IN EVIDENCE.[2]

It should be emphasized at the outset that the only issue proper for determination through a petition for *certiorari* is whether or not the tribunal or body exercising judicial or quasi-judicial functions has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, the Court

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[2] Petition, pp. 25-26, *Rollo*.

will only consider the issue of whether or not the CA acted with grave abuse of discretion in dismissing outright the petition for review filed by petitioner on the ground that certified true copies of the assailed SSC resolutions were not attached to the petition.

Petitioner asseverates that the CA committed grave abuse of discretion in dismissing her petition for review by erroneously applying Section 3-b, Rule 6 of the RIRCA, effective August 18, 1988, to wit:

> SEC. 3. *Petitions for Review*. — Within the period to appeal, the petitioner shall file a verified petition . . .
>
> (b) What Should Be Filed. — The petition shall be accompanied by a *certified true copy of the disputed decisions*, judgments, or orders, of the lower courts, together with true copies of the pleadings and other material portions of the record as would support the allegations of the petition. (Italics supplied)

when the applicable provision to her petition is Section 6, Rule 6 thereof, as amended by Supreme Court Circular No. 1-91, dated February 27, 1991, thus:

> 6. *Contents of petition*. — The petition for review shall contain a concise statement of the facts and issues involved and the grounds relied upon for the review, and *shall be accompanied by a duplicate original or a certified true copy of the ruling*, award, order, decision or judgment appealed from, together with certified true copies of such material portions of the record as are referred to therein and other supporting papers. The petition shall state the specific material dates showing that it was filed within the period fixed therein. (Italics supplied)

Petitioner points out that since their petition for review assails the resolution of a quasi-judicial agency, *i.e.*, the SSC, the applicable provision is Section 6 of the same Rule as amended by Circular No. 1-91, which deals with appeals from administrative tribunals or quasi-judicial agencies. If said provision were applied by the CA, then the petition should not have been dismissed since it clearly states that the petition would be sufficient if accompanied with a duplicate original of the assailed resolution

or order. Petitioner insists that what she attached to the petition for review filed with the CA were the duplicate originals of the assailed resolution and order of the SSC.

On the other hand, in support of its contention that the assailed resolution and order of the SSC were based on the law, the evidence and jurisprudence, respondent SSS which filed a Comment merely alleged that there is no justifiable reason for the Court to grant the petition.

Petitioner's reliance on Circular No. 1-91 is misplaced. At the time the petition was filed with the CA on June 28, 1996, Administrative Circular No. 1-95,[3] governing appeals to the CA from judgments or final orders of the Court of Tax Appeals and quasi-judicial agencies, was already in effect. It was, therefore, the provisions of said circular that are applicable to the petition. Pertinent portions of Administrative Circular No. 1-95 are as follows:

> 6. *Contents of the petition*. — The petition for review shall . . . (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record as are referred to therein and other supporting papers; . . .
>
> 7. *Effect of failure to comply with requirements*. — The failure of the petitioner to comply with the foregoing requirements regarding . . . the contents of and the documents which should accompany the petition shall be sufficient grounds for the dismissal thereof.

Subsequently, the Court, to clarify the meaning of the requirements of the Rules for petitions "to the Supreme Court, or in petitions or other initiatory pleadings filed in other courts or other quasi-judicial agencies which have adopted the same or similar provisions," issued Administrative Circular No. 3-96 effective June 1, 1996, specifically stating therein the meaning of "duplicate original copy," thus:

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[3] Effective February 15, 1995

1. The "duplicate original copy" shall be understood to be that copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same . . .

2. The duplicate original copy must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy. . . .

With the foregoing rules to guide the appellate court, the CA has seriously abused its discretion when it failed to examine the documents attached by petitioner to her petition filed with the CA. By the simple act of examining the document, the CA could have readily found that although at first glance, the copies of the resolution and order of the SSS bear signs of being mere photostatic copies, a closer inspection of said documents readily shows that it indeed bore the marks of a dry seal. Pursuant to paragraph 2 of the Supreme Court Administrative Circular No. 3-96, the presence of the seal qualifies the document as a duplicate original copy. Evidently, there was compliance with the requirement that a duplicate original copy or a certified true copy of the assailed judgment, resolution or order be attached to the petition.

It should be noted that respondent SSC never filed its comment; instead, it was the SSS which filed such pleading. In its Comment, the SSS never refuted petitioner's claim that what was attached to the petition for review filed with the CA was the duplicate original copy. Such failure to refute petitioner's claim is an implied admission of petitioner's allegation that the copy attached to the petition was indeed the duplicate original copy required by the Rules.

In fine, the petition for review filed by petitioner with the CA complied with the Rules and therefore the appellate court committed grave abuse of discretion in outrightly dismissing the petition.

WHEREFORE, herein petition is *GRANTED*. The Resolution of the Court of Appeals dated February 14, 1997 dismissing the petition for review and its Resolution dated July 31, 1997 denying petitioner's motion for reconsideration are *SET ASIDE*.

The Court of Appeals is hereby *ORDERED* to *GIVE DUE COURSE* to the petition for review docketed as CA-G.R. SP No. 41125. Let the records of the case be *REMANDED* to the Court of Appeals for further proceedings.

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

EN BANC

[G.R. Nos. 134531-32. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PERLITO TONYACAO,** *appellant.*

SYNOPSIS

Appellant was charged with two counts of qualified rape, committed while "armed with a jungle bolo, by means of violence and intimidation." Appellant actually pleaded guilty to the charge but the Court ruled that the trial court did not strictly observe the guidelines for a plea of guilty to a capital offense as required by law. That mere warning that the accused faces the supreme penalty of death is insufficient. Nonetheless, the Court found the prosecution's evidence sufficient to sustain the judgment of conviction independent of the plea of guilty. And while appellant alleged a love affair and a consensual sex theory, the Court ruled the same must fail in light of the overwhelming evidence against him. The crime, however, was only two counts of Rape with the Use of a Deadly Weapon, herein punishable by *reclusion perpetua* for each offense. Death cannot be imposed in the absence of the requisite qualifying circumstances. Minority was not alleged in the Information while Relationship was not duly proved.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; ENTIRE CASE OPEN FOR REVIEW.— An appeal in a criminal case, especially one in which the death penalty has been imposed, opens the entire case for review on any question including one not raised by the parties. Thus, before we resolve the lone assigned error of the RTC, we must conduct a thorough examination of the entire records of the case.

2. ID.; ID.; ARRAIGNMENT AND PLEA; PLEA OF GUILTY TO A CAPITAL OFFENSE; DUTY OF THE COURT; REASON THEREFOR.— The RTC did not strictly observe the guidelines for a plea of guilty to a capital offense as required by Section 3, Rule 116 of the Revised Rules of Criminal Procedure. Under said Rule, when a plea of guilty to a capital offense is entered, the trial court is duty bound to: (a) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (b) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (c) inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he so desires. The *raison d'etre* behind the rule is that courts must proceed with caution where the imposable penalty is death for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. Improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea. Moreover, the requirement of taking further evidence would aid us on appellate review in determining the propriety or impropriety of the plea.

3. ID.; ID.; ID.; ID.; ID.; CONDUCT OF A SEARCHING INQUIRY; GUIDELINES.— A mere warning that the accused faces the supreme penalty of death is insufficient. Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry," as follows: (1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions

he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes. (2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty. (3) 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 plea of guilty. (4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment. (5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process. (6) All questions posed to the accused should be in a language known and understood by the latter. (7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

4. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— In rape cases, certain well-established principles and precepts are controlling, to wit: (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) the evidence for the prosecution must

stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— In rape cases the trial court is confronted, almost invariably, with the question of whom to believe – the word of the complainant or that of the accused. The task of ferreting the truth from the conflicting claims of witnesses obviously falls squarely on the trial court which must come face to face with the witnesses and observe their demeanor at the stand. It stands to reason that great reliance is placed by the appellate court on the assessment made by the trial court on the credibility of the witness. The present cases are no exception for, after an exhaustive evaluation of the extant records, we find no cogent reason to depart from the rule.

6. ID.; ID.; ID.; STRAIGHTFORWARD AND CANDID TESTIMONIES OF RAPE VICTIM, UPHELD.— We are convinced of AAA's credibility. She spoke in a manner reflective of honest and unrehearsed testimony. She cried when she testified; her tears added poignancy to verity born out of human nature and experience. She remained steadfast and never wavered in her assertion that appellant forced her to have sexual intercourse with him during the occasions alleged, despite the intense grilling, and often confounding questions, by defense counsel on cross-examination. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.

7. CRIMINAL LAW; RAPE; INTIMIDATION; PRESENT WHEN VICTIM FAILED TO RESIST BECAUSE SHE WAS THREATENED WITH BODILY INJURY.— Appellant faults AAAfor not shouting, using her legs and hands or offering the slightest resistance if indeed she was raped. However, we have long-recognized that when 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. In such cases, physical resistance need not be established since intimidation is exercised over the victim and

the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. Thus, if resistance would nevertheless be futile because of intimidation, offering none at all does not amount to consent to the sexual assault so as to make the victim's submission to the sexual act voluntary. In these cases, AAA clearly testified that, in the two occasions appellant raped her, he poked the jungle bolo at her and threatened to kill her and her family. She was obviously cowed into submission by the real and present threat of physical harm on her person, as well as on her family. Appellant repeatedly threatened Genelita with death upon herself and her family if she resisted his advances.

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY ALLEGED UNLIKELY ACTUATIONS OF RAPE VICTIM.— Neither can AAA's actuation after the first rape be taken against her. It is clear from her testimony that when she cooked for appellant she was forced to do so by appellant. When appellant directed her to cook food, AAA just cried, but upon appellant's reiteration of his threat to kill her family, AAA was silenced to do his bidding. Besides, it is not proper to judge the actions of a child who has undergone a traumatic experience by the norms of behavior expected under the same circumstances from mature persons. There is no standard behavior for rape victims with which we can compare AAA's comportment, as there is no model form of behavioral response when one is confronted with a strange, startling or frightful experience.

9. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES.— The credibility of AAA cannot be assailed on the ground that it is physically impossible for appellant to have poked the bolo with his left hand towards the left side of her neck during the first rape as she testified. Such slight contradiction should not be considered to have completely destroyed her credibility. Errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape. Nonetheless, in the present cases, AAA categorically declared that on two occasions appellant used a jungle bolo to threaten her to submit to his lewd desires.

10. CRIMINAL LAW; RAPE; NOT NEGATED BY THE PRESENCE OF OTHER PEOPLE.— We cannot likewise

sustain appellant's argument that the second rape was impossible to commit in the presence of AAA's family members. Rape is not impossible because, per testimony of AAA, her mother, brothers and sister were in deep slumber when appellant raped her. In addition, there is no rule that a woman can only be raped in seclusion. We have long recognized that rape is not impossible even if committed in the same room where the rapist's spouse was sleeping or in a small room where other household members also slept. Rapists are not deterred from committing their odious act by the presence of people nearby.

11. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY IN REPORTING THE CRIME.— AAA's failure to recount her ordeal to her mother is not an indication of false accusation. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if the delay is satisfactorily explained. In the present cases, the records show that appellant had instilled fear upon AAA's young mind during the sexual assaults. He threatened to kill her and her family if she would report the incidents to anyone. She was continuously seized by fear at the mere presence of appellant who was always nearby.

12. ID.; ID.; ID.; UPHELD IN THE ABSENCE OF ILL-MOTIVE. — Appellant's failure to impute any ill-motive against Genelita constrains us to affirm the jurisprudential presumption that she was not so moved, hence, her testimony is entitled to full faith and credence. It is highly inconceivable for a young barrio lass such as AAA, inexperienced in the ways of the world, to fabricate a charge of defloration against appellant — a person she considered as her father and carried his surname, and undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation, unless she is motivated by a potent desire to seek justice for the wrong committed against her.

13. ID.; ID.; ID.; UPHELD AS THE SAME CORROBORATED BY PHYSICAL EVIDENCE. — Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. 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. Thus, AAA's

testimony and the medical evidence established that the essence of the crime of rape – sexual penetration of the female genitalia by the male organ - was committed beyond a shadow of doubt in Criminal Case Nos. 96-2117 and 96-2118.

14. ID.; ID.; DENIAL; CANNOT PREVAIL OVER OVERWHELMING EVIDENCE.— Against these overwhelming evidence, the love affair and consensual sex theory advanced by the defense necessarily fails. AAA is a 16-year old, unsophisticated barrio lass and there is no evidence on record that she is a pervert, nymphomaniac, temptress or in any other condition that may justify such a theory. Save for his own declaration, appellant was unable to present anything else to prove his theory.

15. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY OF THE VICTIM AND RELATIONSHIP TO ACCUSED; MUST BE ALLEGED IN THE INFORMATION AND PROVED WITH CERTAINTY.— We have previously held that the circumstances of minority and relationship are considered as special qualifying circumstances because they alter the nature of the crime of rape and thus warrant the imposition of the death penalty. As such, it should be alleged in the information as a requirement of the accused's constitutional right to be informed of the nature and cause of the accusation against him. These special qualifying circumstances must also be proved with certainty; otherwise, the penalty of death cannot be imposed upon the accused. Nowhere in the Informations is it stated that AAA was only 16 years old when she was raped. Moreover, the relationship of the victim as the step-daughter of appellant was not properly proved. The relationship between a step-father and a step-daughter presupposes a legitimate relationship, that is, the former should be legally married to the latter's mother. Thus, failure of the prosecution to conjointly allege and prove the special qualifying circumstances of minority and relationship bars appellant's conviction of rape in its qualified form.

16. ID.; ID.; COMMITTED WITH THE USE OF A DEADLY WEAPON; ELUCIDATED.— The Informations in Criminal Case Nos. 96-2117 and 96-2118 allege that the appellant committed rape while "armed with a jungle bolo, by means of violence and intimidation." Appellant was thus specifically

charged with rape through force or intimidation qualified by the use of a deadly weapon. It must be stressed that what qualifies the crime of rape is not just the overt act of "being armed with a weapon" but the "use of a deadly weapon" in the commission of the crime, *i.e.*, when a deadly weapon is used to make the victim submit to the will of the offender and not when it is simply shown to be in the possession of the latter.

17. ID.; ID.; ID.; PROPER PENALTY.— Rape with the use of a deadly weapon is punishable by two indivisible penalties, *i.e.*, *reclusion perpetua* to death, under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. In relation to Article 63 of the same Code, it is provided that where the penalty prescribed by law is composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Other than the use of a deadly weapon, which is already taken into account to raise the penalty to *reclusion perpetua* to death, no aggravating or mitigating circumstance was alleged and proved in the case at bar. Hence, the penalty imposable for Criminal Case Nos. 96-2117 and 96-2118 is *reclusion perpetua*.

18. ID.; ID.; ID.; CIVIL PENALTY.— On the civil liability, based on prevailing jurisprudence, AAA is entitled to indemnity *ex delicto* in the amount of ₱50,000.00 since the penalty imposed is *reclusion perpetua*, as well as moral damages in the amount of ₱50,000.00. Moral damages are awarded in rape cases without need of showing that the victim suffered from mental, physical, and psychological trauma as these are too obvious and already presumed from the fact of rape. In addition, exemplary damages in the amount of ₱25,000.00 should be awarded to Genelita since the qualifying circumstance of the use of a deadly weapon was present in the commission of each rape.

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.*:

Before us on automatic review is the Joint Decision,[1] dated October 24, 1997, of the Regional Trial Court (Branch 30), Basey, Samar (RTC for brevity) in Criminal Cases Nos. 96-2117 and 96-2118, finding appellant Perlito Tonyacao guilty beyond reasonable doubt of two counts of qualified rape and sentencing him to death for each offense.

The Information in Criminal Case No. 96-2117 reads as follows:

That on or about the 25th day of November, 1995, *at about noontime*, in Sitio xxx,[2] Brgy. xxx, xxx, Municipality of xxx, Province of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, armed with a jungle bolo, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with the complainant, AAA[3], his step-daughter, against her consent and will.

CONTRARY TO LAW.[4] (Italics supplied)

The Information in Criminal Case No. 96-2118 reads:

That on or about the 25th day of November, 1995, at about nighttime, in Sitio Cancosep, Barangay Navatas, Daku, Municipality of Talalora, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, armed with a jungle bolo, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously had carnal knowledge with the complainant, GENELITA TONYACAO, his step-daughter, against her consent and will.

CONTRARY TO LAW.[5]

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[1] Penned by Judge Godofredo P. Quimsing.

[2] Also spelled as "Cankusip" in the records.

[3] Also spelled as "AAA" in the records.

[4] Original Records, Criminal Case No. 96-2117, p. 1.

[5] Original Records, Criminal Case No. 96-2118, p. 1.

When arraigned on June 10, 1996, appellant, assisted by counsel *de oficio,* pleaded guilty to the crimes charged. Appellant was asked in open court whether he knew that the possible penalty for both crimes is death and he answered in the affirmative. The prosecution was then ordered to adduce evidence and a joint trial of the cases ensued.[6]

Based on the evidence of the prosecution consisting of the testimonies of private complainant AAA and Dr. Rufina Lynor Barrot, the examining physician, the following facts are established:

AAA is the 16-year old daughter of BBB, the common-law wife of appellant. At around noontime of November 25, 1995, while AAA was gathering coconuts at Sitio xxx, Brgy. xxx, xxx, xxx, xxx, appellant suddenly placed himself behind her and pointed a bolo at the left side of her neck. Appellant demanded that AAA obey his demands otherwise he will kill her and other members of her family. Appellant then struck AAA with his elbow which caused her to fall to the ground. AAA was ordered to lie on her back. Appellant again threatened to kill her and her family. Appellant then stripped AAA of her shorts and panty. After appellant removed his shorts and brief, he pressed himself on top of AAA and inserted his penis into her vagina which caused her intense pain. AAA cried in pain and she was scared because appellant poked the jungle bolo at her neck. Several minutes later, AAA felt and saw a sticky white liquid in her vagina and appellant's penis. His beastly act done, appellant ordered AAA to put on her panty and shorts. Appellant then directed AAA to cook food. But AAA kept on crying so appellant reiterated his threat to kill her and every member of her family if AAA tells her mother about the incident. Silenced, appellant and AAA went to the seashore where she cooked food. They stayed there until 4:00 in the afternoon when they went back home. At home, AAA did not tell her mother about the rape

[6] Original Records, Criminal Case No. 96-2117, p. 20.

incident as she was scared of the appellant who was nearby.[7]

Later in the evening of the same day when all the members of the family were asleep, AAA was awakened by appellant. Appellant held a bolo in his hand and threatened to kill her and her family if she does not do what appellant says. Appellant removed AAA's *maong* shorts and panty. Then appellant inserted his penis into her vagina. Again, AAA just cried because she was scared. Several minutes later, appellant took his penis out. Genelita did not tell her mother of what happened because she was scared because appellant was always watching her.[8]

Three weeks later, or on December 17, 1995, AAA was confronted by her mother. Apparently, appellant told AAA's mother of what he had done in the course of one of their fights. Initially, AAA did not say anything to her mother because of appellant's persistent threats to kill her and her family if she would report the incidents to anyone, but upon the intense inquiry of her mother, AAA revealed that appellant raped her twice on November 25, 1995. On the same day, AAA and her mother reported the matter to the Talalora Police Station. On December 18, 1995, AAA submitted herself to a medical examination.[9]

Dr. Rufina Lynor Barrot, OB-GYNE Department of the Eastern Visayas Regional Medical Center, Tacloban City, conducted the medico-legal examination[10] on AAA and reported the following findings: (a) the hymen had old lacerations at 12 o'clock, 5 o'clock and 9 o'clock positions; (b) the hymen was ruptured or lacerated which had been caused by an insertion into her vaginal canal; (c) the cervix is pinkish, small, and closed with scanty whitish watery substance; and, (d) the uterus is small and negative of spermatozoa due to the fact the same

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[7] TSN, Testimony of AAA, July 9, 1996, pp. 9-13, 22-23 and 25-26.

[8] *Id.*, pp. 13-16 and 28-29.

[9] *Id.*, pp. 17-20 and 29.

[10] Exh. "A", Original Records, Criminal Case No. 96-2118, p. 3.

could only live in the vaginal canal for seventy-two hours.[11]

After the prosecution rested its case, the defense presented its only witness in the person of appellant.

In stark contrast to the clear and categorical declarations of AAA, appellant claims that he had a love affair with her and consensual sexual intercourse occurred between them on November 25, 1995. He testified as follows: At around noontime of November 25, 1995, he and AAA agreed to have sexual intercourse; at that time, AAA's mother and brother were in a hut about sixty meters away; AAA suggested that they had sexual intercourse as her mother could no longer bear children; he refused as her common-law wife might discover it and file a case against him; notwithstanding his refusal, he and AAA eventually engaged in sexual intercourse on a wooden floor near a coconut trunk for about four minutes; in the evening of November 25, 1995, he and AAA had sexual intercourse again inside a nipa hut which lasted for almost an hour; and, a love affair started on July 1994 and lasted up to December 1995 when his common-law wife discovered it.[12]

On October 24, 1997, the RTC rendered its decision finding appellant guilty beyond reasonable doubt of the crimes charged. The dispositive part of the decision reads as follows:

> IN VIEW OF THE FOREGOING, the Court finds the accused Perlito Tonyacao guilty beyond reasonable doubt of having raped his common-law stepdaughter on both Informations; and pursuant to Sec. 11 of RA#7659 he is hereby sentenced to suffer the penalty of two (2) death sentences; and to indemnify the herein complainant AAA the amount of ₱100,000.00, as well as the costs of these cases.[13]

The case is now before us for automatic review pursuant to Article 47 of the Revised Penal Code, as amended. In his Brief, appellant submits for our consideration the following assignment

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[11] TSN, Testimony of Dr. Rufina Laynor Barrot, July 9, 1996, pp. 6-7.

[12] TSN, Testimony of Perlito Tonyacao, August 13, 1997, pp. 2-15.

[13] Original Records, Criminal Case No. 96-2117, pp. 77-78.

of error:

THE COURT *A QUO* ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED NOTWITHSTANDING THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.[14]

Appellant argues that the quantum of proof for his conviction has not been met by the prosecution's evidence. Appellant claims that AAA's testimony, on which the prosecution's evidence is mainly anchored, is of doubtful credibility for the reasons that: (a) if indeed she was raped, AAA never shouted, used her arms and legs or offered the slightest resistance; (b) her actuation after the alleged first rape, when she cooked food for appellant, belies a person claiming to have been sexually abused; (c) AAA testified on re-direct examination that during the first alleged rape appellant poked the bolo with his left hand towards the left side of AAA's neck which is physically impossible; (d) during the alleged second rape, it is unbelievable that not one among her mother, brothers and sister were roused from their slumber although they were sleeping just beside her; and, (e) AAA failed to immediately recount her ordeal to her mother.

An appeal in a criminal case, especially one in which the death penalty has been imposed, opens the entire case for review on any question including one not raised by the parties.[15] Thus, before we resolve the lone assigned error of the RTC, we must conduct a thorough examination of the entire records of the case.

Prefatorily, we note that the RTC did not strictly observe the guidelines for a plea of guilt to a capital offense as required by Section 3, Rule 116 of the Revised Rules of Criminal Procedure. Under said Rule, when a plea of guilty to a capital offense is entered, the trial court is duty bound to: (a) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (b) require the

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[14] *Rollo*, p. 39.

[15] *People vs. Galigao*, 395 SCRA 195, 204 (2003); *People vs. Dela Cruz*, 390 SCRA 77, 83-84 (2002); and, *People vs. Tolentino*, 380 SCRA 171, 181 (2002).

prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (c) inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he so desires.

The *raison d'etre* behind the rule is that courts must proceed with caution where the punishable penalty is death for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.[16] Improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea.[17] Moreover, the requirement of taking further evidence would aid us on appellate review in determining the propriety or impropriety of the plea.[18]

In the present cases, when appellant entered a plea of guilty to the crimes charged, he was simply asked in open court whether he knew that the possible penalty for both crimes is death and when he answered in the affirmative the RTC immediately directed the prosecution to adduce evidence on appellant's culpability.[19] We have repeatedly held that a mere warning that the accused faces the supreme penalty of death is insufficient.[20] Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry," as follows:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations;

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[16] *People vs. Daniela*, G.R. No. 139230, April 24, 2003, citing *People vs. Arizapa*, 328 SCRA 214, 218-219 (2000).

[17] *People vs. Daniela, supra.*

[18] *People vs. Pastor*, 379 SCRA 181, 189 (2002).

[19] Original Records, Criminal Case No. 96-2117, p. 20.

[20] *People vs. Principe*, 381 SCRA 642, 649 (2002); *People vs. Molina*, 372 SCRA 378, 387 (2001); *People vs. Alborida*; 359 SCRA 495, 502 (2001); and, *People vs. Hermoso*, 343 SCRA 567, 576 (2000), all citing *People vs. Nadera*, 324 SCRA 490 (2000).

and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) 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 plea of guilty.

(4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.

(7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[21]

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[21] *People vs. Pastor, supra* at 188-189, citing *People vs. Aranzado*, 365 SCRA 649 (2001), *People vs. Chua*, 366 SCRA 283 (2001), *People vs. Alicando*, 251 SCRA 293 (1995), and *People vs. Albert*, 251 SCRA 136 (1995).

Clearly in these cases, the RTC failed to conduct a "searching inquiry" into the voluntariness of the appellant's plea of guilt and full comprehension thereof. The plea of guilty of the appellant was improvident; hence, inefficacious.

Nevertheless, we find that the prosecution's evidence is sufficient to sustain the judgment of conviction independently of the plea of guilty.

In rape cases, certain well-established principles and precepts are controlling, to wit: (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) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[22]

Consequently, in rape cases the trial court is confronted, almost invariably, with the question of whom to believe — the word of the complainant or that of the accused. The task of ferreting the truth from the conflicting claims of witnesses obviously falls squarely on the trial court which must come face to face with the witnesses and observe their demeanor at the stand. It stands to reason that great reliance is placed by the appellate court on the assessment made by the trial court on the credibility of the witness.[23] The present cases are no exception for, after an exhaustive evaluation of the extant records, we find no cogent reason to depart from the rule.

We are convinced of AAA's credibility. She spoke in a manner reflective of honest and unrehearsed testimony. She cried when

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[22] *People vs. Dela Cruz*, 383 SCRA 410, 427-428 (2002); *People vs. Villaflor*, 371 SCRA 429, 438 (2001); and, *People vs. Dumlao*, 370 SCRA 571, 583 (2001).

[23] *People vs. Bartolome*, 381 SCRA 91, 96 (2002).

she testified; her tears added poignancy to verity born out of human nature and experience.[24] She remained steadfast and never wavered in her assertion that appellant forced her to have sexual intercourse with him during the occasions alleged, despite the intense grilling, and often confounding questions, by defense counsel on cross-examination. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[25]

Enlightening are the following excerpts from her candid and unequivocal testimony which we quote verbatim:

Q: Can you recall if there was anything unusual or fearful incident which happened on that noontime?
A: Yes, there was.

Q: What was it?
A: He threatened me and he had a bolo with him.

Q: And what did he say when he threatened you?
A: He said; if I do not do what he says then he will kill all of us.

Q: Where was the bolo particularly when the same was threatened at you?
A: It was on my neck.

Q: In what part of your neck?
A: On the left side of my neck as the witness indicated.

Q: After he said threatening words to you, what else did he do?
A: He hit me with his elbow and I fell to the ground. He made me lie on my back and threatened me again.

Q: What did he say?
A: He threatened me again by saying: he will kill all of us.

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[24] *People vs. Sagun*, 303 SCRA 382, 393 (1999).

[25] *People vs. Caralipio*, 393 SCRA 59, 75 (2002); *People vs. Ucab*, 390 SCRA 564, 572 (2002).

Q: What happened after that?
A: He took off my shorts and my panty.

Q: After that, what happened next?
A: Then he also took off his shorts and brief.

Q: Then what happened next?
A: He placed his organ to my organ.

Q: After that, what happened?
A: It was inserted for a long time.

Q: Then, what happened?
A: Then after that I felt and I saw a sticky white liquid.

Q: After that, what happened next?
A: Then he put on his brief and his shorts.

Q: Then afterwards?
A: He also made me put on my panty and my shorts.

Q: Afterwards what next?
A: First, he told me to cook but I was not able to do so because I kept on crying, so he threatened me again.

Q: What did he say to you?
A: He said that if I told my mother, he will kill all of us.

PROS. ESTORNINOS:
At this juncture your Honor, let it be on record that the witness is crying.

Q: After he said these threatening words again for the third time, what else happened if any?
A: We went to the seaside because that was where we have to cook.

Q: For how long did you stay there?
A: Up to 4:00 o'clock.

Q: At 4:00 o'clock, where did you go?
A: We went back home.

Q: Were you able to reach home?
A: Yes, Ma'am.

Q: Where was your mother when you reached home?
A: She was in the house.

Q: Did you tell your mother of what happened to you?
A: No, because I was scared as he was near me.

Q: During that nighttime on the same day, November 25, 1995, can you still recall where were you at that time?
A: I was in the house.

Q: Can you still recall if there was again any fearful incident which happened to you?
A: Yes, Ma'am.

Q: What was that?
A: He approached me and he was carrying a bolo and he was threatening me.

Q: What did he say to you?
A: He said again; if I do not do what he says, he will kill all of us.

Q: And what happened next, if any?
A: He again took off my maong shorts and panty.

Q: Where were you then at that time?
A: I was in the house and I was sleeping.

Q: At that time you were asleep, will you please tell the Court if there were other people present then?
A: There was.

Q: Who were they?
A: My brothers and sisters and my mother.

... ...

Q: After your maong short pants was removed and your panty, what happened next?
A: He again inserted his organ into my organ.

Q: After that, what happened?
A: Then he took it out.

Q: And what did you do then?
A: I just kept on crying because I was scared.

Q: After he took it out, what else happened if any?
A: I felt that my panty was already wet.

Q: Did you tell your mother on that particular evening of what happened to you?
A: No, because I was scared because he was near me.[26]

... ...

Q: Now, you said that your stepfather got his bolo and point it at you, do you know of any reason why your stepfather would do that, if you know?
A: I do not know of any reason.

Q: But you just allow your stepfather to pull down your shorts and also your panty?

COURT:
What do you mean by allow?

ATTY. BITAS:
I mean, there is no resistance on your part?

A: I just kept on crying because I was scared because he had a bolo with him.

Q: My question is, you did not do anything? You did not shout?
A: No, because I was scared of him and his looks was fearsome and he had a bolo with him.

Q: You felt his penis go to your vagina?
A: Yes, sir.

Q: It was nice and of course gratifying?

COURT:
Not material. And this is insulting to the witness. The feeling of the witness is immaterial.

ATTY. BITAS:
We are trying to find out whether. . . .

COURT:
Reform.

Q: Now, when your father inserted his penis into your vagina you felt gratifying while his penis was inside?
A: No, I felt pain.

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[26] TSN, Testimony of AAA, July 9, 1996, pp. 11-16.

Q: Because you were a virgin?
A: Yes, sir.

Q: But you also felt a white substance came out from his penis while his penis was in your vagina?

PROS. ESTORNINOS:
Objection your Honor.

ATTY. BITAS:

I am asking the witness whether, while the penis was inside if there were also secretion. I am on cross your Honor.

COURT:
Go ahead.

A: Yes, sir.[27]

... ...

Q: Now, let me ask this, when your stepfather was on top of you where was the bolo of your father?
A: It was on his hands and was poked on my neck.

Q: While he was on top of you?
A: Yes, sir.

Q: And he was on top of you for how many minutes?
A: I cannot remember how long but it takes him time to insert his organ to my organ.

Q: And it also take long his organ inside your organ?
A: Yes, sir.

Q: And you were scared?
A: Yes. I was scared since his bolo was poked on my neck.

Q: After that incident you went home, right?
A: Yes, sir.

Q: Now, you did not tell your mother immediately what happened?
A: Yes, because I was scared and he was near me.

... ...

[27] *Id.*, pp. 22-24.

Q: You could have, while Perlito Tonyacao was on top of you you could even touched anyone of your brothers and sisters in order that they would wake up, correct?
A: I was scared because he has a bolo with him and I just kept on crying?

... ...

Q: And when your mother did not threaten you, you will not report to the police about that incident?
A: Yes, because I was scared and he was always watching me.[28]

Appellant faults AAA for not shouting, using her legs and hands or offering the slightest resistance if indeed she was raped. However, we have long-recognized that when 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.[29] In such cases, physical resistance need not be established since intimidation is exercised over the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety.[30] Thus, if resistance would nevertheless be futile because of intimidation, offering none at all does not amount to consent to the sexual assault so as to make the victim's submission to the sexual act voluntary.[31] In these cases, AAA clearly testified that, in the two occasions appellant raped her, he poked the jungle bolo at her and threatened to kill her and her family. She was obviously cowed into submission by the real and present threat of physical harm on her person, as well as on her family. Appellant repeatedly threatened AAA with death upon herself and her family if she resisted his advances.[32]

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[28] *Id.*, pp. 25-28.

[29] *People vs. Llanto*, 395 SCRA 473, 488 (2003); *People vs. Bation*, 367 SCRA 211, 229 (2001).

[30] *People vs. Llanto, supra; People vs. Aaron*, 389 SCRA 526, 536 (2002).

[31] *People vs. Llanto, supra; People vs. Añonuevo*, 367 SCRA 237, 244 (2001).

Neither can AAA's actuation after the first rape be taken against her. It is clear from her testimony that when she cooked for appellant she was forced to do so by appellant. When appellant directed her to cook food, AAA just cried, but upon appellant's reiteration of his threat to kill her family, AAA was silenced to do his bidding. Besides, it is not proper to judge the actions of a child who has undergone a traumatic experience by the norms of behavior expected under the same circumstances from mature persons.[33] There is no standard behavior for rape victims with which we can compare AAA's comportment, as there is no model form of behavioral response when one is confronted with a strange, startling or frightful experience.[34]

Similarly, the credibility of AAA cannot be assailed on the ground that it is physically impossible for appellant to have poked the bolo with his left hand towards the left side of her neck during the first rape as she testified. Such slight contradiction should not be considered to have completely destroyed her credibility. Errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape.[35] Nonetheless, in the present cases, AAA categorically declared that on two occasions appellant used a jungle bolo to threaten her to submit to his lewd desires.

We cannot likewise sustain appellant's argument that the second rape was impossible to commit in the presence of AAA's family members. Rape is not impossible because, per testimony of AAA, her mother, brothers and sister were in deep slumber when appellant raped her.[36] In addition, there is no rule that a

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[32] TSN, Testimony of AAA, July 9, 1996, pp. 11, 14 and 26.

[33] *People vs. Quezada*, 375 SCRA 248, 262 (2002); *People vs. Baldoz*, 369 SCRA 690, 710 (2001).

[34] *People vs. Baldoz, supra*.

[35] *People vs. Dumanlang*, 386 SCRA 465, 476 (2002); *People vs. Bayona*, 327 SCRA 190, 198 (2000).

[36] TSN, Testimony of AAA, July 9, 1996, pp. 14-15 and 26-27.

woman can only be raped in seclusion.[37] We have long recognized that rape is not impossible even if committed in the same room where the rapist's spouse was sleeping or in a small room where other household members also slept. Rapists are not deterred from committing their odious act by the presence of people nearby.[38]

Lastly, AAA's failure to recount her ordeal to her mother is not an indication of false accusation. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if the delay is satisfactorily explained.[39] In the present cases, the records show that appellant had instilled fear upon AAA's young mind during the sexual assaults. He threatened to kill her and her family if she would report the incidents to anyone.[40] She was continuously seized by fear at the mere presence of appellant who was always nearby.[41]

Appellant's failure to impute any ill motive against AAA constrains us to affirm the jurisprudential presumption that she was not so moved, hence, her testimony is entitled to full faith and credence.[42] It is highly inconceivable for a young barrio lass such as AAA, inexperienced in the ways of the world, to fabricate a charge of defloration against appellant — a person she considered as her father and carried his surname,[43] and undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation,

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[37] *People vs. Besmonte*, 397 SCRA 513, 522 (2003); *People vs. Magtibay*, 386 SCRA 332, 343 (2002); and, *People vs. Tagud, Sr*., 375 SCRA 291, 305 (2002).

[38] *People vs. Cantuba*, 392 SCRA 76, 82-83 (2002); *People vs. Rebato*, 358 SCRA 230, 236 (2001); and, *People vs. Villanueva*, 339 SCRA 482, 499 (2000).

[39] *People vs. Sinoro*, G.R. Nos. 138650-58, 22 April 2003; *People vs. Edem*, 378 SCRA 38, 56 (2002).

[40] TSN, Testimony of AAA, July 9, 1996, pp. 11-14.

[41] *Id*., pp. 13, 16 and 26.

[42] *People vs. De los Reyes*, 327 SCRA 56, 67 (2000).

[43] TSN, Testimony of AAA, July 9, 1996, pp. 8-10.

unless she is motivated by a potent desire to seek justice for the wrong committed against her.[44]

Furthermore, the medico-legal examination conducted on AAA confirms that she is in a non-virgin state. According to the medical findings, AAA's hymen had old lacerations at 12 o'clock, 5 o'clock and 9 o'clock positions and the hymen was "ruptured or lacerated which had been caused by an insertion into her vaginal canal."[45] Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[46] 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.[47] Thus, AAA's testimony and the medical evidence established that the essence of the crime of rape — sexual penetration of the female genitalia by the male organ — was committed beyond a shadow of doubt in Criminal Case Nos. 96-2117 and 96-2118.

Against these overwhelming evidence, the love affair and consensual sex theory advanced by the defense necessarily fails. AAA is a 16-year old, unsophisticated barrio lass and there is no evidence on record that she is a pervert, nymphomaniac, temptress or in any other condition that may justify such a theory.[48] Save for his own declaration, appellant was unable to present anything else to prove his theory.

Nonetheless, the RTC erred in the imposition of the death penalty. Appellant was convicted under Article 335 of the Revised

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[44] *People vs. Manallo*, 400 SCRA 129, 142 (2003); *People vs. Perez*, 397 SCRA 12, 19 (2003).

[45] TSN, Testimony of Dr. Rufina Laynor Barrot, July 9, 1996, pp. 6-7.

[46] *People vs. Montemayor*, 396 SCRA 159, 172 (2003); *People vs. Daganio*, 374 SCRA 365, 372 (2002).

[47] *People vs. Montemayor, supra; People vs. Dumanlang, supra* at p. 489; and, *People vs. Mendoza*, 383 SCRA 115, 129 (2002).

[48] *People vs. Taperla*, 395 SCRA 421, 433 (2003); *People vs. Saladino*, 353 SCRA 819, 827-828 (2001).

Penal Code, as amended by Republic Act No. 7659, which reads in part:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim . . .

We have previously held that the circumstances of minority and relationship are considered as special qualifying circumstances because they alter the nature of the crime of rape and thus warrant the imposition of the death penalty. As such, it should be alleged in the information as a requirement of the accused's constitutional right to be informed of the nature and cause of the accusation against him.[49] These special qualifying circumstances must also be proved with certainty; otherwise, the penalty of death cannot be imposed upon the accused.

In the present cases, the Informations failed to allege AAA's minority. Nowhere in the Informations is it stated that Genelita was only 16 years old when she was raped. Moreover, the relationship of the victim as the step-daughter of appellant was not properly proved. The evidence adduced shows that appellant is merely the common-law spouse of AAA's mother, BBB.[50] While BBB and her children affixed appellant's surname, appellant was never legally married to BBB;appellant merely allowed BBB and her children to use his surname.[51] Hence, appellant could not be considered AAA's "stepfather." The relationship between a step-father and a step-daughter presupposes a legitimate relationship, that is, the former should

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[49] *People vs. Escano*, 376 SCRA 670, 683 (2002); *People vs. Ariola*, 366 SCRA 539, 554 (2001); and, *People vs. Fernandez*, 351 SCRA 80, 91 (2001).

[50] TSN, Testimony of AAA, July 9, 1996, pp. 8-10; TSN, Testimony of CCC, August 13, 1997, pp. 3-4; TSN, Testimony of CCC, August 14, 1997, p. 3.

[51] Testimony of CCC, August 13, 1997, p. 4.

be legally married to the latter's mother.[52] Thus, failure of the prosecution to conjointly allege and prove the special qualifying circumstances of minority and relationship bars appellant's conviction of rape in its qualified form.

Be that as it may, we note that the Informations in Criminal Case Nos. 96-2117 and 96-2118 allege that the appellant committed rape while "armed with a jungle bolo, by means of violence and intimidation." Appellant was thus specifically charged with rape through force or intimidation qualified by the use of a deadly weapon. It must be stressed that what qualifies the crime of rape is not just the overt act of "being armed with a weapon" but the "use of a deadly weapon" in the commission of the crime, *i.e.*, when a deadly weapon is used to make the victim submit to the will of the offender and not when it is simply shown to be in the possession of the latter.[53]

In Criminal Case No. 96-2117, AAA clearly testified that she was threatened with a jungle bolo by appellant. She even demonstrated how appellant poked the jungle bolo at her.[54] With respect to Criminal Case No. 96-2118, Genelita testified that appellant was holding the jungle bolo and threatened her to do what he wants or he will kill her and her family.[55] We find that, in both instances, when appellant threatened AAA with the jungle bolo, it was sufficient to cow AAA to submit to appellant's lewd designs.

Rape with the use of a deadly weapon is punishable by two indivisible penalties, *i.e., reclusion perpetua* to death, under

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[52] *People vs. Hilet*, G.R. Nos. 146685-86, April 30, 2003; *People vs. Baring*, 354 SCRA 371, 384 (2001); and, *People vs. Tolentino*, 328 SCRA 485, 495 (1999).

[53] *People vs. Montemayor*, *supra* at p. 174, citing *People vs. Napiot*, 311 SCRA 772, 782 (1999). See also *People vs. Emocling*, 297 SCRA 214 (1998); *People vs. Cantos, Sr.*, 305 SCRA, 786 (1999); *People vs. Padilla*, 301 SCRA 265 (1999); *People vs. Ranido*, 288 SCRA 369 (1998); *People vs. Taton*, 282 SCRA 300 (1997); *People vs. Tadulan*, 271 SCRA 233 (1997); and, *People vs. Igdanes*, 272 SCRA 113 (1997).

[54] TSN, Testimony of AAA, July 9, 1996, pp. 11, 14 and 26.

[55] *Id.*, pp. 14 and 27.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, to wit:

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

In relation to Article 63 of the same Code, it is provided that where the penalty prescribed by law is composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Other than the use of a deadly weapon, which is already taken into account to raise the penalty to *reclusion perpetua* to death, no aggravating or mitigating circumstance was alleged and proved in the case at bar. Hence, the penalty imposable for Criminal Case Nos. 96-2117 and 96-2118 is *reclusion perpetua*.

On the civil liability, based on prevailing jurisprudence, AAA is entitled to indemnity *ex delicto* in the amount of ₱50,000.00 since the penalty imposed is *reclusion perpetua*,[56] as well as moral damages in the amount of ₱50,000.00.[57] Moral damages are awarded in rape cases without need of showing that the victim suffered from mental, physical, and psychological trauma as these are too obvious and already presumed from the fact of rape.[58] In addition, exemplary damages in the amount of ₱25,000.00 should be awarded to AAA since the qualifying circumstance of the use of a deadly weapon was present in the commission of each rape.[59]

WHEREFORE, the Joint Decision, dated October 24, 1997, of the Regional Trial Court (Branch 30), Basey, Samar in Criminal

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[56] *People vs. Dela Cruz*, 383 SCRA 410, 438 (2002).

[57] *People vs. Parcia*, 374 SCRA 714, 725 (2002); *People vs. Colisao*, 372 SCRA 20, 32 (2001).

[58] *People vs. Barrozo*, 383 SCRA 711, 727 (2002); *People vs. Yaoto*, 370 SCRA 284, 295 (2001); *People vs. Rivera*, 362 SCRA 153, 182 (2001).

[59] *People vs. Montemay*or, *supra* at p. 177; *People vs. Yonto*, 392 SCRA 468, 488 (2002)

Case Nos. 96-2117 and 96-2118, convicting appellant PerlitoTonyacao of two (2) counts of Qualified Rape and sentencing him to suffer the supreme penalty of death for each rape is *MODIFIED*. In Criminal Case Nos. 96-2117 and 96-2118, appellant is found guilty beyond reasonable doubt of two (2) counts of Rape with the Use of a Deadly Weapon and sentenced to suffer the penalty of *reclusion perpetua* for each offense and ordered to pay the offended party, AAA, in each count, the amounts of ₱50,000.00 as indemnity *ex delicto*; ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages or a total of ₱250,000.00.

Costs *de oficio*.

SO ORDERED.

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

EN BANC

[G.R. No. 136085. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CELIO GLODO *Y* BALISNO,** *appellant.*

SYNOPSIS

Appellant was found guilty of raping his own daughter. He was sentenced to death and hence, this automatic review of the decision.

Except for the penalty, the Court affirmed the conviction of appellant. The victim testified that her father had been raping her since 1993 when she was then 11 years old. The last rape happened on the evening of November 10, 1997 in their house

at Baliuag, Bulacan. The victim finally decided to file a case. Appellant, however, alleged that he was not in Baliuag on November 10, 1997. He was in Biñan, Laguna. The Court was not convinced and ruled that appellant's allegation is a weak defense that can be easily fabricated. And it was further weakened by his admission in court that he asked his sister to talk to the victim and try to settle the case. Death, however, cannot be imposed to appellant as the twin qualifying circumstances of minority of the victim and her relationship to the accused had not been sufficiently established. Hence, the proper was penalty is only *reclusion perpetua*. As to civil damages, appellant was ordered to pay ₱50,000 as civil indemnity and ₱50,000 as moral damages.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** At the outset, we emphasize the settled rule that the testimony of a rape victim of tender or immature age deserves full credit. At the time AAA testified, she was a mere sixteen year old. Furthermore, a reading of the record reveals that her testimony is clear, straightforward and bereft of material or significant inconsistencies. Hence, the trial court correctly found that AAA remained steadfast in her testimony and, thus, her statement that appellant had carnal knowledge of her against her will by means of force and intimidation deserves full faith and credit. The trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate court unless it is shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. We find nothing on record that would compel us to deviate from such well-entrenched rule or to overturn the trial court's assessment of the credibility of complainant AAA.

2. **CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; ABSENCE OF PHYSICAL RESISTANCE SUFFICIENTLY EXPLAINED BY THE VICTIM'S LONG HISTORY OF SEXUAL ABUSE FROM HER FATHER WHO HAD CONSIDERABLE MORAL ASCENDANCY OVER HER.—** Appellant's contention that AAA's claim that she was raped

should not be believed because there are no signs whatsoever that she put up any resistance, is untenable. In *People vs. Rodriguez,* we held that it would be plain fallacy to say that the failure to shout or offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. In this case, it is true that AAA did not put up a struggle, hence, their housemaid, Vicky, did not even notice what was happening between AAA and appellant. However, it cannot be disregarded that AAA had long been subjected to intimidation by her father as he had, for four long years, continuously subjected her to sexual abuse. AAA's testimony that she had been sexually abused by her father since the year 1993, or when she was only a young child of around eleven or twelve years old, was never refuted by appellant. This gives full credence to her story of continuous sexual abuse from 1993 up to 1997. Such abuse from the time that she was a mere eleven-year old child must have instilled terrible fear and confusion in the mind of such a young child. Thus, considering that from such a tender age, her father had always succeeded in having his lustful way with her, it is very easy to understand why, in the mind of AAA, it is already useless to put up any struggle against her father. She knew that no amount of protestation on her part would deter her father's dark intentions. The fact that there had been a long history of sexual abuse completely explains why AAA did not put up any struggle against the dastardly act of her father. Furthermore, the fact that appellant is AAA's father who naturally had considerable moral ascendancy over her, sufficiently explains why she did not offer physical resistance. Hence, in this case, we find that the prosecution has successfully established the elements of violence, force and intimidation in the commission of the crime of rape by appellant.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY FAILURE TO IMMEDIATELY REPORT THE PREVIOUS RAPE INCIDENTS AS THE SAME SUFFICIENTLY EXPLAINED BY THE VICTIM'S IMMATURITY.— We find appellant's argument that AAA's credibility is clouded by her failure to report the alleged previous incidents of rape, to be unmeritorious. As a mere child of eleven or twelve years at the time the first rape was committed, AAA could hardly be expected to know how to go about reporting the crime to

authorities without the help of an adult. Verily, we see how AAA must have felt absolutely hopeless, believing that there is nobody to defend her since all the people around her are siblings of her father who would naturally prefer to keep such incident a secret because of the humiliation the whole family might suffer in the community. Thus, AAA's long silence in not reporting and filing the appropriate case against appellant for his previous sexual assaults on AAA is sufficiently explained.

4. ID.; ID.; ID.; TESTIMONY OF WITNESS NOT AFFECTED BY DEFENSE OF RESENTMENT.— Appellant's assertion that AAA falsely testified against him out of resentment for the physical punishment he inflicted on her when she eloped with her boyfriend and to stop him (appellant) from interfering with her and her boyfriend, is not plausible. In *People vs. Cariñaga*, we observed that not a few persons convicted of rape have attributed the charges against them to family feuds, resentment, or revenge. And in *People vs. Viajedor*, we held that family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast in her testimony, throughout the direct and cross-examinations, that she was sexually abused. The alleged motives on the part of a minor victim have never swayed us from lending full credence to the testimony of a complainant who remained steadfast in her claim that her father had raped her. The Court does not believe that just to vex her father, a girl would willingly go through the traumatic experience of narrating the sordid details of a rape and be grilled and discredited during cross-examination in court. It is truly inconceivable for a girl of such tender years to be able to concoct a story, provide details of a rape and ascribe such wickedness to her very own father just because she resents being disciplined by him, since by thus charging him, she would also expose herself to extreme humiliation, even stigma. AAA's credible testimony is unshaken by appellant's implausible claim that she was motivated by ill-will in accusing him of rape.

5. ID.; ID.; ALIBI; WEAK DEFENSE THAT CAN BE EASILY FABRICATED.— Appellant's lame excuse that he was not at their house in Baliuag, Bulacan on November 10, 1997 because he was then in Manila having his "goods listed" and then proceeded to Laguna to attend the burial of the father of his

live-in partner, Marilou, does not inspire belief. Our jurisprudence is replete with rulings that alibi is the weakest defense for it can be easily fabricated.

6. ID.; ID.; RULES OF ADMISSIBILITY; OFFER OF COMPROMISE BY THE ACCUSED IN CRIMINAL CASE IS AN IMPLIED ADMISSION OF GUILT.— Appellant's defense of alibi and denial is further weakened by his admission in court that he asked his sister to talk to AAA and try to settle the case. Section 27, Rule 130 of the Revised Rules on Evidence, provides: "[i]n criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt."

7. CRIMINAL LAW; RAPE; PROPER PENALTY; WHERE MINORITY OF THE VICTIM AND HER RELATIONSHIP TO ACCUSED NOT SUFFICIENTLY ESTABLISHED.— As to the proper penalty to be imposed on appellant, the applicable provisions of the Revised Penal Code at the time of the commission of the crime are Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997). The Information alleges that AAA was only 15 years old at the time the crime was committed and that she is the daughter of appellant. However, the prosecution merely presented the oral testimony and sworn statement of AAA. It failed to present independent evidence proving the age of the victim and her relationship with appellant so as to warrant the imposition of death penalty. Thus, for failure of the prosecution to present independent evidence to prove the age of victim AAA and her relationship with appellant, the trial court erred in considering the special qualifying circumstance of minority and relationship as basis for the imposition of the death penalty. Appellant should have been found guilty of simple rape and the penalty that should be imposed on appellant is *reclusion perpetua* by virtue of Article 266-A of the Revised Penal Code.

8. ID.; ID.; PROPER CIVIL PENALTIES.— As to the damages awarded by the trial court, we held in *People vs. Viajedor* that an award of civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon a conviction for rape. Jurisprudence holds that moral damages in the amount

of ₱50,000.00 should be granted without the necessity of additional pleading or proof other than the fact of rape, in recognition of the victim's injury necessarily resulting from the evil crime of rape.

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.*:

Before us is an automatic review of the Decision[1] dated October 21, 1998, rendered by the Regional Trial Court of Malolos, Bulacan (Branch 78) in Criminal Case No. 274-M-98, finding appellant Celio Glodo *y* Balisno guilty of the crime of Rape and sentencing him to death.

On February 25, 1998, an Information against appellant was filed before the trial court, to wit:

That on or about the 10th day of November, 1997, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of threat, force and intimidation, with lewd designs, have carnal knowledge of her (sic) daughter the offended party AAA, a 15 year old girl, against her will and without her consent.

The alternative aggravating circumstance of relationship under Art. 15 of the Revised Penal Code is present as the accused is the father of the offended party, AAA.

Contrary to law.

Upon arraignment, appellant pleaded not guilty to the foregoing charge. Thereafter, trial ensued.

[1] Penned by Judge Gregorio S. Sampaga.

The facts of the case, as established by the prosecution, are as follows:

At around 11:00 in the evening of November 10, 1997, private complainant AAA (AAA for brevity) was then sleeping at the top bunk of their double deck bed. She was awakened by her father, herein appellant. He instructed her to transfer to the lower deck of the bed. AAA did not want to go down but appellant forced her to do so by squeezing her arms, thus, inflicting pain. When AAA was already at the lower deck, appellant told her to lie down and proceeded to caress her body. Appellant then forced AAA to lie on her back and whenever she resisted, he would hurt her by squeezing her arms. Appellant undressed AAA, laid on top of her and then inserted his penis into her vagina. AAA felt pain in her vagina while she was being sexually assaulted and for some time thereafter, she just kept crying.[2]

Subsequently, she narrated the incident to her boyfriend, Raymundo Galvez. It was Raymundo and his mother, Milagros Galvez, who accompanied AAA in reporting the incident to *barangay* officials. On November 13, 1997, AAA executed a handwritten complaint for rape against her father before the *barangay* officials who summoned appellant. At the meeting before the *barangay* officials, appellant first denied that he raped AAA, but upon repeated questioning by the *barangay* officials, appellant admitted his dastardly act. Such admission was made in writing as shown by Exhibit "D", the *Sinumpaang Salaysay* dated November 14, 1997, executed by appellant before the *Barangay* Secretary and the *Barangay* Captain. AAA and her companions then proceeded to the police before whom she executed a sworn complaint.[3] SPO1 Celso Cruz who took down the statement of AAA on November 14, 1997, observed that while she was narrating the incident to him, she had a very serious deportment and did not cry but there are times that her voice would crack.[4] At the time AAA executed her *Sinumpaang*

[2] Testimony of AAA, TSN of May 18, 1998, Record, pp. 111-113.

[3] Testimony of AAA , TSN of May 18, 1998, Record, pp. 113-117.

[4] Testimony of SPO1 Celso Cruz, TSN of June 19, 1998, Record, p. 152.

Salaysay before the aforementioned police officer, she stated her age as 15 years old.[5] Thereafter, AAA was instructed to go to the medico legal officer who conducted a physical examination on her.[6]

Medico-legal officer Dr. Manuel Aves testified that as part of his examination of AAA, he interviewed her about her sexual and physical background. Maricel told him that she had been sexually abused by appellant since 1993 up to November 10, 1997. She revealed to Dr. Aves that the rape incident on November 10, 1997 was not the first time such incident happened; and that she was raped for the first time by her father sometime in June of 1993 when he just arrived from Japan and they were staying with her father's relatives in Irosin, Sorsogon.

The physical examination conducted by Dr. Aves further disclosed that AAA was in a non-virgin state and she practically had no hymen left because "she was used for a long time";[7] and that he found signs of penetration but no bruises, laceration or any kind of physical injuries outside the genital area or any sign of resistance.[8]

On the witness stand, AAA reiterated her claim that she had been raped by appellant since 1993. The trial court judge asked AAA why did she not file a case against her father when he first molested her. She replied that she knew no one who would help her in filing the case since all their relatives in Bicol are the siblings of her father and they would just dissuade her from pursuing the case against him; and that she has tried to escape from her father but he was able to convince their neighbor to fetch her from Talavera, Nueva Ecija and bring her back to him.[9]

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[5] Sinumpaang Salaysay of AAA , Exhibit "A", Record, p. 77.

[6] Testimony of AAA, TSN of May 18, 1998, Record, p. 117.

[7] Testimony of Dr. Manuel Aves, TSN of July 10, 1998, Record, p. 164.

[8] *Id*., at pp. 163-166.

[9] Testimony of AAA, TSN of May 18, 1998, Record, pp. 118-119.

On the other hand, appellant testified that the accusation of his daughter, AAA, is not true because on November 10, 1997, he was not at their house. He was then in Manila having his "goods listed." Afterwards, he proceeded to Biñan, Laguna for the interment of the father of his live-in partner, Marilou. It was only on November 11, 1997 that he and Marilou arrived home in Baliuag, Bulacan. He believes that AAA filed rape charges against him out of resentment because he often struck her out of anger from the time she eloped with her former boyfriend, Rufino, sometime in December of 1996. In November 1997, AAA eloped again, this time with Raymond Galvez, and he could no longer get his daughter AAA back because the *barangay* officials took her. It was at the meeting at the *barangay* office on November 13, 1997 that he learned of his daughter's accusation that he raped her. He denied having signed any document at the *barangay* office. After said meeting at the *barangay* office on November 13, 1997, he was arrested and confined in jail.[10] On cross-examination, appellant admitted that after the criminal case was filed, he sent his sister to try to talk to AAA to convince the latter to just settle this whole matter, but AAA refused.[11]

The trial court rendered judgment, the dispositive portion of which reads as follows:

> WHEREFORE, the foregoing considered, this Court hereby finds accused CELIO GLODO *Y* BALISNO *GUILTY* beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentences him to suffer the penalty of *DEATH*, and to pay private complainant AAA the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages. With costs.
>
> SO ORDERED.

On appeal before us, appellant assigns the following errors of the trial court:

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[10] Testimony of Celio Glodo, TSN, July 24, 1998, Record, pp. 174-177.

[11] Testimony of Celio Glodo, TSN August 14, 1998, Record, p. 197.

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE EVIDENCE OF THE PROSECUTION TO BE MORE CREDIBLE AND SUFFICIENT THAN THE DEFENSE DESPITE THEIR EVIDENT INCONSISTENCIES AND IMPROBABILITIES.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE LACK OF MATERIAL EVIDENCE ON THE PART OF THE PROSECUTION.

III

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF MINORITY OF THE ALLEGED VICTIM.[12]

Appellant claims that he was at Biñan, Laguna on the day the rape was supposedly committed in their house in Baliuag, Bulacan; and that there is no truth whatsoever to the claims of AAA who is only making such accusation out of resentment because she believed that he would interfere in her relationship with her boyfriend.

The main question, therefore, is, who is more credible — private complainant or appellant?

Aside from his claim that he was not at the place and time where and when the rape allegedly took place, appellant points out several circumstances that would show that AAA's testimony is not worthy of belief.

First, he contends that it is incredible that AAA did not even put up much resistance when she was allegedly being raped, as in fact, their housemaid, Vicky, who was then sleeping at the top bunk of the double deck bed when the rape was allegedly happening in the lower deck, was not even awakened from her sleep. AAA also admitted during cross-examination that if she

[12] Appellant's Brief, *Rollo*, pp. 53-54.

had shouted when the rape was taking place, the housemaid and other neighbors would have heard her, but she did not shout. The medico-legal report also established that AAA's body bore no signs of injuries from any struggle. Thus, appellant argues that AAA's account of how the rape supposedly happened is doubtful.

Second, appellant asseverates that AAA's failure to report the past incidents of rape allegedly committed by appellant taints her credibility as her long silence runs counter to the natural reaction of an outraged maiden despoiled of her honor.

Lastly, appellant insists that the accusation of rape was merely concocted by AAA because of her resentment against him and to stop him from meddling with her relationship with her boyfriend, Raymond Galvez, with whom she eloped in November of 1997.

Appellant therefore concludes that the uncorroborated testimony of complainant is weak and cannot be considered more convincing and rational than the defense presented by him.

At the outset, we emphasize the settled rule that the testimony of a rape victim of tender or immature age deserves full credit.[13] At the time AAA testified, she was a mere sixteen year old. Furthermore, a reading of the record reveals that her testimony is clear, straightforward and bereft of material or significant inconsistencies. Hence, the trial court correctly found that AAA remained steadfast in her testimony and, thus, her statement that appellant had carnal knowledge of her against her will by means of force and intimidation deserves full faith and credit.

The trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate court unless it is shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[14] We find nothing on record that would compel us to deviate from such well-entrenched rule or

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[13] *People vs. Cariñaga*, G.R. Nos. 146097-98. August 26, 2003.

[14] *People vs. Johnny Viajedor*, 401 SCRA 312, 320 (2003).

to overturn the trial court's assessment of the credibility of complainant AAA.

Appellant's contention that AAA's claim that she was raped should not be believed because there are no signs whatsoever that she put up any resistance, is untenable. In *People vs. Rodriguez*,[15] we held that it would be plain fallacy to say that the failure to shout or offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. Again, in *People vs. Gutierrez*,[16] we ruled that:

> Physical resistance need not be proved in rape when intimidation is exercised upon the victim and she submits herself, against her will, to the rapist's advances because of fear for her life and personal safety. It suffices that the intimidation produces fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something worse would befall her at the time she was being molested.

In this case, it is true that AAA did not put up a struggle, hence, their housemaid, Vicky, did not even notice what was happening between AAA and appellant. However, it cannot be disregarded that AAA had long been subjected to intimidation by her father as he had, for four long years, continuously subjected her to sexual abuse. AAA's testimony that she had been sexually abused by her father since the year 1993, or when she was only a young child of around eleven or twelve years old, was never refuted by appellant. This gives full credence to her story of continuous sexual abuse from 1993 up to 1997. Such abuse from the time that she was a mere eleven-year old child must have instilled terrible fear and confusion in the mind of such a young child. Thus, considering that from such a tender age, her father had always succeeded in having his lustful way with her, it is very easy to understand why, in the mind of AAA, it is already useless to put up any struggle against her father. She knew that no amount of protestation on her part would deter

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[15] 375 SCRA 224, 233 [2002].

[16] G.R. Nos. 147656-58. May 9, 2003.

her father's dark intentions. The fact that there had been a long history of sexual abuse completely explains why AAA did not put up any struggle against the dastardly act of her father. This occurrence was fully described in *People vs. Alba*,[17] quoting the ruling in *People vs. Melivo*,[18] to wit:

"A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear.

"xxx The rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.

"Given this pattern, we have repeatedly ruled that the failure of the victim to immediately report the rape is not indicative of fabrication. 'Young girls usually conceal for some time the fact of their having been raped.' xxx

"In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People v. Molero*, we emphasized that "an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."

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[17] 305 SCRA 811, 822 (1999).

[18] 253 SCRA 347, 356-358 (1996).

Furthermore, the fact that appellant is AAA's father who naturally had considerable moral ascendancy over her, sufficiently explains why she did not offer physical resistance. In *People vs. Rodriguez*,[19] we held that:

> The defense argument that the accused has not employed force upon his daughter in order to have sex with him does not at all persuade. The force or violence necessary in rape is a relative term that depends not only on the age, size, and strength of the persons involved but also on their relationship to each other. In a rape committed by a father against his own daughter, the former's parental authority and moral ascendancy over the latter substitutes for violence or intimidation who, expectedly, would just cower in fear and resign to the father's wicked deeds.[20]

Hence, in this case, we find that the prosecution has successfully established the elements of violence, force and intimidation in the commission of the crime of rape by appellant.

We find appellant's argument that AAA's credibility is clouded by her failure to report the alleged previous incidents of rape, to be unmeritorious. As a mere child of eleven or twelve years at the time the first rape was committed, AAA could hardly be expected to know how to go about reporting the crime to authorities without the help of an adult. Verily, we see how AAA must have felt absolutely hopeless, believing that there is nobody to defend her since all the people around her are siblings of her father who would naturally prefer to keep such incident a secret because of the humiliation the whole family might suffer in the community. Thus, AAA's long silence in not reporting and filing the appropriate case against appellant for his previous sexual assaults on AAA is sufficiently explained. In *People vs. De Taza*,[21] the accused therein likewise used the argument that the victim's delay in filing the rape case against him casts doubt on the victim's credibility, but we found such argument unmeritorious, and stated thus:

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[19] *Supra*, Note 15.

[20] *Ibid*.

[21] G.R. Nos. 136286-89. September 11, 2003.

Appellant posits that given the traumatic consequences of rape incidents, it is inconceivable for Jocelyn not to report or confide to anybody what she claims she went through, despite the fact that she was already far from his reach and was already within the secure confines of her other relatives.

Many victims of rape, however, never complain or file criminal charges against the rapist for they prefer to silently bear the ignominy and pain rather than reveal their shame to the world or risk the offender's ire and drive him to carry out his threats.

... ...

To this Court, Jocelyn's delay in charging appellant does not infirm her credibility.

In *People vs. Gutierrez*,[22] we held:

Complainant's failure to immediately report the rape does not diminish her credibility. The silence of a victim of rape or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated. It is not uncommon for young girls to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the offender is someone whom she knew and who was living with her. The delay in this case was sufficiently explained and, hence, did not destroy complainant's credibility.

Thus, in the present case, the trial court did not err in finding that Maricel's credibility is untainted by the fact that she failed to report the sexual assaults committed by her father against her since 1993 and in upholding AAA's testimony.

Appellant's assertion that AAA falsely testified against him out of resentment for the physical punishment he inflicted on her when she eloped with her boyfriend and to stop him (appellant) from interfering with her and her boyfriend, is not plausible. In *People vs. Cariñaga*,[23] we observed that not a few persons convicted of rape have attributed the charges against them to family feuds, resentment, or revenge. And in *People*

[22] G.R. Nos. 147656-58. May 9, 2003.

[23] *Supra*, Note 13.

vs. Viajedor,[24] we held that family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast in her testimony, throughout the direct and cross-examinations, that she was sexually abused.

The alleged motives on the part of a minor victim have never swayed us from lending full credence to the testimony of a complainant who remained steadfast in her claim that her father had raped her. The Court does not believe that just to vex her father, a girl would willingly go through the traumatic experience of narrating the sordid details of a rape and be grilled and discredited during cross-examination in court. It is truly inconceivable for a girl of such tender years to be able to concoct a story, provide details of a rape and ascribe such wickedness to her very own father just because she resents being disciplined by him, since by thus charging him, she would also expose herself to extreme humiliation, even stigma. AAA's credible testimony is unshaken by appellant's implausible claim that she was motivated by ill-will in accusing him of rape.

Moreover, the testimony of appellant that the victim had eloped twice before the act complained of with different men does not demolish the fact that appellant had raped her on November 10, 1997.

In contrast, appellant's lame excuse that he was not at their house in Baliuag, Bulacan on November 10, 1997 because he was then in Manila having his "goods listed" and then proceeded to Laguna to attend the burial of the father of his live-in partner, Marilou, does not inspire belief. Our jurisprudence is replete with rulings that alibi is the weakest defense for it can be easily fabricated. Hence, in *People vs. Cariñaga*,[25] we held that:

> Alibi is often viewed with suspicion and received with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. For the defense of alibi to prosper, it must

[24] *Supra*, Note 14.

[25] *Supra*, Note 13.

be convincing to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* at the time of the incident. Other than his self-serving testimony, appellant did not present evidence to corroborate his alibi and denial. Self-serving declarations are inadmissible as evidence of the facts asserted.

Herein, appellant's testimony regarding his alibi was, just like in the case quoted above, uncorroborated, despite the fact that Marilou, his live-in partner, was supposedly with him when he went back home on November 11, 1997. Marilou could have easily backed up his claim if it were true. Consequently, appellant's self-serving declaration is inadmissible as evidence of his allegation that he was not at the scene of the crime at the time of the complained incident.

Appellant's defense of alibi and denial is further weakened by his admission in court that he asked his sister to talk to AAA and try to settle the case. Section 27, Rule 130 of the Revised Rules on Evidence, provides:

"[i]n criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt."

Nevertheless, over and above this implied admission of guilt, the credibility of AAA having been firmly established, her testimony, even without said offer of compromise, has proven beyond reasonable doubt that appellant had carnal knowledge of her through force and intimidation.

As to the proper penalty to be imposed on appellant, the applicable provisions of the Revised Penal Code at the time of the commission of the crime are Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), to wit:

Article 266-A. Rape. *When and How Committed.* — Rape is committed —

(1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

... ...

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

... ...

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

... ...

The Information alleges that AAA was only 15 years old at the time the crime was committed and that she is the daughter of appellant. However, the prosecution merely presented the oral testimony and sworn statement of AAA. It failed to present independent evidence proving the age of the victim and her relationship with appellant so as to warrant the imposition of death penalty. In *People vs. Viajedor*,[26] we held:

> The minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance, must be alleged in the Information and proved with certainty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of the penalty of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused xxx The prosecution has the burden of proving all the elements of a crime, including the qualifying circumstances, especially in death penalty cases.

In *People vs. Canoy*,[27] we reiterated that:

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[26] *Supra*, Note 14.

[27] G.R. Nos. 148139-43. October 15, 2003.

Under Sec. 11 of RA 7659, however, the qualifying circumstances of minority and the relationship between the accused and the victim must be specifically alleged in the Informations and duly proved during the trial with equal certainty as the crime itself to warrant the imposition of the death penalty.

Thus, for failure of the prosecution to present independent evidence to prove the age of victim AAA and her relationship with appellant, the trial court erred in considering the special qualifying circumstance of minority and relationship as basis for the imposition of the death penalty. Appellant should have been found guilty of simple rape and the penalty that should be imposed on appellant is *reclusion perpetua* by virtue of Article 266-A of the Revised Penal Code.

As to the damages awarded by the trial court, we held in *People vs. Viajedor*[28] that an award of civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon a conviction for rape. Jurisprudence holds that moral damages in the amount of ₱50,000.00 should be granted without the necessity of additional pleading or proof other than the fact of rape, in recognition of the victim's injury necessarily resulting from the evil crime of rape.

WHEREFORE, the Decision dated October 21, 1998 of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 274-M-98, finding appellant Celio Glodo *y* Balisno guilty beyond reasonable doubt of the crime of rape is *AFFIRMED* with the *MODIFICATIONS* that the death penalty imposed is reduced to *reclusion perpetua* and appellant is ordered to pay private complainant AAA Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

SO ORDERED.

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

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[28] *Supra,* Note 14.

SECOND DIVISION

[G.R. No. 136422. July 7, 2004]

BAYANI ALON and SEVERINA, REDILLA-VILLAMIL for herself, and representing the heirs of NORBERTO VILLAMIL, *petitioners, vs.* **THE HON. COURT OF APPEALS and JUANITO AGRAVIO on his behalf and attorney-in-fact of Eduardo Laserna,** *respondents*.

SYNOPSIS

The trial court rendered a summary judgment in favor of respondent who charged herein petitioners of encroaching a portion of respondent's property. On March 4, 1996, petitioner filed a motion for reconsideration of the trial court's decision alleging that they received a copy of the decision in "February 1996." The same was denied in an order received by petitioner on July 19, 1996. Petitioner then filed a notice of appeal from the decision of the court on July 23, 1996. The trial court rejected the same for having been filed out of time. Thereafter, petitioner filed a petition for *certiorari* with the Court of Appeals but the same was dismissed. Hence, this petition for review.

Whether petitioner failed to appeal his case within the period allowed by law, the Court ruled in the positive. Petitioners were burdened to show that their appeal was perfected on time but failed to do so. Petitioners then resorted to filing a petition for *certiorari* with the Court of Appeals assailing the summary judgment of the trial court. The well-entrenched rule is that the remedy of *certiorari* is not a substitute for the right of appeal lost by the party entitled to appeal especially if the right of appeal is lost through negligence as in case at bar.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PERIOD TO APPEAL; ELUCIDATED.— Under Section 39 of Batas Pambansa Bilang (B.P. Blg.) 129, the petitioners had fifteen (15) days within which to file their notice of appeal, from the time their counsel received notice or was served a copy of the trial court's decision. The fifteen-day period provided therein is mandatory and jurisdictional. It bears stressing that the right

to appeal is not a natural right or a part of due process. It is a procedural remedy of statutory origin and, as such, may be exercised only in the manner and within the time frame provided by the provisions of law authorizing its exercise. Failure of a party to perfect an appeal within the period fixed by law renders the decision sought to be appealed final and executory. As a result, no court could exercise appellate jurisdiction to review the decision. After a decision is declared final and executory, vested rights are acquired by the winning party who has the right to enjoy the finality of the case.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT SUBSTITUTE FOR APPEAL.— The well-entrenched rule is that the remedy of *certiorari* is not a substitute for the right of appeal lost by the party entitled to appeal especially if the right of appeal is lost through negligence. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive. The existence and the availability of the right of appeal are antithetical to the availment of the special civil action for *certiorari*. Moreover, the errors attributed by the petiitoners to the trial court are mere errors of judgment and not errors of jurisdiction. Case law is that, as long as the trial 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 and not by a petition for *certiorari*.

APPEARANCES OF COUNSEL

Gumpan & Valenzuela Law Firm for petitioners.
Santos V. Pampolina, Jr. 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. 43838 dismissing the petition for *certiorari* of petitioners Bayani Alon and the Spouses Norberto and Severina Redilla-Villamil.

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Jesus M. Elbinias and Marina L. Buzon, *concurring*.

The Antecedents

The Spouses Angel Aguilar and Encarnacion Agravio, were the owners of a parcel of land located in Sta. Rosa, Laguna, identified as Lot No. 2162 of the Sta. Rosa Estate Subdivision, covered by Transfer Certificate of Title (TCT) No. T-7029 issued on January 12, 1954. The property was subdivided into two lots, Lot 2162-A and Lot 2162-B. Lot 2162-A was sold to the F.A. Amador & Sons, Inc., to which TCT No. 11545 covering the property was issued on March 19, 1970.[2] Lot 828, which abutted Lot 2162-B on the southeast, was subdivided into Lots 828-A and Lot 828-B. The petitioners Bayani Alon, the Spouses Norberto Villamil and Severina Redilla, acquired Lot 828-A of Psd 41152, for which they were issued TCT No. 36405 by the Register of Deeds on January 16, 1974.[3] On September 14, 1989, respondent Juanito Agravio, the nephew of Encarnacion, and his wife, respondent Josephine T. Borres, purchased Lot 2162-B and were issued TCT No. 196085.[4] The Spouses Agravio constructed a house thereon. Subsequently, they sold Lot 2162-B and the improvements thereon to Eduardo Laserna.

On March 25, 1990, the petitioners, through counsel, wrote respondent Juanito Agravio informing the latter that his house was encroaching on a portion of their property, Lot 828-A, and demanded that he vacate the premises.[5] Respondent Juanito Agravio, through counsel, replied that his house was within the perimeter of his property, Lot 2162-B, covered by TCT 196085.[6] The matter was referred to the *barangay lupon*, but no amicable settlement was forged by the parties.

On November 8, 1990, respondent Agravio filed a complaint against the petitioners Alon and Sps. Villamil in the Regional Trial Court of Biñan, Laguna, docketed as Civil Case No. B-3431, for the relocation of Lots 2162-B and 828-A with damages.

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[2] Records, p. 102.

[3] *Id*. at 8.

[4] *Id*. at 5-6.

[5] *Id*. at 12.

[6] *Id*. at 13-14.

Respondent Agravio alleged therein that the petitioners' houses were constructed on a portion of his property, and despite demands, the latter refused to remove their property.[7]

Respondent Agravio, thereafter, filed an amended complaint, alleging that he had sold the property to Eduardo Laserna, who made a partial payment thereon, but refused to pay the balance of the purchase price until after the property and Lot 828-A were relocated, and the petitioners evicted therefrom; hence, respondent Agravio retained ownership and possession of the property.

In their answer to the complaint, the petitioners asserted that Lot 2162-B claimed by respondent Agravio was a road lot.

The parties agreed to have the two lots relocated by a government surveyor, and thereafter, to abide and be bound by the official report of the said surveyor.[8] The parties further agreed that in order to abbreviate the proceedings, the parties would just submit their affidavits and those of their witnesses, on the basis of which the adverse party would conduct his cross-examination of the affiants. In compliance with the Order of the trial court dated July 15, 1991, the Regional Director of the Land Management Bureau, Region IV, designated Engr. Andres L. Valencia to conduct a relocation survey of the lots, in the presence of the parties and their respective counsels. Engr. Valencia conducted a survey on August 29, 1991 and on September 2, 1991 in the presence of the counsel for the petitioners.

In the meantime, the petitioners' counsel withdrew and Atty. Leodegario A.L. Barayang, Sr. entered his appearance as new counsel.

On September 14, 1991, Engr. Valencia submitted his report, *viz*:

2. From these data we gathered, we found out that lot numbers 826, 827, 2162 and 940 adjoin each other based from the stated adjoining lots and descriptions of lines as per title.

[7] *Id*. at 3-4.

[8] *Id*. at 63-65.

3. That on September 2, 1991, we conducted the survey proper and we were able to relocate line 2-3 of Lot 828-A (LRC) Psd-41152 in the presence of Atty. Agapito Carait, the counsel of Bayani Alon, wherein corner 3 was marked by G.I. nail at concrete fence. Corner 2 of same lot which lies one meter from the concrete fence along the road towards the road was instead marked by G.I. nail at the intersection of line 3-2 to the said concrete fence to serve as witness.

4. That the concrete fence along line 4-1 at lot 828-A (LRC) Psd-41152 had been accepted as the boundary at lot 828-A and lot 828-B (LRC) Psd-41152.

5. That Juanito Agravio is amenable to the points we have set who is (sic) also present during our survey.

6. Common point used was corner 4 at lot 828-A (LRC) Psd-41152 which checks to corners 2 & 3 of lot 2, Block 6, (LRC) Psd-158389.[9]

Appended to the Report was a Special/Sketch Plan showing the location of the two lots.

Respondent Agravio presented Engr. Valencia for direct and cross-examination, while the petitioners' counsel cross-examined him during the hearing of May 26, 1993. However, in a Position Paper with Manifestation filed on July 28, 1993, the petitioners prayed that they be given a chance to adduce testimonial and documentary evidence to controvert the report and testimony of Engr. Valencia. [10] On October 11, 1995, Engr. Valencia was present for additional cross-examination by the counsel of the petitioners, but the said counsel failed to appear. The court then issued an order declaring the petitioners as having waived their right to further cross-examine Engr. Valencia.[11]

On January 11, 1996, the court rendered a summary judgment, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

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[9] *Id.* at 73.

[10] *Id.* at 206.

[11] *Id.* at 228.

1. Ordering the defendants, their heirs and successors-in-interests to recognize the ownership and possession of plaintiff over Lot No. 2162-B, together with the improvements thereon, containing an area of 247 square meters, located at Barangay Tagapo, Sta. Rosa, Laguna, and covered by TCT No. T-196085;

2. Ordering the defendants, their heirs and successors-in-interests to vacate the premises being encroached by the houses erected by them on a portion of Lot No. 2162-B and to remove or demolish the said house or portion of defendant Bayani Alon's house which encroaches on a portion of Lot No. 2162-B;

3. Ordering the defendants or their legal heirs to pay the plaintiff the amount of ₱25,000.00 as actual damages and litigation expenses and the amount of ₱20,000.00 as and by way of attorney's fees plus the costs of this suit.

SO ORDERED.[12]

On March 4, 1996, the petitioners filed a motion for reconsideration of the decision with an alternative prayer that they be allowed to adduce evidence. They alleged that they received a copy of the decision of the court in *February 1996*.[13] The trial court issued an Order on July 5, 1996 denying the motion.[14] The petitioners' counsel received a copy of the said order on July 19, 1996, and thereafter filed a notice of appeal from the judgment of the court on July 23, 1996.[15]

On October 10, 1996, the trial court issued an Order rejecting the notice of appeal for having been filed beyond the period provided therefor.[16] On motion of respondent Agravio, the court issued a writ of execution.[17] The court also issued, on April 2, 1997, an Order granting the respondent's motion for the issuance of a writ of demolition.[18]

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[12] *Id*. at 231-232.

[13] *Id*. at 239.

[14] *Id*. at 242-243.

[15] *Id*. at 244.

[16] *Id*. at 246-247.

[17] *Id*. at 254.

[18] *Id*. at 264.

On April 8, 1997, the petitioners filed a petition for review on *certiorari* with the Court of Appeals (CA), with a plea for injunctive relief, for the reversal of the decision of the RTC and to compel the said court to receive the evidence on their behalf.[19]

The petitioners alleged the following in their petition:

> 1. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN NOT ALLOWING DEFENDANTS (Civil Case No. B-3431, *Ibid.*) AT LEAST TO PRESENT/ADDUCE EVIDENCE AT ALL.
>
> 2. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION BY RENDERING "SUMMARY JUDGMENT" DATED JANUARY 11, 1996 IN HASTE IF NOT AT ALL CONTRARY TO [THE] REPORT MADE BY GOVERNMENT ENGR. ANDRES VALENCIA DATED SEPTEMBER 4, 1991 (*Ibid.*).
>
> 3. RESPONDENT JUDGE and/or CLERK OF COURT GRAVELY ABUSED THEIR DISCRETION WHEN THEY ACCEPTED COMPLAINT/AMENDED COMPLAINT FILED BY PLAINTIFF WITHOUT THAT (sic) APPROVED PLAN/ RELOCATED SURVEY-PLAN OF SUBJECT LOTS THEREOF.
>
> 4. RESPONDENT JUDGE'S GRAVE ABUSE OF DISCRETION IS A RECTIFIABLE ERRORS (sic) CORRECTIBLE BY THIS PROCEEDINGS (sic).[20]

The petitioners asserted that the report of Engr. Valencia was erroneous, despite which the court rendered summary judgment based on the said report. Moreover, the petitioners averred that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction when it denied their motion to adduce testimonial and documentary evidence to controvert the said report, rendered a summary judgment, and dismissed their appeal from the said decision.[21]

In his opposition to the petition, the public respondent claimed that, if at all, any error committed by the trial court in its summary

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[19] CA *Rollo*, pp. 12-13.

[20] *Id*. at 7.

[21] *Id*. at 11.

judgment was merely an error of judgment, not correctible by a *writ of certiorari*. He insisted that by agreeing to be bound by the report of the surveyor, the petitioners waived their right to adduce evidence to controvert the findings of the said surveyor. It was then proper for the court to render judgment, considering that the petitioners agreed to be bound by the said findings. As such, no genuine issue was raised by the petitioners. He also posited that the surveyor was cross-examined by the petitioners' counsel on his report. According to the public respondent, by their failure to appeal in due course from the decision of the trial court within the period therefor, the said decision had become final and executory.

In the meantime, the Sheriff implemented the writ of demolition issued by the trial court, but stopped when the petitioners asked that they be allowed to remove that portion of their house which, according to the decision, encroached on the property of the respondent. The petitioners, however, reneged on their promise and even installed additional improvements on the property.[22]

On November 23, 1998, the CA rendered judgment dismissing the petition on the following grounds: (a) the petitioners had the right to appeal the decision of the trial court but lost their right when they failed to appeal within the period therefor; and (b) the errors, if any, committed by the trial court in its summary judgment were errors of judgment, not correctible by a *cert writ*.

The Present Petition

The petitioners forthwith filed their petition with this Court alleging as follows:

1. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO FIND THAT THE SUMMARY JUDGMENT OF JUDGE COSICO WAS ISSUED IN EXCESS OF JURISDICTION.

2. THE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE DOCTRINE OF ESTOPPEL AGAINST PETITIONERS DESPITE THE *PRIMA FACIE* SHOWING OF MISTAKE OR FRAUD ON THE PART OF ENGR. VALENCIA.

[22] Records, p. 286.

3. THE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE PROPRIETY OR CORRECTNESS OF THE SUMMARY JUDGMENT AS THE CORRECT PROCEDURE TO RESOLVE THE COMPLAINT.

4. THE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT FIND THAT JUDGE COSICO DENIED THE PETITIONERS DUE PROCESS WHEN HE ALLOWED RESPONDENT TO PRESENT HIS WITNESSES BUT DENIED PETITIONERS THE SAME OPPORTUNITY.

5. THE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD JUDGE COSICO'S RULING THAT THE NOTICE OF APPEAL WAS FILED OUT OF TIME DESPITE THE FACT THAT THE HONORABLE JUDGE DID NOT HAVE ANY *FACTUAL* BASIS FOR HIS RULING.[23]

The petitioners assert that there is no showing in the RTC records exactly when their counsel received a copy of the trial court's decision. They allege that there was no factual basis for the finding of the trial court that their notice of appeal was filed beyond the period therefor, since the registry return card was not returned to the court. They contend that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction in rejecting their notice of appeal and disallowing their appeal. They further assert that the action of the respondents did not involve the title to or possession of Lot 2162-B and Lot 828-A; hence, the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction in declaring the respondents as the lawful owners of the property and, thus, entitled to the possession thereof, and in ordering them to demolish their houses and pay the respondents damages and attorney's fees.

The petitioners further allege that (a) they were not estopped from assailing the report of Engr. Valencia despite their agreement to abide by the said report; (b) the report of Engr. Valencia contains glaring and vital errors, one of which is his statement therein that he conducted a survey of Lot 828-A instead of conducting a survey of Lot 828-B; (c) such report was not

[23] *Rollo,* pp. 25-26.

approved by the Land Management Bureau and, as such, was not a final report; and, (d) they submitted genuine, factual issues to the trial court, thus, precluding the rendition of a summary judgment.

In their comment on the petition, the respondents aver that the petitioners failed to appeal the trial court's decision within the reglementary period. They assert that the petition for *certiorari* was not a substitute for the right of appeal which, by their negligence, the petitioners lost. The respondents further aver that the petition involves factual issues beyond the competence of the Court to delve into and resolve.

The Issues

The issues for resolution are (a) whether or not the Court of Appeals erred in affirming the Order of the trial court rejecting their notice of appeal and dismissing their appeal; and, (b) if, in the affirmative, whether or not the errors, if any, of the trial court in its summary judgment are errors of judgment.

On the first issue, the Court of Appeals ruled that, as the trial court held, the petitioners failed to appeal the summary judgment within the reglementary period therefor. It stated that, as shown by the records, the petitioners received the decision on February 9, 1996 and that their counsel received it on or about the same date, but filed their motion for reconsideration of the said decision only on March 4, 1996 and thus failed to perfect their appeal within the period therefor. The petitioners contend that there is no showing in the records exactly when their counsel received a copy of the decision of the trial court. Hence, the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction in disallowing or dismissing their appeal.

The Ruling of the Court

We find the stance of the petitioners untenable.

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[24] The notice of appeal was filed before the effectivity of the 1997 Rules of Civil Procedure.

Under Section 39 of Batas Pambansa Bilang (B.P. Blg.) 129,[24] the petitioners had fifteen (15) days within which to file their notice of appeal, from the time their counsel received notice or was served a copy of the trial court's decision. The fifteen-day period provided therein is mandatory and jurisdictional. It bears stressing that the right to appeal is not a natural right or a part of due process. It is a procedural remedy of statutory origin and, as such, may be exercised only in the manner and within the time frame provided by the provisions of law authorizing its exercise. Failure of a party to perfect an appeal within the period fixed by law renders the decision sought to be appealed final and executory. As a result, no court could exercise appellate jurisdiction to review the decision.[25] After a decision is declared final and executory, vested rights are acquired by the winning party who has the right to enjoy the finality of the case.[26]

In this case, there is no showing in the records of the exact date when the counsel of the petitioners received his copy of the trial court's decision. Indeed, the registry return card showing when the said counsel received such copy has not been returned to the trial court. Neither did the private respondents present a certification from the Postmaster of Manila, where the law office of Atty. Leodegario Barayang, Sr., the petitioners' counsel, was located, when he received his copy of the decision. The trial court, likewise, failed to order the said counsel to inform the court when he received his copy of the decision before it rejected the petitioners' notice of appeal and disallowed such appeal, on its belief that the latter's counsel received his copy of the decision on the same date as the petitioners, or on February 9, 1996.

Nevertheless, we sustain the trial court's rejection of the notice of appeal filed by the petitioners, through counsel, on the ground that it was filed out of time. The records show that in the motion for reconsideration filed by the petitioners, through counsel, on March 4, 1996, such counsel admitted that he received, through the mails, his copy of the decision in "February 1996,"

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[25] *Oro v. Diaz*, 361 SCRA 108 (2001).

[26] *Ibid*.

but failed to state the exact day of such receipt. The petitioners were burdened to show that their appeal was perfected on time, but failed to do so. The conclusion of the trial court, that the petitioners' counsel could have received his copy of its decision on February 10, 1996 or ten days after the said copy was deposited in the mails on January 31, 1996 is not capricious. The records show that a copy of the Order dated July 5, 1996, denying the petitioners' motion for reconsideration was sent by registered mail to their counsel on July 9, 1996 and was received after ten days or on July 19, 1996.[27] Although the petitioners received a copy of the order of the trial court granting the motion of the private respondent for a writ of execution, they did not file a motion for reconsideration thereof. In their opposition to the respondent's motion for the issuance of a writ of demolition, the petitioners never alleged that their appeal had already been perfected and, as such, the execution of the decision of the court and the demolition of their houses were premature.

Even in their petition before the Court of Appeals, the petitioners did not claim that their appeal from the decision of the trial court was made within the reglementary period therefor. The petitioners even failed to assail the order of the trial court rejecting their notice of appeal. They merely alleged in their petition that the trial court erred in rejecting their notice of appeal and thereby deprived them of a chance to controvert the report of Engr. Valencia.

We note that even in their petition at bar, the petitioners failed to state the date when their counsel received his copy of the decision of the court *a quo*. The petitioners never explained why they failed to do so.

We are convinced that the petitioners purposely concealed from the trial court, the appellate court, and this Court, as well as from the respondents, the exact date when their counsel received a copy of the decision of the trial court in order to prevent the discovery of the fact that they failed to perfect their appeal within the reglementary period and that, consequently,

[27] Records, p. 243 (Dorsal portion).

the decision of the trial court had become final and executory; hence, the Court of Appeals would have no jurisdiction to review, revise or reverse the said decision. The petitioners then resorted to filing their petition for *certiorari* with the Court of Appeals assailing the summary judgment of the trial court after failing, by their own negligence, to do so by appeal by writ of error.

The well-entrenched rule is that the remedy of *certiorari* is not a substitute for the right of appeal lost by the party entitled to appeal especially if the right of appeal is lost through negligence.[28] The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[29] The existence and the availability of the right of appeal are antithetical to the availment of the special civil action for *certiorari*.[30]

Moreover, the errors attributed by the petitioners to the trial court are mere errors of judgment and not errors of jurisdiction. Case law is that, as long as the trial 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 and not by a petition for *certiorari*.[31]

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED DUE COURSE*. The decision of the appellate court consistent with this Decision is *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

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

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[28] *Obando vs. Court of Appeals,* 366 SCRA 673 (2001).

[29] *Ibid*.

[30] *People of the Philippines vs. Court of Appeals*, G.R. No. 144332, June 10, 2004.

[31] *Ibid*.

SECOND DIVISION

[G.R. No. 139456. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ADONES ABATAYO,** *appellant*.

SYNOPSIS

While the trial court found appellant guilty of two counts of murder, the Court ruled him guilty only of two counts of homicide. The prosecution has proven beyond doubt that appellant killed the victims. He was positively identified by a lone eyewitness who testified in a clear, straightforward, categorical and consistent manner, without any tinge of falsehood or sign of fabrication. No evil motive also was imputed to the witness for testifying against appellant. Nonetheless, there was not any circumstance present to qualify the crimes to that of murder.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT OF ACCUSED TO CONFRONT WITNESSES AGAINST HIM; MAY BE IMPLIEDLY WAIVED.— Under Article III, Section 14(2) of the 1987 Constitution, the appellant has the right to meet the witnesses against him face to face. Under Rule 115, Section 1(f) of the Rules of Court, he has the right to confront and cross-examine the witnesses against him at the trial, a fundamental right which is part of due process. However, the right of confrontation and cross-examination is a personal one. It is not an absolute right which a party can claim at all times. In *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, we ruled that the right to confront the witness may be waived by the accused, expressly or impliedly. Further, in the later case of *Fulgado v. Court of Appeals,* we ruled that the task of recalling a witness for cross-examination is imposed on the party who wishes to exercise said right, and stressed that it should be the opposing counsel who should move to cross-examine the plaintiff's witness. Here, from the conduct of the appellant's counsel, it can be fairly inferred that he considered

the initial cross-examination of Juanito adequate, and that there was no longer a need to further cross-examine the witness.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL-MOTIVE.— Reviewing the records, we find that the prosecution has proven beyond doubt that the appellant killed the victims. He was positively identified by the lone eyewitness, Juanito Gutang. The testimony of this lone eyewitness is clear, straightforward, categorical and consistent, without any tinge of falsehood or sign of fabrication. No evil motive has been imputed against Juanito Gutang for testifying against appellant. As a matter of fact, the latter admitted that no bad blood existed between them, and he knew of no reason why the former would testify against him. In such a situation, the rule is that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not, and his testimony is entitled to full faith and credit. Furthermore, it is unlikely that this witness could relate all the details of the crime with clarity and lucidity if he had not actually witnessed the killings of the Basalan brothers.

3. ID.; ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED.— It is well-established that the trial court's calibration of the credibility of witnesses should not be disturbed on appeal since the said court is in a better position to decide the question, having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value, which, if considered, could alter and affect the result of the case. In the case at bar, we find no reason to depart from this rule, given the trustworthiness of the testimony of the witness.

4. ID.; CRIMINAL PROCEDURE; JUDGMENT; FORMS AND CONTENTS; JUDGMENT OF CONVICTION MUST SPECIFY ATTENDANT CIRCUMSTANCES TO THE CRIME.— The trial court found the appellant guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua* in each case, without finding any circumstance attendant to the crime to qualify the killings to murder. Section 1, Rule 120 of the Revised Rules of Court, requires that after an adjudication of guilt by the court, it should impose the proper penalty and civil liability provided for by law. Further, Section 2 of the same Rule mandates that the judgment of conviction

should state, among others, the aggravating or mitigating circumstances attendant to the commission of the crime, if there are any, to enable the Court to determine the proper penalty on the appellant. Judges who faithfully observe this duty contribute to the orderly administration of justice.

5.CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; MUST BE ESTABLISHED AS CONCLUSIVELY AS THE KILLING ITSELF.— Treachery cannot be appreciated in this case where the lone eye-witness to the killing, Juanito Gutang, was not able to see how the assault started. The fact that the incident happened in an unholy hour, around 3:00 a.m., did not prove that the victims were sleeping when they were killed. As Juanito Gutang testified, he was asleep when appellant started the attack on his victims and he was only awakened by thudding sounds, as the appellant struck the victims with a pipe. The importance of such testimony cannot be overemphasized, considering that treachery cannot be presumed nor established from mere suppositions. It is settled that if the victim, when killed, was sleeping or had just awakened, the killing is with treachery because in such cases, the victim was not in a position to put up any form of defense. However, when the lone eyewitness for the prosecution did not see how the attack commenced, 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. Thus, treachery cannot be deduced from mere conjectures, presumption or sheer speculation. Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Settled is the rule that treachery cannot be presumed but must be proved by clear and convincing evidence, or as conclusively as the killing itself.

6. ID.; ID.; ID.; ID.; WHEN PRESENT.— Under our penal law, 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. It requires the concurrence of two conditions: 1) employment of means of execution that gives the person attacked no opportunity to defend himself,

much less to retaliate; and, 2) deliberate or conscious adoption of the means of execution. 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 and thereby ensuring its commission without risk to himself.

7. ID.; ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; NOT PRESENT IN CASE AT BAR.— Like treachery, evident premeditation should be established by clear and positive evidence. Mere inferences or presumptions, no matter how logical and probable they might be, would not be enough. In the case at bar, evident premeditation was, likewise, not proven. The prosecution did not even attempt to prove the three elements necessary before evident premeditation may be appreciated as a qualifying aggravating circumstance, namely: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and, (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act. A police report of a prior spat between the appellant and the victims is not enough, as nothing in the records show that the appellant planned in advance the commission of the crime. The principal eyewitness was not even aware of any prior incident or possible reason which could have led the appellant to attack the victims.

8. ID.; ID.; ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONY.— The trial court certainly could not be faulted for not giving probative weight to the appellant's alibi. Besides being inherently weak for not being airtight, the appellant's alibi cannot prevail as against the positive identification made by the prosecution witness. On top of its inherent weakness, alibi becomes less plausible as a defense when it is corroborated only by a relative or a close friend of the accused. At any rate, it was for the trial judge, using his discretion and his observations at the trial, to determine whom to believe among the witnesses who disputed the whereabouts of the appellant in the unholy morning of September 10, 1993.

9. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY.— On the appellant's denial, suffice it to say, that said defense cannot prevail over the positive identification by the eyewitness who had no improper motive to falsely testify

against him as we have mentioned above. It is negative and self-serving, and cannot be given greater evidentiary weight over the testimony of a credible witness who testifies on affirmative matters.

10. ID.; ID.; PRESUMPTION; FLIGHT AS INDICATION OF GUILT.—The appellant's flight after the incident could be taken as a clear and positive indication of guilt. It is a sage observation that the flight of an accused from the scene of the crime and his act of hiding himself until he is arrested are circumstances highly indicative of guilt. For, as wisely said, the "wicked flee even when no man pursueth but the righteous are as bold as a lion." The appellant's sudden and unexplained trip following the killing of the victims was unmistakably a flight from justice.

11. ID.; CRIMINAL PROCEDURE; JUDGMENT FOR TWO OR MORE OFFENSES CHARGED IN A SINGLE COMPLAINT.— It must be noted that only one Information (for double murder) was filed with the trial court. The records are bereft of any showing that the appellant objected to the duplicity of the information by filing a motion to quash before his arraignment. Hence, he is deemed to have waived such defect. In this connection, Section 3 of Rule 120 of the Rules of Court provides: SEC. 3. *Judgment for two or more offenses.* — When two or more offenses are charged in a single complaint or information, and the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

12. CRIMINAL LAW; HOMICIDE; PROPER PENALTY ABSENT ANY QUALIFYING CIRCUMSTANCE AND APPLYING THE INDETERMINATE SENTENCE LAW.— Under Article 249 of the Revised Penal Code, homicide is punishable by *reclusion temporal* which has a range of twelve (12) years and one (1) day to twenty (20) years. There being no mitigating nor aggravating circumstance that attended the commission of the crimes, the maximum period of the imposable penalty should be taken from the medium period of *reclusion temporal*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The minimum of the indeterminate penalty should be taken

from the full range of *prision mayor*, which is one degree lower than *reclusion temporal*. Applying the Indeterminate Sentence Law, the appellant may be meted an indeterminate sentence 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, for each count of homicide.

13. ID.; ID.; DAMAGES; TEMPERATE DAMAGES AWARDED IN LIEU OF ACTUAL DAMAGES NOT SUFFICIENTLY ESTABLISHED.— The amount of damages awarded by the trial court must be modified, as it awarded ₱17,000.00 for actual damages despite the absence of any documentary evidence to prove the same. The award shall be deleted. However, temperate damages may be recovered under Art. 2224 of the Civil Code, when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. In this case, the amount of ₱25,000.00 would be sufficient, considering that it is undisputed that the family incurred expenses for the wake and burial of the victims.

14. ID.; ID.; ID.; LOSS OF EARNING CAPACITY; WHEN PROPER.— Under Article 2206 of the Civil Code, the heirs of the victims are entitled to indemnity for loss of earning capacity. Ordinarily, documentary evidence is necessary for the purpose. By way of exception, testimonial evidence may suffice if the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws. In the case at bar, however, while the victims' mother testified that her sons remitted to her their income, she did not indicate how much her sons were then earning. Thus, this case does not fall under any of the exceptions.

15. ID.; ID.; ID.; CIVIL INDEMNITY; PROPER WITHOUT NEED OF PROOF.— In accordance with prevailing jurisprudence relative to Article 2206 of the Civil Code, the heirs of the victims are entitled to the total amount of ₱100,000.00 by way of civil liability. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.

16. ID.; ID.; ID.; MORAL DAMAGES; WHEN PROPER.— Proof of moral damages was presented through the testimony of the mother of the victims. Moral damages may be awarded in favor of the heirs of the victims upon sufficient proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Considering the pain and anguish of the victims' family brought about by their death, the award of ₱50,000.00 for each offense is justified.

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.*:

On appeal is the Decision[1] of the Regional Trial Court of Mandaue City, Branch 56, in Criminal Case No. DU-4381 finding appellant Adones Abatayo guilty beyond reasonable doubt of two counts of murder and sentencing him to suffer *reclusion perpetua* for each count.

The appellant was charged with the crime of double murder in an Information dated January 31, 1994. The indictment reads:

That on or about the 10th day of September 1993, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill and with treachery and evident premeditation, did then and there wil[l]fully, unlawfully and feloniously attack, assault and strike Dominador Basalan and Teofredo Basalan with the use of a GI pipe, thereby inflicting upon them mortal wounds in (*sic*) their head[s] which caused their instantaneous death.

CONTRARY TO LAW.[2]

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[1] Penned by Judge Augustine A. Vestil.

[2] Records, p. 1.

Upon arraignment, the appellant, assisted by counsel, pleaded not guilty.[3]

The first witness for the prosecution was Juanito Gutang, whose direct examination was terminated during the trial of November 22, 1994. The appellant's counsel commenced with his cross-examination of the witness, but later prayed for a resetting as he still had many questions for the said witness. The court granted the motion. However, during the continuation of the trial on January 23, 1995, Juanito failed to appear due to fever. The public prosecutor then asked the court to defer the further cross-examination of Juanito until he recovered from his illness, and that he be allowed to present his second witness, Apolonio Quilag. The appellant did not object. The court granted the motion, but warned the public prosecutor that if Juanito would not appear to continue with his testimony by the next trial date, his testimony would be stricken off the record.[4] However, such warning was not contained in the order issued by the court on even date.

During the trial on March 2, 1995, the public prosecutor presented PO2 Alfredo Andales, and thereafter, the victims' mother, Silvina Basalan. Both testimonies were completed. The hearing of April 17, 1995 was cancelled, after the parties admitted the authenticity of Dr. Ladislao Diola, Jr.'s necropsy report and agreed to dispense with his testimony thereon. The public prosecutor announced that he would rest his case on May 22, 1995.[5]

During the trial on May 22, 1995, the public prosecutor manifested that he was ready to offer his documentary evidence and rest his case thereafter. He offered in evidence the affidavit of Juanito as part of his documentary evidence. The appellant objected to the admission of the affidavit for the purpose for which it was offered. The court nevertheless admitted the affidavit and the public prosecutor rested his case. On motion of the

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[3] *Id*. at 11.

[4] TSN, 23 January 1995, p. 3.

[5] Records, p. 24.

appellant, trial was set at 8:30 a.m. of June 26, 1995 for the presentation of the witnesses for the defense.

The Case for the Prosecution[6]

Teofredo Basalan and his brother Dominador Basalan, aged 24 and 26, respectively, lived with their mother Silvina Basalan in Colon, Naga, Cebu City.[7] They were stay-in construction workers at the construction site of the Gaisano FCDC at Ibabao, Mandaue City.[8]

At around 7:00 p.m. of September 9, 1993, after a hard day's work at the construction site, laborers Juanito Gutang, Apolonio Quilag and Pedro Esconia, as well as an unidentified co-worker, retired early in their quarters.[9]

At around 3:00 a.m. the following day,[10] Juanito was awakened by an unusual thud, similar to that produced by someone "striking somebody."[11] He got up and saw the appellant, from a distance of about three (3) meters,[12] hitting Teofredo and Dominador with a lead pipe.[13] Juanito woke up his co-workers and told them what he had just witnessed.[14] Apolonio saw the victims, already lying in a pool of blood.[15] Juanito and his co-workers immediately reported the incident to the security guards on duty who, in turn, called up the Mandaue City police station.[16]

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[6] The prosecution presented four witnesses, namely, Juanito Gutang, Apolonio Quilag, PO2 Alfredo Andales, and Silvina Basalan.

[7] TSN, 2 March 1995, p. 5 (Silvina Basalan).

[8] TSN, 22 November 1994, p. 3 (Juanito Gutang).

[9] *Id*. at 12.

[10] *Id*. at 3-4.

[11] *Id*. at 5 and 14.

[12] *Id*. at 14.

[13] *Id*. at 5.

[14] *Id*. at 8.

[15] TSN, 23 January 1995, p. 11 (Apolonio Quilag).

[16] TSN, 22 November 1994, p. 9 (Juanito Gutang).

Meanwhile, the appellant hurriedly left the job site, bringing with him his personal belongings.[17]

PO2 Alfredo Andales, who was assigned to the case, forthwith conducted an on-the-spot investigation. At the crime scene, he found the victims' bloodied corpses, with their respective heads smashed. He also found a galvanized iron (G.I.) pipe, the weapon used to kill the victims.[18] His investigation revealed that the night before the victims were killed, they had an acrimonious quarrel with the appellant over some misplaced construction tools which were later recovered.[19] The policemen had the incident recorded in the police blotter[20] with the appellant as the prime suspect.

In the afternoon of that same day, the bodies of the victims were brought to the Cosmopolitan Funeral Homes where Dr. Ladislao V. Diola, Jr., conducted a *post mortem* examination. He signed a necropsy report stating that the victims died due to "cardio respiratory arrest due to shock and hemorrhage secondary to injuries to the head."[21] By agreement of the parties, the

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[17] TSN, 2 March 1995, p. 4 (PO2 Alfredo Andales).

[18] *Id.* at 3-4.

[19] Exhibit "C", Records, p. 25.

[20] *Ibid*.

[21] Exhibits "F" and "G". Records, pp. 28-29. Necropsy Report on the cadaver of Teofredo Basalan.

Fairly developed, fairly nourished male cadaver, in rigor mortis with post mortem lividity on the dependent portions of the body. Lips and nail beds are cyanotic, the conjunctivae are pale. There is a massive hematoma on the left and right side of the scalp. An extensive fracture of the occipital and the anterior cranial fossa was also noted.

Head:

1. Lacerated wound, right eyebrow measuring 4 x 105 cms., 5 cms. from the anterior midline.

2. Contusion, just above the right eye, measuring 5.5 x 2.5 cms., 5 cms. from the anterior midline.

3. Contusion, lower lip measuring 3 x 1.5 cms. bisecting the anterior midline.

testimony of Dr. Diola was dispensed with after the defense admitted the findings contained in the doctor's *post mortem* report.[22] On September 16, 1993, Juanito and Apolonio subscribed and swore to the truth of their respective affidavits before the public prosecutor.[23]

Silvina testified that she fainted when she learned of the death of her two sons. She spent around ₱50,000.00 for the wake and funeral. She also testified that the death of her two sons caused her emotional pain, but when asked to translate her pain into monetary terms, she left it for the court to determine.[24]

The Evidence of the Appellant[25]

The appellant testified that he started working for Super Metro Gaisano as a construction worker sometime in mid-August 1993. On September 9, 1993, after rendering overtime work for two hours, he decided to go home. He left the job site at around 7:00 p.m., and hitched a ride home in the company's vehicle driven by Charmel Ralago, who happened to be his neighbor. He finally arrived home at about 9:00 p.m. The following morning, his uncle dropped by his place and asked to be accompanied to Carcar, Cebu, as it was the town's *fiesta*. The appellant readily acquiesced. Consequently, he absented himself from work, and requested a co-worker to get his salary. After the *fiesta*, he went back home but no longer reported for work. Instead, he

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4. Lacerated wound, occipital area, right, measuring 5 x 1½ cms., 7 cms. from the midsaggital line.

5. Lacerated wound, occipital area, left, measuring 5 x 5 cms., 4 cms. from the midsaggital line.

6. Lacerated wound, below the above wound, measuring 3.5 x 2 cms., 3 cms. from the midsaggital line.

There's a massive hemorrhage of the brain substance.

[22] Records, p. 24.

[23] Exhibits "A" and "B", *Id*. at 2-3.

[24] TSN, 2 March 1995, pp. 11-13.

[25] The defense presented three witnesses, namely, Adones Abatayo, Bernabe Hinario, and Leonora Abatayo.

went to Bohol. He returned home in December 1993 in time for the holiday season. He was surprised when he was arrested in August 1994 for the killings of the Basalan brothers. [26]

Bernabe Hinario, 23 years old, erstwhile *taho* peddler and next-door neighbor of the appellant, corroborated the latter's alibi. He testified that at about 9:00 p.m. on September 9, 1993, as he was whiling away the time in the neighborhood, he saw the appellant arrive from work as usual. The appellant greeted him and invited him to attend the *fiesta* in Carcar, Cebu, the next day. He declined because of his work. Thereafter, they parted ways, as the appellant proceeded to his house.[27]

Leonora Abatayo, the appellant's mother, testified that she was in their house when the appellant arrived home at about 9:00 p.m. on September 9, 1993. After taking his dinner, the appellant slept. The following morning, after breakfast, the appellant left with his uncle, Fransico Malubay, to attend the *fiesta* in Carcar, Cebu.[28]

After trial, the court rendered a decision, the dispositive portion of which reads:

> Foregoing considered and in the light of Prosecution witness Juanito Gutang's positive identification and eyewitness account of the killing, the Court is constrained and so finds the Accused GUILTY of the crime of two counts of Murder. Accordingly, Accused is sentenced to suffer the penalty of *Reclusion Perpetua* for each count of Murder. Accused is, likewise, ordered to:
>
> 1. Reimburse the victim's kin for actual expenses in the sum of Seventeen Thousand Pesos (₱17,000.00);
>
> 2. Pay damages in the total sum of Two Hundred Thousand Pesos (₱200,000.00) plus costs.
>
> SO ORDERED.[29]

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[26] TSN, 26 June 1995, pp. 4-8 (Direct-examination).

[27] TSN, 8 February 1996, pp. 5-7.

[28] TSN, 29 February 1996, pp. 3-4.

[29] Records, p. 66.

In convicting the appellant, the trial court relied on the testimony of Apolonio and eyewitness Juanito Gutang, which were corroborated by the medical findings showing the nature and the location of the wounds inflicted on the victims. The court brushed aside as dubious and weak the denial and alibi interposed by the appellant. According to the court, such defenses could not prevail over the positive identification made by Juanito of the appellant as the perpetrator of the crime.[30]

The appellant now assails his conviction, asserting that:

I

THE TRIAL COURT ERRED IN NOT ORDERING THE STRIKING OUT OF THE ENTIRE TESTIMONY OF THE PROSECUTION['S] ALLEGED EYEWITNESS JUANITO GUTANG ANENT THE CRIME CHARGED IN VIEW OF HIS UNJUSTIFIED FAILURE TO ALLOW HIMSELF TO BE FURTHER CROSS-EXAMINED PURSUANT TO ITS ORDER DATED JANUARY 23, 1995.

II

THE TRIAL COURT ERRED IN GIVING PROBATIVE VALUE TO THE UNFINISHED TESTIMONY OF THE PROSECUTION WITNESS JUANITO GUTANG DESPITE ITS INHERENT IMPLAUSIBILITY AND IN DISREGARDING THE EVIDENCE INTERPOSED BY [THE] ACCUSED-APPELLANT WHICH WAS AMPLY CORROBORATED ON MATERIAL POINTS.

III

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION NOTWITHSTANDING THE FACT THAT ACCUSED-APPELLANT'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[31]

The Ruling of the Court

We affirm the findings of the trial court and sustain the conviction of the appellant with modifications.

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[30] *Id*. at 65-66.

[31] *Rollo*, p. 72.

The Incomplete Cross-Examination of Juanito Gutang

The appellant insists that the trial court should not have given credence to the story of the lone eyewitness for the prosecution, Juanito Gutang, considering that his counsel was not able to continue cross-examining the witness. He strongly argues that his constitutional and procedural right to confront the witness against him was thereby impaired. Citing *Ortigas, Jr. v. Lufthansa German Airlines*[32] as the case in point, the appellant faults the trial court for relying on Juanito's testimony despite the warning it made during the trial of January 23, 1995, that it would consider the entire testimony of Juanito stricken off the record for lack of proper cross-examination.[33]

The Office of the Solicitor General (OSG), for its part, asserts that while the appellant has the constitutional right to cross-examine the witnesses against him, he waived such right when he failed to invoke the same after his initial cross-examination of Juanito.

We agree with the OSG.

Under Article III, Section 14(2) of the 1987 Constitution, the appellant has the right to meet the witnesses against him face to face. Under Rule 115, Section 1(f) of the Rules of Court, he has the right to confront and cross-examine the witnesses against him at the trial, a fundamental right which is part of due process. However, the right of confrontation and cross-examination is a personal one. It is not an absolute right which a party can claim at all times.[34]

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[30] *Id*. at 65-66.

[31] *Rollo*, p. 72.

[32] 64 SCRA 610 (1975).

[33] *Rollo*, pp. 75-76.

[34] *De la Paz, Jr. v. Intermediate Appellate Court*, 154 SCRA 65 (1987).

In *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*,[35] we ruled that the right to confront the witness may be waived by the accused, expressly or impliedly.

> The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived, expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.
>
> The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone.[36]

In the later case of *Fulgado v. Court of Appeals*,[37] we ruled that the task of recalling a witness for cross-examination is imposed on the party who wishes to exercise said right, and stressed that it should be the opposing counsel who should move to cross-examine the plaintiff's witness. Thus:

> The task of recalling a witness for cross-examination is, in law, imposed on the party who wishes to exercise said right. This is so because the right, being personal and waivable, the intention to utilize it must be expressed. Silence or failure to assert it on time amounts to a renunciation thereof. Thus, it should be the counsel for the opposing party who should move to cross-examine plaintiff's witnesses. It is absurd for the plaintiff himself to ask the court to schedule the cross-examination of his own witnesses because it is not his obligation to ensure that his deponents are cross-examined.

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[35] 62 SCRA 258 (1975).

[36] *Id.* at 263-265.

[37] 182 SCRA 81 (1990).

Having presented his witnesses, the burden shifts to his opponent who must now make the appropriate move. Indeed, the rule of placing the burden of the case on plaintiff's shoulders can be construed to extremes as what happened in the instant proceedings.[38]

In this case, we are convinced that the appellant waived his right to further cross-examine Juanito. The records show that Juanito testified for the prosecution on direct examination on November 22, 1994. Thereafter, the appellant's counsel cross-examined the witness on the *corpus delicti*. He then moved for a resetting as he still had many questions to ask the witness. Juanito failed to attend the trial on January 23, 1995 for the continuation of his cross-examination because he had a fever. The appellant did not object to the deferment of Juanito's cross-examination; neither did he object to the public prosecutor's presentation of Apolonio Quilag as its second witness. The trial was reset to March 2, 1995 for the continuation of Juanito's cross-examination.[39] However, no *subpoena ad testificandum* was issued to Juanito for the said trial. There is, likewise, no showing whether Juanito was in court on March 2, 1995 when the case was called. Furthermore, the appellant did not object when the public prosecutor presented PO2 Andales and Silvina Basalan as witnesses.

During the trial on April 17, 1995, the public prosecutor manifested, following the stipulation of the parties on the authenticity of Dr. Ladislao Diola, Jr.'s necropsy report, that he would be ready to rest his case by the next trial. Again, the appellant did not call the attention of the court on the fact that he had not yet finished his cross-examination of Juanito. He did not ask to be allowed to terminate the cross-examination of the witness first before allowing the prosecution to rest its case. Neither did the appellant ask the court to strike Juanito's testimony on direct and cross-examination from the records. When the case was called for trial on May 22, 1995, the public prosecutor announced that he had no more witness to present and was

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[38] *Id*. at 89.

[39] TSN, 23 January 1995, p. 13.

ready to formally offer his documentary evidence. There was no objection from the appellant. Neither did the appellant object to the offer of Juanito's affidavit[40] as part of his testimony, on the ground that he was deprived of his right to complete his cross-examination of the said witness. Moreover, when he testified, the appellant disputed the testimony of Juanito that he killed the victims, claiming that he was at home when the victims were killed. The appellant adduced testimonial evidence corroborating his alibi.

All the foregoing instances conclusively show that the appellant had waived his right to further cross-examine Juanito. From the conduct of the appellant's counsel, it can be fairly inferred that he considered the initial cross-examination of Juanito adequate, and that there was no longer a need to further cross-examine the witness.

Credibility of Witnesses and Sufficiency of Prosecution's Evidence

Reviewing the records, we find that the prosecution has proven beyond doubt that the appellant killed the victims. He was positively identified by the lone eyewitness, Juanito Gutang. The testimony of this lone eyewitness is clear, straightforward, categorical and consistent, without any tinge of falsehood or sign of fabrication. In his testimony, he narrated the nightmarish events that transpired in that unholy hour of 3:00 a.m. on September 10, 1993, thus:

FISCAL MATA (on direct)

... ...

Q Mr. Juanito Gutang, you are a construction worker of what company?
A FCDC.

... ...

[40] Exhibit "A", Records, p. 3.

Q On the said date, September 10, 1993, at around 3:00 o'clock in the evening (sic) where were you?[41]

... ...

ATTY. SURALTA

Misleading, there is no such time.

FISCAL MATA

Q At 3:00 o'clock dawn or in the morning?
A In our bunk house.

Q What do you mean by bunk house?
A The place where we slept.[42]

... ...

Q Do you know of any incident on September 10, at around 3:00 o'clock early in the morning?[43]

... ...

Q Now, what was that incident you mentioned all about?
A I was awakened by a sound striking somebody, and when I got up, I saw Adones holding a pipe.

Q You mentioned Adones, who is this Adones?
A Adones Abatayo.[44]

... ...

COURT (to witness)

Q What was he doing with the pipe?
A He was striking it against my companions who were sleeping?

COURT:

Proceed.

Q Who are these companions you mentioned?
A The brothers, Teofredo and Dominador.

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[41] TSN, 22 November 1994, p. 3 (Adones Abatayo).

[42] *Id*. at 3-4.

[43] *Id*. at 4.

[44] *Id*. at 5.

Q What are their family names?
A Basalan.

Q Where are these Teofredo and Dominador Basalan now?
A They are already dead.[45]

No evil motive has been imputed against Juanito Gutang for testifying against appellant. As a matter of fact, the latter admitted that no bad blood existed between them, and he knew of no reason why the former would testify against him.[46] In such a situation, the rule is that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not, and his testimony is entitled to full faith and credit.[47] Furthermore, it is unlikely that this witness could relate all the details of the crime with clarity and lucidity if he had not actually witnessed the killings of the Basalan brothers.

It is well-established that the trial court's calibration of the credibility of witnesses should not be disturbed on appeal since the said court is in a better position to decide the question, having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value, which, if considered, could alter and affect the result of the case.[48] In the case at bar, we find no reason to depart from this rule, given the trustworthiness of the testimony of the witness.

The Prosecution Failed To Prove Treachery and Evident Premeditation Beyond Reasonable Doubt

The trial court found the appellant guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua* in

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[45] *Id*.

[46] TSN, 26 June 1995, p. 6 (Adones Abatayo — Direct-examination).

[47] *People v. Gayomma*, 315 SCRA 639 (1999).

[48] *People v. Sotes*, 260 SCRA 353 (1996).

each case, without finding any circumstance attendant to the crime to qualify the killings to murder. Section 1,[49] Rule 120 of the Revised Rules of Court, requires that after an adjudication of guilt by the court, it should impose the proper penalty and civil liability provided for by law. Further, Section 2[50] of the same Rule mandates that the judgment of conviction should state, among others, the aggravating or mitigating circumstances attendant to the commission of the crime, if there are any, to enable the Court to determine the proper penalty on the appellant. Judges who faithfully observe this duty contribute to the orderly administration of justice.[51]

Treachery cannot be appreciated in this case where the lone eyewitness to the killing, Juanito Gutang, was not able to see how the assault started. The fact that the incident happened in an unholy hour, around 3:00 a.m., did not prove that the victims were sleeping when they were killed. As Juanito Gutang testified, he was asleep when appellant started the attack on his victims and he was only awakened by thudding sounds, as the appellant struck the victims with a pipe. The importance of such testimony

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[49] SECTION 1. *Judgment; definition and form.* — Judgment is the adjudication by the court that the accused is guilty or is not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

[50] SECTION 2. *Contents of the judgment.* — If the judgment is of conviction, the judgment shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances attending the commission; (2) the participation of the accused in the commission of the offense, whether as principal, accomplice, or accessory; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

[51] *People v. Bonito,* 342 SCRA 405 (2000).

cannot be overemphasized, considering that treachery cannot be presumed nor established from mere suppositions.[52]

Under our penal law, 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.[53] It requires the concurrence of two conditions: 1) employment of means of execution that gives the person attacked no opportunity to defend himself, much less to retaliate; and, 2) deliberate or conscious adoption of the means of execution.[54] 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 and thereby ensuring its commission without risk to himself.[55]

It is settled that if the victim, when killed, was sleeping or had just awakened, the killing is with treachery because in such cases, the victim was not in a position to put up any form of defense.[56] However, when the lone eyewitness for the prosecution did not see how the attack commenced, 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.[57] Thus, treachery cannot be deduced from mere conjectures, presumption or sheer speculation.[58] Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Settled is the rule that treachery cannot be presumed

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[52] *People v. Salvador*, 224 SCRA 819 (1993).

[53] Article 14, par. 16, Revised Penal Code, as amended.

[54] *People v. Lopez*, 313 SCRA 114 (1999).

[55] *People v. Reyes*, 287 SCRA 229 (1998).

[56] *People v. Cotas*, 332 SCRA 627 (2000).

[57] *People v. Rapanut*, 263 SCRA 515 (1996).

[58] *People v. Lopez, supra*.

but must be proved by clear and convincing evidence, or as conclusively as the killing itself. [59]

Like treachery, evident premeditation should be established by clear and positive evidence. Mere inferences or presumptions, no matter how logical and probable they might be, would not be enough. In the case at bar, evident premeditation was, likewise, not proven. The prosecution did not even attempt to prove the three elements necessary before evident premeditation may be appreciated as a qualifying aggravating circumstance, namely: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and, (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.[60] A police report of a prior spat [61] between the appellant and the victims is not enough, as nothing in the records show that the appellant planned in advance the commission of the crime. The principal eyewitness was not even aware of any prior incident or possible reason which could have led the appellant to attack the victims.

The Defenses of Alibi and Denial

The appellant insists that the trial court erred in disbelieving his alibi. He contends that the testimony of Bernabe Hinario, a neighbor, being a disinterested witness, should have been given more weight than the untested words of Juanito Gutang.[62]

The trial court certainly could not be faulted for not giving probative weight to the appellant's alibi. Besides being inherently weak for not being airtight, the appellant's alibi cannot prevail as against the positive identification made by the prosecution witness. On top of its inherent weakness, alibi becomes less plausible as a defense when it is corroborated only by a relative

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[59] *Ibid*.

[60] *People v. Academia Jr.*, 307 SCRA 229 (1999).

[61] Exhibit "C", Records, p. 25.

[62] *Rollo,* pp. 78-79.

or a close friend of the accused.[63] At any rate, it was for the trial judge, using his discretion and his observations at the trial, to determine whom to believe among the witnesses who disputed the whereabouts of the appellant in the unholy morning of September 10, 1993.

On the appellant's denial, suffice it to say, that said defense cannot prevail over the positive identification by the eyewitness who had no improper motive to falsely testify against him as we have mentioned above.[64] It is negative and self-serving, and cannot be given greater evidentiary weight over the testimony of a credible witness who testifies on affirmative matters. [65]

The appellant's flight after the said incident could be taken as a clear and positive indication of guilt. It is a sage observation that the flight of an accused from the scene of the crime and his act of hiding himself until he is arrested are circumstances highly indicative of guilt.[66] For, as wisely said, the "wicked flee even when no man pursueth but the righteous are as bold as a lion." The appellant's sudden and unexplained trip following the killing of the victims was unmistakably a flight from justice.

Duplicity of the Information and the Proper Penalty

It must be noted that only one Information (for double murder) was filed with the trial court. The records are bereft of any showing that the appellant objected to the duplicity of the information by filing a motion to quash before his arraignment. Hence, he is deemed to have waived such defect.[67] In this connection, Section 3 of Rule 120 of the Rules of Court provides:

SEC. 3. *Judgment for two or more offenses*. — When two or more offenses are charged in a single complaint or information,

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[63] *People v. Datingginoo*, 223 SCRA 331 (1993).

[64] *People v. Espina*, 361 SCRA 701 (2001).

[65] *People v. Acala*, 307 SCRA 330 (1999).

[66] *People v. Delmendo*, 296 SCRA 371 (1998).

[67] Section 9, Rule 117, Revised Rules of Court.

and the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

Under Article 249 of the Revised Penal Code, homicide is punishable by *reclusion temporal* which has a range of twelve (12) years and one (1) day to twenty (20) years. There being no mitigating nor aggravating circumstance that attended the commission of the crimes, the maximum period of the imposable penalty should be taken from the medium period of *reclusion temporal*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The minimum of the indeterminate penalty should be taken from the full range of *prision mayor*, which is one degree lower than *reclusion temporal*. Applying the Indeterminate Sentence Law,[68] the appellant may be meted an indeterminate sentence 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, for each count of homicide.

Amount of Damages

The amount of damages awarded by the trial court must be modified, as it awarded ₱17,000.00 for actual damages despite the absence of any documentary evidence to prove the same. The award shall be deleted. However, temperate damages may be recovered under Art. 2224 of the Civil Code, when the court

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[68] Section 1 of Act No. 4103, as amended by Act No. 4225 reads:

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished 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 (Italics supplied).

finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. In this case, the amount of ₱25,000.00 would be sufficient, considering that it is undisputed that the family incurred expenses for the wake and burial of the victims.[69]

Under Article 2206 of the Civil Code, the heirs of the victims are entitled to indemnity for loss of earning capacity. Ordinarily, documentary evidence is necessary for the purpose. By way of exception, testimonial evidence may suffice if the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[70] In the case at bar, however, while the victims' mother testified that her sons remitted to her their income, she did not indicate how much her sons were then earning.[71] Thus, this case does not fall under any of the exceptions.

In its decision, the trial court, likewise, awarded the sum of ₱200,000.00 by way damages without specifying the amount of each item. In accordance with prevailing jurisprudence relative to Article 2206 of the Civil Code, the heirs of the victims are entitled to the total amount of ₱100,000.00 by way of civil liability. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[72]

Proof of moral damages was presented through the testimony of the mother of the victims. Moral damages may be awarded in favor of the heirs of the victims upon sufficient proof of physical suffering, mental anguish, fright, serious anxiety,

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[69] *People vs. Delim*, 396 SCRA 386 (2003).

[70] *People of the Philippines v. Raul Oco @ Boy Usher*, G.R. Nos. 137370-71, September 29, 2003.

[71] TSN, 2 March 1995, p. 12 (Silvina Basalan).

[72] *People of the Philippines v. PO3 Roger Roxas*, G.R. No. 140762, September 10, 2003.

besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[73] Considering the pain and anguish of the victims' family brought about by their death, the award of ₱50,000.00 for each offense is justified.[74]

WHEREFORE, the Decision of the Regional Trial Court of Mandaue City, Branch 56, is hereby *AFFIRMED* with *MODIFICATIONS*. The appellant is found *GUILTY* beyond reasonable doubt of two (2) counts of homicide as defined and penalized in Article 249 of the Revised Penal Code, as amended, and is sentenced to suffer an indeterminate penalty of 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, for each count of homicide. The appellant is *ORDERED* to pay the heirs of each of the victims, Teofredo Basalan and Dominador Basalan, the sums of ₱50,000.00 representing temperate damages; ₱100,000.00 as indemnity *ex delicto;* and, ₱100,000.00 as moral damages.

No costs.

SO ORDERED.

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

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[73] Art. 2217, New Civil Code of the Philippines.

[74] *People v. Leal*, 358 SCRA 794 (2001).

SECOND DIVISION

[G.R. No. 144343. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RICSON PARRENO *y* ATIDO and DELBERT QUINDO *y* PLACENCIA,** *appellants*.

SYNOPSIS

The victim and his friends had merely gone out to buy some food when appellants and their companions chanced upon the victim's group, and without warning, threatened the latter. A game of "cat and mouse" ensued, with the appellants on the winning end as they were armed with a *tirador* and a knife. The chase ended with the unarmed victim being cornered and trapped, and thereafter, stabbed fatally on the back. Appellants were found guilty of murder qualified by treachery.

The Court found no reason to reverse the conclusion reached by the trial court. Hence, appellants were sentenced to the penalty of *reclusion perpetua* and ordered to pay, jointly and severally, the heirs of the victim ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱25,000 as actual damages and ₱25,000 as exemplary damages.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF TRIAL COURT, RESPECTED.— It is well-settled that the findings of facts and the assessment of the credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked,

misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. We have reviewed the records and find no cogent reason to reverse the findings of the trial court.

2. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONIES.— The appellants' bare denials and alibi, as against the positive declarations of the witnesses for the prosecution, are not worthy of credence. Alibi must be supported by the most convincing evidence since it is an inherently weak defense which can easily be fabricated. For the defense of alibi to prosper, the appellant must prove that he was at another place at the time of the commission of the crime, but that it was physically impossible for him to be at the crime scene at such moment. The positive identification of the accused as the perpetrator of the crime, when categorical, consistent, and without any ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR DISCREPANCIES BETWEEN SWORN STATEMENTS AND TESTIMONIAL DECLARATIONS.— Only the presence of serious inexplicable discrepancies between a previously executed sworn statement of a witness and testimonial declarations with respect to one's participation in a serious imputation such as murder would give rise to doubts as to the veracity of the witness' account. In fact, affidavits, in contrast to testimonies made in open court, are often incomplete and inaccurate for lack of or absence of searching inquiries by the investigating officer.

4.CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED.— The trial court correctly appreciated the qualifying circumstance of treachery against the appellants. The elements for treachery to be appreciated as qualifying circumstance are (a) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (b) the means of execution is deliberately or consciously adopted. Even a frontal attack may be considered treacherous when sudden and unexpected, and employed on an unarmed victim who would not be in a position to repel the attack or to avoid it. The essence of treachery is the swiftness and unexpectedness of the attack

on the unarmed victim. With the allegation of treachery in the information having been proven, the same is treated as a circumstance that qualified the killing to murder, pursuant to Article 248(1) of the Revised Penal Code.

5. ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; ELUCIDATED. – As regards the aggravating circumstance of abuse of superior strength, what should be considered is not that there were three, four, or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. While it is true that superiority in number does not *per se* mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength on the part of the appellants. Abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense. However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Servillano J. Conos for accused-appellants.

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 Pasig City, Branch 156, in Criminal Case No. 113331-H, convicting the appellants Ricson Parreno and Delbert Quindo of murder under Article 248 of the Revised Penal Code, sentencing them to *reclusion perpetua* and ordering them to indemnify the heirs of Anthony Cruz in the amount of ₱50,000.00, and to pay ₱25,000.00 as actual damages and costs of the suit.

[1] Penned by Judge Esperanza Fabon Victorino.

On November 10, 1997, an Information was filed charging the appellants with murder, worded as follows:

> On or about November 2, 1997 in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together with 4 John Does, whose identities and present whereabouts are still unknown, armed with a deadly weapon, with intent to kill, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously stab one Anthony Cruz *y* Santos on his back, thereby causing [a] mortal wound which directly caused his immediate death.
>
> Contrary to law.[2]

The appellants pleaded not guilty to the charges.[3] Trial forthwith ensued.

The Case For The Prosecution[4]

Thirty-year-old Anthony Cruz was the eleventh child in a family of twelve. He resided with his elder sister, Zenaida Santos Cruz, at No. 32-D Katarungan St., Caniogan, Pasig City. He was an electrical engineering graduate,[5] still single and was working as a cashier in a Mr. Quickie Repair Shop owned by his sister Zenaida. Anthony Cruz was receiving ₱6,000.00 as compensation,[6] and usually worked from 10:00 a.m. to 7:00 p.m.[7]

Twenty-year-old Simplicio Genova, Jr. and nineteen-year-old Frederick Sabangan were Anthony's neighbors and "gangmates." At around 12:30 a.m. of November 2, 1997, Simplicio and Frederick were with Anthony and two of their

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[2] Records, p. 1.

[3] *Id*. at 17.

[4] The prosecution presented five (5) witnesses: Zenaida Santos Cruz, Dr. Emmanuel Aranas, Simplicio Genova, Jr., Frederick Sabangan, and PO1 Arnel Canonigo.

[5] TSN, 16 December 1997, p. 11.

[6] *Id*. at 7.

[7] *Id*. at 9.

other friends, Agripino Santos and Ricardo Deocareza. They wanted to buy food from a nearby store. As they were walking in front of the Rizal High School in Katarungan Street, they saw six persons on the other side of the street. Appellants Parreno and Quindo were in front, while the four other members of the group were right behind them. Appellant Quindo then challenged them to a fight.[8]

Unsure if they were only speaking in jest, Frederick, Anthony and Simplicio looked at the six men before them, but did not recognize the latter. One of the men had a slingshot (*tirador*).[9] Anthony said, "*Pabayaan na lang natin,*" while Simplicio told the group, "*Hindi kami lalaban*."[10] They turned and started to walk away, but when they saw that two male persons had started running after them, they also ran. Anthony and Simplicio ran ahead of their friends, towards an alley in Katarungan Street. Agripino followed. When Anthony noticed that Frederick and Ricardo had been left behind, he told Simplicio and Agripino to go back to where their two other companions were.[11] Anthony had then gone a little further ahead.

Suddenly, Anthony was cornered by two persons. Outside an alley in Katarungan Street, four others also appeared from the nearby Rizal High School. Anthony was surrounded. Three of the men ran towards the school, while three others remained: appellant Parreno who was then wearing a white shirt, appellant Quindo who had on a blue shirt, and another who was wearing a red jacket.[12] The three "circled" upon Anthony who was facing the man in the red jacket. Appellant Parreno, who was then standing behind Anthony, suddenly stabbed the latter with his right hand.

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[8] TSN, 28 January 1998, p. 4.

[9] *Ibid*.

[10] TSN, 21 January 1998, p. 7.

[11] *Ibid*.

[12] *Id*. at 8.

Simplicio, who was about ten meters away from the scene, saw all this, but in his shock, failed to recognize what weapon appellant Parreno used to stab his friend.[13] The three culprits fled from the scene, and ran towards the direction of the Rizal High School.[14]

In the meantime, Agripino, Ricardo and Frederick had retraced their steps and turned back, taking a right turn going towards the other alley. Frederick then saw his wounded friend, as the three culprits were fleeing from the scene. Anthony slowly approached him and Simplicio and murmured, "*Pare, may tama ako.*"[15] Simplicio informed Anthony's elder brother of the incident. Simplicio, Agripino, Ricardo and Frederick then immediately boarded an owner-type vehicle and brought the wounded Anthony to the provincial hospital. Anthony died shortly after being wheeled into the emergency room.

PO1 Arnel Canonigo testified that the stabbing incident was referred to him at around 12:30 a.m. of November 2, 1997. He immediately proceeded to the Rizal Medical Center where the victim was brought for medical treatment. Upon his arrival, however, Dr. Loy Garcia, the attending physician, told him that the victim already died.[16] PO1 Canonigo proceeded to interview the witnesses, after which a patrol car arrived to take the latter to the crime scene to identify the suspects. Two officers were then dispatched to proceed to the scene of the crime, along with the witnesses. PO1 Canonigo followed them. The officers had already invited four persons found inside the Rizal High School campus for questioning, and were brought to the Block V Station for investigation. With the assistance of PO3 Isuga, there was a "confrontation" among the four male persons who were brought in for questioning. Genova pointed to the appellants Parreno and Quindo as the culprits in the stabbing.[17]

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[13] *Id*. at 9.

[14] *Id*. at 12.

[15] TSN, 28 January 1998, p. 6.

[16] TSN, 31 March 1998, pp. 3-4.

[17] *Id*. at 5-6.

After the appellants were apprised of their constitutional rights, PO1 Canonigo proceeded to take the statements of the witnesses, and prepared a Referral Letter dated November 3, 1997.

Medico-Legal Officer Dr. Emmanuel Aranas of the Philippine National Police (PNP) Crime Laboratory SPD, Fort Bonifacio, Makati, conducted an autopsy[18] of the victim's body. He made the following findings:

> Fairly nourished, fairly developed male cadaver, in rigor mortis, with post mortem lividity at the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic. There are surgical incisions at the chest.
>
> TRUNK AND EXTREMITIES:
>
> (1) Multiple abrasions, right supraorbital region, measuring 7 by 3.5 cms., 4 cms. from the anterior midline.
>
> (2) Stab wound, left lumbar region, measuring 3 by 0.7 cms., 5 cms. from the posterior midline, 10 cms. deep, directed anteriorwards, upwards, and medialwards, thru the left intercostal space along the parvertebral line, piercing both lobes of the left lung
>
> (3) Abrasion, left knee, measuring 0.8 by 0.4 cms., 6 cms. medial to its midline.
>
> (4) Multiple linear abrasions, middle 3rd of the left leg, measuring 2.5 by 0.7 cms., 4 cms. medial to its anterior midline.
>
> About 300 mls. of fluid and clotted blood recovered from the thoracic cavity.
>
> Stomach contains ½ glassful of partially digested food particles.[19]

Dr. Aranas also testified that the cause of the victim's death, the stab wound at the back, was about ten centimeters deep, and about three by 0.7 centimeters in size.[20] However, the doctor

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[18] His findings were contained in Medico-Legal Report No. M-0703-97.

[19] Records, p. 34.

[20] TSN, 14 January 1998, p. 6.

could no longer identify the weapon used to stab the victim as the medical attendants "altered" the edges of the wound.[21]

The victim's sister, Zenaida Santos Cruz, testified that they incurred funeral expenses in the amount of ₱25,000.00, and presented a receipt[22] issued by the *Funeraria* Sta. Clara to prove the same. She also testified that she was not interested in money, but sought justice for her brother's death.[23]

The Case For The Appellants

Sharon Quindo, appellant Quindo's sister, testified that she went to visit her brother in the Pasig City municipal jail and was able to talk to him. She also spoke to PO1 Canonigo, who told her that her brother said that Julius Sorongon was the one who stabbed the victim.[24] PO1 Canonigo then went back to the crime scene, but failed to find Sorongon. Sharon Quindo narrated that she knew Sorongon, as the latter was her *kababayan*, both of them being from Fontevedra, Negros Occidental.[25] Sorongon and her brother were both laborers/workers at the Rizal High School.[26]

PO3 Benjamin Isuga testified that he was with PO1 Canonigo when the latter investigated the stabbing incident. There had been reports that six persons were involved in the stabbing incident and went inside the premises of the Rizal High School. Simplicio Genova, Jr., one of the witnesses, was with them. They searched the place and proceeded to a room where the appellants, along with two others, were found drinking.[27] According to Genova, the four men were among the six persons involved in the stabbing incident. The four informed them that the two others had already

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[21] *Ibid*.

[22] Exhibit "C", Records, p. 26.

[23] TSN, 16 December 1997, p. 8.

[24] TSN, 25 June 1998, p. 5.

[25] *Ibid*.

[26] *Id*. at 9.

[27] TSN, 15 October 1998, p. 5.

fled.[28] PO3 Isuga did not see any blood on the bodies of the appellants or of the other two men.[29]

Appellant Quindo testified that he had nothing to do with the killing of Anthony Cruz. In 1997, he was employed as a laborer of MC Valentin, the construction company in charge of the on-going work in the building.[30] He also lived in the building at the time,[31] but was a resident of St. Pascual Street, Manggahan, Fairview, Quezon City. He was still single.

Appellant Quindo admitted that he was at the Rizal High School Building on November 2, 1997, along with appellant Parreno, Julius Sorongon, Danny Castro, and other friends. However, he insisted that he did not know what happened to Anthony Cruz. He also stated that he could think of no reason why the witnesses for the prosecution would point to him as one of the perpetrators of the crime.

When the policemen arrived at about midnight of November 2, 1997, Julius Sorongon and Danny Castro were drinking, while the appellants were already lying in bed. Appellant Quindo was awakened as all four of them were invited for questioning. The appellant asked permission from their foreman. The police did not say why they were being invited for questioning. One civilian who was with the police went inside their room and inspected their pillows, blankets, and their cabinets. They were then taken to the headquarters in Rotonda, and, upon arriving, were asked to sit down. Thereafter, about fifteen persons came in, and the policemen kept asking them if there was "one among them." Frederick Sabangan went inside and sat in front of them, and suddenly punched appellant Quindo many times, as a consequence of which the latter suffered a black eye. Zenaida Cruz, the sister of the deceased, also slapped appellant Quindo.[32] Frederick Sabangan then pointed to the appellants as the culprits.

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[28] *Id*. at 10.

[29] *Id*. at 6.

[30] TSN, 29 October 1998, p. 4.

[31] *Id*. at 12.

[32] *Id*. at 8.

After trial, the court rendered a decision, the dispositive portion of which reads:

> Wherefore, the Court finds accused Ricson Parreno and Delbert Quindo GUILTY beyond reasonable doubt of the crime of Murder and hereby sentences them to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the amount of ₱50,000.00 as indemnity, ₱25,000.00 as actual damages and COSTS of suit.
>
> SO ORDERED.[33]

The Present Appeal

On appeal, the appellants ascribed the following assignment of errors to the court *a quo*:

> THE TRIAL COURT ERRED IN APPRECIATING ABUSE OF SUPERIOR STRENGTH AS A QUALIFYING CIRCUMSTANCE[34]
>
> THE TRIAL COURT ERRED IN APPRECIATING THE PRESENCE OF TREACHERY[35]
>
> THE TRIAL COURT ERRED IN PRONOUNCING THAT WHAT WAS FOUND ON THE PANT (sic) AND T-SHIRT OF PARENO (sic) WHEN THE POLICE CAME WAS BLOOD STAIN (sic).
>
> THE TRIAL COURT ERRED IN SUSTAINING THE IDENTIFICATION OF THE ACCUSED DURING THE COMMISSION OF THE OFFENSE.[36]
>
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED.[37]

According to the appellants, the mere fact that their group was superior in number than that of the victim's, as testified to by the prosecution witnesses, does not mean that there was abuse of superior strength. Furthermore, the fact that the stab wound was found at the back of the victim does not necessarily

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[33] Records, p. 232.

[34] *Rollo*, p. 43.

[35] *Id*. at 44.

[36] *Id*. at 46.

[37] *Id*. at 47.

mean that the killing was treacherous. The victim's group, in fact, challenged their (appellant's) group, who were seen with spears or *tirador*. As such, the victim was forewarned of the threat to his life, negating the presence of treachery as an aggravating circumstance.

The appellants further aver that the stains found on appellant Parreno's shirt were red paint stains, consistent with his claim that he was a painter. They also question the veracity of the identification made by the witnesses for the prosecution, contending that there was no evidence presented as to the sufficiency of the illumination at the place of the incident when the killing occurred, as well as the presence of obstruction between the location of the witnesses and the *situs criminis*. The appellants, likewise, question the veracity of the testimonies of the witnesses for the prosecution, and stated that the testimony of Frederick Sabangan conflicted with his sworn statement before the police.

For its part, the Solicitor General maintains that the appellants were positively identified by the two eyewitnesses whose credibility was not impaired, and that the alleged contradiction between the testimony of Frederick Sabangan and his sworn statement before the police was "imaginary." Finally, the prosecution was able to establish the guilt of the appellants beyond reasonable doubt.

The Court's Ruling

The appeal has no merit.

In questioning the veracity of the testimony of the prosecution witnesses, the appellants thereby assail the trial court's factual findings. It is well-settled that the findings of facts and the assessment of the credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath — all of which are useful aids for an accurate

determination of a witness' honesty and sincerity. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[38]

We have reviewed the records and find no cogent reason to reverse the findings of the trial court. As aptly stated by the court *a quo*:

> There can be no mistake as to the identity of the two accused whom the witnesses came into face to face shortly before the fatal incident. It was not impossible for the eyewitnesses to have recognized the two who stood out from the group which blocked their way and challenged them to a fight. The conditions of visibility were also favorable. The street was clear of any block and illuminated by a light from the electric post. Moreover, the eyewitnesses who spontaneously and credibly described the manner and crucial details of the commission of the offense do not appear to be biased against the accused. Hence, their assertion as to the latter's identity should be accepted as worthy of credence. Accused themselves did not attribute evil motive on the part of their accusers as to testify falsely against them. Significantly, Genova and Sabangan categorically and positively identified the two accused as the malefactors immediately after the incident. This identification of (sic) accused was affirmed during the trial.
>
> The two accused cannot gainsay their respective participation in ganging-up and killing the victim. The two eyewitnesses were one in recounting how the two accused and the man in red jacket helped one another cornered (sic) and killed (sic) the victim. Even before the fatal attack, their design to finish off their foe was already obvious. While it was only accused Parreno who gave the fatal blow, Quindo and the man in red jacket made sure that the victim could not escape death nor slip out of the small imaginary circle they created as they milled around the victim who was not armed much less ready to defend himself from the attack.[39]

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[38] *People of the Philippines v. Eddie Lachica, Ariel Rollon and Errol Rollon*, G.R. No. 131915, September 3, 2003.

[39] Records, p. 231.

Indeed, Simplicio Genova, Jr. testified how the appellants and their cohorts pursued them; they cornered Anthony and after stabbing him to death, fled from the scene:

Q When you saw two persons chasing you, what did you do?
A When I saw the two nearing us, that they were about to spear us ("*papanain*"), the five of us ran, Sir. Anthony Cruz was with me running towards the alley in Katarungan, and I noticed that Agripino Santos was following me, Sir.

Q When you ran and Agripino Santos was following you, what happened next?
A When Agripino Santos was following us, Anthony Cruz and I turned and after we turned, Anthony Cruz noticed that Frederick Sabangan and Ricardo Diocarosa (sic) were left at Tatlong Bayani, Sir.

Q When this Anthony Cruz noticed that these other friends of yours were left there, what did he do, if any?
A Anthony Cruz told us to go back to where our two other companions were. When we turned at the alley of Katarungan, Anthony Cruz was ahead of us, Sir.

Q And then what happened when Anthony Cruz was a little ahead of you?
A Outside of the alley of Katarungan, I saw four persons who suddenly appeared from Rizal High School, Sir.

Q And what happened when you saw these persons suddenly appeared facing Anthony Cruz?
A When the four persons suddenly emerged from Rizal High School, Anthony Cruz was surrounded by the four persons, Sir.

Q And you were mentioning some other two persons, what were they doing?
A The first two persons who were chasing us already cornered Anthony Cruz together with the four persons who emerged from Rizal High School, Sir.

Q When Anthony Cruz was cornered by these two persons, what happened?
A When Anthony Cruz was cornered, the three ran towards Rizal High School but one of them was left behind, so there were already three who cornered Anthony Cruz, Sir.

Q And who were these persons who cornered Anthony Cruz?
A The one wearing red jacket, the other one was wearing white t-shirt who was Ricson Parreno and the other one (sic) wearing blue t-shirt who was Delbert Quindo, Sir.

Q And then what did these persons do, if any, to the person of the victim, Anthony Cruz?
A When they were surrounding Anthony Cruz and *"paikot-ikot po sila,"* while Anthony Cruz was facing the man in red jacket, I saw Anthony Cruz being stabbed, Sir.

COURT:
Q Who stabbed (sic)?
A Ricson Parreno who was wearing a white t-shirt, Your Honor.

Q Parreno was wearing a white t-shirt at that time?
A Yes, Your Honor.

Q Parreno was the one who stabbed Cruz?
A Yes, Your Honor.

Q With what?
A I don't know, Sir, what weapon was used because I was already in shocked (sic) at that time.

Q You saw Parreno in (sic) stabbing Cruz?
A Yes, Your Honor.

Q How? Please demonstrate. For example the Court Interpreter standing as Cruz. How did Parreno stab Cruz?
A Because Anthony Cruz was facing the man in red jacket...

COURT:
"*Yung nakaharap muna si Cruz.*"

A When Anthony Cruz was facing the one wearing red jacket . . .

COURT:
"Ipagpalagay mo na si Cruz nga ito."
A The other one in white t-shirt, Ricson Parreno, suddenly stabbed him at the back, Your Honor.

Q Where was Parreno?
A Here, Your Honor.

COURT:

"Ganyan. Ito si Cruz nakaharap sa akin. Ganyan ang pwesto?"

A There were two male persons infront (sic), Your Honor.

Q Who were these two persons infront (sic)?
A *"Ang nasa harap"* was Delbert Quindo, Your Honor.

COURT:
"Dito. Meron pang isa doon?"
A The one wearing a red jacket, Your Honor.

COURT
Q Who was that?
A I don't know who was that wearing a red jacket, Your Honor. While Parreno was at the back of Anthony Cruz, Your Honor.

Q At that time, where were you as a witness?
A I was at the alley of Katarungan, Your Honor.

Q How far, more or less?
A Around ten meters away, Your Honor.

Q Will you please demonstrate in what manner Parreno allegedly stabbed Cruz *"kung ganyan ang ayos?"*
A When I saw that Anthony Cruz has his back on Parreno, Anthony Cruz was suddenly stabbed at the back, Your Honor.

Q How?
A *"Paganoon ho."*

Interpreter:
Witness demonstrating with his right hand in swing motion, going upward motion. Swing motion from his right side upward.

ATTY. CONOS:
Kindly demonstrate it again, Mr. Witness?
A Like this, Sir.

COURT:
Coming from downward position upward.

Interpreter:
Witness demonstrating a stabbing motion coming from downward position upward with his right hand.

COURT:
Continue.

Q How many times did he swing that instrument?
A I just saw once, Your Honor.

Q Thereafter, what did Parreno do?
A After he has (sic) stabbed Anthony Cruz, they just suddenly went inside the Rizal High School, inside the school.[40]

Frederick Sabangan, likewise, corroborated the foregoing testimony, and even testified that the place where the stabbing took place was well lit. Thus:

Q We go to the time when you said Anthony Cruz *y* Santos was stabbed. On November 2, 1997, at around 12:30 in the morning, where were you?
A Infront (sic) of Rizal High School in Katarungan Street, Sir.

Q Who were your companions, if any?
A Simplicio Jenoba, Jr., (sic) Agripino Santos, Ricardo Diocarosa (sic) and Anthony Cruz, Sir.

Q What were you doing there at that time?
A At around past 12:00, we were about to buy something to eat, Sir.

Q When you said you intended to buy something to eat, where did you proceed?
A We were about to go to a store, Sir.

Q When you were about to go to the store, what happened?
A While we were walking going to the store, there was a group of male persons, Sir.

Q What is this group of male persons doing at that time?
A They were on the other side of the gutter, Sir. And one of them was challenging us.

Q How many, more or less, were there in this group whom you said [was] near the gutter?
A Six persons, Sir.

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[40] TSN, 21 January 1998, pp. 7-11.

Q And you said one of them was trying to challenge you. Who are you referring to you (sic) as this one who was challenging you?

A Delbert Quindo, Sir. Delbert Quindo was the one challenging us and he was with Ricson Parreno while the other four where (sic) at their back, Sir.

Q When the accused were challenging you at that time, what did you do?

A We looked at them, Sir. "*Napatingin po kami*." Because we were not sure if they were just kidding us because we might know them. But when we were not able to recognize them, we saw that they were holding a spear. It looks like a "*tirador*."

Q When you saw that the accused were holding "*tirador*" or whatever it was, what did you do?

A We ran, Sir.

Q When you said "kami," to whom are you referring?

A Agripino Santos, Simplicio Jenoba, (*sic*) Ricardo Diocarosa, myself and Anthony Cruz, Sir.

Q You, as far as you are concerned, to what direction did you run?

A We ran away, Sir.

Q What about Anthony Cruz and Simplicio Jenoba (*sic*), do you know where did they run?

A I did not see them, Sir, because they went ahead of us.

Q After you said they went ahead of you and after that, what happened next?

A We were looking at where they entered, Sir.

Q And when you were looking where they entered, what happened next?

A We turned around, Sir. "*Umikot po kami*."

Q And when you turned around, to what direction did you proceed?

A We turned right . . . We took a right turn going towards the other alley so that we could go back to the place where we came from, Sir.

Q When you were returning back to the alley where you came from, what did you see?
A I saw Simplicio and Anthony surrounded by the three, Sir.

Q When you saw them being surrounded by the three persons, what happened next?
A He was already stabbed, Sir. "*Nasaksak na ho siya*."

Q When you said "*siya*," whom are you referring to?
A Anthony Cruz, Sir.

Q And who stabbed him?
A Ricson Parreno, Sir.

Q And who was his companion during the time Anthony Cruz was stabbed?
A Delbert Quindo and the other male person in red jacket, Sir.

Q How far were you when you saw [that] the victim was stabbed by the accused?
A More or less, twelve to thirteen meters away, Sir.

Q And you said it was during the nightime (*sic*), early morning, what kind of light was there when you saw it?
A Lights from the post, Sir.

Q When you saw the victim stabbed by the accused, what did you do?
A I ran towards them, Sir. Then the three persons surrounding Anthony Cruz ran towards the (*sic*) inside and Anthony approached us, Sir.

Q When you said the accused ran "*pampaloob*" or ran inside, what do you mean by that?
A Going towards the gate of Rizal High School, Sir.

Q And you said you went or approached the victim Cruz, what did you do when you approached him?
A He said that he has (*sic*) a wound "*may tama*" and we helped him because the blood was already oozing, Sir.

Q What were his words?
A *"[P]are, may tama ako."*

COURT:
Q Who stabbed him?
A Ricson Parreno, Your Honor.

Q How about Quindo, what were or was he doing at that time?
A He was with the three, surrounding Anthony Cruz, Sir. I was facing them and he has his back on me.

Q Who is that "*nakatalikod*?"
A Infront (*sic*) of me was Delbert and at the back of Anthony Cruz was Ricson Parreno and the other guy whom I do not know, Sir.[41]

The appellants' bare denials and alibi, as against the positive declarations of the witnesses for the prosecution, are not worthy of credence. Alibi must be supported by the most convincing evidence since it is an inherently weak defense which can easily be fabricated.[42] For the defense of alibi to prosper, the appellant must prove that he was at another place at the time of the commission of the crime, but that it was physically impossible for him to be at the crime scene at such moment. The positive identification of the accused as the perpetrator of the crime, when categorical, consistent, and without any ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[43]

Furthermore, only the presence of serious and inexplicable discrepancies between a previously executed sworn statement of a witness and testimonial declarations with respect to one's participation in a serious imputation such as murder would give rise to doubts as to the veracity of the witness' account. [44] In fact, affidavits, in contrast to testimonies made in open court, are often incomplete and inaccurate for lack of or absence of searching inquiries by the investigating officer.[45]

The Crime Committed

The trial court correctly appreciated the qualifying circumstance of treachery against the appellants. The elements for treachery

[41] TSN, 28 January 1998, pp. 4-6.

[42] *People v. Melendres, Jr.*, 402 SCRA 279 (2003).

[43] *People v. Gomez*, 402 SCRA 210 (2003).

[44] *People v. Toledo, Sr.*, 357 SCRA 649 (2001).

[45] See *People of the Philippines v. Andres Masapol*, G.R. No. 121997, December 10, 2003.

to be appreciated as qualifying circumstance are (a) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (b) the means of execution is deliberately or consciously adopted.[46] Even a frontal attack may be considered treacherous when sudden and unexpected, and employed on an unarmed victim who would not be in a position to repel the attack or to avoid it.[47] The essence of treachery is the swiftness and unexpectedness of the attack on the unarmed victim.[48]

In the case at bar, Anthony and his friends had merely gone out to buy some food. The appellants and their companions chanced upon the victim's group, and without warning, threatened the latter. A game of "cat and mouse" ensued, with the appellants on the winning end, as they were armed with a *tirador* and a knife. The chase ended with the unarmed victim, Anthony, being cornered and trapped, and thereafter, stabbed fatally on the back. With the allegation of treachery in the information having been proven, the same is treated as a circumstance that qualified the killing to murder, pursuant to Article 248(1) of the Revised Penal Code.[49]

As regards the aggravating circumstance of abuse of superior strength, what should be considered is not that there were three, four, or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense.[50] While it is true that superiority in number does not *per se* mean superiority in strength,[51] the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means

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

[46] *People v. Delim*, 396 SCRA 386 (2003).

[48] *People v. Caballero*, 400 SCRA 424 (2003).

[49] *People v. Barona*, 380 Phil. 204 (2000).

[50] *People v. Platilla*, 304 SCRA 339 (1999).

[51] *People v. Templa*, 415 Phil. 523 (2001).

with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength on the part of the appellants.[52] Abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense.[53] However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.[54]

The Civil Liability of the Appellants

The Court affirms the trial court's award of civil indemnity of ₱50,000.00, and actual damages of ₱25,000.00, having been duly supported by a receipt. However, in accordance with current jurisprudence,[55] the heirs of the victim are, likewise, entitled to moral damages in the amount of ₱50,000.00, not to enrich them but to compensate them for the injuries to their feelings.[56] The heirs are also entitled to exemplary damages, conformably to current jurisprudence.[57]

WHEREFORE, the assailed Decision of the Regional Trial Court of Pasig City, Branch 156, is *AFFIRMED WITH MODIFICATIONS*. Appellants Ricson Parreno and Delbert Quindo are found *GUILTY* of murder qualified by treachery, under Article 248 of the Revised Penal Code, as amended, and there being no modifying circumstance attendant to the crime, are hereby sentenced to *reclusion perpetua*. The appellants are *ORDERED* to pay, jointly and severally, the heirs of the victim Anthony Cruz ₱50,000.00, as civil indemnity; ₱50,000.00, as moral damages; ₱25,000.00, as actual damages; and ₱25,000.00, as exemplary damages.

Costs *de oficio*.

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[52] See *People v. Barrameda*, 342 SCRA 568 (2000).

[53] *People v. Lacbayan*, 339 SCRA 396 (2000).

[54] *People v. Barona, supra.*

[55] *People v. Galvez*, 374 SCRA 10 (2002).

[56] *Id.* at 21.

[57] *People vs. Lilo*, 396 SCRA 674 (2003).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 145428. July 7, 2004]

TRANS-ASIA SHIPPING LINES, INC.-UNLICENSED CREWS EMPLOYEES UNION-ASSOCIATED LABOR UNIONS (TASLI-ALU) and TRANS-ASIA SHIPPING LINES INC.-DECK AND ENGINE (LICENSED CREW)-OFFICERS UNION-ASSOCIATION OF PROFESSIONALS, SUPERVISORS, OFFICE AND TECHNICAL EMPLOYEES UNION (APSOTEU); AND MELCHOR VILLANUEVA, GERARDO SUAN, NESTOR SANCHEZ, LUCAS APAS, JR., BONIFACIO YSAO, NICASIO CALAPRE, GILBERT SUMALPONG, ARNULFO VICTORIO, ALBERTO SILVA, NEIL ARNEJO, DANILO JAYA, SOCRATES ALCOS, ARNOLD ARCIPE, JOSEL ARRANGUEZ, OSCAR ARRANGUEZ, FRANCISCO CUIZON, RAMON ORTEGA, FRANCISCO MANTILLA and MATEO MARAVILLAS, *petitioners, vs.* **COURT OF APPEALS and TRANS-ASIA SHIPPING LINES, INC.,** *respondents.*

SYNOPSIS

Intervening on the labor dispute between respondent shipping corporation and petitioner labor unions, the Secretary of Labor certified the same to the NLRC for compulsory arbitration pursuant to Art. 263 (g) of the Labor Code. Thereafter, the

Secretary issued an Order directing all striking workers to return to work… and *for the Company to accept them back under the same terms and conditions prevailing before the strike.* While petitioners asserted that they should be reinstated to their former assignments, respondent posited that the Order cannot encompass the usurpation of management's prerogative to determine where its employees are to be assigned nor to determine their job assignments.

In view of the explicit directive contained in the Order of the Secretary of Labor, respondent cannot rightfully exercise its management prerogative to transfer or reassign its employees. Art. 263(g) of the Labor Code constitutes an exception to the management prerogative of hiring, firing, transfer, demotion and promotion of employees.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; STRIKES, PICKETING AND LOCKOUTS; WHERE SECRETARY OF LABOR ASSUMES JURISDICTION; ELUCIDATED. – A cursory reading of Art. 263 of the Labor Code, on strikes, picketing and lockouts, shows that when the Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest or certifies the same to the NLRC for compulsory arbitration, such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout. Moreover, if one had already taken place, *all striking workers shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.* The powers granted to the Secretary of Labor under Article 263 (g) of the Labor Code have been characterized as an exercise of the police power of the State, with the aim of promoting public good. When the Secretary exercises these powers, he is granted "great breadth of discretion" in order to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or the lifting thereof if one has already taken place. Assumption of jurisdiction over a labor dispute, or as in this case the certification of the same to the NLRC for compulsory

arbitration, always co-exists with an order for workers to return to work immediately and *for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout.*

2. ID.; ID.; ID.; ID.; ORDER FOR EMPLOYERS TO READMIT ALL WORKERS UNDER THE SAME TERMS AND CONDITIONS PREVAILING BEFORE THE STRIKE; A LIMITATION TO EMPLOYER'S RIGHT TO TRANSFER OR REASSIGN EMPLOYEES. – Case law recognizes the employer's right to transfer or assign employees from one area of operation to another. This right, however, is not absolute but subject to limitations imposed by law. Article 263 (g) of the Labor Code constitutes one such limitation provided by law. The respondent cannot rightfully exercise its management's prerogative to determine where its employees are to be assigned or to determine their job assignments in view of the explicit directive contained in the Orders of the Secretary of Labor to accept the striking workers back "under the same terms and conditions prevailing prior to the strike." The order simply means that the employees should be returned to their ship assignments as before they staged their strike. To reiterate, Article 263 (g) of the Labor Code constitutes an exception to the management prerogative of hiring, firing, transfer, demotion and promotion of employees. And to the extent that Article 263 (g) calls for the admission of all workers under the same terms and conditions prevailing before the strike, the respondent is restricted from exercising its generally unbounded right to transfer or reassign its employees.

3. ID.; ID.; ID.; ID.; MARITIME INDUSTRY IS IMBUED WITH NATIONAL INTEREST. – Article 263 (g) of the Labor Code has been enacted pursuant to the police power of the State. Said provision of law requires that the powers thereunder be exercised only in labor disputes involving industries indispensable to the national interest. That respondent's business is of national interest is not disputed. It is engaged in coastwise shipping services for the transportation of passengers and cargoes. Its vessels service various routes in the Visayas and Mindanao, with the Port of Cebu as its base. The maritime industry is indubitably imbued with national interest. Under the circumstances, the Labor Secretary correctly intervened

in the labor dispute between the parties to this case by certifying the same to the NLRC for compulsory arbitration and issuing the Orders pursuant to Article 263 (g) of the Labor Code.

APPEARANCES OF COUNSEL

Leonard U. Sawal for petitioners.
Arguedo & Associates Law Office for private respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court is the petition for review on *certiorari* filed by Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Unions (TASLI-ALU), Trans-Asia Shipping Lines, Inc.-Deck and Engine (Licensed Crew) Officers Union-Associated Professionals, Supervisors, Officers and Technical Employees Union (TASLI-APSOTEU) and nineteen (19) of their members, seeking to reverse and set aside the Decision[1] dated May 10, 2000 of the Court of Appeals in CA-G.R. SP No. 54393, which enjoined the Secretary of Labor from implementing his "reinstatement order" pending resolution by the National Labor Relations Commission (NLRC) of the legality of the individual petitioners' dismissal from employment. Likewise sought to be reversed and set aside is the appellate court's Resolution dated September 13, 2000 denying the petitioners' motion for reconsideration.

The case arose from the following factual backdrop:

Respondent Trans-Asia Shipping Lines, Inc. is a domestic corporation engaged in coastwise shipping services for the transportation of passengers and cargoes. It operates thirteen (13) vessels servicing seventeen (17) points in the Visayas and Mindanao, including Cagayan de Oro, Ozamis, Zamboanga, Tagbilaran, Leyte, Masbate, Iloilo and Bacolod, with the Port

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Corona Ibay-Somera and Oswaldo D. Agcaoili concurring.

of Cebu as its base. The respondent employs 700 employees, more or less.

Petitioner TASLI-ALU is a labor union of the respondent's rank-and-file employees, while petitioner TASLI-APSOTEU is a labor union of its supervisory employees. The individual petitioners are members of these two unions and the respondent's employees.

On July 6 and 7, 1999, the two unions filed separate notices of strike with the National Conciliation and Mediation Board, Regional Branch VII (NCMB-RB VII) against the respondent on the ground of unfair labor practice. Acting thereon and to avert any work stoppage, then Secretary of Labor Bienvenido E. Laguesma intervened and issued the Order dated July 20, 1999 certifying the labor dispute to the NLRC for compulsory arbitration pursuant to Article 263(g) of the Labor Code and enjoining any strike or lock-out.[2] Further, the parties were directed to cease and desist from committing any act that would exacerbate the situation.[3]

Despite the aforesaid order, the petitioners went on strike on July 23, 1999, paralyzing the respondent's operations. The Secretary of Labor was thus constrained to issue the Order dated July 23, 1999 directing all striking workers "to return to work within twelve (12) hours from receipt of this Order and for the Company to accept them back under the same terms and conditions prevailing before the strike."[4]

On even date, twenty-one (21) of the striking workers, including the individual petitioners, were dismissed from employment by the respondent for alleged violation of the "cease-and-desist" directive contained in the Order of July 20, 1999 by waging an illegal strike. The petitioners, through their respective officers, manifested their willingness to comply with the "return-to-work" order, provided the twenty-one (21) employees would also be

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[2] *Rollo,* p. 41.

[3] *Ibid*.

[4] *Id*. at 44.

allowed to report back for work. They demanded that the respondent issue "embarkation orders" to the positions they held prior to the strike before they lift the pickets and barricades. The respondent refused, claiming that the assignment of an employee to a post is purely a management prerogative.

The bone of contention between the petitioners, on the one hand, and the respondent, on the other, hinged on the proper interpretation of the phrase "*for the company to accept them back under the same terms and conditions prevailing before the strike*." The terminated workers asserted that said phrase must be construed to mean that they be reinstated to their former assignments. The respondent posited that it refers only to their salary grades, rank and seniority, but cannot encompass the usurpation of management's prerogative to determine where its employees are to be assigned nor to determine their job assignments. Consequently, the strike continued as the parties insisted on their respective hard-line stance. To aggravate the situation, the Coalition of Shipowners and Arrastre Operators, of which the respondent is a member, supported the latter by not operating their vessels beginning July 26, 1999.

Recognizing that protracted work disruptions were inimical not only to the parties involved but to the national interest as well, the Secretary of Labor issued the Order dated July 27, 1999, stating in part:

> WHEREFORE, the dispositions of this Office's Order dated 23 July 1999 are hereby reiterated. The striking workers are directed to return to work immediately and the Company to accept them back under the same terms and conditions of employment prevailing prior to the strike.
>
> The effects of the termination of the twenty-one (21) employees are hereby suspended and management is likewise directed to reinstate them.
>
> The National Labor Relations Commission (NLRC) is enjoined to hold marathon hearings and terminate the proceedings within sixty (60) days from start thereof.

This Office likewise reiterates the directive deputizing PNP Regional Director Danilo G. Flores to assist in the smooth implementation of this Order. The deputization includes: (1) maintenance of free ingress to and egress from the premises of the Company, specifically the removal of all blockades in the Company's entrances and exits; (2) ensuring the maintenance of peace and order; and (3) ensuring the safety and security of the Company employees who are returning to work in compliance with our Order.[5]

On July 28 and 29, 1999, then NLRC Chairman Rogelio I. Rayala met with the parties. The petitioners manifested that the 21 employees be issued their respective embarkation orders to the vessels they were assigned as crew members as a precondition to their reporting for work.[6] Chairman Rayala directed them to comply with the Secretary of Labor's "return-to-work" order.[7] The respondent consequently reinstated the twenty-one (21) employees. Despite their reinstatement, however, the respondent continued to refuse to issue the said employees' "embarkation orders" to their former ship assignments. The employees, thus, refused to report back for work.

The respondent forthwith filed with the Court of Appeals (CA) a petition for *certiorari* alleging grave abuse of discretion on the part of the Secretary of Labor in issuing the reinstatement order of the dismissed employees. The said order allegedly constituted an unlawful deprivation of property and denial of due process for it prevented the respondent from taking disciplinary action and seeking redress for the huge property losses that it suffered as a result of the petitioners' illegal mass action.

On August 26, 1999, the CA, through the former Tenth Division, issued a temporary restraining order enjoining the Secretary of Labor from implementing the reinstatement order contained in his Order of July 27, 1999. The pertinent portion of the CA resolution reads:

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[5] *Id*. at 46.

[6] CA *Rollo*, p. 94.

[7] *Id*. at 42-45.

Meantime, in the interest of substantial justice and national interest, a temporary restraining order is hereby ISSUED enjoining the implementation of public respondent's directive for petitioner to reinstate the terminated workers.[8]

On August 30, 1999, bolstered by the temporary restraining order issued by the CA, the respondent issued a memorandum terminating the employment of the subject twenty-one (21) employees, including the individual petitioners.

On September 27, 1999, the NLRC, Fourth Division, issued an Order directing the parties to comply faithfully with the July 20, 1999 Order of the Secretary of Labor.[9] The respondent manifested before the CA that a case was then pending with the NLRC, involving the issue of the legality of the strike and the individual petitioners' dismissal. The respondent, thus, prayed that, pending the resolution thereof, a writ of preliminary injunction be issued to enjoin the NLRC from implementing its Order dated September 27, 1999 directing the respondent to reinstate or accept back the individual petitioners. Granting this prayer, the CA, upon the respondent's filing of a bond in the amount of ₱1,000,000.00, promulgated the Resolution dated November 5, 1999, issuing the writ of preliminary injunction and enjoining the Secretary of Labor, the NLRC, Fourth Division, and their agents and representatives from implementing their respective orders directing the reinstatement of the individual petitioners.[10]

Thereafter, on May 10, 2000, the appellate court rendered the assailed decision. The appellate court ruled in favor of the respondent, holding that the petitioners' demand that they be issued "embarkation orders" could not be properly considered as "under the same terms and conditions prevailing before the strike" because the same constituted undue interference with the respondent's management prerogative. The CA held that the continuous refusal of the striking workers to comply with

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[8] *Id.* at 27.

[9] *Id.* at 43-46.

[10] *Id.* at 115-118.

the "return-to-work" order and the violence that erupted during the strike justified the respondent's position not to reinstate the dismissed employees. The appellate court, likewise, noted that the striking workers might resort to sabotaging the operations of the respondent, and thereby endanger the lives of its passengers. It thus ruled that the respondent's refusal to reinstate the twenty-one (21) employees who participated in the illegal strike was a legitimate precautionary measure properly exercised. The dispositive portion of the assailed decision reads:

> WHEREFORE, the petition is GRANTED; public respondent Secretary of Labor is hereby ENJOINED from implementing the reinstatement order pending the resolution by the NLRC of the legality of the dismissal. No costs.
>
> SO ORDERED.[11]

The petitioners sought reconsideration of the said decision but the appellate court, in the assailed Resolution dated September 13, 2000, denied the said motion. Hence, the recourse by the petitioners to this Court.

The petitioners present for resolution the sole issue:

> WHETHER OR NOT PUBLIC RESPONDENT, COURT OF APPEALS, ACTED "CONTRARY TO LAW" WHEN IT ENJOINED THE SECRETARY OF LABOR IN IMPLEMENTING ITS RETURN-TO-WORK ORDERS, SPECIFICALLY ORDERS DATED 20 JULY 1999, 23 JULY 1999, AND 27 JULY 2000 (sic), IN CONNECTION WITH LABOR DISPUTE AT TRANS-ASIA, INC. (NCMB RB VII-NS-07-43-99/07-44-99)[12]

The petition is impressed with merit.

The Orders dated July 20, 1999, July 23, 1999 and July 27, 1999 of the Secretary of Labor, certifying the labor dispute involving the herein parties to the NLRC for compulsory arbitration, and enjoining the petitioners to return to work and the respondent to admit them under the same terms and conditions

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[11] *Rollo*, p. 36.

[12] *Id*. at 12.

prevailing before the strike, were issued pursuant to Article 263(g) of the Labor Code. Said provision reads:

> Art. 263. *Strikes, picketing, and lockouts*. — . . .
>
> (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

A cursory reading of the above provision shows that when the Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest or certifies the same to the NLRC for compulsory arbitration, such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout. Moreover, if one had already taken place, *all striking workers shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout*.

The powers granted to the Secretary of Labor under Article 263(g) of the Labor Code have been characterized as an exercise of the police power of the State, with the aim of promoting public good:

> . . . [I]t must be noted that Articles 263(g) and 264 of the Labor Code have been enacted pursuant to the police power of the State, which has been defined as the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of the society. The police power,

together with the power of eminent domain and the power of taxation, is an inherent power of government and does not need to be expressly conferred by the Constitution . . . [13]

When the Secretary exercises these powers, he is granted "great breadth of discretion" in order to find a solution to a labor dispute. [14] The most obvious of these powers is the automatic enjoining of an impending strike or lockout or the lifting thereof if one has already taken place. Assumption of jurisdiction over a labor dispute, or as in this case the certification of the same to the NLRC for compulsory arbitration, always co-exists with an order for workers to return to work immediately and *for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout.*[15]

The CA, adopting the respondent's theory, ruled that the phrase "*under the same terms and conditions prevailing before the strike"* could not encompass the usurpation of management's prerogative to determine where its employees are to be assigned nor to determine their job assignments.

The appellate court committed reversible error in so ruling.

Case law recognizes the employer's right to transfer or assign employees from one area of operation to another.[16] This right, however, is not absolute but subject to limitations imposed by law. Article 263(g) of the Labor Code constitutes one such limitation provided by law.

The case of *Metrolab Industries, Inc. v. Roldan-Confesor*[17] is particularly instructive. In that case, the Secretary of Labor,

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[13] *Philtread Workers Union (PTWU) v. Confesor*, 269 SCRA 393 (1997); *Union of Filipro Employees v. Nestlé Philippines, Inc.*, 192 SCRA 396 (1990).

[14] Concurring Opinion of Justice Artemio V. Panganiban in *Phimco Industries, Inc. v. Brillantes*, 304 SCRA 747 (1999).

[15] See *Asian Transmission Corporation v. National Labor Relations Commission*, 179 SCRA 582 (1989).

[16] *Lanzaderas v. Amethyst Security and General Services, Inc.*, 404 SCRA 505 (2003).

[17] 254 SCRA 182 (1996).

pursuant to Article 263(g) of the Labor Code, assumed jurisdiction over the labor dispute at Metro Drug, Inc. Pending resolution of said dispute, the company laid-off ninety-four (94) of its rank-and-file employees invoking the exercise of management prerogative. The Secretary of Labor declared the layoff illegal and ordered the company to reinstate the employees. The Court upheld said order of the Secretary of Labor as it quoted the assailed resolution therein, *viz.*:

> . . . But it may nevertheless be appropriate to mention here that one of the substantive evils which Article 263 (g) of the Labor Code seeks to curb is the exacerbation of a labor dispute to the further detriment of the national interest. When a labor dispute has in fact occurred and a general injunction has been issued restraining the commission of disruptive acts, *management prerogatives must always be exercised consistently with the statutory objective*.[18]

Likewise *apropos* is the case of *University of Sto. Tomas v. NLRC*[19] where the Secretary of Labor, pursuant to Article 263(g) of the Labor Code, directed the University to "readmit all its faculty members, including the sixteen (16) union officials, under the same terms and conditions prevailing prior to the present dispute."[20] Instead of fully complying therewith, the University gave some of the teachers "substantially equivalent academic assignments without loss in rank, pay or privilege." The Court ruled therein that the grant of substantially equivalent academic assignments could not be sustained because it could not be considered a reinstatement under the same terms and conditions prevailing before the strike.

In the same manner, the respondent cannot rightfully exercise its management's prerogative to determine where its employees are to be assigned or to determine their job assignments in view of the explicit directive contained in the Orders dated July 23,

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[18] *Ibid*. (Italics ours).

[19] 190 SCRA 758 (1990).

[20] *Id*. at 767.

1999 and July 27, 1999 of the Secretary of Labor to accept the striking workers back "under the same terms and conditions prevailing prior to the strike." The order simply means that the employees should be returned to their ship assignments as before they staged their strike. To reiterate, Article 263(g) of the Labor Code constitutes an exception to the management prerogative of hiring, firing, transfer, demotion and promotion of employees.[21] And to the extent that Article 263(g) calls for the admission of all workers under the same terms and conditions prevailing before the strike, the respondent is restricted from exercising its generally unbounded right to transfer or reassign its employees.[22] The respondent is mandated, under the said order, to issue embarkation orders to the employees to enable them to report to their ship assignments in compliance with the Order of the Secretary of Labor.

As earlier opined, Article 263(g) of the Labor Code has been enacted pursuant to the police power of the State. Said provision of law requires that the powers thereunder be exercised only in labor disputes involving industries indispensable to the national interest.[23]

That respondent's business is of national interest is not disputed. It is engaged in coastwise shipping services for the transportation of passengers and cargoes. Its vessels service various routes in the Visayas and Mindanao, with the Port of Cebu as its base. As stated by the Secretary of Labor, in his Order dated July 20, 1999:

It may be recalled that the Port of Cebu has been previously rocked by concerted actions by the unions and the shipowners and arrastre

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[21] *Id.* at 771.

[22] *Id*.

[23] See, for example, *Philippine School of Business Administration-Manila v. Noriel*, 164 SCRA 402 (1988); *Sarmiento v. Tuico*, 162 SCRA 676 (1988); *Philippine Airlines, Inc. v. Secretary of Labor and Employment*, 193 SCRA 223 (1991); *International Pharmaceuticals, Inc. v. Secretary of Labor*, 205 SCRA 59 (1992); *Philtread Workers Union (PTWU) v. Confesor, supra; Metrolab Industries, Inc. v. Roldan-Confesor, supra.*

operators which have resulted in the disruption of port operations. Said disruptions have seriously affected trade, commerce and transportation to and from said port and other destinations in the Visayas and Mindanao.

The Company's operations form part of the chain of shipping services at the Port of Cebu and other ports. Any work stoppage thereat is certain to have adverse effects on its operations with its accompanying effects to trade, commerce and transportation. Moreover, a strike could trigger measures from the coalition of shipowners of which the Company is a member, that could escalate to a situation disruptive of the tenuous peace currently obtaining at the Port of Cebu.

At this point when efforts of the government are focused in ensuring economic recovery and growth, it is the primordial concern of this Office to avert unnecessary work stoppages, especially when an alternative mechanism to resolve the differences between the parties exists. The direct intervention of this Office becomes imperative on account of the magnitude of the adverse effect of any work stoppage at the Company to the regional and national economy. Under the present state of things, the exercise of this Office's power as embodied under Article 263(g) of the Labor Code, as amended, is warranted.[24]

The maritime industry is indubitably imbued with national interest. Under the circumstances, the Labor Secretary correctly intervened in the labor dispute between the parties to this case by certifying the same to the NLRC for compulsory arbitration and issuing the Orders of July 20, 1999, July 23, 1999 and July 27, 1999 pursuant to Article 263(g) of the Labor Code.

We note that despite all its protestation of its right to dismiss the individual petitioners for committing illegal acts during the strike, the respondent is deemed to have waived such right[25] when it agreed to reinstate them and issue their embarkation orders during the conference on July 28 to 29, 1999 held by the parties with then NLRC Chairman Rayala.[26]

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[24] *Rollo*, pp. 40-41.

[25] *Reformist Union of R.B. Liner, Inc. v. NLRC*, 266 SCRA 713 (1997).

[26] TSN of the Conference/Hearing on July 29, 1999 reads in part:

In fine, absent any showing that there was grave abuse of discretion on the part of the Secretary of Labor in issuing the

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CHAIRMAN:

Okay, so we go now for (sic) the other issue. I believe that the issue right now is the compliance or implementation of the Order of the Secretary dated July 27, 1999, directing for (sic) the suspension on the aspect of termination and directing the parties to meet at point in time to return to work, and for the management to accept the workers on the condition prior to the staged strike. May we hear now from Atty. Mendoza to manifest it on record.

ATTY MENDOZA:

I will give you to . . .

ATTY PEDARIA:

At this point in time, Your Honor, there are no more placards in the premises of the port. The workers of the TRANS-ASIA are peaceably assembling and waiting for the full implementation of the Order of the Secretary which we interpret. And as it is clearly stated, remaining the *status quo ante* which are the terms and conditions prevailing prior to the strike. All of the workers, including the 21 officers of the two unions are very ready and awaiting the return of their respective positions which they are (sic) holding prior to the strike.

CHAIRMAN:

Let me clarify your statement. You are saying now, (1) that the striking employees are now reporting to work.

ATTY. PEDARIA:

They are ready to report for work, Your Honor, because as we have stated yesterday, there is a precondition to their actual reporting for work, which is the issuance of the embarkation orders. Absent the embarkation orders, they cannot validly be considered as part of the crew of the vessel [to] which they are assigned. So, it is our position at this point in time, that there remains to be performed by the complete compliance of the Order of the Secretary of Labor. But their intention and desire to work is already there, Your Honor.

CHAIRMAN:

That is what I am inquiring now.

ATTY. PEDARIA:

Yes, Your Honor.

CHAIRMAN:

Malinaw yan kung ganoon. So, they are reporting now. So, the next act now would be the acceptance on the part of the management. *Linawin natin yan.* So, that means also that the picket now is being lifted?

ATTY. PEDARIA:

The people are peaceably assembling.

said orders, particularly the Order of July 27, 1999, the appellate court patently erred in enjoining him from implementing the same. By so doing, the appellate court unduly interfered with the powers granted to the Secretary of Labor under Article 263(g) of the Labor Code.

WHEREFORE, the petition is *GRANTED*. The Decision dated May 10, 2000 of the Court of Appeals in CA-G.R. SP No. 54393 and its Resolution dated September 13, 2000 are *REVERSED* and *SET ASIDE*. The Order of the Secretary of Labor and Employment dated July 27, 1999, is *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

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

Quisumbing, J., took no part due to prior action in DOLE.

CHAIRMAN:

No, no, no. If the picket is already lifted? So, we are going to take note of the fact that based on the manifestation has been effected (sic) is now reporting for work. And as I said the picket line together with all the placards has (sic) been removed already.

ATTY. PEDARIA:

Yes, Your Honor.

CHAIRMAN:

So, *malinaw na yon*. Now, inasmuch as there is a manifestation of the union that they are going back to work, we will now hear from the management.

ATTY. ARGUEDO:

For the management side, Your Honor, we adopt the same manifestation we made yesterday, which means that management, TRANS-ASIA, is willing to accept back those workers who are terminated on condition that it is in accordance with the Order, so we will be accepting them back to work.

CHAIRMAN:

Very good.

ATTY. ARGUEDO:

And, we also would like to request the terminated workers to report to the office for their assignment. (CA *Rollo*, pp. 93-95.)

SECOND DIVISION

[G.R. No. 145466. July 7, 2004]

ZAMBOANGA BARTER GOODS RETAILERS ASSOCIATION, INC. [ZAMBAGORA], represented by its president, HADJI MAHMUD GUMAMPANG, *petitioner, vs.* **HON. MARIA CLARA L. LOBREGAT* in her capacity as Mayor of Zamboanga City and HON. ERNESTO R. GUTIERREZ, Presiding Judge of the Regional Trial Court, Branch 14, Zamboanga City,** *respondents*.

SYNOPSIS

In 1994, respondent city government of Zamboanga allowed petitioner Corporation to construct a one-storey building on the reclaimed area behind the city hall. In 1998, petitioner was asked to vacate the property for the construction of the city fire station. Petitioner, however, refused to vacate the property and filed a complaint for injunction with prayer for issuance of preliminary injunction and/or temporary restraining order to enjoin the city government from evicting them from the property. The RTC denied the prayer and petitioner filed this petition.

The Court dismissed the petition. First, this petition for *certiorari* should have been filed with the Court of Appeals. Second, petitioner was not entitled to the injunctive relief sought. Petitioner occupied the property at the sufferance of respondent after the expiry of its right to occupy the same. The consistent rulings of the Court is that a person who occupies a land of another at the latter's tolerance, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand. As petitioner failed to establish any right violated or to be protected by injunction, the trial court had no other alternative but to deny petitioner's plea for injunctive relief.

* Deceased.

SYLLABUS

1. REMEDIAL LAW; HIERARCHY OF COURTS; PETITION FOR *CERTIORARI* SHOULD HAVE BEEN FILED WITH THE COURT OF APPEALS. – Although the Supreme Court, Regional Trial Courts and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. Furthermore, no special and important reason or exceptional and compelling circumstance has been adduced by the petitioner as to why a direct recourse to the Court should be allowed. The present recourse should have been filed with the Court of Appeals under Rule 65, Section 4 of the Rules of Court.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NOT PROPER WHERE PETITIONER FAILED TO ESTABLISH RIGHT PROTECTED OR VIOLATED; CASE AT BAR. – We find no grave abuse of discretion on the part of the trial court in denying the petitioner's application for a temporary restraining order and/or a writ of preliminary injunction. The petitioner was burdened to establish the following requirements for it to be entitled to injunctive relief: (1) the existence of its right to be protected; and (2) that the acts against which the injunction is to be directed are violative of such right. The petitioner failed to discharge its burden. It is evident that the petitioner occupied the property at the sufferance of the respondent after the expiry of its right to occupy the same in 1998. The respondent had granted the petitioner several extensions of time to vacate the property, so that it could look for a property where it could rebuild its building. The consistent rulings of the Court is that a person who occupies a land of another at the latter's tolerance or permission, without any contract between them is necessarily bound by an implied promise that he will vacate upon demand. For two (2) years, the petitioner continued staying on the property. Despite the respondent's magnanimity, the petitioner refused to vacate the property upon demand. The bare fact that the petitioner had been granted a business permit until December 31, 2000 and had paid its realty taxes for the same period did not give the petitioner the right to continue staying in the property over the respondent's objection. As the petitioner

failed to establish any right violated or to be protected by injunction, the trial court had no other alternative but to deny petitioner's plea for injunctive relief.

APPEARANCES OF COUNSEL

Abdulmoin M. Pakam for petitioner.
Silvestre G. Rivera for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court seeking to annul and set aside the Order[1] of the Regional Trial Court of Zamboanga City, Branch 14, in Civil Case No. 5093 denying the application for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction of petitioner Zamboanga Barter Goods Retailers Association, Inc. and its Order denying the motion for reconsideration thereon.

The petition at bar arose from the following antecedents:

The petitioner is a corporation duly organized and established under Philippine laws and has two hundred eighty-eight (288) barter-traders as members. Sometime in 1994, the respondent city government of Zamboanga allowed the members of the petitioner to temporarily occupy a reclaimed area located at P. Lorenzo St., Port Area, Barangay Zone 4. The members of the petitioner proceeded to construct their respective stalls on the property, and sold their wares therein. On July 10, 1994, a fire gutted most of the said stalls.

On July 26, 1994, the city building officials of Zamboanga issued a building permit for the construction of a one-storey building on the reclaimed area right behind the city hall. The petitioner paid monthly rentals thereon, and its members occupied

[1] Penned by Judge Ernesto R. Gutierrez.

the building and sold their wares therein. The petitioner, likewise, declared the building for taxation purposes the following year at the assessment value of ₱1,591,100.00,[2] and thereafter paid realty taxes on the said improvements.

In 1998, the respondent decided to construct the city fire station on the property occupied by the petitioner, and requested the latter to vacate the property. Upon representations made by some members of the *Sangguniang Panlungsod*, the respondent city granted several extensions to the petitioner to look for a new site for its building and vacate the property. However, despite such extensions granted to it, the petitioner failed to vacate the property.

On October 18, 2000, Mayor Maria Clara L. Lobregat sent a letter to the petitioner, through its president, Hadji Gumampang, giving it a last extension, or until October 31, 2000, in view of the urgency of the construction of the city fire station.

The petitioner, through counsel, sent a Letter[3] dated October 19, 2000, to Mayor Lobregat stating that before it complied with such demand to vacate, it must first be adequately compensated for the value of the building and the other improvements it constructed on the subject property. The respondent city government took no action on the letter, and the petitioner's request for an audience with Mayor Lobregat or her representative to determine a just compensation for said improvements, likewise, failed to materialize.

On October 25, 2000, the petitioner filed its complaint with the Regional Trial Court of Zamboanga City, Branch 14, against the respondent for injunction with prayer for issuance of preliminary injunction and/or temporary restraining order to enjoin the city government from evicting them from the property. The case was docketed as Civil Case No. 5093. The petitioner alleged, *inter alia*, the following in its complaint:

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[2] Annex "F" of the Complaint, Records, p. 11.

[3] Annex "I" of the Complaint, *Id.* at 14.

10. That ousting the plaintiff from the present area in the absence of the settlement of claims over their rights to said improvements consisting of buildings and in view of the unavailability of alternative site where they could transfer their business would greatly work grave injustice and irreparable damages not only to their business and the individual member (sic) of the Association but to the members of their respective family (sic) as well who depend for (sic) them for support;

11. That in view of the refusal of the defendant to compensate the plaintiff for the improvements introduced and its eagerness to demolish the improvements belonging to the plaintiff and/or padlock the premises, there is a need to issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining the defendant to cease and desist from threatening, or doing acts which may probably be in violation of the rights of the herein plaintiff and further direct the defendant to maintain the *status quo* pending the resolution of the instant case, and for this purpose hereby offer a bond in such sum as this Honorable Court may fix.[4]

... ...

WHEREFORE, premises considered, plaintiff most respectfully pray (sic) of this Honorable Court that upon the filing hereof, a Temporary Restraining Order and/or Writ of Preliminary Injunction be immediately issued enjoining the defendant, its agent or representative, to refrain and desist from threatening or doing acts which may be in violation of the rights of the herein plaintiff and that after trial said Writ of Preliminary Injunction be made permanent.

Plaintiff pray[s] for other relief just and equitable under the circumstances.[5]

The complaint and summons were served on the respondent, and the case was set for hearing on the application for a temporary restraining order and/or writ of preliminary injunction on October 25, 2000. During the hearing, the petitioner presented its documentary evidence[6] showing that it had paid its quarterly fees for retailing business permits effective until December 31,

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[4] *Id*. at 3.

[5] *Id*. at 4.

[6] Exhibits "A" to "E", inclusive.

2000, as well as garbage fees and other surcharges and interests. The petitioner, likewise, presented an official receipt showing its payment of the real estate tax on March 31, 2000.[7]

On October 26, 2000, the trial court[8] issued its assailed Order denying the petitioner's application for a temporary restraining order or a writ of preliminary injunction. The court declared that the petitioner failed to establish a clear and unmistakable right for injunctive relief.[9]

The petitioner filed a motion for reconsideration of the Order but the trial court denied the same on October 30, 2000. [10] However, the trial court recommended to the respondent to let the petitioner stay in the subject premises until December 31, 2000, since it had already paid its business permit up to the said date. [11] The respondent agreed to the recommendation of the trial court.

However, on November 6, 2000, the petitioner filed the petition at bar, contending that:

1. THE COURT *A QUO* GRAVELY ABUSE[D] ITS DISCRETION WHEN IT OUTRIGHTLY DENIED THE PETITIONER'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER.[12]
2. THE COURT *A QUO* ERRED IN NOT CONSIDERING THE PETITIONER'S DOCUMENTARY EVIDENCE IN SUPPORT OF ITS APPLICATION FOR [A] TRO DURING THE SUMMARY HEARING CONDUCTED FOR THE PURPOSE.[13]

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[7] Records, pp. 20A-24.

[8] Presided by Judge Ernesto R. Gutierrez.

[9] Records, p. 32.

[10] *Id*. at 33.

[11] *Id*.

[12] *Rollo*, p. 9.

[13] *Id*. at 10.

The petitioner asserts that it had been issued a business permit after the payment of the necessary fees effective up to December 31, 2000 and that the respondent had no right to evict its members from the property until such date. Hence, the petitioner avers, the trial court should have issued a temporary restraining order or a writ of preliminary prohibitory injunction enjoining the respondent from evicting its members from the property. The petitioner argues that its right to stay in the property is buttressed by its documentary evidence that it had paid the real estate taxes due.

In its Comment[14] on the petition, the respondent contends that the assailed order, even if erroneous, is merely an error of judgment not correctable by *certiorari*. It asserts that it acquiesced to the recommendation of the trial court, and allowed the petitioner to stay and carry on its business in the subject premises until December 31, 2000; and yet, the petitioner still filed its petition with this Court on November 6, 2000. The respondent also avers that it needs the property for the construction of the city fire station, a public infrastructure property, the accomplishment of which cannot be enjoined under Presidential Decree No. 1818.

The petition is dismissed.

First. The petitioner blatantly disregarded the hierarchy of courts. Although the Supreme Court, Regional Trial Courts and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum.[15] Furthermore, no special and important reason or exceptional and compelling circumstance has been adduced by the petitioner as to why a direct recourse to the Court should be allowed. The present recourse should have been filed with the Court of

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[14] *Id*. at 53.

[15] See *Yared v. Ilarde*, 337 SCRA 53 (2000); *People v. Court of Appeals*, 301 SCRA 566 (1999); *Aleria, Jr., v. Velez*, 298 SCRA 611 (1998); *Tano v. Socrates*, 278 SCRA 154 (1997).

Appeals under Rule 65, Section 4 of the Rules of Court, which provides:

> 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. 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.

Second. Even if we ignore the petitioner's procedural *faux pas* and delve into the merits of its petition, still we find no grave abuse of discretion on the part of the trial court in denying the petitioner's application for a temporary restraining order and/or a writ of preliminary injunction.

The petitioner was burdened to establish the following requirements for it to be entitled to injunctive relief: (1) the existence of its right to be protected; and (2) that the acts against which the injunction is to be directed are violative of such right.[16] The petitioner failed to discharge its burden. It is evident that the petitioner occupied the property at the sufferance of the respondent after the expiry of its right to occupy the same in 1998. The respondent had granted the petitioner several extensions of time to vacate the property, so that it could look for a property where it could rebuild its building. The consistent rulings of the Court is that a person who occupies a land of another at the latter's tolerance or permission, without any contract between them is necessarily bound by an implied promise that he will vacate upon demand.[17] For two (2) years, the petitioner continued

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[16] *Suico Industrial Corporation v. Court of Appeals*, 301 SCRA 212 (1999).

[17] *Pengson v. Ocampo, Jr.*, 360 SCRA 420 (2001).

staying on the property. Despite the respondent's magnanimity, the petitioner refused to vacate the property upon demand.

The bare fact that the petitioner had been granted a business permit until December 31, 2000 and had paid its realty taxes for the same period did not give the petitioner the right to continue staying in the property over the respondent's objection. As the petitioner failed to establish any right violated or to be protected by injunction, the trial court had no other alternative but to deny petitioner's plea for injunctive relief.

It bears stressing that the property occupied by the petitioner was needed by the respondent for the much delayed construction of a fire station, in response to the appeal of the City Fire Marshal in his letter to the City Mayor, *viz*:

> It may be recalled, in this connection, that under the provisions of Section 52 of the Rules and Regulations Implementing the DILG Act of 1990 (RA 6975), the LGUs at the City or Municipal levels are mandated to "render support for the efficient and effective performance of the role of the Fire Service in the event of emergencies and fire-related incidents." They are also mandated to "provide the necessary land or site of the fire station." In the light of these provisions of the rules and regulations herein-cited, may we respectfully and earnestly appeal to Your Honor, to secure suitable land or site where a permanent fire station building could be constructed.
>
> As soon as the land or site is available for the construction of the fire station building, the same must be donated to the BFP, through the Fire Chief (National Office) or his authorized representative, for inclusion in the program for construction of fire station building(s) in this Region. Along this line, it is our fervent hope and prayers that your good office will give this appeal her preferential attention and kindest consideration in the interest of public service.[18]

Third. The petitioner is estopped from assailing the trial court's October 26 and 30, 2000 Orders, since the parties had already agreed before such court to defer the eviction of the petitioner's members from the property until December 31, 2000, in the spirit of the Christmas season.

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[18] Records, p. 53.

IN THE LIGHT OF ALL THE FOREGOING, the petition is hereby *DISMISSED*. The assailed Orders are *AFFIRMED* in all respects.

Costs against the petitioner.

SO ORDERED.

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

EN BANC

[G.R. No. 145911. July 7, 2004]

ANDY QUELNAN, *petitioner, vs.* **VHF PHILIPPINES, INC. and VICENTE T. TAN,** *respondents.*

SYNOPSIS

Petitioner filed a complaint for rescission of contract and damages against respondents. For failure to attend the pre-trial therein, presiding judge declared petitioner non-suited and accordingly dismissed the complaint. Petitioner filed a Motion to set aside the Order; the Motion was denied. Petitioner filed an Omnibus Motion; the same was also denied. Petitioner filed a Notice of Appeal of the Order denying his Omnibus Motion; the same was ruled filed out of time. On petition to the Court of Appeals, appellate court ruled that the Order denying the Omnibus Motion was an interlocutory order and thus, not appealable.

The denial of a motion for reconsideration of an order of dismissal of a complaint is not an interlocutory order. It is a final order that puts an end to the particular matter resolved, or settles definitely the matter therein disposed of. Nothing is left for the trial court to do other than to execute the order. The reference by petitioner, in his Notice of Appeal, to the

Order denying his Omnibus Motion (Motion for Reconsideration), should thus be deemed to refer to the Order which declared him non-suited and accordingly dismissed his complaint. Nonetheless, petitioner's case must still fail. The alleged failure of petitioner's counsel to record the scheduled pre-trial was not an excusable negligence that justify his absence at the pre-trial.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PROPER TO COMPEL PERFORMANCE OF MINISTERIAL DUTY; CASE AT BAR.— *Mandamus* will lie to compel the performance of a ministerial duty, not a discretionary duty, and petitioner must show that he has a well-defined, clear and certain right to warrant the grant thereof. The timeliness of the filing of a notice of appeal determines whether the trial court's giving due course to it is ministerial. If the notice of appeal is filed within the reglementary period, it becomes the ministerial duty of the trial court to give it due course. If not, the trial court cannot be compelled by *mandamus* to do so.

2. ID.; CIVIL PROCEDURE; APPEAL; ORDER DENYING MOTION FOR RECONSIDERATION, NOT APPEALABLE.— In *Republic v. Court of Appeals,* this Court, in dismissing a petition for review of a resolution of the Court of Appeals dismissing therein petitioner's appeal from an order of a Regional Trial Court dismissing his complaint, gave three reasons therefore, the third of which reads: There is another reason why review of the trial court's order cannot be made. Petitioner does not dispute the fact that, as observed by the Court of Appeals, *its notice of appeal referred only to the order of the trial court denying its Motion for Reconsideration and not the order of dismissal of its complaint as well. Such failure is fatal.* Rule 37, § 9 of the Rules of Civil Procedure provides that an order denying a motion for reconsideration is not appealable, the remedy being an appeal from the judgment or final order. On the other hand, *Rule 41, § 1(a) of the same rules also provides that no appeal maybe taken from an order denying a motion for reconsideration. It is true the present Rules of Civil Procedure took effect only on July 1, 1997 whereas this case involves an appeal taken in February 1995.*

But Rule 37, Sec. 9 and Rule 41, § 1(a) simply codified the rulings in several cases to the effect that an order denying a motion for reconsideration is interlocutory in nature and, therefore is not appealable. **These rules, therefore, are not really new**.

3. ID.; ID.; ID.; NOT APPLICABLE TO MOTION FOR RECONSIDERATION OF DISMISSAL OF A COMPLAINT WHICH IS A FINAL ORDER.— Rule 37, Section 9 of the Rules of Civil Procedure reads: *SEC. 9. Remedy against order denying a motion for new trial or reconsideration.* – An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the **judgment or final order**, and Rule 41, Section 1(a) of the same Rules reads: *SEC 1. Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. No order may be taken from: (a) an order denying a motion for new trial or reconsideration; x x x In all the above instances *where the judgment or final order is not appealable*, the aggrieved party may file an appropriate special civil action under Rule 65. The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal. The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal. The denial of the motion for reconsideration of an *order of dismissal of a complaint* is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order. Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself. If the proscription against appealing an order denying a motion for reconsideration is applied to *any* order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject of appeal. In other words, from the entire provisions of Rules 39 and 41, there can be no mistaking that what is

proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order.

4. LEGAL ETHICS; LAWYER; EXCUSABLE NEGLIGENCE; COUNSEL'S FAILURE TO RECORD THE DATE OF PRE-TRIAL IN HIS DIARY REFLECTS CARELESSNESS. – The alleged failure of petitioner's counsel to record the scheduled pre-trial in his 1997 diary to justify his absence at the pre-trial cannot amount to excusable negligence. To constitute excusable negligence, the absence must be due to petitioner's counsel's failure to take the proper steps at the proper time, not in consequence of his carelessness, inattention or willful disregard of the process of the court, but *in consequence of some unexpected or unavoidable hindrance or accident*. Petitioner's counsel's failure to record the date of pre-trial in his 1997 diary reflects his carelessness, his failure to heed his responsibility of not neglecting a legal matter entrusted to him. Petitioner's counsel must know that pre-trial is mandatory. Being mandatory, the trial court has discretion to declare a party non-suited. Absent a showing of grave abuse in the trial court's exercise thereof, as in the case at bar, appellate courts will not interfere.

APPEARANCES OF COUNSEL

Singson Valdez & Associates for petitioner.
M.M. Lazaro & Associates for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The present Petition for Review on *Certiorari* seeks the reversal of the Decision[1] of the Court of Appeals denying the petition for *mandamus* of Andy Quelnan (petitioner) to compel the trial court to reinstate and implement its Order of April 10, 1997[2] giving due course to his Notice of Appeal.

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[1] In CA-G.R. No. SP 45815.

[2] Records of the Regional Trial Court at 147.

Gathered from the records of the case are the following antecedents:

Petitioner claimed to have purchased in 1989 from respondents VHF Philippines, Inc. (VHF) and Vicente Tan, principal stockholder and President of VHF, Unit 15-0 at the Legaspi Tower Condominium, Roxas Boulevard, Manila, for which he made an overpayment of two-hundred seventy thousand (₱270,000.00) pesos. He also claimed that instead of returning the overpayment to him, he and respondents *verbally* agreed that he purchase another unit, Unit 20-G, at the condominium for ₱3,250,000.00 from which the overpaid amount of ₱270,000.00 would be debited, thereby leaving a balance of ₱2,980,000.00 which he would pay "before the end of June, 1991 without any interest thereon"; that he immediately took possession of Unit 20-G, making several payments therefor; and that in May 1991 when he offered to settle his remaining balance, he was informed that Unit 20-G was mortgaged in favor of Philippine Trust Company and that he was being charged by respondents the interest and penalties due on the mortgage obligation.[3]

VHF on the other hand claimed that it merely leased Unit 20-G to petitioner at a monthly rental of ₱25,500.00 plus ₱1,500.00 for a parking space; and that since petitioner failed to pay rentals, they filed an ejectment complaint against him at the Metropolitan Trial Court of Manila (MeTC).

Petitioner failed to file his answer to said ejectment complaint following which, after respondents presented documentary evidence as required by the MeTC, a November 23, 1992 decision was rendered ordering his ejectment.[4] *Petitioner did not appeal this decision* and he was in fact ejected from Unit 20-G.

Close to two years later or on October 7, 1994, petitioner filed before the Makati Regional Trial Court (RTC) a complaint

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[3] *Rollo* at 45-47.

[4] *Id.* at 64-65.

for rescission (of the alleged verbal contract of sale) and damages against respondents.[5]

After respondents filed their Answer [6] on December 20, 1994, the pre-trial of the case was set on March 10, 1995 by Branch 142 of the Makati RTC to which the case was raffled.

The pre-trial scheduled on March 10, 1995 was cancelled and was repeatedly reset to allow a possible amicable settlement of the case.

On December 5, 1996, *on agreement of the parties' counsel*, the pre-trial was reset to January 17, 1997.[7] Copy of the order resetting the pre-trial to January 17, 1997 was received by petitioner, and by his counsel on December 27, 1996.[8]

During the scheduled pre-trial on January 17, 1997, petitioner did not show up. Neither did petitioner's counsel in whose favor he executed a Special Power of Attorney to represent him in the pre-trial and trial of the case including entering into an amicable settlement, prompting the presiding judge to dictate in open court, on respondents' motion, an order noting the absence of petitioner and his counsel, declaring petitioner non-suited, and accordingly dismissing the complaint.

Petitioner's counsel having in the meantime learned of the trial court's open court dismissal of the complaint, he, without awaiting the written January 17, 1997 Order, filed on January 24, 1997 a Manifestation and *Ex Parte* Motion[9] to set aside the said order, invoking honest mistake or oversight amounting to excusable negligence — that he overlooked to transfer from his 1996 diary the entry regarding the scheduled pre-trial conference

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[5] *Id*. at 44-51.

[6] Records at 35-39.

[7] Minutes of the December 5, 1996 session showing the signature-conformity of the parties' counsel, Records at 103.

[8] *Vide* Registry return receipts stapled to the dorsal side of the original of said Order of December 5, 1996, Records at 104.

[9] *Id*. at 108-110.

on January 17, 1997 to his 1997 diary. The motion was, however, denied by Order of January 29, 1997.[10]

On *February 12, 1997*, petitioner received a copy of the trial court's Order of January 17, 1997.[11]

On *February 24, 1997*, petitioner filed an Omnibus Motion[12] reiterating the grounds he set forth in his Manifestation and *Ex Parte* Motion filed on January 24, 1997, which Omnibus Motion was denied by Order of March 12, 1997,[13] copy of which order was received by petitioner's counsel on *March 19, 1997*.

On March 20, 1997, petitioner filed a Notice of Appeal[14] of the *March 12, 1997 Order* denying his Omnibus Motion.

By Order of *April 10, 1997*,[15] the trial court directed the elevation of the records of the case to the Court of Appeals for disposition. Respondents opposed this order through a manifestation and motion.[16]

Holding that the Notice of Appeal was filed out of time, the trial court, by Order of April 22, 1997,[17] set aside its Order of April 10, 1997. Petitioner's Motion for Reconsideration[18] of the said Order of April 22, 1997 having been denied by Order of August 15, 1997,[19] copy of which latter order petitioner claims to have received on September 3, 1997, petitioner filed on October 31, 1997 a petition for *mandamus*[20] at the Court of Appeals

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[10] *Id.* at 111.

[11] *Id.* at dorsal side of 107.

[12] *Id.* at 115-119.

[13] *Id.* at 144.

[14] *Id.* at 145-146.

[15] *Id.* at 147.

[16] *Id.* at 148-151.

[17] *Id.* at 152.

[18] *Id.* at 153-157.

[19] *Id.* at 172.

[20] CA *Rollo* at 1-17.

praying that the trial court be enjoined from implementing its Orders of August 15, 1997 and April 22, 1997, and that it be commanded to reinstate its Order of April 10, 1997 directing the elevation of the records of the case to the proper court.

While the petition before the Court of Appeals was captioned as one for *mandamus*, the said court, in line with the ruling of this Court that the allegations of the complaint or petition and the nature of the relief sought determine the nature of the action, treated it as one for *certiorari* as, in essence, the petition alleged grave abuse of discretion on the part of the trial court in denying due course to petitioner's Notice of Appeal.

By the assailed Decision,[21] the Court of Appeals denied the petition on the ground that the March 12, 1997 Order of the trial court denying petitioner's Omnibus Motion is not appealable, and the January 17, 1997 Order, which should have been, but was not appealed, had thus become final and executory.

Hence, the present petition.

Petitioner maintains that *mandamus* was the proper remedy in the instant case, and that his Notice of Appeal was seasonably filed.

Mandamus will lie to compel the performance of a ministerial duty, not a discretionary duty,[22] and petitioner must show that he has a well-defined, clear and certain right to warrant the grant thereof.[23]

The timeliness of the filing of a notice of appeal determines whether the trial court's giving due course to it is ministerial.

If the notice of appeal is filed within the reglementary period, it becomes the ministerial duty of the trial court to give it due course.[24] If not, the trial court cannot be compelled by *mandamus* to do so.[25]

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[21] *Rollo* at 18-23.

[22] *Angchangco Jr. v. Ombudsman*, 268 SCRA 301 (1997).

[23] *Sales v. Mathay Sr.*, 129 SCRA 180 (1984).

[24] *Mateo v. Court of Appeals*, 196 SCRA 280 (1991).

[25] *Vda. De Crisologo v. Court of Appeals*, 137 SCRA 231 (1985).

Petitioner's counsel received the January 17, 1997 Order declaring petitioner non-suited and accordingly dismissing the complaint on February 12, 1997. When petitioner's counsel filed a Manifestation and *Ex-Parte* Motion on January 24, 1997, prior to his receipt on February 12, 1997 of the January 17, 1997 Order, the 15-day period to appeal did not begin to run, for such period is reckoned *from notice of such judgment or final order* or any subsequent amendment thereof, and it is interrupted by the timely filing of a motion for new trial or reconsideration.[26]

When petitioner's counsel received then on February 12, 1997 a copy of the January 17, 1997 Order declaring petitioner non-suited, and filed on February 24, 1997 an Omnibus Motion to set aside said order, 12 days of the 15-day period had elapsed. The filing of the Omnibus Motion interrupted the period of appeal, and it began to run again when, on March 19, 1997, petitioner's counsel received a copy of the Order of March 12, 1997 denying petitioner's Omnibus Motion.

Since petitioner filed the Notice of Appeal on March 20, 1997 or on the 13th day of the 15-day reglementary period, *it was timely filed.*

The appellate court noted, however, that since it was the *Order of March 12, 1997* denying petitioner's Omnibus Motion-Motion for Reconsideration of the January 17, 1997 Order of dismissal, and not the latter order, which was appealed, said Order of January 17, 1999 had "long attained finality."

In *Republic v. Court of Appeals*,[27] this Court, in dismissing a petition for review of a resolution of the Court of Appeals dismissing therein petitioner's appeal from an order of a Regional Trial Court dismissing his complaint, gave three reasons therefor, the third of which reads:

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[26] Rule 41, Sec. 3, 1964 Revised Rules of Court, as amended by B.P. 129 (The Judiciary Reorganization Act of 1980), which is reiterated under the same Rule and Section in the 1997 Rules of Civil Procedure.

[27] *Republic v. Court of Appeals*, 322 SCRA 81 (2000).

There is another reason why review of the trial court's order cannot be made. Petitioner does not dispute the fact that, as observed by the Court of Appeals, its *notice of appeal referred only to the order of the trial court denying its Motion for Reconsideration and not the order of dismissal of its complaint as well. Such failure is fatal*. Rule 37, §9 of the Rules of Civil Procedure provides that an order denying a motion for reconsideration is not appealable, the remedy being an appeal from the judgment or final order. On the other hand, *Rule 41, §1(a) of the same rules also provides that no appeal maybe taken from an order denying a motion for reconsideration.* **It is true the present Rules of Civil Procedure took effect only on July 1, 1997 whereas this case involves an appeal taken in February 1995**. *But Rule 37, §9 and Rule 41, §1(a) simply codified the rulings in several cases to the effect that an order denying a motion for reconsideration is interlocutory in nature and, therefore is not appealable. T**hese rules, therefore, are not really new***.

The outcome of this petition may be a bitter lesson for petitioner, but one mainly of its own doing. Not only did it file its notice of appeal well beyond the reglementary period, it actually failed to appeal from the order dismissing its case against private respondent. *The inevitable consequence of such grave inadvertence is to render the trial court's decision dismissing its case final and executory.* The Court of Appeals thus acted properly in dismissing petitioner's appeal.[28] (Italics, emphasis and underscoring supplied)

As stated in above-quoted portion of the decision in *Republic*, Rule 37, Section 9 of the Rules of Civil Procedure which reads:

SEC. 9. Remedy against order denying a motion for new trial or reconsideration. — An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the *judgment or final order*. (Italics supplied)

and Rule 41, Section 1(a) of the same Rules which reads:

SEC 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

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[28] *Id*. at 91-92.

No order may be taken from:

(a) an order denying a motion for new trial or reconsideration;

xxx xxx xxx

In all the above instances *where the judgment or final order is not appealable*, the aggrieved party may file an appropriate special civil action under Rule 65; (Italics supplied)

were invoked to bar the appeal in above-said case, the therein notice of appeal having "referred only to the order of the trial court denying its Motion for Reconsideration and not the order of dismissal of the complaint as well."

From a considered re-examination of the immediately-quoted rules, this Court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. That that was the intention of the above-quoted rules is gathered from *Pagtakhan v. CIR*, 39 SCRA 455 (1971), cited in above-quoted portion of the decision in *Republic*, in which this Court held that an order *denying* a motion to dismiss an action is *interlocutory*, hence, not appealable.

The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal.[29] The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal.

The denial of the motion for reconsideration of an *order of dismissal of a complaint* is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order.

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[29] *Cheesman v. Intermediate Appellate Court*, 193 SCRA 102 (1991).

Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.

The reference by petitioner, in his notice of appeal, to the March 12, 1999 Order denying his Omnibus Motion — Motion for Reconsideration should thus be deemed to refer to the January 17, 1999 Order which declared him non-suited and accordingly dismissed his complaint.

If the proscription against appealing an order denying a motion for reconsideration is applied to *any* order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject of appeal. In other words, from the entire provisions of Rules 39 and 41, there can be no mistaking that what is proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order.

Technicality aside, on the merits, petitioner's case just the same fails.

The alleged failure of petitioner's counsel to record the scheduled pre-trial in his 1997 diary to justify his absence at the pre-trial cannot amount to excusable negligence. To constitute excusable negligence, the absence must be due to petitioner's counsel's failure to take the proper steps at the proper time, not in consequence of his carelessness, inattention or willful disregard of the process of the court, but *in consequence of some unexpected or unavoidable hindrance or accident*.[30]

Petitioner's counsel's failure to record the date of pre-trial in his 1997 diary reflects his carelessness, his failure to heed his responsibility of not neglecting a legal matter entrusted to him,[31] especially given the fact that he was given a Special Power of Attorney to represent petitioner in the pre-trial and trial of the case and that the repeated resettings of the pre-trial for a period of 1 year and more than 10 months had unduly

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[30] Black's *Law Dictionary*, 6th ed., at 566 (1991).

[31] Canon 18, Rule 18.03 of the Code of Professional Responsibility.

prolonged the disposition of petitioner's complaint which was filed in 1994 yet.

Petitioner's counsel must know that pre-trial is mandatory.[32] Being mandatory, the trial court has discretion to declare a party non-suited.[33] Absent a showing of grave abuse in the trial court's exercise thereof, as in the case at bar, appellate courts will not interfere.

WHEREFORE, the petition is, in light of the foregoing discussions, hereby DENIED for lack of merit.

SO ORDERED.

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

Panganiban, J., took no part. Former counsel of a party.

EN BANC

[G.R. Nos. 147678-87. July 7, 2004]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EFREN MATEO *y* GARCIA,** *appellant*.

SYNOPSIS

The case was an automatic review of the decision that found appellant guilty of ten counts of rape. The Court, however, amending the rules on procedure, remanded the case to the Court of Appeals for appropriate action and disposition.

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[32] Section 1, Rule 20 of the 1964 Rules of Court, which was in effect during the proceedings in the trial court.

[33] *American Insurance Company v. Republic*, 21 SCRA 464 (1967).

While the Constitution mandates the Supreme Court to review all criminal cases in which the penalty imposed is *reclusion perpetua* or higher, the same does not preclude the Court, in the exercise of its rule-making power, from adding an intermediate review in favor of the accused. Thus, the Court deemed it wise and compelling to provide a review of the case by the Court of Appeals before it is elevated to the Supreme Court for automatic review. That a prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. That if the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WITNESSES; TESTIMONY OF RAPE VICTIM; WHEN SUFFICIENT.— More often than not, the Court has deemed it sufficient to convict an accused for rape solely on the basis of the testimony of the victim. The heavy reliance normally given by the Court on the narration of the victim finds justification on the fact that, generally, she would be the sole witness to the incident and the shy and demure character of the typical Filipina would preclude her from fabricating that crime. It is imperative, nonetheless, that the testimony must be convincing and straightforward in order to avoid any serious doubt from being cast on the veracity of the account given.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; POWER OF THE SUPREME COURT TO REVIEW APPEALED CRIMINAL CASES WHERE THE PENALTY IMPOSED IS *RECLUSION PERPETUA* OR HIGHER; COURT NOT PRECLUDED FROM ADDING INTERMEDIATE REVIEW.— Up until now, the Supreme Court has assumed the direct appellate review over all criminal cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment (or lower but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed).

The practice finds justification in the 1987 Constitution – Article VIII, Section 5. The Supreme Court shall have the following powers: "(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in: "x x x "(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher." The same constitutional article has evidently been a thesis for Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, as well as procedural rules contained in Section 3 of Rule 122, Section 10 of Rule 122, Section 13 of Rule 124 and Section 3 of Rule 125 of the Rules of Court. It must be stressed, however, that the constitutional provision is not preclusive in character, and it does not necessarily prevent the Court, in the exercise of its rule-making power, from adding an intermediate appeal or review in favor of the accused.

3. ID.; ID.; ID.; ID.; ID.; COURT OF APPEALS MANDATED TO REVIEW CRIMINAL CASES WITH PENALTIES OF *RECLUSION PERPETUA* OR HIGHER BEFORE ELEVATING THE SAME TO THE COURT.— While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.

4. ID.; ID.; ID.; POWER OF THE SUPREME COURT TO AMEND RULES OF PROCEDURE; PERTINENT RULES ON CASES OF AUTOMATIC REVIEW BY THE COURT PROVIDED

UNDER THE REVISED RULES ON CRIMINAL PROCEDURE; AMENDMENTS THEREOF, HEREIN EFFECTED. – Under the Constitution, the power to amend rules of procedure is constitutionally vested in the Supreme Court – Article VIII, Section 5. The Supreme Court shall have the following powers: "(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts." Procedural matters, first and foremost, fall more squarely within the rule-making prerogative of the Supreme Court than the law-making power of Congress. The rule here announced additionally allowing an intermediate review by the Court of Appeals, a subordinate appellate court, before the case is elevated to the Supreme Court on automatic review, is such a procedural matter. Pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125, and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of the Supreme Court *en banc*, dated 19 September 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, are to be deemed modified accordingly.

APPPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
C. Erundino M. Cajucom for accused-appellant.

D E C I S I O N

VITUG, *J.*:

On 30 October 1996, ten (10) informations, one for each count of rape, allegedly committed on ten different dates — 07 October 1995, 14 December 1995, 05 January 1996, 12 January 1996, 29 February 1996, 08 May 1996, 02 July 1996, 18 July 1996, 16 August 1996 and 28 August 1996 — were filed against appellant EFREN MATEO. Except for the variance in dates, the ten informations, later docketed Criminal Cases No. 9351 to No. 9360, inclusive, in the Regional Trial Court of Tarlac, uniformly read —

"The undersigned OIC Provincial Prosecutor upon preliminary investigation conducted by the MTC, Tarlac, Tarlac, Branch 1, accuses Efren Mateo of Brgy. Buenavista, Tarlac, Tarlac of the crime of Rape, committed as follows:

"That on or about January 12, 1996, in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused Efren Mateo *y* Garcia, who is the guardian of the complaining witness, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with said Imelda C. Mateo in their house against her consent."[1]

The trial ensued following a plea of "not guilty" entered by appellant to all the charges.

According to AAA, she was born on 11 September 1980 to the spouses BBB and CCC. CCC and appellant started to live together without the benefit of marriage when private complainant was only two years old. AAA stayed with her mother and appellant in a house in xxx, xxx, and adopted the surname of appellant when she started schooling.

AAA recalled that each time the ten rape incidents occurred her mother, CCC, was not at home. On 07 October 1995, the date of the first rape, CCC went to Bamban and returned home only the next day. The second rape was said to have occurred on 14 December 1995, while her mother was attending a seminar for day-care workers. AAA recalled the third rape to have been committed on 05 January 1996, the same day her mother resigned from her job and left for Manila. The fourth rape, she said, happened a week later, on 12 January 1996, when CCC was attending yet another seminar for day-care workers. The fifth incident was on 29 February 1996, when CCC left for Manila to follow-up her application for an overseas job. The sixth rape took place on 08 May 1996 when CCC was once again in Manila to attend to her application papers. On 01 July 1996, CCC and appellant left for Manila as CCC was scheduled to depart for

[1] Records, p. 1.

Jeddah. Appellant returned home in the evening of the next day, 02 July 1996, the same day the job recruiter relayed the news that CCC could not yet leave for Jeddah. During the night, appellant again molested AAA. With CCC finally away, appellant frequented his nocturnal visits. On the night of 18 July 1996, appellant went into her room and abused her while her siblings were sleeping in the sala. The same incident was repeated on the night of 16 August 1996 when appellant, already naked, entered the room and sexually assaulted AAA. The last rape was committed on 28 August 1996. According to private complainant, she never reported any of the ten incidents to anybody because the accused had threatened to kill her and her mother if she were to disclose the matter to anyone.

AAA stated that each of the ten rape incidents were committed in invariably the same fashion. All were perpetrated inside the house in xxx, xxx, during the night and, each time, she would try to ward off his advances by kicking him but that he proved to be too strong for her. These incidents occurred in the presence of her three sleeping siblings who failed to wake up despite the struggles she exerted to fend off the advances. She recalled that in all ten instances, appellant had covered her mouth with a handkerchief to prevent her from shouting. Subsequently, however, she changed her statement to say that on two occasions, particularly the alleged sexual assaults on 02 July 1996 and 18 July 1996, appellant had only covered her mouth with his hands. Still much later, AAA testified that he had not covered her mouth at all.

The predictable pattern of the rape incidents testified to by AAA prompted the defense to ask her whether she had, at any one time, taken any protective measure in anticipation of the rape incidents. She replied that once she had requested her brothers and sister to keep her company in the bedroom at night but appellant had scolded them. On the night of the fourth rape, she narrated that she armed herself with a knife but, when appellant entered her room that night, she was not able to retrieve the bladed weapon from under the bed as appellant was sitting right on top of it.

Dr. Rosario Fider, the second witness for the prosecution, stated that she had physically examined private complainant on 14 October 1996 and found superficially healed lacerations at 3:00, 6:00 and 9:00 positions on her private organ that could have been caused by an insertion of an instrument or by sexual intercourse. According to Dr. Fider, the lacerations pointed to possibly one or two, and at most three, incidents of rape, which had happened not earlier than two weeks before the date of the physical examination.

Appellant denied each of the charges. On 07 October 1995, the date of the first rape, he claimed that he was in Barangay Talaga, Capas, to pick up newly hatched ducklings, numbering about a thousand, which had to be properly fed, kept warm and constantly cared for that required him to be around the entire day and night for two weeks. The fowls had then to be brought into an open field located one and a half kilometers away which could be traversed by foot. He continued to tend to the animals from 20 October 1995 until sometime in February 1996. During the period, he was able to go home only once a week or three times a month.

On 14 December 1995, the supposed date of the second rape, appellant admitted that he had temporarily left the care of his ducks to go caroling with his wife, their daughter Imelda and some friends. He immediately returned to care for his ducks, located some 500 meters from their residence, that kept him busy and away from home when the third, fourth and fifth rape incidents were said to have taken place on the 5th and 12th of January and 29th of February of 1996. While he admitted to leaving occasionally the animals in order to go home, these visits, however, were said to be brief and mainly for getting some food and fresh clothes. Appellant could not recall when exactly he sold the ducks but it was definitely prior to 08 May 1996, the day he was accepted and reported for work at the LA Construction of Hacienda Luisita, Tarlac, located some three kilometers away. On 08 May 1996, the date of the sixth rape, he was at work from seven o'clock in the morning until the following day to finish a rush job.

On 01 July 1996, he accompanied his wife, CCC, to Manila who was scheduled to leave for Jeddah the following day. Upon being advised that her flight was postponed, the couple stayed in the house of one Luding Sevilla in Caloocan. On 03 July, he returned to Tarlac. From 15 July to September, 1996, he was given the nightshift at the LA Construction. Appellant asserted that it was impossible for him to have raped private complainant on 28 August 1996 because at six o'clock that evening, his friends Boy Botio, Boy Pineda, Marvin Dalangin and Nelson Castro had picked him up at his house to attend the *fiesta* at Barangay Murcia, Concepcion, Tarlac, where they spent the night.

Appellant dismissed the charges against him as being the malicious "retribution" of a vengeful stepdaughter. Allegedly, on 11 October 1996, he took private complainant to task after his son, DDD, who had reported seeing her engaged in sexual intercourse with one Pikong Navarro inside the room of their house. Earlier, on 05 August 1996, he also learned that Sharon Flores, a neighbor and a friend of private complainant, had caught his stepdaughter and Navarro in a very compromising position. In anger, he hit AAA twice with a piece of bamboo. He then forbade her from going out at night and leaving her siblings alone in the house.

CCC, the mother of private complainant, rose to testify in defense of her common-law husband. CCC asserted that she had not at any time, prior to her departure for Jeddah, spent any night outside their house. CCC said that she was a day-care teacher from June 1990 until June 1996. On 07 October 1995, the date of the supposed first rape, she was at home and did not go to Bamban as so claimed by private complainant. CCC disputed the claim of private complainant that she attended a seminar for day-care workers on 12 January 1996 since her job did not require her to attend seminars except for regular meetings held on the last Friday of every month, with each meeting lasting for only half a day. The last seminar she had attended was in June of 1990 in Tarlac. On 29 February 1996, CCC was also certain that she spent the night at home as she

had to report for work the following day. She started obtaining documents for her planned employment abroad only on 12 February 1996, when she secured her birth certificate in Bamban as so attested by the date appearing on the certification from the Municipal Civil Registrar of Bamban. On 08 May 1996, she admitted being away from home while attending a general assembly of day-care workers in Zambales. On that day, appellant was likewise not at home due to his overtime work up until about three or four o'clock in the early morning. AAA herself, CCC testified, had attended on that day the San Miguel fiesta. Contrary to the allegation of private complainant, the witness was not in Manila on the 5th and 12th of January 1996 because, at that time, she had yet no plans of working overseas. She denied the assertions of private complainant that CCC had resigned from her day-care work on 05 January 1996, saying it was actually months later, or in June of 1996, when she quit her job. It was on 13 February 1996 when she went to Manila for the first time to attend to her application for a possible overseas work. She made subsequent trips to the city, that is, on the 3rd, 5th, 8th and 24th of the month of June, to follow-up her employment papers and to submit herself to a medical check-up. All these visits only took a day, and she would always be home in xxx at nightfall. On 01 July 1996, appellant accompanied her to Manila but, upon learning that her flight was postponed, they spent the night in Caloocan. The couple stayed together in Manila until 03 July 1996, when appellant decided to return to Tarlac. CCC worked in Jeddah, Saudi Arabia, until 11 November 1996 when she decided to return home.

CCC corroborated the testimony of appellant regarding his whereabouts from October 1995, when the ducks were first brought to the field, until 15 December 1995, when appellant had joined her and their friends caroling. CCC believed that the charges may have been fabricated by her relatives who were "jealous" of appellant because it was he, not they, who had been receiving the remittances of her earnings from Saudi Arabia.

Sharon Flores, a neighbor, testified that, about noontime on 05 August 1996, she repaired to the house of private complainant to investigate rumors regarding a man seen entering the xxx residence. When she went in, she saw private complainant and Pikong Navarro lying on the bed, embracing each other under a blanket.

Anselmo Botio, a friend of appellant, and DDD, a brother of private complainant, corroborated appellant's *alibi*. Botio said that on 28 August 1996, at six o'clock in the evening, he, together with appellant and some friends, went to attend the fiesta in Barangay Murcia upon the invitation of one Ruben Santos. The group arrived in Murcia at seven o'clock that evening and promptly had dinner and a drinking spree which lasted until the morning of the next day.

DDD testified that one day in October 1996, while his mother was working overseas, he arrived home from school, and saw Pikong Navarro and private complainant, both naked, on the bed. Navarro was on top of private complainant and was making thrusting motions. DDD hurriedly left to report the incident to his father.

At the conclusion of the trial, the court *a quo* issued its decision, dated 23 January 2001, finding appellant guilty beyond reasonable doubt of ten (10) counts of rape —

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of ten (10) counts of rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count of rape and to indemnify the complainant the sum of ₱50,000.00 as actual damages and ₱50,000.00 as moral damages for each count of rape."[2]

More often than not, the Court has deemed it sufficient to convict an accused for rape solely on the basis of the testimony of the victim. [3] The heavy reliance normally given by the Court on the narration of the victim finds justification on the fact

[2] *Rollo*, p. 53.

[3] *People v. Paranzo*, G.R. No. 107800, 26 October 1999 (317 SCRA 367).

that, generally, she would be the sole witness to the incident and the shy and demure character of the typical Filipina would preclude her from fabricating that crime. It is imperative, nonetheless, that the testimony must be convincing and straightforward in order to avoid any serious doubt from being cast on the veracity of the account given.

Relative to the first supposed rape incident, private complainant categorically stated that she had slept in the lone bedroom of the house while her siblings and her stepfather slept in the sala—

"Q. How did (sic) he able to remove your t-shirt and shorts?

"A. He brought me to the sala and in that place when he undressed me, sir.

"xxx xxx xxx

"Q. How did (sic) he able to take you out from the room? In what way?

"A. She (sic) lifted me and still my mouth was covered, my hands were stocked and I cannot move, sir.

"Q. She (sic) lifted you by his two hands, is that right?

"A. Yes, sir."[4]

"Q. You testified on direct examination that there is only one room in your house, is that right?

"A. Yes, sir.

"Q. And you were then sleeping inside your house in that one room, is that right?

"A. Yes, sir.

"Q. While your brothers as well as your stepfather were then sleeping outside your room, you [were] also sleeping, is that right?

"A. Yes, sir."[5]

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[4] TSN, Imelda Mateo, Cross-examination, 16 September 1997, pp. 17-19.

[5] TSN, Imelda Mateo, Cross-examination, 16 September 1997, pp. 4-5.

In the next breath, however, she testified that all her three siblings were sleeping with her on the night of 07 October 1995 —

"Q. How did (sic) he able to remove your t-shirt and shorts?

"A. He brought me to the sala and in that place when he undressed me, sir.

"Q. Do you want to tell this Honorable Court that he brought you to the sala where your brothers EEE and DDD and your sister FFF were then sleeping?

"A. My brothers and sister were sleeping in the room, sir.

"Q. Is it not a fact that there was only one room in your house?

"A. But they slept there on that night, sir.

"Q. In other words, Madam Witness, you were sleeping together with EEE, DDD, and FFF by that time in one room together in one bed?

"A. Yes, sir."[6]

Still, later, AAA changed her testimony and said that her brothers were in the sala and that it was only her sister FFF who was with her in the bedroom when the rape incidents were committed —

"Q. How about your brother EEE where did he sleep on October 7, 1995?

"A. At the sala, sir.

"Q. Who was with him in the sala?

"A. He [was] sleeping with my stepfather and my brother DDD, sir.

"Q. How about FFF, where was she sleeping?

"A. She was with me, sir.

"Q. You mean to imply to the Court that according to you the accused abused you on October 7, 1995, Iris [was] with you in the room?

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[6] TSN, Imelda Mateo, Cross-examination, 16 September 1997, pp. 17-18.

"A. Yes, sir.

"Q. Are you sure of that?

"A. Yes, sir.

"xxx xxx xxx

"Q. You stated in your direct testimony that on October 7, 1995 your father entered your room where you were sleeping, covering your mouth and forced you to go to the sala, do you recall that statement?

"A. No, sir.

"Q. Do you not remember that you have testified that he was able to take you to the sala?

"A. No, sir.

"Q. And then when you reached the sala, you stated that the accused criminally abused you?

"A. No, sir.

"Q. Do you not remember having been asked by the prosecutor examining you, and now I cite to you your statement; 'Q — Public Prosecutor Llobrera, 'Now, let us make it clear. You said you were brought to the sala and your answer, 'Yes, sir.'' Do you not remember having made that statement?

"A. No, sir.

"Q. And another question, 'When you reached the sala what were the first things he did to you and your answer, 'He kissed me, sir." Do you remember that?

"A. No, sir. The first time he abused me was in the room, sir."[7]

The Solicitor General would posit that the claim of private complainant that she had the sole privilege of sleeping in the lone bedroom of their house while the rest of the family, namely both her parents and her three siblings, had to squeeze themselves in the *sala* strained credulity, and that the testimony of her mother, CCC, to the effect that the couple were the occupants

[7] TSN, Imelda Mateo, Cross-examination, 14 January 1999, pp. 5-12.

of the single bedroom while their children stayed in the sala where the television was located, made more sense.

AAA testified that her three siblings — DDD, EEE and FFF— were sleeping inside the house every time the rape incidents were committed. The identical testimony of everyone else in the Mateo household, including her mother CCC and brother DDD, exposed such assertions to be a blatant lie and categorically stated that EEE himself had never stayed in the Mateo residence because he was living with his grandparents since childhood.

Private complainant testified that during the rape incidents she was gagged with a handkerchief which rendered her unable to shout for help. Later on, however, she gave different versions on whether appellant covered her mouth with his hand or with a handkerchief during the rape incidents occurring on 07 October 1995, 05 January 1996, 12 January 1996, 18 July 1996, 16 August 1996 and 28 August 1996. Eventually, she repudiated her earlier testimony by stating that appellant had never covered her mouth, either with a handkerchief or with his hand —

"Q. Both the incidents of July 2 and July 18, according to you, he only covered your mouth on both occasions?

"A. Yes, sir.

"Q. He did not tie your mouth with anything?

"A. No, sir.

"Q. Miss Witness, in your statement also on August 20, 1997, you stated that the accused covered your mouth and tied your mouth with a handkerchief on both occasions. Do you remember having given that statement?

"A. No, sir.

"Q. So, you do not remember having made that statement?

"A. No, sir.

"Q. Recalling your testimony you gave on August 20, 1997, for the July 2 occasion and the testimony that you gave as appearing on page 18 of the transcript of stenographic notes.

These questions and answers were given and answered by you. 'Q. While he was doing all these things to you, did you call for help? A. I cannot shout because my mouth was covered with a handkerchief, sir. Q. Was he holding that handkerchief? A. It was tied, sir.' On July 17, 1997, you said that the accused tied your mouth on July 2, 1996, and you said that you cannot shout because your mouth was tied with a handkerchief. Do you remember having stated that?

"A. No, sir.

"xxx xxx xxx

"Q. On the July 18 occasion, you also stated in your direct testimony on August 29, 1997, when asked these following questions appearing on page 21 of the transcript of stenographic notes. 'Q. Tell the Court how did he rape you on that night? A. On that night while I was sleeping in my room, he tied a handkerchief in my mouth so I could not shout, sir.' Do you remember having stated that?

"A. No, sir.

"Q. And also you were asked this question: 'Q. After tying this handkerchief to your mouth, what did he do to you?' You said that he raped you. Do you remember having given this statement?

"A. No, sir."[8]

Also quite telling were some discrepancies in the testimony of private complainant regarding the whereabouts of her mother CCC on the dates of the incidents. According to private complainant, it was when her mother CCC was not at home when appellant would commit the dastardly crimes. Not only did the account of AAA contradict that of CCC but that AAA herself would appear to have made irreconcilable statements. According to her, on 07 October 1995, the date of the first rape, CCC had gone to Bamban to visit her mother. Subsequently, however, she said that CCC went to Bamban because she worked

[8] TSN, Imelda Mateo, Cross-examination, 11 May 1999, pp. 22-25.

there, only to later say that, at that time, CCC had already resigned from work. AAA would further change her story by stating that CCC did not report for work that day; then, in a quick turnaround, she remarked that her mother did go to Bamban not to work but to get her birth certificate. Interestingly, Imelda said that 07 October 1995 was a working day, and that she had gone to school the following day. Judicial notice could be taken of the fact, however, that 07 October 1995 was a Saturday and that the following day, a Sunday, could not have been a school day. With respect to the rape committed on 12 January 1996, AAA testified that CCC was attending a seminar; yet, when cross-examined, she told the trial court that on that day CCC went to Manila to borrow money from her cousin.

The subsequent conduct of a victim could also either confirm or negate her claim of rape.[9] The human nature, characterized by an instinct for self-preservation and an aversion to humiliation, would dictate that a typical victim of rape could display changes in behavior, erratic mood swings and an alteration in her daily routine. No such changes were observed in the case of private complainant. She testified that on the day after the first incident on 07 October 1995, she woke up at six o'clock in the morning, washed her face, and went to school. There was no apparent attempt on her part to run away from home despite every chance to escape from her tormentor or to exercise every means available to ensure that the incidents would not be repeated. At fifteen years old, already old enough to think of her safety and well-being, AAA went about her usual business as if nothing unusual had occurred. She continued to sleep in the same bedroom with nary any precaution against the bestiality she was sure would come everytime her mother was away.

While it may be argued that appellant's moral ascendancy over AAA was enough to intimidate her to suffer in silence; still, it could well be improbable for a victim who had been

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[9] *People v. Bayron*, G.R. No. 122732, 07 September 1999 (313 SCRA 727); *People v. Ablaneda*, G.R. No. 128075, 14 September 1999 (314 SCRA 334).

raped no less than ten times not to make a simple outcry against her unarmed rapist when she had every opportunity to do so.

The Solicitor General assails the factual findings of the trial court and recommends an acquittal of appellant.

The records would disclose that the first half of the trial, from 17 July 1997 until 15 October 1997, was conducted by Judge Lino L. Diamsay. Judge Edgardo F. Sundiam conducted the trial from 14 January 1999 until 24 February 1999. From 11 May 1999 until the day of the last hearing, it was Judge Arsenio P. Adriano who heard the case. While this change of the presiding judges would not invalidate the proceedings, it did deny to the deciding magistrate the opportunity to observe in entirety the demeanor of the witnesses which could well be vital to the decision-making process, particularly where credibility would, by and large, constitute the singular issue.

The law demands that only proof of guilt beyond reasonable doubt can justify a verdict of guilt.

Up until now, the Supreme Court has assumed the direct appellate review over all criminal cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment (or lower but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed). The practice finds justification in the 1987 Constitution —

> Article VIII, Section 5. The Supreme Court shall have the following powers:
>
> "(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> "xxx xxx xxx
>
> "(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher."

The same constitutional article has evidently been a thesis for Article 47 of the Revised Penal Code, as amended by

Section 22 of Republic Act No. 7659,[10] as well as procedural rules contained in Section 3 of Rule 122,[11] Section 10 of Rule 122,[12] Section 13 of Rule 124[13] and Section 3 of

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[10] ART. 47. *In what cases the death penalty shall not be imposed; Automatic Review of death penalty cases*. — xxx

In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court *en banc*, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

[11] Sec. 3. *How appeal taken*. —

xxx xxx xxx

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua* or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this Section.

(d) No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in Section 10 of this Rule.

[12] Sec. 10. *Transmission of records in case of death penalty*. — In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment within five (5) days after the fifteenth (15th) day following the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

[13] Sec. 13. *Quorum of the court; certification or appeal of cases to Supreme Court*. — Three (3) Justices of the Court of Appeals shall constitute a quorum for the sessions of a division. The unanimous vote of the three (3) Justices of a division shall be necessary for the pronouncement of a judgment or final resolution, which shall be reached in consultation before the writing of the opinion by a member of the division. In the event that the three (3) Justices can not reach a unanimous vote, the Presiding Justice shall direct the raffle committee of the Court to designate two (2) additional Justices to sit temporarily with them, forming a special division of five (5) members and the concurrence of a majority of such division shall be necessary for the pronouncement of a judgment or final resolution. The designation of such

Rule 125[14] of the Rules of Court. It must be stressed, however, that the constitutional provision is not preclusive in character, and it does not necessarily prevent the Court, in the exercise of its rule-making power, from adding an intermediate appeal or review in favor of the accused.

In passing, during the deliberations among the members of the Court, there has been a marked absence of unanimity on the crucial point of guilt or innocence of herein appellant. Some are convinced that the evidence would appear to be sufficient to convict; some would accept the recommendation of acquittal from the Solicitor General on the ground of inadequate proof of guilt beyond reasonable doubt. Indeed, the occasion best demonstrates the typical dilemma, *i.e.*, the determination and appreciation of primarily factual matters, which the Supreme Court has had to face with in automatic review cases; yet, it is the Court of Appeals that has aptly been given the direct mandate to review factual issues.

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a

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additional Justices shall be made strictly by raffle and rotation among all other Justices of the Court of Appeals.

Whenever the Court of Appeals finds that the penalty of death, *reclusion perpetua*, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, *reclusion perpetua*, or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

[14] Sec. 3. *Decision if opinion is equally divided.* — When the Supreme Court *en banc* is equally divided in opinion or the necessary majority cannot be had on whether to acquit the appellant, the case shall again be deliberated upon and if no decision is reached after re-deliberation, the judgment of conviction of the lower court shall be reversed and the accused acquitted.

review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.[15]

Statistics would disclose that within the eleven-year period since the re-imposition of the death penalty law in 1993 until June 2004, the trial courts have imposed capital punishment in approximately 1,493,[16] out of which 907 cases[17] have been

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[15] In this instance, then, the Supreme Court may exercise its "exclusive appellate jurisdiction" over all cases where the penalty of death, *reclusion perpetua* or life imprisonment is imposed by lower courts, under applicable laws like Republic Act No. 296 and *Batas Pambansa Blg. 129*.

[16] As of 06 July 2004, the total number of cases pending in the Supreme Court are as follows:

Death Penalty	586
Life Imprisonment	375
Reclusion Perpetua	*1320*
	2281

The total number of cases certified by the Court of Appeals to the Supreme Court for review are as follows:

Death Penalty	1
Life Imprisonment	3
Reclusion Perpetua	*28*
	32

[17] As per report from the Judicial Records Office of the Supreme Court, the following are the data as of 08 June 2004:

DISMISSED due to death of the Accused-Appellants	26
AFFIRMED	230
MODIFIED:	

passed upon in review by the Court. In the Supreme Court, where these staggering numbers find their way on automatic review, the penalty has been affirmed in only 230 cases comprising but 25.36% of the total number. Significantly, in more than half or 64.61% of the cases, the judgment has been modified through an order of remand for further proceedings, by the application of the Indeterminate Sentence Law or by a reduction of the sentence. Indeed, the reduction by the Court of the death penalty to *reclusion perpetua* has been made in no less than 483 cases or 53.25% of the total number. The Court has also rendered a judgment of acquittal in sixty-five (65) cases. In sum, the cases where the judgment of death has either been modified or vacated consist of an astounding 71.77% of the total of death penalty cases directly elevated before the Court on automatic review that translates to a total of six hundred fifty-one (651) out of nine hundred seven (907) appellants saved from lethal injection.

Under the Constitution, the power to amend rules of procedure is constitutionally vested in the Supreme Court —

Article VIII, Section 5. The Supreme Court shall have the following powers:

"(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts."

Procedural matters, first and foremost, fall more squarely within the rule-making prerogative of the Supreme Court than the law-making power of Congress. The rule here announced additionally allowing an intermediate review by the Court of Appeals, a subordinate appellate court, before the case is elevated to the Supreme Court on automatic review, is such a procedural matter.

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a. FURTHER PROCEEDINGS ---------- 31
b. *RECLUSION PERPETUA* ---------- 483
c. INDETERMINATE SENTENCE ---------- 72
d. ACQUITTED ---------- 65
907

Pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125, and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of the Supreme Court *en banc*, dated 19 September 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, are to be deemed modified accordingly.

WHEREFORE, the instant case is REMANDED, and all pertinent records thereof ordered to be FORWARDED, to the Court of Appeals for appropriate action and disposition, consistent with the discussions hereinabove set forth. No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 147965. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REY APATAY *y* BALO,** *appellant.*

SYNOPSIS

The penalty of death was imposed upon herein appellant after the Regional Trial Court of Tagbilaran City found him guilty beyond reasonable doubt of the crime of rape with homicide committed against AAA. Hence, this automatic review where the appellant contended that his plea of guilty was improvidently made.

The Supreme Court held that the trial court correctly found appellant guilty beyond reasonable doubt of rape with homicide and properly imposed upon him the death penalty. There is no hard and fast rule as to how a judge may conduct a "searching inquiry," or as to the number and character of questions he may ask the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual merit. The singular barometer is that the judge must, in all cases, fully convince himself that: (1) the accused, in pleading guilty, is doing so voluntarily – meaning, he was not coerced or threatened of physical harm, or placed under a state of duress; and (2) that he is truly guilty on the basis of his testimony. These jurisprudential guides were faithfully complied with by the trial judge. The Information was read to appellant in the Visayan dialect, which he speaks and understands. After the appellant entered a plea of guilty, the trial judge properly conducted a searching inquiry translated by the court interpreter into Visayan dialect. Appellant's answers to the trial judge's questions were spontaneous and categorical. He declared that his confession was voluntary and that nobody forced him to do so. He also manifested full understanding of the consequences of his plea, specifically that the imposable penalty upon him is death, yet, he would not change his plea. The trial court also required the prosecution to present evidence for the purpose of establishing the appellant's guilt and the precise degree of his culpability, in compliance with the Rules. Further, appellant's confession contained details of the rape-slay perpetrated against the victim, which only he could know and reveal. His extra-judicial confession and the evidence for the prosecution clearly showed that he had carnal knowledge of the victim through force. Accordingly, the Court affirmed the decision of the trial court with modification as to award of damages.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO CAPITAL OFFENSE; RECEPTION OF EVIDENCE; SEARCHING INQUIRY.— In *People vs. Flaviano R. Segnar, Jr.*, we ruled that there is no hard and fast rule as to how a judge may conduct a "searching inquiry," or as to the number and character of questions he may ask the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual

merit. The singular barometer is that the judge must, in all cases, fully convince himself that: (1) the accused, in pleading guilty, is doing so voluntarily – meaning, he was not coerced or threatened of physical harm, or placed under a state of duress; and (2) that he is truly guilty on the basis of his testimony. Thus, in determining whether an accused's plea of guilty to a capital offense is improvident, we held that considering their training, we leave to the judges ample discretion, but expect them at the same time that they will be true to their calling and be worthy ministers of the law and justice.

2. ID.; ID.; ID.; ID.; ID.; GUIDELINES; COMPLIED WITH IN CASE AT BAR.— Here, the above jurisprudential guidelines were faithfully complied with by the trial judge. Records show that during the arraignment, the Information was read to appellant in the *Visayan* dialect which he speaks and understands. After he entered a plea of guilty, the trial judge properly conducted a searching inquiry translated by the court interpreter into his *Visayan dialect*. Appellant's answers to the trial judge's questions are spontaneous and categorical. He declared that his confession (that he committed the crime) is voluntary and that nobody forced him to do so. He also manifested full understanding of the consequences of his plea, specifically that the imposable penalty upon him is death. Yet, he would not change his plea. The trial court required the prosecution to present evidence for the purpose of establishing appellant's guilt and the precise degree of his culpability, in compliance with Section 3 of Rule 116, quoted earlier. Significantly, Dr. Francisco Romulo Villaflor testified that AAA was sexually assaulted and died due to massive hemorrhage secondary to multiple skull fracture. Francisca Buchan and Odelion Manco also testified, declaring that they saw appellant standing near the door of the victim's house just before the incident occurred. Appellant's confession contains details of the rape-slay perpetrated against AAA which only he could know and reveal. On his contention that the trial court failed to ask him whether he intends to present evidence on his behalf, suffice it to say that the defense "opted not to present any evidence considering the accused's plea of guilty."

3. CRIMINAL LAW; RAPE WITH HOMICIDE; IMPOSABLE PENALTY.— Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, provides: "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; Here, it is clear from the appellant's extra-judicial confession and the evidence for the prosecution that he had carnal knowledge of AAA through force. Article 266-B of the same law further mandates that "When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death." The same single and indivisible penalty shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the offense. The trial court, therefore, correctly found appellant guilty beyond reasonable doubt of rape with homicide and properly imposed upon him the death penalty.

4. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; MORAL DAMAGES, PROPER.— We sustain the trial court's award to the victim's heirs of the sum of ₱100,000.00 as civil indemnity, ₱50,000.00 for rape and ₱50,000.00 for the death of the victim. This is in line with our recent ruling in *People vs. Manguera*. In addition, they are entitled to moral damages of ₱75,000.00 without need of pleading or proof of the basis thereof since the anguish and pain they endured are evident.

5. ID.; ID.; ACTUAL DAMAGES; TEMPERATE DAMAGES; ABSENT PROOF OF THE ACTUAL AMOUNT OF LOSS, TEMPERATE NOT ACTUAL DAMAGES MAY BE AWARDED.— The trial court did not award actual damages, obviously because the victim's heirs did not present proof of funeral expenses incurred. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party. In *People vs. Abrazaldo*, we held that where, as here, the amount of actual damages cannot be determined because no receipts were presented to prove the same, but it is shown that the heirs are entitled thereto, temperate damages may be awarded, fixed at ₱25,000.00. Considering that funeral expenses were obviously incurred by AAA's heirs, an award of ₱25,000.00 as temperate damages is proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

For automatic review is the Decision[1] dated March 5, 2001 of the Regional Trial Court, Branch 2, Tagbilaran City, in Criminal Case No. 10885 convicting Rey Apatay *y* Balo, appellant, of rape with homicide and sentencing him to suffer the supreme penalty of death. He was also ordered to indemnify the heirs of the victim, AAA, the sum of ₱100,000.00.

The Information filed against appellant reads:

"The undersigned Assistant Provincial Prosecutor hereby accuses Rey Apatay *y* Balo of Upper Poblacion I, Sikatuna, Bohol of the crime of Rape with Homicide, committed as follows:

"That on or about the 20th day of October 2000 in the municipality of Sikatuna, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with force, threat and intimidation, to wit: by entering the house where the victim AAA was alone, and once inside put out the light thereof, then dragged the victim to a room and did then and there willfully, unlawfully and feloniously had carnal knowledge by inserting his penis into the victim's vagina without her consent and against her will, and thereafter, because the victim was able to identify him, did then and there willfully, unlawfully and feloniously attacked, assaulted, choked her neck and then struck the head and face with a firewood, thereby inflicting upon the vital parts of the victim's body mortal wounds or injuries which resulted directly to the immediate death of the said AAA, to the damage and prejudice of the heirs of the victim.

"Acts committed contrary to the provisions of Art. 266-A & 266-B of the Revised Penal Code, as amended by R.A. 7659."[2]

During his arraignment, appellant was assisted by Atty. Adriano P. Damalerio of the Public Attorney's Office (PAO). After the Information was read and translated to him in his own *Visayan dialect, he entered a plea of guilty to the offense charged.*

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[1] Penned by Judge Baudilio K. Dosdos; *Rollo* at 12-16.

[2] *Rollo* at 16.

Immediately, in conformity with the procedural rules, the trial judge asked appellant searching questions to determine whether his plea of guilty is voluntary and whether he understands its consequences. In answer to the questions propounded by the trial judge, appellant declared that his plea is voluntary and that he fully comprehends its consequences.

The trial judge then directed the prosecution to present evidence to prove appellant's guilt and the degree of his culpability.

Francisca Buchan, Odelion Manco and Dr. Francisco D. Villaflor testified for the prosecution. Their testimonies show that in the early evening of October 20, 2000, 77-year old AAA was alone in her house at Sitio xxx, xxx, xxx. Her niece, Caridad Baluran living with her, was rushed to the hospital by their neighbors, Francisca Buchan and Odelion Manco, due to an asthma attack. Before they left, they saw appellant Rey Apatay, their neighbor, standing near the door.[3]

The following morning, Francisca and Odelion learned from their neighbors that AAA could not be found in her house. Alarmed, Francisca, together with some neighbors, went to AAA's house. Once inside, they saw drops of blood and a piece of firewood on the floor. Immediately, they looked for her. Appellant helped in the search.[4]

On October 22, 2000, the lifeless body of AAA was found inside the hole of an abandoned toilet. That same day, Dr. Francisco Romulo D. Villaflor, Medical Health Officer of Sikatuna, Bohol, conducted a *post-mortem* examination on her cadaver and issued a *Post Mortem* Report[5] showing the following injuries she sustained:

"macerated (L) maxillary area
Extending to zygoma
(L) lateral priodital area.

[3] Transcript of Stenographic Notes (TSN), February 23, 2001 at 4-5, 8-10; Exhibit "B" (Francisca Buchan's Affidavit), Folder of Exhibits at 5-6; & Exhibit "D" (Odelion Manco's Affidavit) at 9-10.

[4] TSN, February 23, 2001 at 4-5, 8-10.

[5] Exhibits "F" and "F-1", Folder of Exhibits at 13-14.

(+) hematoma/ecclymotes
(R) maxillo-zygomatic area

(+) hematoma area ecchymotes
(L) supraclavicular area

(+) Ecchymoses ant. neck

(+) hamatoma (R) supraclavicular area

(+) hematoma oterral area

(+) Left first degree burn with
sollae 6 cm ru greatest diameter

(+) hematoma (L) inquinal area

(+) hematoma (R) inquinal area
extending to (R) ASIS

hymenal laceration at 6 degrees,
at 9 and 12 o'clock positions

multiple laceration and fracture largest
laceration measuring 4 cm.

CAUSE OF DEATH: massive hemorrhage
due to multiple skull fracture."[6]

Dr. Villaflor testified, confirming the above Report. He stressed that AAA had vaginal lacerations at "6, 9, and 12 o'clock positions," indicating that she was a victim of a forcible sexual assault; and that she died due to "massive hemorrhage secondary to multiple skull fracture."

On October 24, 2000, appellant, overwhelmed by his conscience, surrendered to the Sikatuna Police Station. During the investigation conducted by SPO4 Alfredo G. Luengas, appellant, assisted by his counsel, Atty. Adriano P. Damalerio of the PAO, executed a sworn statement [7] in the Visayan dialect, which was translated into English, wherein he acknowledged being advised by his counsel of his constitutional rights and

[6] *Id*.

[7] Exhibit "A", Folder of Exhibits at 1-4; TSN, January 24, 2001 at 3-5.

voluntarily confessed that he raped and killed his neighbor, AAA, in the evening of October 20, 2000. He stated therein that he killed AAA because she recognized him as the culprit. He then choked her, struck her with a piece of firewood and thereafter threw her body into the hole of an abandoned toilet.

During the hearing, the trial judge asked appellant searching questions and he confirmed the details of his extra-judicial confession.

The defense then opted not to present any evidence in view of appellant's plea of guilty.[8]

On March 5, 2001, the trial court rendered a Decision, the dispositive portion of which states:

"WHEREFORE, in Criminal Case No. 10885, the Court finds accused Rey Apatay guilty beyond reasonable doubt of the crime of Rape with Homicide defined under Article 266-A and penalized under Article 266-B of the Revised Penal Code, and hereby sentences the said accused to suffer the supreme penalty of death, with the accessory penalties of the law, to indemnify the heirs of AAA the sum of ₱100,000.00 and to pay the costs.

"SO ORDERED."

In assailing the Decision, appellant contends that (a) "the trial court failed to conduct a searching inquiry into the voluntariness and full comprehension by him of the consequences of his plea"; and (b) "the trial court failed to ask him whether he desires to present evidence in his behalf and allow him to do so if he desires."[9]

The Solicitor General, in his Appellee's Brief,[10] vehemently disputes appellant's contentions, asserting that the trial court did not commit any error in convicting appellant of the crime charged and in imposing upon him the death penalty.

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[8] TSN, February 23, 2001 at 19.

[9] Appellant's Brief, *Rollo* at 84-85.

[10] *Rollo* at 122-162.

The procedure for arraignment is provided in Section 1, Rule 116 of the Revised Rules of Criminal Procedure, as amended, quoted as follows:

"SEC. 1. *Arraignment and plea; how made. —*

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, *reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty.* The prosecution may call at the trial witnesses other than those named in the complaint or information.

xxx xxx xxx" (Italics ours)

When an accused pleads guilty to a capital offense, Section 3 of the same Rule specifies the steps to be followed by the trial court, thus:

"SEC. 3. *Plea of guilty to capital offense; reception of evidence.* — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf. (3a)"

In *People vs. Flaviano R. Segnar, Jr.,*[11] we ruled that there is no hard and fast rule as to how a judge may conduct a "searching inquiry," or as to the number and character of questions he may ask the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual merit.[12] The singular barometer is that the judge must, in all cases, fully convince himself that: (1) the accused, in pleading guilty, is doing so voluntarily — meaning, he was not coerced or threatened of physical harm, or placed under a state of duress; and (2) that he is truly guilty on the basis of his

[11] G.R. No. 133380, February 18, 2004.

[12] Citing *People vs. Dayot*, G.R. No. 88281, July 20, 1990, 187 SCRA 637, 643.

testimony. Thus, in determining whether an accused's plea of guilty to a capital offense is improvident, we held that considering their training, we leave to the judges ample discretion, but expect them at the same time that they will be true to their calling and be worthy ministers of the law and justice.[13]

Here, the above jurisprudential guidelines were faithfully complied with by the trial judge. Records show that during the arraignment, the Information was read to appellant in the *Visayan* dialect which he speaks and understands. After he entered a plea of guilty, the trial judge properly conducted a searching inquiry translated by the court interpreter into his *Visayan dialect*.

The proceedings during the arraignment, the trial judge's searching questions and appellant's answers thereto are reproduced hereunder:

"COURT:

Let the accused come forward.

RECORD:

(Accused came forward for arraignment and listened to the reading of Information.)

COURT INTERPRETER:

(Read the Information to the accused.)

COURT TO THE COURT INTERPRETER:

Will you please ask the accused whether he understood the Information read and translated to him in the *Visayan* vernacular?

COURT INTERPRETER TO THE ACCUSED:

RECORD:

(COURT INTERPRETER Asking the accused in the *Visayan* vernacular if the latter understood the reading of the Information.)

ACCUSED TO THE COURT:

A: *Yes, Your Honor, I understand.*

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[13] *Id*.

COURT TO COURT INTERPRETER:

Will you ask him what is his plea, guilty or not guilty?

COURT INTERPRETER TO THE ACCUSED:

RECORD:

(COURT INTERPRETER asking the accused in the *Visayan* vernacular of the latter's plea.)

ACCUSED TO THE COURT:

A: *Guilty, Your Honor.*

COURT:

Enter a plea of guilty as expressed by the accused upon his arraignment today.

COURT:

Let the accused approach the bench.

COURT TO ACCUSED:

Q: *You have admitted the guilt for the offense charged?*
A: *Yes, your Honor.*

Q: *Is your plea of guilty voluntary?*
A: *Yes, your Honor.*

Q: *Nobody had forced you to make this plea of guilty?*
A: *None, Your Honor.*

COURT TO ACCUSED:

Q: *Do you know that by pleading guilty, you will be penalized by a death penalty?*
A: *Yes, Your Honor.*

Q: *Despite your knowledge that you will be penalized by death, are you still insisting on your plea of guilty?*
A: *Yes, Your Honor.*

Q: *So having pleaded guilty voluntarily, you admit that you abused sexually the victim, AAA.*
A: *Yes, Your Honor.*

Q: *And because of the fact that while having intercourse with her, you realized that she knows you, and that was the time that you decided to choke and strike her with the firewood?*

A: *Yes, Your Honor.*

Q: And you even helped your neighbors in looking for AAA?
A: Yes, Your Honor.

Q: *When this case was investigated, you voluntarily executed an affidavit of confession duly assisted by your counsel, Atty. Adriano Damalerio?*
A: *Yes, Your Honor.*

COURT TO WITNESS:

Q: *I have here signed Extra-Judicial Confession, I am showing to you and please tell me if this is the same Extra-Judicial Confession that you executed in connection with this case with the assistance of your counsel, Atty. Adriano Damalerio?*
A: *This is the one, Your Honor.*

xxx xxx xxx"[14](Italics ours)

The extra-judicial confession referred to by appellant is quoted as follows:

"Q: Mr. Apatay, I would like to inform you that you are now under investigation regarding your involvement of a rape-slay case of one AAA of Sitio xxx, xxx, xxx.

I will inform you that under our New Constitution, you have the right to remain silent and never answer to questions affecting you, and you also have the right to get a counsel who would assist you in this investigation. If you cannot afford to pay a counsel, you will be given one who would assist you.

Q: Do you understand your rights?
A: Yes, I understand.

Q: I would like to remind you that all your statements shall be used in your favor or against you as evidence in court. Do you understand?
A: Yes, I understand.

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[14] TSN, January 24, 2001 at 2-5.

Q: Now that you know your constitutional rights, do you want to proceed with this investigation now?
A: We will proceed, Sir.

Q: Do you have a counsel to assist you?
A: Here is Atty. Adriano Damalerio, Public Attorney's Office of the Justice Department of Tagbilaran City who will assist me.

WAIVER

That I, Rey Apatay, after having been informed of my rights under the New Constitution do hereby depose that I have the right to remain silent and would never answer questions that might affect me, that I have the right to be assisted by a counsel of my choice, and I also was informed that all my statements shall be made evidence against me or in my favor.

That I understood all and I hereby waive my rights and to tell the whole truth in this investigation.

SGD. REY B. APATAY
Affiant

SGD. IN THE PRESENCE OF:

SGD. ADRIANO P. DAMALERIO
Public Attorney 2

Counsel for the affiant/accused.

Q: Are you now ready to tell the truth in this investigation?
A: Yes, I'm ready.

Q: Please tell us your name and your other personal circumstances?
A: REY APATAY *y* BALO, 24 years old, single, Filipino, a farmer and residing at Sitio Upper Poblacion I, Sikatuna, Bohol.

Q: Why are you investigated?
A: Because I am guilty of a rape-slay.

Q: Who is the person whom you raped and killed?
A: AAA.

Q: Where and when did it happen?

A: At Sitio xxx, xxx, xxx last Friday evening of October 20, 2000 at 7:30, more or less.

Q: Were there other persons who were also involved in this rape-slay?
A: None.

Q: What was the reason why you raped and killed AAA?
A: Because she identified me.

Q: Please tell us the details of the rape-slay.
A: Last Friday night of October 20, 2000 at about 7:30, more or less, I went home. When I passed by the house of AAA xxx, I knew that Caridad, the niece of AAA and Toribia, the mother of Caridad, would go to the hospital to have Caridad, the sick person, be treated. They were with Odelion and Balbina, also the sister of Caridad. When they left, I peeped at the entire interior of the house. Then I saw AAA sitting down in the sala alone. So I entered the house thru the broken sink in the kitchen which was barred by a basin. When I entered the house, I put off the light, then I forced AAA to the room and sexually abused her. She recognized me during the sexual intercourse and she told me, '*Ayaw lagi, Rey!*' (or 'Don't Rey!'), meaning, I should stop. Afraid that she recognized me, I killed her by strangulation until she had no voice. Then I went to the stove to get an unconsumed firewood. Then I struck her head and face several times until she was motionless. So I pulled her outside of the house. Then I carried her to the abandoned toilet in the upper ground of their house and dropped her into the hole.

Q: What did you do after you dropped her to the toilet?
A: I walked towards the house of Andres Daplin, then I slept there.

Q: The following day, Saturday, where did you go?
A: I helped the people who were searching for AAA.

Q: That day, Saturday, was AAA found?
A: No.

Q: What day did they find AAA ?
A: Last Sunday, October 22, 2000, she was seen by Rene Gabato with the organization (who render funeral service) then searching, and that was the time I felt having a conscience

and I confessed to Rene Gabato and SPO3 Dalagan that I was responsible for the incident of rape-slay to AAA.

Q: The investigator has nothing to ask, do you have more to declare?
A: No more, except when asked.

Q: Will you sign your affidavit voluntarily that nobody had forced you to do so?
A: Yes, I will sign.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 24th day of October, 2000 at Tagbilaran City, Bohol, Philippines.

SGD. REY B. APATAY
Affiant

Assisted by:

SGD. ATTY. ADRIANO P. DAMALERIO
Public Attorney 2,
Public Attorney's Office
Department of Justice
Tagbilaran City"[15]

Appellant's answers to the trial judge's questions are spontaneous and categorical. He declared that his confession (that he committed the crime) is voluntary and that nobody forced him to do so. He also manifested full understanding of the consequences of his plea, specifically that the imposable penalty upon him is death. Yet, he would not change his plea.

The trial court required the prosecution to present evidence for the purpose of establishing appellant's guilt and the precise degree of his culpability, in compliance with Section 3 of Rule 116, quoted earlier. Significantly, Dr. Francisco Romulo Villaflor testified that AAAwas sexually assaulted and died due to massive hemorrhage secondary to multiple skull fracture. Francisca Buchan and Odelion Manco also testified, declaring that they saw appellant standing near the door of the victim's house just before the incident occurred.

[15] Exhibit "A" — Translation.

Appellant's confession contains details of the rape-slay perpetrated against AAA which only he could know and reveal. On his contention that the trial court failed to ask him whether he intends to present evidence on his behalf, suffice it to say that the defense "opted not to present any evidence considering the accused's plea of guilty."[16]

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, provides:

"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 machinations or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances above be present;

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." (Italics ours)

Here, it is clear from the appellant's extra-judicial confession and the evidence for the prosecution that he had carnal knowledge of Catalina Baluran through force.

Article 266-B of the same law further mandates that "When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death." The same single and indivisible penalty shall be applied by the courts regardless of any mitigating

[16] TSN, February 23, 2001 at 19.

or aggravating circumstances that may have attended the commission of the offense.[17]

The trial court, therefore, correctly found appellant guilty beyond reasonable doubt of rape with homicide and properly imposed upon him the death penalty.

We sustain the trial court's award to the victim's heirs of the sum of ₱100,000.00 as civil indemnity, ₱50,000.00 for rape and ₱50,000.00 for the death of the victim. This is in line with our recent ruling in *People vs. Manguera*.[18] In addition, they are entitled to moral damages of ₱75,000.00 without need of pleading or proof of the basis thereof since the anguish and pain they endured are evident.[19]

The trial court did not award actual damages, obviously because the victim's heirs did not present proof of funeral expenses incurred. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[20] In *People vs. Abrazaldo*,[21] we held that where, as here, the amount of actual damages cannot be determined because no receipts were presented to prove the same, but it is shown that the heirs are entitled thereto, temperate damages may be awarded, fixed at ₱25,000.00. Considering that funeral expenses were obviously incurred by AAA's heirs, an award of ₱25,000.00 as temperate damages is proper.[22]

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[17] Article 63, Revised Penal Code.

[18] G.R. No. 139906, March 5, 2003; *People vs. Payot*, 308 SCRA 43; *People vs. Seranilla*, 348 SCRA 227.

[19] *People vs. Jose Santos y Ruiz*, G.R. Nos. 137828-33, March 23, 2004; *People vs. Magallanes*, G.R. No. 136299, August 29, 2003.

[20] *People vs. Segnar, Jr.*, G.R. No. 133380, February 18, 2004, citing *People vs. Acosta*, 371 SCRA 181 (2001); *People vs. Samolde*, 336 SCRA 632 (2000).

[21] G.R. No. 124392, February 7, 2002, cited in *People vs. Segnar, Jr., supra*.

[22] *Id.; People vs. Manguera, supra.*

Three members of this Court maintain that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can be lawfully imposed herein.

WHEREFORE, the appealed Decision dated March 5, 2001 of the Regional Trial Court, Branch 2, Tagbilaran City, in Criminal Case No. 10885, finding appellant Rey Apatay *y* Balo guilty beyond reasonable doubt of the crime of rape with homicide and sentencing him to suffer the penalty of *DEATH*, is hereby *AFFIRMED* with MODIFICATION in the sense that he is ordered to pay the heirs of AAA ₱75,000.00 as moral damages and ₱25,000.00 as temperate damages, in addition to the trial court's award of ₱100,000.00 as civil indemnity.

In accordance with Section 25 of R.A. 7659, amending Article 83 of the Revised Penal Code, upon the finality of this Decision, let the records of this case be forwarded to the Office of the President of the Philippines for the possible exercise of her pardoning power.

Costs *de oficio*.

SO ORDERED.

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

EN BANC

[G.R. Nos. 148397-400. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **NICODEMO MIÑON *alias* "BOYET" and "NICK,"** *appellant*.

SYNOPSIS

The appellant was sentenced to suffer three death penalties after the Regional Trial Court of Pinamalayan, Oriental Mondoro, found him guilty of three separate counts of qualified rape against his three cousins, AAA, then 11- years old, AAA-1, then 15-years old, and AAA-2, then 11-years old. In convicting the appellant, the trial court gave credence to the initial testimony of the complainants identifying the appellant and narrating the dastardly deeds the latter did to them, and rejected private complainants' subsequent recantation and appellant's alibi. According to the court, the recantation of the complainants was a mere afterthought, made out of pity for the accused and out of gratitude to the family which took them in after their mother died. Hence, this automatic review where the appellant questioned the imposition of the death penalty.

It is well-settled that when a woman says that she has been raped, she says in effect, all that is necessary to show that she has indeed been raped. Here, the Court was convinced that complainants had nothing in mind except to seek redress from the injustice that was done to them when they admitted the ignominy they had undergone, allowed their private parts to be examined, and exposed themselves to the ordeal of testifying on all the sordid details attached to the revelation of that which ought to be suffered in silence. Complainants' recantation of their testimony cannot work for the appellant's acquittal. A retraction is generally unreliable and is looked upon with considerable disfavor by the courts. Hence, the trial court did not err in convicting the appellant of three counts of rape. However, the death penalty cannot be imposed upon the appellant. First, the prosecution failed to establish the age of the complainants. Second, the relationship by consanguinity or affinity between the appellant and complainants was not alleged in the Informations. The allegation that the complainants are cousins of the accused is not specific enough to satisfy the special qualifying circumstance of relationship. Hence, the Court affirmed the judgment of conviction but modified the penalty to *reclusion perpetua* and the award of damages.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN RESOLVING RAPE CASES.— In resolving rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying. With these principles in mind and after a careful review of the records of this case, we find no reason to overturn the conclusion reached by the trial court concerning the guilt of the accused-appellant.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM IS CREDIBLE WHERE SHE HAS ABSOLUTELY NO MOTIVE TO INCRIMINATE AND TESTIFY AGAINST THE ACCUSED.— It is well-settled that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped. A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused. We are convinced that private complainants had nothing in mind except to seek redress for the injustice that was done to them when they admitted the ignominy they had undergone, allowed their private parts to be examined, and exposed themselves to the ordeal of testifying on all the sordid details attached to the revelation of that which ought to be suffered in silence.

3. ID.; ID.; ID.; WITNESSES WERE NOT ACTUATED BY SINISTER MOTIVE TO FALSELY CHARGE ACCUSED WITH SUCH A SERIOUS CRIME AS RAPE IN CASE AT BAR.— The accused claimed that private complainants instituted the complaint because he saw private complainants' father having

sexual intercourse with one of their sisters. However, there is absolutely no showing that AAA-1 and AAA-2 were actuated by any sinister motive to falsely charge their own cousin with such a serious crime as rape. The accused's explanation that private complainants got mad at him because they were "afraid that is not the only time wherein BBB raped CCC but also their [his] other children" is hardly believable. It is unlikely that private complainants would want to antagonize the sole witness to the rape of their sister, even as they fear that their other siblings were, or will also be raped by their father.

4. ID.; ID.; ID.; ASSESSMENT THEREOF IS A FUNCTION BEST DISCHARGED BY THE TRIAL COURT WHICH IS IN A BETTER POSITION TO DETERMINE CONFLICTING TESTIMONIES AND AFTER HAVING HEARD THE WITNESSES, AND OBSERVED THEIR DEPORTMENT AND MANNER OF TESTIFYING.— The assessment on the credibility of witnesses is a function best discharged by the trial court which is in a better position to determine conflicting testimonies and after having heard the witnesses, and observed their deportment and manner of testifying. We find nothing in the records which would indicate that the findings of fact of the trial court are not supported by the evidence or were arrived at in manifest or palpable error, such as to warrant a departure from the foregoing rule. Private complainants were clear and unequivocal when they testified against the accused. With firmness and certainty, they were able to identify herein accused and the dastardly deeds the latter did to them.

5. ID.; ID.; ID.; MERE RETRACTION BY A PROSECUTION WITNESS DOES NOT NECESSARILY VITIATE HIS ORIGINAL TESTIMONY.— Private complainants' recantation of their testimony against the accused on the ground that they took pity on him and were merely forced to testify against the latter by the DSWD officer cannot be taken to work for his acquittal. This court has held that mere retraction by a prosecution witness does not necessarily vitiate his original testimony. A retraction is generally unreliable and is looked upon with considerable disfavor by the courts. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand. As properly held by the trial court, private complainants' recantation appears to be a mere

afterthought, conveniently made out of pity for the accused, and as an act of gratitude to the relatives who took them in.

6. ID.; ID.; ALIBI; IT IS BEYOND THE REALM OF POSSIBILITY THAT A PERSON CAN BE IN TWO PLACES AT ONE TIME, MUCH MORE THREE.— As against the categorical and positive testimonies of private complainants, the accused proferred alibis and testimonies replete with serious inconsistencies. It should be recalled that accused himself stated that on October 4, 1997, the date when the rape of AAA-2 was committed, he was selling ice cream in Batangas City, where he and his wife resided for less than a year; this after he already claimed that he was residing in Roxas, Oriental Mindoro from 1994 to 1998. In addition, witness for the defense Rogelio Rogero claimed that from October 2 to October 28, 1997, the accused was with him in his farm in Tiguisin, Oriental Mindoro. It is beyond the realm of possibility that a person can be in two places at one time, much more three. Defense's dissonant, inconsistent and poorly fabricated testimonies cannot gain acceptance.

7. CRIMINAL LAW; QUALIFIED RAPE; CONCURRENCE OF THE MINORITY OF THE VICTIM AND HER RELATIONSHIP TO OFFENDER MUST BE BOTH ALLEGED AND PROVED WITH CERTAINTY TO WARRANT IMPOSITION OF DEATH PENALTY.— However, we do not agree with the imposition of death penalty on the accused. Article 266-B of the Revised Penal Code provides: x x x. The attendant circumstances provided by Republic Act 7659 must be specifically alleged in the information for rape in order that they may properly qualify the crime to the penalty specially prescribed by law. In qualified rape, the concurrence of the minority of the victim and her relationship to the offender must both be alleged and proved with certainty; otherwise the death penalty cannot be imposed.

8. ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; FAILURE OF THE PROSECUTION TO PRESENT THE VICTIM'S BIRTH CERTIFICATE OR SIMILARLY ACCEPTABLE PROOF OF HER AGE AS A MINOR BARS ACCUSED'S CONVICTION FOR RAPE IN ITS QUALIFIED FORM; CASE AT BAR.— Thus, even if the victim's minority is alleged in the information, the

prosecution must still prove clearly and adequately that the victim was under eighteen (18) years of age at the time of the rape. There must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. Where there is no evidence at all of the minority age of the victim or where the evidence is weak, unreliable and insufficient, the Court is impelled not to impose the death penalty. The failure of the prosecution to present the victim's birth certificate or similarly acceptable proof of her age as a minor bars the accused's conviction for rape in its qualified form. In the present case, while the age of the private complainants at the time of the rape was indicated in the *Informations*, the prosecution was not able to establish their age during trial. The record of the case is bereft of any independent evidence, such as the private complainants' duly certified *Certificate of Live Birth*, accurately showing their respective ages. A careful perusal of the TSN reveals that when private complainants were placed on the witness stand, the matter of their age at the time of the rape was not even discussed. At most, their ages were mentioned only at the beginning of their testimonies describing their personal circumstances. In *People v. Galas*, we held that we cannot consider a rape victim's statement at the beginning of her testimony describing her personal circumstances as proof of age beyond reasonable doubt that the Court has considered indispensable in the criminal prosecution of cases involving the extreme penalty of death. So it must be in the instant case.

9. ID.; ID.; ID.; IF THE ACCUSED IS MERELY A RELATION, IT MUST BE ALLEGED IN THE INFORMATION THAT HE IS A RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE THIRD CIVIL DEGREE; ALLEGATION THAT VICTIMS ARE COUSINS OF THE ACCUSED IS NOT SPECIFIC ENOUGH TO SATISFY THE SPECIAL QUALIFYING CIRCUMSTANCE OF RELATIONSHIP.— We have previously held that if the accused is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." The relationship by consanguinity or affinity between the accused and private complainants was not alleged in the *Informations* in this case. The allegation that the private

complainants are cousins of the accused is not specific enough to satisfy the special qualifying circumstance of relationship. Besides, even if it were so alleged, it was still necessary to specifically allege that such relationship was within the third civil degree. More importantly, in the case at bar, the accused is a first cousin of the private complainants. As properly pointed out by the accused, he is merely a relative within the fourth civil degree of the private complainants. Consequently, he cannot be held liable for qualified rape under Art. 266-B of the Revised Penal Code. The death penalty cannot be imposed in this case.

10. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES.— It must be noted that the trial court ordered the accused to pay private complainants only the civil liability arising from the offense in the amount of ₱50,000.00 each. This is equivalent to actual or compensatory damages in civil law. However, in addition to the civil indemnity in such amount, the offended parties are entitled to moral damages, which are automatically granted in rape cases without need of any proof. Currently, moral damages for rape is fixed at ₱50,000.00. Hence, the additional sum of ₱50,000.00 each should be awarded to AAA-2 and AAA-1.

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.*:

Before us for automatic review is the *Decision* of Branch XLII of the Regional Trial Court, Pinamalayan, Oriental Mindoro[1], finding accused-appellant Nicodemo Miñon[2] guilty of three (3) counts of QUALIFIED RAPE, and sentencing him to suffer three (3) DEATH penalties; together with the accessory penalties

[1] Presided by Judge Manuel C. Luna, Jr.

[2] Accused-appellant is also referred to as Nicodemo Miñon in the Appellee's Brief, *Rollo*, p.78.

provided by law, and to indemnify the victims AAA-1 and AAA-2 ₱50,000 each, without subsidiary imprisonment in case of insolvency; and to pay the cost.

The four (4) separate *Informations* originally filed against the accused-appellant, all dated 17 July 1998, alleged as follows:

Criminal Case No. P- 5795:

"That on or about the 10th day of September, 1994, at Sitio xxx, barangay xxx, municipality of xxx, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one AAA, an 11 year old girl and a cousin of the accused, against her will and without her consent.

"CONTRARY to Article 335 of the RPC in relation to R.A. 7659."[3]

Criminal Case No. 5796:

"That on or about the 25th day of March, 1995, at Sitio xxx, barangay xxx, municipality of xxx, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one AAA, a 15 year old girl and a cousin of the accused, against her will and without her consent.

"CONTRARY to Article 335 of the RPC in relation to R.A. 7659."[4]

Criminal Case No. P- 5797:

"That on or about the 4th day of October 1997 at Sitio xxx, barangay xxx, municipality of xxx, Province of xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one AAA-2, an 11 year-

[3] *Rollo,* p. 8

[4] *Id*. at 10.

old-girl and a cousin of the accused, against her will and without her consent.

"CONTRARY to Article 335 of the RPC in relation to R.A. 7659."[5]

Criminal Case No. P-5798:

"That on or about the 14th day of January 1998 at Sitio xxx, barangay xxx, municipality of xxx, Province of xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one AAA-2, an 11 year old girl and a cousin of the accused, against her will and without her consent.

"CONTRARY to Article 335 of the RPC in relation to R.A. 7659."[6]

On 08 September 1998, accused was arraigned and pleaded not guilty.[7]

Trial ensued, and considering that the evidence to be presented is common, the parties agreed to have the cases tried jointly.

Private complainants AAA-1 and AAA-2 stated that they are first cousins of the accused, their mothers being sisters.[8] Meanwhile, accused stated that private complainants are his nieces, his father being an uncle of AAA-1 and AAA-2.[9]

The facts established by the prosecution are summarized as follows:

AAA-1 testified that since the death of their mother, she and her sisters resided at the house of their uncle, Isagani Miñon at Sitio xxx, Brgy. xxx, xxx, xxx xxx.[10] In the early morning of 25 March 1995, while she was sleeping beside the two-year old

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[5] *Id*. at 12.

[6] *Id*. at 14.

[7] Records, p.64.

[8] TSN dated 16 March 1999, pp. 7, 20.

[9] TSN dated 13 December 1999, p.6.

[10] TSN dated 16 March 1999, p. 25.

daughter of Isagani Miñon, she woke up and found her cousin, accused Nicodemo Minon, on top of her. He removed her panty and forcibly inserted his penis into her vagina. He whispered to her not to make any noise.[11] After the sexual act, accused stayed in the room while AAA-1 cried and stood up, went to the other side of the room, and laid down beside Erwin Miñon, a brother of the accused. When Erwin woke up and went downstairs, AAA-1 followed and told him that the accused raped her. Her aunt, Marianita woke up around that time and AAA-1 likewise informed her of the incident. Marianita woke up her husband Isagani Miñon, who upon learning of the incident, ordered the accused to leave the house, which the latter did. A month later, the accused came back and attempted to rape AAA-1 again. AAA-1 decided to leave the place for good and worked in a bakery at the poblacion.[12]

AAA-2 testified that in 1997, she resided in the house of her uncle, Isagani Miñon.[13] On the evening of 04 October 1997, while she was sleeping with two children of Isagani Miñon, she was awakened and found that accused-appellant had already removed her clothes. He placed himself on top of her and forcibly inserted his penis into her sex organ. She cried as she felt the pain.[14] On 03 December 1997, while AAA-2 was in bed with three (3) children, accused-appellant once more forced himself upon her.[15] AAA-2 stated that she did not report the two incidents to her uncle since the accused threatened to kill her. Thereafter, in the morning of 14 January 1998, the accused instructed AAA-2 to clean the kitchen of Isagani's house, to which she complied. While cleaning the kitchen, the accused removed her shorts and forcibly had sexual intercourse with her. After this incident, AAA-2 revealed her fateful experience

[11] *Id*. at 21-22.

[12] *Id*. at 24.

[13] *Id*. at 7.

[14] *Id*. at 8.

[15] *Id*. at 10.

to the accused's sister, Emma, who, upon knowledge of his brother's acts, immediately castigated the latter.[16]

Meanwhile, AAA, complainant in Criminal Case No. 5795, decided not to pursue her complaint as she was already married and her husband did not want her to testify.[17]

The prosecution likewise presented Dr. Preciosa Soller, Municipal Health Officer of Bansud, Oriental Mindoro, who personally examined the three complainants and issued the corresponding medico-legal reports. Dr. Soller's findings are summarized as follows:

Criminal Case No. P-5795 (AAA):

Findings: Breasts not fully developed; areolae dark colored; scanty pubic hair; hymen-old healed lacerations at 12 o'clock, 3 o'clock, 7 o'clock; uterus not enlarged; vagina admits tightly examiner's gloved index finger, rugae still present; uterus not enlarged physical virginity lost.[18]

Criminal Case No. P-5796 (AAA-1):

Findings: Breasts developed, conical with pigmented areolae; moderate amount of pubic hair; Perineum moderate amount of white mucus; hymen old healed laceration at 12 o'clock, 3 o'clock and 6 o'clock; vagina admits easily examiner's gloved index finger, rugae still present; uterus not enlarged; physical virginity lost.[19]

Criminal Case No. 5798 (AAA-2):

Findings: Breasts not developed; no pubic hair, labia majora not developed; hymen-old healed lacerations, full at 12 o'clock and 7 o'clock; scanty mucus; vagina admits tightly examiner's index finger; physical virginity lost.

The last witness for the prosecution was PO1 Mario Matining, who testified that AAA asked for his help because she was

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[16] *Id.* at 11.

[17] *Id.* at 20.

[18] Records, p. 4.

[19] *Id.* at 25.

raped by the accused. He admitted to having helped prepare the complainants' affidavits and sought their medical examination. He was likewise present when the accused was arrested and identified by the complainants.[20]

In a sudden turnaround, complainants AAA-1 and AAA-2 testified for the defense, and manifested that they were no longer interested in further prosecuting the accused as they pity his children.[21] They claimed that after having gone under investigation by the Bansud Police, they decided to withdraw the case against the accused-appellant. However, PO1 Matining and the DSWD officer, Miramelinda Leuterio opposed the withdrawal and pressured them to testify.[22] On cross-examination, AAA-2 could not explain why she did not inform the trial court, or the prosecuting officer of the alleged pressure from the DSWD officer.[23] When questioned by the trial court whether her statements during the 16 March 1999 hearing were all true and correct, AAA-2 replied in the negative, and insisted that they were merely forced by the DSWD officer to testify.[24]

The defense also presented Rodolfo Rogero, brother-in-law of the accused. He claimed that from 02 October to 28 October 1997, the accused lived with him in his farm in Tiguisan, Bansud, Oriental Mindoro. According to Rogero, the accused never left his farm during the said period as the latter was helping him plow and clean the land in preparation for planting corn. [25]

When the accused was placed on the witness stand, he stated that complainants were his nieces,[26] but denied the accusations against him. He claimed that from 1994 to 1998, he resided in

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[20] TSN dated 16 March 1999, pp. 7-19.

[21] TSN dated 07 September 1999, pp. 3, 12.

[22] *Id.* at 4, 13.

[23] *Id.* at 15.

[24] *Id.* at 16.

[25] TSN dated 12 October 1999, pp. 3-9.

[26] TSN dated 13 December 1999, p. 3.

Odiong, Roxas, Oriental Mindoro, and that on March 25, 1995, the alleged date of the rape of AAA-1; he was working in a *talyer* in Odiong.[27] Thereafter, he stated that on October 4, 1997, the alleged date of the crime against AAA-2, he was selling ice cream and residing in Bauan, Batangas with his wife.[28]

The accused maintained that complainants fabricated the rape charges against him because he saw complainants' father, BBB, having sexual intercourse with a certain CCC, one of the complainants' sisters in Roma Roxas, Oriental Mindoro.[29]

After trial on the merits, the trial court found complainants' initial testimonies to be credible and noteworthy. It held that the recantation of the complainants was a mere afterthought, made out of pity for the accused and out of gratitude to the family which took them in after their mother died.[30] In addition, the trial court found vital contradictions in the testimonies of witnesses for the defense.[31] While Rogelio Rogero stated that the accused was with him from October 2 to October 28, 1997 at Tiguisin, Bansud, Oriental Mindoro, the accused himself claimed that on October 4, 1997, he was in Bauan, Batangas selling ice cream. Likewise, accused contradicted himself when he stated that he and his wife stayed in Batangas for less than a year in 1997 even as he earlier stated that he resided in Odiong, Roxas, Oriental Mindoro from 1994 to 1998.[32] The trial court rejected private complainants' recantation, gave credence to their previous testimonies, found the qualifying circumstances of minority and relationship and convicted the accused for rape,[33] as follows:

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[27] *Id*. at 3.

[28] *Id*. at 3-4.

[29] *Id*. at 5.

[30] *Rollo*, p. 26.

[31] *Id*. at 27.

[32] *Ibid*.

[33] *Id*. at 28, Decision dated 13 April 2000.

"ACCORDINGLY, the Court finds the accused NICODEMO MIÑON guilty beyond reasonable doubt, as principal of the crime of RAPE three (3) counts with the attending circumstance in all the three (3) cases, *that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree* and herby [sic] sentence him to suffer three (3) DEATH penalties, together with the accessory penalties provided by law, and to indemnify the victims AAA-1 and AAA-2 the sum of ₱50,000 each without subsidiary imprisonment in case of insolvency, and to pay the cost.

"Criminal Case No. P-5795 is hereby ordered dismissed." (Italics ours)

The accused now maintains that the trial court gravely erred in convicting him of qualified rape despite the fact that the age of the victims and their relationship to the accused were not duly alleged in the *Informations,* and raised the following lone error:[34]

THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON THE ACCUSED-APPELLANT.

In the Appellee's Brief, the Office of the Solicitor General pointed out that private complainants' relationship with the accused and the fact of their minority were alleged in the information but no proof was presented in court to show their exact ages except for their casual testimony as to their ages.[35] Moreover, the Solicitor General stated that the accused, being a first cousin of the complainants, is a relative within the fourth civil degree.[36] Because of these circumstances, the Solicitor General recommended the reduction of the death penalty to *reclusion perpetua*.[37]

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[34] *Id.* at 46-63.

[35] *Id.* at 97.

[36] *Ibid.* at 95.

[37] *Id.* at 100.

It must be noted that the Appellant's Brief adopted the findings of the trial court,[38] and did not contest the liability of the accused even for simple rape, proceeding directly as it did with the discussion of the propriety of the death penalty. This being a death penalty case, however, the records are open for review.[39]

In resolving rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[40]

With these principles in mind and after a careful review of the records of this case, we find no reason to overturn the conclusion reached by the trial court concerning the guilt of the accused-appellant.

It is well-settled that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped.[41] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where

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[38] *Id*. at 48-53.

[39] *People v. Viernes*, 423 Phil. 463, 475 (2001); *People v. Alipayo*, 381 Phil. 439, 456 (2000), citing *Obosa v. C.A.*, 266 SCRA 281(1997) and *People v. Calayca*, 301 SCRA 192 (1999); *People v. Nuevo*, 420 SCRA 421,431 (2001).

[40] *People v. Marcelo*, 421 Phil. 566, 577 (2001), citing *People v. Quijada*, 321 SCRA 426 (1999) and *People v. Maglente*, 306 SCRA 546 (1999).

[41] *People v. Novio*, G.R. No. 139332, 20 June 2003, 404 SCRA 462, 475-476.

she has absolutely no motive to incriminate and testify against the accused.[42]

We are convinced that private complainants had nothing in mind except to seek redress for the injustice that was done to them when they admitted the ignominy they had undergone, allowed their private parts to be examined, and exposed themselves to the ordeal of testifying on all the sordid details attached to the revelation of that which ought to be suffered in silence.[43]

The accused claimed that private complainants instituted the complaint because he saw private complainants' father having sexual intercourse with one of their sisters. However, there is absolutely no showing that AAA-1 and AAA-2 were actuated by any sinister motive to falsely charge their own cousin with such a serious crime as rape. The accused's explanation that private complainants got mad at him because they were "afraid that is not the only time wherein BBB raped CCC but also their [his] other children" [44] is hardly believable. It is unlikely that private complainants would want to antagonize the sole witness to the rape of their sister, even as they fear that their other siblings were, or will also be raped by their father.

The assessment on the credibility of witnesses is a function best discharged by the trial court which is in a better position to determine conflicting testimonies and after having heard the witnesses, and observed their deportment and manner of testifying.[45] We find nothing in the records which would indicate

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[42] *People v. Gonzales*, G.R. No. 133859, 24 August 2000, 338 SCRA 678, 688 citing *People v. Davon*, 216 SCRA 656 (1992).

[43] *People v. Grefalida*, G.R. No. 121637, 30 April 2003, 402 SCRA 153, 165 citing *People v. Santos*, 368 SCRA 535 (2001).

[44] TSN dated 13 December 1999, p.11.

[45] *People v. Mitra*, 385 Phil. 515, 526-527 (2000), citing *People v. Agbayani*, 284 SCRA 315 (1998) as follows:

"The trial judge is in a better position to decide the question of credibility, since he personally heard the witnesses and observed their deportment and manner of testifying. He had before him the essential aids to determine whether a witness was telling the truth or lying. Truth does not always stalk boldly

that the findings of fact of the trial court are not supported by the evidence or were arrived at in manifest or palpable error, such as to warrant a departure from the foregoing rule.

Private complainants were clear and unequivocal when they testified against the accused. With firmness and certainty, they were able to identify herein accused and the dastardly deeds the latter did to them. Thus, AAA-2 testified:

Q On October 4, 1997, where were you residing then?
A In the house of my uncle, sir.

Q On October 4, 1997, what was you doing?
A I was sleeping, sir.

Q While you were sleeping in the house of your uncle, what happened if any?
A My clothes were removed and he placed himself on top of me.

Q You said your clothes were removed, who removed your clothes?
A He is the one, sir.

Q To whom are you referring?
A Nicodemo Miñon.

Q The person you pointed a while ago?
A Yes, sir.

Q How were you able to say that it was Nicodemo Miñon who undressed you when I presume it was darked then?
A There was a light at the top, sir.

Q After undressing you, what else did the accused do if he did any?
A He placed himself on top of me and forcibly enter his penis. (*Pinasok ang kanyang ari sa aking ari*).

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forth naked; she often hides in nooks and crannies visible only to the mind's eye of the judge who tried the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien."

Q What did you feel when his sexual organ was inserted to your vagina?
A I felt pain, sir.

Q What if any did you do when he placed himself on top of you?
A I just cried and cried.

... ...

Q On that night of December 3, 1997, where was your uncle?
A He was at the farm, sir.

Q While you were then sleeping with your two cousins and the daughter of the accused Nicodemo Miñon, do you remember what happened?

ATTY. JOYA:

I am registering my continuing objection related to the incident which happened on December 3, 1997.

WITNESS:

A He again undressed me and placed himself on top of me.

Q When you said he placed himself on top of me, who is that?
A Nicodemo Miñon, sir.

Q After undressing and placed himself on top of you, what happened?
A He again forcibly insert his sexual organ to my organ.

Q What did you feel when he inserted his sexual organ to your organ?
A I felt pain, sir.

Q How about on January 14, 1998 in the morning thereof, where were you?
A I was also at the house of my uncle.

Q What were you doing in the morning thereof on January 14, 1998?
A I was in the kitchen because he told me to clean the kitchen.

Q Who told you to clean the kitchen?
A Nicodemo Miñon, sir.

Q What did you do in order to clean the kitchen?
A I followed his order, sir.

Q When you were cleaning the kitchen, what if any did the accused do to you?
A He removed my short which I wear at that time.

Q After removing your short, what else did the accused do?
A He again forcibly inserted his sexual organ to my sexual organ.[46]

For her part, AAA-1 declared:

Q You stated that you were once rape, do you still remember the date?
A March 25, 1995, sir.

Q You said that you were raped in the house of his father Isagani Miñon, will you please tell us the time you were raped?
A In the early morning, sir.

Q Where were you at that time that you were raped?
A I was at the house of my uncle on the second floor of the house.

Q What were you doing at that time?
A I was then sleeping, sir.

Q When you were awakened, what happened then?
A Somebody was on top of me.

Q Were you able to recognize that somebody?
A Yes, sir.

Q Who was he?
A Nicodemo Miñon, sir.

Q Will you please tell the Court how were you able to recognize Nicodemo Miñon when I presume it was dark then?
A The moon was bright at that time.

Q You said that when you were awakened, somebody was on top of me. After placing himself on top of you, what did you do if any?
A He forcible entered his penis to my vagina.[47]

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[46] TSN dated 16 March 1999, pp. 8 and 10.

[47] TSN dated 16 March 1999, p. 21.

As against the categorical and positive testimonies of private complainants, the accused proferred alibis and testimonies replete with serious inconsistencies. It should be recalled that accused himself stated that on October 4, 1997, the date when the rape of AAA-2 was committed, he was selling ice cream in Batangas City, where he and his wife resided for less than a year; this after he already claimed that he was residing in Roxas, Oriental Mindoro from 1994 to 1998. In addition, witness for the defense Rogelio Rogero claimed that from October 2 to October 28, 1997, the accused was with him in his farm in Tiguisin, Oriental Mindoro. It is beyond the realm of possibility that a person can be in two places at one time, much more three. Defense's dissonant, inconsistent and poorly fabricated testimonies cannot gain acceptance.

Private complainants' recantation of their testimony against the accused on the ground that they took pity on him and were merely forced to testify against the latter by the DSWD officer cannot be taken to work for his acquittal. This court has held that mere retraction by a prosecution witness does not necessarily vitiate his original testimony.[48] A retraction is generally unreliable

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[48] *People v. Amban*, 383 Phil. 817, 827 (2000) citing *People v. Ubina*, 97 Phil. 515, 525-526 (1955):

". . . Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement [now Rule 132, Section 11]; not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, *i.e.*, that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. (*U.S. v. Magtibay*, 17 Phil. 417; *U.S. v. Briones*, 28 Phil. 362; *U.S. v. Dasiip*, 26 Phil. 503; *U.S. v. Lazaro*, 34 Phil. 871). We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one (*U.S. v. Acasio*, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind[s] for one reason or another, for such rule would make solemn trials a mockery and

and is looked upon with considerable disfavor by the courts.[49] Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[50] As properly held by the trial court, private complainants' recantation appears to be a mere afterthought, conveniently made out of pity for the accused, and as an act of gratitude to the relatives who took them in. The trial court held that:

"The court have carefully examined the not so lengthy testimonies of the complainants, during the presentation of evidence by the prosecution, and have come to the conclusion that the facts narrated therein by AAA-1 and AAA-2 are but the product of their thirst for justice. Noteworthy, it is that when subjected to searching and unrelenting cross-examination by the same defense counsel, the recanting witnesses stood firm and steadfast in their assertions and answered the questions with straightforward clarity.

"On the other hand, their recantation, alleging that they were forced and coerced to implicate accused for the crime charged, the court is not hesitant to hold it to be a mere afterthought, designed to rescue the accused from the hands of the law."[51]

All told, the trial court did not err in finding the accused guilty beyond reasonable doubt of the three separate counts of rape.

However, we do not agree with the imposition of death penalty on the accused.

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place the investigation of truth at the mercy of unscrupulous witnesses. . . . The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized — in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth."

[49] *People v. Gonzales*, G.R. No. 133859, August 24, 2000, 338 SCRA 678, 690 citing *People v. Burce*, 269 SCRA 292 (1997).

[50] *Ibid*.

[51] *Rollo*, p. 26.

Article 266-B of the Revised Penal Code provides:

"xxx xxx xxx.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"1.) when the victim is *under eighteen (18) years of age* and the *offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree* or the common-law spouse of the parent of the victim;" (Italics supplied)

The attendant circumstances provided by Republic Act 7659 must be specifically alleged in the information for rape in order that they may properly qualify the crime to the penalty specially prescribed by law.[52] In qualified rape, the concurrence of the minority of the victim and her relationship to the offender must both be alleged and proved with certainty; otherwise the death penalty cannot be imposed.[53]

Thus, even if the victim's minority is alleged in the information, the prosecution must still prove clearly and adequately that the victim was under eighteen (18) years of age at the time of the rape. There must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. Where there is no evidence at all of the minority age of the victim or where the evidence is weak, unreliable and insufficient, the Court is impelled not to impose the death penalty.[54] The failure of the prosecution to present the victim's birth certificate or similarly acceptable proof of her age as a minor bars the accused's conviction for rape in its qualified form.[55]

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[52] *People v. Delamar*, G.R. No. 136102, January 31, 2001, 350 SCRA 707, 713.

[53] *People v. Velasco*, G.R. Nos. 135231-33, February 28, 2001, 353 SCRA 138,152.

[54] *People v. Alipar*, G.R. No. 137282, March 16, 2001, 354 SCRA 590, 604.

[55] *People v. San Agustin*, G.R. Nos. 135560-61, January 24, 2001, 350 SCRA 216, 230 citing *People v. Tundag*, 342 SCRA 704 (2000).

In the present case, while the age of the private complainants at the time of the rape was indicated in the *Informations*, the prosecution was not able to establish their age during trial. The record of the case is bereft of any independent evidence, such as the private complainants' duly certified *Certificate of Live Birth*, accurately showing their respective ages. A careful perusal of the TSN reveals that when private complainants were placed on the witness stand, the matter of their age at the time of the rape was not even discussed. At most, their ages were mentioned only at the beginning of their testimonies describing their personal circumstances. In *People v. Galas*,[56] we held that we cannot consider a rape victim's statement at the beginning of her testimony describing her personal circumstances as proof of age beyond reasonable doubt that the Court has considered indispensable in the criminal prosecution of cases involving the extreme penalty of death. So it must be in the instant case.

We have previously held that if the accused is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity of affinity (as the case may be) within the third civil degree."[57] The relationship by consanguinity or affinity between the accused and private complainants was not alleged in the *Informations* in this case. The allegation that the private complainants are cousins of the accused is not specific enough to satisfy the special qualifying circumstance of relationship. Besides, even if it were so alleged, it was still necessary to specifically allege that such relationship was within the third civil degree.

More importantly, in the case at bar, the accused is a first cousin of the private complainants. As properly pointed out by the accused, he is merely a relative within the fourth civil degree of the private complainants.[58] Consequently, he cannot be held

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[56] G.R. No. 139413-15, March 20, 2001, 354 SCRA 722, 734.

[57] *People v. Libo-on*, G.R. No. 136737, May 23, 2001, 358 SCRA 152, 175-176 citing *People v. Banihit*, 339 SCRA 87 (2000); *People v. Ferolino*, 329 SCRA 719 (2000).

[58] *Rollo*, p. 55.

liable for qualified rape under Art. 266-B of the Revised Penal Code. The death penalty cannot be imposed in this case.

It must be noted that the trial court ordered the accused to pay private complainants only the civil liability arising from the offense in the amount of ₱50,000.00 each. This is equivalent to actual or compensatory damages in civil law. However, in addition to the civil indemnity in such amount the offended parties are entitled to moral damages, which are automatically granted in rape cases without need of any proof.[59] Currently, moral damages for rape is fixed at ₱50,000.00. Hence, the additional sum of ₱50,000.00 each should be awarded to AAA-2 and AAA-1.

WHEREFORE, the decision dated April 13, 2000 of the Regional Trial Court, Branch XLII Pinamalayan, Oriental Mindoro is AFFIRMED with MODIFICATION. Accused Nicodemo Miñon is sentenced to suffer the penalty of *reclusion perpetua*, and is ordered to pay each to AAA-1 and AAA-2 ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.

Costs *de oficio*.

SO ORDERED.

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

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[59] *People v. Dumlao*, G.R. Nos. 130409-10, November 27, 2001, 370 SCRA 571,590 citing *People v. Hofileña*, 334 SCRA 214 (2000); *People v. Bares*, 355 SCRA 435 (2001); *People v. Bernaldez*, 322 SCRA 462 (2000); *People v. Robles*, 305 SCRA 273 (1999).

EN BANC

[G.R. Nos. 148716-18. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SALVADOR ORILLOSA *y* DELA CRUZ,** *appellant*.

SYNOPSIS

Appellant was charged in three separate Informations with three counts of rape committed against his daughter AAA in 1993, 1997 and 1999, for which the appellant pleaded not guilty to all the charges. After trial, the Regional Trial Court of Malolos, Bulacan found appellant guilty beyond reasonable doubt of the crime of acts of lasciviousness and was sentenced accordingly, and two counts of rape for which he was sentenced to death. Hence, this automatic review.

The Supreme Court agreed with the trial court in downgrading the crime committed in 1993 from rape to acts of lasciviousness in as much as carnal knowledge was not established. The Court found the victim's testimony, on direct as well as on cross-examination, categorically and candidly narrating how she was "fingered" by appellant, sufficient to satisfy the immutable quantum of proof required in criminal cases. Thus, the Court sustained the judgment of conviction for acts of lasciviousness but modified the penalty imposed. Inasmuch as it was expressly alleged in the information and duly proven during the trial that the offended party is the daughter of appellant, relationship, therefore, aggravated the crime of acts of lasciviousness. The Court further affirmed appellant's conviction for two counts of rape. Appellant's conviction rests not on his failure to put up a respectable defense, but on the credible and straightforward testimony of the complainant. Her testimony, given in a spontaneous and candid manner, withstood the searing cross-examination by the defense and carried no earmarks of fabrication. The Court found no cogent reason or circumstance to nullify the truth of her assertions. It takes an extreme sense of moral depravity for a daughter to accuse her very own father of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction if only to exact revenge on her father who allegedly maltreated her. Moreover, the moral and physical dominion of the appellant was sufficient to cow her daughter into submission to his beastly desires. However,

the Court was constrained to hold appellant liable only for simple rape and to reduce the penalty to *reclusion perpetua* for failure of the prosecution to prove complainant's minority with moral certitude.

SYLLABUS

1. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; VICTIM'S TESTIMONY ON HOW SHE WAS "FINGERED" BY THE ACCUSED SUFFICIENT TO SATISFY THE REQUIRED QUANTUM OF PROOF; CASE AT BAR.— Appellant's claim that the prosecution failed to prove its charge of acts of lasciviousness upon the victim is belied by the following exchange on direct examination of Andrelyn: x x x. Contrary to appellant's assertion, Andrelyn reiterated on cross-examination that she was sexually molested by appellant by inserting his finger into her genitalia, thus: x x x. As clearly shown by the foregoing, Andrelyn, on direct as well as on cross-examination, categorically and candidly narrated how she was "fingered" by appellant, which testimony suffices to satisfy the immutable quantum of proof required in criminal cases. As correctly pointed out by the Solicitor General, the defense failed to object when the prosecution elicited further evidence on the acts of lasciviousness. For its neglect, the defense is deemed to have effectively waived on appeal its right to object thereto.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; FAILURE OR REFUSAL OF THE ACCUSED TO TESTIFY SHALL NOT IN ANY MANNER PREJUDICE OR BE TAKEN AGAINST HIM; EXCEPTION.— Appellant assails his conviction on two counts of rape principally on the theory that the trial court did not ask him to testify in his defense. Thus, he is now seeking the remand of the case to the trial court for further proceedings. This is not a novel question. In *People v. Resano*, we rejected a similar plea by stating that: The revenge theory could be better developed and explained by the appellant himself. But he did not take the witness stand to personally refute the charge and accusation against him. He, of course, has a right not to do so and his failure and/or refusal to testify shall not in any manner prejudice or be taken against him, (Rules of Court). But where the prosecution has already established a *prima facie* case, more so when the offense

charged is grave and sufficient enough to send accused behind bars for life or may even warrant the imposition of the supreme penalty of death, then in order to meet and destroy the effects of said *prima facie* case and so as to shift the burden of producing further evidence to the prosecution, the party making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond a reasonable doubt. In such situation, it may be necessary for the accused to have a complete destruction of the prosecution's *prima facie* case, that he take the stand since no hardship will in any way be imposed upon him (*U.S. vs. Chan Toco*, 12 Phil. 262). If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things he has to do, then he is hardly indeed, if he demands and expects that same full and wide consideration which the state voluntarily gives to those who, by reasonable effort seek to help themselves. (*U.S. vs. Tria*, 17 Phil. 303)

3. ID.; ID.; CREDIBILITY OF WITNESSES; IT TAKES AN EXTREME SENSE OF MORAL DEPRAVITY FOR A DAUGHTER TO ACCUSE HER VERY OWN FATHER OF A HEINOUS CRIME, SUCH AS RAPE, AND EXPOSE HIM TO THE PERILS ATTENDANT TO A CRIMINAL CONVICTION IF ONLY TO EXACT REVENGE ON HER FATHER WHO ALLEGEDLY MALTREATED HER.— Be that as it may, the conviction rests not on the failure by appellant to put up a respectable defense, but on the credible and straightforward testimony of the private complainant. Her testimony, given in a spontaneous and candid manner, withstood the searing cross-examination by the defense and carried no earmarks of fabrication. We sense no cogent reason or circumstance of note to nullify the truth of her assertions. Oft repeated is the truism that being a woman of tender age, shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that considering her innate modesty, humility and purity as a young Filipina, Andrelyn would have allowed herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery. Verily, it takes an extreme sense of moral depravity for a daughter to accuse her very own father of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction if only to exact revenge on her father who allegedly maltreated

her. As earlier held by the Court, a true Filipina would not go around in public unravelling facts and circumstances of her defloration for no reason, if such were not true. We find that there exists no convincing reason to disturb the trial court's assessment of the witnesses' credibility.

4. CRIMINAL LAW; RAPE; ELEMENT OF FORCE AND INTIMIDATION; MORAL AND PHYSICAL DOMINION OF THE FATHER IS SUFFICIENT TO COW THE VICTIM-DAUGHTER INTO SUBMISSION TO HIS BEASTLY DESIRES.— On the matter of force or intimidation, we have ruled that in incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of appellant, who is private complainant's father, would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. The instant case is no exception. Appellant took advantage of his overpowering moral and physical ascendancy to unleash his lechery upon his daughter. In the recent case of *People v. Servano,* we held: We have to bear in mind that in incestuous rape, the minor victim is at a great disadvantage because the assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary unlike where the accused is not an ascendant or blood relative of the victim. Thus, the failure of the victim to explicitly verbalize, as in this case, the use of force, threat, or intimidation by the accused should not adversely affect the case of the prosecution as long as there is adequate proof that sexual intercourse did take place. This principle was reiterated in *People v. Cea,* where, although the information alleged that the appellant was armed with a knife, the private complainant never testified that he was so armed when he sexually abused her. In any case, this Court sustained the finding of force or intimidation on the ground that it may be replaced by moral ascendancy in cases of incestuous rape.

5. ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE CONJOINTLY ALLEGED IN THE INFORMATION AND DULY PROVED TO WARRANT IMPOSITION OF DEATH PENALTY.— On the imposable penalty, we agree with appellant that the court *a quo* erroneously imposed the death penalty in Criminal Cases

Nos. 2701-M-99 and 2702-M-99. In a plethora of cases, we have invariably ruled that in incestuous rape, it is essential that the relationship and minority be conjointly alleged in the information and duly proved. In the cases at bar, although the victim's relationship with appellant is unquestioned, the minority of the victim has not been proved with moral certitude. The Informations in Crim. Cases Nos. 2701-M-99 and 2702-M-99 allege that the victim was 16 years old at the time of the rape incidents, yet the prosecution failed to present the birth certificate of the complainant or any other similar independent evidence to prove the same. The case of *People v. Javier* succinctly explains the necessity of such proof in this wise: Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16 years old is just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld. We are thus constrained to hold appellant liable only for simple rape, and to reduce the penalty to the lower indivisible penalty of *reclusion perpetua*.

6. ID.; ACTS OF LASCIVIOUSNESS; ALTERNATIVE CIRCUMSTANCE OF RELATIONSHIP CONSIDERED AS AGGRAVATING IN THE CRIME OF ACTS OF LASCIVIOUSNESS; IMPOSABLE PENALTY.— With respect to Criminal Case No. 2700-M-99, we are in full agreement with the court *a quo* in downgrading the crime from rape to acts of lasciviousness inasmuch as carnal knowledge

was not established. The alternative circumstance of relationship under Article 15 of the Revised Penal Code should be appreciated against appellant. In crimes of chastity such as acts of lasciviousness, relationship is considered as aggravating. Inasmuch as it was expressly alleged in the information and duly proven during trial that the offended party is the daughter of appellant, relationship, therefore, aggravated the crime of acts of lasciviousness. Under Article 336 of the Revised Penal Code, the crime of acts of lasciviousness is punished by *prision correccional*. Applying the Indeterminate Sentence Law and appreciating relationship as an aggravating circumstance, appellant could be sentenced to suffer an indeterminate prison term of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and to pay the victim ₱30,000.00 as moral damages.

7. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES.— The civil indemnity to be awarded to the offended party should likewise be modified. Accordingly, the victim is entitled to ₱50,000.00 as indemnity *ex delicto*, ₱50,000.00 as moral damages for each count of rape without need for proof of the basis thereof, and ₱25,000.00 as exemplary damages to deter other fathers with perverse proclivities for aberrant sexual behavior from sexually abusing their own daughters.

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.*:

On automatic review is the decision of the Regional Trial Court of Malolos, Bulacan, Branch 21,[1] finding appellant Salvador Orillosa *y* dela Cruz guilty of acts of lasciviousness in Criminal Case No. 2700-M-99, sentencing him to suffer the penalty of

[1] Decision penned by Judge Cesar M. Solis.

two (2) years, four (4) months and one (1) day to three (3) years of *prision correccional* in its medium period, and two counts of rape in Criminal Cases Nos. 2701-M-99 and 2702-M-99, for which he was meted the supreme penalty of death for each count.

Appellant was charged with three counts of Rape committed against his daughter, AAA, in three separate Informations, the accusatory portions of which read:

Criminal Case No. 2700-M-99 —

That sometime in the year of 1993, in the municipality of xxx, province of xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force and intimidation, with lewd designs have carnal knowledge of his own daughter, AAA, 9 years old, against her will and without her consent.

Contrary to law.

Criminal Case No. 2701-M-99 —

That on or about the 27th day of July, 1999, in the municipality of xxx , xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his own daughter, AAA, 16 years old, against her will and consent.

Contrary to law.

Criminal Case No. 2702-M-99 —

That sometime in the month of December 1997, in the municipality of xxx, xxx, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his own daughter, AAA, 16 years old, against her will and without her consent.

Contrary to law.

Appellant pleaded not guilty to the charges, after which the three criminal cases were jointly tried.

Sometime in December 1997, at around 10:00 in the morning, while AAA was on the ground floor of their house, her father, appellant Salvador Orillosa, called her upstairs. Appellant closed the door of the room and mashed his daughter's breasts. He whispered to her not to tell anybody. Appellant then ordered AAA to lie down on the floor, then he removed her t-shirt and pulled down her short pants. He mounted the victim and tried to force his penis into her daughter's genitalia. Despite his efforts, appellant failed to fully penetrate the organ of AAA. When appellant stood up, AAA saw his penis dripping with a whitish substance. AAA could do nothing but to whimper in protest. After her ordeal, she ran away from home and sought refuge in the house of a relative. Before long, her mother fetched her and brought her back home. She told her mother about her harrowing experience, but the latter chided her instead for making up stories.

On July 27, 1999, AAA slept in the upper room of the house. Earlier that day, her parents had a quarrel, which caused her mother to leave. At 2:00 in the morning, appellant entered AAA's room and carried her to the ground floor. There, he took off her clothing, and laid her on the floor. He then straddled her, and kissed her repeatedly on the neck. After undressing himself, he forced his penis into her vagina, but only a portion thereof penetrated AAA's organ. His lust satiated, appellant dressed up and left for work. AAA ran upstairs crying because of physical and emotional anguish. Her *Kuya* Leandre saw her and asked why she was crying. She did not tell him what happened for fear that her father might vent his anger on her *Kuya*.

Sometime in August 1999, AAA told her *Lola* Iging about her father's sexual assaults, but the latter did not believe her and even rebuked her for causing embarrassment to her father. With no one to turn to, she personally reported the matter to the *barangay* captain who accompanied her to the police where she gave a written statement.

On direct examination, AAA also revealed that in 1993, appellant first molested her when he inserted his finger in her vagina.[2]

[2] TSN, 7 February 2000, p. 13.

On September 23, 1999, Dr. Ivan Richard Viray, medico-legal officer of the PNP-Bulacan Crime Laboratory, examined the victim AAA. He noted the presence of deep-healed lacerations at 3, 5, 7, and 9 o'clock positions which, according to the victim, were inflicted by appellant since she was in Grade III.[3]

The defense presented BBB, the victim's younger sister, who testified that in 1993, when the alleged first rape incident occurred, she was 8 years old and was living with her parents in xxx, xxx, xxx. Her sister, xxx, was then 9 years old. She was always in the house after classes and during lunch breaks, and she could not recall any single moment when appellant and AAA were left alone in the house. Her father worked from 10:00 in the morning to 8:00 in the evening everyday, including Saturdays and Sundays.

BBB further stated that on July 27, 1999, at around 7:00 in the evening, when the alleged third rape incident happened, appellant and the other members of the family were in the house, except for AAA who ran away from home. She surmised that AAA might have been prompted to file the instant complaint because of her father's cruelty to her sister. She explained that appellant frequently whipped and spanked AAA, especially when she did not remit the proceeds of the *jueteng* collection to appellant, who moonlighted as a collector of the illegal numbers game. According to her, she was forced to sign the complaint by the *Barangay* Captain on the pretext that if she did AAA would become an actress. Moreover, the said *Barangay* Captain coerced her into admitting that she too was the victim of her father's lechery. She belied the charge that her father raped AAA. The truth of the matter, she claimed, is that she saw AAA having sex with five boys and was apparently taking pleasure in the experience.

BBB further testified that during the whole month of December 1997, when the alleged second rape incident happened, AAA worked as a babysitter in Plaridel, Bulacan. She could recall only one instance when AAA went back to their

[3] TSN, 7 June 2000, p. 13.

house in Guiguinto. AAA stayed in the house for a short time in the morning but went back to work shortly thereafter. During AAA's short visit in December, their mother and younger siblings were in the house while appellant was working in Marilao.

On the witness stand, CCC also testified that together with her sisters, AAA and BBB, they were brought by the *Barangay* Captain to the *Barangay* Hall. Before the *Barangay* officials, AAA wanted her to admit that they too were molested by their father, but she adamantly refused to accede to AAA's wishes. According to her, the *Barangay* Captain coaxed her and BBB into signing a document by promising them that if they did, their sister AAA would become an actress. The *Barangay* Captain coerced her into signing the document by holding her hand and forcing her to affix her signature. She asserted that her father could not have raped AAA because she would always leave the house and was out for days on end. She opined that AAA filed the instant complaint because she could no longer take the beatings from her father.

On January 24, 2001, the trial court rendered a decision finding appellant guilty of the crimes of acts of lasciviousness and of two counts of rape, the decretal portion of which reads:

> WHEREFORE, this Court hereby resolves and finds the accused Salvador Orillosa GUILTY beyond reasonable doubt, in Criminal Case No. 2700-M-99 with the crime of Acts of Lasciviousness for which he is hereby sentenced to suffer the penalty of Two (2) years Four (4) months and One (1) day to Three (3) years of *prision correccional* medium; and in both Criminal Cases Nos. 2701-M-99 and 2702-M-99 with the crime of rape (with qualifying circumstance) for which, he is hereby sentenced to suffer the supreme penalty of Death on two counts.
>
> Additionally, the offended party is to be indemnified in the sum of ₱3,000.00 in Criminal Case No. 2700-M-99 and ₱75,000.00 each in Criminal Cases Nos. 2701-M-99 and 2702-M-99. She is likewise awarded moral damages in the amount of ₱5,000.00 in the first case and another ₱100,000.00 each of the two other cases.

With costs against the accused.

SO ORDERED.[4]

Hence, this automatic review, pursuant to Article 47 of the Revised Penal Code, as amended. In his Appellant's Brief, appellant raises the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE GROUND OF THE CRIME OF ACTS OF LASCIVIOUSNESS.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF RAPE AND IN IMPOSING THE DEATH PENALTY.[5]

In support of the first assigned error, appellant argues that the rape allegedly committed in 1993 was not mentioned during the direct examination or in the cross-examination of AAA and was only brought out on re-direct examination. In fact, the narration of the alleged crime of rape was insufficient so much so that the trial court reduced the charge to acts of lasciviousness. Moreover, the prosecutor put words in the mouth of the witness when he premised his question as: "Did you not say in 1993, your father merely inserted his finger on the private organ?"

Appellant's claim that the prosecution failed to prove its charge of acts of lasciviousness upon the victim is belied by the following exchange on direct examination of AAA:[6]

Fiscal Gammad:

Q. AAA, please tell us the truth in this statement, more particularly on the second page, did you really give this statement?

A. Yes, ma'am.

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[4] *Rollo*, p. 34.

[5] *Rollo*, pp. 112 and 115.

[6] TSN, 7 February 2000, p. 13.

Q. Awhile ago, I asked you if in December of 1997 was the first time that you were molested by anyone including by your father and you said "yes." It appears then here that in 1993 aside from fingering, your father inserted his "*titi*" to your private organ, will you please explain that?

A. In 1993, that was the first time that he molested me by fingering me then followed by incident in 1997 and then in 1999, ma'am.

Q. For clarification, are you saying that in 1993 while you were in Grade III, your father merely fingered you and never inserted penis into your organ?

A. No, ma'am, he merely fingered me.

Contrary to appellant's assertion, AAA reiterated on cross-examination that she was sexually molested by appellant by inserting his finger into her genitalia, thus:[7]

Fiscal:

> If according to you, the penis of your father did not fully penetrate your private organ on July 27, 1999, do you know of any reason why the findings of the medico legal officer on you was that you suffered healed laceration and you were not in a virgin state anymore?

A. In 1993, he did that to me.

Fiscal:

> Did you not say in 1993, your father merely inserted his finger on your private organ?

A. Yes. Sir.

As clearly shown by the foregoing, AAA, on direct as well as on cross-examination, categorically and candidly narrated how she was "fingered" by appellant, which testimony suffices to satisfy the immutable quantum of proof required in criminal cases.

As correctly pointed out by the Solicitor General, the defense failed to object when the prosecution elicited further evidence on the acts of lasciviousness. For its neglect, the defense is

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[7] TSN, 14 February 2000, p. 5.

deemed to have effectively waived on appeal its right to object thereto.

Appellant assails his conviction on two counts of rape principally on the theory that the trial court did not ask him to testify in his defense. Thus, he is now seeking the remand of the case to the trial court for further proceedings.

This is not a novel question. In *People v. Resano*, we rejected a similar plea by stating that:[8]

> The revenge theory could be better developed and explained by the appellant himself. But he did not take the witness stand to personally refute the charge and accusation against him. He, of course, has a right not to do so and his failure and/or refusal to testify shall not in any manner prejudice or be taken against him (Rule 15, Sec. 1, Par. (d), Rules of Court). But where the prosecution has already established a *prima facie* case, more so when the offense charged is grave and sufficient enough to send accused behind bars for life or may even warrant the imposition of the supreme penalty of death, then in order to meet and destroy the effects of said *prima facie* case and so as to shift the burden of producing further evidence to the prosecution, the party making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond a reasonable doubt. In such situation, it may be necessary for the accused to have a complete destruction of the prosecution's *prima facie* case, that he take the stand since no hardship will in any way be imposed upon him (*U.S. vs. Chan Toco*, 12 Phil. 262). If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things he has to do, then he is hardly indeed, if he demands and expects that same full and wide consideration which the state voluntarily gives to those who, by reasonable effort seek to help themselves. (*U.S. vs. Tria*, 17 Phil. 303)

Be that as it may, the conviction rests not on the failure by appellant to put up a respectable defense, but on the credible and straightforward testimony of the private complainant. Her testimony, given in a spontaneous and candid manner, withstood the searing cross-examination by the defense and carried no

[8] G.R. No. L-57738, 23 October 1984, 132 SCRA 711.

earmarks of fabrication. We sense no cogent reason or circumstance of note to nullify the truth of her assertions. Oft repeated is the truism that being a woman of tender age, shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that considering her innate modesty, humility and purity as a young Filipina, AAA would have allowed herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery. Verily, it takes an extreme sense of moral depravity for a daughter to accuse her very own father of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction if only to exact revenge on her father who allegedly maltreated her. As earlier held by the Court, a true Filipina would not go around in public unravelling facts and circumstances of her defloration for no reason, if such were not true.[9] We find that there exists no convincing reason to disturb the trial court's assessment of the witnesses' credibility.

On the matter of force or intimidation, we have ruled that in incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of appellant, who is private complainant's father, would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[10] The instant case is no exception. Appellant took advantage of his overpowering moral and physical ascendancy to unleash his lechery upon his daughter.

In the recent case of *People v. Servano*,[11] we held:

We have to bear in mind that in incestuous rape, the minor victim is at a great disadvantage because the assailant, by his overpowering

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[9] *People v. Felipe*, G.R. No. L-40432, 19 July 1982, 115 SCRA 88; *People v. Sambangan,* G.R. No. L-44412, 25 November 1983, 125 SCRA 726.

[10] *People v. Sagaral*, G.R. Nos. 112714-15, 7 February 1989, 267 SCRA 671; *People v. Escober*, G.R. Nos. 122980-81, 6 November 1997, 281 SCRA 498; *People v. Tan, Jr.*, G.R. Nos. 103134-40, 20 November 1996, 264 SCRA 425; *People v. Servano,* G.R. Nos. 143002-03, 17 July 2003.

[11] G.R. Nos. 143002-03, 17 July 2003.

and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary unlike where the accused is not an ascendant or blood relative of the victim. Thus, the failure of the victim to explicitly verbalize, as in this case, the use of force, threat, or intimidation by the accused should not adversely affect the case of the prosecution as long as there is adequate proof that sexual intercourse did take place.

This principle was reiterated in *People v. Cea*,[12] where, although the information alleged that the appellant was armed with a knife, the private complainant never testified that he was so armed when he sexually abused her. In any case, this Court sustained the finding of force or intimidation on the ground that it may be replaced by moral ascendancy in cases of incestuous rape.

On the imposable penalty, we agree with appellant that the court *a quo* erroneously imposed the death penalty in Criminal Cases Nos. 2701-M-99 and 2702-M-99. In a plethora of cases, we have invariably ruled that in incestuous rape, it is essential that the relationship and minority be conjointly alleged in the information and duly proved. In the cases at bar, although the victim's relationship with appellant is unquestioned, the minority of the victim has not been proved with moral certitude. The Informations in Crim. Cases Nos. 2701-M-99 and 2702-M-99 allege that the victim was 16 years old at the time of the rape incidents, yet the prosecution failed to present the birth certificate of the complainant or any other similar independent evidence to prove the same.[13] The case of *People v. Javier* succinctly explains the necessity of such proof in this wise:[14]

Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16 years old is just two years

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[12] G.R. Nos. 146462-63, 14 January 2004; see also: *People v. Valdez*, G.R. Nos. 133194-95 and 141539, 29 January 2004.

[13] *People v. Gavino*, G.R. No. 142749, 18 March 2003.

[14] G.R. No. 126096, 26 July 1999, 311 SCRA 122.

less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld.

We are thus constrained to hold appellant liable only for simple rape, and to reduce the penalty to the lower indivisible penalty of *reclusion perpetua*.

The civil indemnity to be awarded to the offended party should likewise be modified. Accordingly, the victim is entitled to ₱50,000.00 as indemnity *ex delicto,* ₱50,000.00 as moral damages for each count of rape[15] without need for proof of the basis thereof, and ₱25,000.00 as exemplary damages to deter other fathers with perverse proclivities for aberrant sexual behavior from sexually abusing their own daughters.[16]

With respect to Criminal Case No. 2700-M-99, we are in full agreement with the court *a quo* in downgrading the crime from rape to acts of lasciviousness inasmuch as carnal knowledge was not established.

The alternative circumstance of relationship under Article 15 of the Revised Penal Code should be appreciated against appellant. In crimes of chastity such as acts of lasciviousness, relationship is considered as aggravating. Inasmuch as it was

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[15] *People v. Senen Prades,* G.R. No. 127569, 30 July 1998, 293 SCRA 411; *People v. Viajedor,* G.R. No. 148138, 11 April 2003.

[16] *People v. Lao,* G.R. No. 117092, 6 October 1995, 249 SCRA 137; *People v. Sangil, Sr.,* G.R. No. 113689, 31 July 1997, 276 SCRA 532.

expressly alleged in the information and duly proven during trial that the offended party is the daughter of appellant, relationship, therefore, aggravated the crime of acts of lasciviousness.

Under Article 336 of the Revised Penal Code, the crime of acts of lasciviousness is punished by *prision correccional*. Applying the Indeterminate Sentence Law and appreciating relationship as an aggravating circumstance, appellant could be sentenced to suffer an indeterminate prison term of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum,[17] and to pay the victim ₱30,000.00 as moral damages.[18]

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 21, finding appellant Salvador Orillosa *y* de la Cruz guilty of two counts of rape in Criminal Cases Nos. 2701-M-99 and 2702-M-99 is *AFFIRMED* with the *MODIFICATION* that in each case the penalty is reduced to *reclusion perpetua*, with all the accessory penalties thereto. In addition, appellant is ordered to pay in each case the victim, AAA, ₱50,000.00 as civil indemnity *ex delicto*; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

As to Criminal Case No. 2700-M-99, the judgment of conviction for acts of lasciviousness is *AFFIRMED with MODIFICATION*. As modified, appellant is sentenced to an indeterminate imprisonment penalty ranging from six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and to pay the victim ₱30,000.00 as moral damages.

Costs *de oficio*.

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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[17] *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, 3 April 2001.

[18] *People v. Lilo*, G.R. Nos. 140736-39, 4 February 2003.

SECOND DIVISION

[G.R. No. 148815. July 7, 2004]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **ORLANDO SONIDO**, *appellant*.

SYNOPSIS

Appellant assailed the decision of the Regional Trial Court of Tuao, Cagayan convicting him of rape committed against AAA, a married woman, and sentencing him to *reclusion perpetua* and to indemnify the complainant. Appellant alleged that the complainant consented to the sexual intercourse. According to him, complainant falsely charged him of rape because of his refusal to continue with their illicit relations.

The appellant is burdened to prove with clear and convincing evidence the affirmative defense of consent to a sexual intercourse by the complainant. The appellant, to prove his defense, relied solely on his testimony. He failed to corroborate his testimony on the necklace, which the complainant denied giving to the appellant. Such defense needs a strong corroboration, which the appellant failed to produce in evidence. No love letter, memento, or pictures were presented by the appellant to prove that such a romantic relationship existed. Thus, the sweetheart theory proffered by the appellant hardly deserves attention. Indeed, the Supreme Court has constantly ruled that a love affair does not justify rape, for the beloved cannot be sexually violated against her will. A sweetheart cannot be forced to have sex against her will— love is not a license for lust. On the other hand, complainant's testimony was direct, candid, and replete with details of the rape. She clearly described how the appellant forcibly made her lie down on the floor, laid on top of her, and parted her legs with his own to finally consummate his lustful designs. The victim's testimony alone, if credible, is sufficient to convict the accused of the crime. Complainant's testimony was such kind of testimony. Accordingly, the Court affirmed *in toto* the decision of the trial court.

SYLLABUS

1. CRIMINAL LAW; RAPE; EVIDENCE; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.— We reiterate the following standard in reviewing an appeal from a conviction of rape: In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; ID.; CREDIBILITY OF WITNESSES; LONE TESTIMONY OF VICTIM IS SUFFICIENT TO CONVICT THE ACCUSED, IF CREDIBLE.— AAA's testimony was direct, candid, and replete with details of the rape. She was consistent and straightforward in her answers during the direct-examination and cross-examination. She did not waver in her testimony as to how the accused entered the bathroom, embraced and kissed her, and how she shouted and boxed the appellant, in her effort to resist his sexual advances. She clearly described how the appellant forcibly made her lie down on the floor, laid on top of her, and parted her legs with his own to finally consummate his lustful designs. The rule in rape cases is that the testimony of the complainant is credible where no strong ulterior motive for falsely testifying against the accused is shown. In prosecutions for rape, conviction or acquittal virtually depends entirely on the credibility of the victim's testimony because of the fact that only the participants can testify to its occurrence. The victim's testimony alone, if credible, is sufficient to convict the accused of the crime. AAA's testimony is such kind of testimony.

3. ID.; ID.; CAN BE CONSUMMATED IN THE CONFINES OF A SMALL BATHROOM.— It was not physically impossible for the appellant to have raped AAA in a bathroom, two (2) meters by two (2) meters in size, with a toilet bowl on the northern side thereof. A rape can be consummated in the

confines of a small bathroom. In this case, the bathroom door had no lock, and the appellant was able to open the door easily. It was not then physically impossible for Josephine to have been forced to lie down inside the bathroom so that the appellant could consummate his bestial desire, with her feet protruding from the bathroom's entrance.

4. ID.; ID.; PROOF OF INJURY NOT AN ELEMENT THEREOF.— The appellant's insistence that the prosecution failed to prove that AAA struggled and resisted is belied by her testimony, *viz:* x x x. AAA's tenacious struggle and resistance were corroborated by Susan Balunsat who testified that she saw AAA running and crying for help, totally naked and with small scratches on her breasts and with her hair disheveled. Besides, proof of external injuries inflicted on the complainant is not indispensable in a prosecution for rape committed with force or violence. Proof of injury is not an element of rape. The resistance on the part of the victim need not be carried to the point of inviting death or sustaining physical injuries at the hand of the rapist. It suffices that the coitus takes place against her will, or that she yields because of genuine apprehension of great harm.

5. ID.; ID.; ID.; SWEETHEART THEORY; A RAPE VICTIM WOULD NOT CONTRIVE A CHARGE OF RAPE AND UNDERGO THE EMBARASSMENT AND TRIBULATIONS OF A PUBLIC TRIAL MERELY BECAUSE THE ACCUSED HAD DECIDED TO SEVERE THEIR AMOROUS RELATIONSHIP.— We are also not persuaded by the appellant's allegation that AAA is a scorned woman, who falsely filed this case against the appellant because of his refusal to continue with their illicit relations. The spontaneity of all her acts after the rape, namely, running for help to the house of Susan Balunsat without any clothes; rushing to the *barangay* chairman to report her ordeal; reporting the incident to the police authorities; and subjecting herself to a medico-legal examination preparatory to, and in support of, her charging the appellant with rape, completely negates the appellant's scorned woman theory foisted on the Court. We do not believe that AAA would contrive a charge of rape against the appellant and undergo the embarrassment and tribulations of a public trial merely because the appellant had decided to sever their amorous relationship.

6. ID.; ID.; ID.; A LOVE AFFAIR DOES NOT JUSTIFY RAPE, FOR THE BELOVED CANNOT BE SEXUALLY VIOLATED AGAINST HER WILL.— The appellant is burdened to prove with clear and convincing evidence the affirmative defense of consent to a sexual intercourse by AAA. The appellant, to prove his defense, relied solely on his testimony. He failed to corroborate his testimony on the necklace, which AAA denied giving to the appellant. Such defense needs a strong corroboration, which the appellant failed to produce in evidence. No love letter, memento, or pictures were presented by the appellant to prove that such a romantic relationship existed. The sweetheart theory proferred by the appellant hardly deserves attention. Indeed, we have constantly ruled that a love affair does not justify rape, for the beloved cannot be sexually violated against her will. A sweetheart cannot be forced to have sex against her will – love is not a license for lust.

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 Judgment[1] of the Regional Trial Court of Tuao, Cagayan, Branch 11, convicting the appellant Orlando Sonido of rape, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the offended party civil indemnity and moral damages.[2]

On July 8, 1999, an Information was filed charging the appellant with rape, the accusatory portion of which reads:

That on or about July 28, 1998, in the Municipality of xxx, Province of xxx, and within the jurisdiction of this Honorable Court, the said accused, Orlando Sonido *alias* Boyet with lewd design and by the

[1] Penned by Judge Orlando D. Beltran

[2] Docketed as Criminal Case No. 755-T.

use of force, violence, threat, and intimidation, did, then and there willfully, unlawfully, and feloniously have sexual intercourse with the offended party, AAA against her will.

Contrary to law.[3]

Upon arraignment, the appellant, duly assisted by counsel, pleaded not guilty to the charge. Trial ensued thereafter.

The Case for the Prosecution[4]

AAA lived with her young son about ten meters away from the house of her aunt in xxx, xxx, xxx. Her husband was in Alaska. The appellant was her brother-in-law.

At about 8:20 a.m. on July 28, 1998, AAA went to her aunt's house to take a bath as she used to. Her aunt was away and the house was unoccupied. The bathroom door had no lock. While AAA was taking a bath, naked, with her back towards the bathroom door, the appellant surreptitiously entered the bathroom, clad only in his underwear. When she saw the appellant, AAA shouted for help, and called out to her cousin-in-law, Susan Balunsat. In the meantime, the appellant started embracing and kissing her on her face and the breasts; his right hand was atop her right shoulder and his left hand was under her armpit. AAA struggled, and bit his right hand. He then punched her on the lips, and forced her to lie down on the bathroom floor. When she shouted and continued to resist, he punched her again on the pit of her abdomen. AAA was considerably weakened by this blow. He immediately removed his underwear and placed himself on top of her. He then parted her legs with his own and inserted his penis into her vagina and pumped repeatedly.[5] Satiated, he stood up and warned her not to report the incident, otherwise, he would kill her.

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[3] *Rollo,* p. 6.

[4] The prosecution presented two witnesses: Josephine Fontanilla and Susan Balunsat.

[5] TSN, 11 March 1999, p. 7.

After the appellant left, AAA took her clothes and covered her private parts with them. She ran to the house of her cousin-in-law, Susan Balunsat, about twenty meters away, and pleaded for help. Susan noticed that AAA had scratches on the lower side of her breasts and that her hair was disheveled. Susan gave AAA a dress with which to cover herself. AAA then rushed to the house of Susan's uncle-in-law, Barangay Chairman Trinidad Balunsat, and told him that the appellant had just raped her. Barangay Chairman Balunsat accompanied AAA to the Tuao, Cagayan police station where she executed a sworn statement narrating how the appellant consummated the rape against her. Dr. Rowena Cardenas of the Tuao District Hospital examined AAA that same day, and issued a medico-legal certificate bearing the following findings:

1 Superficial abrasions, linear, left breast.
2. IE findings:
   a. negative (-) abrasions over perineal area.
   b. Non-edematous labia.
   c. Vagina admits 2 fingers with ease.
   d. Hymen: positive (+) old, healed lacerations at 2, 3, 4, 6 and 10 o'clock.
   e. Cervix is soft, closed.
   f. Non-gravid uterus.
   g. Negative (-) adnexal tenderness.
   h. Positive (+) scanty, whitish, non-foul smelling vaginal discharge.[6]

The Case for the Defense

The appellant admitted that he had sexual intercourse with AAA but alleged that she consented to it. He testified that he and AAA became lovers as early as the first part of 1997, after her live-in partner left for abroad. AAA gave him a necklace as proof of their love on January 18, 1998. The appellant produced the said necklace with a cross pendant in court. According to the appellant, he and AAA indulged only in kisses and embraces at the initial stage of their relationship. They first had sexual intercourse in the house of her aunt on July 26, 1998. AAA even asked him to massage her back after *coitus*. They again

had sexual intercourse on July 28, 1998, at AAA's insistence. AAA even went to her aunt's house, knowing that he was there cleaning at that time. The appellant obliged and they had sexual intercourse in the kitchen. He told AAA afterwards that it would be their last encounter, as he was terminating their relationship. AAA refused, and was so infuriated that she charged him with rape.

BBB, the appellant's wife and AAA's younger sister, testified that in the morning of July 28, 1998, she asked her sister AAA to help her clean the corn plants located about three hundred (300) meters from their aunt's house. AAA refused, saying that she was going to wash clothes. BBB then left her sister and her husband in her aunt's house. When she returned, the appellant was not at home and had gone to Alcala, Cagayan. Susan told her that her husband had raped AAA. BBB also testified that AAA envied her, because it was she who was favored by their aunt. She described AAA as a wanton woman, who habitually took a bath outside the house with only her panties, exposing herself to public view.

After the appellant rested his case, the prosecution presented AAA anew as rebuttal witness. She denied having any sexual liaison with the appellant and giving him a gold necklace with a cross pendant. She also denied taking a bath outside the house, and claimed that she usually bathed in her aunt's house because there was no bathroom in her own. She further denied having sexual intercourse with the accused on July 26, 1998, and insisted that it was only on July 28, 1998, when the accused raped her, that they had any sexual contact.

On March 15, 2001, the trial court rendered a decision, the decretal portion of which reads:

> WHEREFORE, in view of all the foregoing, the Court finds the accused ORLANDO SONIDO *y* Valiente guilty beyond reasonable doubt of the crime of RAPE, defined and penalized under Article 266-A, No. 1 (a), in relation to Article 266-B, both of the Revised Penal Code,

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

as amended by Republic Act No. 8353, and hereby sentences him to suffer the penalty of *reclusion perpetua*.

The Court further sentences the accused ORLANDO SONIDO *y* Valiente to pay the offended party AAA (*sic*) the amount of Fifty Thousand (₱50,000.00) pesos as civil indemnity, and Fifty Thousand (₱50,000.00) Pesos as moral damages.

SO ORDERED.[7]

The Present Appeal

The appellant now appeals the decision, contending as follows:

I

THE COURT *A QUO* ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE EVIDENCE PRESENTED BY THE ACCUSED-APPELLANT.

II

THE COURT *A QUO* ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[8]

The appellant avers that it was highly improbable for him to have raped AAA inside the bathroom of their aunt's house because the said bathroom measured only two (2) meters by two (2) meters, with a toilet bowl on the northern side. He asserts that the physical circumstances surrounding the alleged rape made the same improbable. He also avers that considering the short distance between the house of AAA's aunt and those of her neighbors, the latter would have heard AAA's shouts, which she alleged she did upon seeing the appellant enter the bathroom. The fact that the neighbors did not hear her greatly casts doubt on the rape that the appellant allegedly committed. Finally, the appellant contends that AAA's claim that she resisted the sexual assault on her by the appellant is negated by the medical certificate

[7] *Rollo*, pp. 20-21.

[8] *Id*. at 39.

issued by Dr. Rowena Cardenas, which does not show any injury on her upper lips.

The Ruling of the Court

The contentions of the appellant hold no water.

We reiterate the following standard in reviewing an appeal from a conviction of rape:

> In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[9]

AAA's testimony was direct, candid, and replete with details of the rape. She was consistent and straightforward in her answers during the direct-examination and cross-examination. She did not waver in her testimony as to how the accused entered the bathroom, embraced and kissed her, and how she shouted and boxed the appellant, in her effort to resist his sexual advances. She clearly described how the appellant forcibly made her lie down on the floor, laid on top of her, and parted her legs with his own to finally consummate his lustful designs.

The rule in rape cases is that the testimony of the complainant is credible where no strong ulterior motive for falsely testifying against the accused is shown.[10] In prosecutions for rape, conviction or acquittal virtually depends entirely on the credibility of the victim's testimony because of the fact that only the participants can testify to its occurrence.[11] The victim's testimony alone, if credible, is sufficient to convict the accused of the crime. Josephine's testimony is such kind of testimony.

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[9] *People v. Sambrano,* 398 SCRA 106 (2003).

[10] *People v. Martinez,* 350 SCRA 537 (2001).

[11] *People v. Ching,* 240 SCRA 267 (1995).

It was not physically impossible for the appellant to have raped AAA in a bathroom, two (2) meters by two (2) meters in size, with a toilet bowl on the northern side thereof. A rape can be consummated in the confines of a small bathroom. In this case, the bathroom door had no lock, and the appellant was able to open the door easily. It was not then physically impossible for AAA to have been forced to lie down inside the bathroom so that the appellant could consummate his bestial desire, with her feet protruding from the bathroom's entrance.

The appellant's insistence that the prosecution failed to prove that Josephine struggled and resisted is belied by her testimony, *viz*:

Q Madam Witness, when the accused entered the bathroom, you did not utter anything, is it not?
A I did not say anything but I shouted.

COURT
Q Where did you shout?
A Inside the bathroom, Sir.

Q What did you say when you shouted?
A I was calling for help shouting the name of Susan Balunsat.

Q How many times did you shout?
A Many times, Sir.

COURT
Proceed.

ATTY. LIGAS
Q When did you shout, Madam Witness, when the accused embraced you or when you noticed that the accused entered the bathroom?
A When I saw the accused entered (*sic*) the bathroom that's the time I shouted by (*sic*) the name of Susan.

Q At the time the accused entered the bathroom, you are (*sic*) still holding the water bucket, is it not?
A Yes, Sir.

Q But you did not smash the face of the accused, is it not?
A The tabu felt (*sic*) when he embraced me, Sir.

Q But you did not also scratch his face, is it not?
A I just boxed the accused, Sir.

Q How many times did you box the accused?
A Many times because I was struggling, Sir.

Q Was he able to hold your body against himself when you struggled?
A Yes, Sir.

Q Where did he place his right arm?
A The right hand was placed on my left shoulder, Sir.

Q When you struggled, Madam Witness, is (*sic*) there not a chance when you were about to extricate yourself from the accused?
A No chance, Sir.

COURT
Q But did you try to extricate yourself?
A Yes, Sir.

COURT
Proceed.

ATTY. LIGAS
Q But you did not suffer any injury on your shoulder at the time you grappled with him, is it not?
A It was only my upper lip, Sir.

COURT
Q Why did you have that injury on your upper lip?
A I suffered the injury when I bit his wrist and he hit it against my mouth.

Q You said awhile (*sic*) ago during the direct examination that you bit the accused on his right hand, is it not?
A Yes, Sir, the right wrist.

COURT
Proceed.

ATTY. LIGAS
Q You said a while ago that he kissed you, is it not?
A Yes, Sir.

Q What part of your body did the accused kiss?
A My face and my breast, Sir.

Q What particular part of your face (*sic*) the accused kiss?
A All over my face, Sir.

PROS. BACULI
Already answered.

ATTY. LIGAS
Q But you did not attempt to bite the mouth or the tongue of the accused, is it not?
A No, Sir, but I kept on struggling.

Q Approximately, Madam Witness, how many seconds or minutes did the struggling between you and the accused take place?
A Eight (8) minutes, Sir.

Q You did not try to kick the balls of the accused while you were struggling?
A No, Sir.

COURT
Q Did you think of kicking or boxing the accused while you were struggling?
A I did not think of that, Sir.

COURT
Proceed.

ATTY. LIGAS
Q What was the color of the brief of the accused?
A White, Sir.

Q Madam witness, when did the accused remove his brief, at the time that you were struggling with each other or when you were laid on the floor?

PROS. BACULI
Already answered. The accused already removed his brief when he was on top and he boxed the stomach of the witness.

ATTY. LIGAS
Q Madam witness, on (*sic*) what part of the bathroom where (*sic*) you laid by the accused?
A My head is in the south direction.

Q How did (*sic*) the accused able to lay you on the floor of the bathroom?
A He forcibly pushed me down, Sir.

COURT
Q Was he still hodling (*sic*) your both hands when he forced you to lay down?
A Yes, Sir.

ATTY. LIGAS
Q What part of your body was (*sic*) first hit the floor when the accused lay (sic) you down on the floor of the bathroom?
A My head, Sir.

COURT
Q Did you feel him ejaculate inside your genital?
A Yes, Sir.

COURT
Proceed.

ATTY. LIGAS
Q Madam Witness, when your head hit the floor, it is (*sic*) done with force, is it not?
A Yes, Sir.

Q What happened after you were laid by the accused on (*sic*) that manner?
A He boxed my stomach, Sir.

Q Which came first, Madam Witness, the fact that you were laid by the accused or . . . may I withdraw the question. Now, when you were laid by the accused on the floor of the bathroom, what did you do?
A I felt weak but still continue (*sic*) to struggle, Sir.

Q Will you describe to us the way you struggled when you were on the floor?
A I kept on boxing with both hands, Sir.

Q You did not kick him?
A No, Sir.

COURT
Q Why did the accused to have (*sic*) forcibly part your legs?
A Because I did not like to open my legs, Sir.

COURT
Proceed.

ATTY. LIGAS
Q But is it not true that he did not also box your legs?
A No, Sir.

Q So you can (*sic*) still use two (2) legs from preventing his desire?

PROS. BACULI
Already answered.

COURT
Witness may answer.

A I did not think of that anymore, Sir.
I have (*sic*) my two (2) legs together.[12]

AAA's tenacious struggle and resistance were corroborated by Susan Balunsat who testified that she saw AAA running and crying for help, totally naked and with small scratches on her breasts and with her hair disheveled. Her testimony reads:

COURT:
Q When the private complainant ran towards your house, you were unaware of anything (*sic*) happened?
A I did not know yet but she told me that she was raped by Boyet Sonido, Sir.

Q How far is your house from the house of AAA?
A Around 9 to 10 meters, Sir.

Q So AAA came from her house?

FISCAL BACULI:
Objection, no basis, Your Honor.

COURT:
Witness may answer.

A I don't know from (*sic*) where she came from, she just ran to our house, Sir.

Q What direction is the house of the private complainant in relation to your house?

[12] TSN, 14 March 2000, pp. 18-24.

A Our house is east from the house of AAA, Sir.

Q You mentioned while (*sic*) ago that you noticed small scratches from (*sic*) the private complainant, where are these scratches located?
A Here, Sir (The witness pointing below the right breast to the left)

Q What is (*sic*) the appearance of the small scratches?
A It looked like scratches from the finger nails (*sic*), Sir.

Q How long have you talked (*sic*) with the private complainant when she came to ask for help?
A Around 20 to 30 minutes because I gave her clothes to use, Sir.[13]

... ...

ATTY. LIGAS:
Q You stated in your prior testimony that the private complainant asked for your help?
A Yes, Sir.

Q What was the first word she uttered?
A She said, Susan Ading, help me.

COURT:
Q How are you related to the *Barangay* Captain?
A He is my uncle-in-law, Sir.

COURT:
Proceed.

ATTY. LIGAS:
Q When the private complainant uttered those words she did not mention the caused (*sic*)?
A She told me that she was raped by Boyet, Sir.

Q What is (*sic*) your reaction when she told you that she was raped?
A I cried because I saw her appearance, Sir.

Q When she uttered those words to you, will you describe the manner she uttered those words?

[13] TSN, 8 May 2000, pp. 6-7.

A She said, *"Ading ko, Ading ko,* help me*"* and she was crying and trembling, Sir.

Q In what particular place in your house were you washing your clothes when the private complainant ran to your house?
A Beside our kitchen near the pump well, Sir.

Q On that date, July 28, 1998, being (*sic*) neighbor of the accused, do you have (*sic*) any occasion that you have seen him on that day?
A None, Sir.

Q How about the wife of the accused, have you seen her on that day?

FISCAL BACULI:
Objection, incompetent.

COURT:
Witness may answer.

A No, Sir.

Q Did you stay in your house in the entire duration of that day?
A Yes, Sir.[14]

Besides, proof of external injuries inflicted on the complainant is not indispensable in a prosecution for rape committed with force or violence. Proof of injury is not an element of rape.[15] The resistance on the part of the victim need not be carried to the point of inviting death or sustaining physical injuries at the hand of the rapist. It suffices that the coitus takes place against her will, or that she yields because of genuine apprehension of great harm.[16]

The allegation that AAA's neighbor heard no shouts has no leg to stand on either. AAA's violation happened in an enclosed bathroom, which muffled the sounds of her struggle. Moreover, the appellant punched her twice in the abdomen to prevent her

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

[15] *People v. Gonzaga*, 364 SCRA 689 (2001).

[16] *People v. Sagaysay*, 308 SCRA 455 (1999).

from calling for help. We find it natural and in accord with ordinary human experience for a woman to weaken after suffering a blow on the pit of her stomach, thus, disabled from either continuing her struggle or shouting for help.

We are also not persuaded by the appellant's allegation that AAA is a scorned woman, who falsely filed this case against the appellant because of his refusal to continue with their illicit relations. The spontaneity of all her acts after the rape, namely, running for help to the house of Susan Balunsat without any clothes; rushing to the *barangay* chairman to report her ordeal; reporting the incident to the police authorities; and subjecting herself to a medico-legal examination preparatory to, and in support of, her charging the appellant with rape, completely negates the appellant's scorned woman theory foisted on the Court.[17] We do not believe that AAA would contrive a charge of rape against the appellant and undergo the embarrassment and tribulations of a public trial merely because the appellant had decided to sever their amorous relationship.[18]

The appellant is burdened to prove with clear and convincing evidence the affirmative defense of consent to a sexual intercourse by AAA.[19] The appellant, to prove his defense, relied solely on his testimony. He failed to corroborate his testimony on the necklace, which AAA denied giving to the appellant. Such defense needs a strong corroboration, which the appellant failed to produce in evidence. No love letter, memento, or pictures were presented by the appellant to prove that such a romantic relationship existed. The sweetheart theory proferred by the appellant hardly deserves attention.[20] Indeed, we have constantly ruled that a love affair does not justify rape, for the beloved cannot be sexually violated against her will.[21] A sweetheart cannot

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[17] *People v. Cepeda*, 324 SCRA 290 (2000); *People v. Perez*, 296 SCRA 17 (1998).

[18] *People v. Taneo*, 284 SCRA 251 (1998).

[19] *People v. Cepeda, supra*.

[20] *People v. Venerable*, 290 SCRA 15 (1998).

[21] *People v. Akhtar*, 308 SCRA 725 (1999).

be forced to have sex against her will — love is not a license for lust.[22]

We affirm the appellant's conviction for simple rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and the penalty of *reclusion perpetua* by the trial court on the appellant.

As to damages, the trial court correctly awarded civil indemnity in the amount of fifty thousand pesos (₱50,000) upon the finding of the fact of rape, and fifty thousand pesos (₱50,000)[23] as moral damages without the need for pleading or proof of the basis thereof.

IN LIGHT OF ALL THE FOREGOING, the appealed Decision of the Regional Trial Court of Tuao, Cagayan, Branch 11, is *AFFIRMED in toto.* Costs against the appellant.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 152947. July 7, 2004]

EAST ASIA TRADERS, INC., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the DIRECTOR, LANDS MANAGEMENT BUREAU,** *respondent*.

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[22] *People v. Loyola*, 351 SCRA 263 (2001).

[23] *People v. Lizada*, 396 SCRA 62 (2003).

SYNOPSIS

Galileo Landicho's application for Free Patent which covered Lot No. 4355 was approved on March 6, 1987 and Free Patent No. 1516 was thereafter issued in his name. The property was subsequently registered in his name under Original Certificate of Title (OCT) No. P-3218 . Then, the following year, he sold the same land to Teresita Reyes who, subsequently, sold it to petitioner East Asia Traders, Inc. On March 9, 1998, the Republic of the Philippines, respondent, through the Director of the Lands Management Bureau, filed with the Regional Trial Court (RTC) of Tanauan, Batangas, a complaint for reversion and cancellation of Free Patent No. 1516, OCT No. P-3218 and its derivative titles (TCT No. 36341 and TCT No. 38609). Respondent alleged that the petitioner and its predecessors-in-interest procured their certificates of title through fraud and misrepresentation; that the lot is inalienable because the DENR investigation disclosed that it was intended by the government for the construction of a national road; that the titles of petitioner and its predecessors-in-interest are null and void and should be cancelled and, therefore, Lot 4355 should be reverted to the State. Instead of filing an answer, petitioner moved to dismiss the complaint on the following grounds: (1) the cause of action has prescribed; (2) *litis pendentia*; and (3) the complaint fails to state a sufficient cause of action. The RTC denied petitioner's motion to dismiss for lack of merit and his subsequent motion for reconsideration. Petitioner's petition for *certiorari* and prohibition with prayer for issuance of a temporary restraining order and a writ of preliminary injunction was likewise dismissed by the Court of Appeals. Hence, this petition for *certiorari*.

In denying the petition, the Supreme Court found no grave abuse of discretion committed by the RTC in denying petitioner's motion to dismiss. Firstly, basic as a hornbook principle is that prescription does not run against the government. Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. The right of reversion or reconveyance to the State is not barred by prescription. Secondly, when a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should be based only on the facts alleged in the complaint. The court must pass upon this issue based solely on such allegations, assuming them

to be true. For to do otherwise would be a procedural error and a denial of petitioner's right to due process. Here, the Court had reviewed very carefully respondent's allegations in its complaint and found these allegations sufficient to constitute a cause of action for reversion.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; NOT PROPER REMEDY TO ASSAIL DENIAL OF THE MOTION TO DISMISS.— The petition for *certiorari* and prohibition filed by petitioner with the Court of Appeals is not the proper remedy to assail the denial by the RTC of the motion to dismiss. *The Order of the RTC denying the motion to dismiss is merely interlocutory.* An interlocutory order does not terminate nor finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. It is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This proceeds from the court's inherent power to control its process and orders so as to make them conformable to law and justice. The only limitation is that the judge cannot act with grave abuse of discretion, or that no injustice results thereby.

2. ID.; CIVIL PROCEDURE; MOTION TO DISMISS; MATTERS WHICH REQUIRE PRESENTATION OR DETERMINATION OF FACTS RAISED THEREIN CAN BE BEST RESOLVED AFTER TRIAL ON THE MERITS.— The Court of Appeals *erred* in concluding that Lot 4355 "is considered inalienable land of the public domain"; and that "since the sale of the land subject of this case in favor of petitioner East Asia Traders, Inc. is null and void and of no legal force and effect, it did not acquire any right over the land whatsoever." In reaching this conclusion, the *Court of Appeals actually decided the entire case summarily, unmindful that the only incident before it for resolution is petitioner's motion to dismiss.* In *Parañaque Kings Enterprises, Inc. vs. Court of Appeals*, we held that matters which require presentation and/or determination of facts raised in a motion to dismiss can be best resolved after trial on the merits, thus: x x x. "x x x, we find no more need to pass upon the question of whether the complaint states a cause of action for damages or whether the

complaint is barred by estoppel or laches. As *these matters require presentation and/or determination of facts, they can be best resolved after trial on the merits.* x x x, private respondents cannot be denied their day in court. While, in the resolution of a motion to dismiss, the truth of the facts alleged in the complaint are theoretically admitted, such admission is merely hypothetical and only for the purpose of resolving the motion. *In case of denial, the movant is not to be deprived of the right to submit its own case and to submit evidence to rebut the allegation in the complaint.* Neither will the grant of the motion by a trial court and the ultimate reversal thereof by an appellate court have the effect of stifling such right. *So too, the trial court should be given the opportunity to evaluate the evidence, apply the law and decree the proper remedy. Hence, we remand the instant case to the trial court to allow private respondents to have their day in court*." Clearly, the Court of Appeals should not have ruled outright that Lot 4355 is inalienable. This could be best resolved only after trial on the merits.

3. ID.; ID.; MOTION TO DISMISS BASED ON LACK OF CAUSE OF ACTION; RULING THEREON SHOULD BE BASED ONLY ON THE FACTS ALLEGED IN THE COMPLAINT; COURT CANNOT TAKE COGNIZANCE OF EXTERNAL FACTS OR HOLD PRELIMINARY HEARINGS TO ASCERTAIN THEIR EXISTENCE.— When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should be based only on the facts alleged in the complaint. The court must pass upon this issue based solely on such allegations, assuming them to be true. For to do otherwise would be a procedural error and a denial of petitioner's right to due process. In *China Road and Bridge Corporation vs. Court of Appeals,* we ruled: "It is well settled that in a *motion to dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations assuming them to be true.* The *court does not inquire into the truth of the allegations and declare them to be false, otherwise it would be a procedural error and a denial of due process* to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence. To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not,

admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint."

4. ID.; ID.; ID.; ID.; RESPONDENT'S ALLEGATIONS IN ITS COMPLAINT ARE SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION FOR REVERSION IN CASE AT BAR.— We reviewed very carefully respondent's allegations in its complaint. In a nutshell, respondent alleged that the defendants (herein petitioner and its predecessors-in-interest) procured their certificates of title through fraud and misrepresentation; that the lot is inalienable because the DENR investigation disclosed that it was intended by the government for the construction of a national road; that defendants' titles are null and void and should be cancelled and, therefore, Lot 4355 should be reverted to the State. These allegations are sufficient to constitute a cause of action for reversion.

5. CIVIL LAW; LAND TITLES AND DEEDS; RIGHT OF REVERSION OR RECONVEYANCE TO THE STATE IS NOT BARRED BY PRESCRIPTION.— Basic as a hornbook principle is that *prescription does not run against the government*. In *Reyes vs. Court of Appeals*, we held: "In so far as the timeliness of the action of the Government is concerned, it is basic that *prescription does not run against the State*. x x x The case law has also been: '*When the government is the real party in interest, and is proceeding mainly to assert its own rights and recover its own property, there can be no defense on the ground of laches or limitation.*' x x x 'Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. *Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The right of reversion or reconveyance to the State is not barred by prescription*."

APPEARANCES OF COUNSEL

King Capuchino Tan & Associates for petitioner.
The Solicitor General for respondent.

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 November 26, 2001 and the Resolution[2] dated April 9, 2002, both rendered by the Court of Appeals in CA-G.R. SP No. 59627, *"East Asia Traders, Inc. vs. Hon. Regional Trial Court (RTC), Tanauan, Batangas, Branch 83, and Republic of the Philippines, represented by the Director of Lands Management Bureau."*

The factual antecedents as borne by the records are:

On December 15, 1986, Galileo Landicho filed with the Bureau of Lands, District Office at Lemery, Batangas, Free Patent Application No. 1427. This application [3] covers Lot No. 4355 consisting of 00.1312 hectare situated in Niogan, Laurel, Batangas. On March 6, 1987, then Acting District Land Officer Constante Asuncion, approved[4] the application and issued Free Patent No. 1516 in Landicho's name. Subsequently or on January 22, 1988,

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[1] Penned by Justice Sergio L. Pestaño and concurred in by Justice Conchita Carpio Morales, then Chairman of the Ninth Division, Court of Appeals, now Justice of this Court, and Justice Martin S. Villarama, Jr. Annex "A", Petition, *Rollo* at 36-47.

[2] Annex "B", *id*. at 48-49.

[3] Galileo Landicho, in his patent application, claimed that he occupied, cultivated and planted coffee, banana and root crops on the subject land since 1944. Pursuant to R.A. No. 782, the following documents were attached to his application: (1) Joint Affidavit executed by Hugo Medina and Maxima Roxas, attesting to Landicho's occupancy of the land since July 4, 1945; (2) Affidavit on Confirmation of Sale executed by Leovigildo Landicho, Galileo's predecessor-in-interest; and (3) Attestation submitted by applicant Landicho regarding his compliance with the posting of the notice of his free patent application from December 15 to 30, 1986.

[4] The approval of Landicho's free patent application was inscribed as Entry No. IV-3-A.

the Registry of Deeds of Tanauan, Batangas issued to him Original Certificate of Title (OCT) No. P-3218.

On June 7, 1989, Landicho sold the lot to Teresita Reyes. Forthwith, Landicho's OCT No. P-3218 was cancelled by the same Registry of Deeds and in lieu thereof, TCT No. 36341 was issued in the name of Teresita Reyes. In turn, on June 7, 1990, Reyes sold the same lot to East Asia Traders, Inc., *petitioner*, represented by its Vice-President, Betty Roxas Chua. Consequently, the Register of Deeds cancelled TCT No. 36341 in the name of Reyes and in lieu thereof, issued TCT No. 38609 in the name of petitioner.

Meanwhile, the Department of Environment and Natural Resources (DENR), pursuant to Section 91 of Commonwealth Act No. 141, as amended,[5] conducted an investigation to ascertain the truth of the material facts alleged in various free patent applications or whether they are maintained and preserved in good faith. The investigation covered several parcels of land, including Lot 4355. The DENR found that at the time Landicho

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[5] Section 91 of Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act, provides:

"Section 91. The statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statement therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted. It shall be the duty of the Director of Lands, from time to time and whenever he may deem it advisable, to make the necessary investigations for the purpose of ascertaining whether the material facts set out in the application are true, or whether they continue to exist and are maintained and preserved in good faith, xxx In every investigation made in accordance with this section, the existence of bad faith, fraud, concealment, or fraudulent and illegal modification of essential facts shall be presumed if the grantee or possessor of the land shall refuse or fail to obey a subpoena or subpoena *duces tecum* lawfully issued by the Director of Lands or his authorized delegates or agents, or shall refuse or fail to give direct and specific answers to pertinent questions, and on the basis of such presumption, an order of cancellation may issue out further proceedings."

applied for a free patent, Lot 4355 was inalienable, being a property of public dominion intended to be used as a national road.

This prompted the Republic of the Philippines, *respondent*, through the Director of the Lands Management Bureau to file, on March 9, 1998, with the Regional Trial Court (RTC), Branch 83, Tanauan, Batangas, a complaint for reversion and cancellation of Free Patent No. 1516, OCT No. P-3218 and its derivative titles (TCT No. 36341 and TCT No. 38609), docketed as Civil Case No. CT-98-001. Impleaded as defendants were petitioner East Asia Traders, Inc., Landicho, Reyes, and the Register of Deeds of Tanauan, Batangas.

Instead of filing an answer, petitioner, on September 14, 1998, filed a motion to dismiss the complaint on the following grounds: (1) the cause of action has prescribed; (2) *litis pendentia*; and (3) the complaint fails to state a sufficient cause of action.

On January 11, 2000, the RTC issued an Order denying *petitioner's motion to dismiss* for lack of merit. Petitioner's motion for reconsideration was likewise denied in its Order dated May 31, 2000.

Petitioner then filed with the Court of Appeals a petition for *certiorari* and prohibition (with prayer for issuance of a temporary restraining order and a writ of preliminary injunction) seeking to nullify the trial court's (1) Order dated January 11, 2000 denying petitioner's motion to dismiss; and (2) Order dated May 31, 2000 denying it's motion for reconsideration.

On November 26, 2001, the Appellate Court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the herein 'Petition for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction' is *DENIED DUE COURSE* and, accordingly, DISMISSED, for lack of merit. The assailed Orders dated January 11, 2000 and May 31, 2000 of the Regional Trial Court, Branch 83, Fourth Judicial Region, Tanauan, Batangas, are *UPHELD* and *REITERATED*.

SO ORDERED."

The Court of Appeals ratiocinated as follows:

"As to the first ground for the petition, petitioner East Asia Traders, Inc. contends that respondent court committed an error when it denied its Motion to Dismiss despite the fact that prescription had already set in against the State.

As alleged in the complaint, Galileo Landicho's application for Free Patent was approved on March 6, 1987 and subsequently registered under his name. Then, the following year, he sold the same land to Teresita Reyes who, subsequently, sold it to petitioner East Asia Traders, Inc. Gathered from the foregoing events, *it is now the contention of petitioner that the action for reversion filed by respondent Republic of the Philippines is already barred by prescription since it only filed the action for reversion on March 9, 1998, eleven (11) years after the registration of the land in question.*

We are not swayed by the argument proffered by the petitioner, simply because *prescription does not lie against the State* xxx.

And as provided in *Article 1113 of the Civil Code*: 'All things which are within the commerce of men, are susceptible of prescription, unless otherwise provided. *Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription*.'

To our mind, respondent Republic could not have been more correct when it cited *Article 1108 (4) of the Civil Code*, which provides that *prescription, both acquisitive and extinctive, does not run against the State and its subdivisions* xxx.

As to the second ground, respondent Republic correctly pointed out in its complaint that the *subject land sought to be retained by petitioner is inalienable* because subsequent investigations conducted by the DENR disclosed that the *land in question was a private land taken by the government for the construction of a national road.* Being private land, even if it belongs to the government, the same is not covered by Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act *much less can it be disposed of by the Bureau of Lands by a free patent* under Chapter VII of said Act, and even assuming that there was re-routing of the national road, the land remains under the control of the Department of Public Works and Highways (DPWH); and *even if the DPWH does not need the land anymore for road purposes, the same does not become*

available for application or appropriation by any private party until and unless officially released for that purpose, and even then the land can be disposed of only by sale or lease thru public bidding. Thus, the *property in question is considered inalienable land of the public domain.*

What respondent Republic is trying to point out was that the petitioner, through fraud and/or misrepresentation, was able to procure title to the land, as in fact, there was no record of any final investigation report in the folder of the application, nor was there any indication written in the summary of the survey data that the land in question was claimed during the cadastral survey. As stated by respondent Republic, the *object of the complaint it filed was to cancel the title issued to defendant Galileo Landicho for being void* **ab initio** *pursuant to Section 91 of the Public Land Act*. Apparently, the Director of Lands was misled into issuing patents over the land; therefore, the patents and corresponding certificates of title are immediately infected with jurisdictional flaw, which warrants the institution of suits to revert lands to the State xxx. Hence, *its complaint stated a valid cause of action.*

With respect to the third ground for the petition, We hold that while it is true that the land in question used to be privately owned, it was converted into public land when it was acquired by the State through the Department of Public Works and Highways for the construction of a national road. Respondent Republic maintains that *the land being public land, reserved for a specific public purpose, the same cannot be the subject of private ownership as it is beyond the commerce of man. Even if the proposed national road was re-routed elsewhere, it did not change the character of the land classified as public land* xxx:

xxx xxx xxx

But more importantly, even *assuming,* **arguendo**, *that Galileo Landicho's Free Patent No. (IV-3-A) 1516 and his Original Certificate of Title (O.C.T.) No. P-3218 issued on March 6, 1987 were valid,* the *sale to Teresita Reyes* of the property *on June 7, 1989* and her Transfer Certificate of Title (T.C.T.) No. T-36341 issued pursuant thereto, *as well as Reyes' sale thereof to petitioner East Asia Traders, Inc. on June 7, 1990* and its title, T.C.T. No. T-38609 subsequently issued, *were all unlawful and null and void, as the acquisition, conveyance, alienation, and transfer of the property were made and executed within five (5) years from the*

issuance of Landicho's free patent and title on March 6, 1987, in flagrant violation of Sections 118 and 124 of the Public Land Act (Com. Act No. 141) xxx:

xxx xxx xxx

Hence, since the sale of the land subject of this case in favor of petitioner East Asia Traders, Inc. was null and void and of no legal force and effect, it did not acquire any right over the land whatsoever.

Consequently, respondent Regional Trial Court did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its assailed Orders denying petitioner's motion to dismiss and motion for reconsideration in Civil Case No. CT-98-001."

Petitioner then filed a motion for reconsideration but was denied by the Appellate Court in its Resolution dated April 9, 2002.

Petitioner, in the instant petition, submits for our resolution the following issues:

"I

WHETHER OR NOT PRESCRIPTION HAS ALREADY SET IN AGAINST THE STATE.

II

WHETHER A PRIVATE LAND, THE SUBJECT MATTER OF THE INSTANT PETITION, CAN BE THE PROPER SUBJECT OF REVERSION PROCEEDINGS.

III

WHETHER OR NOT THE COMPLAINT FILED BY THE RESPONDENT STATES A CAUSE OF ACTION AGAINST PETITIONER DESPITE ITS FAILURE TO ALLEGE THEREIN THAT PETITIONER WAS A BUYER IN BAD FAITH OR HAD KNOWLEDGE OF THE DEFECT OR FLAW IN THE TITLE OF ITS PREDECESSORS-IN-INTEREST."

Petitioner contends that *respondent's action for reversion*, filed only on March 9, 1998 or more than 11 years after the approval and issuance of a free patent by the Bureau of Lands, is already *barred by prescription*. Respondent's *complaint states*

no cause of action, not only because it *failed to allege* that Lot 4355 was acquired in *bad faith* and with *notice of defect or irregularity in its title*, but also because the same *lot has become a private land* and *ceased to be part of the public domain* after the registration of the patent and the issuance of the corresponding certificate of title. Moreover, *TCT No. 38609* issued by the Register of Deeds in its name, being one of the derivative titles of OCT No. P-3218 registered on the basis of a free patent, became *indefeasible after the lapse of one year* as provided in Section 32 of P.D. No. 1529 (formerly Act No. 496, §38).[6] Petitioner then maintains that the Appellate Court should not have sustained the trial court's denial of the motion to dismiss.

In his comment, the Solicitor General asserts that the State, in an action for reversion of inalienable land of the public domain, is not bound by prescription or laches for public policy requires an unimpeded exercise of its sovereign function. Petitioner's defense of indefeasibility of a certificate of title is not tenable considering that TCT No. 38609 issued in its name is void *ab initio* and does not form part of the Torrens system. The Solicitor General, citing Section 118 in relation to Section 124 of the Public Land Act, further asserts that the sale of the subject lot within the 5-year prohibited period, being unlawful, nullifies the patent originally issued and justifies the reversion of the property to the State.

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[6] Section 38, Act No. 496, otherwise known as "The Land Registration Act," provides:

"SEC. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. *Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof*, xxx subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance (now *Regional Trial Court) a petition for review within one year after entry of the decree*, provided no innocent purchaser for value has acquired an interest. *Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible* xxx."

Petitioner basically contends before the Court of Appeals that the RTC acted without or in excess of jurisdiction or with grave abuse of discretion when it denied the motion to dismiss the complaint in Civil Case No. CT-98-001.

The petition for *certiorari* and prohibition filed by petitioner with the Court of Appeals is not the proper remedy to assail the denial by the RTC of the motion to dismiss. *The Order of the RTC denying the motion to dismiss is merely interlocutory.* An interlocutory order does not terminate nor finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. It is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This proceeds from the court's inherent power to control its process and orders so as to make them conformable to law and justice. The only limitation is that the judge cannot act with grave abuse of discretion, or that no injustice results thereby.[7]

In *Indiana Aerospace University vs. Commission on Higher Education*,[8] we held:

> "*An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of certiorari is not intended to correct every controversial interlocutory ruling*; it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts — acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts."

Assuming that *certiorari* is the proper remedy, we find no grave abuse of discretion committed by the RTC in denying

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[7] *Bangko Silangan Development Bank vs. Court of Appeals*, G.R. No. 110480, June 29, 2001, 360 SCRA 322.

[8] G.R. No. 139371, April 4, 2001, 356 SCRA 367, citing *Carandang vs. Cabatuando*, 53 SCRA 383, 390 (1973); *Philippine Rabbit vs. Galanan*, 118 SCRA 664, 667, (1982); and *De Vera vs. Pineda*, 213 SCRA 434, 442, (1992).

petitioner's motion to dismiss. In the same vein, the Court of Appeals did not err in upholding the assailed RTC Order denying the motion to dismiss reproduced below:

"After a careful examination of the records of this case, as well as the contentions of both parties, the court finds no merit to the instant motion to dismiss.

It should be noted that the Civil Case No. T-1061 pending before the RTC of Tanauan, Batangas was not initiated by the Office of the Solicitor General and therefore, the same is not an action brought by the plaintiff, Republic of the Philippines. The inclusion of the Republic of the Philippines as an unwilling co-plaintiff did not make the Republic of the Philippines a party in said civil case.

Further, it is a rule in our jurisdiction that prescription does not lie against the State for the reversion to the public domain of the lands, which have been fraudulently granted to private individuals.

Furthermore, the complaint alleges that the certificates of title on the property subject matter of the complaint having been procured through fraud and misrepresentation are null and void and should therefore be cancelled, clearly states plaintiff's cause of action against defendants.

Lastly, defendants Galileo Landicho, Teresita Reyes and the Register of Deeds of Tanauan, Batangas did not file their respective answers despite receipt of the summons in this case. Hence, they may be declared in default.

WHEREFORE, premises considered, the instant Motion to Dismiss is hereby DENIED for lack of merit.

In the interest of justice, defendant East Asia Trading is given a period of ten (10) days from receipt of this Order within which to file its responsive pleading.

Also, for failure to file their answers, defendants Galileo Landicho, Teresita Reyes and the Register of Deeds of Tanauan, Batangas are hereby declared in default.

SO ORDERED."

A further ratiocination on the issues raised by petitioner shows that indeed the petition is bereft of merit.

I

WHETHER LOT 4355 IS ALIENABLE

We hold that this issue can only be properly determined during the hearing on the merits of Civil Case No. CT-98-001 wherein both parties may present their respective evidence. On this point, the Court of Appeals *erred* in concluding that Lot 4355 "is considered inalienable land of the public domain"; and that "since the sale of the land subject of this case in favor of petitioner East Asia Traders, Inc. is null and void and of no legal force and effect, it did not acquire any right over the land whatsoever." In reaching this conclusion, the *Court of Appeals actually decided the entire case summarily, unmindful that the only incident before it for resolution is petitioner's motion to dismiss.*

In *Parañaque Kings Enterprises, Inc. vs. Court of Appeals*,[9] we held that matters which require presentation and/or determination of facts raised in a motion to dismiss can be best resolved after trial on the merits, thus:

"xxx, we find no more need to pass upon the question of whether the complaint states a cause of action for damages or whether the complaint is barred by estoppel or laches. As *these matters require presentation and/or determination of facts, they can be best resolved after trial on the merits.*

xxx, private respondents cannot be denied their day in court. While, in the resolution of a motion to dismiss, the truth of the facts alleged in the complaint are theoretically admitted, such admission is merely hypothetical and only for the purpose of resolving the motion. *In case of denial, the movant is not to be deprived of the right to submit its own case and to submit evidence to rebut the allegation in the complaint.* Neither will the grant of the motion by a trial court and the ultimate reversal thereof by an appellate court have the effect of stifling such right. *So too, the trial court should be given the opportunity to evaluate the evidence, apply the law and decree the proper remedy. Hence, we remand the instant case to the trial court to allow private respondents to have their day in court."*

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[9] G.R. No. 111538, February 26, 1997, 268 SCRA 727, 746, citing *Home Savings Bank vs. Court of Appeals,* 237 SCRA 360 (1994).

Clearly, the Court of Appeals should not have ruled outright that Lot 4355 is inalienable. This could be best resolved only after trial on the merits.

II

WHETHER IN FILING THE COMPLAINT FOR REVERSION, THE STATE IS BARRED BY PRESCRIPTION

Basic as a hornbook principle is that *prescription does not run against the government.* In *Reyes vs. Court of Appeals*,[10] we held:

"In so far as the timeliness of the action of the Government is concerned, it is basic that *prescription does not run against the State* . . . The case law has also been:

'When the government is the real party in interest, and is proceeding mainly to assert its own rights and recover its own property, there can be no defense on the ground of laches or limitation.' . . .

'Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. *Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The right of reversion or reconveyance to the State is not barred by prescription."*

III

WHETHER THE COMPLAINT IN CIVIL CASE NO. CT-98-001 STATES A CAUSE OF ACTION

When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should be based only on the facts alleged in the complaint. The court must pass upon this issue based solely on such allegations, assuming them to be true. For to do otherwise would be a procedural error and a denial of petitioner's right to due process.

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[10] G.R. No. 94524, September 10, 1998, citing *Republic vs. Court of Appeals*, 171 SCRA 721 (1989).

In *China Road and Bridge Corporation vs. Court of Appeals*,[11] we ruled:

"It is well settled that in a *motion to dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations assuming them to be true.* The *court does not inquire into the truth of the allegations and declare them to be false, otherwise it would be a procedural error and a denial of due process* to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence. To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint."

We reviewed very carefully respondent's allegations in its complaint. In a nutshell, respondent alleged that the defendants (herein petitioner and its predecessors-in-interest) procured their certificates of title through fraud and misrepresentation; that the lot is inalienable because the DENR investigation disclosed that it was intended by the government for the construction of a national road; that defendants' titles are null and void and should be cancelled and, therefore, Lot 4355 should be reverted to the State. These allegations are sufficient to constitute a cause of action for reversion.

In sum, we hold that petitioner's resort to *certiorari* is misplaced. And granting that *certiorari* is the proper remedy, the Court of Appeals correctly ruled that the RTC, in denying petitioner's motion to dismiss, did not commit any grave abuse of discretion.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated November 26, 2001 and the Resolution dated April 9,

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[11] G.R. No. 137898, December 15, 2000, 348 SCRA 401, 408-409, citing *Consolidated Bank and Trust Corp. vs. Court of Appeals*, 197 SCRA 663 (1991); *Rava Development Corporation vs. Court of Appeals*, 211 SCRA 144 (1992); *Perpetual Savings Bank vs. Fajardo*, 223 SCRA 720 (1993); and *D.C. Crystal Incorporation vs. Laya*, 170 SCRA 734 (1989).

2002 of the Court of Appeals in CA-G.R. SP No. 59627 are hereby *AFFIRMED* with modification in its ratiocination. Petitioner is hereby directed to file with the trial court its answer to respondent's complaint within ten (10) days from notice.

SO ORDERED.

Vitug (Chairman) and *Corona, JJ.*, concur.

Carpio Morales, J., took no part.

EN BANC

[G.R. No. 152969. July 7, 2004]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BOBBY ORENSE,** *appellant.*

SYNOPSIS

The penalty of death was imposed upon herein appellant after the Regional Trial Court of Antipolo City found him guilty beyond reasonable doubt of the crime of statutory rape against his three-year old daughter AAA. Hence, this automatic review, where the appellant assailed the credibility of the private complainant, being still a child, to testify.

It is settled that a child, regardless of age, can be a competent witness if he can perceive and, in perceiving can make known his perception to others and that he is capable of relating truthfully the facts for which he is examined. A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully. Here, the complainant, despite her age, was able to respond well to questions that convinced the trial court of her competency to testify. Although her story might lack vividness, her narration,

nevertheless, had sufficiently described the sexual assault on her. During cross-examination, the complainant also did well in maintaining her account of the incident. Far from detracting from her veracity, the minor discrepancies or lapses that might have been committed by the complainant, just to the contrary, would tend to bolster her testimony. Indeed, her narration was corroborated, not only by her mother but significantly, by the findings of the examining physician. Thus, the bare and uncorroborated denial of appellant and his defense of alibi cannot prevail. Accordingly, the Supreme Court affirmed the judgment of conviction, but with modification reducing the penalty imposed upon the appellant to *reclusion perpetua* for failure of the prosecution to prove the age of the complainant.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.— As so often said, this Court, is guided in its review of trial court decisions in rape cases by certain guidelines, *i.e.*, (1) that an accusation for rape can be made with facility; (2) that the crime is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) that, in view of the nature of the offense of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (4) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense. More frequently than not, however, the thrust of the issues focuses on the credibility of the victim. In this respect, great reliance is made on the evaluation made by the trial court because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsel.

2. ID.; ID.; ADMISSIBILITY; QUALIFICATION OF WITNESSES; PHYSICAL DISQUALIFICATION; COMPETENCY OF A CHILD-WITNESS; GUIDELINES; INTELLIGENCE, NOT THE AGE, OF A YOUNG CHILD IS THE TEST OF THE COMPETENCY AS A WITNESS.— Appellant doubts the credibility of AAA, being still a child, to testify. In *People v. Pruna*, the Court has observed: "As a general rule, when a witness takes the witness stand, the law, on ground of public policy,

presumes that he is competent. The court cannot reject the witness in the absence of proof of his incompetency. The burden is, therefore, upon the party objecting to the competency of a witness to establish the ground of incompetency. (VII Vicente J. Francisco, Part I, 234 [1997 Ed.], *citing* Wharton's Criminal Evidence, Section 1152 [11th Ed.]) "Section 21 of Rule 130 of the Rules on Evidence enumerates the persons who are disqualified to be witnesses. Among those disqualified are '[c]hildren whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully.' "No precise minimum age can be fixed at which children shall be excluded from testifying. The intelligence, not the age, of a young child is the test of the competency as a witness. (*Ibid*., p. 242, *citing* 58 Am. Jur. 97.) It is settled that a child, regardless of age, can be a competent witness if he can perceive and, in perceiving, can make known his perception to others and that he is capable of relating truthfully the facts for which he is examined. (*People v. Librando*, 335 SCRA 232, 244 [2000].) "In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness. (2 Florenz D. Regalado, Remedial Law Compendium 608 [2001 Ed.]. *See* also VII Francisco 243, *citing* Wheeler *v.* U.S., 159 U.S. 523.) The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing. (VII Francisco 243, *citing* 3 Jones on *Evidence* 1296-1298.) A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully. (*People v. Virtucio*, 326 SCRA 198, 205 [2000].) "The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding

of the obligation of an oath. (*People v. De la Cruz*, G.R. No. 135022, 11 July 2002, 384 SCRA 375. *See* also *People v. De la Cruz*, 276 SCRA 352, 357 [1997]; *People v. Operana*, 343 SCRA 43, 63 [2000].) Since many of the witness' manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous. (*People v. De la Cruz*, G.R. No. 135022, 11 July 2002, 384 SCRA 375.)"

3. ID.; ID.; CREDIBILITY OF WITNESSES; MINOR DISCREPANCIES OR LAPSES COMMITTED BY THE RAPE VICTIM TEND TO BOLSTER HER TESTIMONY; CASE AT BAR.— The complainant, despite her age, was able to respond well to questions that convinced the trial court of the victim's competency to testify. Appellant suggests that the testimony of AAA might have just been fabricated to suit the rape charge. Although her story might lack vividness, her narration, nevertheless, has sufficiently described the sexual assault on her. During cross-examination, AAA also did well in maintaining her account of the incident. Far from detracting from her veracity, the minor discrepancies or lapses that might have been committed by AAA, just to the contrary, would tend to bolster her testimony. Indeed, her narration was corroborated, not only by BBB (AAA's mother) but, significantly, by the medical report presented by the prosecution; *i.e.*, that blood samples of AAA, belonging to blood type "B", matched with the bloodstains found in appellant's shirt which, according to AAA, appellant used to wipe off the blood from her; that the results of the urinalysis showed that AAA had urinary tract infection; that the hymenal lacerations found could have been caused by the insertion of an object like a penis or a finger; and that AAA showed manifestations of an abused child who had undergone a traumatic event. The fact that there were no signs of physical violence would not militate against the occurrence of rape, proof of external injuries not being indispensable in a prosecution for rape. Clearly, appellant took advantage of his moral ascendancy over his defenseless daughter. Neither would the presence of spermatozoa be essential to prove rape.

4. ID.; ID.; DENIAL; AN INTRINSICALLY WEAK DEFENSE WHICH MUST BE BUTTRESSED BY STRONG EVIDENCE

OF NON-CULPABILITY TO MERIT CREDIBILITY; ALIBI; TO PROSPER, ACCUSED MUST PROVE THAT HE WAS IN ANOTHER PLACE AT THE TIME OF THE COMMISSION OF THE CRIME AND THAT IT WAS IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE AT THE APPOINTED TIME.— The bare and uncorroborated denial of appellant and his defense of *alibi* cannot prevail. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. In order that *alibi* can prosper, not only must an accused prove his being in another place at the time of the commission of the crime, but also that it would have been impossible for him, given the circumstances, to be at the crime scene at the appointed time.

5. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCE OF MINORITY; APPRECIATION OF THE AGE OF THE VICTIM EITHER AS AN ELEMENT OF THE CRIME OR AS A QUALIFYING CIRCUMSTANCE; GUIDELINES.— *People v. Pruna* has set forth the guidelines in the appreciation of the age of the victim, either as an element of the crime or as a qualifying circumstance, *viz*: "1. 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. "2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. "3. If the certificate of live birth or authentic document *is shown to have been lost or destroyed or otherwise unavailable*, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: "a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; "b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; "c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. "4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice *provided*

that it is expressly and clearly admitted by the accused. (*People v. Velasco*, G.R. Nos. 135231-33, 28 February 2001 [353 SCRA 138]; *People v. Remudo*, G.R. No. 127905, 30 August 2001 [364 SCRA 61]; *People v. Llanita*, G.R. No. 134101, 05 September 2001 [364 SCRA 505]; *People v. Agustin*, G.R. Nos. 135524-25, 24 September 2001 [365 SCRA 667].) "5. It is the prosecution that has the burden of proving the age of the offended party. *The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.* "6. The trial court should always make a categorical finding as to the age of the victim."

6. ID.; ID.; ID.; IMPOSITION OF DEATH PENALTY UNWARRANTED WHERE AGE OF THE OFFENDED PARTY WAS NOT SUFFICIENTLY PROVED; CASE AT BAR.— The relationship of the complainant to the appellant was sufficiently proved. BBB testified having been married to appellant. The marriage was twice celebrated, the first on 08 March 1988 at a church in Ermita, Manila and on 16 April 1988 at the San Roque De Manila Parish. A certified true copy of the 08 March 1988 marriage certificate and a duplicate original of the one contracted on 16 April 1988 were presented in court. After due comparison, the photocopies of these documents were duly marked, respectively, Exhibit "A" and Exhibit "B". The prosecution, however, failed to satisfy the *Pruna* test to warrant the imposition of the death penalty. The Certificate of Live Birth of AAA presented to the court is neither an original nor a certified true copy. When BBB took the witness stand, neither was an original or a certified true copy of the birth certificate shown in court to at least compare it with a bare photocopy marked as Exhibit "B". Most importantly, it was not shown that the authentic document had been lost or destroyed or otherwise unavailable required in *Pruna*.

7. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, PROPER.— The civil indemnity of ₱50,000.00 awarded by the trial court is consistent with the prevailing jurisprudence. Additionally, moral damages of ₱50,000.00 must be awarded for in crimes of rape it is to be assumed that the victim has suffered such damages. Exemplary damages of ₱25,000.00 must also be awarded to the victim, the daughter of appellant, as has been sanctioned in *People v. Catubig* pursuant to Article 2230 of the Civil Code.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ernesto M. Prias for accused-appellant.

D E C I S I O N

VITUG, *J.*:

For review before the Court is the decision[1] of the Regional Trial Court, Branch 73, of Antipolo City, finding appellant Bobby Orense guilty beyond reasonable doubt of the crime of statutory rape against his own daughter, AAA, and sentencing him to suffer the penalty of death.

The information, dated 31 March 1997, averred —

"That on or about the 2nd day of March 1997, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, who is his own daughter, a minor three (3) years of age, against her will and consent."[2]

When arraigned, appellant Bobby Orense pled "not guilty" to the charge; whereupon, trial on the merits commenced.

The case for the prosecution. —

The prosecution presented five witnesses, namely: complainant-victim AAA; her mother BBB; examining physician Tomas D. Suguitan; Dr. Olga M. Bausa, who compared the blood samples of the complainant with the bloodstains found on the "*sando*" shirt of appellant; and Dr. Norieta Calma-Balderama, a psychiatrist.

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[1] Per Executive Judge Mauricio M. Rivera.

[2] RTC Records, p. 1.

AAA identified her father, appellant Bobby Orense, in open court. She testified that her father, whom she curtly called "*bastos*," did something bad to her and that she prayed that "her father be sent to jail." She said that she had seen the penis of appellant which he had inserted into her vagina several times. When she bled, appellant wiped the blood off with his shirt and then licked her private parts. When asked about her age, she answered that she was four years old.

BBB, mother of AAA, confirmed being married to appellant Bobby Orense, their marriage twice solemnized, on 08 March 1988[3] and on 16 April 1988,[4] and that complainant AAA was born on 08 October 1993 per her birth certificate.[5] The family lived in xxx Street, xxx Village, Brgy. xxx, xxx, xxx. BBB was not home in the afternoon of 02 March 1997. Returning home at six o'clock that evening, she noticed that AAA was unusually quiet (*matamlay*). Around noontime the following day, AAA, who just had a bowel movement, complained of pains in her private parts while BBB was giving her a bath. It was then when she learned for the first time of the rape incident. For about a week, BBB had the same observation whenever she would give AAA a bath. AAA also complained of frequent stomach pains and difficulty in urinating. The matter prompted BBB to call the "hotline" of *Bantay Bata*[6] where she was told to have her child examined by a medico-legal officer. She and AAA proceeded to the Sto. Niño de San Antonio Maternity and General Hospital. She was advised to have the child undergo

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[3] Officiated by Msgr. Danilo D. Henson, a bishop, at 1050 Concepcion Street, Ermita, Manila per Marriage Contract (Exh. "A"), RTC Records, p. 265.

[4] Officiated by Rev. Fr. Bing Gregorio Pechueco, Asst. Parish Priest of the San Roque De Manila Parish in Blumentritt, Manila per Marriage Contract (Exh. "B"), RTC Records, p. 266.

[5] Exhibit "C", RTC Records, p. 267.

[6] A non-governmental organization that protects the rights and welfare of the children.

urinalysis. Dr. D.S. Sta. Ana, a pathologist, with the assistance of medical technologist Editha A. Santos, conducted the urinalysis and found AAA to be suffering from urinary tract infection. Dr. Tomas D. Suguitan, a medico-legal officer, examined AAA and found her to be a non-virgin.

On 24 March 1997, BBB went to the Rizal CIG Provincial Office, Karangalan Village, in Cainta, Rizal, to execute a sworn statement[7] on the rape perpetrated by appellant. When apprehended, appellant told BBB that he would agree to leave the house and financially support them provided she would drop the charge against him. BBB declined. Appellant was detained at the Antipolo Municipal Jail. Since AAA continued to have nightmares, BBB brought her daughter to the Child Protection Unit of the Philippine General Hospital for psychiatric treatment.

Dr. Sta. Ana and Editha A. Santos of the Sto. Niño De San Antonio Maternity and General Hospital in Marcos Highway, Barrio de la Paz, Pasig City, undertook urinalysis on AAA. The report,[8] dated 25 March 1997, read:

"STO. NIÑO DE SAN ANTONIO
MATERNITY AND GENERAL HOSPITAL
Marcos Highway, Barrio dela Paz
Pasig City
Tel. 645-30-60

URINALYSIS

Name: AAA		Age: Sex: Status: Date: 3/17/97	
Physician		Room: Ward: OPD:	
Color	yellow	Pus Cells	14-16/hpf
Transparency	hazy	RBC	0-2/hpf

[7] The *Sinumpaang Salaysay* dated 24 March 1997 was not marked as an exhibit.

[8] Exhibit "D", RTC Records, p. 268.

Reaction	ph 6.0	Cast	
Specific Gravity	1.020	Epithelial Cells	few
Sugar	negative	Bacteria	
Protein	negative	Parasite	
Billirubin		Crystals Uric Acid	few
Ketones		Pregnancy Test	

Sgd.
EDITHA A. SANTOS
MEDICAL TECHNOLOGIST

Sgd.
DR. D.S. STA. ANA
PATHOLOGIST

"STO. NIÑO DE SAN ANTONIO
MATERNITY AND GENERAL HOSPITAL
Marcos Highway, Barrio dela Paz
Pasig City
Tel. 645-30-60

URINALYSIS

Name: AAA	Age:3½	Sex: F	Status: Date: 3/25/97
Physician		Room: Ward:	OPD: xx
Color	yellow	Pus Cells	2-4/hpf
Transparency	slightly turbid	RBC	0-1/hpf
Reaction	ph 6.0	Cast	
Specific Gravity	1.015	Epithelial Cells	few
Sugar	negative	Bacteria	
Protein	trace	Parasite	
Billirubin		Crystals a. urates	few
Ketones		Pregnancy Test	

Sgd.
MEDICAL TECHNOLOGIST

Sgd.
DR. D. S. STA. ANA
PATHOLOGIST"

Dr. Tomas D. Suguitan, Police Senior Inspector and Medico-

Legal Officer of the Philippine National Police Crime Laboratory Group in Camp Crame, Quezon City, examined AAA. Medico-Legal Report No. M-1058-97,[9] dated 20 March 1997, yielded the following findings; *viz*:

"PURPOSE OF LABORATORY EXAMINATION:

To determine physical signs of sexual abuse.

"**FINDINGS**:

"*GENERAL AND EXTRAGENITAL*:

Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

"*GENITAL*:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with shallow healed laceration at 9 o'clock position. External vaginal orifice admits tip of the examiner's smallest finger.

"CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

"REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."

Dr. Suguitan testified that he found a shallow healed laceration at the nine o'clock position which could have been caused by the insertion of a blunt object, such as a penis or a finger, and not merely because of a bad fall.

Dr. Olga M. Bausa, Police Senior Inspector and Medico-Legal Officer of the Philippine National Police Crime Laboratory Service in Camp Crame, Quezon City, compared the 2 ml. blood

[9] Exhibit "E", RTC Records, p. 269.

sample taken from AAA with that of the bloodstains found on a "*sando*" shirt [10] belonging to appellant. The biochemical examination on the shirt gave positive result for the presence of human blood belonging to blood type "B". Medico-Legal Report No. S-233-97,[11] dated 10 November 1997, showed that both specimens belong to blood type "B":

"SPECIMEN SUBMITTED:

Specimen A — Living person of AAA

Specimen B — One (1) sando shirt colored white with alleged bloodstains.

"PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of blood, its origin and its corresponding blood type.

"FINDINGS:

Biochemical examination conducted on specimen B gave POSITIVE result to the test for the presence of human blood belonging to blood group 'B'.

Blood typing conducted on the living person of AAA R. Orense showed that she belong[s] to blood group 'B'.

"CONCLUSION:

Specimen A belongs to human blood group 'B'.

Specimen B revealed the presence of human blood belonging to blood group 'B'."

Dr. Norieta Calma-Balderama, an Adult and Child Psychiatrist of the Child Protection Unit of the Philippine General Hospital, testified that she handled the psychiatric treatment. Dr. Balderama used the "play and interview" approach in talking to AAA. During the interview, she observed that AAA repeatedly said the words "*titi ni Papa,*" "*dugo,*" *daliri ni Papa,*" and "*dito*

[10] Exhibit "G".

[11] Exhibit "F", RTC Records, p. 270.

hinawakan" (referring to her private parts) even without being asked about the abuse. She concluded that the girl was telling the truth. When AAA visited the center for the seventh time, she showed manifestations of one who had experienced a traumatic event.

The version of the defense. —

Appellant Bobby Orense, testifying in his own behalf, admitted being married to BBB. The couple had three children born of the marriage, namely, CCC, AAA, and EEE. Appellant denied having raped AAA. He claimed that at eight o'clock in the morning of 02 March 1997, he was at his father's house in Blumentritt, Manila, to meet a friend who would accompany him to renew his security guard license. By eleven o'clock in the morning, appellant was at the National Bureau of Investigation (NBI) in U.N. Avenue, Manila, to secure an NBI clearance which he needed for his job application. He stayed there until two o'clock in the afternoon. He then proceeded to Camp Crame to renew his license as a security guard and left the place at four o'clock in the afternoon. At around six o'clock in the evening, appellant arrived home only to find his clothes in a trash can. According to appellant, his wife did it out of anger as he was away for so long. Appellant said that his wife treated him like a house helper and obliged him to do household chores, like washing clothes and doing the dishes, that prompted him to stay with his father at Blumentritt, Manila, for about a month prior to 02 March 1997.

The decision under review. —

On 24 August 2001, the court *a quo* rendered a decision, finding Bobby Orense guilty of statutory rape; it concluded:

"WHEREFORE, premises considered, accused Bobby Orense is hereby found guilty beyond reasonable doubt of the crime of statutory rape and is sentence[d] to suffer the penalty of death in accordance with Republic Act [No.] 7659. The accused is also ordered to pay the victim the amount of ₱50,000.00 as indemnity."[12]

[12] RTC Records, p. 235.

In this appeal, appellant contends that the prosecution has failed to prove his guilt beyond reasonable doubt.

As so often said, this Court, is guided in its review of trial court decisions in rape cases by certain guidelines, *i.e.*, (1) that an accusation for rape can be made with facility; (2) that the crime is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) that, in view of the nature of the offense of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (4) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[13] More frequently than not, however, the thrust of the issues focuses on the credibility of the victim. In this respect, great reliance is made on the evaluation made by the trial court because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsel.[14]

Appellant doubts the credibility of AAA, being still a child, to testify. In *People v. Pruna*,[15] the Court has observed:

"As a general rule, when a witness takes the witness stand, the law, on ground of public policy, presumes that he is competent. The court cannot reject the witness in the absence of proof of his incompetency. The burden is, therefore, upon the party objecting to the competency of a witness to establish the ground of incompetency. (VII Vicente J. Francisco, *Part I, 234 [1997 Ed.], citing* Wharton's Criminal Evidence, Section 1152 [11th Ed.])

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[13] *People v. Baniguid*, G.R. No. 137714, 08 September 2000 (340 SCRA 92); *People v. Baygar*, G.R. No. 132238, 17 November 1999 (318 SCRA 358); *People v. Maglente*, G.R. Nos. 124559-66, 30 April 1999 (306 SCRA 546); *People v. Lopez*, G.R. No. 129397, 08 February 1999 (302 SCRA 669); *People v. Sta. Ana*, G.R. Nos. 115657-59, 26 June 1998 (291 SCRA 188).

[14] *People v. Brondial*, G.R. No. 135517, 18 October 2000 (343 SCRA 600); *People v. Dizon*, G.R. Nos. 126044-45, 02 July 1999 (309 SCRA 669); *People v. Maglente*, G.R. Nos. 124559-66, 30 April 1999 (306 SCRA 546); *People v. Banela*, G.R. No. 124973, 18 January 1999 (301 SCRA 84).

[15] G.R. No. 138471, 10 October 2002 (390 SCRA 577).

"Section 21 of Rule 130 of the Rules on Evidence enumerates the persons who are disqualified to be witnesses. Among those disqualified are '[c]hildren whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully.'

"No precise minimum age can be fixed at which children shall be excluded from testifying. The intelligence, not the age, of a young child is the test of the competency as a witness. (*Ibid*., p. 242, citing 58 Am. Jur. 97.) It is settled that a child, regardless of age, can be a competent witness if he can perceive and, in perceiving, can make known his perception to others and that he is capable of relating truthfully the facts for which he is examined. (*People v. Librando*, 335 SCRA 232, 244 [2000].)

"In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness. (2 Florenz D. Regalado, *Remedial Law Compendium* 608 [2001 Ed.]. See also VII Francisco 243, *citing Wheeler v. U.S.*, 159 U.S. 523.) The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing. (VII Francisco 243, citing 3 Jones on Evidence 1296-1298.) A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully. (*People v. Virtucio*, 326 SCRA 198, 205 [2000].)

"The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. (*People v. De la Cruz*, G.R. No. 135022, 11 July 2002, 384 SCRA 375. See also *People v. De la Cruz*, 276 SCRA 352, 357 [1997]; *People v. Operana*, 343 SCRA 43, 63 [2000].) Since many of the witness' manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear

that such finding was erroneous. (*People v. De la Cruz*, G.R. No. 135022, 11 July 2002, 384 SCRA 375.)"[16]

The complainant, despite her age, was able to respond well to questions that convinced the trial court of the victim's competency to testify.

"PUBLIC PROSECUTOR:

Are you studying right now?
"A: Not yet, sir.

"Q: Did somebody already tell you about God?
"A: Not yet.

"Q: But have you heard about Jesus?
"A: No, sir.

"Q: What about prayer, do you pray?
"A: Yes, sir.

"Q: To whom do you pray?
"A: To Jesus.

"Q: So, you know about Jesus?
"A: Yes, sir.

"Q: Do you know the things that make Jesus mad?
"A: No, sir.

"Q: Do you know the things that make Jesus happy?
"A: No, sir.

"Q: What things do you pray to Jesus?
"A: That Papa be placed in jail.

"Q: That is what you pray to Jesus?
"A: Yes, sir.

"Q: Did Papa [do] something wrong to you?
"A: Yes, sir.

"Q: Why do you say that something wrong or something was done to you?
"A: *'Kasi bastos po si Papa.'*

[16] At pp. 591-593.

"Q: When a person does something that is *'bastos'* or obscene, is that bad?
"A: Yes, sir.

"Q: Who told you that it is bad?
"A: Me.

"Q: How did you learn that it was bad?
"A: *'Kaya ko lang natutunan iyon, nasasagot lang ako ni Mama.'*

"Q: Do you mean to say that you ask your Mama if something is *'bastos,'* and your mother tells you it is *'bastos.'*
"A: Yes, sir.

"Q: And if a person does something *'bastos'* to you, you will tell the truth about what happened?
"A: I am telling the truth, sir.

"Q: Do you know what will happen to you if you tell a lie?
"A: No, sir.

"Q: Do you know if you are bad?
"A: No, sir.

"Q: Is telling the truth bad?
"A: No, sir.

"Q: What about telling a lie, is it bad?
"A: Yes, sir.

"Q: What would happen to someone who is telling a lie?
"A: Jesus will get angry.

"Q: Do you wish Jesus to be mad at you by not telling the truth?
"A: No, sir, and I am not telling a lie.

"DEFENSE COUNSEL:
The witness categorically said that she does not know what lie is all about, and what truth is all about.

"PRIV. PROSECUTOR:
The witness also said that Jesus will get mad if she [tells] a lie.

"PUBLIC PROSECUTOR:
We submit to the discretion of the Court.

"COURT:
Swear the witness."[17]

Appellant suggests that the testimony of AAA might have just been fabricated to suit the rape charge. Although her story might lack vividness, her narration, nevertheless, has sufficiently described the sexual assault on her. She testified:

"INTERPRETER:
Do you swear to tell the truth and nothing but the truth in this proceedings?
"A: Yes, sir.

"INTERPRETER:
State your name and personal circumstances.
"A: AAA, five years old, and residing at Antipolo.

"PRIV. PROSECUTOR:
The testimony of the witness is being offered to prove that on March 1997, she was sexually abused and raped by her father, and to prove the other allegations in the complaint.

"PUBLIC PROSECUTOR:
May we make it of record that the private prosecutor is still authorized to handle the prosecution of this case.

"COURT:
Proceed.

"Q: AAA, do you know who your father is?
"A: Yes, sir, Bobby.

"Q: Is he here in this courtroom?
"A: Yes, sir.

"Q: Can you point to your father?
"A: Yes, sir. (Witness pointing to a person inside the courtroom who identified himself as Bobby Orense.)

"Q: Did your father do anything bad to you?
"A: Yes, sir.

"Q: And [did] you tell your mother about this bad thing your father did to you?

[17] TSN, Grace Ann[e] Orense, 24 November 1998, pp. 3-6.

"A: Yes, sir.

"Q: Did you tell your mother, *'titi ni Papa?'*
"A: Yes, sir.

"Q: Have you seen the penis of your father?
"A: Yes, sir.

"Q: What did your father do when you saw his penis?
"A: He pulled it.

"Q: Did he put his penis in your vagina?
"A: Yes, sir.

"Q: How many times did he do that?
"A: *'Matagal na po.'*

"Q: What happened after your father placed his penis in your vagina?
"A: When he placed his penis inside my vagina, he did not press it hard. But when he placed his finger inside my vagina, he pressed it really hard.

"Q: Did you acquire any wound as a result of the placing of the penis inside your vagina?
"A: Yes, sir.

"Q: Did you see any blood when you had this wound?
"A: Yes, sir.

"Q: What did your father do when you had blood in your vagina?
"A: He wiped it with his clothes.

"Q: Aside from pressing his penis and his finger in your vagina, did your father do anything else to you AAA?
"A: Yes, sir, he licked my vagina.

"PRIV. PROSECUTOR:
May I make it of record that the child even pointed to her vagina while answering.

AAA, does your father still live with you?
"A: Yes, sir.

"Q: Where did your father do these things to you?
"A: Outside, sir.

"Q: Did he do it inside your house?
"A: Yes, sir.

"COURT:
Did you cry when this happened?

"A: No, your [H]onor.

"COURT:
Was it not painful when your father did these things to you?

"A: It was not painful, your [H]onor.

"COURT:
Proceed.

"PRIV. PROSECUTOR:
Do you still see your father, AAA?
"A: Yes, sir.

"Q: Do you still see him in your house?
"A: Yes, sir.

"Q: AAA, aside from your mother, did you tell anybody else what your father has done to you?
"A: Yes, sir.

"Q: To whom did you tell about the things that your father did to you?
"A: When I reported the matter to my mother, my father was not in the room.

"Q: Were you brought to a doctor when you told your mother what your Papa did to you?
"A: Yes, sir.

"Q: And did you tell the Doctor what happened to you?
"A: Yes, sir.

"Q: Is this doctor a man or a woman?
"A: A woman.

"Q: Is the name of the doctor, Dr. Calma?
"A: Yes, sir.

"PRIV. PROSECUTOR:

I have no further questions."[18]

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[18] TSN, Grace Ann[e] Orense, 24 November 1998, pp. 6-11.

During cross-examination, AAA also did well in maintaining her account of the incident.

"COURT:
Cross?

"DEFENSE COUNSEL:
With the permission of the Court.

"COURT:
Proceed.

"Q: You said that your Papa did something '*bastos*' to you, '*tama ba iyon*?'
"A: No, sir.

"Q: Is it not that your mother BBB told you that your father did something '*bastos*' to you?
"A: Yes, sir.

"Q: Is it not that it is your mother who told you, '*titi ni Papa*?'
"A: Yes, sir.

"Q: And it was and still is your Mama BBB who wants your Papa to be placed in jail?

"PRIV. PROSECUTOR:
Objection, your [H]onor.

"COURT:
Witness may answer.

"A: '*Kasi salbahe siya*.'

"Q: You said that you were brought to a woman doctor and that her name is Dr. Calma, is that correct?
"A: Yes, sir.

"Q: Do you still recall the place where you were brought to the doctor?
"A: No, sir.

"Q: Who brought you to Dr. Calma?
"A: Mama.

"Q: Only the two of you went to the doctor?
"A: Yes, sir.

"Q: Did your mother tell you what to tell Dr. Calma?
"A: No, sir.

"DEFENSE COUNSEL:
That will be all for the witness."[19]

Far from detracting from her veracity, the minor discrepancies or lapses that might have been committed by AAA, just to the contrary, would tend to bolster her testimony.[20] Indeed, her narration was corroborated, not only by BBB (BBB's mother) but, significantly, by the medical report presented by the prosecution; i.e., that blood samples of AAA, belonging to blood type "B", matched with the bloodstains found in appellant's shirt which, according to AAA, appellant used to wipe off the blood from her; that the results of the urinalysis showed that AAA had urinary tract infection; that the hymenal lacerations found could have been caused by the insertion of an object like a penis or a finger; and that AAA showed manifestations of an abused child who had undergone a traumatic event. The fact that there were no signs of physical violence would not militate against the occurrence of rape, proof of external injuries not being indispensable in a prosecution for rape. Clearly, appellant took advantage of his moral ascendancy over his defenseless daughter. Neither would the presence of spermatozoa be essential to prove rape.[21]

The bare and uncorroborated denial of appellant and his defense of *alibi* cannot prevail. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[22] In order that *alibi* can prosper, not only must an accused prove his being in another place at the time of the commission of the crime, but also that it would have been

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[19] TSN, Grace Ann[e] Orense, 24 November 1998, pp. 11-13.

[20] *People v. Maglente*, G.R. Nos. 124559-66, 30 April 1999 (306 SCRA 546).

[21] *People v. Freta*, G.R. Nos. 134451-52, 14 March 2001 (354 SCRA 385).

[22] *Ibid.*,*People v. Martinez*, G.R. No. 130606, 15 February 2000 (325 SCRA 601); *People v. Maglente, supra.*

impossible for him, given the circumstances, to be at the crime scene at the appointed time.[23]

Article 335 of the Revised Penal Code, as so amended by Republic Act No. 7659, provides:

"ART. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by *reclusion perpetua*.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion 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 *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

"2. When the victim is under the custody of the police or military authorities.

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[23] *People v. Fabre*, G.R. No. 146697, 23 July 2002 (385 SCRA 185); *People v. Payot*, G.R. No. 119352, 08 June 1999 (308 SCRA 43).

"3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (*As amended by Sec. 11, RA 7659*.)"

People v. Pruna[24] has set forth the guidelines in the appreciation of the age of the victim, either as an element of the crime or as a qualifying circumstance, *viz*:

"1. 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.

"2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

"3. If the certificate of live birth or authentic document *is shown to have been lost or destroyed or otherwise unavailable*, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

"a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

"b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years

[24] G.R. No. 138471, 10 October 2002 (390 SCRA 577).

old;

"c.If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

"4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice *provided that it is expressly and clearly admitted by the accused.* (*People v. Velasco*, G.R. Nos. 135231-33, 28 February 2001 [353 SCRA 138]; *People v. Remudo*, G.R. No. 127905, 30 August 2001 [364 SCRA 61]; *People v. Llanita*, G.R. No. 134101, 05 September 2001 [364 SCRA 505]; *People v. Agustin*, G.R. Nos. 135524-25, 24 September 2001 [365 SCRA 667].)

"5. It is the prosecution that has the burden of proving the age of the offended party. *The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.*

"6. The trial court should always make a categorical finding as to the age of the victim."

The relationship of the complainant to the appellant was sufficiently proved. BBB testified having been married to appellant. The marriage was twice celebrated, the first on 08 March 1988 at a church in Ermita, Manila and on 16 April 1988 at the San Roque De Manila Parish. A certified true copy of the 08 March 1988 marriage certificate and a duplicate original of the one contracted on 16 April 1988 were presented in court. After due comparison, the photocopies of these documents were duly marked, respectively, Exhibit "A" and Exhibit "B". The prosecution, however, failed to satisfy the *Pruna* test to warrant the imposition of the death penalty. The Certificate of Live Birth of AAA presented to the court is neither an original nor a certified true copy. When BBB took the witness stand, neither was an original or a certified true copy of the birth certificate shown in court to at least compare it with a bare photocopy marked as Exhibit "B". Most importantly, it was not shown that the authentic document had been lost or destroyed or otherwise unavailable required in *Pruna*.

The civil indemnity of ₱50,000.00 awarded by the trial court is consistent with the prevailing jurisprudence. Additionally, moral damages of ₱50,000.00 must be awarded for in crimes of rape it is to be assumed that the victim has suffered such damages.[25] Exemplary damages of ₱25,000.00 must also be awarded to the victim, the daughter of appellant, as has been sanctioned in *People v. Catubig*[26] pursuant to Article 2230 of the Civil Code.

WHEREFORE, the decision of the Regional Trial Court, Branch 73, Antipolo City, finding appellant Bobby Orense guilty beyond reasonable doubt of the crime of rape is AFFIRMED with MODIFICATION in that the penalty of death is reduced to *reclusion perpetua* and, in addition to the ₱50,000.00 civil indemnity awarded by the trial court, appellant is ordered to pay complainant AAA, ₱50,000.00 moral damages and ₱25,000.00 exemplary damages. Costs *de oficio*.

SO ORDERED.

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

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[25] *People v. Magallanes*, G.R. No. 136299, 29 August 2003; *People v. Cariñaga*, G.R. Nos. 146097-98, 26 August 2003; *People v. Eclera*, G.R. No. 144402, 14 August 2003; *People v. Rosario*, G.R. No. 144428, 06 August 2003; *People v. Rabago*, G.R. No. 149893, 02 April 2003; *People v. Prades*, G.R. No. 127569, 30 July 1998 (293 SCRA 411).

[26] G.R. No. 137842, 23 August 2001 (363 SCRA 621), cited in *People v. Nerio*, G.R. No. 142564, 26 September 2001 (366 SCRA 63); *People v. Marahay*, G.R. Nos. 120625-29, 28 January 2003 (396 SCRA 129); *People v. Manallo*, G.R. No. 143704, 28 March 2003; *People v. Evina*, G.R. No. 124830, 27 June 2003.

EN BANC

[G.R. No. 153454. July 7, 2004]

AGUS DWIKARNA, *petitioner, vs.* **HON. ANDREA D. DOMINGO, Commissioner, Bureau of Immigration, GEN. LEANDRO MENDOZA,* Chief, Philippine National Police, GEN. JAIME G. CARINGAL, Chief, Intelligence Group, Philippine National Police, RONALDO P. LEDESMA, Chief, Bureau of Special Inquiry, and the Board of Commissioners, Bureau of Immigration,** *respondents*.

SYNOPSIS

Petitioner and two other Indonesian nationals were arrested at the Ninoy Aquino International Airport for violation of Presidential Decree 1866, otherwise known as Illegal Possession of Firearms and Ammunition. Petitioner and his co-accused were thereafter charged before the Regional Trial Court of Pasay City of said crime. They were further charged before the Bureau of Immigration for violation of Section 37 (a) (7) & (8) of the Philippine Immigration Act of 1940, as amended, and were ordered detained. Subsequently, the Information against petitioner's co-accused was withdrawn. They were released from custody and the deportation case with respect to them were likewise dismissed. After due trial, the trial court convicted petitioner of the crime charged. When petitioner failed to appeal, his conviction became final and executory and was entered in the book of entries of judgment. The trial court then ordered the incarceration of the petitioner at the National Bilibid Prison. Hence, the instant petition for *certiorari*, prohibition and *mandamus* for the immediate release of petitioner from detention, as well as a writ of prohibition enjoining absolutely and perpetually the deportation proceedings.

The writ of *certiorari* does not lie where an appeal may be taken or where another adequate remedy is available for the

* Now the Secretary of the Department of Transportation and Communications. He was replaced by Hermogenes Ebdane as PNP Chief.

correction of the error. Likewise, *mandamus* is granted only in cases where no other remedy is available which is sufficient to afford redress. Here, petitioner's conviction attained finality when the period to file an appeal lapsed. He cannot now come to the Court through this petition for *certiorari* because *certiorari* is not a substitute for the lost remedy of appeal. On the deportation case against the petitioner, resort to court is proper only after a decision is rendered by the Board of Commissioners of the Bureau of Immigration. There is, therefore, nothing irregular and illegal with petitioner's continued detention. He has been duly charged in court and convicted by final judgment and sentenced to imprisonment. Even if he is eventually ordered deported by the Bureau of Immigration, his continued incarceration would nevertheless still be legally justified. Under Section 37 (a) (9) of the Philippine Immigration Act of 1940, as amended, a person convicted of a crime and ordered deported at the same time must first serve his sentence before he is deported. His imprisonment may, however, be waived by the Commissioner of Immigration. Without such waiver, he cannot be released from prison. Accordingly, the Supreme Court denied the petition.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; AVAILABLE ONLY WHEN THERE IS NO APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— We have held in a litany of cases that the extraordinary remedies of *certiorari*, prohibition and *mandamus* are available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The writ of *certiorari* does not lie where an appeal may be taken or where another adequate remedy is available for the correction of the error. Likewise, *mandamus* is granted only in cases where no other remedy is available which is sufficient to afford redress. Furthermore, a writ of *mandamus* will not generally lie from one branch of the government to a coordinate branch, for the obvious reason that neither is inferior to the other. As correctly argued by the Office of the

Solicitor General, petitioner is not without "other plain, speedy and adequate remedy in the ordinary course of law."

2. ID.; ID.; PETITION FOR *CERTIORARI*; NOT A SUBSTITUTE FOR THE LOST REMEDY OF APPEAL.— Before coming to us, petitioner should have first appealed his conviction in Criminal Case No. 02-0576 to the Court of Appeals by way of a petition for review under Rule 45 of the Revised Rules of Court. Unfortunately, despite the availability of an appeal, petitioner pursued the wrong mode by filing directly with us a petition for review on *certiorari* with *mandamus* in G.R. No. 155575. Said petition was denied outright in a resolution dated December 16, 2002. Petitioner's conviction attained finality when the period to file an appeal lapsed. He cannot now come to us through this petition for *certiorari*, among others, because *certiorari* is not a substitute for the lost remedy of appeal. An appeal is a statutory privilege and it may only be exercised in the manner provided by law.

3. ID.; EVIDENCE; FINDINGS OF FACT OF ADMINISTRATIVE DEPARTMENTS OVER MATTERS FALLING WITHIN THEIR JURISDICTION GENERALLY ACCORDED RESPECT, IF NOT FINALITY, BY THE COURTS.— On the deportation case against him in D.C. ADD 02-004, resort to court is proper only after a decision is rendered by the Board of Commissioner of the Bureau of Immigration. The Bureau is the agency that can best determine whether petitioner violated certain provisions of the Philippine Immigration Act of 1940, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts. If petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration. If his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the 1997 Rules of Civil Procedure.

4. ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; BUREAU OF IMMIGRATION; PHILIPPINE IMMIGRATION ACT OF 1940, AS AMENDED; PERSON CONVICTED OF A CRIME AND ORDERED DEPORTED AT THE SAME TIME MUST FIRST SERVE HIS SENTENCE BEFORE HE IS DEPORTED; IMPRISONMENT MAY BE WAIVED BY THE COMMISSIONER OF IMMIGRATION.— There is, therefore, nothing irregular and illegal with petitioner's continued detention. He has been duly charged in court and convicted by final judgment of illegal possession of explosive materials and sentenced to imprisonment. Even if he is eventually ordered deported by the Bureau of Immigration, his continued incarceration would nevertheless still be legally justified. Section 37 (a) (9) of the Philippine Immigration Act of 1940, as amended, explicitly states that: Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien: x x x. (9) x x x *Provided*, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, *said alien shall first serve the entire period of his imprisonment before he is actually deported. Provided*, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head; x x x. The law is thus clear that a person convicted of a crime and ordered deported at the same time must first serve his sentence before he is deported. His imprisonment may, however, be waived by the Commissioner of Immigration. Without such waiver, he cannot be released from prison.

APPEARANCES OF COUNSEL

A. Rogelio T. Linzag and Felipe P. Arcilla for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CORONA, *J.*:

Before us is a petition for *certiorari*, prohibition and *mandamus*, filed under Rule 46, in relation to Rule 56, Sections 1 and 2 of the Revised Rules of Court, with a prayer for a temporary mandatory injunction for the immediate release of petitioner from detention.

The facts of the case follow.

On March 13, 2002, at around 7:25 p.m., petitioner Agus Dwikarna and two other Indonesian nationals, namely, Abdul Jamal Balfas and Hamsid Lin Rung, were at the Ninoy Aquino International Airport, checking in their luggage for x-ray screening in preparation for their departure for Bangkok, Thailand. The police authorities apprehended them when they were found to be in possession of two pieces oval-shaped C-4 plastic explosives and five pieces detonating cords.

The following day, on March 14, 2002, an information was filed against petitioner and his two companions in the Regional Trial Court of Pasay City, Branch 117, for violation of PD 1866 (illegal possession of firearms and ammunition), as amended. The accusatory part of the information read:

> That on 13 March 2002, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating, together and mutually helping one another, with intent to possess, did then and there, willfully, unlawfully and feloniously have in their possession, custody and control, incendiary devices capable of producing destructive effects on contiguous objects and/or causing injury or death to persons without the necessary license and authority to possess the same, *viz*.: two (2) pcs. oval shaped C-4 plastic explosives and five (5) pcs. detonating cords.
>
> CONTRARY TO LAW.[1]

The case was docketed as Criminal Case No. 02-0576.

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[1] Annex "D", *Rollo*, p. 34.

On March 19, 2002, a charge sheet was filed by the special prosecutor of the Bureau of Immigration against petitioner and his two co-accused, docketed as D.C. No. ADD No. 02-004, for violation of Section 37(a)(7) of the Philippine Immigration Act of 1940, as amended. The charge sheet read:

The undersigned Special Prosecutor charges for deportation, AGUS DWIKARNA, ABDUL JAMAL BALFAS and TAMSIL LIN RUNG all Indonesian nationals for violation of Sec. 37(a)(7) of the PIA of 1940, as amended, committed as follows:

That herein respondents were arrested at the NAIA on 13 March 2002 at about 7:25 p.m. for violation of P.D. 1866 by joint elements of PNP, IG, NICA, BID, PAF-AISG in cooperation with ASG, PNP and under the supervision of TASK FORCE 'SANGLAHI'.

That on or about 7:15 PM March 13, 2002 the trio, AGUS DWIKARNA, ABDUL JAMAL BALFAS and TAMSIL LIN RUNG entered the International Terminal 1, Pasay City, and submitted themselves for routine security check. However, during the course of the inspection by the IRASCO personnel, PNP-ASG, the pieces of luggage of the trio yielded components for making improvised explosive devices (IEDs) without necessary and legal authority to possess the said items.

That consequently the corresponding charge for violation of PD 1866 was filed before Pasay City prosecutor. Office and Inquest Prosecutor Bernabe Augustus C. Solis ordered their detention with the PNP Intelligence Group.[2]

On March 25, 2002, the charge sheet was amended and petitioner and his co-accused were further charged with violation of Section 37(a)(8) of the same Act. The amended charge sheet read:

The undersigned Special Prosecutor charges for deportation, AGUS DWIKARNA, ABDUL JAMAL BALFAS, TAMSIL LIN RUNG all Indonesian nationals for violation of Sec. 37(a)(7) of the PIA of 1940, as amended, committed as follows:

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[2] Annex "K", *Rollo*, p. 42.

That herein respondents were arrested at the NAIA on 13 March 2002 at about 7:25 p.m. for violation of P.D. 1866 by joint elements of PNP, IG, NICA, BID, PAF-AISG in coordination with ASG, PNP and under the supervision of TASK FORCE 'SANGLAHI.'

That on or about 7:15 PM March 13, 2002 the trio AGUS DWIKARNA, ABDUL JAMAL BALFAS, TAMSIL LIN RUNG entered the International Terminal 1, Pasay City, and submitted themselves for routine security check. However, during the course of the inspection by the IRASO personnel, PNP-ASG, the pieces of luggage of the trio yielded components for making improvised explosive devices (IEDs) without necessary and legal authority to possess the said items;

xxx xxx xxx

That they are likewise charged for violation of Sec. 37(a)(8) of the Philippine Immigration Act of 1940, as amended, committed as follows:

Being members of the Islamic extremist movements particularly the Jema'ah Islamiah and Mejahidoon Indonesia, they are involved in riots in Indonesia and organized (*sic*), advocates, or teaches the assault of public official and destruction of public and private property and overthrow of organized government, thus they are undesirable aliens.[3]

Meanwhile, petitioner and his co-accused were allowed to post bail for their provisional liberty, per the release order dated March 22, 2002, issued by the trial court in Criminal Case No. 02-0576. However, the order stated that the release was subject to the condition that "*there exist(ed) no other legal cause to the effect that they remain confined under your custody*." Since petitioner and his co-accused were charged with violation of the Philippine Immigration Act of 1940, as amended, and were ordered detained by the Bureau of Immigration, their temporary release could not be effected.

Aggrieved, petitioner and his co-accused filed a petition[4] for *habeas corpus* at the Court of Appeals in CA-G.R. SP No.

[3] Annex "L", *Rollo*, p. 44.

[4] Annex "M", *Rollo*, p. 46.

70045 on April 11, 2002, alleging in the main that petitioner and his co-accused were "illegally arrested and illegally restrained of their personal liberty in violation of their human rights."

While the case was pending resolution by the Court of Appeals, the information against Tamsil Lin Rung and Abdul Balfas in Criminal Case No. 02-0576 was withdrawn.[5] Consequently, Lin Rung and Balfas were released from custody and the deportation case with respect to them were likewise dismissed.[6] That left Dwikarna as the sole petitioner in the case.

On April 29, 2002, the Court of Appeals dismissed the petition for *habeas corpus*:

> Without passing on the legality of the arrest of petitioner DWIKARNA, but even assuming *arguendo* that his arrest was illegal, supervening events bar his subsequent release. xxx For DWIKARNA had already been charged by the BI for violation of the Philippine Immigration Act of 1940, as amended.
>
> > Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of *habeas corpus*. His remedy would be to quash the information and/or the warrant of arrest duly issued. *The writ of habeas corpus should not be allowed after the party sought to be released had been charged before any court. The term 'court' includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration*. (*Rodriguez v. Bonifacio*, 344 SCRA 524, 541 [2000], Emphasis supplied).[7]

On April 30, 2002, petitioner moved for the dismissal of the amended charge sheet in D.C. No. ADD No. 02-004. On May 8, 2002, he filed a motion for the early resolution of the case. Both motions are still pending resolution by the Board of Commissioners.

In May 2002, petitioner filed the present petition for *certiorari*, prohibition and *mandamus*, which prays for the issuance of a

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[5] Annex "R", *Rollo*, p. 66.

[6] Annex "S", *Rollo*, p. 67.

[7] Penned by Associate Justice Conchita Carpio Morales, now an Associate Justice of the Supreme Court.

mandatory injunction, the petitioner's release with finality from his detention as well as a writ of prohibition enjoining absolutely and perpetually the proceedings in BSI-D.C. No. ADD-02-251.

On July 12, 2002, the trial court convicted petitioner of the crime charged in Criminal Case No. 02-0576 for illegal possession of explosive materials. The dispositive portion of the decision read:

> WHEREFORE, accused AGUS DWIKARNA is hereby found GUILTY beyond reasonable doubt of the crime of violation of Section 3 of P.D. No. 1866, as amended by R.A. No. 8294.
>
> Accordingly, said accused is hereby sentenced to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of *reclusion temporal*, and to pay a fine of ₱50,000.00
>
> The Branch Clerk of this court is hereby directed to immediately turn over to the Firearms and Explosives Division of the Philippine National Police all the explosives subject of this case for the latter to dispose of the same in accordance with law.
>
> The cost of the suit is on the accused.
>
> So ordered.[8]

Petitioner moved for a reconsideration of the decision and the reopening of the case for new trial. Both motions were denied. Petitioner failed to appeal from said denials. His conviction became final and executory and was entered in the book of entries of judgment. Petitioner moved to reconsider the entry of judgment but his motion was denied. He appealed said denial directly to us. His appeal was dismissed outright for being the wrong mode of appeal. The trial court then directed the Director of the National Bilibid Prisons, Bureau of Corrections, to implement the decision in Criminal Case No. 02-0576 and ordered petitioner incarcerated at the National Bilibid Prisons.[9]

The only issue to be resolved in this case is whether or not petitioner is entitled to the extraordinary remedies of *certiorari*,

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[8] Penned by Judge Henrick F. Gingoyon, Annex "2", *Rollo*, p. 139.

[9] Annex "7", *Rollo*, p. 285.

prohibition and *mandamus*, and whether he should be released from detention.

We have held in a litany of cases[10] that the extraordinary remedies of *certiorari*, prohibition and *mandamus* are available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The writ of *certiorari* does not lie where an appeal may be taken or where another adequate remedy is available for the correction of the error. Likewise, *mandamus* is granted only in cases where no other remedy is available which is sufficient to afford redress. Furthermore, a writ of *mandamus* will not generally lie from one branch of the government to a coordinate branch, for the obvious reason that neither is inferior to the other. As correctly argued by the Office of the Solicitor General, petitioner is not without "other plain, speedy and adequate remedy in the ordinary course of law."

Before coming to us, petitioner should have first appealed his conviction in Criminal Case No. 02-0576 to the Court of Appeals by way of a petition for review under Rule 45 of the Revised Rules of Court. Unfortunately, despite the availability of an appeal, petitioner pursued the wrong mode by filing directly with us a petition for review on *certiorari* with *mandamus* in G.R. No. 155575. Said petition was denied outright in a resolution dated December 16, 2002.[11] Petitioner's conviction attained finality when the period to file an appeal lapsed. He cannot now come to us through this petition for *certiorari*, among others, because *certiorari* is not a substitute for the lost remedy of appeal. An appeal is a statutory privilege and it may only be exercised in the manner provided by law.[12]

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[10] *Marawi Marantao General Hospital, Inc. vs. Court of Appeals*, 349 SCRA 321 [2001]; *Heirs of Pedro Atega vs. Garilao*, 357 SCRA 203 [2001]; *Zarate, Jr. vs. Olegario*, 263 SCRA 1 [1996]; *Filoteo, Jr. vs. Sandiganbayan*, 263 SCRA 222 [1996]; *Solis vs. National Labor Relations Commission*, 263 SCRA 629 [1996]; *Ongsitco vs. Court of Appeals*, 255 SCRA 703 [1996].

[11] Resolution, Annex "3", *Rollo*, p. 276.

[12] *Mito vs. Court of Appeals*, 354 SCRA 180 [2001].

On the deportation case against him in D.C. ADD 02-004, resort to court is proper only after a decision is rendered by the Board of Commissioner of the Bureau of Immigration. The Bureau is the agency that can best determine whether petitioner violated certain provisions of the Philippine Immigration Act of 1940, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[13] By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.[14] If petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration. If his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the 1997 Rules of Civil Procedure.

There is, therefore, nothing irregular and illegal with petitioner's continued detention. He has been duly charged in court and convicted by final judgment of illegal possession of explosive materials and sentenced to imprisonment. Even if he is eventually ordered deported by the Bureau of Immigration, his continued incarceration would nevertheless still be legally justified. Section 37(a)(9) of the Philippine Immigration Act of 1940, as amended, explicitly states that:

> Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:
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> xxx xxx xxx

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[13] *Olaguer vs. Domingo*, 359 SCRA 78 [2001].

[14] *Palele vs. Court of Appeals*, 362 SCRA 141 [2001].

(9) xxx *Provided*, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, *said alien shall first serve the entire period of his imprisonment before he is actually deported*. *Provided*, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head; xxx[15] (Italics supplied)

The law is thus clear that a person convicted of a crime and ordered deported at the same time must first serve his sentence before he is deported. His imprisonment may, however, be waived by the Commissioner of Immigration. Without such waiver, he cannot be released from prison.

WHEREFORE, foregoing premises considered, the instant petition is hereby *DENIED*. The prayer for a temporary mandatory injunction for the release of petitioner is likewise *DENIED*.

SO ORDERED.

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

Carpio Morales, J., no part.

FIRST DIVISION

[G.R. No. 155421. July 7, 2004]

ELMER M. MENDOZA, *petitioner, vs.* **RURAL BANK OF LUCBAN,** *respondent.*

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[15] The Philippine Immigration Act of 1940, as amended.

SYNOPSIS

In line with its policy to "familiarize bank employees with the various phases of bank operations and further strengthen the existing internal control system," the respondent implemented its Board Resolution Nos. 99-52 and 99-53 directing the reshuffle of employees at its Tayabas branch to positions other than those they were occupying, without changes in their compensation and other benefits. Petitioner was among those affected by the reshuffle. Alleging that he was constructively dismissed, petitioner filed a complaint for illegal dismissal, underpayment, separation pay and damages against the respondent. Petitioner alleged that he had been demoted from appraiser to clerk and not given any work to do, while his table had been placed near the toilet and eventually removed. He added that the reshuffling of employees was done in bad faith, because it was designed primarily to force him to resign. Respondent denied petitioner's allegations. The Labor Arbiter upheld the claim of the petitioner and declared his dismissal illegal. The NLRC, however, reversed the labor arbiter. The Court of Appeals affirmed the decision of the NLRC.

Hence, this petition.

In denying the petition, the Supreme Court found no reason to disturb the conclusion of the NLRC and the Court of Appeals that there was no constructive dismissal. The management, in the pursuit of its legitimate business interest, has the prerogative to transfer or assign employees from one office or area of operation to another – provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. Here, petitioner's transfer was made in pursuit of respondent's policy. He was not singled out; other employees were also reassigned without their express consent. Neither was there any demotion in the rank of petitioner, or any diminution of his salary, privileges and other benefits. On the other hand, petitioner had offered no sufficient proof to support his allegations. While the rules of evidence

prevailing in courts of law are not controlling in proceedings before the NLRC, parties must nonetheless submit evidence to support their contentions.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, DEFINED.— Constructive dismissal is defined as an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.

2. ID.; ID.; MANAGEMENT PREROGATIVE; TO CHANGE EMPLOYEES' ASSIGNMENTS OR TO TRANSFER THEM; CONDITIONS FOR THE EXERCISE THEREOF.— Jurisprudence recognizes the exercise of management prerogatives. For this reason, courts often decline to interfere in legitimate business decisions of employers. Indeed, labor laws discourage interference in employers' judgments concerning the conduct of their business. The law must protect not only the welfare of employees, but also the right of employers. In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another — provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. This privilege is inherent in the right of employers to control and manage their enterprise effectively. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.

3. ID.; ID.; ID.; ID.; LIMITATION.— Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. The test for determining the validity of the transfer of employees was explained in *Blue Dairy Corporation v. NLRC* as follows: "[L]ike other rights, there are limits thereto. The

managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment."

4. ID.; ID.; ID.; ID.; BURDEN OF PROVING VALIDITY OF TRANSFER RESTS ON THE EMPLOYER.— The employer bears the burden of proving that the transfer of the employee has complied with the foregoing test. In the instant case, we find no reason to disturb the conclusion of the NLRC and the CA that there was no constructive dismissal. Their finding is supported by substantial evidence — that amount of relevant evidence that a reasonable mind might accept as justification for a conclusion.

5. ID.; ID.; ID.; ID.; EMPLOYEES MAY BE TRANSFERRED BASED ON THEIR QUALIFICATIONS, APTITUDES AND COMPETENCIES TO POSITIONS IN WHICH THEY CAN FUNCTION WITH MAXIMUM BENEFIT TO THE COMPANY.— Petitioner's transfer was made in pursuit of respondent's policy to "familiarize bank employees with the various phases of bank operations and further strengthen the existing internal control system" of all officers and employees. We have previously held that employees may be transferred — based on their qualifications, aptitudes and competencies — to positions in which they can function with maximum benefit to the company. There appears no justification for denying an employer the right to transfer employees to expand their

competence and maximize their full potential for the advancement of the establishment. Petitioner was not singled out; other employees were also reassigned without their express consent. Neither was there any demotion in the rank of petitioner; or any diminution of his salary, privileges and other benefits. This fact is clear in respondent's Board Resolutions, the April 30, 1999 letter of Bank President Daya to Branch Manager Cada, and the May 10, 1999 letter of Daya to petitioner.

6. ID.; ID.; ID.; ID.; WHILE THE RULES OF EVIDENCE PREVAILING IN COURTS OF LAW ARE NOT CONTROLLING IN PROCEEDINGS BEFORE THE NLRC, PARTIES MUST NONETHELESS SUBMIT EVIDENCE TO SUPPORT THEIR CONTENTIONS.— On the other hand, petitioner has offered no sufficient proof to support his allegations. Given no credence by both lower tribunals was his bare and self-serving statement that he had been positioned near the comfort room, made to work without a table, and given no work assignment. Purely conjectural is his claim that the reshuffle of personnel was a harassment in retaliation for an alleged falsification case filed by his relatives against a public official. While the rules of evidence prevailing in courts of law are not controlling in proceedings before the NLRC, parties must nonetheless submit evidence to support their contentions.

7. ID.; ID.; ID.; ID.; AN EMPLOYEE WHO WAS NOT DISMISSED BY THE EMPLOYER IS NOT ENTITLED TO HIS CLAIM OF MONETARY BENEFITS.— *Serrano v. NLRC* does not apply to the present factual milieu. The Court ruled therein that the lack of notice and hearing made the dismissal of the employee ineffectual, but not necessarily illegal. Thus, the procedural infirmity was remedied by ordering payment of his full back wages from the time of his dismissal. The absence of constructive dismissal in the instant case precludes the application of *Serrano*. Because herein petitioner was not dismissed, then he is not entitled to his claimed monetary benefits.

8. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; QUESTION NOT RAISED IN THE COURT BELOW SHALL NOT BE ENTERTAINED ON APPEAL.— Petitioner argues that the proceedings before the NLRC and the CA were void, since respondent's appeal before the NLRC had allegedly been filed

beyond the reglementary period. A careful scrutiny of his Petition for Review with the appellate court shows that this issue was not raised there. Inasmuch as the instant Petition challenges the Decision of the CA, we cannot rule on arguments that were not brought before it. This ruling is consistent with the due-process requirement that no question shall be entertained on appeal, unless it has been raised in the court below.

APPEARANCES OF COUNSEL

Manuel M. Maramba for petitioner.
Carlos Mayorico E. Caliwara for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

The law protects both the welfare of employees and the prerogatives of management. Courts will not interfere with business judgments of employers, provided they do not violate the law, collective bargaining agreements, and general principles of fair play and justice. The transfer of personnel from one area of operation to another is inherently a managerial prerogative that shall be upheld if exercised in good faith — for the purpose of advancing business interests, not of defeating or circumventing the rights of employees.

The Case

The Court applies these principles in resolving the instant Petition for Review[1] under Rule 45 of the Rules of Court, assailing the June 14, 2002 Decision[2] and September 25, 2002 Resolution[3]

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[1] *Rollo*, pp. 3-31.

[2] *Id.*, pp. 33-48. Fifteenth Division. Penned by Justice Oswaldo D. Agcaoili (chairman), with the concurrence of Justices Eriberto U. Rosario Jr. and Danilo B. Pine (members).

[3] *Id.*, p. 50.

of the Court of Appeals (CA) in CA-G.R. SP No. 68030. The assailed Decision disposed as follows:

"*WHEREFORE*, the petition for *certiorari* is hereby *DISMISSED* for lack of merit."[4]

The challenged Resolution denied petitioner's Motion for Reconsideration.

The Facts

On April 25, 1999, the Board of Directors of the Rural Bank of Lucban, Inc., issued Board Resolution Nos. 99-52 and 99-53, which read:

"Board Res. No. 99-52

"'RESOLVED AS IT IS HEREBY RESOLVED' that in line with the policy of the bank to familiarize bank employees with the various phases of bank operations and further strengthen the existing internal control system[,] all officers and employees are subject to reshuffle of assignments. Moreover, this resolution does not preclude the transfer of assignment of bank officers and employees from the branch office to the head office and vice-versa."

"Board Res. No. 95-53

"Pursuant to Resolution No. 99-52, the following branch employees are hereby reshuffled to their new assignments without changes in their compensation and other benefits.

NAME OF EMPLOYEES	PRESENT ASSIGNMENT	NEW ASSIGNMENT
JOYCE V. ZETA	Bank Teller	C/A Teller
CLODUALDO ZAGALA	C/A Clerk	Actg. Appraiser
ELMER L. MENDOZA	Appraiser	Clerk-Meralco Collection
CHONA R. MENDOZA	Clerk-Meralco Collection	Bank Teller"[5]

[4] Assailed Decision, p. 15; *rollo*, p. 47.

[5] *Rollo*, p. 119.

In a letter dated April 30, 1999, Alejo B. Daya, the bank's board chairman, directed Briccio V. Cada, the manager of the bank's Tayabas branch, to implement the reshuffle.[6] The new assignments were to "be effective on May 1, 1999 without changes in salary, allowances, and other benefits received by the aforementioned employees."[7]

On May 3, 1999, in an undated letter addressed to Daya, Petitioner Elmer Mendoza expressed his opinion on the reshuffle, as follows:

"RE: The recent reshuffle of employees as per Board Resolution dated April 25, 1999

"Dear Sir:

"This is in connection with the aforementioned subject matter and which the undersigned received on April 25, 1999.

"Needless to state, the reshuffling of the undersigned from the present position as Appraiser to Clerk-Meralco Collection is deemed to be a demotion without any legal basis. Before this action on your part[,] the undersigned has been besieged by intrigues due to [the] malicious machination of a certain public official who is bruited to be your good friend. These malicious insinuations were baseless and despite the fact that I have been on my job as Appraiser for the past six (6) years in good standing and never involved in any anomalous conduct, my being reshuffled to [C]lerk-[M]eralco [C]ollection is a blatant harassment on your part as a prelude to my termination in due time. This will constitute an unfair labor practice.

"Meanwhile, may I beseech your good office that I may remain in my position as Appraiser until the reason [for] my being reshuffled is made clear.

"Your kind consideration on this request will be highly appreciated."[8]

On May 10, 1999, Daya replied:

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[6] Assailed Decision, pp. 2-3; *rollo*, pp. 34-35.

[7] Letter of Alejo B. Daya dated April 30, 1999; *rollo*, p. 120.

[8] *Rollo*, p. 121.

"Dear Mr. Mendoza,

"Anent your undated letter expressing your resentment/comments on the recent management's decision to reshuffle the duties of bank employees, please be informed that it was never the intention (of management) to downgrade your position in the bank considering that your due compensation as Bank Appraiser is maintained and no future reduction was intended.

"Aside from giving bank employees a wider experience in various banking operations, the reshuffle will also afford management an effective tool in providing the bank a sound internal control system/ check and balance and a basis in evaluating the performance of each employee. A continuing bankwide reshuffle of employees shall be made at the discretion of management which may include bank officers, if necessary as expressed in Board Resolution No. 99-53, dated April 25, 1999. Management merely shifted the duties of employees, their position title [may be] retained if requested formally.

"Being a standard procedure in maintaining an effective internal control system recommended by the Bangko Sentral ng Pilipinas, we believe that the conduct of reshuffle is also a prerogative of bank management."[9]

On June 7, 1999, petitioner submitted to the bank's Tayabas branch manager a letter in which he applied for a leave of absence from work:

"Dear Sir:

"I wish I could continue working but due to the ailment that I always feel every now and then, I have the honor to apply for at least ten (10) days sick leave effective June 7, 1999.

"Hoping that this request [merits] your favorable and kind consideration and understanding."[10]

On June 21, 1999, petitioner again submitted a letter asking for another leave of absence for twenty days effective on the same date.[11]

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[9] Letter of Daya dated May 10, 1999; *rollo*, p. 122.

[10] Letter of petitioner dated June 7, 1999; *rollo*, p. 123.

[11] Letter of petitioner dated June 21, 1999; *rollo*, p. 124.

On June 24, 1999, while on his second leave of absence, petitioner filed a Complaint before Arbitration Branch No. IV of the National Labor Relations Commission (NLRC). The Complaint — for illegal dismissal, underpayment, separation pay and damages — was filed against the Rural Bank of Lucban and/or its president, Alejo B. Daya; and its Tayabas branch manager, Briccio V. Cada. The case was docketed as NLRC Case SRAB-IV-6-5862-99-Q.[12]

The labor arbiter's June 14, 2000 Decision upheld petitioner's claims as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring respondents guilty of illegal dismissal.

2. Ordering respondents to reinstate complainant to his former position without loss of seniority rights with full backwages from date of dismissal to actual reinstatement in the amount of ₱55,000.00 as of June 30, 2000.

3. Ordering the payment of separation pay if reinstatement is not possible in the amount of ₱30,000.00 in addition to 13th month pay of ₱5,000.00 and the usual ₱10,000.00 annual bonus afforded the employees.

4. Ordering the payment of unpaid salary for the period covering July 1–30, 1999 in the amount of ₱5,000.00.

5. Ordering the payment of moral damages in the amount of ₱50,000.00.

6. Ordering the payment of exemplary damages in the amount of ₱25,000.00.

7. Ordering the payment of Attorney's fees in the amount of ₱18,000.00 which is 10% of the monetary award."[13]

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[12] Assailed Decision, p. 6; *rollo*, p. 38.

[13] Decision of Labor Arbiter Waldo Emerson R. Gan dated June 14, 2000, p. 5-6; *rollo*, pp. 145-146.

On appeal, the NLRC reversed the labor arbiter.[14] In its July 18, 2001 Resolution, it held:

"We can conceive of no reason to ascribe bad faith or malice to the respondent bank for its implementation of its Board Resolution directing the reshuffle of employees at its Tayabas branch to positions other than those they were occupying. While at first the employees thereby affected would experience difficulty in adjusting to their new jobs, it cannot be gainsaid that the objective for the reshuffle is noble, as not only would the employees obtain additional knowledge, they would also be more well-rounded in the operations of the bank and thus help the latter further strengthen its already existing internal control system.

"The only inconvenience, as [w]e see it, that the [petitioner] may have experienced is that from an appraiser he was made to perform the work of a clerk in the collection of Meralco payments, which he may have considered as beneath him and his experience, being a pioneer employee. But it cannot be discounted either that other employees at the Tayabas branch were similarly reshuffled. The only logical conclusion therefore is that the Board Resolution was not aimed solely at the [petitioner], but for all the other employees of the xxx bank as well. Besides, the complainant has not shown by clear, competent and convincing evidence that he holds a vested right to the position of Appraiser. xxx

"How and by what manner a business concern conducts its affairs is not for this Commission to interfere with, especially so if there is no showing, as in the case at bar, that the reshuffle was motivated by bad faith or ill-will. xxx"[15]

After the NLRC denied his Motion for Reconsideration,[16] petitioner brought before the CA a Petition for *Certiorari* [17] assailing the foregoing Resolution.

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[14] CA Decision dated June 14, 2002, pp. 11-12; *rollo*, pp. 43-44.

[15] NLRC Resolution dated July 18, 2001, pp. 4-5*; rollo*, pp. 79-80.

[16] Assailed Decision, p. 12; *rollo*, p. 44.

[17] *Rollo*, pp. 51-74.

Ruling of the Court of Appeals

Finding that no grave abuse of discretion could be attributed to the NLRC, the CA Decision ruled thus:

"The so-called 'harassment' which Mendoza allegedly experienced in the aftermath of the reshuffling of employees at the bank is but a figment of his imagination as there is no evidence extant on record which substantiates the same. His alleged demotion, the 'cold shoulder' stance, the things about his chair and table, and the alleged reason for the harassment are but allegations bereft of proof and are perforce inadmissible as self-serving statements and can never be considered repositories of truth nor serve as foundations of court decisions anent the resolution of the litigants' rights.

"When Mendoza was reshuffled to the position of clerk at the bank, he was not demoted as there was no [diminution] of his salary benefits and rank. He could even retain his position title, had he only requested for it pursuant to the reply of the Chairman of the bank's board of directors to Mendoza's letter protesting the reshuffle. There is, therefore, no cause to doubt the reasons which the bank propounded in support of its move to reshuffle its employees, *viz*:

1. to 'familiarize bank employees with the various phases of bank operations,' and

2. to 'further strengthen the existing internal control system' of the bank.

"The reshuffling of its employees was done in good faith and cannot be made the basis of a finding of constructive dismissal.

"The fact that Mendoza was no longer included in the bank's payroll for July 1 to 15, 1999 does not signify that the bank has dismissed the former from its employ. Mendoza separated himself from the bank's employ when, on June 24, 1999, while on leave, he filed the illegal dismissal case against his employer for no apparent reason at all."[18]

Hence, this Petition.[19]

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[18] Assailed Decision, pp. 14-15; *rollo*, pp. 46-47.

[19] This case was deemed submitted for resolution on June 9, 2003, upon this Court's receipt of respondent's Memorandum, signed by Atty. Carlos Mayorico E. Caliwara. Petitioner's Memorandum, signed by Atty. Manuel M. Maramba, was received by this Court on April 23, 2003.

The Issues

Petitioner raises the following issues for our consideration:

"I. Whether or not the petitioner is deemed to have voluntarily separated himself from the service and/or abandoned his job when he filed his Complaint for constructive and consequently illegal dismissal;

"II. Whether or not the reshuffling of private respondent'[s] employees was done in good faith and cannot be made as the basis of a finding of constructive dismissal, even as the [petitioner's] demotion in rank is admitted by both parties;

"III. Whether or not the ruling in the landmark case of *Ruben Serrano vs. NLRC* [*and Isetann Department Store* (323 SCRA 445)] is applicable to the case at bar;

"IV. Whether or not the Court of Appeals erred in dismissing the petitioner's money claims, damages, and unpaid salaries for the period July 1-30, 1999, although this was not disputed by the private respondent; and

"V. Whether or not the entire proceedings before the Honorable Court of Appeals and the NLRC are a nullity since the appeal filed by private respondent before the NLRC on August 5, 2000 was on the 15th day or five (5) days beyond the reglem[e]ntary period of ten (10) days as provided for by law and the NLRC Rules of Procedure."[20]

In short, the main issue is whether petitioner was constructively dismissed from his employment.

The Court's Ruling

The Petition has no merit.

Main Issue:
Constructive Dismissal

Constructive dismissal is defined as an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or

[20] Petitioner's Memorandum, p. 10; *rollo*, p. 220. Original in upper case.

a diminution of pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[21] Petitioner argues that he was compelled to file an action for constructive dismissal, because he had been demoted from appraiser to clerk and not given any work to do, while his table had been placed near the toilet and eventually removed.[22] He adds that the reshuffling of employees was done in bad faith, because it was designed primarily to force him to resign.[23]

Management Prerogative to Transfer Employees

Jurisprudence recognizes the exercise of management prerogatives. For this reason, courts often decline to interfere in legitimate business decisions of employers.[24] Indeed, labor laws discourage interference in employers' judgments concerning the conduct of their business.[25] The law must protect not only the welfare of employees, but also the right of employers.

In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another — provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[26] This privilege is inherent in the right of employers to control and manage their enterprise effectively.[27]

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[21] *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186, September 14, 1999; *Escobin v. NLRC*, 351 Phil. 973, 999, April 15, 1998; *Philippine Japan Active Carbon Corporation v. NLRC*, 171 SCRA 164, 168, March 8, 1989.

[22] Petitioner's Memorandum, pp. 11, 14; *rollo*, pp. 221, 224.

[23] *Id.*, p. 14; *id.*, p. 224.

[24] *Metrolab Industries, Inc. v. Roldan-Confesor*, 324 Phil. 416, 429, February 28, 1996.

[25] *Bontia v. NLRC*, 325 Phil. 443, 452, March 18, 1996.

[26] *Lanzaderas v. Amethyst Security and General Services, Inc.*, 404 SCRA 505, June 20, 2003; *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, 334 Phil. 84, 93, January 2, 1997; *Escobin v. NLRC, supra*.

[27] *Ibid*.

The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[28]

Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[29] The test for determining the validity of the transfer of employees was explained in *Blue Dairy Corporation v. NLRC*[30] as follows:

"[L]ike other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment."[31]

Petitioner's Transfer Lawful

The employer bears the burden of proving that the transfer of the employee has complied with the foregoing test. In the

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[28] See Antonio H. Abad Jr., *Compendium on Labor Law* (2004), p. 55.

[29] *Philippine Airlines, Inc. v. NLRC*, 225 SCRA 301, 308, August 13, 1993; *University of Sto. Tomas v. NLRC*, 190 SCRA 758, 771, October 18, 1990.

[30] *Supra*.

[31] *Id*., p. 186, per Bellosillo, *J*.

instant case, we find no reason to disturb the conclusion of the NLRC and the CA that there was no constructive dismissal. Their finding is supported by substantial evidence — that amount of relevant evidence that a reasonable mind might accept as justification for a conclusion.[32]

Petitioner's transfer was made in pursuit of respondent's policy to "familiarize bank employees with the various phases of bank operations and further strengthen the existing internal control system"[33] of all officers and employees. We have previously held that employees may be transferred — based on their qualifications, aptitudes and competencies — to positions in which they can function with maximum benefit to the company.[34] There appears no justification for denying an employer the right to transfer employees to expand their competence and maximize their full potential for the advancement of the establishment. Petitioner was not singled out; other employees were also reassigned without their express consent.

Neither was there any demotion in the rank of petitioner; or any diminution of his salary, privileges and other benefits. This fact is clear in respondent's Board Resolutions, the April 30, 1999 letter of Bank President Daya to Branch Manager Cada, and the May 10, 1999 letter of Daya to petitioner.

On the other hand, petitioner has offered no sufficient proof to support his allegations. Given no credence by both lower tribunals was his bare and self-serving statement that he had been positioned near the comfort room, made to work without a table, and given no work assignment.[35] Purely conjectural is his claim that the reshuffle of personnel was a harassment in

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[32] *Tan v. NLRC*, 359 Phil. 499, 512, November 24, 1998. Substantial evidence is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies like the NLRC (*Equitable Banking Corporation v. NLRC,* 273 SCRA 352, 373-374, June 13, 1997).

[33] Board Resolution No. 99-52; *rollo*, p. 119.

[34] *Allied Banking Corporation v. Court of Appeals,* G.R. No. 144412, November 18, 2003; *Blue Dairy Corporation v. NLRC, supra,* p. 186; *Philippine Japan Active Carbon Corporation v. NLRC, supra*.

[35] Petitioner's Memorandum, p. 3; *rollo,* p. 213.

retaliation for an alleged falsification case filed by his relatives against a public official.[36] While the rules of evidence prevailing in courts of law are not controlling in proceedings before the NLRC,[37] parties must nonetheless submit evidence to support their contentions.

Secondary Issues:

Serrano v. NLRC Inapplicable

Serrano v. NLRC[38] does not apply to the present factual milieu. The Court ruled therein that the lack of notice and hearing made the dismissal of the employee ineffectual, but not necessarily illegal.[39] Thus, the procedural infirmity was remedied by ordering payment of his full back wages from the time of his dismissal.[40] The absence of constructive dismissal in the instant case precludes the application of Serrano. Because herein petitioner was not dismissed, then he is not entitled to his claimed monetary benefits.

Alleged Nullity of NLRC and CA Proceedings

Petitioner argues that the proceedings before the NLRC and the CA were void, since respondent's appeal before the NLRC had allegedly been filed beyond the reglementary period.[41] A careful scrutiny of his Petition for Review[42] with the appellate court shows that this issue was not raised there. Inasmuch as the instant Petition challenges the Decision of the CA, we cannot rule on arguments that were not brought before it. This ruling is consistent with the due-process requirement that no question

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[36] *Ibid*.

[37] *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC, supra*, p. 92.

[38] 380 Phil. 416, January 27, 2000.

[39] *Id*., p. 449. See herein *ponente's* Separate Opinion in Serrano. See also *Dayan v. Bank of Philippine Islands*, 421 Phil. 620, 633, November 20, 2001.

[40] *Id*., p. 451.

[41] Petitioner's Memorandum, p. 20; *rollo*, p. 230.

[42] *Rollo*, pp. 51-74.

shall be entertained on appeal, unless it has been raised in the court below.[43]

WHEREFORE, this Petition is *DENIED*, and the June 14, 2002 Decision and the September 25, 2002 Resolution of the Court of Appeals are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

EN BANC

[G.R. No. 159299. July 7, 2004]

POMPEYO QUERUBIN, ERIBERTO LOSARIA, MA. AIDA TORRE, HERNAN MAGLUPAY and VICENTE PETIERRE, *petitioners, vs.* **THE REGIONAL CLUSTER DIRECTOR, Legal and Adjudication Office, COA Regional Office No. VI, Pavia, Iloilo City,** *respondent.*

SYNOPSIS

Petitioners, Members of the Board of the Bacolod City Water District (BCWD), questioned before the Supreme Court the Resolution of the Legal and Adjudication Office-Corporate, Commission on Audit, which sustained the disallowance of the payment of Personal Economic Relief Allowance (PERA), Representation and Transportation Allowance (RATA), Uniform Allowance, Rice Allowance, Mid-Year Bonus, Centennial Bonus, Extra-ordinary and Miscellaneous Expenses, Anniversary Bonus, Productivity Incentive Bonus, Cash Gift, Amelioration Bonus, and Year End Assistance to them, on the ground that

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[43] *Del Rosario v. Bonga,* 350 SCRA 101, 108, January 23, 2001.

they ran counter to the provision of Section 13 of Presidential Decree No. 198, as amended, otherwise known as the Provincial Water Utilities Act of 1973. The aforesaid allowances were received by the petitioners pursuant to Resolution No. 313, series of 1995.

In *Baybay Water District v. Commission on Audit* , the Court held that PD 198 governs the compensation of members of the board of water districts. Section 13 of PD 198 is clear enough that it needs no interpretation. It expressly prohibits the grant of compensation other than the payment of per diems, thus preempting the exercise of any discretion by water districts in paying other allowances and bonuses. Thus, members of the board of water districts cannot receive allowances and benefits more than those allowed by PD 198. The Court further declared that LWUA Resolution No. 313, series of 1995, which grants compensation and other benefits to the members of the Board of Directors of Local Water Districts, is not in conformity with Section 13 of PD 198, as amended. Applying *the said case of Baybay Water District v. Commission on Audit,* the Court , thus, sustained the disallowance of the monetary benefits granted to petitioners in accordance with LWUA Resolution No. 313, series of 1995. However, the Court declared that the petitioners need not refund said additional compensation. Having been granted said allowances and bonuses in 1999, before the Court declared in *Baybay Water District* the illegality of payment of additional compensation other than the allowed *per diem* in Section 13 of PD 198, as amended, they can thus be considered to have received the same in good faith.

SYLLABUS

1. ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; BACOLOD CITY WATER DISTRICT; SECTION 13 OF PD 198, AS AMENDED; FORBIDS GRANT OF BONUS AND ALLOWANCES OTHER THAN *PER DIEMS*; PETITIONERS NEED NOT REFUND THE DISALLOWED ALLOWANCES AND BONUSES CONSIDERED TO HAVE BEEN RECEIVED BY THEM IN GOOD FAITH.— Accordingly, the Court sustains the disallowance of the monetary benefits granted to petitioners Members of the Board of the BCWD in accordance with LWUA Resolution No. 313, series of 1995. Having been granted said allowances and bonuses

in 1999, before the Court declared in *Baybay Water District* the illegality of payment of additional compensation other than the allowed *per diem* in Section 13, of PD 198, as amended, they can thus be considered to have received the same in good faith. Hence, they need not refund them.

2. REMEDIAL LAW; RULES OF PROCEDURE; PROCEDURAL TECHNICALITIES MAY BE OVERLOOKED IN THE INTEREST OF JUSTICE.— In his Comment, the Solicitor General pointed out that petitioners erroneously sought the review of the Legal and Adjudication Office-Corporate's Decision and Resolution directly with this Court *via* Rule 45. In effect, the Solicitor General would want the Court to deny the petition and order the petitioners to refund the allowances and bonuses disallowed by the COA Auditor. Indeed, COA Memorandum No. 2002-053, states that appeals from the decision of the Legal and Adjudication Office shall be filed with the Commission Secretary and shall be decided by the Commission Proper. Moreover, under Section 2, Rule 64, of the Revised Rules of Civil Procedure, a judgment or final order or resolution of the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65. Nevertheless, we deem it wise to overlook procedural technicalities in order to rule speedily on this case. In the interest of substantial justice, petitioners should not be denied of the Court's favorable ruling in *De Jesus* modifying the decision of the COA on the matter of refund.

APPEARANCES OF COUNSEL

Jovim V. Entila for petitioners.
The Solicitor General for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the Revised Rules of Civil Procedure seeking to annul the March 24, 2003 Decision[1] of the Legal and Adjudication Office-Corporate,

[1] *Rollo*, p. 25.

Commission on Audit (COA), which affirmed the Decision[2] of the Regional Cluster Director, Legal and Adjudication Office, COA Regional Office No. VI, Pavia, Iloilo City, disallowing the payment of allowances and benefits to the Members of the Board of Directors of the Bacolod City Water District (BCWD). Likewise assailed is its June 24, 2003 Resolution[3] which denied petitioners' motion for reconsideration.

The undisputed facts show that pursuant to Resolution No. 313, series of 1995, of the Local Water Utilities Administration (LWUA), petitioners, Members of the Board of the BCWD, received between January 1-December 31, 1999, the following allowances, namely — Personal Economic Relief Allowance (PERA), Representation and Transportation Allowance (RATA), Uniform Allowance, Rice Allowance, Mid-Year Bonus, Centennial Bonus, Extra-ordinary and Miscellaneous Expenses, Anniversary Bonus, Productivity Incentive Bonus, Cash Gift, Amelioration Bonus, and Year End Assistance.[4] The said benefits and allowances were, however, disallowed by the State Auditor in his post-audit of BCWD's 1999 accounts, on the ground that they ran counter to the provision of Section 13 of Presidential Decree No. 198, as amended, otherwise known as the Provincial Water Utilities Act of 1973.

Petitioners appealed to the COA Regional Office No. VI, but the Regional Cluster Director denied the appeal on August 21, 2002.[5] Unfazed, they filed a petition for review[6] with the COA Central Office but the same was likewise denied by the Director of the Legal and Adjudication Office-Corporate in a Decision

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[2] *Id*., p. 70.

[3] *Id*., p. 29.

[4] The total disallowance for each petitioner Director are as follows: Pompeyo Querubin — ₱261,702.92; Eriberto Losaria — ₱224,274.10; Herman Maglupay — ₱276,488.52; Ma. Aida Torre — ₱140,369.10 and Vicente Petierre — ₱103,578.00 (*Rollo*, p. 70).

[5] *Rollo*, p. 70.

[6] *Id*., p. 75.

dated March 24, 2003. The motion for reconsideration filed by petitioners suffered the same fate.

Hence, the instant petition raising the following issues:

Are the allowances and bonuses granted to petitioners prohibited under Section 13 of PD 198, as amended? Should petitioners refund the disallowed disbursements?

These queries have already been settled in the case of *De Jesus v. Commission on Audit*.[7] Applying *Baybay Water District v. Commission on Audit*,[8] it was held in De Jesus that Section 13 of PD 198, as amended,[9] categorically forbids the grant of bonuses and allowances other than payment of *per diems*. De Jesus likewise declared that LWUA Resolution No. 313, series of 1995, which grants compensation and other benefits to the members of the Board of Directors of Local Water Districts, is not in conformity with Section 13 of PD 198, as amended. Nevertheless, it was held therein that the disallowed monetary benefits received by the Board Members concerned in 1997 and 1998 need not be refunded by the recipient Board Members because they received the same before *Baybay Water District* was promulgated on January 23, 2002. They were therefore of the honest belief that LWUA Board Resolution No. 313 was valid, thus —

This issue was already resolved in the similar case of *Baybay Water District v. Commission on Audit*. In Baybay Water District, the members of the board of Baybay Water District also questioned the disallowance by the COA of payment of RATA, rice allowance

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[7] G.R. No. 149154, 10 June 2003.

[8] G.R. Nos. 147248-49, 23 January 2002, 374 SCRA 482.

[9] Section 13 of PD 198, as amended, reads as follows:

Compensation. — Each director shall receive a *per diem*, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive *per diems* in any given month in excess of the equivalent of the total *per diems* of four meetings in any given month. No director shall receive other compensation for services to the district.

Any *per diem* in excess of ₱50 shall be subject to approval of the Administration. (Italics supplied)

and excessive *per diems*. The Court ruled that PD 198 governs the compensation of members of the board of water districts. Thus, members of the board of water districts cannot receive allowances and benefits more than those allowed by PD 198. Construing Section 13 of PD 198, the Court declared:

> xxx Under S[ection] 13 of this Decree, *per diem* is precisely intended to be the compensation of members of board of directors of water districts. Indeed, words and phrases in a statute must be given their natural, ordinary, and commonly-accepted meaning, due regard being given to the context in which the words and phrases are used. By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, and, in the same paragraph, providing "No director shall receive other compensation" than the amount provided for *per diems*, the law quite clearly indicates that directors of water districts are authorized to receive only the *per diem* authorized by law and no other compensation or allowance in whatever form.

Section 13 of PD 198 is clear enough that it needs no interpretation. It expressly prohibits the grant of compensation other than the payment of *per diems*, thus preempting the exercise of any discretion by water districts in paying other allowances and bonuses.

xxx xxx xxx

Nevertheless, our pronouncement in *Blaquera v. Alcala* supports petitioners' position on the refund of the benefits they received. In *Blaquera*, the officials and employees of several government departments and agencies were paid incentive benefits which the COA disallowed on the ground that Administrative Order No. 29 dated 19 January 1993 prohibited payment of these benefits. While the Court sustained the COA on the disallowance, it nevertheless declared that:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

This ruling in Blaquera applies to the instant case. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided Baybay Water District. Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.

Accordingly, the Court sustains the disallowance of the monetary benefits granted to petitioners Members of the Board of the BCWD in accordance with LWUA Resolution No. 313, series of 1995. Having been granted said allowances and bonuses in 1999, before the Court declared in *Baybay Water District* the illegality of payment of additional compensation other than the allowed *per diem* in Section 13, of PD 198, as amended, they can thus be considered to have received the same in good faith. Hence, they need not refund them.

One final note. In his Comment, the Solicitor General pointed out that petitioners erroneously sought the review of the Legal and Adjudication Office-Corporate's Decision and Resolution directly with this Court *via* Rule 45. In effect, the Solicitor General would want the Court to deny the petition and order the petitioners to refund the allowances and bonuses disallowed by the COA Auditor. Indeed, COA Memorandum No. 2002-053,[10] states that appeals from the decision of the Legal and Adjudication Office shall be filed with the Commission Secretary and shall be decided by the Commission Proper. Moreover, under Section 2, Rule 64, of the Revised Rules of Civil Procedure, a judgment or final order or resolution of the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65. Nevertheless, we deem it wise to overlook procedural technicalities in order to rule speedily on this case.[11] In the interest of substantial justice, petitioners

[10] Effective September 1, 2002.

[11] *Spouses Go v. Tong*, G.R. No. 151942, 27 November 2003.

should not be denied of the Court's favorable ruling in *De Jesus* modifying the decision of the COA on the matter of refund.

WHEREFORE, in view of all the foregoing, the March 24, 2003 Decision and the June 24, 2003 Resolution of the Legal and Adjudication Office-Corporate, Commission on Audit, which sustained the disallowance of the payment of Personal Economic Relief Allowance (PERA), Representation and Transportation Allowance (RATA), Uniform Allowance, Rice Allowance, Mid-Year Bonus, Centennial Bonus, Extra-ordinary and Miscellaneous Expenses, Anniversary Bonus, Productivity Incentive Bonus, Cash Gift, Amelioration Bonus, and Year End Assistance to petitioners Members of the Board of Bacolod City Water District, are *AFFIRMED* with the *MODIFICATION* that petitioners need not refund said additional compensation received in the year 1999, per Resolution No. 313, series of 1995, of the Local Water Utilities Administration.

No costs.

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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